

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 1998

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-0115

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

SAUK COUNTY DEPARTMENT OF HUMAN SERVICES,

PLAINTIFF-RESPONDENT,

v.

JAMES CARNEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
VIRGINIA A. WOLFE, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. James Carney appeals a money judgment in favor of the Sauk County Department of Human Services. The Department sued for reimbursement of payments it made for medical and mental health care provided Carney on three occasions between August 1989 and January 1993. Carney contends that the applicable statute of limitations barred recovery for the 1989

services and that the trial court erred by excluding certain evidence at trial. We conclude that no statute of limitations barred any part of this action, and that the trial court properly excluded the evidence in question. We therefore affirm.

The Department paid \$2,344 for inpatient care Carney received between August 9, and August 17, 1989. In September 1989, the Department obtained a reimbursement agreement from Carney. The Department made subsequent payments for care in 1991 and 1993, totaling \$2,038.62, also subject to reimbursement. Carney never reimbursed the Department, however, and the Department commenced this action on August 31, 1995. Before trial, the court held that § 893.87, STATS., which provides a ten-year statute of limitation for “any action in favor of the State when no other limitation is prescribed in this chapter,” applied to these claims. That ruling eliminated Carney’s statute of limitations defense for reimbursement of the 1989 claim. At trial, Carney attempted to present evidence that a part of the 1991 claim involved services provided him while he was unlawfully confined in a hospital against his will. The trial court determined that the evidence was irrelevant to the Department’s reimbursement claim and excluded it. As a result, the Department was awarded its full claim of \$4,382.62.

Section 46.10, STATS., provides, in relevant part, that “any person ... receiving care ... in which the State is chargeable with all or part of the person’s care ... shall be liable for the cost of the care” In *DHSS v. Slater*, 43 Wis.2d 260, 264, 168 N.W.2d 869, 871 (1969), the supreme court held that a governmental claim under § 46.10, STATS., is covered by the ten-year statute of

limitations set forth in § 893.87, STATS.¹ Although Carney suggests that recent trends indicate that the supreme court would hold differently if again presented with the issue, *Allen* remains the law in Wisconsin. We are bound by supreme court precedent. See *Livesey v. Copps Corp.*, 90 Wis.2d 577, 581, 280 N.W.2d 339, 341 (Ct. App. 1979).

Carney also contends that the Department failed to allege or prove that it was proceeding against him under § 46.10, STATS. Consequently, according to Carney, it cannot claim the benefit of the ten-year limitation. However, despite the absence of direct proof, the inference is not only reasonable but unavoidable that the County sued under authority of § 46.10. Chapter 46, STATS., provided the only authority for the Department's payment of Carney's bills, and § 46.10 provided the only authority for requiring reimbursement from him.

In any event, the dispute over the applicable statute of limitations makes no difference. If the ten-year statute of limitations in § 893.87, STATS., does not apply, the six-year limit on contract causes of action in § 893.43, STATS., would, as Carney concedes. Under the latter section, a contract cause of action accrues when the contract is breached, not when the underlying services are provided. See *CLL Assocs. v. Arrowhead Pac. Corp.*, 174 Wis.2d 604, 607, 497 N.W.2d 115, 116 (1993). The cause of action in this case therefore accrued only when Carney breached the reimbursement agreement he first entered into in

¹ At the time of the *Allen* decision, the statute concerning limitations of actions in favor of the State was numbered § 893.18(6). The statute was renumbered, effective July 1, 1980. See Laws of 1979, ch. 323, § 28.

September 1989. The action commenced on August 31, 1995, fell within six years of that earliest possible breach.

The trial court properly excluded evidence that Carney was held involuntarily during his 1991 hospital stay. Section 46.10, STATS., plainly requires reimbursement from any person who receives care for which a governmental unit is chargeable. There is no exception stated for charges for services that the recipient received involuntarily. If, in fact, Carney was held against his will, he still received services that the Department became obligated to pay under ch. 46, STATS. Consequently, the evidence was, as the trial court held, irrelevant to the reimbursement issue.

By the Court.—Judgment affirmed.

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

