

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 30, 2009**

David R. Schanker  
Clerk of Court of Appeals

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**Appeal No. 2008AP2123**

**Cir. Ct. No. 2007ME45**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE MENTAL COMMITMENT OF RICHARD S. P.:**

**WISCONSIN DEPARTMENT OF HEALTH SERVICES,**

**APPELLANT,**

**v.**

**WOOD COUNTY,**

**RESPONDENT.**

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APPEAL from order of the circuit court for Wood County: JAMES M. MASON, Judge. *Reversed and cause remanded.*

Before Higginbotham, P.J., Vergeront and Bridge, JJ.

¶1 VERGERONT, J. The issue on this appeal is whether Wood County is the entity responsible for Richard S.P.'s care and treatment under an

order for commitment pursuant to WIS. STAT. § 51.20 (2007-08).<sup>1</sup> The resolution of this issue turns on whether Richard is a resident of Wood County within the meaning of WIS. STAT. § 49.001(6). The circuit court held that he was not, and the Wisconsin Department of Health Services appeals. Construing and applying § 49.001(6) in a manner consistent with the statutory scheme established in § 51.20 and related statutes, we conclude that Richard is a resident of Wood County. Accordingly, we reverse.

### BACKGROUND

¶2 Richard is twenty-eight years old, and has apparently lived in Wisconsin all his life. He was six years old when his biological parents terminated their parental rights. He was subsequently adopted and lived in St. Croix County with his adoptive parents until they terminated their parental rights when he was eleven.<sup>2</sup> He was then placed in foster homes and institutional settings, including Wyalusing Academy in Crawford County, where he spent two years just before he turned eighteen. At that time he was considered a resident of St. Croix County.

¶3 On February 25, 1999, the day after Richard turned eighteen, he was admitted to Mendota Mental Health Institute (Mendota) in Dane County on a commitment order under WIS. STAT. ch. 51. The commitment proceeding was filed in Crawford County but venue was transferred to St. Croix County.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

<sup>2</sup> The testimony and evidence presented to the circuit court at the evidentiary hearing apparently does not show where Richard lived before living in St. Croix County with his adoptive parents.

However, St. Croix County successfully contended that it was no longer Richard's county of residence because his adoptive parents had terminated their parental rights, and Richard then became a ward of the state.

¶4 Upon Richard's discharge from Mendota in April 1999, he was released to live with his biological mother in Abbotsford, the Clark County side.<sup>3</sup> Richard was under a "settlement agreement" at this time, which was set to expire in mid-July 1999. The nature of this agreement is not explained in the record, but it apparently involved the Department, described the care and treatment Richard needed for a specified period of time after his release from Mendota, and designated Clark County as the county where he was to receive such care and treatment. Apparently this agreement did not involve a determination by the Department of Richard's county of residence. The Department gave Clark County a special allocation of \$10,000 to provide for Richard's care and treatment and Clark County arranged residential placements for him in which he stayed a short time.

¶5 When the settlement agreement ended in mid-July 1999, Richard went to live with his biological father in Marshfield, Wood County, and stayed for about two weeks. During the next period of time, until he returned to Marshfield in late October 1999, Richard stayed in various counties—including with his biological mother in Abbotsford (who at some point during this time period moved to the Marathon County side of Abbotsford), Wausau (Marathon County), Medford (Taylor County), Stevens Point (Portage County), as well as Wood County.

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<sup>3</sup> Abbotsford lies in both Clark County and Marathon County.

¶6 From early September 1999 to September 23, 1999, Wood County paid for case management services for Richard. During this time period there was discussion between Wood County and the Department regarding which entity was responsible for providing care and treatment for Richard, but no determination of his county of residence was made.

¶7 In late October 1999, Richard was staying in Medford and was charged with sexually assaulting his niece. He returned to Marshfield and an employee of Lutheran Social Services helped him find an apartment. He lived in the apartment from November 1, 1999, until approximately December 17, 1999, when he was taken into custody for inappropriate conduct with children and placed in the Wood County jail.

¶8 In February 2000, Richard was transferred to the Taylor County jail and remained there until he was transported to Mendota in July 2000, after being found not guilty by reason of mental disease or defect of battery to a law enforcement officer.

