

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 22, 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. 03-2343
STATE OF WISCONSIN**

Cir. Ct. No. 97FA000136

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

PAULA LUCAS (N/K/A PAULA LANGHOFF),

PETITIONER-APPELLANT,

v.

DELANO E. LUCAS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Paula Langhoff appeals an order transferring primary physical placement of her children, Heather Lucas and Delano Lucas, Jr.,

to their father, Delano Lucas. Langhoff contends that the circuit court erred in a number of respects. We reject her arguments and affirm.

¶2 Langhoff argues that the circuit court did not address whether there had been a substantial change in circumstances before modifying the placement order. *See* WIS. STAT. § 767.325(1)(b)1.b (2001-02)¹ (providing that a circuit court may modify an order of physical placement if “[t]here has been a substantial change of circumstances since the entry of ... the last order substantially affecting physical placement”). Although the circuit court did not use the words “a substantial change in circumstances,” it did, in fact, point to substantial changed circumstances that justified modifying the order. In particular, the circuit court pointed to the fact that the parents were unable to cooperate in sharing placement of the children, primarily due to the intransigence of Langhoff. We reject Langhoff’s argument that the circuit court violated § 767.325(1)(b)1.b.

¶3 Langhoff also argues that the circuit court did not address the rebuttable presumption that it was in the best interest of the children to continue primary physical placement with her because they had been spending more time in her care than in the care of their father. *See* WIS. STAT. § 767.325(1)(b)2.b (providing that there is a rebuttable presumption that “[c]ontinuing the child’s physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child”). We first note that there is nothing in the statute that requires the circuit court to specifically *state* that it has begun its analysis with this presumption. And, here, the circuit court’s decision

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

makes clear that any presumption in favor of continued primary physical placement with Langhoff was rebutted.

Well, I think the weight of the evidence in this case indicates that the best interest of the children require[s] a change of primary placement to the father at this time. I think the evidence is fairly strong as far as inability to cooperate.... And I consider the evidence of [the therapist] basically that primary inability to do that fell on the mother. And I think that this has had an effect on the children, and the environment of the home where they live.... Delano is crying out that there be a change.

.... I consider the feelings of the children as expressed in the report of the custody study and ... the interactions of the children with [each] parent. I think the evidence is strong that there's a certain amount of fear [in] the children as far as telling their feelings

.... I think that the substantiating factor here is the statements of the children about their fears to express, and fear that their mother is listening in. That comes from behaviors in the past; things that have happened to them, and substantiates the proof of at least some inappropriate conduct by the mother with the children in disciplining them. I believe certainly teaching children discipline is good. But to the point of it causing fear and withdrawal from that parent, that causes a problem. [R. 35:28-29]

Because the circuit court's decision makes clear that any presumption in favor of continued placement with Langhoff was overcome, we reject this argument.

¶4 Finally, Langhoff contends that the circuit court did not address the criteria mandated by statute in making its placement decision. The circuit court should consider, among other things, the wishes of the child, the interaction and interrelationship of the child with his or her parents, the child's adjustment to home, school and community, and the mental and physical health of the parties. *See* WIS. STAT. §§ 767.24(5) and 767.325(5m). The circuit court's oral decision shows that it considered the proper statutory factors, including the children's

wishes, their interactions with their parents, and the respective home environments. Therefore, we also reject this argument.

By the Court.—Order affirmed.

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

