COURT OF APPEALS
DECISION
DATED AND RELEASED

September 26, 1996

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, 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. 95-2229

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

DAVID L. SHULMAN and GERALDINE M. SHULMAN,

Petitioners-Appellants,

v.

LAURA LYNN SHULMAN, DANE COUNTY

Respondents.

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

Before Eich, C.J., and Paul C. Gartzke and Robert D. Sundby, Reserve Judges.

PER CURIAM. David and Geraldine Shulman appeal from an order requiring them to reimburse Dane County for guardian ad litem fees incurred during a child custody action. They argue that the fees exceed the

amount allowable by statute and supreme court rule. We disagree and therefore affirm.

In February 1992, the Shulmans commenced an action in Dane County for custody of their grandchild, Brandon S.S. The court appointed Nancy Wettersten as guardian ad litem for Brandon. In March 1992, without notice to either the Shulmans or Wettersten, the circuit court in Waupaca County terminated the parental rights of Brandon's parents and approved his adoptive placement with nonrelatives. After considerable litigation, the supreme court set aside the Waupaca Circuit Court's order, and remanded to that court for further proceedings in which the Shulmans and Wettersten would have the opportunity to participate. ***In re Interest of Brandon S.S.***, 179 Wis.2d 114, 507 N.W.2d 94 (1993). Wettersten participated in the subsequent proceedings, which again resulted in a TPR order and approval of Brandon's adoptive placement. Soon afterwards, the Dane County Circuit Court dismissed the Shulmans' custody proceeding.

During the course of the proceedings the Shulmans paid $4,492 toward Wettersten's fees, which she billed to them at her private rate of $95 and then $110 per hour. She billed Dane County for another $10,000, approximately, in fees and expenses, at a rate of $60 per hour. The County then sought partial reimbursement from the Shulmans.

After a hearing on the matter, the court found Wettersten's fees to be reasonable and necessary and held that she properly billed the Shulmans at her private rate under § 767.045(6), STATS. The court also determined that the Shulmans and Dane County should be liable for 50% of the total fees and expenses and recommended an even split by ordering the Shulmans to pay Dane County $2,744 in reimbursement.

The Shulmans concede that they agreed to pay one-half Wettersten's fees. However, they contend that the hours billed directly to them should have been calculated at the same $60 per hour rate that Wettersten billed the County, absent a prior order of the court authorizing a higher rate. We disagree. Section 767.045(6), STATS., provides that the guardian ad litem for a minor child in an action affecting the family shall be compensated at a rate the court determines is reasonable. There is no requirement that the trial court

determine the reasonableness of the rate before the guardian ad litem performs any services or submits any bills. The court's determination of reasonableness at the end of the proceeding was sufficient to justify Wettersten's billings.

The Shulmans also argue that absent an agreement to the contrary, Wettersten was limited by SCR 81.02 (West 1996), to a billing rate not exceeding $60 per hour before July 1, 1994, and $70 per hour after that date. Again, we disagree. SCR 81.02 sets a basic rate of $70 per hour for "attorneys appointed by any court to provide legal services for that court, for judges sued in their official capacity, for indigents and for boards, commissions and committees appointed by the supreme court." It also applies in all cases where the statutes fix a fee. SCR 81.01 (West 1996). Wettersten was not, however, appointed under those circumstances. Her fees were measured by the test of reasonableness, under § 767.045(6), STATS.

The Shulmans next argue that they have no obligation to share in the fees and expenses billed for Wettersten's participation in the Waupaca County proceeding. They rely on § 48.235(8), STATS., which provides that in contested termination proceedings "the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue." "Reasonable compensation" may not exceed the compensation paid to private attorneys under § 977.08(4m), STATS., which sets an even lower rate than Wettersten billed Dane County. Wettersten was not, however, the guardian ad litem appointed under chapter 48 for the Waupaca County proceeding. She remained the guardian ad litem appointed in the Dane County custody action, with special permission granted by the supreme court to participate in the Waupaca County proceeding. Her compensation therefore remained a matter for the Dane County Circuit Court to establish under § 767.045(6), STATS. Although that section also provides that compensation may not exceed the compensation paid under § 977.08(4m), the latter restriction applies under that section only if both parties are unable to pay. Here, we have an unchallenged finding that the Shulmans were able to pay the guardian ad litem fees.

Finally, the Shulmans also briefly raise questions concerning the reasonableness of Wettersten's fees and expenses and the quality of her work. These issues were not raised in the trial court and are therefore waived. ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145 (1980).

By the Court.—Order affirmed.

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