COURT OF APPEALS
DECISION
DATED AND FILED

December 30, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1591 **Cir. Ct. No. 00-FA-134**

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

IN RE THE MARRIAGE OF:

JOHN P. CATLIN,

PETITIONER-RESPONDENT,

V.

KIRSTIN A. CATLIN,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: JAMES E. WELKER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

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

¶1 LUNDSTEN, J. Kirstin Catlin appeals a judgment of divorce. Kirstin argues that the circuit court erred in several respects when ordering child

support, maintenance, custody, and physical placement. Regarding child support, Kirstin contends, among other arguments, that the circuit court erred by failing to comply with statutory requirements governing both presumptive child support calculations and deviations from the presumptive child support award. Regarding both child support and maintenance, Kirstin asserts the circuit court erred by using John's "half-time" income and by finding that Kirstin is able to work full time. Finally, Kirstin argues that the circuit court applied an erroneous legal standard and misused its discretion when it awarded custody and physical placement in a manner that precluded her from moving back to her home state of Maine with the children. We reject most of Kirstin's arguments, but remand because we conclude that the circuit court failed to properly calculate the presumptive child support award, and this error, combined with other factors, persuades us that the court should reconsider both its child support and maintenance awards.

Background

¶2 Kirstin and John Catlin were married on June 6, 1992. They have three children, born February 3, 1994, April 1, 1996, and April 18, 1998. A memorandum decision granting the divorce and detailing the terms was filed on July 19, 2001. Both Kirstin and John requested modifications, and some changes were made in a final judgment of divorce which, apart from the changes, incorporated the terms of the memorandum decision. The final judgment was filed on March 20, 2002.

¶3 In its memorandum decision, the court ordered John to pay $236 per week in child support. In the final judgment, John's child support obligation was changed to $272 per week. This award constituted a downward deviation from the presumptive percentage standards. The court ordered John to pay Kirstin

maintenance in the amount of $200 per week for five months. The court awarded the parties joint legal custody of all three children. Regarding physical placement, the court awarded 63% of the overnights to Kirstin and 37% to John. This placement schedule effectively precluded Kirstin from moving back to her home state of Maine.

Discussion

A. Child Support

¶4 Kirstin contends that the circuit court erred when awarding child support. Specifically, she argues the circuit court:

1) erred when it ascribed to John income based on his "half-time" status;

2) erred when it found that Kirstin was capable of working full time;

3) failed to correctly determine John's presumptive child support obligation under WIS. ADMIN. CODE §§ DWD 40.03 and 40.04; and

4) failed to provide a reasonable explanation for deviating from the child support standard.

In addition, Kirstin contends that the record does not support the downward deviation ordered by the circuit court.

¶5 The determination of child support is entrusted to the circuit court and will not be disturbed on appeal unless an erroneous exercise of discretion can be shown. ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will sustain a discretionary act if we find that the circuit court "(1) examined the relevant facts, (2) applied a proper standard of law, and (3) using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***State v. Gudenschwager***, 191 Wis. 2d 431, 440, 529 N.W.2d

225 (1995). The trial court's findings of fact are reviewed under a clearly erroneous standard. WIS. STAT. § 805.17(2) (2001-02).[1] Under this standard, findings of fact will be affirmed on appeal, even though the evidence would permit a contrary finding, as long as the evidence would permit a reasonable person to make the finding made by the court. ***Sellers v. Sellers***, 201 Wis. 2d 578, 586, 549 N.W.2d 481 (Ct. App. 1996).

1. John's Income

¶6 Kirstin argues that the circuit court erred when it used John's current income as a "half-time" airline pilot for purposes of determining child support. John's income at the time of trial was about $9,000 per month and $2,080 per week. Kirstin asserts that John has a higher "earning capacity" and that the circuit court erred by failing to use a higher amount. Kirstin requests remand with directions that the circuit court attribute to John an earning capacity of $18,000 per month (the amount John would earn if he worked full time), $13,500 per month (the amount John would earn if he worked three-quarters time), or an earning capacity based on what John could make as a co-pilot of a larger aircraft or as a captain.

