

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOVEMBER 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.

Nos. 95-1491
95-1952

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

LIBBIE PESEK,

Petitioner-Appellant,

v.

LINCOLN COUNTY
GENERAL RELIEF
AGENCY, and
LINCOLN COUNTY
DEPT. OF SOCIAL
SERVICES, CURTIS MOE,
DIRECTOR,

Respondents-Respondents.

APPEALS from orders of the circuit court for Lincoln County:
J. MICHAEL NOLAN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Libbie Pesek appeals orders dismissing her action for a declaratory judgment and allowing the County to be represented by an attorney other than the corporation counsel at the declaratory judgment proceedings. Because we conclude that the declaratory judgment action was not justiciable and requested an advisory opinion, and because there is no basis for Pesek to interfere in the County's choice of attorneys, we affirm the orders.

At the time this complaint was filed, Pesek had pending a petition for the review of the agency's decision to deny general relief (trial court no. 95-CV-61). In this action, she requests a declaratory judgment regarding her eligibility on four specific dates in 1994 and 1995. The trial court properly concluded that any review of Pesek's eligibility should be by administrative review rather than declaratory judgment. See *State v. WERC*, 65 Wis.2d 624, 636, 223 N.W.2d 543, 549 (1974).

In addition, before a court may grant relief in the form of a declaratory judgment, it must find that a justiciable controversy exists. A justiciable controversy is one in which a claim of right is asserted against one who has an interest in contesting it, between two parties whose interests are adverse, in which the party seeking declaratory relief has a protected interest and the issue is ripe for judicial determination. See *Loy v. Bunderson*, 107 Wis.2d 400, 410, 320 N.W.2d 175, 182 (1982). The fourth component of justiciability, ripeness, requires that the facts be sufficiently developed to avoid courts entangling themselves in abstract disagreements. See *Miller Brands-Milwaukee v. Case*, 162 Wis.2d 684, 694, 470 N.W.2d 290, 294 (1991). If the facts are not sufficiently developed, that is, if they are contingent and uncertain, the trial court must deny declaratory relief because that would constitute an impermissible advisory opinion. *Loy*, 107 Wis.2d at 412, 320 N.W.2d at 182.

The trial court properly refused to grant Pesek a declaration that she was a dependent person eligible for general relief. Because Pesek's dependency must be judged on the basis of a variety of factors that are not always the same, a declaration of her eligibility at a particular time would either involve ruling on contingent and uncertain facts or invading the province of the court deciding her administrative review action.

The trial court properly concluded that Lincoln County could be represented in this matter by outside counsel. Generally, a litigant has no right to interfere with his or her opponent's choice of counsel. There is no merit to Pesek's characterization of the attorney's appearance as "intervention" in this action.

By the Court. – Orders affirmed.

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