COURT OF APPEALS
DECISION
DATED AND FILED

February 5, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2638 **Cir. Ct. No. 2005FA135**

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

IN RE THE MARRIAGE OF:

TARA JEAN FLASCHENRIEM,

PETITIONER-RESPONDENT,

V.

SCOTT OWEN FLASCHENRIEM,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Scott Flaschenriem appeals that portion of a divorce judgment that determined physical placement of his child. Scott argues

the circuit court erroneously exercised its discretion when it made the placement determination. We affirm.

¶2 During their marriage, Scott and Tara Flaschenriem had one child, Lauren, who was three years old at the time of trial. The first temporary order awarded Tara primary placement. Placement converted to each parent having alternating-week placement of Lauren. Consistent with the recommendations of the guardian ad litem, the court concluded after the final hearing that it was in Lauren's best interests to be primarily placed with Tara. The court placed Lauren with Scott every other weekend, three weeks each summer and some holidays.

¶3 Physical placement determinations are committed to the sound discretion of the trial court. *See* ***Bohms v. Bohms***, 144 Wis. 2d 490, 496, 424 N.W.2d 408 (1988). The exercise of discretion requires that the trial court consider the facts of record in light of the applicable law to reach a reasoned and reasonable decision. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). We will not upset the trial court's exercise of discretion unless it clearly misused that discretion. *See* ***Bohms***, 144 Wis. 2d at 496.

¶4 Here, we are satisfied the court considered the factors required by statute to be considered. *See* WIS. STAT. § 767.41(5).[1] Consistent with the guardian ad litem's conclusion that it would be in the best interests of the child to be placed primarily with her mother, the court noted that Tara provided the majority of Lauren's care and rearing. As a result, a closer bond had developed

[1] References to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted. WISCONSIN STAT. ch. 767 was substantially renumbered and revised by 2005 Wis. Act 443.

between mother and daughter. The court also recognized that Tara had more child care options available to her, and Tara's extended family was close to Tara and available to provide support when needed as well. The court concluded Scott's interaction with Lauren was limited. Until the divorce commenced, Scott was far less involved in Lauren's day-to-day care. The court also attributed the parties' inability to communicate with Scott. Another factor the court specifically noted were Scott's "social, moral values." The court noted anger, profanities, pornography on the computer, pornographic magazines, and "references to sex toys…." The court properly noted that exposing a minor child to explicit sexual material is clearly prohibited by law under WIS. STAT. ch. 948, and while the court did not view the material, it noted that "certainly the inference could be drawn that the type of material would not be healthy for a young child to be exposed to."

¶5 We see no reason to disturb the court's decision. While the reasons for the court's ultimate determination may not have been exhaustive, they need not have been. The court's decision, as a whole, examined the facts, considered the appropriate factors and reached a reasoned and appropriate placement decision. The court did not erroneously exercise its discretion.

¶6 Scott next argues the circuit court failed to follow WIS. STAT. § 767.41(6)(a). That statute provides: "If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interests of the child." Here, while the court did not state its findings in writing, any error was harmless. When the court states it findings orally, it would perhaps be better practice for the court to incorporate its oral findings into the final order or judgment, directing the court reporter to prepare a transcript of the relevant portions of the oral decision and then attaching the transcript to the final order or judgment so the reasons are "in writing."

However, in this case we conclude the transcript of the court's oral decision, which has now been produced, fulfills the requirements of the statute.

¶7 Finally, we note that our review in this case has been unduly complicated by the parties' insistence upon re-arguing the evidence on appeal. Given the animosity between the parties, the circuit court in this case was presented with a difficult task. The task on appeal was made no less difficult by the parties' insistence upon portraying the facts as if restating closing arguments. In this regard, we cite a statement in a case written over three decades ago: "Unfortunately, too many divorced parents 'allow the desire to nurture their personal animosities to overshadow the welfare of the child….'" ***Weichman v. Weichman***, 50 Wis. 2d 731, 736, 184 N.W.2d 882 (1971).

By the Court.—Judgment affirmed.

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