¶7 Neither Kirstin's assertion that John works "half-time" nor her assertion that the circuit court found that John was "only employed half-time" is supported by the record. She has not directed our attention to any place in the record, and we have found none, indicating that John works half-time or indicating what portion of a full-time schedule John works. Moreover, the circuit court did

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

not find that John works half-time. Rather, in the context of commenting on Kirstin's parenting, the court noted that John was at home to assist more often than the average worker because his "work schedule of approximately 11 days a month, including an average of 3 overnight flights, [is] a work schedule that is about one-half of the days worked by the average worker in our society." Thus, the court only commented on the numbers of days, not the portion of a full-time schedule, John works.

¶8 Kirstin's argument can be viewed as an assertion that John is "shirking" and that the circuit court should have recognized the shirking and used a higher income figure when calculating John's child support obligation. If this is her argument, it lacks support in the record.[2]

¶9 "Shirking" was addressed in ***Sellers***, 201 Wis. 2d 578:

[2] Although Kirstin seemingly argues that the circuit court should have ascribed a higher "earning capacity" to John than his current income, thereby warranting an upward deviation from the presumptive percentage standard, we note that Kirstin simultaneously and incongruously argues that the circuit court had no authority to deviate from the presumptive child support standard because there was no "request by a party," as required by WIS. STAT. § 767.25(1m). We deem this latter argument insufficiently developed to merit our attention. Among other failings, Kirstin does not engage in statutory construction analysis, does not explain why she did not bring this alleged omission to the circuit court's attention when she requested an amended judgment, and does not explain how she was prejudiced by the absence of an express request for deviation. *See* ***Brevak v. Brevak***, 90 Wis. 2d 556, 559-64, 280 N.W.2d 329 (Ct. App. 1979) (family court commissioner's failure to comply with statutory directive that a reconciliation report in a contested divorce be filed was disregarded because complaining party claimed no prejudice and no substantial right of any party was affected by the failure). Kirstin also fails to address John's "Proposed Parenting Plan," in which he states there "may need to be a deviation from the [child support] guidelines …." In addition, Kirstin may have waived her assertion that, when determining child support, the circuit court should have used a higher income capacity regarding John. John asserts this argument is made for the first time on appeal, and Kirstin does not respond to this waiver argument. During a post-trial hearing on her request for modification of the child support order, the circuit court stated: "[W]e've got a $2,080 [for John] and $1,000 [for Kirstin] a week in income and some divided placement. That's – apparently, everybody agrees with that." Kirstin did not disagree and did not otherwise argue during that hearing that either income figure was wrong.

> The trial court may consider earning capacity when determining a support or maintenance obligation if it finds a spouse's job choice voluntary and unreasonable. While the courts have stated that shirking is required to consider earning capacity, shirking does not require a finding that the spouse deliberately reduced his earnings to avoid support obligations or to gain advantage in the divorce action. It is sufficient that the court finds the employment decision both voluntary and unreasonable under the circumstances. The employment decision may be unreasonable even though it is well intended.
>
> The issue whether [a party's] job choice is unreasonable presents a question of law. However, we will give appropriate deference to the trial court's legal conclusion because it is so intertwined with factual findings supporting that conclusion.

Id. at 587 (citations omitted). For the reasons that follow, we conclude that the record does not support Kirstin's apparent assertion that John is shirking.

¶10 Kirstin's appellate brief baldly asserts that John could earn more income by working more hours as a co-pilot by working on a larger aircraft, or by obtaining the higher paying rank of captain. For example, Kirstin states: "While able to move up in rank to Captain, or become a co-pilot on a larger aircraft, either of which would increase his income …." However, the record cites Kirstin supplies do not support her assertions.

¶11 Our review of the record reveals the following. When asked to confirm that he had "the seniority to either move to the first chair or captain's seat in the planes that [he] currently fl[ies]," John disagreed. He stated that he did not know what kind of seniority it would take to become captain on a 757 and that he had never put in a bid to become captain on a 757. John testified he had never put in a bid for a second chair on a larger aircraft and that he had no idea what kind of seniority it would take to become second chair on a larger aircraft. John stated: "Again, I don't know. It's never – hasn't been a concern of mine. I've been

comfortable in the seat that I'm flying, and I hadn't considered moving to another one, so I hadn't really researched that."

