COURT OF APPEALS
DECISION
DATED AND FILED

July 17, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP684

Cir. Ct. Nos. 1995PA135703
2005FA768
2006JI2
2006JI3

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

KELLY S.,

PETITIONER-RESPONDENT,

V.

MYRON H.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed in part; reversed in part; and cause remanded with directions.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 KESSLER, J. Myron H.,[1] the father, appeals the trial court's decision modifying custody and placement of the parties' two children by: awarding sole custody and primary placement to Kelly S., the mother; ordering supervised alternate placement one hour each week with Myron H.; and denying Myron H.'s request for child abuse injunctions against Kelly S. All of the decisions appealed from are based upon the trial court's exercise of discretion, including the trial court's determination of the credibility of witnesses. There are facts in the record upon which to base the findings necessary to support the trial court's decisions; therefore, we affirm all of the order except for the limitation of supervised visitation to one hour each week, as to which we reverse and remand.

BACKGROUND

¶2 Myron H. and Kelly S. have two children: S.H., born July 24, 1995, and R.H., born January 29, 1999. In December 2004, Myron H. filed a motion to modify placement and to reduce his child support arrears as to S.H., the only child as to which a support order had ever been entered. On January 13, 2005, the commissioner ordered joint custody, with primary placement to Kelly S., alternate Saturday and Sunday afternoons to Myron H., and a shared holiday schedule. The commissioner also reduced the arrears somewhat. Within days of the order's issuance, on January 27, 2005, Myron H. filed for a *de novo* review of the commissioner's order, and began a separate action against Kelly S. to set child support and for the issuance of an "order addressing legal custody and placement"

[1] Pursuant to WIS. STAT. RULE § 809.19(1)(g) (2005-06) and the authority of this court, the names of the parties have been modified.

All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

of R.H. On April 26, 2005, all actions then pending in the Family Court involving either child were consolidated.[2]

¶3 The eventual resolution, in February 2006 by the trial court, of Myron H.'s consolidated actions to determine support, legal custody and placement, and his subsequent petitions for child abuse injunctions, are all the subject of this appeal. However, the path between the December 2004 initial request, and the ultimate order in February 2006, setting child support, custody and placement, and denying the injunction petitions, has been beset by an amazing array of collateral litigation, allegations of criminal conduct and allegations of unethical conduct by judges and the guardian *ad litem* made by Myron H. and his attorney, the significance of which is apparent in the trial court's decision.

¶4 Myron H., in the context of his *de novo* review, asserted that Kelly S. was "unfit … to exercise primary placement," and moved for a hair follicle examination of Kelly S., implying through counsel's affidavit that she might be addicted to drugs based upon Myron H.'s characterization of Kelly S.'s behavior. Myron H.'s counsel, Christopher Carson, in an affidavit filed with the court, alleged that Kelly S. "is living in a known drug house" and "is staying out all hours … and leaving the children in the care of dubious caretakers." These statements were later either withdrawn as inaccurate or modified.[3] In addition,

[2] Custody, placement and support of both children are resolved in Case No. 2005FA768. The injunction requests, added after the other actions, are Case Nos. 2006JI2 and 2006JI3.

[3] We remind counsel that pursuant to WIS. STAT. § 802.05(2) (2005-06), by signing a pleading, counsel represents that a reasonable investigation of the facts asserted has been made by counsel or those working for counsel, and that sanctions may be imposed for violations of this statute, pursuant to § 802.05(3). We further remind counsel that reliance on the word of a client, without independent investigation, is not necessarily a defense to sanctions for violating this statute. *See* ***Riley v. Isaacson***, 156 Wis. 2d 249, 259, 456 N.W.2d 619 (Ct. App. 1990); *see also* SCR 20:3.1(a)(2) and (3).

Myron H. asked for a psychological evaluation of Kelly S., relying upon the same affidavit by Carson. Kelly S.'s hair follicle test was negative for all drugs tested. The psychologist who eventually evaluated her concluded: "I do not find Kelly S. to be a threat to her children or anyone else." Prior to, and after, that professional opinion, Myron H. subjected Kelly S. to myriad and repeated allegations of physical, emotional and sexual abuse of her children. Because it is clear those allegations, and the repeated nature thereof, had a profound effect on the trial court's decision, we describe the history of these attacks on Kelly S. and on others during this litigation.

The June temporary restraining order

¶5 In June 2005, before the *de novo* review could be heard, Myron H. obtained a temporary restraining order based upon his allegations of child abuse[4] by Kelly S. Child Protective Services began its first investigation. The trial court[5] appointed Attorney James E. Collis as guardian *ad litem* for the minor children. The court dismissed the temporary restraining order and refused to issue an injunction, but modified placement while the guardian *ad litem* and Child Protective Services investigated Myron H.'s allegations. Temporary primary placement pending investigation of the charges was awarded to Myron H., with alternate placement to Kelly S. in a supervised setting. Kelly S.'s time with the children was limited to Tuesday and Thursday evenings and all day Saturday. No

[4] Allegations in the first TRO included: allegations of physical abuse (use of a belt for disciplinary purposes); neglect (behind in immunizations); and possible drug abuse by Kelly S.

[5] The Honorable Bonnie L. Gordon presided over the consolidated case until judicial transfer moved the case to the Honorable Mary M. Kuhnmuench.

change was made in the joint custody. In October 2005, Child Protective Services reported that these June 2005 allegations of abuse were unfounded.

¶6 On July 14, 2005, Kelly S. asked the court to reinstate the original primary placement order and schedule, which would return her to the role of primary caregiver. A hearing on Kelly S.'s motion was set for August 8, 2005. Myron H. and Kelly S. were ordered to mediation. Kelly S. attended; Myron H. did not. In the interim, the Honorable Mary M. Kuhnmuench received the case as a result of regular Milwaukee County judicial reassignments that were publicly announced in June. At the August 8 hearing, Myron H. moved for substitution of judge against Judge Kuhnmuench, who denied his motion as untimely. Myron H.'s counsel appealed to Chief Judge Kitty K. Brennan.[6] Judge Kuhnmuench continued to preside.