¶9 Shortly before Richard's mandatory release date of February 28, 2007, the treatment director at Mendota initiated this WIS. STAT. ch. 51 commitment proceeding in Dane County Circuit Court under WIS. STAT. § 51.20(1)(am).<sup>4</sup> The court entered an order finding that Richard was mentally ill,

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<sup>4</sup> The Mendota treatment director filed a statement of emergency detention under WIS. STAT. § 51.15. The filing of this statement has the same effect as a petition for a commitment under WIS. STAT. § 51.20. Section 51.15(5). In general, the grounds for commitment under § 51.20(1) as they relate to mental illness are that the person is mentally ill, is a proper subject for treatment, and is dangerous as specified in the statute. Section 51.20(1)(a)1. and 2. Section 51.20(1)(am) specifies how the requirement of dangerousness is determined when the person is already the subject of treatment immediately prior to commencement of the proceeding, as was Richard.

met the other criteria for commitment, and was a resident of Wood County. The court ordered him committed for a period of six months to the care and custody of the Wood County Department of Community Programs. However, Wood County had not received notice of the hearing. Upon learning of the order, Wood County sought and received transfer of the matter to Wood County Circuit Court and a reopening of the commitment order with respect to Richard's residence.

¶10 The circuit court held an evidentiary hearing in June 2007 at which Richard testified. When he was asked "where do you feel that you are a resident of?" Richard answered: "Wisconsin. I have no residency of any place. I have been all over the state. I don't really have a residency...." When asked where he would live if he could live where he wanted to "right now," he answered that he wanted to live close to various family members, who lived in Marathon, Clark, Taylor, and Wood counties, but it did not matter specifically where as long as he stayed away from his father, who, the last he knew seven years ago lived in Marshfield, and a cousin, whose location he did not know.<sup>5</sup> The reason he went back to Marshfield after being charged in Medford, he testified, was that his mother did not want him and he thought the Lutheran Social Services employee who had worked with him before would help him find a place to live. If it had not been for the Lutheran Social Services employee, he would not have gone back to Marshfield; he probably would have gone to Wisconsin Rapids. (Wisconsin Rapids is also in Wood County.) When he lived in the apartment in Marshfield, he did not want to stay in that apartment because it was near a school, which is a

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<sup>5</sup> Counsel for the Department raised the objection of relevance to this question, explaining that the inquiry was his intent in 1999 when he was living in Wood County, but the court overruled the objection.

danger for him, and he wanted a better apartment. He was looking for a better apartment in Marshfield away from schools, but if he could not find one in Marshfield, he would have gone somewhere else. Richard also testified as to the reasons related to his father he did not want to be in Marshfield, but it is not clear when he had these feelings.<sup>6</sup>

¶11 Wood County’s position, as stated by counsel at the hearing, was that Richard was not a resident of Wood County or any county in the state within the meaning of WIS. STAT. § 49.001(6) and (8), which provide:

(6) “Residence” means the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.<sup>7</sup>

....

(8) “Voluntary” means according to an individual’s free choice, if competent, or by choice of his or her guardian if the individual is adjudicated incompetent.

WIS. STAT. § 51.01(14) (footnote added). According to Wood County, Richard’s care and treatment and the payment for them were the responsibility of the Department. The Department’s position was that the last county that was Richard’s residence under the statutory definition was Wood County, based on his

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<sup>6</sup> Richard testified:

Basically, I really didn’t want to live in Marshfield because Marshfield was well-known for my father, and that’s reason I didn’t want to be around was because of that, and plus of the things that happened in past years that brought up too much of a bad memory after getting charged with something that they thought I had done because it was done to me by my father.

<sup>7</sup> “Residence” as defined in WIS. STAT. § 49.001(6) has the same meaning as “residence” for purposes of commitment proceedings under WIS. STAT. ch. 51.

living there voluntarily from late October 1999 until December 17, 1999. Therefore, according to the Department, Wood County had the responsibility for providing Richard with the care and treatment he needed and paying for them.

