

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 2004

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. 04-0200-FT
STATE OF WISCONSIN**

Cir. Ct. No. 01FA001301

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE PATERNITY OF E.L.A.N.:

ROWAN L. WARDLE,

PETITIONER-RESPONDENT,

v.

ALEC G. NEWMAN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Alec Newman appeals an order dismissing his motion for modified physical placement with his daughter E.L.A.N. The court dismissed upon concluding that Newman's motion did not sufficiently allege a

substantial change of circumstances that would warrant modified placement. The issue is whether the averments in support of the motion, if accepted as true, were sufficient to bring the matter before the court for evidentiary proceedings. We affirm the trial court's determination that they were not.

¶2 Rowan Wardle is E.L.A.N.'s mother, and the court adjudicated Newman the father on September 14, 2001. The judgment provided for physical placement as agreed upon by the parties. Under the agreement Newman received placement two nights a week, and six to eight hours every weekend. On September 29, 2003, Newman filed a motion for equal placement, alleging a substantial change of circumstances. His accompanying affidavit in relevant part stated the following:

Since entry of the Judgment, a number of significant changes have taken place. For example, at the time the Judgment was entered, I had just moved out of the residence I shared with the Petitioner and was living in a one bedroom apartment. I was married in March, 2002. In March, 2003, my wife and I purchased a three bedroom home in Middleton. [E.L.A.N.] has her own bedroom at our home which she loves. My wife is a registered nurse at UW Hospital and Clinics. She and [E.L.A.N.] have developed a close step-parent relationship. My wife also has extended family residing in the Madison area. We get together with her family often. The family provides a support network for us and includes numerous children who are great "cousins" and playmates for [E.L.A.N.].

¶3 At the motion hearing, the parties agreed that the equal placement Newman sought was a significant enough change in placement to require a substantial change of circumstances. However, the court concluded that even if true, the averments in Newman's affidavit did not constitute a substantial change of circumstances that would justify proceeding on his motion. The trial court therefore dismissed the motion, but granted permission to refile it to get a set

schedule established, if the schedule did not substantially alter the amount of time the child spent with each parent

¶4 WISCONSIN STAT. § 767.325(1)(b) (2001-02)¹ provides that the trial court can modify a previous placement order after two years only if there has been a substantial change of circumstances, and modification is in the child's best interest. A substantial change of circumstances is one where it would be unjust or inequitable to strictly hold either party to the original judgment. *Rosplock v. Rosplock*, 217 Wis. 2d 22, 33, 577 N.W.2d 32 (Ct. App. 1998) (citation omitted). Whether a change is substantial is a question of law we review de novo. *Id.* However, because determining whether something is "substantial" is a value judgment, it is heavily dependent upon interpretation and analysis of underlying facts. *Harris v. Harris*, 141 Wis. 2d 569, 574-75, 415 N.W.2d 586 (Ct. App. 1987). Consequently, we give weight to the trial court's decision, notwithstanding our de novo review. *Id.* at 575.

¶5 The averments in Newman's affidavit, even accepted as true and viewed in the most favorable light, do not show a substantial change in circumstances. Newman relies on two circumstances: that he has a more stable and secure lifestyle than previously, thus making him a better parent; and that E.L.A.N.'s needs have changed as she has grown older. A change in marital status or economic circumstances does not meet the substantial change of circumstances standard. WIS. STAT. § 767.325(1)(b)3. Nor does the inevitable change in a child's development as she leaves infancy constitute a substantial change, because

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

it is a circumstance common to all children. Consequently, the changes Newman identifies plainly do not meet the statutory standard. They were therefore not sufficient to mandate further inquiry into the second part of the § 767.325(1) test, whether modified placement was in E.L.A.N.'s best interest.

By the Court.—Order affirmed.

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