¶12 John testified that he was a first officer (co-pilot) on a 757 and the 767. John stated that he "averaged just over 20 days at home, so it would be approximately ten days of flying every month." John testified that he was "fairly senior.… [A]bout No. 29 out of over 250 pilots in that seat on that airplane." His seniority allows John to almost always get his first choice of flying schedules, length of trips, types of days, and types of trips. John also stated that, as a result of his seniority, he was able to fly "pretty much all one-day trips" and "bid [his] schedule to fly so that [he was] home when Kirstin [was] working." John testified that, if he became a captain, his seniority would drop, which would mean that he would be "at the bottom of the list with either being on reserve or having, you know, the [worst] schedules that are available."

¶13 We find nothing in the record disclosing how much more a captain makes, how many days or hours a full-time co-pilot works, whether flying a larger aircraft would produce more income and, if so, how much more income, or how many more hours John might be able to work at his current rank. Kirstin may be correct that John could make $13,500 or $18,000 a month, but her assertions in this respect are not based on evidence in the record.

¶14 Accordingly, we reject the argument that John is shirking and affirm the circuit court's use of John's current income, $2,080 per week, for purposes of determining the statutory child support percentage standard. For essentially these same reasons, we also conclude in other parts of this opinion that the use of John's current income was appropriate for purposes of deciding whether to deviate from the child support percentage standard and for use in determining maintenance.

2. Kirstin's Earning Capacity

¶15 Kirstin argues that the circuit court erred when it determined that *her* earning capacity should be based on full-time work as a dental hygienist. It is undisputed that full-time dental hygienist work, at $25 per hour, was readily available in the Janesville market. Thus, Kirstin's challenge regarding her earning capacity is solely directed at her ability to work full time. We conclude that the record supports the trial court's finding that Kirstin is able to work full time.

¶16 The divorce trial was held over three days in July 2001. Kirstin testified that, nine years earlier, in July 1992, she was injured while riding a roller coaster. As a result of this injury, Kirstin has a herniated disc. Kirstin testified that her neck "go[es] out" on her, thereby incapacitating her about three days per incident. Kirstin testified that her neck "used to go out every three months" but "now it's every six months." Kirstin also testified that: "[I]t happens mostly when I work. Often because my head is turned in a position for eight hours, in the same position, and it aggravates."

¶17 Kirstin testified that when she lived in New Hampshire during parts of 1993 and 1994 she worked "about 35 hours" per week for three dentists. She said that after moving to Janesville, she worked for a dentist "almost full time" for about a year and a half. Kirstin testified that since then she "was working a lot to pay for things," but she would "come home with a headache." As John received raises and they had more children, she worked less. Kirstin testified that, when she works eight hours a day, she comes home with a headache and must "take four Ibuprofen to relax my muscles because they are all tense up here. I've got a headache, a dull, aching headache." She did not, however, say that her headaches were caused by her herniated disc.

¶18 Kirstin's testimony and medical records provide evidence of the opinions of doctors Kirstin saw during the two years prior to trial in July of 2001.

¶19 Sometime in the first half of 2000, more than a year before trial, Kirstin saw a doctor named Gary Cohen. Kirstin admitted that this doctor was the only doctor who told her she should limit her work hours. A medical note in the record from Dr. Cohen, dated July 25, 2000, reads: "Ms. Catlin has a large herniated disc at C5-6 which makes it painful to do her work as a dental hygienist. I would like to limit her work to one or two days a month."

¶20 Kirstin testified she saw a doctor named Robert Dempsey twice, once in July of 2000 and once in October of 2000. Dr. Dempsey did not limit Kirstin's hours of work. A report in the record from Dr. Dempsey, dictated on July 31, 2000, states:

> We will monitor her at this time. We will refer her to Physical Therapy for ergonomic activities, range of motion exercises, and a home exercise program. We will see the patient back in a month and will evaluate her prognosis at that time. We will discuss the options of surgery now, but will hold off on that.