¶7 As a result of the August 8 hearing, Judge Kuhnmuench found that:

- Myron H.'s initial allegations of Kelly S.'s abuse of the children were found to be unsubstantiated;

- Myron H.'s allegations of illicit drug use by Kelly S. were reviewed by the guardian *ad litem* and the hair follicle tests were negative;

[6] Chief Judge Brennan issued an opinion on September 8, 2005, holding that, consistent with the long-standing practice in Milwaukee County of publishing notice of the reassignments in June, well before they take effect on August 1, and the actual notice to these parties in June disclosed in the transcripts of proceedings before Judge Gordon, the substitution motion filed on August 8 was not timely.

- The Milwaukee County District Attorney's office, in the first week of August, denied prosecution of Myron H.'s allegations of criminal child abuse by Kelly S.;

- Kelly S. admitted having physically disciplined the children with a belt, but denied abusive behavior; and

- Based on the information provided by all counsel and the parties, and the findings of the Bureau of Milwaukee Child Welfare, and the Milwaukee County District Attorney's Office declining prosecution, Kelly S. is not a danger to the two minor children.

¶8 The trial court set a review date of September 23, ordered Kelly S. to begin therapy on parenting issues including the use of physical discipline, ordered counseling for the children (with involvement of Collis, the guardian *ad litem*), directed monitoring of the placement by Collis, continued placement of the children with Kelly S. based upon the guardian *ad litem*'s recommendation, gradually ended the prior supervision of Kelly S.'s placement, and gave Kelly S. unsupervised overnight weekend placements beginning "the week of September 5th"—the Labor Day weekend.

¶9 Approximately two weeks after the August 8 hearing order was signed, on August 26, 2005, Myron H. moved to have Collis removed as the guardian *ad litem*. Myron H.'s counsel, Carson, in a letter to the trial court, told the court that Collis's "actions/statements … should call into question the Court's confidence in his ability to act in a fair and un-biased manner on this case." Carson complained about the manner in which Collis drafted the August order, complained that Collis did not interview witnesses Carson considered favorable to

his client and complained that Collis admonished Myron H. for recording one of the children allegedly describing to Myron H. drug use by Kelly S.

¶10 On September 2, 2005, the afternoon before Kelly S.'s renewed overnight placement was to begin the next morning, Myron H. obtained two "Temporary Restraining Orders (Child Abuse)" from an assistant family court commissioner. There is no indication that either the guardian *ad litem* or the trial court was advised in advance of this Friday afternoon activity. The temporary orders barred Kelly S. from *any* contact with either child until an injunction hearing before the trial court on September 6, 2005, after the Labor Day weekend, and after her now-aborted placement was to have occurred. Some of the conduct described by Myron H. in September as grounds for the temporary restraining orders was alleged to have occurred in January 2005. The remaining allegations had already been considered by Judge Kuhnmuench in the August 8, 2005 hearing.

September 6, 2005 hearing—the September temporary restraining orders

¶11 On September 6, 2005, the trial court considered several matters. These included Myron H.'s motion to terminate the appointment of Collis as the guardian *ad litem*, a dispute that had developed about choosing the children's therapist, a dispute about where the children should be enrolled for the upcoming school year,[7] and Myron H.'s restraining orders and petitions for child abuse injunctions.

[7] Myron H. had removed the children from the Milwaukee school they previously attended and enrolled them in another school in New Berlin, where he lived. He did this without consultation or agreement with either the guardian *ad litem* or Kelly S.

¶12 The court denied Myron H.'s request to remove the guardian *ad litem*.[8] The court also noted that much of the alleged abuse cited in support of the second temporary restraining order had already been investigated by the Bureau of Milwaukee Child Welfare (BMCW) in connection with the June TRO, and the Bureau determined to take no action.

¶13 Assistant District Attorney Christopher A. Liegel, a prosecutor with the Sexual Assault Unit in the Milwaukee District Attorney's Office, and the police detective who investigated Myron H.'s complaint of criminal child abuse by Kelly S. testified. Myron H. included allegations from the June temporary restraining order, as well as a new allegation. Liegel testified that he reviewed Myron H.'s complaint, which alleged that Kelly S. hit S.H. on the back of the head with a closed fist (the new allegation), that he reviewed the police investigation report, that he interviewed the child in his office, and that he declined to prosecute. Liegel also said that Carson was "quite obviously displeased with the decision" and filed a petition for a John Doe investigation because the prosecution was declined. The detective testified that in investigating Myron H.'s complaint, he interviewed various adults, S.H., and later R.H.. He told the trial court that unlike other investigations in his experience, in which the child victims had difficulty talking about the abuse, he found it odd that the children here were so "direct to

[8] In describing counsel's affidavit in support of removing the guardian *ad litem,* the court observed:

> It goes beyond good lawyering in my opinion, Mr. Carson, and it goes beyond advocacy. There is no basis for me to remove a GAL simply because you and he had heated discussions out in the hallway. He's not here to make you happy. He's here to make sure that he keeps faith with the Court … acting in the best interest of the children.

the point … [t]here was no gray area." He also stated that neither child reported, or gave any indication of, any other injury either child had suffered; nor had the adults he interviewed suggested any other injuries.

¶14 Because of the timing of the petition, because the allegations included matters already investigated and rejected by the police, because the allegations included allegations about abuse in January which neither child had disclosed to police in subsequent interviews, and because the allegedly newly disclosed information about the January incident was of the type one would expect to be immediately disclosed to police and a guardian *ad litem,* but which Myron H. and his counsel had not disclosed for ten days and then did so only in the strategically filed Friday afternoon request for the temporary restraining orders, the trial court expressed considerable skepticism about the allegations in the injunction petition. Again, the trial court did not grant an injunction.

¶15 Instead, the order[9] from the September 6 hearing specifically authorized Collis to investigate the allegations against Kelly S. involving the alleged incident in January 2005,[10] another incident alleged to have occurred in February and March 2005, and gave Collis the authority to speak with the psychologist retained by Myron H. The court set aside the temporary restraining

[9] The trial court's formal order, drafted by Collis, and commented on extensively and objected to by Carson, was signed by the court on September 21, 2005, substantially as submitted.

