

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

September 18, 1997

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.

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

No. 96-1149

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE PATERNITY OF DANIELLE J.D.:
STATE OF WISCONSIN AND SHELLIE L.H.,**

PETITIONERS-RESPONDENTS,

V.

MARK N.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
JOHN W. BRADY, Judge. *Affirmed.*

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

PER CURIAM. Mark N. appeals a paternity judgment which adjudges him the father of Danielle J.D., and orders him to pay child support to Danielle's mother, Shellie L.H. He contends that the trial court improperly precluded him from arguing that another man was Danielle's father. He also

contends that the court ordered excessive child support. We reject both contentions and affirm.

Shellie identified three men with whom she had sexual relations during Danielle's conceptive period, including Mark. Blood tests excluded the other two as potential fathers, while Mark's test showed a 99.5% probability that he fathered Danielle.

Mark, however, denied having sexual relations with Shellie during the conceptive period, and took the matter to trial. The State moved before trial to exclude testimony or reference to sexual intercourse between Shellie and any male other than Mark during the conceptive period. The trial court ruled that no male witness could testify that he had sexual relations with Shellie unless he had undergone a blood test. The court further ruled that counsel for Mark could not argue that another man was the father if Mark merely testified that he was not the father, and offered no other evidence.

At the conclusion of the trial a jury determined that Mark was Danielle's father. The trial court subsequently set child support at \$500 per month. The court also ordered Mark to pay monthly amounts toward \$2339 in pregnancy and confinement expenses, guardian ad litem fees, past child support of \$20,000, the blood test costs, and the attorney fees and costs incurred by the county in the action.

Mark contends that § 767.47(3), STATS., allows him to present evidence concerning other potential fathers, without the requirement that they undergo blood tests. He further contends that the trial court erroneously interpreted this statute in its evidentiary ruling. However, § 767.47(3) only concerns admissible evidence "with respect to an identified man who is not subject

to the jurisdiction of the court.” Here, Mark conceded that he could not identify any other potential fathers, whether within the jurisdiction or not. Section 767.47(3) was therefore inapplicable. The trial court properly based its ruling on § 767.48(6), STATS., which requires blood tests of any male testifying to sexual intercourse with the mother during the conceptive period, and on the common sense proposition that Mark’s counsel could not argue that another man was Danielle’s father when Mark had offered no evidence to prove another’s paternity. In any event, under any reasonable view, the ruling did not have any significant impact on the trial. Had it chosen to accept Mark’s testimony, the jury would necessarily have inferred, with or without counsel’s argument, that if Mark was not the father, some other man had to be.

The trial court did not award excessive child support. Mark argues that the award was excessive because his total monthly payments for child support, back child support and his various other costs and expenses exceed 17% of his gross income. *See* WIS. ADM. CODE § HSS 80.03(1)(a). He contends that awards cannot exceed, in aggregate, the percentage standard except under certain conditions that are not present here. However, there is no authority for the proposition that the percentage standards authorized by § 767.51, STATS., apply to all of the father’s financial obligations that result from a paternity proceeding. In fact, § 767.51 differentiates between child support and other obligations such as blood tests, attorney fees and other costs. *See* § 767.51(3). Child support is considered to be the cost of maintaining a child. *In re Paternity of B.W.S.*, 131 Wis.2d 301, 318, 388 N.W.2d 615, 623 (1986) (citation omitted). The trial court established the cost of maintaining Danielle at \$500 per month, which is actually less than 17% of Mark’s gross income.

By the Court.—Judgment affirmed.

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

