COURT OF APPEALS
DECISION
DATED AND FILED

July 13, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP399 **Cir. Ct. No. 2000FA2098**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

BHARATI HOLTZMAN,

PETITIONER-RESPONDENT,

V.

JON E. HOLTZMAN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: JOHN C. ALBERT, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Jon Holtzman appeals the circuit court's judgment divorcing him from Bharati Holtzman. Jon challenges the circuit court's

implementation of an agreement the parties made regarding the procedure whereby the court was to resolve placement and related issues concerning the children. He also contends that the guardian ad litem acted improperly. We affirm.

¶2 The parties have been involved in a lengthy and acrimonious divorce. In February 2003, after several years of litigation, the parties and their counsel agreed to a procedure for resolving placement and other issues related to the children. They agreed that the circuit court would make a decision based on the record they had created through that time, the court would inform them of its tentative placement order, each party would have a chance to respond and the court would then finalize its ruling. The court had previously conducted a three-day hearing on temporary custody and placement issues, at which it heard testimony from numerous witnesses, including the Family Court Counselor, two psychologists who worked individually with two of the children and a therapist for one of the children. The court had also received the guardian ad litem's recommendations regarding permanent custody and placement provisions.

¶3 After the circuit court notified the parties of its proposed placement schedule, Jon objected and demanded a trial on custody and placement of the children. The circuit court refused to release Jon from his agreement to forgo further evidentiary proceedings and incorporated its ruling on placement in the divorce judgment.

¶4 Jon argues that the circuit court did not have authority to make a decision regarding physical placement without a trial on the merits. We disagree. Jon and Bharati agreed to allow the circuit court to resolve the remaining issues based on the record then before it, which was extensive. Because Jon agreed to

the court's proceeding in that fashion, he cannot now complain that it did so. *See* ***Shawn B.N. v. State***, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992) (an appellate court will generally not review an error that was invited or induced by the appellant in the trial court).

¶5 Jon contends, however, that the circuit court could not enforce the repudiated procedural agreement because the agreement was not binding until approved by the court pursuant to WIS. STAT. § 767.10(1) (2003-04).[1] The stipulation at issue, however, was not a stipulation "for legal custody and physical placement," to which the statute applies. Rather, the parties simply agreed to a procedure for the court to resolve the parties' disputes regarding custody and placement of their children. In short, § 767.10(1) is not relevant to this appeal, but even if it were, we note that the circuit court *did* approve the parties' procedural stipulation at the time they entered into it.

¶6 Jon next argues that the guardian ad litem misrepresented testimony and statements of psychologists and therapists involved with the family. We disagree. The guardian ad litem did what he was required to do, that is, to advocate for the children's best interests. In so doing, the guardian ad litem was permitted to point to evidence in the record that supported the position he believed to be in the children's best interests. *See* ***Hollister v. Hollister***, 173 Wis. 2d 413, 419, 496 N.W.2d 642 (Ct. App. 1992). Finally, Jon also argues that the guardian ad litem should have ceased representing the children after the circuit court issued

[1] WISCONSIN STAT. § 767.10(1) provides: "The parties in an action for … divorce … may, subject to the approval of the court, stipulate … for legal custody and physical placement…." All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

a decree of divorce on October 28, 2002. He cites WIS. STAT. § 767.045(5), which provides that the guardian ad litem's appointment "terminates upon the entry of the court's final order…." We reject this final argument. The circuit court's October 28, 2002 decision expressly left placement and other child-related issues pending and was thus not the "final order" in the divorce.

By the Court.—Judgment affirmed.

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