

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 31, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-2238**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**IN THE INTEREST OF JASON K.,  
A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**JASON K.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from orders of the circuit court for Ozaukee County:  
JOSEPH D. MC CORMACK, Judge. *Reversed and cause remanded with  
directions.*

¶1 ANDERSON, J.<sup>1</sup> We granted leave to appeal to Jason K. to present two issues. First, Jason asserts that because he was under fifteen years of age when he allegedly committed criminal acts, the State cannot seek waiver of the juvenile court's jurisdiction. Second, he challenges the decision of the juvenile court to waive its jurisdiction. We reverse because we determine that it is Jason's age at the time he allegedly committed criminal acts that controls whether the State can seek his waiver to criminal court.<sup>2</sup>

¶2 The first issue Jason raises is a challenge to the competency of the juvenile court to entertain the waiver petition. Jason contends that it is his age at the time of the commission of the delinquent act, and not his age at the time the waiver petition is filed, that determines whether he can be waived into criminal court. Because the issue in this case is purely statutory interpretation and because the text of the statute will help in gaining an understanding of the facts, we will set forth the language of the statute before discussing the facts. The pertinent part of WIS. STAT. § 938.18(1)(a) reads as follows:

**938.18 Jurisdiction for criminal proceedings for juveniles 14 or older; waiver hearing.** (1) (a) Subject to s. 938.183, a juvenile or district attorney may apply to the court to waive its jurisdiction under this chapter in any of the following situations:

1. If the juvenile is alleged to have violated s. 940.03, 940.06, 940.225(1) or (2), 940.305, 940.31, 943.10(2),

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> Our holding on the narrowest issue, whether the juvenile court was competent to waive Jason to criminal court under WIS. STAT. § 938.18, is dispositive and therefore we do not reach the question of whether the State proved that Jason met the criteria for waiver under § 938.18(5)(b). If we decide a case on one issue, we need not address others. *Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983). An appellate court should decide cases on the narrowest possible grounds. *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

943.32(2) or 961.41(1) on or after the juvenile's 14th birthday.

2. If the juvenile is alleged to have committed, on or after the juvenile's 14th birthday, a violation, at the request of or for the benefit of a criminal gang, as defined in s. 939.22(9), that would constitute a felony under chs. 939 to 948 or 961 if committed by an adult.

3. If the juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.

¶3 Jason's birth date is August 19, 1983. Jason is alleged to have committed three or more acts of anal intercourse against another juvenile between January 1, 1996, and July 1998. He is also alleged to have committed three or more acts of fellatio against the same juvenile during the same period. Jason was fourteen years old when the sexual assaults ended in July 1998. A delinquency petition alleging two counts of violating WIS. STAT. §§ 948.02(1) and 948.025 and an accompanying petition for waiver of juvenile court jurisdiction were filed on May 11, 2000. Jason was sixteen years old when the petitions were filed.

¶4 After the juvenile court found prosecutive merit and the waiver criteria had been met, it ordered Jason waived to criminal court. Jason filed a motion for reconsideration arguing that the State was not permitted by WIS. STAT. § 938.18(1)(a) to bring a waiver petition because the delinquent acts charged were not among the enumerated acts in § 938.18(1)(a)1 and that § 938.18(1)(a)3 did not apply because he was only fourteen at the time of the alleged acts. The juvenile court denied Jason's motion, reasoning that Jason's age on the date of the filing of the waiver petition was the controlling age. We granted Jason leave to appeal.

¶5 Whether Jason is correct in his position is a question of statutory interpretation. The interpretation or application of a statute is a question of law which this court reviews de novo. *State v. Hughes*, 218 Wis. 2d 538, 543, 582 N.W.2d 49 (Ct. App. 1998). When we interpret a statute, our goal is to ascertain

the intent of the legislature and give effect to the intent of the legislature. *State ex rel. Frederick v. McCaughtry*, 173 Wis. 2d 222, 225, 496 N.W.2d 177 (Ct. App. 1992). We first look to the language of the statute itself. *Anderson v. City of Milwaukee*, 208 Wis. 2d 18, 25, 559 N.W.2d 563 (1997). If the language of the statute is unambiguous in its meaning, we go no further.

