

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 28, 2006

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. 2006AP152-FT

Cir. Ct. No. 2004FA46

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN THE MATTER OF THE GUARDIAN AD LITEM FEES
IN EILEEN G. ANDERSON N/K/A EILEEN WEUM V.
MICHAEL O'BRIEN:**

EILEEN ANDERSON N/K/A EILEEN WEUM,

APPELLANT,

V.

JOHN D. HANSON AND MICHAEL O'BRIEN,

RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.*

Before Vergeront, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Eileen Weum appeals an order awarding guardian ad litem fees for work done in her custody and placement dispute with Michael O'Brien. The issue is whether the trial court awarded an excessive fee to the guardian ad litem, Attorney John Hanson, and whether the court reasonably divided the fee equally between Weum and O'Brien. We affirm.

¶2 Weum filed a motion to revise the custody and placement provisions of a prior order in the parties' paternity proceeding. The court appointed Attorney Hanson as guardian ad litem and approved a fee rate of \$195 per hour. The parties ultimately settled the matter approximately nineteen months later. Hanson submitted a statement for guardian ad litem fees and expenses totaling \$16,821.05, with a balance owing of \$15,821.05. Hanson submitted time sheets indicating that he billed in increments of one-tenth (.1) of an hour.

¶3 Weum objected to Hanson's statement and received a hearing on her objection. At the hearing she contended that Hanson repeatedly billed .1 hours for activities that took substantially less than .1 hour to complete, such as reading brief, nonsubstantive notices and letters copied to him, and repeatedly billed his full rate for secretarial work. Hanson stated that .1 hours was the minimum time he billed for any case-related activity, and the court noted that billing in .1 hour increments is a standard attorney billing practice. The court concluded that the bill was reasonable because the hourly rate was within the customary range for guardian ad litem; that Hanson played a critical role in reaching what the court deemed a "desirable result"; and that there was no evidence that Hanson did not do the work claimed in his statement or that it was unnecessary. The court rejected the contention that rounding an activity time up to the nearest tenth of an hour was unreasonable. The court divided the bill equally, based on its conclusion that both parties contributed to the large guardian ad litem fee—O'Brien for his behavior

that led the parties to court, and Weum for maintaining unreasonably rigid positions during the ensuing litigation. The court also described the parties' roughly equal, and equally poor, financial situations, and concluded that nothing in their financial situations justified dividing the fees other than equally.

¶4 WISCONSIN STAT. § 767.045(6) (2003-04)¹ authorizes the court to order either or both parties to contribute to guardian ad litem fees. The decision as to who pays and how much is discretionary. *Lacey v. Lacey*, 45 Wis. 2d 378, 389, 173 N.W.2d 142 (1970). We affirm a discretionary decision if the trial court examines the relevant facts, applies the correct law, and demonstrates a rational process to reach a reasonable result. *State ex rel. M.L.B. v. P.G.H.*, 122 Wis. 2d 536, 542, 363 N.W.2d 419 (1985).

¶5 Weum contends that Hanson's fee is excessive because he did a poor job as guardian ad litem, and because he billed excessively for routine tasks. Her complaints about Hanson's performance are conclusory, and unsupported by evidence. As the trial court noted, she presented no evidence that Hanson failed to perform the tasks he billed for, or that his representation of her child suffered from his alleged inattention. She may have preferred that he do things differently, but he was the child's attorney, not hers. Nor did she present any evidence refuting the trial court's determination that a minimum .1 hour billing practice was standard billing practice for attorneys. Therefore, we conclude that the trial court reasonably approved Hanson's billing statement.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶6 The trial court also reasonably chose to divide the bill equally. Weum has not demonstrated that the court unreasonably attributed a substantial amount of the bill to Weum's intransigent litigating positions. Nor does she demonstrate that the court erred in determining that the parties' financial situations did not justify an unequal division. It is true, as Weum notes, that before making its decision the court ordered O'Brien to provide additional financial information on his partner's contribution to the expenses he claimed. It is also true, as Weum notes, that O'Brien apparently failed to provide this information before the court rendered its decision. However, she fails to show that the missing information would have substantially changed O'Brien's financial situation relative to hers, rendering the equal division unreasonable.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

