

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 31, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

**Nos. 99-1963
99-1964
99-1965
99-1966**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

No. 99-1963

**IN THE MATTER OF APPOINTMENT OF COUNSEL IN IN
THE INTEREST OF SHELDON G.:**

OFFICE OF STATE PUBLIC DEFENDER,

APPELLANT,

v.

**CIRCUIT COURT FOR WALWORTH COUNTY AND WALWORTH
COUNTY,**

RESPONDENTS.

No. 99-1964

**IN THE MATTER OF APPOINTMENT OF COUNSEL IN IN
THE INTEREST OF TATIANA G.:**

OFFICE OF STATE PUBLIC DEFENDER,

APPELLANT,

V.

**CIRCUIT COURT FOR WALWORTH COUNTY AND WALWORTH
COUNTY,**

RESPONDENTS.

No. 99-1965

**IN THE MATTER OF APPOINTMENT OF COUNSEL IN IN
THE INTEREST OF JOHN S.:**

OFFICE OF STATE PUBLIC DEFENDER,

APPELLANT,

V.

**CIRCUIT COURT FOR WALWORTH COUNTY AND WALWORTH
COUNTY,**

RESPONDENTS.

No. 99-1966

**IN THE MATTER OF APPOINTMENT OF COUNSEL IN IN
THE INTEREST OF POWELL G.:**

OFFICE OF STATE PUBLIC DEFENDER,

APPELLANT,

V.

**CIRCUIT COURT FOR WALWORTH COUNTY AND WALWORTH
COUNTY,**

RESPONDENTS.

APPEAL from an order of the circuit court for Walworth County:
ROBERT J. KENNEDY, Judge. *Reversed and cause remanded.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 BROWN, P.J. The question in this case is whether WIS. STAT. § 48.23(4) (1997-98),¹ which deals with providing counsel in proceedings where a child is alleged in need of protective services (CHIPS), requires the state public defender (SPD) to provide counsel for parents when the court appoints counsel. Or, as the SPD contends, must the county provide for such appointed counsel? We agree that the statute was ambiguous as it read at the time of the circuit court's order, and we acknowledge that that was the version in effect at that time. However, we conclude that the ambiguity has been removed by a subsequent amendment to the statute. The legislature has clarified the matter: the SPD need only represent children for whom counsel has been appointed under the statute. We thus reverse the order of the circuit court and remand the cause for further proceedings.

¶2 The statutory section in question read as follows:

(4) PROVIDING COUNSEL. In any situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly

¹ All references to the Wisconsin Statutes are to the 1997-98 version.

and voluntarily waived, the court shall refer the person to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency.

Here, the circuit court ordered the SPD to provide counsel for the parents in these CHIPS proceedings. The SPD refused.

¶3 There are two ways to read the above statute. On the one hand, it appears to unambiguously mandate that the SPD provide counsel whenever the circuit court says so. The SPD argues, however, that it only has the authority to accept referrals from the circuit court when the right to counsel arises from some other subsection of WIS. STAT. § 48.23. The SPD goes on to argue that to require SPD representation of parents in CHIPS proceedings regardless of indigence would create an absurd result: not even criminal defendants, who have a constitutional right to counsel, are guaranteed counsel when not indigent. Furthermore, the SPD points out, the legislature deleted language from § 48.23(2) that provided for representation of parents in CHIPS proceedings. *See* 1995 Wis. Act 27, § 2442r. This eliminated the provision of funds to the SPD to handle such cases.

¶4 The situation has been clarified by the legislature's recent amendment of the statute, replacing the word "person" with "child." *See* 1999 Wis. Act 9, § 1130x. This section first applied to CHIPS proceedings commenced on October 29, 1999, *see* 1999 Wis. Act 9, §§ 9358(4cs), 9400 (act takes effect on the day after publication), so it was not in effect when the circuit court ordered the SPD to represent the parents in this case. However, the amendment removes any ambiguity in the statute and tips the scale in favor of the SPD's interpretation.

Thus, we reverse the order of the circuit court and remand the cause for further proceedings.

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports.

