COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2323 **Cir. Ct. No. 00-FA-2064**

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

IN RE THE MARRIAGE OF:

LISA J. POOLE,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

DAVID A. POOLE,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed.*

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

¶1 PER CURIAM. David Poole appeals a post-divorce order granting his ex-wife Lisa Poole decision-making authority over their son Brian's religious

training. David contends that, absent any finding that David's choice of religious training would be harmful to Brian, and given that Brian was barred from testifying that he wished to attend Jehovah's Witnesses meetings with his father, the order deprives both father and son of their rights to religious freedom, speech, and association. David further challenges the admission of testimony by an "intervention specialist" on the grounds that the witness was not a qualified expert. For the reasons discussed below, we reject each of David's arguments on appeal and affirm.[1]

BACKGROUND

¶2 David and Lisa stipulated to most of the terms of their divorce. They could not agree, however, on a course of religious upbringing for their twelve-year-old son Brian.

¶3 David was raised as a Jehovah's Witness, but had left the faith after graduating from high school. During the course of David and Lisa's marriage, the family celebrated Christian holidays such as Easter and Christmas, but did not attend religious services or belong to any religious organizations. After the divorce proceeding had begun, however, David began again attending meetings of the Jehovah's Witnesses, sometimes bringing Brian with him. By the time of the divorce hearing, and over Lisa's objections, Brian was spending between five and ten hours a week at Jehovah's Witness meetings and activities during his

[1] Lisa has cross-appealed but she cites no rulings adverse to her that she wishes overturned. Rather, her arguments on the cross-appeal present reasons why we should affirm the trial court's order. Accordingly, we do not separately address them.

placement with his father. Lisa also complained that David was taking Brian to Jehovah's Witness meetings during Lisa's physical placement times.

¶4 Lisa testified that she felt Brian's involvement with the Witnesses was destructive and isolating, and that she would like to expose him to alternative religious viewpoints. She was particularly concerned that the Witnesses discouraged associating with "worldly people," i.e., non-Witnesses, discouraged extracurricular activities and education beyond high school, discouraged celebration of birthdays and holidays that Brian had previously enjoyed celebrating, and preached the imminent destruction of the world, such that Brian began living in daily fear.

¶5 Lisa's opinions were supported in part by the testimony of Rick Ross. Ross identified himself as "an expert consultant, lecturer and intervention specialist regarding radical and unsafe groups." The trial court permitted Ross to give his opinions as to why the Jehovah's Witnesses were a "potentially unsafe and destructive religious organization." In the course of giving its decision from the bench, however, the trial court characterized Ross's testimony as insulting and stated that it "refuse[d] to write off Jehovah's Witnesses as a cult or even a dangerous organization."

¶6 At the close of the testimony, the guardian ad litem noted that Brian had expressed the wish to participate in the Jehovah's Witness religion, but questioned how voluntary that decision really was, given David's emphasis on adherence to the Witness lifestyle as a source of pride and Brian's desire to please his father. The guardian ad litem recommended giving religious decision-making authority to Lisa on the grounds that Brian should not face the pressure of changing religions and altering activities, and that Lisa would give him a broader

religious perspective. The trial court ultimately agreed with the guardian ad litem that giving Lisa religious decision-making authority would be in Brian's best interest, citing concern that David appeared to measure Brian's development as a person solely on his adherence to Witness teaching and that Brian was so motivated to please his father that his supposed decision to follow Witness teaching was not truly voluntary.

DISCUSSION

¶7 David first argues that WIS. STAT. § 767.24(6)(b) (2001-02),[2] which authorizes the trial court to "give one party sole power to make specified decisions" does not permit restriction of the non-custodial parent's right to direct a child's religious training absent a showing that the child would face imminent and substantial harm from said religious training. This court squarely rejected a similar contention in ***Lange v. Lange***, 175 Wis. 2d 373, 502 N.W.2d 143 (Ct. App. 1993), however. ***Lange*** explicitly held that no showing of harm was required before a trial court could fashion restrictions to protect a sole custodial parent's right to chose the child's religion from proselytizing efforts from the non-custodial parent. ***Id.*** at 385-86.

¶8 We conclude that ***Lang*** is dispositive. When parents sharing joint legal custody are unable to agree as to a course of religious upbringing for their child, WIS. STAT. § 767.24(6)(b) authorizes the trial court to grant sole authority to direct the child's religious training to one parent and to correspondingly restrict the other parent's religious decision-making, without a showing that the other

[2] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

parent's religious choices would be potentially harmful to the child. *See* ***Lang***, 175 Wis. 2d at 385-86.