¶12 The court entered a judgment declaring that, for purposes of WIS. STAT. ch. 51, Richard was not a resident of Wood County. The circuit court agreed with the Department that the proper timeframe for making this determination was before December 17, 1999, when Richard was taken into custody in Wood County, because his presence in the places he stayed after that date was not voluntary. The court then determined that the last place Richard voluntarily resided was Wood County. With respect to Richard's intent to remain there, the court decided:

whether—in light of [Richard's] transient past and his statements, then and now—he had the voluntary intent to stay in Wood County in '99, is so ... unclear, and uncertain, that it disestablishes the prima facie effect of his physical presence; and it cannot be concluded that Richard ... is a resident of Wood County.

## DISCUSSION

¶13 On appeal the Department contends that the circuit court erred in construing and applying WIS. STAT. § 49.001(6) and the related sections of WIS. STAT. ch. 51 and that this resulted in the erroneous conclusion that Richard is not a resident of Wood County. According to the Department, there are limited situations, not applicable here, in which the legislature has made the State of Wisconsin, rather than the county of residence, responsible.<sup>8</sup>

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<sup>8</sup> The Department also asserts that, for purposes of determining responsibility for the care and treatment of persons committed under WIS. STAT. § 51.20, every person who is a resident of the State of Wisconsin is a resident of a county in Wisconsin. In light of our  
(continued)

¶14 Wood County responds that the circuit court correctly determined that Richard was not a resident of Wood County within the meaning of WIS. STAT. § 49.001(6). Wood County also asserts that the only issue the circuit court decided is whether Richard was a resident of Wood County. According to Wood County, the circuit court did not decide whether Richard is a resident of any other county or whether the State is responsible for his care and treatment, and these issues are therefore not before us. In the alternative, Wood County contends that the State is responsible for Richard's care and treatment under WIS. STAT. § 51.22(3).

¶15 We first address Wood County's assertion that the issues whether Richard is a resident of any county other than Wood County and whether the State is responsible for his care and treatment are not properly before us. We conclude they are.

¶16 While the factual and legal arguments in the circuit court focused on whether Richard was a resident of Wood County, both parties and the court understood that the only two contenders for responsibility for Richard's care and treatment were Wood County and the State. This was the reason Wood County objected to the Department's motion to have the matter remanded to the Department for a determination of residency. Such a procedure was designed for a dispute between counties, Wood County argued, and would be unfair where, as here, the dispute was between the Department and a county. In denying the Department's motion, the circuit court agreed that it would be unfair to let the

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conclusion that the evidence is insufficient to disprove the prima facie evidence of intent, it is not necessary to address this issue.



Department decide because “this is a case between Wood County and [the Department] as to whether [Richard]’s treatment is the responsibility of Wood County or the State.” As noted above in paragraph 11, Wood County’s counsel told the court that Richard was not a resident of any county, and the Department has never contended that any county besides Wood County is potentially responsible. Indeed, the court specifically noted in its decision that “... Wood County doesn’t contend that, among the counties where [Richard] had physical presence, any other county than Wood would constitute his residence.” Accordingly, we conclude that the issue properly before us is whether Wood County is responsible for Richard’s care and treatment and the payment for them because he is a resident of Wood County within the meaning of WIS. STAT. § 49.001(6) or whether the State is responsible.

¶17 Resolution of this issue involves the construction of a statute and its application to a given set of facts, which presents a question of law for our de novo review. See *Waukesha County v. Dodge County*, 229 Wis. 2d 766, 772, 601 N.W.2d 296 (Ct. App. 1999). In our review we accept the factual findings made by the circuit court unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶18 When we construe a statute we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes, and we interpret it reasonably to avoid absurd or unreasonable results. *Id.*, ¶46. We also consider the scope, context, and purpose of the statute insofar as they are ascertainable from the text and structure

of the statute itself, *id.*, ¶48, and we consider the consequences of alternative interpretations. *State v. Morford*, 2004 WI 5, ¶21, 268 Wis. 2d 300, 674 N.W.2d 349.