¶6 The State sought Jason’s waiver into criminal court under the provisions of WIS. STAT. § 938.18(1)(a)3, which permits waiver “[i]f the juvenile is alleged to have violated any state criminal law on or after the juvenile’s 15th birthday.” The language is unambiguous; it requires that the act constituting the violation of the criminal law be committed on or after the juvenile’s fifteenth birthday. We conclude that the juvenile court was not competent to consider the waiver petition because Jason was under the age of fifteen years when he committed the alleged criminal acts.

¶7 The issue Jason raises has not been specifically addressed before, but several cases have considered the age of a juvenile at mileposts in the Juvenile Justice Code and provide us with guidance and support. *D.V. v. State*, 100 Wis. 2d 363, 302 N.W.2d 64 (Ct. App. 1981), involved a juvenile who was eleven years old when he committed a delinquent offense, but turned twelve one week before the State filed a delinquency petition. *Id.* at 365. The juvenile argued that under the then-existing Children’s Code, WIS. STAT. ch. 48 (1979-80), his disposition had to be under the CHIPS provisions of the code because he was eleven years old when the offense was committed. *D.V.*, 100 Wis. 2d at 364. In rejecting the juvenile’s argument, we held that the statute addressed the age of the juvenile at the time the delinquency petition is filed and not the age of the juvenile at the time the offense is committed.

Section 48.12, Stats., states that the juvenile court has exclusive jurisdiction over any child age twelve or older who is alleged to be delinquent. By its terms, the statute addresses the age of the child at the time of the delinquency allegation, not the age of the child at the time of the offense.

*D.V.*, 100 Wis. 2d at 366.<sup>3</sup>

¶8 However, in describing how the Children’s Code strictly defines and limits the jurisdiction of the juvenile court, we discussed the “jurisdictional division point” provided by WIS. STAT. § 48.18(1) (1979-80), governing waiver of children into criminal court. *D.V.*, 100 Wis. 2d at 367.

48.18 Jurisdiction for criminal proceedings for children 16 or older; waiver hearing. (1) If a child is alleged to have violated a state criminal law on or after his or her 16th birthday, the child or district attorney may apply to the court to waive its jurisdiction under this chapter....

Exclusively of jurisdiction of the juvenile court may be waived after age sixteen. However, in this instance [§ 48.18(1)] the legislature has specified that age at the time of the offense is determinative of the point of division of jurisdiction....

*D.V.*, 100 Wis. 2d at 367.

¶9 *State v. LeQue*, 150 Wis. 2d 256, 442 N.W.2d 494 (Ct. App. 1989), considered whether LeQue could be charged in criminal court twenty days after

---

<sup>3</sup> The pertinent portions of WIS. STAT. ch. 48 (1979-80) provided:

**48.12 Jurisdiction over children alleged to be delinquent. (1)** The court has exclusive jurisdiction, except as provided in ss. 48.17 and 48.18, over any child 12 years of age or older who is alleged to be delinquent as defined in s. 48.02(3m).

**48.13 Jurisdiction over children alleged to be in need of protection or services.** The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

....

(12) Who, being under 12 years of age, has committed a delinquent act as defined in s. 48.12.

his eighteenth birthday for a sexual assault he allegedly committed when he was fifteen. *Id.* at 258-60. The victim first reported to a school counselor on January 12, 1988, that LeQue sexually assaulted her three times between May and July 1985. *Id.* A complaint charging three counts of sexual assault was filed in criminal court on February 23, 1988, twenty days after LeQue turned eighteen. We concluded that the criminal court had subject matter jurisdiction to hear and determine any charge brought against an adult defendant, regardless of the defendant's age at the time of the offense. *Id.* at 265.

¶10 In reaching that decision, we noted that “[t]he legislature has specified in § 48.18, Stats., that age at the time of the offense determines the juvenile court’s authority to *waive* its exclusive jurisdiction.”<sup>4</sup> *LeQue*, 150 Wis. 2d at 264. We noted that if the legislature had wanted to provide age at the time of the offense to define the difference between criminal court jurisdiction and juvenile court jurisdiction, it would have included similar language in the appropriate statutes. *Id.*

¶11 In a case with facts almost identical to those in *LeQue*, the supreme court discussed the jurisdictional division points of the Children’s Code in *State v. Annala*, 168 Wis. 2d 453, 484 N.W.2d 138 (1992). After examining the language of the relevant statutes, the supreme court held that “[t]he jurisdiction of the juvenile court is determined by the individual’s age at the time charged, not the individual’s age at the time of the alleged offense.” *Id.* at 463 (citations omitted).