[10] The new allegation was that Kelly S. had put a towel in boiling water, then hit S.H. in the face with the towel. This was alleged to have occurred in January 2005. As we see later, Myron H. claimed to have first learned about this in August 2005, but did not report the alleged conduct to the police or the guardian *ad litem*, and instead reported it immediately to Carson and waited until September 2, 2005, to use the information as the basis for a child abuse injunction petition.

order and warned the parties not to attempt to circumvent the court's orders of August 12 (from the August 8 hearing) or any prior orders not inconsistent with this order. The court set September 23, 2005, for further proceedings, including Myron H.'s request for a child abuse injunction.

September 19, 2005 psychologist opinion

¶16 About two weeks after the September 6 hearing, Collis met with Myron H.'s psychologist, Dr. Marc Ackerman, who memorialized his concerns and opinions in a letter to Collis dated September 19, with copies to counsel for both parents. This letter became an exhibit at the later hearing on September 26. Dr. Ackerman expressed the following opinions to all counsel:

> It is clear that Myron H. is on a crusade to demonstrate to anyone who will listen how inadequate, inept, and inappropriate Kelly S. is with their children. In brief, as part of his hypervigilance and overzealousness in this case, Myron H. attempted to have the judge replaced, the Guardian ad Litem removed, the District Attorney superceded by a John Doe investigation, did not listen to my recommendations, disagreed with the Bureau of Child Welfare, and was contradicted by testimony from Detective Brown. Furthermore, he obtained a restraining order from the Family Court Commissioner which was set aside by Judge Kuhnmuench. On the other hand, Kelly S. admits that she hit the children with a belt once to twice a month, was behind on her immunizations, and engaged in inappropriate communication with Myron H.'s grandmother regarding his sexual behavior.
>
> Because of Myron H.'s insistence on recording the children's stories and making CD's of them telling their story, it is not possible to completely differentiate how much of what the children [are] reporting is based on fact and how much of it is based on suggestibility and desire to please their father.
>
> I can state to a reasonable degree of psychological certainty that the mother has engaged in inappropriate behavior in the past. I can also state to a reasonable degree of psychological certainty that the father has gone beyond

> reasonable behavior in his attempts to demonstrate his point by asserting that the Judge, the Guardian ad Litem, the Bureau of Child Welfare, Detective Brown, and the District Attorney did not know what they were doing.

The September 22, 2005 CHIPS petitions

¶17 The day *after* the order from the September 6 hearing was signed on September 21, and the day *before* the scheduled September 23 continued hearing on the child abuse injunctions, Carson hand-delivered another letter to the court. In this letter, he informed the trial court that it no longer had any authority to proceed because he had filed two CHIPS (Child in need of Protection or Services) petitions in Children's Court.[11] The letter explained (without attaching copies of the petitions) that the petitions were based upon "repeated acts of child abuse" by Kelly S., instructed the court that, in his view, under WIS. STAT. § 48.15, the Family Court lacked authority to make any decisions while the Children's Court action was pending because "whether Kelly S. is a clear and present danger to her children is not 'incidental' or irrelevant to [C]hildren's [C]ourt." Carson asked the court to adjourn the Family Court hearing scheduled for the next day until the Children's Court matters were concluded.

¶18 Judge Kuhnmuench contacted the Honorable Thomas R. Cooper, the Children's Court judge to whom the CHIPS cases were assigned. Judge Cooper described Judge Kuhnmuench's communications as advising him that she would proceed with the custody hearing and injunction hearing, and that she thought it would be a good idea for Collis, the children's guardian *ad litem*, to appear in the CHIPS proceedings, to which Judge Cooper agreed.

[11] Apparently one petition was filed for each child. The petitions are not part of the record in this appeal.

September 23, 2005 hearing

¶19 The Family Court hearing was not adjourned. On September 23, 2005, the court began the custody, placement and injunction hearing. At the hearing, Judge Kuhnmuench observed that Milwaukee County is a large district in which the courts have organized themselves into special divisions such as family court, children's court, drug court, felony court and so forth. However, such organizational structure does not change the fact that each court is still a court of general jurisdiction, and neither the statutes nor local rules prohibit the courts from conferring for the purposes of efficient management of the court system. The transcript discloses the court's expressed concern with what appeared to be Myron H.'s and his counsel's continued attempt to avoid complying with its orders by, at the last possible moment, bringing a variety of motions, or delivering letters which challenge the court's authority. After substantial discussion with all counsel, the trial court continued the hearing to September 26.

September 26, 2005 hearing

¶20 This hearing focused on the abuse issues Myron H. raised in early September, but included the effect of Myron H.'s attempts to influence multiple courts or agencies with substantially the same allegations already considered by the trial court. Dr. Ackerman testified based upon his separate interviews with both parents and each child between June 5, 2005 and July 19, 2005. He discussed conversations with S.H. during that time in which the child never mentioned an incident when his mother allegedly punished him by hitting him with a towel

dipped in boiling water.[12] In addition, Dr. Ackerman provided the following information and opinions:

> [Kelly S.] had admitted that she had used a belt for punishing the children. She admitted that she was behind on her immunizations. She admitted that she had engaged in some inappropriate communications….
>
> ….
>
> I also did a sexual abuse allegation interview … as part of an abuse interview I want to make sure that that hasn't occurred. And it was clear to me that nobody had sexually abused R.H.
>
> ….
>
> [I]t was my perception … in that window between 6-5-05 and 7-19-05, that [the children] were not being coached.
>
> ….
>
> [In that window of time] I believe that there was a high level of credibility in what I was hearing. When it came to the tapes and the interviews of the kids by Dad and Step Mom and CDs and the leading questions … without having the opportunity to have additional contact with the kids I was not willing to put any credibility in them at all because it is my opinion that Dad seized the opportunity to find that Mom had done some things inappropriately, and carried it well beyond what I consider to be reasonableness. And I see the taping and the CDs as being examples of that. So the credibility of the case turned after we had our meeting on 7-29-05 … and I have difficulties with things that I have heard and received since that day.
>
> ….
>
> I am able to form an opinion on [the newer allegations]. Quite clearly I'm able to form an opinion, and that opinion is that I wouldn't use them.

[12] This is the January 2005 incident alleged by Myron H. in the September petition for temporary restraining order. *See* ¶15 n.10 *supra*.