On October 31, 2000, Dr. Dempsey wrote a letter to another doctor in which he states an MRI done two months earlier showed a "small centrally herniated disk" that "should not require surgery." Dr. Dempsey wrote that he recommended physical therapy and that Kirstin had been getting physical therapy for the past two months. He wrote: "Today, [Kirstin] reports she is doing very well. She does not have any neck pain or any shoulder pains. She has not had any episodes of spasms since she has started the physical therapy. She does not have sensory changes or any weakness." Dr. Dempsey recommended continued therapy.

¶21 A note from Kirstin's physical therapist, dated September 5, 2000, observed: "slight improvement in neck pain; although continues to work [with] forward head positioning as a dental hygienist, which probably aggravates [the] C5-6 [injury]." While this note provides some support for Kirstin's apparent assertion that her work-related headaches are caused by her herniated disc, it is also true that Kirstin stopped attending the recommended therapy after four sessions. She "canceled or [was] a no-show for four other sessions" and there is no indication that she subsequently attempted to restart therapy.

¶22 Kirstin testified that she was currently seeing Dr. Bender and had last seen Bender four weeks before trial. She said Dr. Bender recommended physical therapy and acupuncture. Still, there is no indication Kirstin renewed therapy and she admitted that Dr. Bender did not limit her hours of work.

¶23 John called as a witness a vocational rehabilitation counselor named Devan Dutra. Kirstin relies on Dutra's testimony to argue that even John's expert gave the opinion that she could only work thirty-two hours per week. Dutra interviewed Kirstin and reviewed medical reports prepared by Dr. Dempsey and Dr. Cohen. Dutra opined that "with further rehabilitation, [Kirstin] might be able to work up to 20 hours and perhaps even up to 32 hours per week." Dutra did not explain how he determined that Kirstin could work up to thirty-two hours per week or whether he meant by that that Kirstin could work four eight-hour days per week.

¶24 Based on the evidence before it, the circuit court rejected Kirstin's assertion that her injury prevented her from working full time as a dental hygienist:

> [T]his injury no longer affects her ability to be employed. No medical doctor or other professional testified as to any restriction on her ability to work. She had earlier been advised to engage in physical therapy and exercises. She voluntarily discontinued those activities, apparently because she no longer had significant problems. She maintains that she has the ability to provide adequate and complete care for three children, a task that is as arduous as any occupation in which she might engage. All of this leads to the conclusion that, while she may have some discomfort on rare occasions, there is nothing that prevents her from being employed full-time and earning as much as she would have earned had this marriage never occurred.

¶25 Viewing the evidence in a light most favorable to the circuit court, we affirm the court's finding that Kirstin is able to work full time as a dental hygienist. As the above summary demonstrates, the testimony and medical reports are in conflict. The circuit court was entitled to ignore Dutra's opinion that Kirstin could only work thirty-two hours per week. The court was acting as a fact finder and was entitled to find Dutra's opinion lacking in credibility, especially since Dutra did not explain why Kirstin could work thirty-two hours per week, but not forty.

¶26 We address one more issue relating to Kirstin's earning capacity. The circuit court asked Dutra whether Kirstin's ability to care for her children made it more or less likely that she could work more than thirty-two hours per week. Dutra initially responded that it depended on the "amount of care" the children needed. After Kirstin's attorney objected to the question, Dutra said he did not have an answer to the court's question. In its memorandum decision, the court supported its finding that Kirstin could work full time with the following statement: "She maintains that she has the ability to provide adequate and complete care for three children, a task that is as arduous as any occupation in which she might engage." We question the evidentiary basis for the court's

inference that, because Kirstin is able to care for children, she is able to work full time as a dental hygienist. Nonetheless, ignoring this inference, the record supports the court's factual finding.

¶27 Accordingly, we affirm the circuit court's finding that Kirstin's income earning capacity was $1,000 per week, based on a forty-hour week.

3. Deviation From Presumptive Child Support Percentage Standard

¶28 Kirstin asserts that the circuit court erred by failing to comply with its statutory duty to calculate the presumptive child support percentage standard, as required by WIS. STAT. § 767.25(1j), and by failing to "state" the amount of presumptive percentage standard, as required by § 767.25(1n). Kirstin also argues that the court failed to provide an adequate explanation for deviating from the presumptive percentage standard and that the record does not support a downward deviation in favor of John.

