

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 1, 2006

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. 2005AP2447-FT

Cir. Ct. No. 1998FA34

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE MARRIAGE OF:
KATHERINE G. KANE P/K/A KATHERINE G. MILLER,**

JOINT-PETITIONER-APPELLANT,

V.

SCOTT M. MILLER,

JOINT-PETITIONER-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County:
GARY LANGHOFF, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Katherine G. Kane appeals from an order of the circuit court ordering her to provide to her former husband, Scott M. Miller, the joint tax return without redactions for her and her current husband, Gary Kane.

Pursuant to this court's order of November 7, 2005, and a presubmission conference, the parties have submitted memo briefs. After reviewing those memoranda and the record, we affirm the order of the trial court.

¶2 The facts in this case are not disputed. Kane moved for an increase in child support from Miller. During the proceedings, Miller requested that Kane produce her income tax returns. Kane redacted the portions of the joint return that described her new husband's income. By an order dated September 20, 2005, the circuit court ordered both parties to produce the returns for them and their current spouses. This meant that Kane had to produce an unredacted copy of the joint return.¹ The circuit court concluded that this information about the financial circumstances of the parties was relevant to determine the amount of support to be awarded.

¶3 Kane argues to this court that the circuit court erred because her current husband has a confidentiality interest in his tax return, and therefore the information relating to him is not discoverable. In the alternative, she argues that the circuit court should conduct an in camera inspection of the documents to determine which portions of the returns are relevant. We agree with the circuit court that the documents should be produced but for a different reason. *See Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995) (we may affirm on grounds different from those relied on by the trial court). We conclude that Kane does not have standing to assert her current husband's privacy interest. Consequently, we affirm the circuit court's order.

¹ The court allowed her to redact the social security numbers of her dependents.

Standing, the right to be heard by a court, is not construed narrowly or restrictively. *Bence v. City of Milwaukee*, 107 Wis. 2d 469, 478, 320 N.W.2d 199, 203 (1982). It is required as a matter of judicial policy, not as a jurisdictional prerequisite. *Wisconsin Bankers Ass'n v. Mutual Sav. & Loan Ass'n*, 96 Wis. 2d 438, 444 n.1, 291 N.W.2d 869, 873 n.1 (1980). However, a strong desire to be heard by the court is not enough to establish standing. To have standing, a person must show that the proceedings will have a direct effect upon his or her legally protected interest. *Trojan v. Board of Regents*, 104 Wis. 2d 277, 286, 311 N.W.2d 586, 590 (1981). Whether the person claiming standing has such an interest is a question of law. *Le Fevre v. Schrieber*, 167 Wis. 2d 733, 736, 482 N.W.2d 904, 905 (1992).

L.P. v. B.G., 177 Wis. 2d 424, 427, 501 N.W.2d 908 (Ct. App. 1993).

¶4 In this case, Kane argues that requiring her husband, who is not a party to the action, to disclose confidential tax returns is an unwarranted violation of his reasonable expectation of privacy. Kane cannot show that resolving this issue will have a direct effect on her legally protected interest: she is asserting her husband's interest and not her own. Consequently, she does not have standing to assert his interest, and the circuit court acted properly. Similarly, Kane does not have standing to request the *in camera* review of the document. Once again, she is asserting her husband's interest and not her own. Further, had her current husband wished to protect his interest, he could have moved to intervene in the action under WIS. STAT. § 803.09 (2003-04). He did not.

¶5 We note, however, that even were her husband to assert an independent interest in the matter at some point, he would have an uphill battle. In *Abitz v. Abitz*, 155 Wis. 2d 161, 172-73, 455 N.W.2d 609 (1990), the Wisconsin Supreme Court held that a court may consider a new spouse's income when determining a party's total economic circumstances. Kane argues that the court in *Abitz* did not identify what kind of information the family court could consider.

Further, she attempted to distinguish the case on the grounds that the evidence there showed that the wife and new husband had pooled their income. We doubt, however, that this is a distinction that matters. A family court's obligation to review a party's total economic circumstances means that tax returns may be considered. In fact, the returns may often be the best evidence to determine the total economic resources of the parties.

¶6 We also recognize, however, that a new spouse may have a valid privacy concern about his or her tax returns. If, for example, the new spouse had a business interest reflected in the tax returns that was not commingled with the family income, then that spouse could move to intervene, with separate counsel, and ask for the court to conduct an *in camera* inspection. The court then would consider whether to redact those portions of the returns that have no relationship to the total economic circumstances of the family. This is not what happened in this case, however, and consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2003-04).

