

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 4, 2007

David R. Schanker
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. 2007AP492

Cir. Ct. No. 2000GF96

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE MODIFICATION OF THE BIRTH CERTIFICATE OF
STEPHANIE TIA CALEWARTS:**

STEPHANIE TIA CALEWARTS,

APPELLANT,

V.

**CIRCUIT COURT FOR BROWN COUNTY AND
THE HONORABLE J. D. MCKAY, PRESIDING,**

RESPONDENTS.

APPEAL from an order of the circuit court for Brown County:
J.D. MCKAY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Stephanie Calewarts appeals an order denying her¹ request to vacate a July 2000 order changing her birth certificate to indicate she is female. She argues she is in fact male, the court erred in entering the July 2000 order, and the court erroneously exercised its discretion in refusing to grant her relief from the order. We reject her arguments and affirm.

BACKGROUND

¶2 Calewarts was born Stephen Thomas Calewarts in 1949. Her original birth certificate indicated she was male. On July 12, 2000, the circuit court issued an order allowing Calewarts to change her birth certificate from male to female. The order was based on an affidavit, apparently filed by Calewarts, from Pierre Brassard, a doctor in Montreal, Canada. The six-paragraph affidavit indicated Brassard had performed male to female gender reassignment surgery on Calewarts “and she is now female. Any designation on her birth record and all official documents as male is incorrect.” Brassard stated the purpose of the affidavit was “to support [Calewarts’] request to amend her birth record and all official documents to reflect her new name and female gender.” Calewarts apparently applied for and received a new birth certificate designating her as female.

¶3 On October 13, 2006, Calewarts filed a petition requesting that her birth certificate be corrected to indicate she is male and the female birth certificate be destroyed. In the petition, Calewarts said she had attempted to get married but

¹ Because Calewarts is listed as female on her birth certificate and we affirm the court’s order maintaining that designation, we refer to Calewarts using the female pronoun in this opinion.

her marriage license was revoked because she was female. She asked the court to correct her birth certificate so she could get married. Calewarts said she had been born with a severe birth defect that left her genitals deformed, and the Brassard surgery had been performed for health reasons, not to change her sex. She said she had submitted the Brassard affidavit to the court because Brassard told her to, without understanding “what it was all about.” Finally, Calewarts indicated she had changed her name to Stephanie in memory of her grandmother, who had called her that while she was growing up, and “nothing more.”

¶4 Calewarts also submitted an affidavit from Chris Kordiyak, a doctor in Green Bay. Doctor Kordiyak referred to the Brassard surgery as reconstructive surgery, and said it had involved relocating Calewarts’ penis and removing her testicles. He said she had a prostate, deep voice, facial hair, and bone structure consistent with being male. Kordiyak concluded that in his opinion Calewarts had “some female characteristics,” but overall she had “predominantly male characteristics” with the “surgical reconstruction done for health reasons.” Calewarts also submitted a blood report indicating she has a male XY chromosome.²

¶5 The circuit court denied Calewarts’ petition without a hearing. The court’s order read:

On July 12, 2000, based on evidence submitted by
Stephanie Tia Calewarts, this Court ordered a Form

² In her appendix and statement of facts, Calewarts includes documents not in the record and a number of additional background facts. On review, we can consider only facts in the record. *Shoreline Park Pres., Inc. v. Wisconsin DOA*, 195 Wis. 2d 750, 769 n.8, 537 N.W.2d 388 (Ct. App. 1995).

DOH5035 (Rev. 1/96) to be completed changing the sex designation on registrant's birth certificate from **male** to **female**. Any time for appealing or challenging that determination has long since expired.

Stephanie Tia Calewarts now seeks to have that determination change back from **female** to **male**. The applicant is precluded from such undertaking. The issue has been decided. The request is denied.

DISCUSSION

¶6 Calewarts first argues the court's July 2000 order was in error because the Brassard surgery did not actually make her female. WISCONSIN STAT. § 69.15(4)(b)³ allows individuals to change the sex listed on their birth certificate "due to a surgical sex-change procedure." According to Calewarts, the surgery was not a "surgical sex-change procedure" for purposes of § 69.15(4)(b) and the court lacked statutory authority to order a change in Calewarts' birth certificate.

¶7 However, as the circuit court correctly observed, the time for appealing the July 2000 order has long since passed. *See* WIS. STAT. § 808.03(1)(a); 808.04(1). Because Calewarts did not appeal or otherwise challenge the July 2000 order, she is precluded from challenging that order now. *See Wickenhauser v. Lehtinen*, 2007 WI 82, ¶22, 734 N.W.2d 855.

¶8 Calewarts next challenges the court's decision not to grant her relief from the order under WIS. STAT. § 806.07. Section 806.07, as relevant here, allows a court to grant relief based on "[m]istake, inadvertence, surprise, or excusable neglect," but only if a motion is made within one year. WIS. STAT. § 806.07(1)(a), (2). In addition, a court may grant relief based on "[a]ny other

³ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

reasons justifying relief from the operation of the judgment,” so long as the motion is made “within a reasonable time.” WIS. STAT. § 806.07(1)(h), (2). Courts have construed § 806.07(1)(h) as requiring a showing of “extraordinary circumstances.” *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 549, 363 N.W.2d 419 (1985).

¶9 Calewarts argues her petition shows extraordinary circumstances justifying relief from the July 2000 order, and it was filed within a “reasonable time.” However, Calewarts has failed to preserve this issue for review. *See Bishop v. City of Burlington*, 2001 WI App 154, ¶¶7-8, 246 Wis. 2d 879, 631 N.W.2d 656. In order to preserve an issue for appeal, a party must raise it “with sufficient prominence such that the trial court understands that it is being called upon to make a ruling.” *Id.*, ¶8. In her 2006 filings, Calewarts did not give the court an indication that it was being asked to decide whether extraordinary circumstances were present, or whether her motion was made within a reasonable time. Instead, a fair reading of her filings indicates they were intended to show that: (1) Calewarts was male; and (2) the July 2000 order was based on a series of mistakes, including a misunderstanding between Calewarts and Brassard and Calewarts’ own failure to understand the effect of the prior court proceedings.

¶10 The circuit court properly construed Calewarts’ petition as a request for relief based on mistake under WIS. STAT. § 806.07(1)(a), not as a motion alleging extraordinary circumstances under § 806.07(1)(h), and correctly concluded the petition was time barred. *See* WIS. STAT. § 806.07(2). We therefore affirm the circuit court’s order refusing to grant relief from the July 2000 order under § 806.07(1)(a).

By the Court.—Order affirmed.

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