¶29 Before proceeding to address Kirstin's arguments, we note that we have already addressed two arguments Kirstin makes in support of her assertion that a downward deviation in John's child support payments was error. We have explained that the court properly used John's current income as John's "base" income, and we have rejected Kirstin's argument that the court erred when it concluded that she could work full time. Accordingly, the following analysis uses $2,080 as John's weekly "base" income and $1,000 as Kirstin's weekly "earning capacity."

a. Percentage Standard Calculation

¶30 Under WIS. STAT. § 767.25(1j), the court "shall" determine child support payments by using the percentage standard in the administrative rules.

Both parties agree that the circuit court properly applied WIS. ADMIN. CODE § DWD 40.03(1). There are three children, and the court correctly applied the 29% figure found in § DWD 40.03(1)(c) to John's weekly $2,080 income, yielding a payment figure of $603.20.

¶31 Kirstin complains that the circuit court erroneously failed to take the $603.20 figure and apply the shared-time payer formula under WIS. ADMIN. CODE § DWD 40.04(2)(b). We agree, but observe the following before applying the formula. The administrative code itself defines "percentage standard" as "the percentage of income standard under s. DWD 40.03(1) which, multiplied by the payer's base or adjusted base, results in the payer's child support obligation." WIS. ADMIN. CODE § DWD 40.02(27). Thus, this definition of "percentage standard" does not include a shared-time payer reduction. Also, § DWD 40.03(1) contains "shall" language, while the section for shared-time payers, § DWD 40.04(2), uses "may" language. Section DWD 40.04(2) says a "child support obligation … may be determined as follows." Consequently, if we only looked at the administrative rules, we might conclude that the circuit court was correct when it referred to the $603.20 figure as John's presumptive child support obligation.[3] However, case law clarifies that calculation of presumptive child support obligations includes the shared-time payer formula. *See* ***Randall v. Randall***, 2000 WI App 98, ¶¶12-15, 235 Wis. 2d 1, 612 N.W.2d 737 (discussing ***Luciani v. Montemurro-Luciani***, 199 Wis. 2d 280, 544 N.W.2d 561 (1996), and stating:

[3] The record is clear that this is what the circuit court did. The circuit court stated orally: "If I were to simply apply the child support standard of 29 percent of [John's] gross income [$603.20] and not require her to contribute anything, it would be simply disguised maintenance …." In the judgment of divorce, the court wrote: "Under the percentage guideline, [John] would pay $603.20 per week."

"[U]nder § 767.25(1j), the circuit court must determine [the parent's] support obligation by using § DWD 40.04(2) if [the parent] is a shared-time payer …," ***Randall***, 235 Wis. 2d 1, ¶15). Accordingly, in keeping with ***Luciani*** and ***Randall***, this opinion uses the term "percentage standard" as including the shared-time payer calculation in § DWD 40.04(2).

¶32 We now apply the shared-time payer formula to the facts here. Section DWD 40.04(2)(b) applies when the percentage of overnights with the payer is over 30% but not more than 40%. On appeal, neither party disputes the circuit court's finding that the placement schedule results in John having the children 37% of the overnights. Thus, under § DWD 40.04(2)(b), John's child support payment is reduced to 76.69% of $603.20. That is, John's presumptive child support obligation is $462.59 per week.

¶33 The circuit court explained why it was deviating downward from $603.20 per week. It did not address a downward deviation from $462.59 per week.

b. Circuit Court's Explanation for Deviation

¶34 John's presumptive child support obligation was $462.59 per week. The circuit court set child support at $272 per week. The difference is $190.59 per week and $9,910.68 per year. We remand the matter for reconsideration of the child support award because we cannot tell whether the circuit court was mindful of the presumptive percentage standard and because it is not readily apparent that some of the reasons given by the court support a downward deviation. We will address some of the arguments made by the parties in an effort to reduce the number of disputed issues on remand and to clarify others.