The hearing ended without resolution of the custody and placement issues.[13]

Letter warning Judges not to engage in unethical conduct

¶21 On September 27, 2005, the day before the CHIPS hearing, Carson hand-delivered a letter to the Children's Court judge, the Honorable Thomas R. Cooper, explaining that, in Carson's view, it would be a breach of judicial ethics for Judge Cooper to talk to Judge Kuhnmuench about the pending CHIPS petition. On September 29, Carson wrote a four-page, single-spaced letter to Chief Judge Brennan,[14] with a copy to Judge Kuhnmuench. This letter alleged ethical violations by Judge Kuhnmuench based upon nearly everything she had done in this case from the first hearing in August 2005 to the date of the letter. Carson's accusations of misconduct, and violation of Supreme Court ethical rules, essentially claimed Judge Kuhnmuench's decisions were improper because she did not adopt the positions he advocated or alleged.

September 28 CHIPS hearing before Judge Cooper

¶22 Collis appeared at the CHIPS hearing over Carson's vigorous objections. In response to Judge Cooper's questions, Collis advised the court at length of the status of proceedings and of Judge Kuhnmuench's rulings on abuse and neglect allegations, which involved the same parties as in the CHIPS petitions. Carson described the same proceedings from his perspective, argued the fact that

[13] The hearing transcript indicates that further testimony from Dr. Ackerman will be taken later that day, and ends noting "(Lunch break taken)." There is no further transcript in the record of proceedings on September 26.

[14] The letter duplicates an email Carson sent to Chief Judge Brennan on September 27, 2005. Chief Judge Brennan instructed Carson that the courts do not accept email communications from litigants and counsel.

abuse allegations found to be unsubstantiated by the BMCW "doesn't mean it didn't occur," which meant that Judge Kuhnmuench had been wrong in her lack of action on the alleged abuse. In response to Judge Cooper's question to Carson about whether the CHIPS action was filed because "somehow or another you see this as an appeal," Carson told the court he filed the CHIPS petitions "because the children are in immediate need of protection. In part, because Judge Kuhnmuench is allowing unsupervised extended placement with the mother despite … the absence of a hearing" and "I was illegally thwarted by the process downtown."

¶23 Because Judge Cooper found that Judge Kuhnmuench had already begun to deal with the abuse and neglect issues, and because, as he explained to those present, "it will get infinitely more complicated if you have two judges making cross orders that may be in conflict of each other. That is 100 percent of the time the worst case scenario," Judge Cooper waived the Children's Court's exclusive jurisdiction. The CHIPS actions were adjourned to give the Family Court time to resolve the issues involved in the custody, placement, and injunction proceedings, and to give the BMCW time to investigate the new allegations.

October 28, 2005 hearing

¶24 When Kelly S. learned that Myron H. had, again, moved the children from the Milwaukee schools, she moved for a finding of contempt. An October 28, 2005 hearing was held where the trial court considered Kelly S.'s request. The court did not find Myron H. in contempt, but did find his conduct was "bad behavior."

¶25 At this hearing, Collis advised the trial court of developments since the last hearing (one month earlier), including his observations of the children at a meeting with himself and Dr. Ackerman. The unusual behavior Collis described

included S.H. going out of his way to tell them that he thought a small scratch on his nose might have been done by his mother, and R.H. being unable to talk to them without pulling up the skirt on the costume she was wearing and talking through the skirt. The court expressed extreme displeasure at, and concern about, both parents insofar as their conduct, both in this litigation and otherwise, appeared to be having a severe negative impact on the children. The court even suggested the possibility of putting the children in foster care.

¶26 Following the foster care discussion, both parents made long and impassioned statements in which each expressed their views of the litigation, their perceptions of the other parent's conduct, their own superior ability to parent and their devotion to their children. Among other things, Myron H. told the trial court:

> You can do whatever you decide to do, that's why you're sitting there, I'm sitting here. You can do whatever you decide to do, but I'll be right because I know that what I'm saying is the truth and I got God on my side…. So if I'm sitting here trying to tell you time after time again, you don't want to see [Myron H.] and they got broken bones. You don't want to see [Myron H.] again and they get injured, or seriously injured or worse. I won't even commit my mind to that.
>
> ….
>
> I'm not here to play any games. You [sic] going to see [Myron H.] again if this woman does something to them.

¶27 The trial court found that "both of you are acting in a way that is just very detrimental to these children," and that Myron H. had aggravated matters by the constant filing of motions. Although reserving a final determination on custody and placement until the already scheduled February 16 hearing on that issue, the court ordered immediate reinstatement of joint custody and equal placement. Collis was directed to arrange the logistics to implement this order, to

coordinate therapy for the children, and to report to the court if either party interfered with the other party's placement.

Refusal to allow placement and the January temporary restraining order

¶28 On January 17, 2006, Collis reported to the trial court that Myron H. refused to turn over the children for placement that day, that Myron H.'s counsel intended to file another petition for a temporary restraining order based upon new abuse claims, this time involving alleged sexual abuse of R.H. by Kelly S.,[15] and, in addition, that Carson had filed a complaint against Collis, as guardian *ad litem*, with the Office of Lawyer Regulation blaming Collis because the newly alleged abuse was claimed to have occurred in unsupervised placement. The new temporary restraining order petition, containing allegations of sexual abuse, was transferred by Judge Cooper to Judge Kuhnmuench for hearing. These allegations were ultimately considered at the already scheduled trial.

February hearings—trial of custody, placement, support and the injunction requests

¶29 The trial began on February 14, 2006. Liegel testified that there was an ongoing investigation about the alleged sexual abuse of R.H., and that he did not want to discuss details because the investigation was ongoing. No one had been charged regarding the sexual assault allegations.

¶30 Liegel repeated prior testimony regarding investigation of Myron H.'s allegation that Kelly S. hit S.H. on the back of the head. Liegel

[15] These allegations were based upon forensic reports of scratches to the child's vaginal area, and the claim that R.H. told Myron H.'s wife that Kelly S. had done this to her. R.H. is variously described as reporting this "in a dream" and "for real."

understood that on a Friday or Saturday, while the family was en route to Chicago, Myron H. discovered the head injury, which he said took place the day before. Myron H. delayed reporting the injury until the following week. Liegel declined to issue charges. Carson then filed a John Doe petition because Liegel did not issue charges against Kelly S. The court in the John Doe proceeding did not order Liegel to issue charges. Carson then began sending Liegel regular emails reporting additional allegations against Kelly S. Liegel referred them to the Milwaukee Police Department for investigation. In addition, Liegel testified that Carson called Liegel's supervisor "and then spoke with [then-Milwaukee County District Attorney] E. Michael McCann himself about the case" before the case was reviewed and that Carson sent Liegel "a flurry of emails." Liegel described why his decisions were difficult in this case:

> Because if the allegations against the mother were legitimate I don't believe you would be shopping for different DA's to look at the case, I don't believe you would be shopping for different judges to handle matters of the proceedings.