¶9 We are further satisfied that the trial court's order in this case was a proper exercise of its statutory discretion. There is ample evidence to support the trial court's determination that there was an "irreconcilable conflict" between the parties on the issue of religion, such that joint decision-making was unworkable. It was therefore entirely appropriate for the trial court in this case to assign religious decision-making to one parent or the other. The trial court took great care to note that the Jehovah's Witness religion was a "well regarded religious institution" whose practitioners' "sincere and heartfelt" beliefs were entitled to respect. The trial court did not base its decision on a comparison between the merits of Brian's and Lisa's religious beliefs. Rather, the trial court considered such factors as "Brian's relationship to his father and his relationship to the religion and Brian's age and his ability to make decisions for himself." The trial court reasonably explained that it believed it would be in Brian's best interest to give religious decision-making authority to Lisa, due to the pressure Brian felt to please his father by participating in the Witness religion. Contrary to David's allegations, we are not persuaded that the trial court's decision was improperly based on a negative view of the Witness faith.

¶10 David argues that the trial court's decision was not in Brian's best interest, because social scientists and other courts have concluded that a child of divorce is best served by being exposed to both parents' religions. David was certainly free to make such arguments to the trial court, but the trial court's ultimate determination needed to be tailored to this particular child, and, as we have discussed, its decision was reasonable. David's disagreement with the trial

court's view of what would be in Brian's best interest does not provide grounds for reversal.

¶11 David next contends that, even if an assignment of religious authority is permissible under the statutes without a finding of potential harm, the trial court's order violates his rights under the free exercise clauses of the United States and Wisconsin constitutions. Again, ***Lange*** contradicts David's claim. As the ***Lange*** court explained,

> the free exercise of religion includes the right to profess one's faith, but it does not include the right to engage in religious conduct such as proselytizing, that runs afoul of an otherwise valid law….
>
> Limiting [the non-custodial parent's] religious conduct is not the object of the visitation restriction. It is the incidental effect of securing [the custodial parent's] right under a valid law, the custody statute, to chose the children's religion.

Lange, 175 Wis. 2d at 384-85 (citations omitted). In other words, what is at issue here is not David's right to exercise his own religious beliefs, but his authority to direct the religious upbringing of his son. In accordance with ***Lange***, we conclude that David's constitutional free exercise rights are not violated by an order which necessarily divides and assigns religious decision-making authority to one of two parents who cannot agree on a course of religious upbringing for their child.

¶12 David further asserts, in a single paragraph, that the custody modification order violates the establishment clause by entangling the court in religious matters. His sole authority for this assertion is a Pennsylvania case which apparently follows the showing-of-harm rule rejected in this state by ***Lange***. This court need not consider arguments which are undeveloped or unsupported by

references to relevant legal authority. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633, (Ct. App. 1992).

¶13 David also maintains that the custody modification order violates his rights to free speech and association, because it is not narrowly tailored to protect Lisa's right to direct Brian's religious upbringing. Specifically, he claims that Lisa "offers no formal religious training or affiliation for Brian. So there is nothing for [David]'s religious exposure to contradict." First of all, David's claim ignores Lisa's testimony that Brian refused to attend Unitarian services with Lisa after going to Witness meetings with his father. Thus, there was evidence in the record that David was impeding Lisa's ability to direct Brian's religious upbringing by encouraging Brian to follow only the Witness faith. Moreover, the fact that Lisa may have chosen a less formal or non-formal course of religious upbringing for Brian does not mean that her choice is somehow less protected.

¶14 David makes similar claims that Brian's rights to religious freedom, free speech and freedom of association are violated by the custody modification order. He has not, however, provided any authority which persuades us that a minor has the right to exercise any of these constitutional rights in contravention of his or her parent's wishes. We are more convinced by the trial court's analogy to educational and medical decisions which a parent has the right to make on a child's behalf. In any event, the trial court clarified at a post-decision hearing that its order would not bar Brian from doing things like socializing with Witness friends, praying, reading Witness literature on his own or asking his Dad or grandparents about Witnesses, so long as not directed to do so by his father. We do not consider the order here any more restrictive to Brian's ability to form his own religious beliefs than that of any other child subject to his or her parents' direction.

¶15 David also contends that Brian's due process rights were violated when the trial court refused to allow Brian to testify. Even assuming David has standing to raise this issue on Brian's behalf, the trial court may appropriately rely upon a third party to communicate the child's wishes. ***Hughes v. Hughes***, 223 Wis. 2d 111, 130-31, 588 N.W.2d 346 (1988). Here, the guardian ad litem conveyed Brian's undisputed desire to follow the Witness faith to the court, and the court acknowledged Brian's preference. David does not identify any information which Brian was unable to convey to the court through this mechanism, and we see no reversible error.

¶16 Finally, David argues that the trial court erroneously exercised its discretion by admitting Ross's testimony. We note that David's challenges to Ross's qualifications appear, by and large, to go more to the question of credibility than admissibility. Even assuming for the sake of argument that Ross was not qualified to serve as an expert witness, however, we conclude that the admission of his testimony would have been harmless error because it is plain from the trial court's comments that it did not give weight to the testimony.

By the Court.—Order affirmed.

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