¶35 Kirstin argues that it is not fair to require that she work full time while permitting John to continue working "half-time." However, as explained above, the record does not show that John works "half-time" and we do not know what percentage of full time he does work. Since Kirstin's fairness argument is based solely on the proposition that it is not fair that she work full time while John works half time, her failure to show what percentage of full time John works renders any further discussion mere speculation.

¶36 John argues that a downward deviation was justified in part by the requirement that he pay unreimbursed medical expenses. We agree that the court considered this fact and that it supports a downward deviation. However, according to John's own estimates, this requirement will only impose on him an additional burden of approximately $57.69 per week.[4] This accounts for just 30% of the $190.59 deviation from the presumptive percentage standard.

¶37 John accurately recounts that the circuit court did not want child support payments to be "disguised maintenance." However, the circuit court's stated concern about "disguised maintenance" is directed at the unfairness of imposing on John a child support obligation that does not take into account the shared placement schedule. The court explained:

> If I were to simply apply the child support standard of 29 percent of Mr. Catlin's gross income [$603] and not require her to contribute anything, it would be simply disguised

[4] John has estimated, and Kirstin has not disputed, that John will pay about $250 per month in unreimbursed medical expenses. This translates into an extra $57.69 per week, calculated as follows: $250 x 12 months = $3,000 per year; $3,000 ÷ 52 weeks = $57.69 per week. We note that Kirstin asserts in her brief that John must pay health insurance premiums through his work in the amount of $14.42 per month. However, her supporting record cite is to a document indicating that this payment is for *medicare*, not health insurance. Accordingly, we ignore this amount.

> maintenance, and I do not believe that the children should live in – at a rate of about $207 a day while they are living with their mother and have to sleep on the kitchen floor in sleeping bags the other 37 percent of the time because Mr. Catlin can't afford beds for the children.

While we agree that the circuit court is entitled to consider John's status as a shared-time payer, the shared-time payer formula in WIS. ADMIN. CODE § DWD 40.04(2), which the court did not use, is specifically designed to take this factor into account. We find no explanation as to why or whether the circuit court believed § DWD 40.04(2) is inadequate to protect John's interests in this respect.

¶38 John correctly argues that the circuit court considered the relative incomes of the parties. Consideration of this factor was proper under WIS. STAT. § 767.25(1m)(hs), which directs courts to consider "[t]he earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community." At the same time, the supreme court has explained that the percentage standards incorporate a presumed contribution by the payee parent and, therefore, they are presumptively fair, even in situations where the payee parent has a relatively high income. ***Luciani***, 199 Wis. 2d at 285, 305-07. We do not opine that the relative earning capacities of the parties in this case do not justify a downward deviation, only that if there is a justification, the circuit court should supply it. ***Id.*** at 295; *see also* WIS. STAT. § 767.25(1n) ("[T]he court shall state in writing or on the record ... its reasons for finding that use of the percentage standard is unfair to the child or the party, its reasons for the amount of the modification and the basis for the modification.").

¶39 John points out that the property division left him with substantial debt and that the circuit court took this into account. We agree with John that the circuit court considered this factor, as indicated by its statement: "and based upon

the substantial financial obligations that the Petitioner is being burdened with." Still, we cannot tell whether this factor, alone or in combination with other factors, warrants the substantial deviation in this case. Neither party has directed our attention to any place where the circuit court made findings regarding John's cash flow, and we are unable to determine the extent to which the circuit court considered this topic. Furthermore, John does not in his appellate brief supply an analysis of his budget. It is true that the property division left John with substantial debt, but it also left him with substantial assets.[5] Conversely, the equalizing payment left Kirstin with more liquidity, but she must find housing. Neither the circuit court nor John explains why the particular property division in this case should affect John's child support.

¶40 Finally, John points out that he has been ordered to pay temporary maintenance. However, the maintenance is very temporary. The duration is only five months, from July 20, 2001, to December 15, 2001. On the other hand, at the time of the divorce, the oldest child was seven and the youngest child was three. Child support, therefore, will likely continue for many years. Moreover, the express intent of the circuit court when imposing limited term maintenance was to cover a gap: the time until John made his equalization payment to Kirstin. Thus, it does not appear that maintenance was intended to supplement Kirstin's income on an ongoing basis.