¶31 Candyce Reynolds, an experienced investigator with the BMCW, testified that in November 2005, she was assigned to do a home study of the children.[16] Reynolds decided to make an unannounced visit to the children's school, which she did on Monday, January 9, 2006. She did not inform anyone of the visit in advance so that the children would not be biased or coached. She wanted to see the children in a neutral setting, "so that they don't feel intimidated in terms of saying anything in front of any other people." The children had been

[16] She was contacted by Carson in January 2006, before she began the investigation. He faxed her a copy of the child abuse injunction draft he had drawn up and the John Doe hearing testimony.

in Kelly S.'s care for the weekend. At that time, Reynolds was unaware of any sexual abuse allegations.

¶32 Reynolds interviewed the children separately. S.H. described the "whooping" his mom gave him when she had gone to take a shower, then remembered she was going to punish him, came back from the bathroom, and whooped him. S.H. said he was eight when that happened; he was ten when he told Reynolds about it. S.H. denied any whoopings over Christmas, and could not remember the last time he had been whooped. S.H. said he liked being at his dad's but he missed his mom.

¶33 Reynolds also talked with R.H., who said she liked being with her dad and liked living with her mother. The child reported that she "gets spanked" at her dad's, and gets "occasionally whooped" at her mom's. R.H. said the last time she got whooped was "a very long time ago." R.H. got "kind of sheepish" and acknowledged that she knew what her private parts were. The child said "no" when asked if she had ever been touched "in a way that made her feel uncomfortable or hurt her." R.H. also said there had been no whoopings at Christmas.

¶34 Reynolds first learned of the sexual abuse allegations on January 13, four days after she interviewed the children. R.H. was not with her mom from the conclusion of Reynolds' first interview with the child on Monday until she learned on Friday about the alleged sexual assault. Reynolds then observed a "forensic interview" of R.H. conducted by the Child Protection Center (CPC). She also interviewed Myron H., his wife, and Kelly S., and talked with the CPC. Reynolds described observations of R.H. in the interview process which she considered "very unusual," such as R.H. giving "a litany of all [the] things" that have ever

been alleged and being "very unclear about [the] time frame." Reynolds testified that R.H. "couldn't pin down any specific time," and said that the things happened "in a dream and also for real." Reynolds concluded that "it just didn't appear as though she was certain of anything."

¶35 Reynolds acknowledged seeing the medical evidence of some sort of abrasion in the vaginal area, and that R.H. indicated that her mom was the person who did it. Reynolds stated that the fact that a child would name a parent is not necessarily determinative of who caused the injury. Because of the way in which the child disclosed the injury and other information, Reynolds concluded, "I don't know that she was coached or not coached, or whether these things had been talked about for so long and so much that it's difficult for her to even discern what's real and what's not." Reynolds expressed her opinion that "it's possible, certainly" that the child's abrasions could be self-inflicted.

¶36 Reynolds testified that both children denied being afraid at either parent's home, both children described being whooped by Kelly S. with a belt with tiny stars on it, and both said they were spanked by Myron H. Reynolds concluded that, "[b]ased upon the information that I have received to date, it's my belief that either home is appropriate" but noted that could change if there was "something … terribly wrong" with either place.

¶37 R.H.'s teacher testified that Kelly S. was not invited to the parent teacher conferences because she understood the school had been told by dad that there were no rights with the mother, that there was some sort of no contact with the mother. The teacher also said R.H.'s first disclosure to her of bad conduct by her mom occurred on January 16, when they were living with their dad. The children had not been with mom since the teacher first spoke with R.H. R.H. just

interjected, into unrelated conversations which took place the day before the teacher testified, information about additional abuse, about mom going for counseling and about supervised visits.

¶38 A nurse with the Sexual Assault Treatment Center testified that she met Myron H., his wife, S.H. and R.H. on January 12, at night at the Sinai Samaritan emergency room. This was a Thursday, three days after R.H. began her placement with Myron H. The nurse testified to observing "a two millimeter abrasion periurethral" on the labia and a ".75 centimeter linear abrasion and another .75 centimeter linear abrasion that were adjacent to the hymen." The nurse did not believe the abrasions were from the same object, but did conclude that "it seemed to be fresh, since it was very tender, and things in children seem to heal very quickly," which she said meant a healing time of one to three days for a child this age. The nurse opined that the "abrasion to her urethral area could be caused by a child's fingernail" and concluded that it was "possible, but not probable" that the child could have caused the injuries to herself.

¶39 Both Myron H. and Kelly S. testified at length. The testimony will not be repeated here as the trial court summarized their testimony, demeanor and credibility at length in its decision and orders.

¶40 Ghaniya A., Myron H.'s wife, testified about the discovery of the injury to the back of S.H.'s head when he got in the car to go to Chicago for the weekend. During the ride, R.H. told them S.H. had been hit. They pulled over in Gurnee, Illinois, and took pictures of the injury with Myron H.'s cell phone. The family then proceeded on to Chicago. There is no reference to seeking medical treatment for S.H. They went to a studio where Myron H. was to do some recording. At that time, Ghaniya A. said S.H. described to her, and she described

to Myron H., how he got the head injury that day. She also testified S.H. then described the January incident with the towel in boiling water. Ghaniya A.'s summary of what she told Myron H. in S.H.'s presence were S.H.'s disclosures, Myron H.'s reactions and what S.H. said in response to Myron H.'s questions were recorded, but Ghaniya A. says they did not realize that until later. Myron H. later made a CD of this recording which was distributed to various people during the litigation.

¶41 Myron H.'s grandmother described a list of things she said S.H. and R.H. told her about things they said their mother had done to them. If this conduct occurred, it was probably physical or sexual abuse. The grandmother described the statements as all being made for the first time on the weekend before the trial. The reported conduct now included claims of sexual assault of S.H.,[17] which was not previously disclosed and as to which no particular time was described.

