COURT OF APPEALS
DECISION
DATED AND FILED

July 16, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 01-2436 Cir. Ct. No. 90FA903638

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

IN RE THE MARRIAGE OF:

JAN RAZ,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

MARY BROWN,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from orders of the circuit court for Milwaukee County: MICHAEL GUOLEE, Judge.[1] *Affirmed; reversed and cause remanded with directions*.

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

¶1 PER CURIAM. Mary Brown appeals from the trial court's orders: modifying the primary physical placement of her two daughters and vacating the then-existing child-support order because of the change in placement. Brown alleges that the trial court erroneously exercised its discretion when it modified physical placement because: (1) there was insufficient evidence to rebut the statutory presumption that continued placement with the parent with whom the child resides for the greater period of time is in the best interests of the child; (2) there was insufficient evidence to support the court's finding that there was a substantial change in circumstances; and (3) the trial court was more concerned with ending litigation than with the children's best interests. Brown also claims that the trial court erred when it: (1) denied her alleged motion for a retroactive increase in child support; (2) vacated the then-existing child-support order because, under the facts of this case, a change in physical placement is not a substantial change in circumstances warranting a modification of support; and (3) found her in contempt for violating an order to attend family therapy. We affirm.

[1] Mary Brown appeals from two orders modifying physical placement and child support, entered on May 30, 2001, and July 31, 2001. Jan Raz cross-appeals from the orders entered on May 30, 2001, and July 31, 2001, and from an order denying his motion to preclude the appointment of a guardian *ad litem*, entered on April 14, 1999.

¶2 Jan Raz, the children's father, cross-appeals from the trial court's orders modifying physical placement and child support and from an order denying his motion challenging the constitutionality of Wisconsin child-support guidelines. Raz claims that: (1) the trial court erred when it denied his motion because provisions of the Wisconsin child-custody statutes, enumerated below, violate the Fourteenth Amendment of the United States Constitution; and (2) the trial court erred when it did not retroactively modify the then-existing support order because the order violated the "fairness criteria" of WIS. STAT. § 765.001(2) and (3), as well as the Fourteenth Amendment of the United States Constitution. Brown did not file a response brief. Thus, we summarily grant Raz the relief that he requests on his cross-appeal without reaching the merits of his claims. *See* WIS. STAT. RULE 809.21. Accordingly, we affirm on the appeal and summarily reverse on the cross-appeal and remand with directions.

I. BACKGROUND

¶3 Jan Raz and Mary Brown divorced on December 12, 1991. The marital settlement agreement provided that they would have joint custody of their children, Kelly and Cathleen, but that Brown would have primary physical placement of the children. The agreement also provided that Raz would pay $2100 per month to Brown in child support.

¶4 In April of 1995, Raz filed a motion to modify child support. On June 7, 1996, the trial court ordered Raz to pay $1806 per month. Raz appealed and we affirmed. *See* ***Raz v. Brown***, 213 Wis. 2d 296, 570 N.W.2d 605 (Ct. App. 1997).

¶5 On October 22, 1998, Raz filed a motion to modify the June 7, 1996, child-support order. Raz asked the Family Court Commissioner to declare that the

"per se" application of the Wisconsin child-support guidelines was unconstitutional and to modify his child-support obligation accordingly. On January 4, 1999, Brown filed a motion to modify physical placement. Brown claimed that a change in physical placement was warranted because there was a substantial change in circumstances because of the children's ages and the amount of time that had lapsed since the entry of the divorce judgment. The Commissioner denied both motions. Raz and Brown filed motions for *de novo* review.

¶6 Raz filed a brief in support of his motion to modify child support on February 25, 1999. Raz claimed that the Wisconsin child-support guidelines were unconstitutional and that there was a substantial change in circumstances warranting a modification of child support based upon changes in his income and the children's expenses. Raz also filed a motion on June 9, 1999, asking the court to find Brown in contempt for allegedly failing to participate in court-ordered family therapy.

¶7 Raz filed a counter-motion to modify physical placement on July 6, 1999. He claimed that he was entitled to at least equal placement and that a change in placement was warranted by a substantial change in circumstances. Specifically, Raz claimed that a substantial change in circumstances existed because Brown: interfered with his relationship with the children, was hostile toward Raz in front of the children, refused to communicate with Raz regarding the children, refused to support family therapy, and filed a motion to reduce the children's placement with him. Raz also claimed that increasing the children's placement with him was in their best interests because it would allow the children to develop strong relationships with both parents.

