

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 17, 1998

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-3800

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

PETER P. GINTNER,

PETITIONER-RESPONDENT,

v.

LORI ANN GINTNER,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Clark County:
MICHAEL W. BRENNAN, Judge. *Affirmed.*

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

PER CURIAM. Lori Ann Gintner appeals from the trial court's judgment divorcing her from Peter Gintner. The issue is whether the trial court misused its discretion in awarding joint legal custody of the parties' two children

with primary physical placement to Peter.¹ We conclude that the trial court did not misuse its discretion. We affirm.

Lori and Peter were divorced after nine years of marriage. After considering the testimony of several experts, including a psychologist and a social worker, the trial court awarded Lori and Peter joint custody of their children, Drew and Caleb, and awarded Peter primary physical placement. The trial court awarded Lori physical placement with the boys two out of every three weekends. Lori was also awarded physical placement with the boys in the summer from Sunday evening until Thursday afternoon.

The trial court's decision awarding custody and placement of children in a divorce will not be overturned unless the trial court misuses its discretion. *Gould v. Gould*, 116 Wis.2d 493, 498, 342 N.W.2d 426, 429 (1984). In making custody and placement determinations, the trial court must consider: (1) the wishes of the child's parents; (2) the interaction and interrelationship of the child with his or her parents, siblings, and any other person who may significantly affect the child's best interest; (3) whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party; and (4) a host of other statutorily enumerated factors. *See* § 767.24(5), STATS. The trial court properly exercises its discretion when it considers the appropriate law, applies it to the facts of the case, and reaches a reasonable decision. *See Gould*, 116 Wis.2d at 498, 342 N.W.2d at 429.

¹ Lori also raised two issues relating to the property division in her appellant's brief. We do not address them because Peter has informed this court in his respondent's brief that those issues were settled by the parties by stipulation entered in the trial court, a fact Lori does not dispute in her reply brief.

The trial court considered the testimony of numerous witnesses. Those witnesses included Kathleen Hehl, a social worker who performed the custody study, Peter Sternberg, a clinical social worker, and Dr. Michael Nelson, a psychologist. Although the trial court concluded that both parents “were interested and able and competent,” the trial court concluded that Peter would be more appropriate as the primary caretaker, in accord with Dr. Nelson’s recommendation, because of the following: (1) Peter would be more likely to facilitate the involvement of Lori in the children’s lives; (2) Lori appeared less able to handle stress and use appropriate discipline; and (3) it appeared that Lori would have more difficulty adjusting to life as a single parent. Because the trial court considered the appropriate factors and reached a reasonable decision, we conclude that the trial court properly exercised its discretion.

Lori argues that the trial court erred in denying her motion to continue proceedings after the trial court had issued its oral decision on primary placement, but before a final order was entered. Lori moved to continue proceedings so that a new custody study could be done to reflect the fact that Peter had a serious relationship with Deanne Haas, a woman he intended to marry, and his relationship with Haas was more involved than Peter had acknowledged when the custody study in this case was done. Lori cites § 767.24(5)(c), STATS., which states that the trial court shall consider “the interaction and interrelationship of the child with ... any other person who may significantly affect the child’s best interest.”

Although Lori wanted a new custody study done, the trial court did not misuse its discretion in denying the motion to continue the proceedings which at that point, were nearly concluded. The trial court had a lot of information before it about Deanne Haas, the woman with whom Peter was involved. The trial

court had presided over the Haas divorce two days before it heard the motion to continue. The trial court made the custody study done in the Haas divorce part of the record in this case and allowed Peter, Lori, their attorneys, and the guardian ad litem to see it. The study included extensive information about Deanne Haas's background and her interactions with her children. In denying the motion to continue, the trial court noted that there was nothing in that custody study which suggested that Peter's relationship with Haas would change the decision the trial court made. We conclude that the trial court did not err in refusing to continue proceedings and order a new custody study.

By the Court.—Judgment affirmed.

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

