

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 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. 2005AP1523

Cir. Ct. No. 1992PA106394

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE PATERNITY OF D.L.:

DANIELLE LENTZ,

PETITIONER-RESPONDENT,

v.

MARSHALL WELLS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Marshall Wells appeals from the order denying his motion for reconsideration of the court's decision to deny his motion for modification of custody and placement of his daughter, D.L. He argues that the

circuit court erred when it did not find a substantial change in circumstances warranting a change in custody and placement. Because we conclude that the circuit court did not err, we affirm.

¶2 Wells moved for a change in custody and placement. After a hearing, the court commissioner eventually added a few hours of placement each week but did not change the custody order. Wells then moved for a *de novo* review of the decision. He argued that there had been a substantial change in circumstances because his twelve-year-old daughter wanted to spend more time with him, and that he and the child's mother communicated badly. The guardian *ad litem* stated that she did not believe it was in the child's best interest to have the change in the placement or custody. The guardian *ad litem* noted that the father had failed to comply with the current court orders, and the guardian *ad litem* had some other concerns about the time the child spent with him. By an order dated December 20, 2004, the court decided that there had not been a substantial change in circumstances. Wells appeared *pro se* at this hearing. Wells then obtained a lawyer who moved the court to reconsider its decision.

¶3 At the hearing on the motion for reconsideration, Wells again argued that his daughter's wish to spend more time with him was a substantial change in circumstances. The court stated that it had fully considered the issue at the *de novo* hearing, and that Wells had offered no new reason for reconsidering the court's earlier decision. The court also noted that Wells's decision to proceed *pro se* at the initial hearing had been his choice. The court denied the motion for reconsideration.

¶4 "Whether there is a substantial change in circumstances is a mixed question of law and fact. The circuit court's findings of fact regarding an alleged

change of circumstance since the last custody and placement order will not be disturbed unless clearly erroneous. However, whether a substantial change in circumstances has occurred is a question of law. Because the circuit court's legal determination is mixed with its factual findings, we give weight to the circuit court's decision." *Abbas v. Palmersheim*, 2004 WI App 126, ¶8, 275 Wis. 2d 311, 685 N.W.2d 546 (citations omitted).

¶5 In this case, the court found that the daughter did wish to spend more time with her father, but concluded, based on the guardian *ad litem*'s recommendation, that this was not appropriate. The court also found that there was poor communication between the mother and the father because the mother did not want to have unnecessary contact with the father. The court further stated that this was the mother's decision to make. The court ultimately concluded that these facts did not constitute a substantial change in circumstances that warranted a change in the placement of the child.

¶6 We conclude that the circuit court properly exercised its discretion by carefully and thoroughly considering the arguments of the parties. Further, we agree with the court's conclusion that in this situation, these facts did not constitute a substantial change in circumstances. We see no reason to upset the custody and placement schedule established by the *de novo* review.

By the Court.—Order affirmed.

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

