

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 9, 2011

A. John Voelker
Acting 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. 2010AP2391

Cir. Ct. No. 2009PR92

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE ESTATE OF CLETUS F. LANGLAY:

THE ESTATE OF CLETUS F. LANGLAY,

APPELLANT,

V.

**PROFESSIONAL GUARDIANSHIP, INC., GUARDIAN OF THE ESTATE OF
EVELYN R. LANGLAY,**

RESPONDENT.

APPEAL from an order of the circuit court for Brown County:
TIMOTHY A. HINKFUSS, Judge. *Affirmed and cause remanded for further proceedings.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. The Estate of Cletus Langlay appeals an order granting Professional Guardianship, Inc.'s petition for a special allowance to support Evelyn Langlay, Cletus's surviving spouse. Evelyn receives public assistance to finance institutional medical care. The Estate contends the circuit court impermissibly considered this fact when it ordered a support allowance. We reject the Estate's arguments and affirm.¹

BACKGROUND

¶2 Evelyn Langlay is the surviving spouse of the decedent, Cletus Langlay. Her institutional medical care is currently financed by public assistance. In 2006, prior to Cletus's death, Evelyn was allowed to transfer her interest in their marital home to her husband. Cletus sold the home and retained the proceeds in his name alone. Those assets became part of his estate upon his death in 2009. In his will, Cletus left his entire estate to some of his children and made no provision for his wife's support.

¶3 Professional Guardianships, Evelyn's guardian, filed a petition for a special allowance pursuant to WIS. STAT. § 861.35.² Brown County, which financed Evelyn's care, also argued in support of the petition. Professional Guardianships asserted that Evelyn's failure to claim a special allowance against the Estate would render her ineligible for public assistance.

¹ On July 15, 2011, Professional Guardianships advised this court that Evelyn Langlay had recently passed away and that its authority as guardian also ceased upon her death. The Estate suggests that it may be necessary to appoint an administrator to act on behalf of Evelyn's estate. Accordingly, we remand to the circuit court for further proceedings consistent with this opinion.

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 The circuit court granted the petition and ordered that Evelyn receive a special allowance for support out of the Estate's assets. The court considered the requirements of WIS. STAT. § 861.35 and rejected the Estate's legislative history and public policy arguments. The court also concluded that the transfer of the marital home was not meant to benefit Cletus's testamentary heirs, and that assets from the sale of that property should be available to the surviving spouse. Finally, the court determined that the public interest supported an award because the public should be a payor of last resort.

DISCUSSION

¶5 We review a circuit court's order for a special allowance under WIS. STAT. § 861.35 for an erroneous exercise of discretion. We will sustain a discretionary act if the court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Lane v. Sharp Packaging Sys., Inc.*, 2002 WI 28, ¶19, 251 Wis. 2d 68, 640 N.W.2d 788. Whether the circuit court utilized the proper legal standard, however, is a question of law we review de novo. *Id.* Statutory interpretation and application are also questions of law which this court decides. *State ex rel. Parker v. Sullivan*, 184 Wis. 2d 668, 679, 517 N.W.2d 449 (1994). The principal objective of statutory interpretation is to ascertain and give effect to the legislature's intent. *Id.*

¶6 Special allowances for spouses are governed by WIS. STAT. § 861.35. The Estate contends a circuit court may not rely on a surviving spouse's receipt of public assistance as justification for ordering a support allowance. The Estate correctly observes that the statute does not mention public assistance. Instead, the Estate relies on drafting records purportedly showing that the

legislature intended to preclude a surviving spouse's receipt of public assistance from affecting a support allowance.

