

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**SEPTEMBER 4, 1996**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

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

No. 96-1229-FT

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN THE MATTER OF THE GUARDIANSHIP  
& PROTECTIVE PLACEMENT OF SARA J. W.:**

**ONEIDA COUNTY,**

**Petitioner-Appellant,**

**v.**

**SARA J. W.,**

**Respondent-Respondent.**

APPEAL from an order of the circuit court for Oneida County:  
ROBERT E. KINNEY, Judge. *Affirmed.*

CANE, P.J. Oneida County appeals the circuit court's order that Sara J. W. be protectively placed in the sixteen-bed facility attached to the Midwest Rehabilitation Center in Waterford, Wisconsin.<sup>1</sup> On appeal, the County asserts that the order is inconsistent with the funding restrictions included in 1995 Wis. Act 92. However, the Act does not apply to this case

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

because the cause of action arose prior to its effective date. The order is affirmed.

The facts are undisputed. Sara J. W. is a forty-five-year-old woman with severely impaired judgment and impulse control as a result of a stroke she suffered in 1989 during brain surgery. Her family brought her to Oneida County in 1992, and she was admitted to a nursing home in Rhineland. In 1994, she was moved to a nursing home in Woodruff to be closer to her family.

On January 26, 1995, she was moved to Katewood Place, a fifteen-bed community based residential facility (CBRF) in Woodruff, because of behavioral problems. Less than seven months later she was given a thirty-day notice to leave the facility because her behavior was detrimental to other residents.

Between September 1, 1995, and October 4, 1995, Sara J. W. resided with her family. On October 4, 1995, she was admitted to St. Mary's Hospital because her family was unable to care for her and believed she needed professional help. Sara J. W. was moved to the hospital's mental health center on October 10, 1995. On October 30, 1995, she was discharged.

Oneida County filed a petition for guardianship and for protective placement on October 30, 1995. At the petition hearing on November 6, 1995, the court found Sara J. W. incompetent and ordered that she be protectively placed in a nursing home. However, the County failed to find a nursing home that would accept her. She resided with family until December 8, 1995, when she was left by her family at the Oneida County Sheriff's Department. As a result, she was admitted to the mental health center at St. Mary's Hospital.

On December 11, 1995, the court found probable cause and ordered that Sara J. W. be involuntarily committed for treatment. She was then transferred to the Midwest Rehabilitation Center Hospital in Waterford to be evaluated. On December 28, 1995, after it was determined that Sara J. W. was not a proper candidate for an involuntary mental commitment, the County's petition for guardianship and for protective placement was dismissed. Sara J. W. remained at the Midwest Rehabilitation Center.

On February 9, 1996, the County filed a motion to transfer Sara J. W. to the Outagamie County Health Care Center. The guardian advised the County that both she and Sara J. W. objected to the transfer, and preferred placement in a CBRF.

At the March 7, 1996, placement hearing, the County asserted that the only feasible placement for Sara J. W. was Outagamie County Health Center, because the cost of a CBRF placement would exceed both the cost of a nursing home and the County's available funds.<sup>2</sup> The court continued the hearing until March 27, 1996, requesting that further funding information be presented at that time.

On March 27, 1996, no additional funding sources were presented. The court ruled that the least restrictive placement for Sara J. W. was the sixteen-bed CBRF attached to the Midwest Rehabilitation Center, that 1995 Wis. Act 92 was vague, and that the Act did not prohibit holding the County liable for the additional costs of the placement ordered.

On May 6, 1996, the County filed a petition for supervisory writ. In response, Sara J. W. asserted that 1995 Wis. Act 92 was inapplicable to her case because the guardianship and protective placement proceedings were filed on October 27 and October 30, 1995, before the statute's effective date. This court agreed and denied the petition. The County now appeals the circuit court's placement order.

The issue is whether 1995 Wis. Act 92 applies to this case. The County asserts that it does. The construction and interpretation of a statute and its application to the facts presents a question of law, which this court reviews *de novo*. *State v. Keith*, 175 W.2d 75, 78, 498 N.W.2d 865, 866 (Ct. App. 1993). Wis. Act 92 created the following funding provision:

The appropriate county department designated under s. 55.02  
shall, *within the limits of available state and federal funds*

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<sup>2</sup> Whereas the average cost of a nursing home in Wisconsin is \$2,325 per month, the two appropriate CBRF placements known to the parties cost \$6,018 per month, or \$206 per day. Placement at the CBRF attached to the Midwest Rehabilitation Center Hospital costs \$175 per day.

*and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of persons who are protectively placed ....*

Section 55.045, STATS. (emphasis added). The Act effectively limits the County's funding obligations for protective placements to programs within the limits of available state and federal funds and of matching County funds, and prohibits the court from requiring a county to provide additional funding to protectively place a person.

1995 Wis. Act 92 became effective on December 16, 1995. As stated in § 10(1) of the Act, "This act first applies to a cause of action that arises on the effective date of this subsection." A cause of action arises when "there exists a claim capable of enforcement, a suitable party against whom it may be enforced, and a party with a present right to enforce it." *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis.2d 302, 315, 533 N.W.2d 780, 785 (1995).

In a protective placement case, a claim capable of enforcement exists when the individual meets the criteria for protective placement established in § 55.06(2), STATS.<sup>3</sup> The trial court protectively placed Sara J. W. on November 6, 1995. At that time, the protective placement claim was capable of enforcement by court order, Sara J. W. was the appropriate party against whom the placement would be enforced, and the County exercised its present right to enforce the protective placement. Thus, the cause of action arose prior to December 16, 1995, the Act's effective date.

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<sup>3</sup> In pertinent part, § 55.06(2), STATS., provides the following:

- (2) The department, an agency, a guardian or any interested person may petition the circuit court to provide protective placement for an individual who:
  - (a) Has a primary need for residential care and custody;
  - ....
  - (c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and
  - (d) Has a disability which is permanent or likely to be permanent.

The Act is prospective in its application. The general rule in Wisconsin is that "legislation is presumed to be prospective unless the statutory language clearly reveals by express language or necessary implication an intent that it apply retroactively." *State v. DILHR*, 101 Wis.2d 396, 403, 304 N.W.2d 758, 761 (1981). Neither the language nor the history of 1995 Wis. Act 92 demonstrates legislative intent that the Act be retroactive.

Because 1995 Wis. Act 92 does not apply to this case, its constitutionality is not addressed by this opinion. The circuit court's order is therefore affirmed.

*By the Court.* – Order affirmed.

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