

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 4, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0578-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

In re the Marriage of:

**VICKI L. JOHNSON,
k/n/a VICKI AUSTAD,**

Petitioner-Appellant,

v.

CHRISTOPHER T. JOHNSON,

Respondent-Respondent.

APPEAL from an order of the circuit court for Polk County:
ROBERT H. RASMUSSEN, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Vicki (Johnson) Austad appeals an order changing physical placement of her children to their father, Christopher Johnson.¹ Austad argues that the trial court erroneously exercised its discretion

¹ This is an expedited appeal under RULE 809.17, STATS.

when it changed custody based solely on her plan to move with the children to Minnesota. She also argues that the trial court ignored the testimony of her expert witnesses. We reject these arguments and affirm the order.

The trial court may modify physical placement if it is in the children's best interest. *Kerkvliet v. Kerkvliet*, 166 Wis.2d 930, 936, 480 N.W.2d 823, 825 (Ct. App. 1992). There is a rebuttable presumption that continuing the current physical placement arrangement is in the best interest of the children. See § 767.327(3)(a)2a, STATS. This presumption was created to minimize the disruption to a child's life by discouraging repeated litigation of placement orders. The question whether to change placement is committed to the trial court's discretion and its decision will be sustained if the record reflects a reasoning process depending on facts of record and conclusions based on proper legal standards. *Bohms v. Bohms*, 144 Wis.2d 490, 496, 424 N.W.2d 408, 410 (1988). The findings of fact upon which the discretionary decision is made will be sustained unless they are clearly erroneous. See § 805.17(2), STATS. The trial court, not the court of appeals, assesses the credibility of the witnesses and the weight to be accorded their testimony. *Mullen v. Braatz*, 179 Wis.2d 749, 756, 508 N.W.2d 446, 449 (Ct. App. 1993).

The trial court's decision is supported by adequate evidence and reflects consideration of the proper legal standards. The trial court specifically went through each of the factors set out in § 767.327(5), STATS., and determined that the children's best interest required that they stay in their community and schools, with the same friends, and with access to their paternal grandparents whom they were accustomed to seeing on a daily basis. The court considered and adopted the guardian ad litem's recommendation and the children's wishes. Austad had moved with the children four times in a ten-month period and proposed to move them to Minnesota. Johnson's fiancée testified that the children were upset by the move to Minnesota and adjusted quickly when they were returned to their father's home. The children's school teachers testified to the children's adjustments to the placement changes. This evidence is sufficient to rebut the presumption that it is in the children's best interest to continue primary placement with their mother.

In reaching its decision, the trial court did not "ignore" the testimony of social workers regarding their contacts with the children. The trial court personally examined several of these witnesses and carefully considered

their testimony. Its failure to comment on their testimony is not synonymous with ignoring it. We will not infer from the trial court's failure to mention the testimony that it also failed to consider it. See *Chernetski v. American Family Mut. Ins. Co.*, 183 Wis.2d 68, 80, 515 N.W.2d 283, 288 (Ct. App. 1994). One of the social workers had no contact with the children after Austad's decision to move to Minnesota. One of the social workers spent only one month counseling the children, centered on Austad's relationship with the children and admitted that she did not attempt to make any contact with Johnson. Although the trial court criticized Johnson for some of his behavior after the divorce, it properly chose to give less weight to the social worker's testimony than to the other factors that showed the move would be traumatic to the children and that a change of physical placement would be less disruptive than moving away from the family, friends, community and schools to which the children had become accustomed.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.