

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 10, 2003

Cornelia G. Clark
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. 02-1922
STATE OF WISCONSIN**

Cir. Ct. No. 89-FA-76

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

HEIDI CONDE,

PETITIONER-APPELLANT,

V.

ROBERT KRUEGER,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Heidi Conde appeals from a judgment modifying the legal custody award in a divorce judgment. Conde received sole legal custody of Giselle Conde, d/o/b November 29, 1988, following her 1991 divorce from

Robert Krueger. This appeal concerns the judgment entered in June 2002 which allowed Conde to retain sole legal custody in most respects, but awarded Krueger sole legal custody on decisions pertaining to Giselle's therapy and her religious training. The issue is whether the trial court properly exercised its discretion in determining that the evidence satisfied the statutory criteria for modifying custody after two years. We affirm.

¶2 Krueger challenged Conde's custody award in a February 2001 motion for transfer of legal custody and primary physical placement. He alleged that Conde had physically abused Giselle, and that Giselle now preferred to live with him. When mediation failed to resolve the matter, the court ordered the Jefferson County Family Court Counseling Service to conduct a "team assessment" of custody and physical placement. Family Court Counselor Susan Wendorf drafted the report of the assessment, with the assistance of psychologist Michelle Roets.

¶3 At the trial on Krueger's motion, Wendorf testified concerning her conclusion, joined by Dr. Roets, that Conde had systematically alienated Giselle from her father, such that Giselle had recently and abruptly changed from wanting to live with him to not wanting to spend any time with him at all. Wendorf's recommendation consisted of modifications to legal custody and physical placement to gradually reestablish a positive relationship between Giselle and Krueger. In recommending modified custody, Wendorf stated that "[Conde] has used sole legal custody to effectuate a proprietary attitude toward Giselle which has effectively denied Giselle the input and insight of her family in any major decision regarding her well-being."

¶4 Wendorf testified that she had been family court counselor since August 1993, and had conducted more than 200 custody and placement studies. When asked about her qualifications to testify regarding parental alienation, she replied:

I don't have any degree in parental alienation. I have attended a number of seminars and trainings, but I haven't researched it. I haven't done my own research. I haven't authored any peer review journal articles on the subject. I rely on those things that are produced by those who have studied and done their own research.

Wendorf testified, however, that she was confident to a reasonable degree of professional certainty that Giselle had been subjected to parental alienation syndrome by Conde.

¶5 Testimony from Wendorf and other witnesses also addressed reports that Conde had slapped Giselle across the face on different occasions. Conde admitted to three or four such instances.

¶6 The trial court found, based primarily on Wendorf's report and testimony, that Conde had subjected Giselle to "parental alienation syndrome." The court concluded that this fact, plus the physical abuse presented by the slapping incidents, constituted a substantial change of Giselle's circumstances. The court also concluded that a modified custody and placement order was in Giselle's best interest in order to protect her from the potentially damaging psychological effects of the alienation and the slapping incidents. Consequently, the court modified the legal custody award to provide Krueger sole legal custody with regard to therapy and religion for Giselle, while Conde retained sole custody in all other respects. The court also modified the physical placement schedule.

However, Conde's appeal concerns only the custody award. She does not seek review of the physical placement determination.

¶7 WISCONSIN STAT. § 767.325(1)(b) (2001-02)¹ provides that after two years from an initial order of legal custody the trial court may modify custody upon finding that modification is in the child's best interest, and that there has been a substantial change of circumstances since entry of the last order affecting legal custody. Whether to modify custody under these provisions is directed to the trial court's discretion. *Hughes v. Hughes*, 223 Wis. 2d 111, 119, 588 N.W.2d 346 (Ct. App. 1998). We affirm a trial court's discretionary determination when the court applies the correct legal standard to the facts of record and reaches a reasonable result. See *Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 938-39, 480 N.W.2d 823 (Ct. App. 1992).

¶8 Conde first contends that the trial court erred by finding modification of custody to be in Giselle's best interest, because: (a) the determination depended on findings regarding Giselle's alienation from Krueger, (b) expert testimony was required to prove alienation, and (c) Wendorf, whose testimony the trial court primarily relied on, did not qualify as an expert on parental alienation. However, assuming that expert testimony was necessary, Conde has waived her challenge to the court's reliance on Wendorf by not objecting to her testimony on alienation with any degree of specificity.² See WIS.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

² In her brief Conde asserts that she did, in fact, object to Wendorf's testimony. However, the objections were to Wendorf interpreting psychological examinations, and to her testifying to written opinions presented by other experts. There is no objection of record to Wendorf's qualifications to address the subject of parental alienation.

STAT. § 901.03(1)(a). In any event, Wendorf's experience was such that the trial court reasonably relied on her as an expert. One with any form of specialized knowledge, however obtained, may testify as an expert in Wisconsin. See *State v. Hollingsworth*, 160 Wis. 2d 883, 896, 467 N.W.2d 555 (Ct. App. 1991). Formal education is not a requisite. *Id.* Experience alone, as opposed to technical and academic training, may qualify one as an expert. *Id.*

¶9 Conde also contends that the evidence did not show a substantial change in Giselle's circumstances because there was no evidence that Giselle had suffered any adverse behavioral or psychological effects from the alienation or the slapping incidents. However, the trial court expressly noted its concern about future emotional damage if the problems were not addressed. Conde does not explain why the trial court erred by reasonably inferring a potential for future harm to Giselle, and by considering that potential harm, created by the alienation and slapping incidents, as a substantial change in circumstances.

¶10 Finally, Conde contends that the trial court erred by finding that the face slapping incidents constituted child abuse, as defined in WIS. STAT. § 48.02(1)(a), and predicating its ruling on the fact that Conde's actions met this statutory definition.³ By so arguing Conde misconstrues the trial court's decision. The court reasonably treated multiple admitted slapping incidents as a serious matter, as potentially damaging to Giselle's emotional well-being and as a substantial change of circumstances. Whether the conduct amounted to statutorily

³ WISCONSIN STAT. § 48.02(1)(a) defines child abuse to include "[p]hysical injury inflicted on a child by other than accidental means."

defined child abuse was an incidental question that was simply not relevant to the court's determination.

¶11 To summarize, the trial court reasonably relied on admissible testimony from an expert witness, without objection, and reached a reasonable, fully articulated conclusion that the statutory criteria to modify legal custody were met.

By the Court.—Judgment affirmed.

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

