

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2007

David R. Schanker
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. 2006AP2155

Cir. Ct. No. 1998GN123

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE ATTORNEY FEES IN RE THE
PROTECTIVE PLACEMENT OF NANCY V.S.**

NANCY V. S. AND VICKI S.,

APPELLANTS,

V.

DANE COUNTY,

RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Nancy V.S. and Vicki S. appeal from an order denying a petition to require Dane County to pay the attorney fees of Nancy's

counsel in this proceeding. Counsel asked for fees although she was privately retained to represent Nancy, who was the subject of a protective placement petition. The court denied the petition for fees because counsel was not appointed. The appellants contend that whether counsel was appointed or retained is irrelevant: under the applicable law Dane County must pay in either case because Nancy is indigent. We disagree, and therefore affirm.

¶2 Nancy suffers from a severe, degenerative brain disease and requires nursing home care. Vicki is her guardian and mother. She petitioned to protectively place Nancy in 2002. In March 2006, the trial court ordered Nancy protectively placed in Dane County.

¶3 Since the beginning of the protective placement proceeding, a court-appointed guardian ad litem represented Nancy's interests. In April 2005, Attorney Carol Wessels, having made private arrangements to represent Nancy, filed a notice of appearance as Nancy's advocacy counsel. Attorney Wessels continued to represent Nancy until the conclusion of the proceeding. Nancy was declared indigent and the court ordered the county to pay the guardian ad litem's fees and costs. However, the court refused to order the county to pay for Attorney Wessels' services as advocacy counsel, resulting in this appeal.

¶4 At the time of the court's decision on fees, WIS. STAT. § 880.33(2)(a) (2003-04),¹ since repealed and replaced, defined the county's obligation to pay attorney fees for an indigent protective placement candidate. *See*

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

WIS. STAT. § 55.06(6). The appellants premised their claim to fees on the following provisions of § 880.33(2)(a):

1. The proposed ward has the right to counsel The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48(1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07(1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it....

2. If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07(1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

3. If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's legal counsel.

¶5 In the appellants' view, these provisions plainly required the county to pay counsel's fees if the protective placement candidate was indigent and represented, whether by appointed or retained counsel, unless counsel was a public defender appointment (under WIS. STAT. § 977.08). In the county's view, the legislature intended to assign fee liability to a county only for court-appointed representation of indigent candidates.

¶6 Statutory interpretation is a question of law that we review independently. *Reyes v. Greatway Ins. Co.*, 227 Wis. 2d 357, 364-65, 597 N.W.2d 687 (1999). The purpose of statutory interpretation is to discern the intent of the legislature. *McEvoy v. Group Health Coop. of Eau Claire*, 213 Wis. 2d

507, 528, 570 N.W.2d 397 (1997). A statute's clear and unambiguous language is conclusive of legislative intent. *See Cemetery Servs., Inc. v. Department of Regulation & Licensing*, 221 Wis. 2d 817, 825, 586 N.W.2d 191 (Ct. App. 1998). However, "[i]f statutory language is ambiguous, that is, if reasonable minds could differ as to its meaning, we look to the scope, history, context, subject matter, and purpose of the statute to help establish its proper interpretation." *State v. T.J. Int'l, Inc.*, 2001 WI 76, ¶20, 244 Wis. 2d 481, 628 N.W.2d 774 (citation omitted).

¶7 We conclude that the legislature intended to make counties liable for fees only when a court-appointed attorney represents the indigent person. The clear purpose of WIS. STAT. § 880.33(2) was to ensure legal representation for indigents when necessary or appropriate to adequately protect their rights. The legislature accomplished that purpose through a clearly defined and regulated process of court appointments of counsel and public liability for fees, without which the necessary representation could not be assured. In that context, § 880.33(2)(a)3. was plainly intended to allocate liability for appointed counsel between the counties and the public defender, depending on the source and circumstances of the appointment.

¶8 It is true that, when read alone, WIS. STAT. § 880.33(2)(a)3. arguably imposed fee liability on counties in all cases where the indigent's counsel was not appointed under WIS. STAT. § 977.08. It did not, in other words, expressly rule out a county's fee liability if retained counsel represented the indigent even where, as here, no court had determined that counsel was necessary. However, we must read statutory language in context, not in isolation. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. In context, this provision imposed public fee liability only for appointed counsel, and

only where a court determined that representation was either mandated or appropriate. No other interpretation is reasonable in context.

¶9 The appellants also contend that provisions of the Wisconsin Constitution require county payment of attorney Wessels' fees. They advance this argument for the first time on appeal. We therefore decline to address it. *See Evjen v. Evjen*, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992) (we generally do not review an issue raised for the first time on appeal).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).