¶41 We acknowledge that the calculation the circuit court used in lieu of the shared-time payer percentage was an effort to account for the shared-time

[5] The property division appears to be equal. The trial court stated that the property division was equal and neither party suggests otherwise.

placement in this case and the relative incomes of the parties. At the same time, the circuit court's calculation results in a child support award significantly lower than the one produced by WIS. ADMIN. CODE § DWD 40.04(2). Generally speaking, when a circuit court does not explain its reasons for a child support order, we may search the record to determine whether it supports the court's decision. ***Randall***, 235 Wis. 2d 1, ¶7. Here, however, we are unable to discern if the circuit court's equalizing calculation, compared with § DWD 40.04(2), produces a more fair result for the children or for John. On its face, the calculation, which seems to treat both John and Kirstin as payer parents and then produces an equalizing payment to account for the differing amount of overnights, is in conflict with § DWD 40.04(2) and ***Luciani***. We are unable to conclude that the facts justify a downward deviation of nearly $10,000 per year. Accordingly, we remand and direct that the circuit court reconsider the child support award. *See* ***Minguey v. Brookens,*** 100 Wis. 2d 681, 688, 303 N.W.2d 581 (1981) (generally, a trial court's decision and the record will permit a meaningful review, but there is a preference for remand to the trial court when confronted with limited findings in family law cases).

B. Maintenance

¶42 The circuit court ordered limited term maintenance in the amount of $200 per week from July 20, 2001, to December 15, 2001. The court selected this time period and amount because it provided extra income to Kirstin while she was moving to a new residence and waiting for the equalizing payment from John. Kirstin contends the circuit court misused its discretion by failing to award her a much longer period of maintenance, one that would give her "some support until she is able to reach [the] level of income to be self-sufficient at a standard of living comparable to that enjoyed during the marriage." Kirstin complains that the court

erroneously discarded both her testimony and the testimony of Devan Dutra when it found that Kirstin could work full time. Kirstin also argues that the circuit court failed to address John's earning capacity.

¶43 We have already explained that the circuit court did not err when finding that Kirstin is able to work full time and did not err when using John's current income for purposes of determining child support. The same analysis applies here.

¶44 Kirstin's briefs contain several other disjointed arguments. For example, she briefly summarizes a "tax analyses offered by John during his case." What she fails to do, and what she failed to do before the circuit court, is present a comprehensive and comprehensible picture of John's financial situation and her own. We readily admit this is a difficult and time-consuming task, but it is necessary in cases such as this where there are many relevant maintenance factors. Furthermore, Kirstin's failure to submit a financial disclosure statement puts her in a poor position to complain that the circuit court did not calculate the payment needed and the length of time necessary to allow Kirstin to reach her marital standard of living.

¶45 Although we reject Kirstin's maintenance arguments, we direct that the circuit court may, if it chooses, revisit maintenance along with its reconsideration of child support. Maintenance and child support determinations are often interdependent. *See* ***Ondrasek v. Ondrasek***, 126 Wis. 2d 469, 479, 377 N.W.2d 190 (Ct. App. 1985) ("While property division and family support are separate awards, they are interdependent and cannot be made in a vacuum.").

C. Custody and Physical Placement

¶46 Kirstin contends the court misused its discretion in not allowing her to relocate to Maine with the children. She acknowledges that WIS. STAT. § 767.327, the statute governing postjudgment residence moves, is not, by itself, the appropriate test to apply to an initial placement decision. Still, she proposes a two-step test that incorporates § 767.327 because the "law is not settled on what standard the court is to apply when a parent comes to the divorce trial requesting primary placement and the right to move that placement out of state." Kirstin's suggested two-step test is this: first, determine which parent has primary physical placement under WIS. STAT. § 767.24(5); second, apply § 767.327, using as the current "location" the place which "the primary placement parent wishes to move."[6] Following this approach, Kirstin argues that once the circuit court determined that Kirstin would have primary physical placement, the court should have considered Maine as the status quo location of the children.

