COURT OF APPEALS
DECISION
DATED AND RELEASED

January 25, 1996

No. 95-1696

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

IN RE THE PATERNITY OF MARIAN G.F.-McG. and COLLEEN E.F.-McG.

TERESA J.McG.,

Petitioner,

SUE L.,

Appellant,

v.

RAYMOND J.F.,

Respondent-Respondent.

APPEAL from an order of the circuit court for Dane County: ROBERT DE CHAMBEAU, Judge. *Reversed and cause remanded*.

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. Sue L. appeals from an order denying her motion to modify a paternity order with regard to physical placement. We reverse and

remand for further proceedings in light of ***Holtzman v. Knott***, 193 Wis.2d 649, 533 N.W.2d 419, *cert. denied*, 116 S. Ct. 475 (1995).

Marian and Colleen F.-McG. ("the children") are children of Raymond F. and Teresa McG., who never married. Raymond admitted paternity in 1989 in a paternity action. Primary placement of the children was with Raymond pursuant to an order of June 1993. In February 1994, Sue L. filed a motion in the paternity action seeking to modify physical placement. She alleged that the children do not live in an intact family with their natural parents but have periods of physical placement with each parent. She alleged that she had previously maintained a parent-child relationship with the children, and that therefore she had standing to bring the motion in the children's best interests. She sought physical placement for one evening each week and at various other times.

An evidentiary hearing was held in June 1994, continued to December 1994, and was scheduled to continue again in January 1995. Teresa, the children's mother, died before the hearing resumed. The court sought briefs on Sue L.'s standing to pursue her motion under these circumstances. The court concluded that a person had standing to seek nonparent visitation under § 767.245(1), STATS., when an underlying action affecting the family had been filed and the children's family was not intact. Following ***Cox v. Williams***, 177 Wis.2d 433, 502 N.W.2d 128 (1993), the court concluded in May 1995 that Sue L.'s petition should be denied because Teresa's death terminated the underlying paternity action and the children's family was now intact. The court did not otherwise rule on the merits of Sue L.'s petition. Sue L. appeals.

The supreme court issued its ***Holtzman*** decision in June 1995. The court held that § 767.245(1), STATS., does not preempt "the courts' long recognized equitable power to protect the best interest of a child by ordering visitation under circumstances not included in the statute." ***Holtzman***, 193 Wis.2d at 658, 533 N.W.2d at 421. A court may determine whether visitation is in a child's best interest after a petitioner first proves that he or she has a parent-like relationship with the child and that "a significant triggering event justifies state intervention in the child's relationship with a biological ... parent." ***Id.***

Holtzman is a significant change in the law relevant to Sue's petition. She asks us to conclude that she has met the two preconditions necessary for consideration of whether visitation is in the children's best interest. However, the evidentiary record has not been completed and the circuit court made no findings. We express no opinion whether Sue L. has met any of the standards provided in ***Holtzman***. Rather, we conclude that she should be allowed to amend her petition, if necessary, to address the standards created in ***Holtzman***. For administrative convenience, the circuit court may wish to direct that the petition be refiled and given a new case number, since it no longer must be filed in the 1988 paternity case. The circuit court must then consider ***Holtzman*** in reviewing the petition.

By the Court.—Order reversed and cause remanded with directions. No costs to either party.

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