

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2012

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. 2011AP621

Cir. Ct. No. 2007FA6820

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

RUTH B. CORDDRY,

PETITIONER-APPELLANT,

V.

STEVEN F. BERG,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
ELSA C. LAMELAS, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 BRENNAN, J. Ruth B. Corddry appeals from the circuit court's December 15, 2010 child custody placement order, which adopted the guardian ad litem's placement recommendations for Corddry's son Nicholas with his father Steven F. Berg. Corddry contends that the circuit court's December 2010

placement order was entered in response to a motion for modification filed by Berg, and that the circuit court erroneously entered the December 2010 placement order without making the requisite findings pursuant to WIS. STAT. § 767.451(1)(b) (2009-10).¹ We disagree and affirm.

BACKGROUND

¶2 Corddry and Berg were divorced in January 2000 in Arapahoe County, Colorado. They had one minor child, Nicholas, who was born August 19, 1997. Pursuant to the divorce decree and the parties' separation agreement, Corddry and Berg maintained joint custody of Nicholas, but Nicholas resided primarily with Corddry. Sometime after the divorce was finalized, Corddry and Nicholas relocated to Milwaukee, with Berg's permission, while Berg remained in Colorado. Corddry docketed the parties' Colorado divorce judgment in Milwaukee County in November 2007.

¶3 Following Corddry's move to Milwaukee, the parties' previous custody arrangement was no longer tenable. Consequently, in February 2008, Berg brought an Order to Show Cause for Contempt and Other Relief in Milwaukee County, asking the court, *inter alia*, to establish a placement schedule that permitted Berg regular and meaningful time with Nicholas.

¶4 In April 2008, the Honorable Karen E. Christenson held a hearing regarding the Order to Show Cause, at which she set a temporary placement

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

schedule. The day after the hearing, the circuit court appointed Linda Ivanovic as Nicholas's guardian ad litem ("GAL").

¶5 Following months of additional litigation, during which time the circuit court received several detailed investigative reports and a placement recommendation from Ivanovic, the circuit court held a hearing on placement in June 2009. In July 2009, the circuit court entered a written placement order, adopting Ivanovic's recommendations, that set forth the specific dates and times Berg would have placement through May 31, 2010. The order explicitly stated that "[t]he parties shall consider the GAL's suggestion outlined below for placement after May 31, 2010. The parties may also agree on any other similar schedule or may petition for a review of this structure from the Court." Ivanovic's suggested placement schedule immediately followed and set forth an open-ended framework for placement into the future, specifying different holiday and summer schedules for odd and even years.

¶6 In May 2010, the parties were unable to agree on a specific placement schedule based upon Ivanovic's recommendations or otherwise. Consequently, Berg filed a placement motion, asking the circuit court to set a visitation schedule for the summer of 2010. The court, the Honorable Elsa C. Lamelas now presiding due to judicial transfer, reappointed Ivanovic as Nicholas's GAL and ordered that Nicholas be placed with Berg in Colorado from June 30 through July 31, 2010.

¶7 Berg filed a second placement motion in December 2010, alleging that Corddy did not abide by Judge Lamelas's court-ordered summer placement schedule. Berg asked the court to adopt date-and-time-specific periods of placement with Berg to make up for placement time Berg lost with Nicholas and

to set a date-and-time-specific placement schedule for the parties going forward. Berg attached to his motion a proposed placement schedule following the odd/even year format suggested by Ivanovic in Judge Christenson's July 2009 order.

¶8 Corrdry, although represented by counsel, filed no motions.

¶9 In December 2010, the circuit court held a hearing on Berg's motion, during which it heard Ivanovic's recommendations and arguments from counsel. Corrdry's counsel objected to Berg receiving "make-up time," stating that "[w]e were left a year and a half ago with an order that expired at the end of May, which left no order at all," a sentiment counsel repeated several times during his argument. Corrdry's counsel also objected to the circuit court ruling upon Berg's motion without an evidentiary hearing.

