COURT OF APPEALS
DECISION
DATED AND FILED

November 2, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP72 **Cir. Ct. No. 2005FA77**

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

IN RE THE MARRIAGE OF:

JON T. PAZDERA,

PETITIONER-RESPONDENT,

V.

ROXANN R. PAZDERA,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Marinette County: TIM A. DUKET, Judge. *Affirmed*.

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

¶1 PER CURIAM. Roxann Pazdera appeals from an order revising physical placement, arguing the circuit court erroneously exercised its discretion in numerous respects. We affirm.

¶2 Roxann and Jon Pazdera were married January 8, 1993, and divorced September 22, 2005. Four children were born to the marriage. Roxann was granted primary physical placement by stipulation. Jon subsequently filed a motion to modify placement.[1] After a hearing, the circuit court found that a substantial change of circumstances had occurred and that a revision of placement was in the children's best interests. The court ordered a change of primary physical placement to Jon. Roxann now appeals.

¶3 Physical placement determinations are committed to the sound discretion of the circuit court. *See* ***Bohms v. Bohms***, 144 Wis. 2d 490, 496, 424 N.W.2d 408 (1988). We will affirm a determination on placement modification as long as it represents a rational decision based on the application of the correct legal standards to the facts. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶4 Here, we see no reason to disturb the circuit court's decision. The court considered the children's wishes and their relationship with their parents as well as others. The court noted one child had strong wishes to remain with Roxann, but in the court's view:

> [T]hat's because with the mom she can run the show, she can do what she pleases, she can come and go as she wants without adequate supervision and control, and that's exactly what she's not going to have happen when she's with the dad ….

[1] The parties contend this case is based upon a request by both parents in separate motions to modify a physical placement order. We note the circuit court's written order only references Jon's motion.

¶5 The court found the child was "spinning out of control, and I don't see much control by the mother to be able to harness her and keep her in line." The court concluded the child "has decided she is going to start calling the shots, she is going to start doing whatever she wants to do in terms of pot, alcohol, sex, MySpace, smoking." The court noted "highly sexually suggestive photographs" placed on the internet, and concluded Roxann was inadequately supervising "what [the child has] been doing on [the internet]." The court also indicated the child's grades were slipping, she was involved in a cheating incident at school and "she has engaged in a pattern of deceit and lying."

¶6 The court contrasted Roxann's inadequate supervision and control with Jon's "greater structure, control, [and] stability …." The court reasoned Jon was willing to assert control and was not afraid to assume parental responsibility. The court concluded, "It shows to me strong parenting skills that – that are in the best interests of the children."

¶7 The court also considered the cooperation between the parties and whether one party was likely to unreasonably interfere with the children's continuing relationship with the other party. The court found Roxann engaged in a "systematic plan" to poison Jon's relationship with the children. The court noted Roxann attempted to get Jon fired from his job. The court also stated, "She's told the kids to lie, to hide things like cellphones …." The court found Roxann deceitful and concluded she would "make up lies to suit her to get what she wants." The court stated:

> I think it's been her intention to stir things up and to make it more difficult for the father to exercise his secondary physical placement. I'm not convinced that she is acting in good faith and the best interest of the children, she's acting to create turmoil and deception and problems ….

¶8 The court also considered the amount of time each parent had to spend with the children and the changes Jon proposed in order to be able to spend more time with the children. The court noted Jon was living with his parents after the divorce, where space was limited. Jon had since moved from Marinette to the Green Bay area. The court concluded Jon's situation "has significantly improved in terms of his ability to have these kids for physical placement. His situation is remarkably different now than it was at the time of the divorce …." The court also indicated Jon found different employment that allowed him to be home Monday through Friday with little overtime or work on weekends. The court also found the children would adjust to school, church and the community.

¶9 After consideration of numerous factors, the court found there was a substantial change in circumstance since the last placement order. The court reasonably exercised its discretion and concluded the children's best interests were served by being primarily placed with Jon.

¶10 Roxann insists the circuit court "erred as a matter of law when it did not address the factor of serious interspousal abuse …." The evidence indicated a domestic violence incident in 1999, which occurred before the divorce judgment. The circuit court did consider this incident during the modification proceedings.

¶11 Roxann testified about further incidents of alleged abuse.[2] However, the existence of these incidents came down to a question of credibility. When two parties to a placement modification proceeding present conflicting testimony, the

[2] Jon contends the only incident allegedly occurring after the last placement order was where Roxann alleged he pushed her in the driveway. Regardless, the court found Roxann not credible.

circuit court is the ultimate arbiter of credibility. *See* ***Brandt v. Witzling***, 98 Wis. 2d 613, 619, 297 N.W.2d 833 (1980).

¶12 Quite simply, the court did not consider Roxann's testimony credible. The court stated:

> I have, in light of all the other testimony which I find questionable by the mother, I find it unlikely that there was any significant situations of battery or domestic abuse, other than what happened back in 1999.

¶13 The circuit court specifically found Jon a "zero threat" to Roxann and the children. Credible evidence supports the court's findings in this regard.

¶14 Roxann also argues the circuit court improperly based its placement modification on lifestyle choices. However, the court's decision was not based upon lifestyle choices but, rather, concrete problems the children were having related to inadequate control and supervision, among other things. The court cited numerous examples to support its finding that the existing placement order was contrary to the children's best interests, and none of the findings the court relied upon was clearly erroneous. *See* WIS. STAT. § 805.17(2).[3]

¶15 Roxann next asserts that "a father does not have a fundamental right to equal placement." She argues the court "implicitly and deliberately compensated the father for the court's perception of previously lost placement opportunity due to burdens of employment and travel." Roxann also suggests "inadvertent [circuit court] bias or preconception." We conclude the record demonstrates neither a misconception concerning equal placement nor bias.

[3] References to Wisconsin Statutes are to the 2007-08 version.

¶16 Roxann also contends the court did not state in writing its reasons for modifying the placement order, as required by WIS. STAT. § 767.451(5). However, Roxann concedes the court incorporated its oral findings into the final order, and attached a transcript of the decision to the order. The court's reasons for modifying the placement order were therefore "in writing."

¶17 Roxann next asserts the circuit court improperly favored Jon's physical placement over the children's best interests. However, it is apparent from the court's oral decision that its primary purpose in modifying placement was the children's best interests.

¶18 Roxann also argues that "regardless of any stipulation or finding to the contrary, the record fails to demonstrate a substantial change in circumstances." Roxann contends:

> During the hearing, Jon's counsel asserted that the ***Keller*** case seemed to support the idea that the trial court could find based upon Roxann's motion, and Jon's motion, that there was a stipulated substantial change in circumstances.
>
> The referenced case, believed to be ***Keller v. Keller***, 2002 WI App 161, 256 Wis. 2d 401, 647 N.W.2d 426, does not support such an assertion. While there had been some language indicating the mother had to maintain a consistent stance from trial to appeal, that particular portion of the opinion is clearly dicta and does not set forth the proposition that if a parent files a motion to substantially modify placement that a trial court, during contested proceedings may then presume by a nonexistent stipulation and unproven allegations that a substantial change in circumstances exists. ***Millikin***, [sic] 2002 WI App 161, ¶11, 256 Wis. 2d at 408.

¶19 Roxann's argument is difficult to decipher. Regardless, she fails to provide record citations to support her underdeveloped contentions in this regard and we will not consider the issue further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d

239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). We further decline to engage in speculation concerning case law Jon allegedly referenced in the circuit court.

By the Court.—Order affirmed.

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