

SUPREME COURT OF WISCONSIN

City of Milwaukee v. Washington

2007 WI 104 (Wis. 2007) · Decided July 17, 2007

SUMMARY

The Wisconsin Supreme Court reviewed whether a circuit court could confine Ruby Washington to the Milwaukee County Criminal Justice Facility for failing to comply with tuberculosis treatment orders. The court held that Wis. Stat. § 252.07(9) permits confinement in a jail if proper treatment and disease prevention are provided and no less restrictive alternative exists, and that cost may be considered only after those requirements are satisfied. The court affirmed the confinement order under the tuberculosis statute but rejected remedial contempt as an independent basis for confinement.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Louis B. Butler, Jr.
JURISDICTION	Wisconsin
DECIDED	July 17, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ruby Washington sought review of a published court of appeals decision affirming a circuit court order confining her to the Milwaukee County Criminal Justice Facility under Wisconsin's tuberculosis-control statute. She challenged only the placement in jail rather than a less restrictive facility and did not challenge the statutory basis for confinement itself.
STANDARD OF REVIEW	The selection of a confinement facility is reviewed for erroneous exercise of discretion. Whether the circuit court applied the correct legal standard and the interpretation of the statutes are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Ruby Washington v. City of Milwaukee

TOPICS

- health law
- statutory interpretation
- municipal law
- remedies

PRACTICE AREAS

health law

statutory interpretation

municipal law

remedies

QUESTIONS PRESENTED

1. Whether Wis. Stat. § 252.07(9)(a) authorizes confinement in a jail of a person with noninfectious tuberculosis who is at high risk of developing infectious tuberculosis and has failed to comply with a prescribed treatment regimen.
2. Whether the statute's requirement that no less restrictive alternative exist applies to the place of confinement as well as to the fact of confinement.
3. Whether a circuit court may consider the relative costs of alternative placements after determining that the placements satisfy the statutory requirements.
4. Whether remedial contempt under Wis. Stat. § 785.04(1) independently authorized Washington's confinement.

HOLDINGS

1. A jail may be a permissible place of confinement for a person with noninfectious tuberculosis who is at high risk of developing infectious tuberculosis and has failed to comply with a prescribed treatment regimen, provided that the jail provides proper care and treatment, prevents the spread of disease, and no less restrictive alternative exists.
2. The phrase no less restrictive alternative in Wis. Stat. § 252.07(9)(a)3. applies to the place of confinement as well as to the fact of confinement.
3. A circuit court may consider the relative costs of placement options, but only after determining that the options satisfy the requirements of proper medical care and disease prevention and that none is significantly less restrictive than the others. Cost considerations must be supported by evidence rather than assumptions.
4. Remedial contempt under Wis. Stat. § 785.04(1) did not provide an independent basis for Washington's confinement in this case, and the court of appeals' contrary discussion was disavowed.

KEY QUOTATIONS

“We conclude that Wis. Stat. § 252.07(9)(a) authorizes confinement to a jail for a person with noninfectious tuberculosis who is at a high risk of developing infectious tuberculosis and fails to comply with a prescribed treatment regimen, provided the jail is a place where proper care and treatment will be provided and the spread of disease will be prevented, and that no less restrictive alternative exists to jail confinement.” (¶ 3)

“A court must first determine that the place of confinement is a facility where proper care and treatment will be provided, spread of the disease will be prevented, and that no less restrictive alternative to the proposed placement exists.” (¶ 53)

“We further conclude that a circuit court may take into account the cost of placement options when determining the place of confinement under § 252.07, but only after determining that two or more placement

options fulfill the statutory requirements of proper medical treatment and disease prevention, and that none of these options is significantly less restrictive than the other(s).” (¶ 69)

FACTUAL BACKGROUND

Washington was diagnosed with tuberculosis and was prescribed a directly observed, nine-month treatment regimen. After being released from hospital confinement under stipulated conditions, she left the required residence and failed to take prescribed medication, requiring police to locate and detain her. The circuit court found that continued noncompliance created a substantial public-health risk and ordered confinement in the Milwaukee County Criminal Justice Facility rather than a hospital or mental-health facility.

PROCEDURAL HISTORY

The Milwaukee County Circuit Court ordered Washington confined to the Criminal Justice Facility after finding that she had failed to comply with tuberculosis-treatment orders and posed a threat to public health. The court of appeals affirmed, holding that the statutory less-restrictive-alternative requirement applied only to whether confinement was permissible and not to the selection of the confinement facility, and also finding remedial contempt to be an alternative basis. The Wisconsin Supreme Court affirmed on the tuberculosis-statute grounds, rejected cost-only placement reasoning as insufficient but permissible after statutory requirements are met, and disavowed contempt as an independent basis for confinement.

DISPOSITION

affirmed

CASES CITED

- State v. Manuel, 2005 WI 75, 281 Wis. 2d 554, 697 N.W.2d 811
- Landwehr v. Landwehr, 2006 WI 64, 291 Wis. 2d 49, 715 N.W.2d 180
- State ex rel. Kalal v. Circuit Court, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- Robin K. v. Lamanda M., 2006 WI 68, 291 Wis. 2d 333, 718 N.W.2d 38
- Wis. Citizens Concerned for Cranes & Doves v. DNR, 2004 WI 40, 270 Wis. 2d 318, 677 N.W.2d 612
- D.E.R. v. La Crosse County, 155 Wis. 2d 240, 455 N.W.2d 239 (1990)
- Dunn County v. Judy K., 2002 WI 87, 254 Wis. 2d 383, 647 N.W.2d 799
- State v. Blalock, 150 Wis. 2d 688, 442 N.W.2d 514 (Ct. App. 1989)
- State ex rel. N.A. v. G.S., 156 Wis. 2d 338, 456 N.W.2d 867 (Ct. App. 1990)
- Schroeder v. Schroeder, 100 Wis. 2d 625, 302 N.W.2d 475 (1981)
- State v. King, 82 Wis. 2d 124, 262 N.W.2d 80 (1978)
- State v. Michael S., 2005 WI 82, 282 Wis. 2d 1, 698 N.W.2d 673
- Mueller v. McMillian Warner Ins. Co., 2006 WI 54, 290 Wis. 2d 571, 714 N.W.2d 183
- Strenke v. Hogner, 2005 WI 25, 279 Wis. 2d 52, 694 N.W.2d 296

- Clean Wisconsin, Inc. v. Public Service Commission of Wisconsin, 2005 WI 93, 282 Wis. 2d 250, 700 N.W.2d 768
- City of Milwaukee v. Ruby Washington, 2006 WI App 99, 292 Wis. 2d 258, 716 N.W.2d 176

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