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April 27, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP1074

In re the Paternity of M. S. H.: Jamie Lynn Grosse v. Michael
Scott Krapohl (L. C. #2012FA2114)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Jamie Lynn Grosse and Michael Scott Krapohl share legal custody and physical placement of their minor son, who was born in 2012 when they resided together as a couple. Grosse appeals an order denying her request for an order permitting her to move from Wisconsin to Florida and to remove the child from Wisconsin to live with her in Florida. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ As

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

explained below, we reject the only developed challenge Grosse makes to the order on appeal, and we affirm the order.

Grosse, Krapohl, and the child lived together until April 2013, and the relationship between Grosse and Krapohl ended approximately two months later. A stipulated temporary order was entered in November 2013, ordering joint legal custody and shared equal physical placement. In November 2014, Grosse filed a notice of her intent to move, and to remove the child, from Wisconsin to Florida. Krapohl opposed the removal of the child from Wisconsin to Florida. The circuit court held a hearing in March 2015 and denied Grosse's request.

The decision to modify a physical placement schedule, including whether to grant or deny a request to remove a child from Wisconsin, lies within the sound discretion of the circuit court. *Hughes v. Hughes*, 223 Wis. 2d 111, 119, 588 N.W.2d 346 (Ct. App. 1998). Therefore, we affirm the court's decision if it applied the correct legal standard to the facts before it and reached a reasonable result, and if necessary we search the record to determine whether it reveals reasons to sustain the court's exercise of discretion. *Id.* at 119-20. We affirm the circuit court's findings of fact unless they are clearly erroneous, and we review de novo whether the court applied a correct legal standard in exercising its discretion. *Id.* at 120; *see also* WIS. STAT. § 805.17(2)

The legislature has established two different sets of standards for a circuit court to follow when a parent proposes to move with a minor child from Wisconsin. One set of standards is set forth in WIS. STAT. § 767.481(3)(a), which applies if the parents have joint legal custody and the child resides with the requesting parent "for the greater period of time." A second set of standards is set forth in WIS. STAT. § 767.481(3)(b), which

applies if “the parents have joint legal custody and substantially equal periods of physical placement with the child.”²

² The pertinent parts of WIS. STAT. § 767.481 are as follows:

(3) STANDARDS FOR MODIFICATION OR PROHIBITION IF MOVE OR REMOVAL CONTESTED.

(a)

1. Except as provided under par. (b), if the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time, the parent objecting to the move or removal may file a petition, motion or order to show cause for modification of the legal custody or physical placement order affecting the child. The court may modify the legal custody or physical placement order if, after considering the factors under sub. (5), the court finds all of the following:

a. The modification is in the best interest of the child.

b. The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1.:

a. There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. This presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interest of the child.

b. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under that subdivision.

3. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

(b)

(continued)

1. If the parents have joint legal custody and substantially equal periods of physical placement with the child, either parent may file a petition, motion or order to show cause for modification of the legal custody or physical placement order. The court may modify an order of legal custody or physical placement if, after considering the factors under sub. (5), the court finds all of the following:

a. Circumstances make it impractical for the parties to continue to have substantially equal periods of physical placement.

b. The modification is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent filing the petition, motion or order to show cause.

(c)

1. If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time or the parents have substantially equal periods of physical placement with the child, as an alternative to the petition, motion or order to show cause under par. (a) or (b), the parent objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

2. Under this paragraph, the burden of proof is on the parent objecting to the move or removal.

...

(5) FACTORS IN COURT'S DETERMINATION. In making its determination under sub. (3), the court shall consider all of the following factors:

(a) Whether the purpose of the proposed action is reasonable.

(b) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.

(c) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

(5m) OTHER FACTORS. In making a determination under sub. (3):

(continued)

The circuit court first considered WIS. STAT. § 767.481(3)(b), deeming it the more appropriate standard, because the parents have joint legal custody and substantially equal periods of physical placement with the child. The court denied Grosse’s request after considering the factors identified in, and making the findings required by, § 767.481(3)(b). The court then stated that, in the alternative, if it considered the standards in WIS. STAT. § 767.481(3)(a), it would also deny Grosse’s request.

Grosse does not challenge in any specific or developed manner either the circuit court’s factual finding that the parents here have substantially equal periods of physical placement with the child, or the court’s consideration of the evidence in light of the WIS. STAT. § 767.481(3)(b) standards. Rather, the only argument that Grosse develops on appeal is that the court incorrectly interpreted the standards set forth in WIS. STAT. § 767.481(3)(a), specifically whether Krapohl showed that Grosse’s move and the child’s removal from Wisconsin to Florida are “unreasonable.” *See* WIS. STAT. § 767.481(3)(a)2.a. Grosse’s argument does not matter because the circuit court found that “the parents have joint legal custody” and “substantially equal periods of physical placement with the child,” and therefore determined that the applicable standards are

(a) The court may consider the child’s adjustment to the home, school, religion and community.

(b) The court may not use the availability of electronic communication as a factor in support of a modification of a physical placement order or in support of a refusal to prohibit a move.

those in WIS. STAT. § 767.481(3)(b). And, as stated above, Grosse does not develop any argument challenging that determination or the court's application of those standards.³

Even if we were to reach the merits, we would affirm the circuit court's exercise of discretion. Our review of the record demonstrates that the court's factual finding, that the parents have substantially equal periods of physical placement with the child, is well supported in the record. The court then considered the factors identified in WIS. STAT. § 767.481(3)(b) in light of the evidence presented, and found that Grosse's proposed move and removal will "undercut" the good relationship between Krapohl and the child, and given the age of the child, will more likely do harm than good. The court based this finding in part on the family court counselor's testimony, which the court credited. Finally, addressing the findings specified in WIS. STAT. § 767.481(3)(b)1.a. and b., the court found that it is not impractical for the parents to continue to have substantially equal periods of placement in Wisconsin, and that the proposed move and removal are not in the best interest of the child.

Because Grosse fails to argue that the circuit court made erroneous factual findings, applied incorrect legal standards, or otherwise improperly exercised its discretion in applying WIS. STAT. § 767.481(3)(b), and because the court's analysis under WIS. STAT. § 767.481(3)(b) resolves the parties' dispute, we affirm the order of the circuit court.

³ In her reply brief, Grosse suggests that the circuit court's arguably incorrect analysis under WIS. STAT. § 767.481(3)(a) makes the court's analysis under WIS. STAT. § 767.481(3)(b) "suspect." We reject Grosse's suggestion because it is undeveloped and made for the first time in her reply brief. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed."); *State v. Reese*, 2014 WI App 27, ¶14 n.2, 353 Wis. 2d 266, 844 N.W.2d 396 ("[t]his court need not address arguments that are raised for the first time on appeal, or ... for the first time in the reply brief").

IT IS ORDERED that the order denying Grosse's request to move, and to remove the parties' child, from Wisconsin to Florida is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals