

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 04-2793-FT

Cir. Ct. No. 04-JV-17

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF AUSTON J.S., A PERSON UNDER
THE AGE OF 18:**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AUSTON J.S.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Door County:
D. TODD EHLERS, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Auston J.S. appeals an order placing him outside his home after he was found delinquent due to misdemeanor disorderly conduct

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

and misdemeanor battery. He argues the acts for which he was found delinquent did not rise to the standard required for the court to place him outside his home. We conclude the court applied the proper standard and affirm the order.

BACKGROUND

¶2 On February 26, 2004, Auston was involved in an incident at his school. Auston's teacher, Russell Hoelscher, testified that Auston was being disruptive so he attempted to escort Auston from the room for a "time out." Auston then threw a book through a door into an adjoining room and kicked a chair. As Hoelscher and Auston walked down the hallway, Auston slammed lockers along the way and also slammed into a door at the end of the hallway.

¶3 When Hoelscher told Auston he would have to go see the principal, Auston ran back down the hallway towards the classroom. As he was running, he jumped up and smacked a sign on the wall. When he got back to the classroom, Auston grabbed a book and tried to tear it. Hoelscher grabbed Auston by the shoulders to attempt to guide him to the principal's office. Hoelscher asked a teacher's aide for assistance. The aide took Auston's shoulders while Hoelscher tried to grab Auston's legs to prevent him from kicking. Auston lunged forward and bit Hoelscher on the arm, breaking the skin. Throughout the incident Auston directed obscenities at Hoelscher.

¶4 The State filed a petition under WIS. STAT. ch. 938, alleging Auston was delinquent based on this incident, charging Auston with disorderly conduct and misdemeanor battery. The court found the State had met its burden of proof and found Auston delinquent on both charges.

¶5 The Door County Department of Social Services recommended that Auston be placed in a foster home. Auston argued the Department's report was insufficient to order out-of-home placement under WIS. STAT. § 938.355(2)(b)6. That section states that out-of-home placement is dependent upon "the serious nature of the act for which the juvenile was adjudicated delinquent." Auston argued the acts for which he was adjudicated delinquent were not serious enough to warrant out-of-home placement.

¶6 A social worker testified that the department's recommendation was based on the serious nature of the act as well as occurrences in the past. These occurrences included a 2002 JIPS order, a CHIPS order involving Auston and his brother, and an incident with another student in April 2004. The social worker also described the department's history of working with Auston's family, the problems Auston's mother had with Auston, and services the department unsuccessfully tried to provide to Auston's family.

¶7 The court determined Auston was to be placed out of his mother's home. It concluded that if Auston remained at home, it would be harmful to his own welfare as well as the community's because Auston was "at risk of being further abused; at risk of further perpetrating others." Auston appeals the out-of-home placement.

DISCUSSION

¶8 Auston argues the court improperly applied WIS. STAT. § 938.355(2)(b)6. when it decided to place Auston outside his home. Statutory interpretation is a question of law that we review independently. *Truttschel v. Martin*, 208 Wis. 2d 361, 364-65, 560 N.W.2d 315 (Ct. App. 1997). Statutory interpretation "begins with the language of the statute. If the meaning of the

statute is plain, we ordinarily stop the inquiry.” *Seider v. O’Connell*, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. “Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history.” *Id.*

¶9 Auston argues the statute requires that the court look only at the acts for which he was judged delinquent. He contends that his acts were not serious because they consisted only of disorderly conduct and misdemeanor battery. However, the statute does not delineate what offenses are considered “serious,” nor does it exclude from consideration any particular offense. In fact, the important consideration is not what the title of the offense is. Rather, the court is to look at the “acts” that underlie the offense. Here, the court acknowledged,

absolutely I need to look at the seriousness of the offense in trying to fashion or determine a disposition.

... [B]ut it’s not solely a situation where because these are misdemeanors that that in and of itself cannot give rise to a sufficient factual basis for the Court to make a determination that an out-of-home placement is appropriate.

¶10 The record shows that Auston was disruptive in class, threw a book and kicked chairs, and slammed lockers and slammed into a door when Hoelscher escorted him down the hallway. Then, when he was to go to the principal’s office, Auston ran back down the hallway and back into the classroom. There, he had to be restrained by Hoelscher and a teacher’s aide. When Hoelscher attempted to

prevent Auston from kicking, he lunged forward and bit Hoelscher. The court could reasonably determine that Auston's acts were serious.

¶11 Furthermore, contrary to Auston's argument, when considering out-of-home placement the court is to consider more than simply the acts for which a juvenile is found delinquent. The placement order has to fit the entire text of WIS. STAT. § 938.355(2)(b)6., which further states:

The court order shall also contain a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns ... and a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile's permanency plan, unless return of the juvenile to the home is the goal of the permanency plan and the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 4. applies. The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the court order.

Here, based on the circumstances specific to Auston's case, the court determined that out-of-home placement was appropriate. The court stated its determination was:

based upon his past delinquent acts. It's based upon his impulse control issues that ... are evidenced in [the social worker's] report.

... [I]t's contrary to his welfare at the present time that he remain placed with his mother, and I'm finding it's contrary to the interest of the public. The public's health, welfare, and safety is also brought into issue if he would continue to be placed in his mother's home.

I'm finding reasonable efforts have been undertaken by the Department to prevent this removal. The services which have been made available to [Auston's mother] and her

family are detailed in great detail in [the social worker's] report in this matter and, unfortunately, as I've previously stated, they have not led us to a situation where this removal today can be prevented.

The court adequately documented the reasons for its conclusion and based it on appropriate factors. We therefore conclude the court properly exercised its discretion.

By the Court.—Order affirmed.

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

