

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 24, 2016

Diane M. Fremgen
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. 2014AP2638

Cir. Ct. No. 2007FA131

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE MARRIAGE OF:

WAYNE P. ADEMA,

PETITIONER-APPELLANT,

V.

LAURA A. DELL,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County:
TERENCE T. BOURKE, Judge. *Affirmed.*

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

¶1 PER CURIAM. Wayne Adema appeals from a December 10, 2014 circuit court order affirming the accuracy of a June 14, 2014 order awarding sole legal custody of the parties' children to their mother, Laura Dell, because Adema

did not comply with a previous order requiring him to cooperate with Dell on passport applications for the parties' children.¹ The circuit court properly exercised its discretion, and we affirm.

¶2 The parties were divorced in 2008. In May 2014, the circuit court heard the parties' dispute relating to international travel for their children. After hearing from the parties, the court ordered Adema to cooperate with Dell on the children's passport applications.² The court also granted Dell "sole legal custody on the issues of academic and health matters affecting the minor children," granted Dell the right to travel internationally with the children upon forty-five days notice to Adema, and found Adema in contempt for failing to answer various questions and provide documents.

¶3 Adema failed to cooperate with Dell on the passport applications, and the parties appeared for a June 13, 2014 hearing. Other than continuing to object to the issuance of the passports, Adema offered no explanation for his failure to comply with the circuit court's May 2014 decision that he cooperate with Dell on the passport applications. The circuit court reiterated that there was no indication in the record that if Dell took the children to Ecuador to visit her current husband's family, she would not return to the United States, where she has significant ties and contacts. Adema continued to object. Dell argued that Adema would continue to obstruct Dell's efforts to obtain the passports.

¹ We conclude that Adema timely appealed from the December 10, 2014 circuit court order.

² The order memorializing the May 2014 hearing was entered on December 1, 2014. "The judicial act is complete when the order is announced from the bench. Reducing it to writing is only a ministerial act to preserve the evidence of the order." *State ex rel. Hildebrand v. Kegu*, 59 Wis. 2d 215, 216, 207 N.W.2d 658 (1973).

¶4 During the hearing, Dell moved the circuit court to grant her sole legal custody so that she could apply for the children's passports without Adema's involvement.³ The court determined that it was in the children's best interest to grant Dell sole legal custody to effectuate its prior order authorizing her to apply for passports. The court's ruling was memorialized in a June 14 circuit court order awarding sole legal custody to Dell and authorizing her to obtain passports for the parties' children.

¶5 Adema sought clarification of the June 14, 2014 circuit court order awarding Dell sole legal custody. At a November 10, 2014 hearing, Adema argued that the June 14 order erroneously granted Dell sole legal custody for all purposes when the circuit court clearly meant to grant Dell sole legal custody only for purposes of obtaining the passports. Adema acknowledged that he had filed objections to the passports with the United States Department of State. Dell informed the court that Adema's objections had interfered with the passport issuing process.

¶6 In addressing Adema's request for clarification, the circuit court stated that at the time it entered the June 14 order, "it was my intent—because I did feel that Mr. Adema was interfering with the, with his former wife's intent to take the kids out of the country for vacations; I felt he was totally interfering—it was my intent to give to Laura [Dell] sole legal custody over that issue, meaning the passport issue." The circuit court further stated:

³ A parent with sole legal custody may apply for a passport for a minor child, and the other parent need not be involved in or consent to the application. 22 C.F.R. § 51.28(a)(3)(ii)(E) (Feb. 4, 2016).

It was my intent to make sure that Laura [Dell] could get the passports for the children, because, Wayne [Adema], I did not think you would cooperate. And from my reading of federal law, that meant that she had to have sole legal custody regarding that, what I perceived to be that issue.

But as I go back and read the law, it's what the law would require that she have sole legal custody and that she can get the passports. And that's what the [June 14] order ... requires and I'm okay with that. So that's the clarification. The [June 14] order ... is appropriate.

¶7 Later in the hearing, the circuit court characterized Adema's demand that Dell post bond before taking the children out of the country as "a subterfuge. You want to keep control of the kids, don't want them going to Ecuador, so you raise that issue." The December 10 order memorializing the November 10 hearing affirmed the June 14 order granting sole legal custody to Dell and denied Adema's request that Dell post bond. Adema appeals.

¶8 On appeal, Adema argues that the circuit court misused its discretion when it granted Dell sole legal custody of the children. Whether to modify custody of the children was committed to the circuit court's discretion. *Andrew J.N. v. Wendy L.D.*, 174 Wis. 2d 745, 764, 498 N.W.2d 235 (1993).

¶9 In awarding sole legal custody to Dell, the circuit court properly considered the best interest of the children, Adema's failure to comply with its prior order requiring him to cooperate with Dell in procuring passports, and Adema's obstruction of and interference with the passport issuing process. We further note that in May 2014 the circuit court granted Dell "sole legal custody on the issues of academic and health matters affecting the minor children." Given the circuit court's order to Adema that he cooperate in the passport applications, his failure to do so, his obstruction of and interference with the passport issuing process, and the court's prior decision to grant Dell sole legal custody relating to

academic and health matters, we conclude that the circuit court's discretionary decision to grant Dell sole legal custody was the product of a rational mental process founded upon the facts of record and the law. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶10 Adema next argues that the circuit court's decision to award sole legal custody to Dell violated his constitutional right to seek relief from the government on the question of whether his children should have passports. This argument is moot. We have affirmed the circuit court's sole custody order which, under federal law, empowers Dell to obtain passports without Adema's involvement. 22 C.F.R. § 51.28(a)(3)(ii)(E) (Feb. 4, 2016). We see no violation of Adema's rights to act in matters involving the children; his rights were properly adjudicated in the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

