COURT OF APPEALS
DECISION
DATED AND RELEASED

April 9, 1996

NOTICE

No. 95-3118-FT

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

JOHN NIERENGARTEN and
BETTY NIERENGARTEN,

Petitioners-Appellants,

v.

STATE OF WISCONSIN,
DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. John and Betty Nierengarten appeal a judgment affirming a Department of Health and Social Services decision that the Nierengartens' adoption assistance application was properly denied as untimely.[1] The Nierengartens raise three issues on appeal: (1) whether their

[1] This is an expedited appeal under RULE 809.17, STATS.

adopted son, Benjamin, was eligible for adoption assistance at the time of his adoption; (2) whether foreign born children were excluded from the adoption assistance program at the time Benjamin was adopted; and (3) whether the trial court's decision was consistent with federal policy considerations and congressional goals. Applying the plain language of § 48.975, STATS., we conclude that application for adoption assistance was properly denied as untimely. We therefore affirm the judgment.

In April 1987, Lutheran Social Services of Wisconsin and Upper Michigan placed four-year-old Benjamin, who was born in Korea, with the Nierengartens for the purpose of adoption. When Benjamin was placed with the Nierengartens, they were advised that they did not qualify for adoption assistance. In November 1987, Benjamin's adoption was finalized. After his adoption was finalized, Benjamin was diagnosed with bipolar disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder and mathematics disorder.

In August 1994, the Nierengartens applied for adoption assistance to assist with the financial exigencies in meeting Benjamin's medical needs. Their application was denied as untimely. The circuit court affirmed the DHSS's denial of their application.

We review the department's decision and not that of the circuit court. ***Gibson v. State Public Defender,*** 154 Wis.2d 809, 812, 454 N.W.2d 46, 47-48 (Ct. App. 1990). The scope of our review is prescribed by § 227.57(5), STATS.: "The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law ...."

Here, there is no dispute of underlying facts, and the issues presented require that we apply the statutory guidelines to a set of facts. The application of a statute to a set of facts presents a question of law that we review de novo. ***Sheely v. DHSS,*** 150 Wis.2d 320, 328, 442 N.W.2d 1, 5 (1989). The primary source of interpretation is the statutory language itself. ***Hartlaub v. Coachmen Indus.,*** 143 Wis.2d 791, 797, 422 N.W.2d 869, 871 (Ct. App. 1988). If the language is unambiguous, resort to extrinsic aid for purposes of statutory interpretation would be improper. ***General Tel. v. A Corp.,*** 147 Wis.2d 461, 464, 433 N.W.2d 264, 265 (Ct. App. 1988).

Here, the statutory language is unambiguous. Adoption assistance was created to assist the adoption of special needs children by providing financial assistance to adoptive families. "'[A]doption assistance' means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents." Section 48.975(1), STATS. The application for adoption assistance must be made before the adoption is finalized. Section 48.975(4), STATS., provides: "A written agreement to provide adoption assistance shall be made prior to legal adoption ...." We conclude that the department correctly interpreted the law to require the application for adoption assistance be made before the adoption is finalized.

The Nierengartens argue that Benjamin would have qualified for adoption assistance at the time he was placed, that the law did not disqualify foreign born children, and that they were misinformed that they were not eligible. The Nierengartens do not contend that Lutheran Social Services deceived them or misrepresented the state of Benjamin's health. Their contention is that at that time his undiagnosed condition would have qualified him as a special needs child for whom adoption assistance would have been available, if they would have applied before the adoption was finalized. Although the Nierengartens' contentions may be correct, they do not change the result, given our narrow scope of review. Our obligation under § 227.57, STATS., is to apply the plain and unambiguous language of the applicable statute. ***Harris v. Kelley,*** 70 Wis.2d 242, 249, 234 N.W.2d 628, 631 (1975). Section 49.975(4), STATS., plainly requires that the application for adoption assistance be made before the adoption is finalized. Because it is undisputed that the application was made after the adoption was finalized, it was properly denied.

The Nierengartens also argue that interpretations of analogous federal law recognize extenuating circumstances that require a hearing after the adoption is final to reverse an improper agency denial of an adoption assistance application. However, they agree that in the federal interpretation, the family applied before the adoption was finalized. That is not the case here.

The Nierengartens also argue that the congressional goals of Title IV-E of the Social Security Act, which resulted in the creation of the adoption assistance program, would be met if extenuating circumstances were recognized to permit an untimely application. Our duty, however, is to

ascertain legislative intent by virtue of the plain statutory language. Here, in § 48.975(4), STATS., the unambiguous language requires the application to be made before finalization of the adoption. The department's regulations pursuant to § 48.975(5), STATS., are consistent with this interpretation. *Cf.* WIS. ADM. CODE § HSS 50.04(1) ("An application for adoption assistance shall be completed and approved before an adoptive placement occurs ...."); § HSS 50.03(3)(b) (application may be made after placement but before finalization if there is a change in needs).

The Nierengartens also cite ***Ferdinand v. Department for Children & Their Families,*** 768 F.Supp. 401 (D. R.I. 1991), which concluded that an adoptive family was not barred from adoption assistance although the adoptive child's special educational needs were not evident at the time of her adoption. Because the ***Ferdinand*** court was not interpreting our Wisconsin statutes, its result is not controlling.

By the Court.—Judgment affirmed.

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