

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 1999

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. 99-0681

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HUMAN SERVICES CENTER,

PLAINTIFF-APPELLANT,

v.

FRANCIS D. BOCEK,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Oneida County:
MARK A. MANGERSON, Judge. *Affirmed.*

¶1 CANE, C.J. The Human Services Center appeals from the circuit court's order dismissing its complaint attempting to collect its \$1,820.19 in hospital costs for Francis Bocek's emergency detention. The trial court concluded that because the Center failed to prove that there was a valid commitment order or other judicial determination showing the propriety of the detention, Bocek was not liable for the costs of his care. This court agrees and affirms the order.

¶2 A law enforcement officer went to Bocek's home, told him to "pack your bags," and took him to the Human Support Unit at St. Mary's Hospital pursuant to an emergency petition filed by the officer under § 51.15, STATS. Bocek remained at St. Mary's from December 28, 1994 until discharged on January 4, 1995.¹ On January 4, the circuit court granted Oneida County corporation counsel's motion to dismiss the petition based on the treating psychiatrist's recommendation. Consequently, Bocek was released before there was any judicial determination of probable cause as required under § 51.20(7), STATS. After Bocek's release, the Center attempted to gather financial information from him in order to recover its costs. When Bocek provided little, if any, information, the Center filed a small claims action to recover its costs.

¶3 At the conclusion of the small claims trial, the circuit court concluded, "neither actual commitment pursuant to a permanent order after judicial determination, nor the finding of requisite probable cause for temporary detention was proven by the plaintiff in this case." The Center concedes that under the holdings of *In re Ethelyn I.C.*, 221 Wis.2d 109, 584 N.W.2d 211 (Ct. App. 1998), and *Jankowski v. Milwaukee County*, 104 Wis.2d 431, 312 N.W.2d 45 (1981), a valid commitment is required in order for a state institution to recover its costs of care.² However, it argues that the circuit court erred by placing the burden on the Center to prove that Bocek's detention or commitment was valid. Instead, it suggests that unless the record shows Bocek's emergency detention was

¹ The record is unclear as to the actual date Bocek was released from the Center. However, it appears it was either January 3 or 4, 1995.

² It is undisputed that § 46.10, STATS., provides the exclusive remedy for liability and imposition of costs of care provided by a state institution. The Human Services Center's small claims action seeks recovery of its costs under this statute. Essentially, § 46.10 provides that persons committed or admitted to a state institution shall be liable for the costs of care, maintenance, services, and supplies according to their ability to pay.

illegal or invalid, it is allowed to recover its costs from Bocek. This court is not persuaded.

¶4 In a civil action to recover monies, the burden is upon the party seeking money to prove liability. *See Ernst v. Greenwald*, 35 Wis.2d 763, 773, 151 N.W.2d 706, 711 (1967). Thus, it stands to reason that in this case, when liability is denied, the burden rests with the Center to prove that a valid commitment occurred before liability may be imposed upon Bocek. It did not. Therefore, the circuit court correctly ordered dismissal of the small claims action.

By the Court.—Order affirmed.

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