---

<sup>4</sup> WISCONSIN STAT. § 48.18(1) (1987-88) provided:

**Jurisdiction for criminal proceedings for children 14 or older; waiver hearing.** (1) If a child is alleged to have violated s. 940.01 or 940.02 on or after his or her 14th birthday or if a child is alleged to have violated any state criminal law on or after his or her 16th birthday, the child or district attorney may apply to the court to waive its jurisdiction under this chapter....

The supreme court then contrasted this jurisdictional division point with the jurisdictional division point of waiver into criminal court.

The initial jurisdiction of the juvenile court is framed in terms of the defendant's age at the time of prosecution because the juvenile court is only empowered under [the Children's Code] to impose rehabilitation treatment programs that are designed to benefit delinquent children. The programs are not designed to benefit an adult that has committed a criminal act, regardless of whether the criminal act was committed when the defendant was a child. *Waiver of the juvenile court's jurisdiction is framed in terms of the defendant's age at the time of the alleged offense.* Logically, the juvenile court may not waive its jurisdiction if it does not have jurisdiction in the first instance.

*Id.* at 464 (emphasis added).<sup>5</sup>

¶12 Subsequent to *D.V.*, *LeQue* and *Annala*, the statutory provisions governing juvenile delinquency proceedings have been amended and renumbered and are codified in the new Juvenile Justice Code. See WIS. STAT. ch. 938. However, although the pertinent age for a juvenile subject to waiver petitions is lower, see WIS. STAT. § 938.18(1)(a), the jurisdictional division point for a waiver petition remains unchanged. Just as under the previous version of the waiver statute in the Children's Code, see WIS. STAT. § 48.18 (1993-94), that made the juvenile's age on the date of the offense the key to waiver, the waiver provision in

---

<sup>5</sup> The State posits that the discussion on the jurisdictional division point for waiver into criminal court contained in *D.V.* and *LeQue* is merely dicta because it was not essential to the holdings in those cases. True, dicta "is a statement not addressed to the question before the court or necessary for its decision." *Am. Family Mut. Ins. Co. v. Shannon*, 120 Wis. 2d 560, 565, 356 N.W.2d 175 (1984). However, the Wisconsin Supreme Court engaged in the same discussion and reached the same conclusion in *Annala*. We have been cautioned that while some pronouncements of the Wisconsin Supreme Court are technically dicta, the announcements are "nevertheless administrative or supervisory directions that are intended for the guidance of the court system and are to be followed." *State v. Koput*, 142 Wis. 2d 370, 386 n.12, 418 N.W.2d 804 (1988). Therefore, we will follow the logic of the discussion in *Annala*, *D.V.* and *LeQue*.

the Juvenile Justice Code, *see* § 938.18(1)(a), maintains the juvenile's age on the date of the offense as the key to waiver.

¶13 When the legislature created the new Juvenile Justice Code, the Wisconsin appellate courts had been construing the Children's Code as giving initial jurisdiction to the juvenile court in terms of the juvenile's age on the date the delinquency petition was filed and as giving the juvenile court the right to waive its jurisdiction in terms of the juvenile's age on the date of the criminal offense. We can presume that the legislature was aware of the appellate courts' interpretation of the jurisdictional division points in the Children's Code when it adopted the Juvenile Justice Code. *See State v. Johnson*, 207 Wis. 2d 239, 246, 558 N.W.2d 375 (1997). If the legislature disagreed with this interpretation, it could have amended WIS. STAT. § 938.18(1)(a) to permit waiver in terms of the juvenile's age when the waiver petition is filed, yet it has not done so. *See id.* Legislative inaction following judicial construction of a statute, while not conclusive, evinces legislative approval of the interpretation. *State v. Eichman*, 155 Wis. 2d 552, 566, 455 N.W.2d 143 (1990).

¶14 WISCONSIN STAT. § 938.18(1)(a) unambiguously establishes that the juvenile's age at the time of the alleged offense determines the juvenile court's authority to waive its jurisdiction. Therefore, we reverse the juvenile court's order waiving its exclusive jurisdiction over Jason and remand for further proceedings under the Juvenile Justice Code.

*By the Court.*—Orders reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.





