

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**MAY 6, 1997**

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, 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. 96-2560**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**IN THE INTEREST OF MICHELLE P.:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**LIBBIE P.,**

**RESPONDENT-APPELLANT.**

---

APPEAL from an order of the circuit court for Lincoln County:  
J. M. NOLAN, Judge. *Affirmed.*

CANE, P.J. Libbie P. appeals the trial court's order denying her motion to vacate the CHIPS dispositional orders entered in 1993 placing her child's custody with the Lincoln County Department of Social Services. Essentially, she sought an order from the circuit court to enjoin the State of

Wisconsin from intercepting her state income tax refund on the basis that the 1993 dispositional orders were invalid. The order denying the motion is affirmed.

In November 1992, Libbie's child was taken into custody on a temporary physical custody petition and Lincoln County filed a petition alleging that the child was in need of protective services. After an evidentiary hearing, the child was ultimately determined to be a child in need of protective services and placed in various foster homes until she reached the age of eighteen. Although Libbie initially appealed the dispositional orders, her appeal was dismissed as moot because the child had reached the age of eighteen.

While the child was in Lincoln County's custody and in foster care, Libbie's AFDC benefits were terminated. Although Libbie appealed the termination of her AFDC benefits, the appeal was denied. However, Libbie accrued an over-payment of these benefits after her child had been placed in foster care. It is undisputed that while her child was in foster care, Libbie did not provide for her child's needs nor did the State attempt to collect child support.

At the hearing on Libbie's motion to enjoin the State from intercepting her income tax refund and to vacate the 1993 dispositional orders, the trial court concluded that there was no basis to justify reopening and vacating the orders. This court agrees. Whether to reopen a dispositional order, like a judgment, lies within the trial court's discretion. *See* § 806.07, STATS. Libbie has failed to establish a sufficient basis to vacate the order. As the trial court observed, proper notices were given to her and an evidentiary hearing was held where she was represented by an attorney. The trial court concluded that there were no jurisdictional or constitutional errors made during the proceedings to justify reopening the case and vacating the orders. Nor has Libbie demonstrated to this court a sufficient basis for the trial court to reopen and vacate the 1993 dispositional orders.

This court is not persuaded by Libbie's argument that if the CHIPS orders are vacated, the State would have no basis to recover the AFDC overpayments made to her while the child was living outside of her home and in foster care. It does not make any sense that Libbie should be entitled to receive AFDC benefits for her child when the child is living outside of the home and the county is meeting the child's needs through foster care payments. The taxpayers should not be obligated to pay twice for meeting the child's needs. Regardless of the merits of the dispositional orders, there simply is no basis for AFDC eligibility when there are no dependent children in the home.

Therefore, the trial court's order denying the request for an injunction against the State from intercepting her tax refund and vacating the 1993 dispositional orders was a reasonable exercise of discretion and is affirmed.

*By the Court.*—Order affirmed.

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