¶7 We begin with the language of the statute. *State v. ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. “Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Id.* We read 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 reasonably, to avoid absurd or unreasonable results. *Id.*, ¶46. If this analytical process yields a clear meaning, the statute is unambiguous, and we need not consult extrinsic sources of interpretation. *Id.*

¶8 WISCONSIN STAT. § 861.35 begins by conferring discretionary authority to order an allowance from a decedent's estate for the support of a spouse. *See* WIS. STAT. § 861.35(1m). However, subsection (1m) limits this authority by prohibiting a spousal allowance in two situations: if the decedent has “amply provided” for the spouse by the transfer of probate or nonprobate assets, or if the spouse has “ample means to provide for his or her support.” *See* WIS. STAT. § 861.35(1m)(a), (c). Plainly, neither exception disqualifies a surviving spouse solely based on his or her eligibility for public assistance.

¶9 WISCONSIN STAT. § 861.35(3), in turn, requires the court to consider any number of factors when determining whether to award a support allowance. The court must consider: (1) the effect of the allowance on claims under WIS. STAT. § 859.25; (2) the size of the estate; (3) other resources available for support; (4) the existing standard of living; and (5) whether the provisions of a marital

property agreement will create a hardship for the surviving spouse. WIS. STAT. § 861.35(3)(a)-(e). Although a spouse's eligibility for, or receipt of, public assistance is not specifically listed, the court must also consider "any other factors that the court considers relevant." *See* WIS. STAT. § 861.35(3)(f). Our analysis ends with the unambiguous language of the statute, but we would nonetheless reject any interpretation relying on extrinsic sources.

¶10 The Estate attempts to argue its way around the unambiguous catch-all provision, but its argument misses the mark. The Estate cites a drafting committee note to 1997 Wis. Act 188. In that law, the legislature added WIS. STAT. § 861.35(3)(e), which directs a circuit court to consider whether a marital property agreement will create a hardship. *See* 1997 Wis. Act 188, § 222. The drafting committee note reads, in its entirety:

§ 861.35(3)-(4). Edited to increase clarity. Amends list of factors that the court must consider in awarding a special allowance to include the provisions of a marital property agreement that creates a hardship for the surviving spouse. This rule is more restrictive than that for waiver of maintenance under § 767.26; the "hardship" language is drawn from the statute on division of property at divorce, § 767.255(2)(b), and is intended to have the same meaning as under that statute. However, the hardship provision under new § 861.35(3)(e) is distinct from the "public assistance" rule in current § 766.58(9)(b).

The Estate seizes on the drafting committee note's final sentence to argue that a court may not consider a surviving spouse's eligibility for public assistance.

¶11 A comparison of WIS. STAT. § 861.35(3)(e) and the marital property agreement statute cited in the drafting committee note, WIS. STAT. § 766.58(9)(b), demonstrates that the Estate's argument is off-target. Paragraph 861.35(3)(e) establishes that a court must consider any hardship created by a marital property agreement in determining whether to order a support allowance. That statute is, as

the drafting committee intended, distinct from § 766.58(9)(b),³ which provides that if a marital property agreement modifies or eliminates spousal support so as to make one spouse eligible for public assistance, “the court may require the other spouse or the other spouse’s estate to provide support necessary to avoid that eligibility” Though both statutes permit a court to order support payments to alleviate financial difficulties created by a marital property agreement, they do so under different standards. The drafting committee note simply means that “hardship” under § 861.35(3)(e) means something less than impoverishment for public assistance purposes. The note does not purport to preclude a circuit court from considering the surviving spouse’s eligibility for public assistance in cases where no marital property agreement is at issue.

¶12 The sole remaining question is whether the circuit court properly exercised its discretion in ordering a support allowance. The court properly rejected the Estate’s reliance on the drafting committee note and its interpretation of WIS. STAT. § 861.35. The court considered each of the factors described in WIS. STAT. § 861.35(3), and its conclusion that Evelyn should receive a support allowance was reasonable.

¶13 The Estate contends the circuit court’s decision was irrational because the parties have agreed that Evelyn’s care will not change regardless of the outcome of this case. This amounts to an argument that the support allowance could be put to a more productive use if left with the Estate. We do not indulge such speculation. The circuit court’s decision is adequately supported by the record.

³ WISCONSIN STAT. § 766.58(9)(b) has not changed since 1997.

By the Court.—Order affirmed and cause remanded for further proceedings.

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

