

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.

No. 96-0931

COURT OF APPEALS OF WISCONSIN, DISTRICT THREE

207 Wis. 2d 644; 559 N.W.2d 924; 1996 Wisc. App. LEXIS 1574

December 10, 1996, Released

NOTICE: PURSUANT TO RULE 809.23 OF APPELLATE PROCEDURE, AN UNPUBLISHED OPINION IS OF NO PRECEDENTIAL VALUE AND FOR THIS REASON MAY NOT BE CITED IN ANY COURT OF THIS STATE AS PRECEDENT OR AUTHORITY EXCEPT TO SUPPORT A CLAIM OF RES JUDICATA, COLLATERAL ESTOPPEL OR LAW OF THE CASE.

PRIOR HISTORY: [*1] APPEAL from a judgment of the circuit court for Eau Claire County: FREDERICK A. HENDERSON, Judge.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Third-party plaintiff individual, refuge house, and insurance company appealed a judgment of the Circuit Court for Eau Claire County (Wisconsin), which dismissed their third-party action against third-party defendants, an attorney and her insurer, seeking damages for failure to comply with a court order.

OVERVIEW: The third-party plaintiffs argued that an attorney representing the custodial parent in a child custody proceeding could be liable for damages to the noncustodial parent when the attorney failed to comply with a court order designed to protect the noncustodial parent from a foreseeable risk that the custodial parent would remove the child from the country. The order at issue stated that the passports of the wife, whom the attorney represented in a custody dispute, and child would be given to the wife's attorney. The instant court found that the attorney did not violate a court order. While there was some dispute regarding the precise language of the oral decision, the written decision, including a handwrit-

ten provision regarding the passports, imposed no duty on the attorney until she received the passports from an unidentified party. Neither the order nor affidavit of any person present at the hearing suggested that the attorney was required to do anything other than hold the passports after she received them.

OUTCOME: The judgment was affirmed.

CORE TERMS: passports, insurer, custodial parent, noncustodial parent, custody

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

OPINION

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.

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.

[*2] Carson represented Alexandra Verdone in a custody dispute with her husband, Anthony Verdone. During the litigation, Alexandra and the child lived at

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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, in-

cluding 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 [*3] 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 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.