

every presumption and will sustain the law if at all possible." *Id.*

[9] Woodward argues that the commission's construction of sec. 77.54(15), Stats., causes an unconstitutional classification under our state and federal due process and equal protection provisions. Woodward asserts that it is irrational to impose a use tax on persons such as Woodward who print and publish their own shoppers guides but exempt persons who engage others to print and publish their shoppers guides.<sup>6</sup> Again we disagree.

Before the 1978 amendment to sec. 77.54(15), Stats., both classes were equally treated. The person who prints and publishes its own shoppers guide paid a use tax under sec. 77.53(1) on materials and supplies it consumed and was not exempt under sec. 77.54(15). The person who had another print and publish its shoppers guides was not subject to but ultimately paid the sales tax, since the printer could collect it from that person. Secs. 77.52(2)(a)11., 77.52(3).

The 1978 amendment affects the sales tax exemption in sec. 77.54(15), Stats. The person who prints and publishes its own shoppers guide continues to pay a use tax under sec. 77.53(1). The amendment to the sales tax exemption divides persons who have others print and publish their shoppers guides into two classes: those who distribute no less than forty-eight issues in a twelve-month period and those who distribute less. A sale to persons who distribute forty-eight issues or more is exempt. A sale to persons who distribute less than forty-eight issues is not exempt, and they therefore ultimately pay sales tax. Sec. 77.52(3). The constitutional issue does not arise if Woodward's class is compared with the class consisting of those who publish less than forty-eight issues, since those classes bear the same tax impact.

The record is silent, however, as to whether after July 1, 1978, Woodward distributed no less than forty-eight issues in a twelve-month period. Because of the strong presumption favoring constitutional-

6. Woodward refers to persons in the latter class as its competitors, even though, as we have

ity and Woodward's failure to show that the post-July 1, 1978 classification disparately treats Woodward, its challenge to the commission's construction of sec. 77.54(15), Stats., also fails.

Order affirmed



143 Wis.2d 508

In the Interest of K.K.C., K.M., S.M., T.S., D.L.W., and B.W.

ROCK COUNTY DEPARTMENT OF SOCIAL SERVICES, Appellant,

v.

Richard R. DeLEU, Respondent.

In the Interest of R.M.L., a person under the age of 18.

R.M.L., Appellant,

v.

Richard R. DeLEU, Respondent.

Nos. 87-0266, 87-0334.

Court of Appeals of Wisconsin.

Submitted on Briefs Jan. 21, 1988.

Opinion Released Feb. 18, 1988.

Opinion Filed Feb. 18, 1988.

Sexual assault defendant sought statutory in camera review of county social service department records of juveniles, for whose assault defendant was being tried, to ascertain whether records contained information necessary to his defense. The Circuit Court, Rock County, John H. Lusow, and Patrick J. Rude, JJ., granted the motion. The county department appealed. The Court of Appeals, Sundby, J., held that: (1) juvenile court was to perform in camera inspection, not trial court, and (2)

seen, certain of its customers are members of that class.

defendant made statutory motion to juvenile court, not *Ritchie* motion to trial court.

Reversed and remanded.

1. Infants ⇐133

Juvenile court did not exercise proper discretion when it ordered county Social Services Department to turn over confidential files of juveniles, victims in sexual assaults for which defendant was being tried, to trial court for in camera inspection into whether files contained any information necessary to defendant's defense; defendant's motion under statute was to juvenile court, which was to perform the in camera review. W.S.A. 48.02(2m), 48.78(2)(a).

2. Courts ⇐26

Concept of exercise of discretion does not contemplate that a court will delegate the necessary process of reasoning, underlying step in exercising discretion, to another court.

3. Criminal Law ⇐627.8(4)

Sexual assault defendant's statutory motion to compel juvenile court to turn over, after in camera review, county social services department records of juveniles, victims in sexual assaults for which defendant was being tried, did not entitle defendant to have trial court examine those records in camera under *Ritchie*; defendant must ask trial court for a *Ritchie* review after demonstrating that the records contain evidence material to his defense. U.S.C.A. Const.Amend. 6; W.S.A. 48.02(2m), 48.78(2)(a).

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David Heitzman, Janesville, on brief and Jerome M. Elliott, Beloit, for appellants.

Richard D. Martin, Asst. State Public Defender, for respondents.

Before GARTZKE, P.J., and EICH and SUNDBY, JJ.

