

## SUPREME COURT OF WISCONSIN

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CASE NO.: 01-2649

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## COMPLETE TITLE:

Martin G. Wenke and Dakota M. Wenke, a minor, by  
his Guardian ad Litem, Lynn R. Laufenberg,  
Plaintiffs-Appellants,  
v.  
Gehl Company, a Wisconsin corporation,  
Defendant-Respondent.

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ON CERTIFICATION FROM THE COURT OF APPEALS

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OPINION FILED: July 8, 2003

SUBMITTED ON BRIEFS:

ORAL ARGUMENT: January 16, 2003

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## SOURCE OF APPEAL:

COURT: Circuit  
COUNTY: Washington  
JUDGE: Patrick J. Faragher

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## JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING: WILCOX, J., did not participate.

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## ATTORNEYS:

For the plaintiffs-appellants there were briefs by *Michael L. Laufenberg*, *Lynn R. Laufenberg* and *Laufenberg & Hoefle, S.C.*, Milwaukee, and oral argument by *Lynn R. Laufenberg*.

For the defendant-respondent there was a brief by *Francis H. LoCoco*, *Daniel J. La Fave* and *Quarles & Brady LLP*, Milwaukee, and oral argument by *Francis H. LoCoco*.

An amicus curiae brief was filed by *Ralph A. Weber*, *Beth Ermatinger Hanan*, and *Reinhart Boerner Van Deuren, S.C.*, Milwaukee, on behalf of the Wisconsin Manufacturers and Commerce.

An amicus curiae brief was filed by *William C. Gleisner, III*, Madison, and *David M. Skoglund* and *Aiken & Scoptur, S.C.*, Milwaukee, on behalf of the Wisconsin Academy of Trial Lawyers.

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NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 01-2649  
(L.C. No. 99 CV 0431)

STATE OF WISCONSIN

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IN SUPREME COURT

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**Martin G. Wenke and Dakota M. Wenke, a  
minor, by his Guardian ad Litem, Lynn R.  
Laufenberg,**

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**FILED**

**JUL 8, 2003**

Cornelia G. Clark  
Clerk of Supreme Court

APPEAL from a judgment of the Circuit Court for Washington County, Patrick J. Faragher, Judge. *Order granting certification vacated and cause remanded to the Court of Appeals.*

¶1 PER CURIAM. The court is equally divided on whether to affirm or reverse the judgment of the circuit court. Justice N. Patrick Crooks, Justice David T. Prosser, Jr., and Justice Diane S. Sykes would affirm. Chief Justice Shirley S. Abrahamson, Justice William A. Bablitch, and Justice Ann Walsh Bradley would reverse. Justice Jon P. Wilcox did not participate.

¶2 When a certification or bypass results in a tie vote by this court, the better course of action is to vacate our decision to accept certification or bypass and remand the cause to the court of appeals. State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995) (remanding to court of appeals on a tie vote on certification); State v. Elam, 195 Wis. 2d 683, 684-85, 538 N.W.2d 249 (1995) (restating rule but declining to remand to court of appeals on a tie vote on bypass because court of appeals had previously decided issue).

¶3 Accordingly, we vacate our order granting certification and remand to the court of appeals.

*By the Court.*—The Order granting certification is vacated and the cause is remanded to the court of appeals.

