COURT OF APPEALS
DECISION
DATED AND RELEASED

December 14, 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, 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. 95-2432-FT

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

IN THE INTEREST OF ROBERTO L.V.,
A PERSON UNDER THE AGE OF 18:

BROWN COUNTY,

Appellant,

v.

ROCK COUNTY,

Respondent.

APPEAL from an order of the circuit court for Rock County: MICHAEL J. BYRON, Judge. *Order reversed and cause remanded*.

EICH, C.J.[1] Brown County appeals from an order of the Rock County Juvenile Court granting the petition of the Rock County Department of Human Services to revise a dispositional order in a CHIPS proceeding to "transfer venue" of the case to Brown County.

---

[1] This appeal is decided by one judge pursuant to § 752.31(2)(e), STATS.

The dispositive issue is whether Brown County was entitled to notice of the hearing on the department's petition. We conclude that it was, and we therefore reverse the order and remand the case to the trial court to re-hear the petition on proper notice to Brown County.[2]

The facts are not in dispute. In 1991, Roberto L.V., a minor, was adjudged to be a child in need of protection or services (CHIPS). He was placed in foster care pursuant to a "Permanency Plan" which, among other things, set out several conditions which must be met by his mother for his return to the family home. It also contained a list of "services" the department was directed to provide or arrange for Roberto and his family.

The 1991 dispositional order was amended several times over the years and is still in effect. The conditions established for Roberto's return have not been met and he remains in foster care--currently in a group home in Columbia County. Roberto's mother has been residing in Brown County since mid-1992.

In May 1995, the department filed a petition to revise the dispositional order to "transfer venue" of the proceedings to Brown County, stating as grounds for the transfer the fact of his placement in Columbia County and his mother's new residence in Brown County. The petition was accompanied by a slightly revised Permanency Plan setting forth information on Roberto's placement and restating the conditions that must be met by his mother for his return and the services to be provided--now by the Brown County Department of Social Services.[3]

---

[2] Despite Brown County's willingness to argue the merits of the juvenile court's determination that good cause existed to transfer venue, we do not consider the argument. We hold in this case that, under the applicable statutes, Brown County was entitled to notice of the hearing; because it is impossible for us to say that the circuit court would have decided the case in the manner it did had Brown County participated in the hearing, we consider a remand for a new hearing with notice to Brown County to be required.

[3] While the petition simply named "the county" as the entity responsible for providing the services, the "proposed order" accompanying it--which eventually was signed by the court--substituted Brown County for Rock County "as the agency primarily responsible

A hearing was scheduled on the petition for June 12, 1995, and notice was evidently given to Roberto and his mother. Neither the department nor the court notified Brown County of the hearing.

Brown County inadvertently learned of the hearing and filed a formal objection to the proposed venue change. Upon receiving Brown County's objections, the court rescheduled the hearing for July 13, 1995, and directed the department's counsel to prepare a response to the objections and to notify Brown County of the new hearing date. The department's counsel replied to the objections but never notified Brown County of the rescheduled hearing. The court nonetheless proceeded with the hearing in Brown County's absence and signed the order prepared by counsel changing venue and substituting Brown County for Rock County as the agency responsible for providing the mandated services to Roberto and his family.

Venue transfers in CHIPS proceedings are governed by § 48.185(2), STATS. The statute provides that where, as here, "the child has been placed outside the home pursuant to a [CHIPS] dispositional order," venue is in the county where the dispositional order was issued *unless* (a) the child's county of residence has changed, or (b) the parent has resided in a different county for six months. In either of these two situations, "the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child or parent."

Although § 48.185(2), STATS., is silent on the question of notice to the "receiving" county, the statute does make it plain that venue transfers are to be accomplished by a revision of the dispositional order placing the child outside the home.[4] Revision of dispositional orders is governed by § 48.363, STATS. Section 48.363(1) requires that (1) requests for revision set forth the nature of the revisions sought; and (2) "[i]f a hearing is held, the court shall notify the parent, child, guardian and legal custodian [and] all parties bound by

(..continued)
for providing the services mandated by the Court."

[4] That is, of course, the procedure followed by the department and the juvenile court in this case: a petition to the court to revise the existing dispositional order to change the venue of the proceedings--and to shift responsibility for services to Roberto and his family--from Rock County to Brown County, and an order doing just that.

the dispositional order ... at least 3 days prior to the hearing," and include a copy of the petition for revision with the notice.

Brown County argues that, considered together, the plain language of §§ 48.185(2) and 48.363(1), STATS., requires notice to the receiving county of any hearing scheduled by the court on a petition to transfer venue. The department argues to the contrary, discussing at considerable length the legislative history of § 48.185, STATS., together with that of several other statutes relating to venue in non-CHIPS juvenile proceedings and the "legal settlement" laws in general. The crux of the department's argument, based on its extensive exposition of the history of the several statutes, past and present, is that, considering everything the legislature has done in this area since 1945, two conclusions follow:

> [T]he legislature has assigned (1) to the children's court the power to decide which county will be the venue and (2) to the county department in that county the responsibility to fund the court's placements and other services.

