

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2011

A. John Voelker
Acting 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. 2010AP945

Cir. Ct. No. 2004PA40PJ

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE PATERNITY OF L. Q. U. L.:

STATE OF WISCONSIN,

PETITIONER,

TANYA M. LOHRENTZ,

PETITIONER-RESPONDENT,

v.

PEDRO A. LOPEZ,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Pedro Lopez appeals from an order dismissing his motion for modification of custody, physical placement and child support.¹ Lopez argues the circuit court erroneously exercised its discretion by utilizing for its physical placement ruling the substantial change in circumstances standard under WIS. STAT. § 767.451(1)(b),² rather than the best interest standard under WIS. STAT. § 767.41(5). Lopez also argues that even if § 767.451(1)(b) is the appropriate standard, the court erred by finding Lopez failed to show a substantial change in circumstances. We reject Lopez's arguments and affirm.

¶2 Tanya Lohrentz resided in Florida for nine months in 2003, where she became involved in a brief sexual relationship with Lopez. Tanya returned to Wisconsin in October 2003, and subsequently gave birth to L.Q.U.L. After a paternity test indicated the statistical probability of parentage was 99.98%, Lopez admitted paternity and the court entered findings of fact, conclusions of law and a judgment of paternity on December 28, 2004.³ The judgment advised Lopez:

[T]he parties should attempt to come to an agreement regarding custody and physical placement, if no agreement is reached, [Lopez] would need to come to Wisconsin and file a Motion for custody and visitation rights.

¶3 The parties initiated a voluntary period of placement in Florida from July 25 to September 21, 2005. Prior to the next placement, the parties entered

¹ The motion was entitled Motion to Order Supplementing Judgment of Paternity to Establish the Respondent as Legal Custodian and Parent Having Primary Physical Placement of the Minor Child of the Parties. The issue statement in Lopez's brief on appeal addresses only physical placement.

² References to the Wisconsin Statutes are to the 2007-08 version unless noted.

³ The court established child support at \$250 monthly, which was subsequently reduced to \$166 monthly.

into a written stipulation that provided for placement in Florida commencing on June 16, 2006 to January 10, 2007. This stipulation specifically referred to Lopez as the “non-custodial parent” and Lohrentz as the “custodial parent.”⁴

¶4 On January 9, 2007, Lopez filed a motion to modify custody, placement and child support. After a hearing on April 29, 2009, the court dismissed the motion and Lopez now appeals.

¶5 Physical placement issues are directed to the circuit court’s sound discretion. See *Keller v. Keller*, 2002 WI App 161, ¶6, 256 Wis. 2d 401, 647 N.W.2d 426. We affirm the court’s discretionary determination when the court applies the correct legal standard to the facts of record and reaches a reasonable result. *Id.*

¶6 We see no reason to disturb the circuit court’s decision. The court appropriately utilized WIS. STAT. § 767.451(1)(b) as the basis to determine whether to modify physical placement. Pursuant to WIS. STAT. § 767.475(2m) (2003-04),⁵ Lohrentz was the sole legal custodian of L.Q.U.L. upon his birth. By operation of statute, Lohrentz would retain sole legal custody until a court ordered otherwise.⁶ The December 28, 2004 Findings of Fact, Conclusions of Law and

⁴ Lopez argues, without citation to authority, that “[Lohrentz] refers to herself in the document as the custodial parent; but, this is an attempt to bootstrap herself into a position not accorded to her by any prior legal document.” We will not further consider Lopez’s undeveloped and unsupported argument. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Nevertheless, we note the stipulation was signed by Lopez and approved by the court.

⁵ Now numbered WIS. STAT. § 767.82(2m) (2009-10), provides: “If there is no presumption of paternity under s. 891.41(1) or if paternity acknowledged under s. 767.805(1), the mother shall have sole legal custody of the child until the court orders otherwise.”

⁶ At the hearing on Lopez’s motion to modify placement, the circuit court stated:

(continued)

Judgment of Paternity demonstrate that the circuit court contemplated the child would continue to reside with his mother. Moreover, primary placement with Lohrentz is implicit in the court's requirement in the judgment that Lopez pay child support without credit for placement time.⁷ Lopez also signed a temporary placement stipulation subsequent to the judgment specifically referring to Lohrentz as the "custodial parent."

¶7 The December 28, 2004 judgment constituted a final judgment. WISCONSIN STAT. § 767.451(1)(b) creates a two-step process for a court to follow in determining whether to modify the terms of physical placement two years after a final judgment determining custody or physical placement. As a threshold matter, the moving party must show there has been a "substantial change of circumstances since the entry of the last order ... substantially affecting physical placement." WIS. STAT. § 767.451(1)(b)1.b. If that showing is made, the court proceeds to consider whether any modification would be in the best interests of the child. WIS. STAT. § 767.451(1)(b)1.a. Where no substantial change of circumstances is shown, the question of the child's best interest need not be reached. *Greene v. Hahn*, 2004 WI App 214, ¶22, 277 Wis. 2d 473, 689 N.W.2d 657.

I'm to decide whether or not to revise the previous order of this Court which I understand was the original paternity judgment [dated December 28, 2004] which granted legal custody of [the child] to his mom.

⁷ In addition, the December 28, 2004 judgment stated, "Pedro A. Lopez was advised by the court that the parties should attempt to come to agreement regarding custody and physical placement" However, if no agreement could be reached, "[Lopez] would need to come to Wisconsin and file a Motion for custody and visitation rights."

¶8 The circuit court properly exercised its discretion by concluding that the evidence failed to show a substantial change of circumstances. At the hearing on his motion to modify custody and placement, Lopez attempted to make much of Lohrentz's involvement with an individual named Daniel Thunder. In his brief on appeal, Lopez characterizes Thunder as "a violent and dangerous felon ... with no respect for authority or human life." However, the court found "he is in prison and she has a restraining order against him"

¶9 Lopez also argues that Lohrentz is "unstable and lacks judgment to the point where the child is unsafe and uncared for when he is with her." The court found:

[Lohrentz] has got her depression or stress and she uses a little alcohol. None of that is substantial. Those circumstances haven't really changed. That's always been there I guess is what I'm saying, although she's doing – she has a criminal record but now that's kind of old. There hasn't been anything in the last couple of years.

¶10 Indeed, to the extent the court found changes of circumstances, they were unfavorable to Lopez. For example, the court found that Lopez had repeatedly withheld the child from Lohrentz in bad faith. As the court stated:

I think Mr. Lopez did not show good faith when he got the child and then Ms. Lohrentz wanted the child back and there was already an agreement and – actually, a court order, and it became – she actually had to go get a court order in Florida to follow through with that agreement. That's not – that does not look good to the Court. I'm afraid that if I send the child off to Florida[,] Ms. Lohrentz may never see her child again. On the other hand, she has cooperated – for whatever reason – she has cooperated in letting Mr. Lopez see the child. I just can't put my finger on anything that I can say is a substantial change in circumstances warranting this Court finding that there has been – that the presumption ... has been rebutted.

¶11 We reject Lopez’s assertion that the court “completely glossed over all of the [sic] [Lopez]’s evidence” Contrary to Lopez’s insistence, the circuit court did not ignore evidence in this case. After consideration of numerous facts, the circuit court found there was no substantial change of circumstances. The court reached a reasonable conclusion and the evidence sufficiently supports the court’s findings.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).