The trial court findings

¶42 The trial court specifically found that Liegel and Reynolds were credible witnesses, that S.H. did not recall any whoopings after he was eight (he was ten at the time of the Reynolds' interview), and that at the time of Reynolds' interview in January 2006, "neither of the children … were able to … describe any type of sexual contact or inappropriate contact by anyone, much less their parents."

[17] The new allegation was that S.H.'s mother "pulled his penis" and "twisted him in his chest."

¶43 The trial court found that during the proceedings, Myron H., through his counsel, Carson, shopped for district attorneys (through the attempt to obtain a John Doe investigation when Liegel did not issue criminal charges), shopped for judges (attempting to disqualify Judge Kuhnmuench, and when that was unsuccessful, raising the same factual allegations that were before the court in new petitions for child abuse injunctions and CHIPS petitions; and "warning" both the court and the Children's Court judge of their purported ethical violations), and shopped for guardians *ad litem* (first moving to disqualify the assigned guardian *ad litem*, then when that was unsuccessful, filing an ethical complaint against him with the Office of Lawyer Regulation).

¶44 The trial court found Kelly S. credible, noting that her testimony was "consistent," commented on her demeanor, her responsiveness to questions, and her steady willingness to cooperate with the guardian *ad litem* (although she was not getting what she wanted from the guardian *ad litem*) and her willingness to follow the court's orders. The court noted that Kelly S. "didn't shrink from her responses … about her lack of diligence … getting the … proper immunizations for the children," "didn't shirk from her bad behavior as it related to the type of discipline that she was using with the children.… [S]he didn't even try to diminish that," and that "Mom has gone through counseling, the court has reviewed [her therapist's] report to the court, and he indicates that she is [not] a threat to her children or anyone else."

¶45 The trial court discussed Myron H.'s testimony as "disjointed, his recollections were vague … many of his responses non responsive.… He continued to respond even though … there was no question on the table. He appeared evasive." The court found particularly damaging to Myron H.'s credibility the fact that he was aware of the allegations about the boiled towel on

July 30, that he told his lawyer about it by phone on July 31, and by e-mail on either July 31 or August 1, but did not call the police immediately. Instead, Myron H. waited thirty-three days, until the September 2 child abuse restraining order request, to bring it back into the court system, thereby defeating Kelly S.'s overnight placement with the children the next day, and frustrating the trial court's order. Myron H. did not tell the guardian *ad litem* about the allegation, nor did he advise the court when he appeared at the August 8 hearing. The trial court concluded that "[a]ll of this goes directly to the credibility of the things that [Myron H.] is saying … [and] to whether I believe that he's reporting correctly what the children are telling him." The court described this type of conduct as "a recurring theme" throughout this case and concluded that Myron H. is not credible.

¶46 The trial court found that:

- Myron H. is controlling the flow of information.

- The allegations are always coming when the children are in his and his wife's care.

- The allegations are developed and communicated to his attorney and then to law enforcement.

- Kelly S. has been the victim of this.

- Kelly S.'s name has been trashed, she has lost lots of time from work and has suffered financially.

- Both Collis and the assistant district attorney have been the subject of "unbelievably cruel … and I believe absolutely inaccurate, untruthful allegations" about their conduct.

- All this was done and contrived to interfere with the children's relationship with their mother.

- He is attempting to use the system to alienate his children from one of their parents.

- Myron H.'s conduct is absolutely contrary to the best interests of the children.

¶47 The trial court awarded sole custody and primary placement to Kelly S., provided alternate supervised placement with Myron H. for an hour each week, set child support based on twenty-five percent of Myron H.'s gross income which the court found to be $30,000 per year, ordered continued therapy for Kelly S. and the children, directed the guardian *ad litem* to remain involved to report the final results of the ongoing criminal investigation, and denied the child abuse injunction.

STANDARD OF REVIEW

¶48 Custody and placement decisions are committed to the trial court's discretion, and we sustain them on appeal when the court exercises its discretion based upon the correct law and the facts of record, and arrives at its decision by employing a logical rationale. *See* ***Koeller v. Koeller***, 195 Wis. 2d 660, 663-64, 536 N.W.2d 216 (Ct. App. 1995). Whether the trial court properly exercised its discretion is a question of law which we review *de novo*. ***Seep v. Wisconsin Pers. Comm'n***, 140 Wis. 2d 32, 38, 409 N.W.2d 142 (Ct. App. 1987).

¶49 The determination of

> [w]hether to grant an injunction is left to the discretion of the judge who hears the petition. But the judge may not grant the injunction unless the judge "finds reasonable grounds to believe that the respondent has engaged in … or may engage in, abuse of the child victim."

M.Q. v. Z.Q., 152 Wis. 2d 701, 708, 449 N.W.2d 75 (Ct. App. 1989) (citation omitted; ellipsis in original). Under WIS. STAT. § 813.122(5)(a), "[w]hether such reasonable grounds exist is a question of mixed fact and law. We will not set aside the factual portion of the judge's answer to the question unless it is clearly erroneous." ***M.Q.***, 152 Wis. 2d at 708 (citing WIS. STAT. § 805.17(2)). We independently review the trial court's conclusion, based upon the established facts, to determine whether such reasonable grounds exist. *See* ***Department of Revenue v. Exxon Corp.***, 90 Wis. 2d 700, 713, 281 N.W.2d 94 (1979) (mixed question of fact and law requires finding as to what actually happened, followed by a conclusion of whether the facts satisfy a legal standard), *aff'd*, 447 U.S. 207 (1980).

¶50 The trial court "is the ultimate arbiter of the credibility of the witnesses." ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). This includes the testimony of expert witnesses. ***State v. Kienitz***, 227 Wis. 2d 423, 440, 597 N.W.2d 712 (1999). Evidence supporting the trial court's findings "need not constitute the great weight or clear preponderance of the evidence and reversal is not dictated [even] if there is evidence to support a contrary finding." ***Klein-Dickert Oshkosh, Inc. v. Frontier Mortgage Corp.***, 93 Wis. 2d 660, 663, 287 N.W.2d 742 (1980).