¶19 We begin our analysis with an examination of the statutory scheme for the care of, and payment for the care of, persons involuntarily committed for treatment under WIS. STAT. § 51.20. If the allegations of the petition are proved, as they were in this case, and the person is not developmentally disabled, as Richard is not, then the disposition for a person who is a resident of the state and is not an inmate of a state prison, county jail, or house of corrections is to “order commitment to the care and custody of the ... county department under s. 51.42 [county department of community programs] ... or if inpatient care is not required order commitment to outpatient treatment under care of such county department....” Section 51.20(13)(a)3.<sup>9</sup> Persons who are inmates of a county jail or house of corrections are also “commit[ed] to the county department under 51.42 ... serving the inmate’s county of residence,” with additional provisions required in the order. Section 51.20(13)(a)4m. Commitment is ordered to the Department only if the person is a nonresident, § 51.20(13)(a)5., or the person is an inmate of a state prison. Section 51.20(13)(a)4.

¶20 The care and custody of a committed person is addressed in WIS. STAT. § 51.22. Section 51.22(1) provides that, with the exception of persons committed to the Department because they are inmates of state prisons or are nonresidents,

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<sup>9</sup> For developmentally disabled individuals older than fourteen, the mandated procedure is to determine if they should receive protective placement or protective services under WIS. STAT. § 51.67. WIS. STAT. § 51.20(13)(a)2.

any person committed under this chapter shall be committed *to the county department under s. 51.42 ... serving the person's county of residence*, and such county department shall authorize placement of the person in an appropriate facility for care, custody and treatment according to 51.42(3) (as) 1....

(Emphasis added.) WISCONSIN STAT. § 51.42 obligates the county departments of community programs to provide “community services and facilities for the prevention or amelioration of ... mental illness...” Section 51.42(2), (3).

¶21 WISCONSIN STAT. § 51.42(1)(b) addresses the county’s liability and provides:

(b) County liability. The county board of supervisors has the primary responsibility for the well-being, treatment and care of the mentally ill ... citizens residing within its county and for ensuring that those individuals in need of such emergency services found within its county receive immediate emergency services. This primary responsibility is limited to the programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds. County liability for care and services purchased through or provided by a county department of community programs established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found.

Within the limits of “available state and federal funds and of county funds required to be appropriated to match state funds ...” the county department is to offer specified services including assessment and evaluation services and “inpatient and outpatient care and treatment, residential facilities, partial hospitalization, emergency care and supportive transitional services.” Section 51.42(3)(ar)4.b., c. Paragraph 51.42(3)(as), referred to in WIS. STAT. § 51.22(1), establishes the manner in which a county is to contract and pay for the care it

authorizes for persons in facilities it does not govern—whether state, local, or private.

¶22 If a person is placed in a facility authorized by a county department under WIS. STAT. § 51.42 and the placement is outside the county, “the placement does not transfer the patient’s residence to the county of the facility’s location while such patient is under commitment or placement.” WIS. STAT. § 51.22(4). *See also* WIS. STAT. § 51.40(2)(a)1. (person residing in a facility under a commitment order remains a resident of the county in which he or she has residence at the time of the initial commitment), and § 51.40(2)(b)1. (an individual in a state facility is a resident of the county in which he or she was in residence at the time the admission to the state facility was made).

¶23 From this statutory scheme, we see that each county is primarily responsible for persons who have a residence in the county, both for providing mental health care and services and for paying for the care and services it provides (with certain exceptions, such as emergency services. *See* WIS. STAT. § 51.42(1)(b)). This principle applies to persons who are committed under WIS. STAT. § 51.20 to a county department. There is no provision for committing a person under § 51.20 to the Department unless he or she is in a state prison or is a nonresident. In this case, there is no question that Richard was not an inmate of a state prison when the commitment order was entered and that he is a resident of the state of Wisconsin.

¶24 Wood County contends that, nonetheless, the provision in WIS. STAT. § 51.22(3) for “an admission through the department” makes the Department financially responsible for Richard’s care and treatment even if he is a

resident of the State and not an inmate of a state prison. Section 51.22(3) provides:

(3) Whenever an admission is made through the department, the department shall determine the need for inpatient care of the individual to be admitted. Unless a state-operated facility is used, the department may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a county department under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (7) (da)....

The proceeding in this case, according to Wood County, constitutes “an admission through the [D]epartment” because the Mendota treatment director who signed the initiating petition is the designee of the clinical director of the forensic program at Mendota, who is employed by or on behalf of the Department. We agree with the circuit court and the Department that Wood County’s construction of § 51.22(3) is not a reasonable one because it ignores the two preceding and interrelated subsections.