¶47 We need not address the merits of Kirstin's proposed legal test because she suggests it for the first time on appeal. *See* ***Sauk County Child Support Agency v. Drier***, 119 Wis. 2d 312, 325 n.12, 351 N.W.2d 745 (Ct. App. 1984) (general rule is that issues not presented in trial court will not be considered for first time on appeal). Before the circuit court, there was some discussion of whether and how to apply WIS. STAT. § 767.327, but no one suggested the approach Kirstin now advances on appeal.

[6] Kirstin lists three steps, but her second and third steps merely track considerations contained in WIS. STAT. § 767.327.

¶48 Accordingly, we will review the circuit court's placement decision under the normal standards. WISCONSIN STAT. § 767.24(5) lists the factors that a judge must consider when determining custody and physical placement. That determination is committed to the discretion of the circuit court and will not be disturbed unless the findings of fact are clearly erroneous or the decision represents a clear misuse of discretion. ***In re Marriage of Hollister v. Hollister***, 173 Wis. 2d 413, 416, 496 N.W.2d 642 (Ct. App. 1992). Our review discloses that the circuit court considered the factors listed in § 767.24(5) and reached a reasonable decision.

¶49 We agree with John that Kirstin's appellate briefs on this topic largely consist of an effort to persuade us that John is a bad person and that the children would be better off with Kirstin in Maine, a place John could visit frequently because of his job as an airline pilot. However, the circuit court was able to observe the parties and was in the best position to make judgment calls of that type. *See* ***Hollister***, 173 Wis. 2d at 416. We also agree with John that the court used the catchall section, WIS. STAT. §767.24(5)(k), to consider Kirstin's request that custody and the placement schedule be structured to allow her to move to Maine.

¶50 Among other considerations, the court considered the reasons Kirstin gave for wanting to move to Maine, that Kirstin's desire to have primary physical placement was greater than her desire to move, that the guardian ad litem gave the opinion that a move to Maine might be in Kirstin's best interest but not the best interests of the children, that Kirstin's separation from her family might have negative effects on her psyche and her performance as a parent, and how well the children were currently functioning in Janesville. Our review persuades us that the circuit court carefully considered information presented by the parties and

reasonably awarded joint legal custody and a physical placement schedule providing 37% of the overnights to John.

¶51 Furthermore, to the extent Kirstin complains that the circuit court misused its discretion by issuing an order that does not facilitate her move to Maine, we observe that Kirstin had no specific plan and essentially asked the court to make a custody and placement decision based on non-specific contingencies. We question whether the circuit court has the power to issue a prospective or contingent custody determination in this situation. *See* ***Culligan v. Cindric***, 2003 WI App 180, ¶13, ___ Wis. 2d ___, 669 N.W.2d 175.

¶52 We also observe that the court did not forbid Kirstin from relocating to Maine. The court merely reached its conclusions based on the current Wisconsin residences of both parents and applied the normal restrictions "against removing the residence of the children from the State of Wisconsin or more than 150 miles from the other parent without the proper statutory procedure." In other words, from the moment the divorce judgment was final, Kirstin was free to seek relocation to Maine in accordance with WIS. STAT. § 767.327.

Conclusion

¶53 We affirm the circuit court's use of John's current income for purposes of calculating child support. We affirm the court's finding that Kirstin is able to work full time as a dental hygienist and conclude that the circuit court did not misuse its discretion when it used $1,000 per week as Kirstin's earning capacity. We also affirm the custody and placement schedule. We reverse and remand, however, on the issue of child support and maintenance because we conclude the circuit court erred when calculating the presumptive child support percentage standard. On remand, the court should apply both WIS. ADMIN. CODE

§ DWD 40.03(1)(c) and § DWD 40.04(2)(b). We calculate that application of these rules produces a presumptive child support obligation of $462.59 per week. If the circuit court determines that deviation from this amount is unfair to the children or to John, the court should "state in writing or on the record … its reasons" for deviating. *See* WIS. STAT. § 767.25(1n). The maintenance award is reversed, but only because child support and maintenance decisions are often intertwined. Thus, on remand, the circuit court may award the same maintenance or it may exercise its discretion to award maintenance at a different level and for a different duration.

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

Not recommended for publication in the official reports.