¶8 After hearing extensive testimony on the issues of placement and child support, the trial court modified physical placement and child support in an oral decision on April 2, 2001, and in an order issued on May 30, 2001.[2] The court modified physical placement from primary placement with Brown to an equal shared placement and vacated the June 7, 1996, child-support order based upon the change in placement.[3] The court also found Brown in contempt for "obstruct[ing] the therapeutic process by canceling therapy" and ordered her to participate in future therapy.

¶9 Brown filed a motion for reconsideration. The trial court denied the motion.

II. ANALYSIS

A. The Appeal

1. Physical Placement

¶10 First, Brown alleges several reasons why the trial court erroneously exercised its discretion when it modified the children's physical placement. The trial court has "wide discretion" in making physical placement and custody determinations. ***Larson v. Larson***, 30 Wis. 2d 291, 303, 140 N.W.2d 230, 237 (1966). We review a trial court's decision to modify custody for an erroneous

[2] The trial court held hearings on the issue of physical placement on September 21, 2000, October 12, 2000, and January 31, 2001. The trial court held hearings on the issue of modification of child support on September 30, 1999, November 11, 1999, and December 16, 1999.

[3] The trial court found that there was no "evidence of a substantial change in circumstances as to finances during the interim of the case" and ordered that "each parent shall be responsible for the children's expenses while in his or her care and for one-half of the tuition expenses."

exercise of discretion. ***Licary v. Licary***, 168 Wis. 2d 686, 692, 484 N.W.2d 371, 374 (Ct. App. 1992). We will affirm a discretionary determination if it appears from the record that the trial court: (1) examined the relevant facts; (2) applied a proper standard of law; and (3) using a demonstrative rational process, reached a conclusion that a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414–415, 320 N.W.2d 175, 184 (1982).

¶11 In this case, WIS. STAT. § 767.325(1)(b) (1999-2000) sets forth the standard for the modification of physical placement.[4] *See* ***Wiederholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442, 444 (Ct. App. 1992). Section 767.325(1)(b) provides, as relevant:

> **Revision of legal custody and physical placement orders.**
>
> ….
>
> (b) *After 2-year period.* 1. Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:
>
> a. The modification is in the best interest of the child.
>
> b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
>
> 2. With respect to subd. 1., there is a rebuttable presumption that:

[4] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

> a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
>
> b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

¶12 First, Brown alleges that the trial court erroneously exercised its discretion because there was insufficient evidence to rebut the presumption under WIS. STAT. § 767.325(1)(b)2b that the children's primary placement with Brown, the parent with whom the children resided with for the greater period of time, was in the best interests of the children. Specifically, she claims that the trial court did not adequately state its reasons for rejecting the court-appointed psychologist's and the guardian *ad litem*'s recommendation that primary physical placement should remain with Brown. We disagree.

¶13 The weight to be accorded testimony is peculiarly within the province of the trial court. ***Wiederholt***, 169 Wis. 2d at 533, 485 N.W.2d at 445. Furthermore, when more than one reasonable inference may be drawn from the credible evidence, we accept the inference drawn by the trial court. ***Brandt v. Witzling***, 98 Wis. 2d 613, 619, 297 N.W.2d 833, 836 (1980).

¶14 Here, the trial court heard testimony from Dr. Marc Ackerman, a court-appointed psychologist. Dr. Ackerman recommended joint custody, with primary placement with Brown and "a liberal placement period" with Raz. Dr. Ackerman opined that Raz could not have a healthy relationship with the children as long as the children lived with Brown: "I don't think that the children can survive, if you will, in their mother's household and be positive towards their father." He also acknowledged on cross-examination that while Raz was

"myopic" in his pursuit of child-support issues, Raz cared about his daughters and that Brown was "alienating" the children from Raz.

¶15 The trial court also considered a letter from Susan A. Hansen, an attorney the trial court appointed to be the children's guardian *ad litem*. Hansen urged the court to continue the placement schedule during the school year, with a change consisting of alternating weeks in the summer. Hansen made this recommendation because the "parents clearly do not have the necessary level of communication and cooperation" to make a flexible placement schedule work. She also commented that both parents were responsible for damaging the other parent's relationship with the children: "The sad reality is that Mary Brown's anger and negativity and Jan Raz's relentless pursuit of a law change are both destructive and damaging to their daughters…. It is actually painful to me to see the toxic results of these parental behaviors manifested in the children since the original granting of the divorce in 1991."

