

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

November 20, 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. 96-2971

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE PATERNITY OF KAITLYNN M. S.-P. AND
KARISSA H. S.-P.: STATE OF WISCONSIN**

CO-PETITIONER,

RHONDA J. S.,

CO-PETITIONER-APPELLANT,

v.

BRIAN C. P.,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Crawford County:
MICHAEL KIRCHMAN, Judge. *Reversed and cause remanded with directions.*

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

PER CURIAM. Rhonda J.S. appeals from the trial court's judgment granting Brian C.P. joint custody of the parties' two children and modifying the children's periods of physical placement with each parent. The issues are: (1) whether the trial court erred in entering the judgment without finding that a substantial change in circumstances had occurred since the initial judgment; and (2) whether the trial court erred in failing to make findings regarding the "best interests" of the children. We conclude that the trial court misused its discretion because it did not make adequate findings on these issues. Accordingly, we reverse and remand to the trial court with directions to make the required findings and enter a new judgment in light of those findings.

Rhonda J.S. was granted sole legal custody and physical placement of her two children, Kaitlynn and Karissa, pursuant to a paternity judgment entered on March 21, 1994. The children's father, Brian C.P., was granted reasonable periods of placement with the girls. In August 1995, Rhonda moved to amend the judgment to set a child support award and to set forth a specific placement schedule. In January 1996, Brian also moved to revise the judgment. After considering the motions of both parties, the trial court awarded the parents joint legal custody of the children, set a specific child support award, and increased the children's periods of physical placement with Brian.

Orders determining legal custody and physical placement may be revised two years or more after an existing order is entered if the trial court finds that the "modification is in the best interest of the child" and "[t]here has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement." Section 767.325(1)(b)1, STATS. Our review of a trial court decision modifying child support, custody, or placement is limited to whether the trial court misused its

discretion. *See Krause v Krause*, 58 Wis.2d 499, 508, 206 N.W.2d 589, 594 (1973). “A discretionary determination, to be sustained, must demonstrably be made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.” *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20 (1981).

The trial court did not make factual findings addressing whether a substantial change of circumstances had occurred since the initial judgment was entered. Similarly, the trial court did not make findings about whether the custodial and placement changes were in the best interest of the children. Although the trial court’s factual findings about the circumstances of the children and their parents are quite detailed and thorough, that is not enough. Before the trial court may change a custody or placement order, the statutes require that the trial court find that a substantial change in circumstances has occurred since the entry of a prior order and that the modification is in the best interest of the children. *See* § 767.325(1)(b)1, STATS. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

By the Court.—Judgment reversed and cause remanded with directions.

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

