

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

DECEMBER 10, 1996

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.

NOTICE

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

No. 96-0931

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ANTHONY J. VERDONE,

Plaintiff,

v.

**BOLTON REFUGE HOUSE,
GERALD L. WILKIE and
ACCEPTANCE INSURANCE
COMPANY,**

Defendants-Third Party Plaintiffs-Appellants,

v.

**CINDRA R. CARSON and
CNA INSURANCE COMPANY,**

Third Party Defendants-Respondents.

APPEAL from a judgment of the circuit court for Eau Claire County: FREDERICK A. HENDERSON, Judge. *Affirmed.*

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

PER CURIAM. Bolton Refuge House, Gerald Wilkie and their insurer appeal a judgment dismissing their third-party action against Attorney Cindra Carson and her insurer. They argue that an attorney representing the custodial parent in a child custody proceeding may be liable for damages to the noncustodial parent when the attorney fails to comply with a court order designed to protect the noncustodial parent from a foreseeable risk that the custodial parent will remove the child from the country. This argument fails because it is based on a factual premise that does not exist in this case.¹ Therefore, we affirm the judgment dismissing the action.

Carson represented Alexandra Verdone in a custody dispute with her husband, Anthony Verdone. During the litigation, Alexandra and the child lived at Bolton Refuge House. At the suggestion of an attorney in Carson's law firm, Gerald Wilkie, executive director of Bolton Refuge House, took possession of Alexandra's and the child's passports pending a hearing before the family court commissioner. The hearing resulted in an order stating "Alexandra's and Marcel's passports shall be given to Respondent's [Alexandra's] attorney." Wilkie gave the passports to Alexandra and she absconded to Germany with the child. Anthony then commenced this action against Bolton Refuge House, Wilkie and their insurer, and those defendants seek indemnification or contribution from Carson and her insurer based on her violation of the court order.

Carson did not violate the court order. While there is some dispute regarding the precise language of the commissioner's oral decision, the written decision, including a handwritten provision regarding the passports, imposed no duty on Carson until she received the passports from an unidentified party. Neither the court commissioner's written order nor the affidavit of any person present at the hearing suggests that Carson was required to do anything other than hold the passports after she received them. Because the issues argued on appeal lack a factual underpinning, we need not address

¹ The appellants argue that the respondent's argument that the court commissioner's order imposed no duty on Carson was raised for the first time on appeal. The issue was adequately raised in Carson's reply brief in support of her motion to dismiss.

whether a person without privity of contract with an attorney may bring an action for failing to comply with a court order. *See Mills v. State*, 52 Wis.2d 445, 447, 190 N.W.2d 168, 169 (1971).

By the Court.—Judgment affirmed.

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