¶16 After considering Dr. Ackerman's testimony and Hansen's letter, the trial court ordered alternating periods of placement on a weekly basis. The trial court found, among other things, that: (1) "There is a lack of communication between the parents. When disputes arise and parents cannot communicate and reach agreement, the courts must intervene"; (2) "The petitioner's personality is emotionless and humorless, and his single-mindedness has been destructive to his relationship with the children"; (3) "The respondent is an angry person. Her anger has affected the children and impacted upon their relationship with their father"; and (4) "Both parties love the children and are able to make proper decisions about their present and future needs." The trial court thus concluded that "[i]t is in the *best interests* of the children to allow them to benefit from both of their parents for

the short period of time they have left until they are adults … [because] that will stop these constant fights I think." (Emphasis added.)

¶17 Dr. Ackerman's testimony and Hansen's letter support the trial court's findings and conclusion that a shared placement arrangement is in the best interests of the children. Although Dr. Ackerman and Hansen did not recommend a change in primary placement, the evidence presented supports the inference that shared placement is in the children's best interests. *See* ***Brandt***, 98 Wis. 2d at 619, 297 N.W.2d at 836. The trial court had evidence that both parents loved and cared for the children, but that the children could not maintain healthy relationships with both parents as long as they were living primarily with Brown. The trial court also had evidence that the children were victims of the parents' constant altercations, that the parents could not effectively communicate regarding the needs of the children, and that the fighting between the parents was not likely to end under the then-current placement situation. Accordingly, there was ample evidence to support the trial court's findings and to rebut the statutory presumption that continued primary placement with Brown was in the best interests of the children.[5]

¶18 Second, Brown alleges that there was insufficient evidence to support the trial court's finding that there was a substantial change in circumstances. We disagree.

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[5] Although the trial court did not make an explicit finding of fact on the issue of whether the statutory presumption that continued physical placement with Brown, the parent with whom the children resided for the greater period of time, was in the best interests of the children, it implicitly found that this presumption was rebutted. *See* ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 162 Wis. 2d 296, 311–312, 470 N.W.2d 873, 878–879 (1991) (a trial court's finding of fact may be implicit from its ruling). It heard testimony that supported an inference that the current placement situation was not in the best interests of the children and it found that "[i]t is in the *best interests* of the children to allow them to benefit from *both* of their parents for the short period of time they have left until they are adults." (Emphasis added.)

¶19 The term substantial change in circumstances "requires that the facts on which the prior order was based differ from the present facts, and the difference is enough to justify the court's considering whether to modify the order." ***Licary***, 168 Wis. 2d at 692, 484 N.W.2d at 374. Here, the trial court found that:

> Based upon the increased age of the children since the date of all the other orders, this Court has, I find there is a, somewhat change in circumstances, at least in the philosophy from this Court and after viewing the activities of the parties and learning the underpinnings of their attitudes and what they are doing in regards to these children. I think there is a need for a change. And there is a change in circumstances.

These findings are sufficient to support the conclusion that the facts on which the 1991 placement agreement was based were different from the present facts. First, there was a substantial increase in the children's ages. Kelly was seven and Cathleen was five when the original placement order was entered. Kelly was seventeen and Cathleen was fourteen when the trial court modified the placement order.[6]

¶20 Second, and more importantly, the trial court found that there was a change in circumstances because of changes in the parents' attitudes. From 1991 to 1994, neither parent contested the placement of the children. Then, in April of 1995, Raz filed a motion to modify child support, which triggered years of bitterly contested litigation. As discussed above, this constant fighting had a substantial negative impact upon the children. Thus, there is sufficient evidence to support the trial court's finding that there was a substantial change in circumstances. *See* WIS. STAT. § 767.24(5)(dm), (fm), and (g) (factors that the trial court should

[6] Kelly was born on January 15, 1984, and Cathleen was born on September 25, 1986. The trial court modified physical placement on April 2, 2001.

consider in making custody and physical placement determinations include the age of the child, the cooperation and communication of the parties, and whether each party can support the other party's relationship with the child).[7]

¶21 Moreover, Brown agreed that there was a substantial change in circumstances when she filed the January 4, 1999, motion to modify placement: "[B]ased upon the children's age and the amount of time which has lapsed since the Judgement [sic] of Divorce, there is a substantial change in circumstances warranting a Modification of Current Placement." Thus, Brown cannot backtrack now and claim that there is no evidence to support a substantial change in

[7] WISCONSIN STAT. § 767.24(5) provides, as relevant:

> **(5)** FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:
>
> ….
>
> (dm) The age of the child and the child's developmental and educational needs at different ages.
>
> ….
>
> (fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
>
> (g) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

circumstances simply because the trial court did not decide the placement issue in her favor. Accordingly, the trial court did not erroneously exercise its discretion when it found that there was a substantial change in circumstances.

