

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

August 31, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0332

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

IN RE THE MARRIAGE OF:

KATHRYN M. LEUTE,

Petitioner-Appellant,

v.

ROBERT L. LEUTE,

Respondent-Respondent.

APPEAL from an order of the circuit court for Grant County:  
GEORGE S. CURRY, Judge. *Reversed and cause remanded with directions.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. We granted Kathryn Leute's petition for leave to appeal from an order denying her motion to dismiss a custody petition. Section

808.03(2), STATS.<sup>1</sup> The dispositive issue is whether Wisconsin has jurisdiction of the matter under the provisions of § 822.03(1)(b), STATS. We conclude that the State of Wisconsin does not have jurisdiction and therefore reverse.

Kathryn and Robert Leute have two children, born in 1982 and 1984, respectively. Until 1991, the family lived in Wisconsin. Then, after Kathryn and Robert's divorce, Kathryn and the children moved to Virginia while Robert remained in Wisconsin.

In July 1994, Robert filed a petition in Grant County seeking sole custody of the children. He alleged that Kathryn was attempting to disrupt his relations with the children and to alienate them from him. Kathryn moved to dismiss the petition on the grounds that Wisconsin no longer had custody jurisdiction. The trial court denied the motion, concluding that the jurisdictional requirements of § 822.03(1)(b), STATS., were satisfied. In support of its conclusion, the trial court made the following findings of fact:

1. Both parties have substantial contact with the State of Wisconsin and the Tri-State area.
2. The children have friends in Wisconsin and Virginia.
3. The children have spent summers in Wisconsin.
4. The children have had several physical placement periods in Wisconsin.
5. The children's maternal grandparents and numerous relatives live in Grant County, Wisconsin.
6. The children's paternal grandparents live in Iowa but within the area known as the "Tri-State" area adjacent to Grant County, Wisconsin.

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<sup>1</sup> By our own motion, this appeal was expedited. Rule 809.17, STATS.

7. The petitioner spent time outside Wisconsin since the original divorce judgment necessitated it by his traveling sales job. Also, he spent substantial time in Wisconsin and frequently resided at Schwendingers, his friends who live in Grant County, Wisconsin.
8. The children have friends in both states. The children have only two relatives in the Virginia area. The children's doctors live in Virginia, but there is no indication that testimony of physicians would be necessary and if necessary, they may testify by telephone.
9. Medical records and school records exist in both states.
10. This Court is familiar with the case and parties. A Virginia court would have to start afresh. This would not be an economical use of judicial time.
11. Religious and social contacts exist in both states.
12. All the children and parties were born in Wisconsin or the Tri-State area.
13. The parties' attorneys and Guardian ad Litem all live in Grant County, Wisconsin.

Based upon these facts, the court concluded that the parties and children have more connections to Wisconsin than Virginia, and that exercising jurisdiction here was in the children's best interests.

Section 822.03(1), STATS., confers child custody jurisdiction on the home state of the children, in this case Virginia, or, under § 822.03(1)(b) on a state other than the home state if it is in the children's best interest, the children and at least one contestant have a significant connection to the state, and substantial evidence concerning the children's lives is available in the state. Determining whether Wisconsin has jurisdiction under § 822.03(1)(b) is a question of law that we decide independently, without deference to the trial court's conclusion. *In re J.T.*, 168 Wis.2d 646, 652, 485 N.W.2d 70, 72 (Ct. App. 1992).

Wisconsin does not have jurisdiction over this custody dispute. The purpose of § 822.03(1)(b), STATS., is to limit jurisdiction rather than expand it, and maximum rather than minimum contact is therefore necessary to obtain jurisdiction under it. *Id.* at 653, 485 N.W.2d at 72. The home state is the preferred forum, and § 822.03(1)(b) confers jurisdiction only where the children and the family have equal or stronger ties with another state. *Davidson v. Davidson*, 169 Wis.2d 546, 563, 485 N.W.2d 450, 456 (Ct. App. 1992) (quoted source omitted). Here, if anything, Iowa has a stronger case than Wisconsin for jurisdiction. It is true, as the trial court noted, that the children came to Wisconsin to visit each summer, and on other occasions as well. However, they spent most of their visits staying with Robert's parents and other relatives in Iowa. In fact, until early 1994, Robert also spent little time in Wisconsin due to the travel demands of his job. Meanwhile, while not visiting their midwestern relatives, Kathryn and the children became fully integrated into their Virginia community. The trial court therefore erred by concluding that the children's ties to Wisconsin exceeded those more recently established in Virginia.<sup>2</sup>

Furthermore, the subject of the litigation is Kathryn's allegedly disruptive conduct, most of which occurred in Virginia. "The interest of the child is served when the forum has optimum access to relevant evidence about the child and family." *Id.* at 565, 485 N.W.2d at 457 (quoted source omitted). Most of the evidence concerning Kathryn's conduct in Virginia probably exists in Virginia. Although the trial court emphasized the many relations and friends the children still have in Wisconsin, it is not explained how that circumstance bears on Kathryn's conduct in Virginia since the divorce.

Robert cites the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A, to support the proposition that the Grant County trial court may continue to exercise jurisdiction based on its status as the court of original custody jurisdiction. However, we held that the PKPA "will not become an issue in a Wisconsin court unless a child custody determination by a court of another state is attacked or sought to be modified in a Wisconsin court." *Davidson*, 169 Wis.2d at 554, 485 N.W.2d at 453. That is not the case here.

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<sup>2</sup> We reject the proposition that the ties to two states, here Iowa and Wisconsin, may be considered cumulatively in order to confer jurisdiction on one of them.

We therefore reverse and remand with instructions that the trial court dismiss Robert's custody petition. Our holding that Wisconsin lacks jurisdiction makes it unnecessary to determine whether this state is a convenient forum under § 822.07, STATS.

*By the Court.*—Order reversed and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.