

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 2003

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-1470-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00GN000240

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE PROTECTIVE PLACEMENT OF
OLIVIA G.:**

RACINE COUNTY HUMAN SERVICES DEPARTMENT,

PETITIONER-RESPONDENT,

v.

OLIVIA G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
FAYE M. FLANCHER, Judge. *Reversed and cause remanded with directions.*

¶1 BROWN, J.¹ Olivia G. appeals the order for protective placement claiming that while the trial court found she could be in a placement

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

less restrictive than the one she had been in, the present, more restrictive placement was continued without first obligating Racine County to show how it made a good faith, reasonable effort to find or fund placement in that less restrictive setting. We agree with Olivia. We reverse and remand with directions that the “good faith effort” issue be tried.

¶2 We will begin with the law. In *Dunn County v. Judy K.*, 2002 WI 87, 254 Wis. 2d 383, 647 N.W.2d 799, our supreme court addressed whether a court can put a person in a more restrictive setting if the County does not have a less restrictive setting available. The court held that, before a trial court can place a person in the more restrictive setting, the County must first prove to the court that it made affirmative, good faith, reasonable efforts to find and fund appropriate placement. *Id.*, ¶28. The County bears the burden of showing whether funds are available and whether appropriate placements may be developed within the limits of required funds. *Id.*, ¶27.

¶3 In the case at bar, Olivia was found to be in need of protective placement requiring twenty-four hour supervision. That much is not in dispute on appeal. What is in dispute is whether the court found that Ridgewood Care Center was the least restrictive setting. The County maintains that this is what the trial court found and, therefore, the County had no burden of making an affirmative showing of a good faith, reasonable effort to secure funding to pay for a less restrictive placement. Olivia contends that the trial court did not find Ridgewood to be the least restrictive setting—that a facility similar to one located in Milwaukee was the least restrictive setting. But since Olivia refused to go to Milwaukee and no similar facility had come to the court’s attention, the court continued placement in Ridgewood “until a place like that is either found in Racine County for you or some other county.” In Olivia’s view, once the court

made a finding that a less restrictive setting was appropriate for Olivia, the County had the burden of either placing her in such a setting or demonstrating to the court that, despite its good faith efforts, it could not.

¶4 We agree with Olivia’s reading of the trial court’s decision. After finding that Olivia needed to have protective placement continued, the court stated:

That will continue at Ridgewood Care Center unless and until another place—and apparently there’s a less restrictive setting for you, ma’am, that exists potentially in the Milwaukee County area. I understand you don’t want to be that far away from home, but again, a facility needs to be able to provide the 24 hour supervision that you need to make sure that you remain healthy, and until a place like that is either found in Racine County for you or some other county, I find that continued placement at Ridgewood Care is in fact the least restrictive setting.

¶5 It is evident that the finding of Ridgewood as the least restrictive setting was a qualified one. The court clearly stated that there was a setting less restrictive than Ridgewood, but it was in Milwaukee county and Olivia did not want to be that far from home. So, the court said that “until a place like that is either found in Racine County ... or some other county,” Ridgewood Care Center was the least restrictive. Given this state of the record, we cannot agree with the County’s assertion that Ridgewood was found, without qualification, to be the least restrictive setting.

¶6 We reverse and remand with directions that a hearing be conducted on whether the County made a reasonable, good faith effort to fund Olivia’s placement, considering the “needs of the person to be protected,” the “level of supervision needed” in the “least restrictive environment consistent with the needs of the person to be placed,” the “placement resources of the appropriate board”

and the availability of funds coupled with the limitations on county financial liability. *Id.*, ¶¶21-22; *see also* WIS. STAT. § 55.06(9)(a).

By the Court.—Order reversed and cause remanded with directions.

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