¶22 Finally, Brown claims that the trial court erroneously exercised its discretion when it modified physical placement because it was more concerned with ending the litigation than with the best interests of the children. We disagree.

¶23 First, it is apparent from the discussion above that the trial court focused on the best interests of the children when it modified physical placement. Indeed, at a hearing on the motion for reconsideration, the trial court affirmed: "[A]fter extensive testimony, and finding that in equity and fairness and the best thing for these children and the lesser extent for the parents, the Court is not that concerned about the parents. *It is concerned about the best interests of these children is to have shared placement.*" (Emphasis added.) Thus, the trial court was very clear that it was concerned with ending the constant fighting between the parents because it was unhealthy for the children, not because it wanted to end the litigation.

¶24 Second, as we also noted above, the relationship between the parents is a legitimate factor for the trial court to consider when making a placement determination. *See* WIS. STAT. § 767.24(5)(fm) and (g). As we have already pointed out, the trial court had ample evidence that the parents failed to communicate with each other regarding the needs of the children and that each parent was negatively affecting each child's relationship with the other parent. Accordingly, the trial court did not erroneously exercise its discretion when it ordered a change in the primary placement of the children.

2. Child Support

¶25 Brown makes two allegations regarding child support. First, Brown contends that the trial court erroneously exercised its discretion when it denied her alleged motion to retroactively increase child support. Brown claims that the trial court never addressed her request in its findings, "constitut[ing] a denial of [her] motion."

¶26 We decline to address this issue, however, because it is inadequately briefed. An appellate brief "must contain … [an] argument on each issue … with citations to the authorities, statutes and parts of the record relied on." WIS. STAT. RULE 809.19(1)(e). Brown failed to provide record citations showing where she made a request for a retroactive increase in child support.[8] Thus, we do not know if this issue was properly raised before the trial court. Accordingly, we decline to address this issue here. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992) ("An appellate court's review is confined to those parts of the record made available to it.").

¶27 Second, Brown claims that the trial court erroneously exercised its discretion when it vacated the June 7, 1996, support order. Brown claims that the

[8] Moreover, our review of the record did not reveal a request by Brown for an increase in child support. In a proposed "findings and order," Brown alleged that "[t]he increase in petitioner's income constitutes a substantial change in circumstance" and proposed that the "petitioner shall pay the respondent [an increase in] child support in the amount of $2,133.40 per month retroactive as of October 22, 1998, the date of filing of the parties motions." This, however, is not enough to trigger trial court review of the issue. *See* WIS. STAT. RULE 802.01(2) ("An application to the court for an order shall be made by motion.").

Furthermore, in her brief, Brown claimed that on December 24, 1998, she filed a counter-motion requesting a modification in physical placement and an increase in child support. The record clearly shows that in a motion dated December 24, 1998, and file-stamped January 4, 1999, Brown only made a request to modify physical placement–there is no request for an increase in child support. We admonish Brown's attorney for misrepresenting the record.

trial court erred because, under the facts of this case, a change in placement is not a "substantial" change in circumstances. Brown thus claims that the trial court should have heard additional financial testimony to determine the financial impact of the change in placement before vacating the order. We disagree.

¶28 A child-support order may be revised only upon a finding of a "substantial change in circumstances." WIS. STAT. § 767.32(1)(a). There are four factors that may constitute a substantial change in circumstances: (1) a change in the payer's income where the amount of child support is not expressed as a percentage of income; (2) a change in the child's needs; (3) a change in the payer's earning capacity; or (4) any other factor the court deems relevant. WIS. STAT. § 767.32(1)(c)1-4.

¶29 We review a trial court's determination of whether there was a substantial change in circumstances as a mixed question of fact and law. ***Rosplock v. Rosplock***, 217 Wis. 2d 22, 32–33, 577 N.W.2d 32, 37 (Ct. App. 1998). We will uphold the trial court's findings regarding what changes have occurred in the circumstances of the parties unless those findings are clearly erroneous, but we will independently consider the legal significance of those changes. ***Id.***, 217 Wis. 2d at 33, 577 N.W.2d at 37.

