

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 13, 2003

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. 02-0128
STATE OF WISCONSIN**

Cir. Ct. No. 99-PA-3

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE PATERNITY OF JOSEPH C. M.:

CHRISTOPHER A. M.

PETITIONER-RESPONDENT,

v.

TRUDIE T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VANDEHEY, Judge. *Affirmed.*

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 PER CURIAM. Trudie T. appeals an order determining custody, placement and child support for Joseph M. Trudie argues that the circuit court

erroneously exercised its discretion in awarding Trudie and Christopher A.M., Joseph's father, equally shared physical placement. We disagree and affirm.

¶2 Placement decisions are committed to the discretion of the circuit court. *Jocius v. Jocius*, 218 Wis. 2d 103, 110-11, 580 N.W.2d 708 (Ct. App. 1998). We will sustain the circuit court's exercise of discretion if the circuit court makes its decision based on the law and the facts of record and employs a logical rational in arriving at its decision. *Id.* The circuit court's overarching goal is to make a decision that is in the best interest of the child. See WIS. STAT. § 767.24(5) (1999-2000).¹

¶3 Trudie's argument focuses on two points. She is concerned that Joseph, who was born March 5, 1998, will be harmed by the circuit court's placement schedule because it requires him to move between the home of his father and mother every couple of days. The circuit court ordered that Joseph live with each parent on a two, two, three-day rotation. Trudie also contends that Christopher is an unfit parent who has emotional problems and a tendency toward violence.

¶4 After reviewing the record with an eye toward Trudie's concerns, we conclude that the circuit court properly exercised its discretion in deciding that it was in Joseph's best interest to have equal physical placement with his parents. The trial court found that both parents were fit to take care of Joseph and it was undisputed that Christopher had been actively involved in Joseph's life. While it is true that Trudie and Trudie's sister both testified that Christopher had acted

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

violently toward Trudie and screamed and swore in front of the children, the circuit court decided that Christopher's behavior did not put Joseph at risk because it had been directed at Trudie and seemed circumstantial—the parties had been in the midst of a difficult period ending their relationship. The circuit court placed special emphasis on the fact that Trudie had told a counselor, who specializes in domestic abuse cases, that Christopher would never hurt the children and that, although he spanked them, he did not spank them too hard.

¶5 The circuit court also found that Christopher had shown that he could care for Joseph because he had, in fact, taken good care of Joseph for several weeks and a number of weekends while Trudie was in Arizona and had been successfully taking care of Joseph fifty percent of the time during the period before trial.² The circuit court also considered the guardian ad litem's recommendation that joint physical placement and custody was in Joseph's best interest. In sum, the circuit court explained its reasons for awarding equally shared placement, based its ruling on testimony at trial and the guardian ad litem's recommendation, and made a decision in accord with the legal principles applicable to placement decisions. Therefore, we conclude that the circuit court properly exercised its discretion.

By the Court.—Order affirmed.

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

² Christopher had also been caring for Joseph for shorter periods of time since his birth.