According to the department, "The legislature does not want counties squabbling about who pays ... through the rather indirect method of venue transfers," and that is why that body "has not required prior notice of transfer of venue to be given to the receiving county."

If indeed that was the legislature's intent, it is an intent unexpressed in the statutes it drafted to cover venue transfers, §§ 48.185(2) and 48.363(1), STATS. The primary purpose of statutory construction and interpretation is, of course, "to ascertain and give effect to the intent of the legislature," ***DeMars v. LaPour***, 123 Wis.2d 366, 370, 366 N.W.2d 891, 893 (1985). We begin that inquiry by looking to the language of the statute. ***State v. Rognrud***, 156 Wis.2d 783, 787-88, 457 N.W.2d 573, 575 (Ct. App. 1990). "If the statute is clear on its face, our inquiry as to the legislature's intent ends and we must simply apply the statute to the facts of the case." ***Interest of Peter B.***, 184 Wis.2d 57, 70-71, 516 N.W.2d 746, 752 (Ct. App. 1994). We do not look behind the plain and unambiguous language of a statute.[5] It is only when a statute is

[5] Justice (then-Professor) Frankfurter proposed a three-step methodology for

ambiguous--when it is capable of being understood by reasonably well-informed persons in either of two senses, ***Robinson v. Kunach***, 76 Wis.2d 436, 444, 251 N.W.2d 449, 452 (1977)--that we may look beyond its terms and construe it in light of its history, context, subject matter and scope. ***Kluth v. General Casualty Co. of Wisconsin***, 178 Wis.2d 808, 815, 505 N.W.2d 442, 445 (Ct. App. 1993).

We think the statutes governing transfer of venue are plain and unambiguous. Venue in CHIPS cases where the child is placed outside the home may be changed, upon a showing of good cause, by revising the dispositional order. Section 48.185(2), STATS. CHIPS dispositional orders may be revised only in conformance with the requirements of § 48.363; § 48.363(1) plainly provides that where a petition to revise the dispositional order to change venue is scheduled for hearing, as was done in this case, the court "shall notify ... all parties bound by the dispositional order." We see no ambiguity in that statutory scheme, and we consider it to be equally plain that Brown County, to whom all administrative, professional and fiscal responsibility for the services ordered to be provided to Roberto and his family is to be transferred under the revised order, is a "party bound" by its terms.[6]

(..continued)
interpreting statutes: "1. Read the statute; 2. Read the statute; 3. Read the statute." HENRY J. FRIENDLY, MR. JUSTICE FRANKFURTER ON THE READING OF STATUTES, in FRIENDLY, BENCHMARKS 202 (1967).

[6] We agree with Brown County's observation that such a reading of the statute is both reasonable and logical for, as the county notes: "If the `receiving county' is opposed to the transfer, and does not receive notice, who will argue that good cause does not exist [? T]he movant can simply present a one-sided argument that good cause exists and obtain a transfer of venue."

The purpose of the department's petition was to transfer all responsibility for Roberto and his family in the context of the continuing CHIPS proceeding from Rock County to Brown County, and the order of the juvenile court effectuates that purpose, for it requires Brown County to assume responsibility "for providing the services mandated by the Court." Included among those services are: (1) counseling for Roberto and his mother; (2) sex-offender treatment for Roberto's stepfather; and (3) monitoring and case management services to the family. Last and, we are sure, by no means least in the context of this proceeding, the order specifically requires Brown County to "fund [Roberto's] placement" in the Columbia County group home. Under these circumstances, we consider Brown County to be a party "bound by the ... order" within the meaning of § 48.363, STATS.

We conclude, therefore, that the plain language of §§ 48.185(2) and 48.363(1), STATS., requires notice to the receiving county of hearings scheduled by the court on petitions to transfer venue in CHIPS proceedings. And because neither the nature of Brown County's participation in such a hearing nor the effect such participation may have on the juvenile court's determination of "good cause" under § 48.185(2) can be ascertained until they are accomplished, we reverse the order of July 17, 1995, and remand to the juvenile court with directions to reschedule the hearing on the department's petition, on appropriate notice to Brown County and others, as required by § 48.363(1).

By the Court.—Order reversed. Cause remanded for further proceedings consistent with this opinion.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

(..continued)

It is true that Brown County was not a party to the proceedings prior to the venue-transfer request, and thus was not "bound" by the prior order sought to be revised by the department's petition. It would stretch reason to the breaking point, however, to restrict the "bound by" language to prior orders, when the order sought and obtained by the department in the July 1995 proceedings imposed such burdens and responsibilities on Brown County.