¶30 In this case, at a hearing on Brown's motion to reconsider, the trial court determined that: "there was a substantial change in circumstances because of the [change] in placement … [t]hat does in fact affect support." Brown claims that this finding is erroneous under ***State v. Beaudoin***, 2001 WI App 42, 241 Wis. 2d 350, 625 N.W.2d 619, because a change in the number of days of placement, without evidence of a financial impact on either party, does not

constitute a substantial change in circumstances. ***Beaudoin***, however, is distinguishable.

¶31 In ***Beaudoin***, we held that a father's failure to take physical placement of his children for four of his 148 allocated days was not a substantial change in circumstances because there was no evidence regarding the financial consequences of this failure. ***Id.*** at ¶8. By contrast, the issue in this case is not whether Raz exercised periods of his existing placement, but whether a court-ordered change to the existing child-placement order constituted a substantial change in circumstances. Accordingly, ***Beaudoin*** does not apply.

¶32 Moreover, the record clearly supports the trial court's findings. First, the physical placement of the children changed from a 64/36 percent distribution of time to a 50/50 percent distribution of time. This increased Raz's placement by fifty days per year and decreased Brown's placement by fifty days per year.[9] We fail to see how a change of this many days would *not* have a substantial financial impact on Raz and Brown.[10]

¶33 Second, additional financial testimony is not necessary in this case. The trial court had already taken extensive testimony on Raz's and Brown's

[9] Raz claims that his future placement periods will be increased by fifty days per year and that Brown's placement periods will be decreased by fifty days per year. Brown did not file a reply brief. Accordingly, we accept this fact as undisputed. *See* WIS. STAT. RULE 809.83(2); ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) ("Respondents on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute.") (quoted source omitted).

[10] Moreover, in this case, both parents agree that there is a presumption of a substantial change in circumstances. Under WIS. STAT. § 767.32(1)(b)2, if thirty-three months have passed since the entry of the last support order, there is a rebuttable presumption that a substantial change in circumstances exists. Here, both parents agree that thirty-three months have passed, triggering the presumption.

financial circumstances when it held at least three hearings on the issue of child support.[11] The trial court found that Raz's annual gross income was $124,077 and Brown's annual gross income was $143,392. It thus concluded that "[b]oth parents have very good incomes…. [n]either one of them would be harmed if support didn't come either way." Accordingly, the trial court's finding that the significant change in placement with the attendant expenses that would flow naturally from that change was a substantial change in circumstances was not clearly erroneous.

3. Contempt Finding

¶34 Finally, Brown claims that the trial court erroneously exercised its discretion when it found her in contempt because the evidence does not support its finding that Brown failed to comply with a court order to participate in family therapy. We disagree.

¶35 A court may hold a person in contempt "if he or she has the ability, but refuses, to comply with a circuit court order." ***Benn v. Benn***, 230 Wis. 2d 301, 309, 602 N.W.2d 65, 69 (Ct. App. 1999). We review the trial court's use of its contempt power for an erroneous exercise of discretion. ***State ex rel. N.A. v. G.S.***, 156 Wis. 2d 338, 341, 456 N.W.2d 867, 868 (Ct. App. 1990).

¶36 In May of 1996, the trial court entered an order reflecting Raz's and Brown's stipulations on physical placement. The order contained a provision on family therapy, that provided:

[11] The trial court held evidentiary hearings on the modification of child support on September 30, 1999, November 11, 1999, and December 16, 1999.

> Therapy shall be commenced with a mutually agreed-upon therapist. The parents have received a name from Dr. Crandell and if that person is not acceptable to both, the parents agree to work with the Guardian ad Litem to select an alternate individual. Therapy shall begin with the petitioner, and then include the children. *The respondent agrees to be supportive of therapy for the children and shall participate directly as requested by the therapist.* The frequency of sessions and duration of therapy shall be determined by the therapist. (Emphasis added.)

¶37 The trial court found that Brown "obstructed the therapeutic process by canceling therapy" and ordered Brown to attend future therapy sessions as a sanction. The record supports this finding.

¶38 On April 9, 1997, Brown ended therapy with Jody Keskey, Psy.D.: "This letter is in regards to Kelly and Cathleen Raz. I'm disappointed you did not return my calls. On the advice of my attorney the children will no longer be seeing you." Dr. Keskey responded on April 12, 1997:

> I received your letter today. I apologize for not calling this week. I made multiple attempts to reach you the week before, but found no-one at home and no answering machine to leave a message on at the number you had left for me to call. I am concerned regarding the sudden discontinuation of my contact with Kelly and Cathleen. I believe the girls continue to suffer from the conflicts between you and their father. I had hoped we would have resolved some of these issues before termination.
>
> I would like the opportunity to speak with you and the girls before ending our relationship. The therapeutic relationship I have with the girls requires closure, and I would like to update you on the issues addressed during treatment and discuss recommendations for the future.
>
> I will be out of the office until April 18, 1997. I hope we can meet after that time. I look forward to hearing from you regarding this matter.

