

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 1, 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. 2010AP255

Cir. Ct. No. 2004PA247PJ

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE PATERNITY OF REESE ALLEN DERKSEN AND BRET ROBERT
DERKSEN:**

WENDY BROOKE MILLER,

PETITIONER-RESPONDENT,

v.

DEAN DARWIN DERKSEN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Sheboygan County:
GARY LANGHOFF, Judge. *Affirmed.*

¶1 REILLY, J.¹ Dean Derksen appeals from a circuit court order denying his motion to hold the mother of his children—Wendy Miller—in contempt. The circuit court denied Derksen’s motion after it found that Miller had not violated their children’s placement order. As we agree with the circuit court, we affirm the order.

BACKGROUND

¶2 Derksen and Miller are the parents of twin boys Reese and Bret. Derksen and Miller never married, but share joint legal custody of the twins. Additionally, Derksen and Miller have an equal placement agreement whereby the children spend Mondays and Tuesdays with Miller and Wednesdays and Thursdays with Derksen, with placement of the children alternating on weekends.

¶3 On February 19, 2009, Derksen and Miller agreed to modify the placement situation of Reese and Bret. Paragraph ten of the modified agreement deals with extracurricular activities for the twins. It reads:

If both parties agree on an extracurricular activity for the children, the parties shall each be responsible for providing transportation to the activity during their period of placement. If the parties do not agree on an extracurricular activity, the parent who enrolls the children in that activity shall be responsible for providing transportation. Notwithstanding the above, the parent who has placement during a time in which there is an extracurricular activity that the party has not agreed with, the non-agreeing party’s period of placement shall not be interfered with, although the non-agreeing party shall have the option of bringing the children to the particular extracurricular activity, or offering the agreeing party the opportunity to bring the children to the activity.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶4 Both Reese and Bret have played hockey since they were two years old. Starting in November of 2009, Miller refused to take the twins to their Tuesday evening hockey practice. She stated that she believes hockey practice interferes with their schoolwork. Because Derksen wants the twins to attend practice even when Miller has custody, he filed a motion to hold Miller in contempt for not abiding by the placement agreement.

¶5 The circuit court rejected Derksen's motion. At the hearing on the motion, the court noted that paragraph ten of the placement agreement stipulates that when both parents do not agree on an activity, the parent who does not want the child to participate in the activity does not lose his or her placement rights.

STANDARD OF REVIEW

¶6 The construction of a child placement agreement is a question of law. *See Keller v. Keller*, 214 Wis. 2d 32, 37, 571 N.W.2d 182 (Ct. App. 1997). A placement agreement is a contract. When the terms of a contract are plain and unambiguous, we will construe the contract as it stands. *Id.* We give words in a contract their common and ordinary meaning. *Id.*

DISCUSSION

¶7 Paragraph ten of the placement agreement states that when Derksen and Miller both agree on an extracurricular activity for the children, each parent is responsible for transporting the children to the activity when the parent has custody. But in this instance where the parties do not agree on an activity, paragraph ten states that the parent with placement of the children gets to decide whether he or she wants the children to participate in the activity. Miller stated that she does not want Reese and Bret attending hockey practice because she

believes it interferes with their schoolwork. Derksen thus has no say over Miller's decision not to take the twins to hockey practice when Miller has placement of the children.

By the court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)(4).

