COURT OF APPEALS
DECISION
DATED AND RELEASED

October 26, 1995

No. 95-1548

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN THE INTEREST OF THOMAS A. F.,
A Person Under the Age of 18:

JEFFREY S. and DEBORAH V.,

Petitioners-Appellants,

v.

THOMAS A. F. and CHERYL F.,

Respondents-Respondents.

APPEAL from an order of the circuit court for Portage County: FREDERIC FLEISHAUER, Judge. *Affirmed*.

EICH, C.J.[1] This appeal challenges the trial court's decision to deny the release of juvenile records. Jeffrey S. and Deborah V. are the parents of Adam S., a child accidentally shot and killed by another child, Thomas F., in March 1994. After the accident, Adam's parents made a claim against

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

Employers Mutual Casualty Company, the insurer of Thomas F.'s parents, for Adam's wrongful death. Employers, wishing to review the police investigatory file relating to the shooting in order to verify the validity of Adam's parents' claim, asked their insureds (Thomas's parents) to move the court under § 48.396(5)(c), STATS.,[2] to release the police files to Employers. The court granted the request but before the records were released, Employers and Adam's parents agreed to a settlement of the wrongful-death claim.

Adam's parents then filed their own petition under § 48.396(5)(c), STATS., seeking to obtain the police records for their own review in order to learn the truth of what had happened to their son and to assist them in easing their grief and getting on with their lives. The trial court denied the motion, and the parents appeal.

The parties hotly dispute the scope of our review of the trial court's decision. Thomas's parents, arguing in support of the court's order, point to the language of § 48.396(5)(c), STATS., specifically requiring the court to "balance" a variety of "private and societal interests" in order to determine "whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality," and maintain that language necessarily invokes the court's discretion and should be subject to the same limited review as other discretionary decisions. And, referring to the transcript of the trial court's oral decision, they claim discretion was appropriately exercised in this case.

Adam's parents, on the other hand, refer us to the trial court's written order which, for reasons unknown to us, does not reflect the trial court's oral decision balancing the various interests but states simply that the denial of their motion for release of the records "rests solely on the application of ... section 48.396(5)(c)(1)[3] to the facts of this case .... [which] is a question of law."

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[2] The statute, which will be discussed in more detail below, authorizes the court to release otherwise confidential juvenile records to "[a]ny victim of a child's act" if certain conditions are met.

[3] Section 48.396(5)(c)1 states that the "private ... interests" to be considered by the court in striking the balance for release or nonrelease of the records are "[t]he petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the child's interest in rehabilitation and in avoiding the stigma that might result from

As a result, Adam's parents argue that since the trial court treated the issue as one of law, our review is de novo. And they bolster their argument by referring us to cases indicating that "[a]n oral ruling must be reduced to writing and entered before an appeal can be taken from it." ***Helmrick v. Helmrick***, 95 Wis.2d 554, 556, 291 N.W.2d 582, 583 (Ct. App. 1980).

It is true that the application of a statute to undisputed facts is a matter of law which we decide without deference to the trial court's opinion, ***State v. Michels***, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987), and that our review of a discretionary determination is much more limited in that we will not reverse if the record shows that discretion was exercised and we can perceive a reasonable basis for the court's decision. ***Prahl v. Brosamle***, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987).

The problem is that the trial court's oral decision and its written order appear to conflict. As explained, the order appears to indicate that the court's decision was one of law, involving only the application of an unambiguous statute to the undisputed facts. Our reading of the trial court's announcement of its decision from the bench, however, satisfies us that it was doing much more than simply applying a portion of § 48.396(5)(c), STATS., to the facts. It was exercising its discretion by balancing the various statutory factors, and we do not think that its subsequent signature on an order apparently drafted by one of the attorneys, which hints at something else, should bar us from considering whether, given the reasons stated by the court for its decision, it appropriately exercised that discretion. Given the conclusion we reach below--that the trial court exercised its discretion in a manner consistent with relevant cases on the subject and that it reached a result a reasonable judge could reach--to reverse and remand to the court to exercise its discretion would be an exercise in futility and would do little to advance either the cause of justice generally or the interests of the parties to this proceeding.

(..continued)
disclosure."

We thus review the trial court's oral decision--its discussion of the reasons for denying Adam's parents' motion--to determine whether, in so ruling, it erroneously exercised its discretion.[4]

The limited scope of our review of discretionary rulings is well settled. As we have noted above,

> Generally, "[w]e will not reverse a discretionary determination by the trial court if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." Indeed, "[b]ecause the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary determinations."
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> To determine whether the trial court properly exercised its discretion in a particular matter, we look

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[4] In a sense, the trial court was applying § 48.396(5)(c), STATS., to the facts of the case. The statute, however, requires the court to consider and balance several competing private and societal interests in arriving at its decision, and the trial court's oral decision indicates quite plainly, we think, that it was engaging in such a balancing process in deciding the motion.

So viewed, the process stated in § 48.396(5)(c), STATS., is much the same as that in the statutes governing awards of child custody and support in matrimonial actions. Section 767.24, STATS., for example, requires the court to consider and balance a number of specific factors in making a custody determination, and such determinations have long been held to be "committed to the sound discretion of the circuit court." ***Hollister v. Hollister***, 173 Wis.2d 413, 416-17, 496 N.W.2d 642, 643-44 (Ct. App. 1992). Similarly with respect to child support, § 767.25, STATS., sets forth a list of factors to be considered by the court in setting support, and its ultimate decision after balancing the relevant factors is routinely held to be discretionary. ***Resong v. Vier***, 157 Wis.2d 382, 387, 459 N.W.2d 591, 593 (Ct. App. 1990).

