COURT OF APPEALS
DECISION
DATED AND RELEASED

December 28, 1995

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. 94-3163

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

In the Matter of Fees In re the Marriage of: Richard Yaun and Diane Yaun (Lehman):

DANE COUNTY,

Appellant,

v.

DIANE LEHMAN,

Respondent.

APPEAL from an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed*.

Before Eich, C.J., Sundby and Vergeront, JJ.

PER CURIAM. Dane County appeals from an order requiring it to pay the fees of a private counselor who provided services to an indigent party in a divorce action. We conclude the court has authority to do so. We affirm.

Richard Yaun and Diane Lehman were divorced in 1983. In January 1991 the circuit court issued a "Revised Order for Periods of Physical Placement." The court ordered that Diane Lehman, the respondent in the divorce action, not have face-to-face or telephone contact with her daughters until she had complied with certain requirements. Among those requirements was that Lehman, an indigent resident of Green County,

> continue her counseling therapy through the Green County Human Services, with her current therapist being Bruce E. Enger. Ms. Lehman may pursue her counseling therapy through another agency or a private counseling group provided the new treatment professional is approved, in advance, by [the guardian ad litem] and Dane County [Family Court Counseling Service].

At some point following that order, Enger went into private practice. Lehman continued to use his services and accumulated unpaid bills. Lehman subsequently asked the circuit court to order Dane County to pay Enger's bill of approximately $2,000.[1] The court did so in an order entered in December 1993. Dane County did not appear at the proceedings related to that issue.

In March 1994, Dane County filed a "Motion for Modification on Payment of Respondent's Fees." The County asserted that it had not received notice of the relevant hearing and that there is no statutory authority authorizing payment of private therapy fees by the County. The circuit court held a hearing on this motion in April 1994 and issued a written order in October 1994, concluding that the County had notice and the court had proper authority. The court also increased the ordered payment to approximately $2,500 to cover Enger's services since the original order. Dane County appeals.

[1] It is not clear when Lehman, who was pro se, made this request. It may only have been made orally, off the record.

The guardian ad litem[2] argues that the circuit court has authority to order payment of the counseling fees under § 767.23(1)(i), STATS., which allows the court to make a temporary order "[r]equiring counseling of either party or both parties" in an action affecting the family.[3] We agree. Section 767.01(1), STATS., provides the circuit court in an action affecting the family with "authority to do all acts and things necessary and proper in such actions." In ***W.W.W. v. M.C.S.***, 185 Wis.2d 468, 483-85, 518 N.W.2d 285, 289-90 (Ct. App. 1994), we held that this provision gave the circuit court authority to issue a certain injunction to protect its judgment in a paternity action. Here, it was necessary and proper for the court to effectuate its counseling order by requiring the county to pay the fees.

Dane County also argues that it did not receive adequate notice of the hearing resulting in the original fee order. However, because the County eventually appeared before the circuit court and this court, both of which addressed the County's argument on the merits, the issue is moot.

By the Court.—Order affirmed.

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

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[2] Lehman, the respondent in this appeal, did not file a brief.

[3] This is a question of law we decide independently. ***W.W.W. v. M.C.S.***, 185 Wis.2d 468, 483, 518 N.W.2d 285, 289-90 (Ct. App. 1994).