

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 21, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-0282

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

CHARLES A. POINDEXTER II,

PETITIONER-APPELLANT,

v.

PAMELA J. KAGAN,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Charles Poindexter II appeals orders modifying a custody award and refusing to order counseling and evaluation by the Dane

County Family Counseling Service. He raises numerous issues, none having merit. We affirm.

¶2 Poindexter and Pamela Kagan married in 1983 and were divorced in 1986, in Florida. One child, Kelly, was born to the marriage in 1984. The divorce judgment provided for joint custody with primary physical placement to Kagan and “free and liberal” visitation rights for Poindexter.

¶3 Kagan and Kelly moved to Wisconsin in 1991, around the time that Poindexter was sentenced to two consecutive life sentences on charges resulting from the sexual abuse of several children, including Kelly’s half sisters. His parole eligibility date is 2041.

¶4 Poindexter commenced this action in Dane County Circuit Court, the county of Kagan’s residence in Wisconsin, to enforce the custody and visitation terms of the divorce judgment, after a Florida court refused jurisdiction. He alleged that Kagan had cut off all contact between him and Kelly. After extended litigation, the trial court denied Poindexter’s motion to enforce the divorce judgment and instead modified it to award sole custody to Kagan and allowing Poindexter to contact Kelly by mail only.

¶5 The trial court concluded that Poindexter’s proven record of sexual abuse constituted a “huge change of circumstances,” noting that “[t]he nature of his offenses strikes at the heart of one’s qualifications to exercise legal custody of a child.” The court also noted that “Mr. Poindexter is, for Kelly, a noxious and frightening element in her life. She is terrified of him and believes that he is stalking her and has agents that follow her.” The court found Kelly’s perception to be well-founded, and described his actions toward Kagan and Kelly as “oppressive, overbearing and intrusive.” Consequently, the court not only ruled

that Poindexter should forfeit legal custody, but that his exercise of any physical placement rights with Kelly would endanger her mental and emotional health. The resulting order awarded sole custody of Kelly to Kagan, and limited Poindexter's contacts with her to correspondence only. In a separate order the trial court denied as unnecessary Poindexter's request for counseling and family evaluation. Poindexter raises a number of issues concerning those orders, each of which is addressed below.

¶6 Poindexter alleges error in the trial court's failure to order mediation for the parties. WISCONSIN STAT. § 767.11(5) (1997-98)¹ directs the court to refer the party to family court counseling services for possible mediation of any contested issue concerning custody or physical placement. Under the circumstances of this case, however, a mediation order would have been futile. Kagan and Kelly fled the State of Florida to avoid Poindexter's influence on their lives. Throughout this proceeding both remained adamant that they wanted nothing to do with Poindexter. Under these circumstances, mediation was pointless, even apart from the practical problem of Poindexter's incarceration in Florida.

¶7 Poindexter next argues that the trial court lacked authority to rule on the matter due to various pleading and procedural omissions, including the inadequacy of his own pleadings. The alleged omissions are merely listed, without legal argument as to why they deprived the trial court of authority or otherwise caused reversible error. We need not address issues raised but

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

inadequately briefed. See *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶8 Poindexter’s third argument is his claim that the trial court erred when it modified custody without finding a substantial change of circumstances, as required by WIS. STAT. § 767.32(1). The trial court found a “huge” change of circumstances. Poindexter cannot reasonably contend that “huge” does not satisfy the statutory standard of “substantial.”

¶9 Poindexter also asserts that the trial court erred by failing to apply the clear and convincing standard of proof to the factual determinations in this matter. He cites no relevant authority for the proposition that the clear and convincing standard of proof is required in actions affecting the family. We are aware of none, and thus reject this claim.

¶10 Poindexter next contends that the trial court erred by reaching its decision without ordering psychological and family evaluations. He does not, however, explain why the lack of those evaluations prejudiced him. He cannot reasonably contend that evaluations would have influenced the court to allow him custodial authority or physical placement rights with Kelly, given his crimes and Kelly’s rational and justifiable attitude toward him.

¶11 Poindexter next asserts that the trial court erred by refusing to compel Kagan to provide the address of certain of her relatives. Poindexter does not adequately explain why knowing those addresses would have affected the outcome of this litigation. Again, he fails to demonstrate any prejudice from the trial court’s ruling.

¶12 Poindexter next contends that the trial court had no authority to modify the terms of the Florida divorce judgment because this was solely an action to enforce that judgment. In proceedings concerning custody and physical placement the trial court's duty is to "make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties...." WIS. STAT. § 767.24(1). The trial court may modify custody and physical placement orders if modification is in the best interest of the child. WIS. STAT. § 767.325(1)(b). The trial court may therefore provide remedies other than those specifically requested by the moving party. If other remedies are in the child's best interest, the trial court may use its discretion to order them.

¶13 Poindexter briefly raises five additional issues. First, he contends that the trial court should have granted him attorney's fees. However, he was not represented by counsel in this proceeding. Second, he contends that his due process rights were violated when the guardian ad litem did not file a report before the evidentiary hearing. There is neither a statutory nor constitutional requirement that the guardian ad litem provide any report in advance of trial in a custody matter. Third, Poindexter contends that the presiding judge should have disqualified himself for prejudice. Other than the fact that the trial court ruled adversely to him on most issues, Poindexter offers no proof of record to support his bias allegation. Fourth, Poindexter asserts that he was entitled to reimbursement for his costs in locating Kelly and Kagan after they moved to Wisconsin, under WIS. STAT. § 948.31(6). Costs may be awarded under that section against a criminal defendant prosecuted under WIS. STAT. § 948.31. It is inapplicable in this case. Fifth, and finally, Poindexter contends that the trial court should have ordered Kagan to provide him with photographs of Kelly. Given the

evidence of record concerning Poindexter's harassment of Kagan and Kelly over the last several years, and the other circumstances of the case, the trial court reasonably denied this request.

By the Court.—Orders affirmed.

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

