COURT OF APPEALS
DECISION
DATED AND RELEASED

December 5, 1996

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, STATS.

NOTICE

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

Nos.95-2744
95-2745
95-2746

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE PATERNITY OF COREY W. W.:

ALLEN L. W.,

Petitioner-Appellant,

v.

ANN MARIE W.,

Respondent-Respondent.

APPEAL from orders of the circuit court for Monroe County: MICHAEL J. McALPINE, Judge. *Affirmed*.

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Allen W. appeals from orders in which the trial court declined to exercise jurisdiction over a child custody and visitation

dispute and denied his motion for reconsideration. The issue is whether the court properly applied the provisions of chapter 822, STATS., the Uniform Child Custody Jurisdiction Act. We conclude, on stipulated facts, that the trial court properly declined jurisdiction. We therefore affirm.

Allen W. and Ann Marie W. lived together for several years. During that time, they had three children, born in 1986, 1989 and 1990. From 1986 until mid-1989 the parties lived in Michigan from then until the relationship ended in October 1994, they lived in Wisconsin. Ann Marie then moved back to Michigan with the three children.

For several months Allen did not know where the children were. After finally locating them in February 1995, he arranged for the State to commence these paternity actions so he could assert his parental rights. In March, while the paternity actions here remained pending, Allen commenced an action in Michigan for custody and visitation. A few days later, on March 31, 1995, Allen filed a motion for custody in the paternity actions.

Ann Marie moved to dismiss the Wisconsin custody proceeding on the grounds that Wisconsin was an inconvenient forum. After conferring with the Michigan trial judge assigned to the case, the court declined to exercise jurisdiction. The court noted, however, that the children's contacts with Wisconsin were far more significant than their contacts with Michigan.

Section 822.06(1), STATS., provides that a Wisconsin court shall not exercise child custody jurisdiction

> if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

Section 822.06(3), STATS., directs the trial court to communicate with the court of the other state in such situations to determine the appropriate forum. Because the trial court did communicate with the Michigan court, which refused to stay its proceeding, there are two dispositive issues. The first is whether a proceeding was pending in Michigan when Allen commenced this custody proceeding. The second is whether Michigan exercised jurisdiction "substantially in conformity with [chapter 822, STATS.]." § 822.06(1).

The Michigan action was pending when Allen commenced this action. In the paternity actions the State commenced on behalf of Allen, custody was not an issue until Allen made it one by filing his motion on March 31, 1995. By then, the Michigan trial court had already accepted jurisdiction and issued orders on Allen's petition filed several days earlier.

Michigan's jurisdiction was exercised substantially in conformity with chapter 822, STATS. Section 822.03(1)(b), STATS., confers jurisdiction if

> [i]t is in the best interest of the child that a court of this state assume jurisdiction because the child ... and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships....

It is undisputed that Ann Marie and the children had significant connections to Michigan because that is where Ann Marie has substantial family ties, where the children had been living for several months, and where two of them were born and had lived before moving to Wisconsin. For the same reasons, it is undisputed that there was substantial evidence concerning the children's care, protection, training and personal relationships in Michigan. The Michigan court's conclusion on those facts that it was in the best interests of the children that Michigan assume jurisdiction is not subject for review here. We must therefore conclude that Michigan exercised jurisdiction in this case substantially

in conformity with chapter 822, even though it is evident, as the trial court noted, that the children had closer contacts with Wisconsin than Michigan.

By the Court.—Orders affirmed.

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