

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 2010

A. John Voelker
Acting 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. 2009AP2837-FT

Cir. Ct. No. 2001FA193

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

ANTHONY A. MASTRODONATO,

PETITIONER-APPELLANT,

V.

LISA MARIE MASTRODONATO,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed; attorney sanctioned.*

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

¶1 PER CURIAM. Anthony Mastrodonato appeals¹ from an order dismissing his motion to modify custody, physical placement and child support. Anthony argues the circuit court erroneously exercised its discretion. We reject Anthony's arguments and affirm.

¶2 Anthony and Lisa Mastrodonato were married on November 6, 1999, and divorced on January 15, 2003. The parties stipulated to joint custody and equal placement. Numerous postdivorce proceedings were filed. The present appeal involves Anthony's "Motion for Modification of Judgment and Prior Orders in the Divorce Relating to Legal Custody, Placement and Support of a Minor Child and Appointment of a Guardian Ad Litem." After a hearing, the circuit court denied the motion. Anthony now appeals.

¶3 Custody, physical placement and child support decisions 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 the court's discretionary decision as long as it represents a rational decision based on the application of the correct legal standard to the facts. See *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). When reviewing fact findings, we search the record for reasons to sustain the circuit court's discretionary decision, not for evidence to support findings the court could have but did not reach. *Steiner v. Steiner*, 2004 WI App 169, ¶18, 276 Wis. 2d 290, 687 N.W.2d 740.

¶4 Both parties agree this case is controlled by WIS. STAT. § 767.451(1)(b), which provides in relevant part:

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

767.451 Revision of legal custody and physical placement orders.

(1) Substantial modifications.

(b) *After 2-year period.* 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 interests 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.

¶5 Anthony contends the court ignored substantial evidence “showing the harm suffered by this child” as a result of conflict and interactions between the parties. Anthony points to several sources of evidence allegedly ignored, including the testimony of Lisa’s step-daughter, Stephanie Spreeman; Anthony’s testimony; the testimony of clinical therapist Michael Mervilde; and the guardian ad litem’s recommendation. Anthony also contends the court failed to make specific findings in support of a rational decision.

¶6 Anthony fails to provide citations to the record on appeal concerning Spreeman’s testimony.² We will not search the record for evidence to support a party’s arguments. *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239

² Anthony requested the circuit court take judicial notice of Spreeman’s testimony from a prior injunction hearing, which appears to be a separate action in Shawano County case No. 2008CV384, heard on October 7, 2008. With regard to Spreeman’s testimony at the injunction hearing, both parties merely cite to “Injunction Hearing Transcript,” “Transcript injunction hearing,” or “IHT.” It should be clear to all lawyers that appellate briefs must give reference to the appellate record for each statement and proposition made in an appellate brief. *Haley v. State*, 207 Wis. 193, 198-99, 240 N.W. 829 (1932); *see also* WIS. STAT. RULE 809.19(c), (d), and (e).

Wis. 2d 406, 620 N.W.2d 463. Regardless, the record demonstrates Spreman's testimony was not ignored by the circuit court. Anthony is also incorrect that the court "gave absolutely no credence" to any of Anthony's testimony. The court considered Anthony's self-serving and unsupported testimony, and concluded he was an overly controlling individual.

¶7 The circuit court found Mervilde's opinions "wishy washy." Mervilde's opinions were based upon interviews with the child and one parent, Anthony. Mervilde neither specified the parent responsible for conflicts, nor made a specific recommendation as to which parent should be awarded custody. Mervilde's response to questions from the guardian ad litem about joint counseling for the parents was also significant. Despite Mervilde's "rather hopeless feeling that this is just never going to end ... as long as the parents continue to interact in this way," he acknowledged he had clients who were even more conflicted than Anthony and Lisa but who benefitted as a result of counseling. The circuit court concluded Mervilde's comments suggested possibilities for consideration, rather than criticism of Lisa, as suggested by Anthony.

¶8 Anthony also contends the circuit court "ignored the recommendations of the Court Appointed Guardian ad Litem, who concurred with the treating professional." Anthony asserts, "the Court [sic] total dismissal of the Guardian ad Litem's recommendation, may well go to show the Court's state of mind concerning the evidence that was before it." Anthony's argument in this regard is underdeveloped. We will not abandon our neutrality to develop arguments. *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Regardless, the court considered the guardian ad litem's opinions, although it chose not to follow her recommendations.

¶9 After consideration of the evidence in this case, the circuit court asked, “So what has changed since the last order?” The court found there was not a substantial change of circumstances and cited numerous examples to support its finding. It is also apparent from the court’s oral decision that its primary consideration was the best interest of the child.

¶10 We see no reason to disturb the circuit court’s decision. None of the court’s findings were clearly erroneous. *See* WIS. STAT. § 805.17(2). The court’s decision was a product of rational decision-making and, although not a picture-perfect example of findings of fact and conclusions of law, the record sufficiently supports the court’s determination.³

By the Court.—Order affirmed; attorney sanctioned.

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

³ Anthony’s attorney certified to this court, as required by rule, that his appendix “complies with s. 809.19(2)(a) and contains, at a minimum: (1) a table of contents[;] (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court’s reasoning regarding those issues.” However, Anthony’s appendix contains only the “Order of Dismissal,” and does not include the court’s oral decision or other record showing the court’s reasoning. Filing a false certification with this court is a serious infraction justifying the imposition of sanctions. *State v. Bons*, 2007 WI App 124, ¶¶23-25, 301 Wis. 2d 227, 731 N.W.2d 367. We therefore direct Anthony’s counsel to pay \$150 to the clerk of this court within thirty days of the date of this decision.

