COURT OF APPEALS
DECISION
DATED AND RELEASED

November 22, 1995

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0887

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

IN THE INTEREST OF KEVIN R.C.,
A PERSON UNDER THE AGE OF 18:

ROCK COUNTY HUMAN SERVICES DEPARTMENT,

Petitioner-Appellant,

v.

LORELEI B.,

Respondent-Respondent.

APPEAL from an order of the circuit court for Rock County: JAMES DALEY, Judge. *Affirmed*.

GARTZKE, P.J. On November 7, 1994, the Rock County Human Services Department filed with the circuit court a motion to compel the mother of Kevin R.C. to provide support for the child under § 48.36(1), STATS. Although the notice of motion did not specifically so advise the mother, the department sought an order compelling her to provide past support. The court ordered her to pay support between November 7, 1994, and December 5, 1994,

and refused to order her to pay past support. The department appeals.[1] We affirm.

The issue is whether § 48.36(1), STATS., authorizes disposition of an order to pay child support for a period prior to the date the county filed its motion under § 48.36(1). The issue is one of law. Our review is de novo. Section 48.36(1)(a) provides in pertinent part:

> If legal custody is transferred from the parent ... or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.34 or 48.345 or by a change in placement under s. 48.357, the duty of the parent ... to provide support shall continue even though the legal custodian or the placement designee may provide the support....

Nothing in § 48.36(1)(a), STATS., expressly provides that the order may cover a period prior to the date of the application to the court for the order. The department asserts that the court is authorized to enter such an order because the statute provides that "the duty of the parent ... to provide support shall continue even though the legal custodian or placement designee may provide the support."

Usually statutes speak to the present or to the future and not to the past. As the trial court points out, family law cases are legion to the effect that the trial court may not retroactively increase support payments, *e.g.*, ***Strawser v. Strawser***, 126 Wis.2d 485, 489, 377 N.W.2d 196, 198 (Ct. App. 1985) (a trial court has no authority to make an order directing retroactive increase of support payments), *citing* ***Foregger v. Foregger***, 40 Wis.2d 632, 645, 162 N.W.2d 553, 559 (1968). For other examples of the same principle, *see* ***Greenwood v. Greenwood***, 129 Wis.2d 388, 391, 385 N.W.2d 213, 214 (Ct. App. 1986), and ***Whitwam v. Whitwam***, 87 Wis.2d 22, 30, 273 N.W.2d 366, 370 (Ct. App. 1978).

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

While judicial precedent in family law does not control the construction of the statute, the case law illustrates the general rule that support orders are prospective only. In the absence of contrary evidence within § 48.36(1)(a), STATS., itself that the legislature intends that child support may be ordered retroactively, we hold that a court may order support, at the earliest, only from and after the date an application is made under the statute for the support order. Thus, the duty "to provide support shall continue" from and after the date the application is made, "even though the legal custodian ... may provide the support."

By the Court.—Order affirmed.

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