SUNDBY, Judge.

The Rock County Department of Social Services appeals orders requiring that it deliver all of its files concerning seven juveniles to the trial judge in two criminal

prosecutions in which Richard R. DeLeu, Jr., is charged with sexually assaulting the juveniles. The orders require the trial judge in the criminal cases to review the files *in camera* to determine what portions of such files should be released to DeLeu for his use in defense against the criminal charges. We conclude that sec. 48.78(2)(a), Stats., requires that the juvenile court, not the criminal court, exercise its discretion to determine whether the confidential records of the department shall be disclosed or made available for inspection. We therefore reverse.

Section 48.78(2)(a), Stats., provides:

No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under sub. (3) or s. 48.432, 48.433, 48.93, or 48.981(7) or by order of the court. (Emphasis added.)

[1] The parties agree that "the court" as used in sec. 48.78(2)(a), Stats., refers to the juvenile court. Section 48.02(2m) provides: "'Court,' when used without further qualification, means the court assigned to exercise jurisdiction under this chapter." The parties also agree that an order of the juvenile court under sec. 48.78(2)(a) is discretionary.

DeLeu argues that the juvenile courts exercised their discretion when they ordered the department to deliver its files to the criminal trial judge to make the *in camera* review. He claims that the juvenile courts considered the interest of the juveniles and the public in maintaining the confidentiality of the records, DeLeu's interest in a fair trial, and the ability of the criminal trial judge to recognize information relevant to DeLeu's defense. DeLeu contends that the judge who will preside over his criminal trials is in a better position than are the juvenile court judges to balance the competing interests of confidentiality and disclosure.

[2] "Discretion" contemplates a process of reasoning which yields a conclusion based on logic and founded upon proper

legal standards. *Marriage of Mathewson v. Mathewson*, 135 Wis.2d 411, 416, 400 N.W.2d 485, 487 (Ct.App.1986). Discretion does not contemplate that a court will delegate to another court the necessary process of reasoning.

We conclude that the juvenile courts did not exercise their discretion under sec. 48.78(2)(a), Stats. By ordering the department to deliver its files to the criminal trial judge for that judge to determine which, if any, of the agency's files would be disclosed to DeLeu or made available for his inspection, the juvenile courts delegated the exercise of their discretion. Since the juvenile courts failed to exercise their discretion, the orders must be reversed.

[3] DeLeu contends that if the trial judge in his criminal cases does not review the agency's files, he will be denied his constitutional rights to confrontation, compulsory process and due process. *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). *Ritchie* holds that a criminal defendant is entitled to an *in camera* review by the trial court of confidential records if those records are material to the defendant's defense. *Id.* at —, 107 S.Ct. at 1003, 94 L.Ed.2d at 59.

DeLeu has not moved the trial court in his criminal cases to make an *in camera* review of the agency records. If he does so, *Ritchie, supra*, establishes that he is entitled to such a review by the trial court, provided he makes a preliminary showing that the files contain evidence material to his defense.

DeLeu's motion at present is directed to the juvenile court under sec. 48.78(2)(a), Stats. Only the juvenile court may issue an inspection or disclosure order under that section.

Orders reversed.



143 Wis.2d 568

In re the ESTATE OF  
Charles P. DRAB.

ESTATE OF Charles P.  
DRAB, Appellant,

v.

Mildred ANDERSON, Respondent.

87-0799.

Court of Appeals of Wisconsin.

Submitted on Briefs Dec. 16, 1987.

Opinion Released Feb. 23, 1988.

Opinion Filed Feb. 23, 1988.

Estate appealed from civil judgment entered by the Circuit Court for Langlade County, James P. Jansen, J., finding that estate's personal representative intentionally harassed individual who was alleged to possess estate property. The Court of Appeals, Myse, J., held that harassment statute was not safety statute and did not grant private right of action for its violation.

Reversed and remanded with directions.

#### 1. Action ⇄3

##### Negligence ⇄6

"Safety statute" is legislative enactment intended to protect class of persons from particular harm; if statute is safety statute, civil cause of action is created and violation of statute constitutes negligence per se.

See publication Words and Phrases for other judicial constructions and definitions.

#### 2. Action ⇄3

Harassment statute was not "safety statute" and did not grant private right of action for its violation; statute was not intended to protect specific class of persons from harassment, and did not articulate intention to change common law by creating civil liability. W.S.A. 947.013.