

**WISCONSIN SUPREME COURT
WEDNESDAY, NOVEMBER 1, 2006
1:30 p.m.**

05AP3141 City of Milwaukee v. Ruby Washington

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed an order of the Milwaukee County Circuit Court, Judge Clare L. Fiorenza presiding.

This case involves a woman with infectious tuberculosis (TB) who was confined in the Milwaukee County jail to keep her from spreading the disease after she refused to follow her treatment regimen. The Supreme Court will clarify whether the circuit court had the authority to order confinement in this type of facility.

Here is the background: TB is an airborne, bacterial infection that was once the leading cause of death in the United States. If a patient follows a lengthy course of treatment, s/he is not contagious. But if the patient fails to follow through, the TB can mutate to a drug-resistant strain.

In June 2005, the Milwaukee Health Department (MHD) confirmed that Ruby Washington had infectious TB. At the time, she was living in a homeless shelter. The MHD gave her bus tickets to travel to its clinic to receive her medication, but she disappeared. It then issued orders directing her to take her medication under observation and requiring her to be isolated in a home or a hospital, but it could not serve these orders because it could not find her.

When the MHD learned that Washington was at a local hospital giving birth, it tracked her down and served her with copies of the two orders. When she threatened to leave the hospital, the City of Milwaukee filed a petition in circuit court for enforcement of its orders.

At a hearing, the City and Washington agreed that she would remain at the hospital, under guard, for treatment until at least Sept. 27, 2005. On that day, the court set conditions for her release to the custody of her sister and cautioned that if Washington failed to comply, she would be subject to imprisonment for contempt of court.

Washington escaped her sister's home almost immediately and returned to the streets. She was quickly arrested, taken to the hospital for a medical assessment, and then taken to the Milwaukee County Jail – which inadvertently released her.

She was again tracked down, and the circuit court held a hearing on whether Washington should be confined. The City argued that she had become a danger to the public, and should be confined in the jail until her treatment ended. Her attorney agreed on the confinement, but argued in favor of a hospital or other health care facility. The City objected to these ideas on the basis of the cost to taxpayers. The judge ordered Washington confined in the Milwaukee County Jail. She was projected to be released last May. Washington appealed.

A divided Court of Appeals concluded that, in light of cost considerations and Washington's own conduct, the circuit court had acted within the discretion that it is granted under Wisconsin's TB statute¹. The majority also found that the circuit court was

¹ Wis. Stat. § 252.07(9)

within its authority to use the contempt statute; Judge Joan Kessler, dissenting, argued that the contempt statute is meant to punish, and that it does not contain appropriate safeguards to ensure that the civil liberties of a person confined for medical treatment are not violated.

Now Washington has come to the Supreme Court, where she argues that the Court of Appeals misread the TB statute. The law does not, Washington asserts, authorize a judge to order confinement in a law enforcement facility, but rather it authorizes a health department to confine an individual with tuberculosis, and authorizes the circuit court to review whether the confinement is to continue. The City, on the other hand, maintains that the statute is clearly written and was properly applied.

The Supreme Court will be asked to determine whether the circuit court appropriately exercised its discretion in ordering Washington confined in a law enforcement facility, and whether a circuit court may use the contempt statute to order confinement in such situations.