¶10 During the hearing, the circuit court adopted, and later signed, the proposed placement order attached to Berg's motion, which was based upon Ivanovic's recommendations. In doing so, the court stated as follows:

Before Judge Christenson there were a number of hearings. At some of them the parties made statements.

In July of 2008[,] Judge Christenson gave to the guardian ad litem certain authorities including the authority to regulate the phone calls between the parties.

In October of 2008[,] Judge Christenson adopted the guardian ad litem's recommendation regarding some matters that were before the court then. There was yet another hearing before Judge Christenson in February of 2009 in which Ms. Ivanovic once again entered an appearance as the guardian ad litem for the child. Statements were made by the parties, and the court advised the parties to address the summer schedule back then.

Then in June of 2009, the case was before Judge Christenson once again for [a] status conference and for the

petitioner's motion for contempt. Once again there were recommendations by the guardian ad litem.

Then the case came before me in June. There was a fairly detailed order that had been entered, and it had expired, and the guardian ad litem was once again in a position to make certain recommendations.

I have heard nothing more serious here today than a squabble, if it's to be called that, between the father and his child regarding the purchase of a drink while the child was in Colorado. I don't believe that is sufficient to push this case back into an evidentiary posture.

Corddry appeals.

DISCUSSION

¶11 Corddry submits that the circuit court erred when it failed to hold an evidentiary hearing before ruling on Berg's December 2010 placement motion, arguing that Berg's motion was a request to modify an unspecified existing court order and that, as such, the court was required to hold an evidentiary hearing pursuant to WIS. STAT. § 767.451(1)(b)1.b. to demonstrate that there was "a substantial change of circumstances." Corddry's argument is without merit.

¶12 The circuit "court has wide discretion in making physical placement determinations." *Wiederholt v. Fischer*, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992). We will sustain the circuit court's discretionary decision if 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).

¶13 When considering Berg's December 2010 placement motion, Judge Lamelas did not interpret it as a motion for modification filed pursuant to WIS.

STAT. § 767.451(1)(b), but rather she considered the motion a request to fill in the void left open by Judge Christenson's July 2009 placement order. Judge Lamelas's interpretation of the motion was reasonable given that: (1) Berg's motion did not request "modification" or otherwise reference § 767.451(1)(b); (2) the proposed placement schedule attached to Berg's motion substantially adopted Ivanovic's placement recommendations, as suggested by Judge Christenson's July 2009 placement order; (3) Judge Christenson's July 2009 placement order only gave specific dates and times for placement through May 31, 2010, and then directed the parties to "petition for a review" if they could not independently come to an agreement on Nicholas's placement; and (4) Corddry did not file a motion for modification in response to Berg's December 2010 motion, even though she could have done so.

¶14 Because Judge Lamelas rationally and reasonably interpreted Berg's December 2010 motion as one for continuation of Judge Christenson's July 2009 order and enforcement of placement, rather than as a motion to modify an existing order, the court did not err in failing to hold an evidentiary hearing pursuant to WIS. STAT. § 767.451(1)(b). Judge Lamelas summarized the extensive past litigation and Ivanovic's recommendations, which led to Judge Christenson's July 2009 order. Judge Lamelas concluded that the proposed placement schedule attached to Berg's December 2010 motion was consistent with what was deemed appropriate in the past, and continued the schedule with dates into the future. The record supports Judge Lamelas's conclusions. Berg's motion and proposed placement schedule was fairly interpreted as a continuation of the final order on placement. Berg did not bring a motion for modification of placement and neither did Corddry. Corddry did not argue for a modification of placement or custody. In adopting Berg's proposed placement schedule, Judge Lamelas reaffirmed the

framework from the original order. Judge Lamelas's reliance on the record and the numerous hearings held before Judge Christenson, as well as the parties' oral arguments in December 2010, provided a sufficient basis on which to rule upon Berg's motion.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