¶51 "The fact that the [trial] court failed to make the findings necessary ... does not prevent this court from reviewing the record to determine whether the

evidence supports the [trial] court's decision." ***Davidson v. Davidson***, 169 Wis. 2d 546, 558, 485 N.W.2d 450 (Ct. App. 1992); *see* ***Dodge v. Carauna***, 127 Wis. 2d 62, 67, 377 N.W.2d 208 (Ct. App. 1985) (reviewing court may search record for evidence sustaining trial court's decision); *see also* ***State v. Walstad***, 119 Wis. 2d 483, 515, 351 N.W.2d 469 (1984) (the failure to make required findings is not fatal when "findings can be gleaned from a trial judge's decision"); ***Hintz v. Olinger***, 142 Wis. 2d 144, 149, 418 N.W.2d 1 (Ct. App. 1987) (when a trial court fails to make express findings of fact, we may assume that a missing finding was determined in favor of the judgment).

DISCUSSION

1. The child abuse injunction

¶52 A child abuse[18] injunction under WIS. STAT. § 813.122 is something a court *may*, but is not required to, grant if, after a hearing, the court finds that "the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim,"[19] and the court may "provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised."[20] In ***Scott M.H. v. Kathleen M.H.***, 218 Wis. 2d 605, 612, 581 N.W.2d 564 (Ct. App. 1998), we affirmed a trial court's decision not to grant an injunction although we found that

[18] WISCONSIN STAT. § 48.02(1)(a), as relevant here, defines "Abuse" to a child as "Physical injury inflicted on a child by other than accidental means."

[19] WISCONSIN STAT. § 813.122(5)(a)3.

[20] WISCONSIN STAT. § 813.122(5)(b).

grounds for an injunction existed. The trial court in ***Scott M.H.*** stated: "The difficult thing about this case to the court is … the restraining order … is a complete bar restraining the mother from going upon the premises where the child lives, and all sorts of things…. I don't think that is necessary." ***Id.*** The trial court went on to dismiss the injunction petition, electing to address the alleged abuse in the context of the parties' divorce action. ***Id.*** We held that in an injunction hearing "the trial court has the authority to address custody and placement issues as they become pertinent to a hearing under § 813.122." ***Scott M.H.***, 218 Wis. 2d at 612.

¶53 There are ample facts in the record to support the trial court's decision that the injunction should be denied. First, the trial court concluded that Myron H. was not a credible witness as to any of the abuse he alleged, that all of the abuse allegations occurred while the children were with him, and that most were unsubstantiated after investigation by the BMCW. The sexual assault claim, although still under investigation, had not been reasonably linked to Kelly S. as it first became evident while the child was with Myron H. and the nurse who examined R.H. testified that the fresh injury probably would have healed within three days; R.H. had been with Myron H. during the past three days. In addition, the court inferred that Myron H. was coaching the children and/or prompting their statements. This is a reasonable inference from the facts previously discussed and one that the trial court could, and by implication did, draw.

¶54 Further, had the trial court believed Kelly S. was responsible for any of the abuse alleged, an injunction is not mandatory. *See* ***id.*** Myron H.'s brief before this court essentially disputes the trial court's finding that he was incredible, and argues that the trial court erred in rejecting his witnesses and in believing the witnesses called by the guardian *ad litem* or Kelly S. He quotes

liberally from the children's great-grandmother's testimony, which he claims proves "horrendous" crimes. We agree with the trial court's observations that if "horrendous" or "egregious" crimes actually occurred, the BMCW, the mental health professionals, the police and district attorney, or the Children's Court judge who presided over the John Doe investigation request would certainly have proceeded. Apparently all of these individuals and agencies were unpersuaded by Myron H.'s editorial prose and hyperbole, and each separately concluded that reliable facts to establish probable cause to believe Kelly S. was responsible for the underlying claimed abuse did not exist. In addition, particularly in the context of the pattern in this case, the trial court is not required to credit a new claim of abuse,[21] allegedly first disclosed by the children immediately prior to trial (and, again, not reported to the police, the guardian *ad litem* or anyone except Myron H.'s attorney). We conclude that the record amply supports the trial court's conclusions as to credibility and inferences therefrom which are necessary to sustain the conclusion that the child abuse injunction should be denied.

2. Custody and placement

¶55 Courts have decision-making authority on behalf of a child.[22] How custody is to be determined is guided by statutory factors,[23] but it is fundamentally

[21] The allegation is that, at an unspecified time, S.H.'s mother "pulled his penis" and "twisted him in his chest." It was claimed that S.H. revealed this sometime during the weekend before the trial.

[22] *See* WIS. STAT. § 767.01(2) and (2m).

[23] WISCONSIN STAT. § 767.41, entitled "Custody and physical placement" states, in pertinent part:

> **(1)** GENERAL PROVISIONS. (a) Subject to ch. 822, the question of a child's custody may be determined as an incident of any

(continued)

a discretionary decision by the court. Placement is the physical location of the children from time to time.[24] Likewise, how placement is to be determined is guided by statutory factors,[25] but also is in the trial court's discretion. *See* ***Koeller***,

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> action affecting the family or in an independent action for custody.
>
> ….
>
> **(2)** CUSTODY TO PARTY; JOINT OR SOLE. (a) Subject to pars. (am) to (e), based on the best interest of the child and after considering the factors under sub. (5) (am), subject to sub. (5) (bm), the court may give joint legal custody or sole legal custody of a minor child.
>
> (am) Except as provided in par. (d), the court shall presume that joint legal custody is in the best interest of the child.
>
> (b) Except as provided in par. (d) and subject to par. (e), the court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:specifically finds any of the following:
>
> ….
>
> b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.
>
> c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody.

[24] WISCONSIN STAT. § 767.41(5) and (6).

[25] WISCONSIN STAT. § 767.41(4) states:

> **(4)** ALLOCATION OF PHYSICAL PLACEMENT. (a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.
>
> 2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the

(continued)

195 Wis. 2d at 663. In determining both custody and placement, the trial court is directed to consider the specific factors set out in WIS. STAT. § 767.41(5)(am), which are relevant to the particular case. As relevant to this case, we discuss the record which supports these statutory factors.

¶56 *The wishes of the child's parent or parents.*[26] Both parents want primary placement of the children. This factor does not weigh towards either parent.