¶39 At a hearing, when asked whether she contacted Dr. Keskey after she received Dr. Keskey's April 12, 1997, letter, Brown replied "No." Brown did

not explain her failure to do so. In her brief, however, Brown claims that she complied with court-ordered therapy because she attended counseling sessions with Josie Cusma, M.S.W., from December of 1999 to May of 2000. This is not enough to avoid contempt. Raz filed the motion asking the court to find Brown in contempt in June of 1999. According to Brown, she began those counseling sessions after the motion was filed, in December of 1999. Thus, absent further explanation, the counseling sessions with Cusma from December of 1999 to May of 2000 do not excuse Brown's failure to attend counseling sessions from April of 1997 until December of 1999. Accordingly, the trial court did not erroneously exercise its discretion when it found Brown in contempt.

B. The Cross-Appeal

¶40 On his cross-appeal, Raz alleges that the trial court erred when it denied his request for costs because WIS. STAT. §§ 767.045(1)(a)2 (guardian *ad litem*), 767.045(4) (guardian *ad litem*), 767.11(10) (family court counseling), 767.11(14) (family court counseling), 767.24(4)(a) (custody and physical placement), 767.24(5) (custody and physical placement), and 767.325(1)(b) (custody and physical placement) violate the Fourteenth Amendment of the United States Constitution in cases, such as this one, where there is "no credible evidence that either parent is unfit or that a placement proposal that maximizes placement of the child with both parents would be harmful to the child." Raz requests that we remand this case to the trial court for a determination of the costs that he has incurred as a result of this alleged violation. We summarily reverse for the reasons set forth below. *See* WIS. STAT. RULE 809.21.

¶41 Under WIS. STAT. RULE 809.19(3)(a), "[t]he respondent shall file a brief within 30 days of the service of the appellant's brief." Brown did not do so.

We decline to do Brown's work for her. "[T]he Court of Appeals of Wisconsin is a fast-paced, high-volume court…. We cannot serve as both advocate and judge." ***Pettit***, 171 Wis. 2d at 647, 492 N.W.2d at 642. Thus, as a sanction, we summarily grant Raz the relief that he seeks without deciding the merits of his claim. *Cf.*, WIS. STAT. RULES 806.02(2) and (5) (provisions on when a default judgment may be entered at trial); *see* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) ("Respondents on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute.") (quoted source omitted). Accordingly, we reverse and remand to the trial court for a determination of costs against Brown.[12]

¶42 Raz also alleges that the trial court erred when it failed to retroactively modify the June 7, 1996, support order because the order violated the "fairness" standard of WIS. STAT. § 765.001(2) and (3) and the Fourteenth Amendment of the United States Constitution. Raz thus requests that we "merely" issue an order revising the child-support order from October 21, 1998, the date the motion was filed, to June 7, 2001, the date the new order went into effect, and grant him $35,804.

¶43 Again, because Brown failed to file a response brief we summarily reverse without reaching a decision on the merits of Raz's argument. We decline to enter an order, however, granting Raz $35,804 in back support. *See* ***Cary v. Cary***, 47 Wis. 2d 689, 691, 177 N.W.2d 924, 926 (1970) ("[I]n contested domestic

[12] In the alternative, Raz requests that we remand for an assessment of costs against the State of Wisconsin. We decline to do so. The State is not a party in this action. Thus, we do not have jurisdiction to order relief against the State. *See* ***Bulik v. Arrow Reality, Inc.***, 148 Wis. 2d 441, 446, 434 N.W.2d 853, 855 (Ct. App. 1988) ("The court has jurisdiction only over the parties named.").

relations and family-law cases, … we are inclined to … remand the case for the making of additional findings.") (quoted source omitted). Accordingly, we remand this case to the trial court for a hearing to determine the amount of child support Raz is due from October 22, 1998, to June 7, 2001.[13]

By the Court.—Orders affirmed; reversed and cause remanded with directions.

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

[13] The motion to modify child support is filed-stamped October 22, 1998. Thus, we will use this date instead of Raz's date of October 21, 1998.