¶25 WISCONSIN STAT. § 51.22(1), as discussed above in paragraph 20, reiterates that under WIS. STAT. § 51.20(13)(a) there are only two situations in which a person is ordered committed to the Department, rather than a county department serving the person’s county of residence: an inmate of a state prison and a nonresident. *See* § 51.20(13)(a)4., 5. Subsection 51.22(1) further specifies

the provisions under which a county department, when a person is committed to it, is to “authorize placement ... in an appropriate facility.”<sup>10</sup>

¶26 When read in this context, the procedure in WIS. STAT. § 51.22(3) for “an admission ... made through the [D]epartment ...” plainly refers either to those admissions by the Department of a person committed to the Department under WIS. STAT. § 51.20(13)(a)4. or 5. or to the three types of voluntary admissions specified in subsec. (2).<sup>11</sup> There is no indication in the language of subsec. (3), when read in context, that this subsection creates a procedure for admission and payment by the Department when the admission does not fall into one of these categories. Put somewhat differently, there is no indication in the language of subsec. (3), when read in context, that this subsection creates a procedure for admission and payment by the Department when a commitment order is to a county department.

¶27 Because Richard is a Wisconsin resident and not an inmate of a state prison, his commitment is properly to the county department under WIS. STAT. § 51.42 “that serv[es] [his] county of residence.” WIS. STAT. § 51.22(1). We therefore turn to an examination of the application of the definition of “residence”

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<sup>10</sup> WISCONSIN STAT. § 51.22(2) addresses specific types of admissions that either a county department or the Department (for a nonresident) might make—voluntary admissions of adults (WIS. STAT. § 51.10), admission of minors (WIS. STAT. § 51.13), and voluntary treatment of alcoholics (WIS. STAT. § 51.45(10)—and establishes the respective procedures for these admissions: the county departments are to follow WIS. STAT. § 51.42(3)(as)1. and WIS. STAT. § 51.437(4rm)(a) and the Department is to follow subsec. (3).

<sup>11</sup> While the admission of minors under WIS. STAT. § 51.13 is not titled “*Voluntary admission of minors*,” the text indicates that either the minor or the parent/guardian or both voluntarily choose the admission. *See* § 51.13(1). Apparently admissions under these three sections, WIS. STAT. §§ 51.10, 51.13, and 51.45(10), may be independent of a commitment under WIS. STAT. § 51.20.

to the facts of this case. Under WIS. STAT. § 49.001(6), made applicable to WIS. STAT. ch. 51 by WIS. STAT. § 51.01(14), residence is “the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation.” “Voluntary” means “according to an individual’s free choice, if competent.” Section 49.001(8).<sup>12</sup>

¶28 There is no dispute that Richard was voluntarily physically present in Wood County from late October 1999 until December 1999, and living in an apartment there from November 1 until December 17, 1999. After December 17, 1999, until the date of this commitment proceeding, he was physically present in Wood County, Taylor County, and Dane County, but his presence was not voluntary. Therefore, we agree with the circuit court that the proper inquiry is whether Richard’s voluntary physical presence in Wood County from late October 1999 until December 17, 1999, was in “concurrence ... with intent to remain in a place of fixed habitation.” *See* WIS. STAT. § 49.001(6).

¶29 According to WIS. STAT. § 49.001(6) “[p]hysical presence is prima facie evidence of intent to remain.” The meaning of “prima facie” when used in a legal context is “sufficient to establish a fact or raise a presumption unless disproved or rebutted.” BLACK’S LAW DICTIONARY 1228 (8th ed. 2004). In this case, then, Richard’s physical presence in Wood County beginning in late October 1999 is sufficient to establish his intent to remain there unless evidence is presented that disproves this intent.

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<sup>12</sup> Although “voluntary” directly precedes “concurrence” rather than “physical presence,” we agree with the implicit position of both parties and the circuit court that the only reasonable reading is that voluntary modifies “physical presence.”

¶30 We recognize the circuit court here gave careful attention to the evidence in applying this statutory definition in a situation where there is a complex statutory scheme and no case law guidance. Although we benefit from the circuit court’s opinion, we employ a different analysis and reach a different conclusion.