¶57 *The wishes of the child.*[27] The children want to be with both parents. This factor does not weigh towards either parent.

¶58 *The amount and quality of time that each parent has spent with the child in the past.*[28] Each parent has had primary placement. There are positive and negative factors about the quality of time each parent has had with the children. Prior to these proceedings, Kelly S. was the children's primary caregiver. Myron H. lived with them for only a short time. At the beginning of these proceedings, the children's time was divided approximately evenly between the parents. However, because of Myron H.'s repeated abuse allegations, Kelly S.'s placement was severely restricted during most of these proceedings.

> factors in sub. (5) (am), subject to sub. (5) (bm). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

[26] *See* WIS. STAT. § 767.41(5)(am)(1).

[27] *See* WIS. STAT. § 767.41(5)(am)(2).

[28] *See* Wis. STAT. § 767.41(5)(am)(4).

¶59 *The child's adjustment to the home, school, religion and community.*[29] The children have been moved from one parent to the other, and from one school to another, repeatedly during this litigation. Except for the abuse allegations repeatedly raised by Myron H., there is no evidence that the children were not well-adjusted to their mother's home.

¶60 *Whether the mental or physical health of a party … negatively affects the child's intellectual, physical, or emotional well-being.*[30] Neither adult is diagnosed with any mental health condition or physical condition that negatively affects the children. The only mental health professional involved with the children opined that if Myron H. did not end his "crusade" to discredit Kelly S., then Myron H.'s placement should be reduced. Kelly S.'s therapist found that she was not "a threat to her children or anyone else." The court reasonably concluded that Myron H.'s "crusade" created a situation that was not in the best interests of the children.

¶61 *The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.*[31] The history of this case demonstrates Myron H.'s willingness to use any possible means to interrupt the predictability of the children's placement with Kelly S. The trial court's orders during the pendency of these proceedings were obviously designed to promote stability and predictability for the children and to provide substantial placement for Kelly S. while Myron H.'s abuse allegations were investigated. However, as

[29] *See* WIS. STAT. § 767.41(5)(am)(5).

[30] *See* WIS. STAT. § 767.41(5)(am)(7).

[31] *See* WIS. STAT. § 767.41(5)(am)(8).

we have seen, Myron H.'s conduct thwarted the court's efforts and its orders. The court could reasonably conclude that Myron H. could not be relied upon to promote regularity and stability of placement schedules.

¶62 *The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party; and whether each party can support the other party's relationship with the child.*[32] The trial court repeatedly found that Myron H. demonstrated throughout this case that he would do anything to defeat Kelly S.'s access to their children, that he would use leading questions to generate accusations of grossly improper conduct by their mother by the children (which he recorded, duplicated on CDs, and distributed during these proceedings), and that he would manipulate the court system by repeated eleventh-hour court filings raising abuse claims already resolved against him. His conduct in this case is overwhelming evidence that he cannot support Kelly S.'s relationship with her children.

¶63 It is hard to imagine a more blatant example of forum shopping, of attempts to avoid compliance with court rulings a litigant considers unfavorable, or of attempts to intimidate judges and attorneys serving as guardians *ad litem* than we have observed in the voluminous record of this case. Unfortunately, Myron H. also used his children to conduct this crusade. Myron H. subjected his children to multiple BMCW interviews, required a sexual assault physical examination of his six-year-old daughter, used recordings of the children saying terrible things about their mother in response to his leading questions, and

[32] Although these are separate statutory factors, *see* WIS. STAT. § 767.41(5)(am)(10) and (11), we discuss them together because, on the facts in this case, they are inextricably intertwined.

subjected one or both of the children to repeated interviews by police and prosecutors. Based upon Myron H.'s behavior during the entire course of this action, it was not unreasonable for the trial court to conclude that he would continue to refuse to cooperate with Kelly S. on any matters involving the children, and that he would not only not support Kelly S.'s relationship with her children, but that he would continue to do everything possible to interfere with that relationship.

¶64 *Whether there is evidence that a party engaged in abuse, as defined in WIS. STAT. § 813.122(1)(a), of the child, as defined in WIS. STAT. § 48.02(2).*[33] It is on this single factor that Myron H. bases his claim that he should have primary placement. Kelly S. disciplined the children inappropriately by using a belt for "whoopings." (Myron H. disciplined them by spanking with his hand.) Kelly S. acknowledged that she was raised with that form of discipline. She cooperated in therapy and dealt with physical discipline issues in therapy, so that her therapist stated and the trial court found that she is not a danger to her children. The history of the case, and her therapist's report, support the trial court's findings.

¶65 *The reports of appropriate professionals if admitted into evidence.*[34] Ackerman is the only professional who met with both parents and the children. No mental health professional involved with the children recommended either Myron H. or Kelly S. as the preferred parent. Dr. Ackerman recommended substantial placement with both parents, described Myron H.'s inappropriate crusade against Kelly S., and recommended placement of the offending parent be

[33] *See* WIS. STAT. § 767.41(5)(am)(12).

[34] *See* WIS. STAT. § 767.41(5)(am)(15).

reduced if there was interference by one with the relationship of the other with the children. The trial court reasonably credited those opinions and, based upon Myron H.'s repeated interference with the court's efforts to provide substantial placement to both parents, could reasonably conclude that transferring both custody and placement of the children to Kelly S. was the only way to insure Kelly S. would have substantial time with the children.

¶66 We affirm the trial court's award of sole custody to Kelly S. We affirm the trial court's award of primary placement to Kelly S.

¶67 As to the portion of the decision which limits Myron H.'s supervised alternate placement to one hour per week, we have reviewed the record but are unable to locate trial court findings, express or implied, in support of such minimal alternate placement. We are unable to locate facts in the record upon which the trial court might have reasonably based its conclusion that such limited time was an appropriate alternate placement in view of the court's repeated expressed interest in providing quality time for the children with each parent. Consequently, we reverse the order as to alternate placement and remand for the trial court to either make findings necessary to support the stringent time limitation imposed on alternate placement, or to modify Myron H.'s placement time based upon such statutory factors as the court, in the exercise of its discretion, considers relevant.

By the Court.—Order affirmed in part; reversed in part; and cause remanded with directions.

Not recommended for publication in the official reports.