

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-3158

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

MARIAN STEFFENS,

PETITIONER-APPELLANT,

v.

VERNON STEFFENS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County:
THOMAS S. WILLIAMS, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. Marian Steffens appeals from an order denying her motion to hold her former husband, Vernon Steffens, in contempt for failing to make support payments, denying her request for further maintenance, and expunging all support arrearages shown by the clerk of court. Because we

conclude that Marian's requests for relief are barred by laches, we affirm the order.

Marian and Vernon were divorced in 1981. The parties' stipulation at that time was incorporated into the judgment of divorce. With regard to support, the stipulation required Vernon to pay family support and maintenance in the amount of \$593.40 per month and that "said payments shall continue until the youngest minor child shall reach the age of majority or until said child has reached the age of 19 so long as the child is pursuing an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent."

In August 1983, Vernon moved the trial court to reduce his support obligation because two of the three children had reached the age of majority. Family Court Commissioner (now Judge) Bruce Schmidt entered the following order modifying the judgment of divorce to provide: "[Vernon] shall pay as family support [to the clerk of court] the sum of \$100 per week as for the support and maintenance of the child of the parties, and for the petitioner, Marian Steffens. This support shall continue until further order of the Court."

It is undisputed that Vernon ceased making support payments in July 1988 when the youngest child reached the age of majority and was no longer attending high school. On December 23, 1996, Marian filed a motion seeking to hold Vernon in contempt for ceasing support payments in July 1988, and requiring payment of indefinite maintenance and support arrearages. Vernon countered that maintenance should be terminated and that the parties understood that support ended in July 1988 and acted in accordance with that understanding for many years until Marian filed her motion.

The trial court held that the 1983 modification order was ambiguous and found that the order's intent was to modify the amount, not the duration, of support payments. The court went on to state that "[m]ost importantly, there has been a practical interpretation of the [order's] language by both parties. Whether or not they constitute laches, there's been a period of roughly nine years without anyone raising the issue." We affirm the trial court, although on slightly different grounds. See *Moonen v. Moonen*, 39 Wis.2d 640, 646, 159 N.W.2d 720, 723 (1968) (we may affirm if the trial court reached a result that the evidence would sustain if a specific finding supporting that result had been made).

Vernon alluded to a laches argument in the trial court and the trial court noted the existence of that argument in response to Marian's motion. The elements of the equitable¹ doctrine of laches are: (1) unreasonable delay, (2) knowledge of and acquiescence in the course of events, and (3) prejudice to the party asserting laches. See *Ozaukee County v. Flessas*, 140 Wis.2d 122, 127, 409 N.W.2d 408, 410 (Ct. App. 1987). Where, as here, the facts are undisputed, our application of those facts to the law of laches presents a question of law which we decide independently. See *Ball v. District No. 4, Area Bd. of Vocational, Technical & Adult Educ.*, 117 Wis.2d 529, 537, 345 N.W.2d 389, 394 (1984).

The trial court recognized Marian's many-year delay in seeking support after Vernon ceased paying in July 1988. The circumstances of this case do not admit of a reasonable basis for Marian's delay in seeking support. It is also undisputed that the parties were aware that support payments stopped in July 1988 and did not act regarding support for almost nine years. Finally, Vernon would have

¹ A divorce court acts as a court of equity. See *Gardner v. Gardner*, 175 Wis.2d 420, 433, 499 N.W.2d 266, 271 (Ct. App. 1993).

a large and prejudicial support arrearage if support should have been paid past July 1988. Under the facts of this case, we conclude that Marian's claim is barred by laches. Therefore, we affirm the order denying her motion for postdivorce relief.²

By the Court.—Order affirmed.

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

² Vernon's motion to strike Marian's reply brief is pending. Because we dispose of this case on the grounds of laches, we take no action on the motion which seeks to strike an argument relating to an ambiguity in the 1983 modification order.