¶31 The circuit court identified several items of evidence that it considered persuasive in deciding that the evidence presented disproved the prima facie evidence of intent. As explained in the next four paragraphs, we conclude that some of this evidence is irrelevant to the determination of Richard’s intent with respect to remaining in Wood County after his arrival there in late October 1999.

¶32 First, the circuit court gave consideration to Richard’s “own words in 2007” that he did not have a “residency,” that he had been “all over the state.” However, Richard’s conclusory opinion on whether he does or does not have a county of residence is not relevant to a determination under WIS. STAT. § 49.001(6). The relevant factual inquiry is his intent with respect to remaining in Wood County when he was voluntarily physically present there in late October to December 17, 1999. While the places he had lived before that time period might be relevant to that intent, his own opinion on what does or does not constitute “residence” within the meaning of the statute is not. *See Patients Comp. Fund v. Physicians Ins. Co.*, 2000 WI App 248, ¶8 n.3, 239 Wis. 2d 360, 620 N.W.2d 457 (even experts may not give opinions on questions of domestic law because it is the court’s role to decide legal issues).

¶33 Second, the circuit court took into account Richard’s desire to live near various family members who reside in four counties, one of which is Wood



County, except that, in the court's words, "he doesn't want anything to do with his dad who he thinks lives in Marshfield of Wood County." However, this testimony was in response to a question about where Richard would choose to live at the time of the hearing in June 2007, if he had that choice. It is not relevant to his intent with respect to Wood County in late 1999.

¶34 Third, the circuit court found the history of the Department's treatment of Richard's county of residence implicitly showed that the Department found it difficult and confusing to determine his county of residence, and it considered this relevant.<sup>13</sup> We agree there are a number of unanswered questions on this record about the decisions the Department did or did not make prior to late October 1999 concerning financial and other responsibility for Richard's care and treatment. Whether there was confusion or inconsistency in the Department's approach, on the one hand, or a reasonable application of a complex statutory scheme to a complicated fact situation, on the other, is something that we cannot determine on the state of this record and the legal arguments presented. However, we do not understand from the circuit court's opinion, our review of the record, and Wood County's arguments how the Department's past actions bear on the determination of Richard's county of residence when he was voluntarily physically present in Wood County from late October to December 17, 1999. As already noted, Wood County has not taken the position that the Department should have determined another county to be the county of residence, nor has Wood

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<sup>13</sup> Part of this finding appears to be based on the court's view that the Department could have chosen to consider Richard's residence to be in the county of residence of his adoptive parents when he was released from Mendota in April 1999. However, it appears the court may be overlooking the undisputed fact that his adoptive parents terminated their parental rights to Richard when he was eleven.

County developed an argument that the Department is somehow equitably estopped from contending that Wood County is Richard's county of residence based on his physical presence there from late October to December 17, 1999.<sup>14</sup>

¶35 Fourth, the court viewed Richard's "transient life-style" as relevant. We are uncertain whether the court is including in this term Richard's history before the settlement agreement terminated in July 1999. If the court is, we conclude that is error. Before Richard turned eighteen in February 1999, he had no choice in where he lived or where he was placed. He was either living with his biological parents or his adoptive parents or was placed in various foster homes and institutional settings. Upon turning eighteen, he was placed at Mendota and, upon release from there in April 1999, was placed in the county where his biological mother lived until the expiration of the settlement agreement in July 1999. This history is not relevant to his intentions regarding his residence when he was in a position to make a choice on where to live, which first occurred upon the expiration of the settlement agreement in July 1999. As for Richard's frequent moves between that date and late October 1999 when he returned to Wood County, we discuss this evidence below.

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<sup>14</sup> In another part of its opinion the court stated that Richard's "contact with Wood County was no more significant than his contact with Clark, Marathon, or Taylor Counties...." We are uncertain whether the court considered this relevant in deciding whether Wood County was Richard's county of residence. We clarify here that the standard established for determining residence under WIS. STAT. § 49.001(6) does not involve a comparison of contact among various counties. As an example, if a person was voluntarily physically present in one county for a number of years concurrent with the intent to remain there in a place of fixed habitation and then voluntarily moved to another county with the intent to remain in a place of fixed habitation there and lived there only thirty days before a WIS. STAT. ch. 51 proceeding was commenced, the county of residence would be the "newer" county, with which the person would have much less contact than the "older" county. The point is that § 49.001(6) contemplates that a person's county of residence may change by a move to another county where the person is voluntarily physically present with the requisite concurrent intent.

