

WISCONSIN SUPREME COURT
WEDNESDAY, APRIL 11, 2007
10:45 a.m.

2005AP1034

Kristie L. M., et al v. Dennis E. M.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Dodge County Circuit Court decision, Judge Richard J. Callaway, presiding.

The issue raised in this case is whether the lower courts infringed on a parent's constitutional right to have a relationship with a child by expanding the definition of "severe" bruising to include any bruising.

In the midst of a divorce action, Kristie filed a petition for a child abuse injunction against Dennis, alleging an 11-month old child had returned home from Dennis' residence with bruises on his head that were consistent with fingerprints.

An emergency room physician who examined the child said the chances of the bruises having been caused by child abuse were less than 50 percent. Another physician, who did not examine the child but later reviewed records, concluded the case was "suspicious for abuse."

After an evidentiary hearing, the trial court found there were reasonable grounds to believe that Dennis had engaged in, or threatened to engage in abuse to both children. The injunction required Dennis to avoid the children's residence and to avoid contacting them without court approval.

The Court of Appeals summarily reversed the injunction regarding one child but affirmed it in regard to the other child. The majority concluded there was sufficient evidence for the trial court to conclude that there were reasonable grounds to believe the bruises were not accidental.

In a dissenting opinion, Court of Appeals Judge Charles P. Dykman said the majority interpreted the statute to include bruising which does not have to be severe, in contrast to the statute, which requires "severe" bruising.

Dennis argued that the evidence presented at the hearing was insufficient to support a finding that he engaged in physical abuse of a child and that the level of bruising did not satisfy the definition of "severe" bruising.

The determination is critical to Dennis because if a parent is found to have abused a child, the presumption of joint legal custody no longer applies.