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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

In the Interest of B.M., a person under the age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

Case No. 2021AP0501-FT

B.M.,

Respondent-Appellant.

ON NOTICE OF APPEAL FROM A DISPOSITIONAL ORDER ORDERED
AND ENTERED IN LANGLADE COUNTY CIRCUIT COURT, THE
HONORABLE JOHN B. RHODE, PRESIDING

**RESPONDENT-APPELLANT’S RESPONSE TO COURT
ORDER**

B.M., through his attorney, Len Kachinsky, of KACHINSKY LAW
OFFICES, responds to the court’s order of November 12, 2021 as follows:

The court raised the issue of what effect there is because the written order
conflicts with the court’s oral pronouncement. (44:33-34 reproduced on page 4 of
B.M.’s brief-in-chief). The oral pronouncement did not authorize electronic
monitoring without further court order. The written order from which B.M. appeals
delegated it to the assigned juvenile worker (12; App. 109 reproduced on page 5 of

B.M.'s brief-in-chief). In a subsequent hearing, the State took the position that the court left GPS to the discretion of the juvenile worker ((46: 2-5).

In *State v. Perry*, 136 Wis.2d 92, 401 N.W.2d 748, 757 (Wis. 1987) the original oral pronouncement required that sentences for burglary and robbery be concurrent with each other and concurrent to the sentence imposed for injury by conduct regardless of life. The written judgment ordered that the injury by conduct regardless of life sentence be consecutive to the other sentences. The Supreme Court did not find an ambiguity that might support the written judgment being different from the oral pronouncement. *Perry*, 401 N.W.2d at 757-758, The remedy was to remand for entry of a written judgment which reflected the oral pronouncement. *Id.*

There are no published cases applying this principle to juvenile cases. However, there is an unpublished one (*Interest of Ryan D.D.*, 577 N.W.2d 388, 217 Wis.2d 291 (Wis. App. 1998) which D.M: attaches to this letter brief as required by Sec. 809.23(3), Wis. Stats. In *Ryan D.D.*, the trial court withheld placement at Lincoln Hills for a juvenile during the dispositional hearing. Later, the court purported to lift a stay of placement at Lincoln after a rule violation. Thereafter the trial court entered a dispositional order it had not previously entered for the original disposition that imposed and stayed Lincoln Hills disposition. The Court of Appeals reversed the dispositional order and the subsequent order lifting the stay.

The reasoning of *Ryan D.D.* follows the *Perry* decision which it cited on the second page of the decision. This court should, as requested by B.M., vacate that

portion of the dispositional order which incorporates Rule 22 of the Court Report Rules and remand for entry of a corrected dispositional order.

CONCLUSION

For the reasons stated above and in his brief and reply brief, B.M. requests that this court reverse that portion of the dispositional order which incorporates Rule 22 of the Court Report Rules and remand this matter to the trial court with instructions to amend said rule to provide that B.M. comply with rules of the Electronic Monitoring Program “if so ordered by the court.”

Dated this 15th day of November 2021

Electronically signed by Len Kachinsky

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Attached: *Interest of Ryan D.D.*, 577 N.W.2d 388, 217 Wis.2d 291 (Wis. App. 1998)