¶36 The evidence that *is* highly relevant to Richard’s intent is his own testimony of why he went to Marshfield in late October 1999, and what his plans were. He chose to be there because he thought the Lutheran Social Services employee would help him find an apartment, and she did. Although he was looking for a better apartment and one not near a school, he was looking in Marshfield. If he did not find one, his testimony indicates, he would look somewhere besides Marshfield, although it is not clear whether that would be in Wisconsin Rapids, where he testified he would have gone but for the Lutheran Social Services employee, or in one of the other nearby counties where he had family members and had recently been. It is also not clear what might happen with his father that could cause him to decide to leave Marshfield, and which of the foregoing choices he would make on where to relocate, if that occurred. It is clear that Richard did not testify that he had a plan to leave Marshfield or that he intended to remain in Marshfield for only a specified period of time.

¶37 The issue is whether this evidence is sufficient to disprove the prima facie evidence of his intent derived from his voluntary physical presence in Wood County from late October to December 17, 1999. We view this as a question of law because it involves applying the statutory language of WIS. STAT. § 49.001(6) to the summary of Richard’s testimony in the preceding paragraph, and, in doing so, interpreting that statutory language in the context of the relevant sections in WIS. STAT. ch. 51. *See Waukesha County*, 229 Wis. 2d at 772.

¶38 We conclude the evidence is not sufficient to disprove the prima facie evidence of Richard’s intent derived from his voluntary physical presence in Wood County. First, WIS. STAT. § 49.001(6) does not require an intent to “remain” for any particular period of time. Certainly “remain” cannot reasonably be construed to mean “stay permanently.” Because so many people do not intend

to stay in any location permanently, it could easily be proved that many people would have no “residence” or no “county of residence.” In the context of a statutory scheme that places the responsibility on the county department in the person’s county of residence in all but two limited circumstances, it is unreasonable to adopt this restrictive meaning of “remain.”

¶39 Second, while Richard identified factors that might cause him to move from Marshfield and, perhaps also from Wood County, it was uncertain if or when those would occur. A conclusion that this evidence is sufficient to disprove the prima facie evidence of intent would mean that a person in Richard’s circumstances—someone who has not had a county of residence as an adult and who apparently has difficulty in planning for and arranging a predictable life—would have difficulty establishing a county of residence. In the context of a statutory scheme that places the responsibility on the county department for the person’s county of residence in all but two limited circumstances, the more reasonable construction is one that facilitates establishing a county of residence. In this case Richard was voluntarily living in Wood County in an apartment with no plan to leave. In light of this evidence, the fact that he might move from the county if certain things occur in the future, which might not occur, is not sufficient to disprove the prima facie intent to remain.

¶40 Our conclusion that the evidence is insufficient is not altered by the evidence of Richard’s frequent moves between July 1999 and late October 1999. The proper focus of WIS. STAT. § 49.001(6) as applied to the facts of this case is on Richard’s intent while in Wood County from late October 1999 to December 17, 1999. The bare fact that he moved frequently in the preceding three months without some evidence tying those moves to his intent while in Wood County during the relevant time period does not disprove the prima facie evidence

of his intent to remain in Wood County. Concluding otherwise allows an inference that a person who has moved a lot in a short period of time does not intend to remain in a place of fixed habitation and permits this inference to overcome the statutory prescribed prima facie evidence of intent. Giving countervailing weight in this way to the evidence of Richard's recent frequent moves, without more, is inconsistent with the prima facie evidence of intent established in § 49.001(6).

### CONCLUSION

¶41 Construing and applying WIS. STAT. § 49.001(6) in a manner consistent with the statutory scheme established in WIS. STAT. § 51.20 and related statutes, we conclude that Richard is a resident of Wood County. Accordingly, we reverse and remand.

*By the Court.*—Order reversed and cause remanded.

Not recommended for publication in the official reports.

