

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 19, 2012

A. John Voelker
Acting 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. 2011AP218

Cir. Ct. No. 2004FA1084

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

KATHRYN R. STILLER-SCHLEIP,

PETITIONER-APPELLANT,

V.

JASON A. SCHLEIP,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
MARYANN SUMI, Judge. *Affirmed.*

Before Vergeront, Sherman, and Blanchard, JJ.

¶1 PER CURIAM. Kathryn Stiller-Schleip appeals an order granting Jason Schleip's motion to modify a placement order regarding their son, Braden. Kathryn argues that Jason failed to establish a substantial change of circumstances

and the court erroneously refused to consider domestic abuse when determining placement.¹ We affirm the circuit court's order.

BACKGROUND

¶2 The parties were married in 2000 and divorced in 2006. The court awarded the parties joint legal custody of Braden and gave Kathryn “final decision-making authority” as to health care decisions and Braden’s religious upbringing. Jason was given physical placement of Braden every other weekend to be coordinated with Kathryn’s work schedule. In April 2008, pursuant to the parties’ stipulation, the court modified the placement order, giving Jason placement for four overnights and two days in a fourteen-day period, to be coordinated with Kathryn’s evening shifts at work.

¶3 After entry of the 2008 order, Jason remarried, giving Braden two stepbrothers, and Jason and his wife were expecting a baby daughter. Braden also started school. More significantly, in August 2008, Kathryn was injured in a confrontation with her boyfriend. She was diagnosed and treated for post-traumatic stress disorder (PTSD), negatively affecting her approach to most men, including Jason. She made unsubstantiated accusations of physical abuse of Braden by Jason. Kathryn eventually lost her job. Braden, who witnessed the attack, also received therapy. His treatment changed after approximately four

¹ Kathryn also argues that a Family Court Counseling Service report contained hearsay that this court should not consider if we elect to search the record to support the circuit court’s findings. That argument is speculative and not fully developed, and therefore will not be considered. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

months of therapy when the therapist began exploring allegations by Kathryn that Jason abused Braden.

¶4 Jason then brought the present motion seeking additional placement of Braden. The court concluded that Jason established a substantial change of circumstances and it was time “to introduce more balance into the parenting dynamic.” The court was critical of Braden’s therapist and found no credible evidence that either party engaged in any level of abuse of Braden. The court modified the placement order, giving each parent equal physical placement and rescinding Kathryn’s impasse decision-making authority. The court established a procedure for either parent to follow in seeking to obtain mental health treatment for Braden.

DISCUSSION

¶5 Whether there has been a substantial change of circumstances is a mixed question of law and fact. *Lofthus v. Lofthus*, 2004 WI App 65, ¶17, 270 Wis. 2d 515, 678 N.W.2d 393. The circuit court’s fact-finding regarding the circumstances before and after the last order affecting placement will not be disturbed unless they are clearly erroneous. *Id.* However, whether the change is substantial is a question of law that we review de novo. *Id.* WISCONSIN STAT. § 767.451(1)(b)2b (2009-10)² creates a rebuttable presumption for maintaining the current placement schedule.

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶6 We conclude that Jason established a substantial change of circumstances following the 2008 placement order. Kathryn notes that many of the changes are comparable to the changes in *Lofthus* in which this court affirmed the circuit court's conclusion that no substantial change of circumstances had occurred. *Lofthus*, 270 Wis. 2d 515, ¶18. However, each case is decided on its own facts and this case presents changes that were not found in *Lofthus*. Kathryn's PTSD, her accusations against Jason, her loss of employment, the parties' disputes over Braden's therapy, when combined with Jason's remarriage, Braden's step-brothers and half-sister, his entering school and Kathryn's loss of employment constitute a substantial change of circumstances.

¶7 Kathryn's argument regarding the court's refusal to consider domestic abuse by Jason mischaracterizes the court's decision. The court indicated that, because the issue was whether there was a change of circumstances after the 2008 order, incidents that occurred before 2008 would not be relevant. However, the court gave the parties the right to make offers of proof as to allegations of domestic abuse. Kathryn identifies only one offer of proof:

That Jason had gone to some domestic violence counseling more than once; that he pushed Kathryn into a bathtub and hurt her in 1997; that he had gone to an alternatives aggression class in 2004 but he left the course and refused to pay for it.

In the absence of any other offer of proof, pursuant to the circuit court's order and WIS. STAT. § 901.03(1)(b), no other exclusion of evidence is properly preserved for appeal. The court properly exercised its discretion by excluding testimony regarding an incident that happened eleven years before the 2008 placement order, before Braden was born and before the parties married. The court's duty to give paramount consideration to the child's safety under WIS. STAT. §§ 767.41(2)(d)

and 767.41(5)(bm) does not require the court to give any weight to a single allegation of abuse that occurred long before the time in question.

By the Court.—Order affirmed.

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