The same is true with respect to § 48.396(5), STATS.: The court's consideration and balancing of the interests specified in the statute are discretionary and reviewable as such on appeal.

> first to the court's on-the-record explanation of the reasons underlying its decision. And if that explanation indicates that the court looked to and "considered the facts of the case and reasoned its way to a conclusion that is (a) one a reasonable judge could reach and (b) consistent with applicable law, we will affirm the decision even if it is not one with which we ourselves would agree."

Steinbach v. Gustafson, 177 Wis.2d 178, 185-86, 502 N.W.2d 156, 159 (Ct. App. 1993) (quoted sources omitted).

Section 48.396(5)(c), STATS., provides that, after receiving the petition of a victim of a child's act for disclosure of juvenile records, the court is to inspect the records. If it determines the information is sought for good cause and cannot reasonably be obtained from other sources, the court:

> (c) ... shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this termination, the court shall balance the following private and societal interests:
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> 1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the child's interest in rehabilitation and in avoiding the stigma that might result from disclosure.
>
> 2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

The trial court, considering those provisions, reasoned as follows:

> Well this isn't an easy question. Quite frankly, I think there are two reasons that it's not. One being

> that the needs of the people asking for [the information are] not what you would consider the normal needs, and the second being that protection of the record thereafter is subject to just the problem that Mr. Klein described ....[5]
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> Ordinarily, I would agree ... that this statute is basically designed to allow a person to bring a cause of action for injuries that may have been suffered which resulted in juvenile court proceedings as well as perhaps other litigation. And it allows for the release of police records in that circumstance when the petitioner does not have other sources of that information and when the private litigation interest is greater than the public interest in maintaining confidentiality over those records.
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> Now here the circumstances are that the party has apparently recovered as much as they intend to recover ....
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> ....
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> So that's probably not a concern .... I do think, however, there is a secondary accent [sic] of a harm

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[5] Mr. Klein, the attorney for Thomas's parents, argued that it would be difficult to keep the information out of the hands of others in the community should it be released to Adam's parents.

> Your Honor, the order proposed ... that [Adam's parents] aren't to discuss the information ... outside of their immediate family. They discuss it with perhaps the members of their immediate family, hypothetically, the member of the immediate family discusses it with the neighbor, the neighbor discusse[s] it with someone else. Does the court have any authority over anyone but [Adam's parents]...? Absolutely not.... I don't know if this court has any authority to prevent an immediate member to discuss it with another person or ... from contacting someone.... People in a small town talk.

> that people suffer in the loss that these people have undergone and that's different. I don't think that this statute can specifically be limited entirely to that interest, although, I would agree that's the primary interest it's concerned with. That the petitioner may very well have an interest in obtaining records for the purpose of simply knowing and understanding the details of what occurred after this tragedy and the interpretation that the public officials gave to the factual circumstances that occurred ....
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> That is to be weighed against the juvenile's interest in avoiding stigma that might result from disclosure. I think some of that can be handled by reviewing the records and ensuring that there's no private information about the family or home life of the juvenile ... and the real risk is the risk of discussion of the circumstances with other persons by the petitioners whether it be intentional or unintentional and those I think are the two factors that have to be weighed.
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> It seems to me that ... the public's interest and the redress of private wrongs through private litigation is no longer at issue here and so ... the only basis [in the statute] for allowing [release] ... specifically defines the interest and recovering loss suffered against the child's interest and rehabilitation and avoiding the stigma that might result from disclosure and it does say recovering for not referring from which I think places more emphasis on Mr. Klein's position in this matter and accordingly I'm going to deny the motion.

We have set forth the court's remarks in some length--including the rather confusing transcription of the concluding paragraph. We do so because Adam's parents maintain that, even in its oral decision, the trial court was not engaged in any balancing of interests under § 48.396(5)(c), STATS., but rather was simply making a ruling of law--i.e., that because § 48.396(5)(c)1

defines the petitioner's interest (which is to be balanced against other competing interests in the process) as an interest "in recovering for the injury, damage or loss he or she has suffered," the records of the police investigation of the shooting could not, as a matter of law, be released after Adam's parents had settled their wrongful death claim because, after the settlement, they no longer had any right to "recovery" for Adam's death. In support of their argument, they point to a portion of Klein's argument to the court making a similar point.

Assuming that a portion of Klein's argument could be so described, Klein also argued at length that the court was required to balance the various private and public interests specified in the statute, and Adam's parents' settlement was but one factor to be considered in the balance.[6] And while the court may have referred to the same statutes and also to Adam's parents' settlement, we think its remarks plainly indicate that factor was considered, if at all, only in striking a balance between the considerations favoring release and those favoring nondisclosure.

In our opinion, the trial court's discussion of its reasons for denying Adam's parents' petition meets the requirements of ***Steinbach*** and

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[6] Klein explained the interests to be balanced as follows:

> First is the [balance of] petitioner's interest [in] recovering for injury, damage or loss he or she has suffered against the child's interest in rehabilitation and in avoiding stigma that might result from disclosure.
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> The recovery [by Adam's parents] has been made .... So I think ... the scales tipped right there in favor of the child and [against] release of the information.
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> Second is the public's interest in redress of private wrongs [through] private litigation [to be balanced] against the public's interest in protecting the integrity of the juvenile justice system. Well again the redress of private wrongs through private litigation has already taken place. You balance [that] fact ... [and] I think the public has to protect the juvenile justice system which I think is there for rehabilitation in this particular case.

similar cases, and we cannot say that it erroneously exercised the discretion in ruling as it did.

By the Court.—Order affirmed.

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