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**DISTRICT IV**

November 20, 2018

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

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2017AP2183

In re the marriage of: Ryan E. Moston v. Tracy A. Jurci p/k/a  
Tracy A. Moston (L.C. # 2008FA311)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Ryan E. Moston appeals an order that modified child placement. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We summarily affirm.<sup>2</sup>

In February 2016, Tracy A. Jurci moved to modify the placement of the minor child shared by Jurci and Moston. Jurci sought an order limiting the child’s placement with Moston to provide for the child’s safety and protection. She argued that any placement with Moston should be conditioned on Moston undergoing a comprehensive mental health evaluation and engaging in treatment of his mental health issues and pattern of domestic violence. Following a trial on the motion, the circuit court entered an order that modified placement to deny Moston any contact with the child.

“[P]lacement decisions are committed to the trial court’s discretion, and we sustain them on appeal when the court exercises its discretion based on the correct law and the facts of record, and employs a logical rationale in arriving at its decision.” *State v. Alice H.*, 2000 WI App 228, ¶18, 239 Wis. 2d 194, 619 N.W.2d 151. We will not disturb the circuit court’s findings of fact unless those findings are clearly erroneous. *Covelli v. Covelli*, 2006 WI App 121, ¶13, 293 Wis. 2d 707, 718 N.W.2d 260. “A court may deny a parent’s physical placement rights at any time, upon motion of a party or on its own motion, if it finds that ‘physical placement rights would

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> The respondent’s brief asserts that this court should strike the appellant’s brief for failure to follow the rules of appellate procedure. While we recognize that the appellant’s brief fails to adhere to some of the requirements for an appellant’s brief set forth in WIS. STAT. RULE 809.19(1), we decline to strike the brief. Instead, we reject the arguments in the brief on the merits.

endanger the child's physical, mental, or emotional health.'" *Alice H.*, 239 Wis. 2d 194, ¶18 (quoted source omitted).

Moston first challenges the circuit court's factual finding that Moston has engaged in a pattern of spousal battery and domestic abuse, contending that the finding was unsupported by the evidence and therefore clearly erroneous. Moston contends that the court relied on unproven allegations of abuse, and points to discrepancies and inconsistencies in the allegations against him. This argument, however, goes to the weight and credibility of the evidence, and does not establish that the court's finding was clearly erroneous. The court found credible the allegations made by three women—Jurci, Moston's girlfriend following his divorce from Jurci, and Moston's second wife—that Moston was verbally and physically abusive towards them during their relationships. The court found that Moston's testimony denying the abuse was not credible. The circuit court's credibility determinations were sufficient to support its finding that Moston had engaged in a pattern of spousal battery and domestic abuse as alleged by his three former partners. *See Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980) (the fact-finder is the ultimate arbiter of credibility determinations and we defer to its resolution of discrepancies or disputes in the testimony).

Moston also argues that the circuit court improperly considered facts from a 2009 custody and placement study referenced by an expert witness and a deposition of Moston's former girlfriend, contending that both documents contained inadmissible hearsay. However, Moston does not contend that he objected in the circuit court to the admission of the custody and placement study. Indeed, our review of the trial transcript indicates that Moston stated that he had no objection to admission of the study. Moston's challenge to the court's consideration of the study is therefore not preserved for appeal. *See State ex rel. Olson v. City of Baraboo Joint*

*Review Bd.*, 2002 WI App 64, ¶23, 252 Wis. 2d 628, 643 N.W.2d 796 (“To preserve an issue for appeal, the circuit court must be apprised of a party’s objection and the basis for it.”). Additionally, the circuit court found that Moston’s former girlfriend was unavailable, and admitted her deposition for that reason. *See* WIS. STAT. § 908.04(1)(d). Moston has not developed an argument challenging that ruling, and we therefore do not consider it further. *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.”).

Moston’s final challenge to the circuit court’s factual finding as to Moston’s ongoing pattern of violent behavior is that the expert he retained did a more thorough and reliable psychological evaluation of him than the expert that Jurci retained. However, the court found Jurci’s expert more credible than Moston’s, and we defer to that credibility determination. *See Johnson*, 95 Wis. 2d at 151-52. While Moston points to reasons for why he believes more weight should have been accorded the testimony by the expert he retained, he has not set forth a persuasive argument that the circuit court was required to do so.

In sum, Moston argues that there was evidence to support a finding by the circuit court that Moston had not engaged in a pattern of spousal battery and domestic abuse. However, Moston has not provided any basis for this court to disturb the circuit court’s contrary finding that was based on other evidence in the record.

Next, Moston contends that the circuit court failed to apply the proper statutory factors for modifying child placement. Moston argues that the circuit court did not make the required findings that modification of placement was in the child’s best interest and that there was a substantial change in circumstances. *See* WIS. STAT. § 767.451(1)(b) (“[A] court may modify an

order ... of physical placement ... if the court finds ... [t]he modification is in the best interest of the child [and] [t]here has been a substantial change of circumstances since the entry of the last order ... substantially affecting physical placement.”). Moston acknowledges that a court may deny physical placement with a parent at any time if the court finds that the placement would endanger the child’s physical, mental, or emotional health, *see* § 767.451(4), but contends that, before the court may do so, the court must consider the child’s best interest. *See* WIS. STAT. §§ 767.451(5m) (“[I]n all actions to modify ... physical placement orders, the court shall consider the factors under s. 767.41(5)(am), subject to s. 767.41(5)(bm), and shall make its determination in a manner consistent with s. 767.41.”); 767.41(5)(am) (requiring the court to consider all facts relevant to the best interest of the child in determining physical placement, and setting forth enumerated factors for the court to consider). Moston points to evidence that he and his child had a positive relationship, and argues that, therefore, denying all contact between them was not in the child’s best interest. He argues that the court erred by considering allegations of spousal battery and domestic abuse by Moston against women other than Jurci, arguing that the statutory references to spousal battery and domestic abuse apply only to the parties to the case. He contends that, since the last order setting placement, there was no substantial change in circumstances as between Moston and Jurci because there have been no further acts of spousal battery or domestic abuse as between the two of them. We are not persuaded.

The circuit court found that there was a substantial change in circumstances since the last order affecting placement and that it was in the child’s best interest to modify placement. The court found that Moston’s continuing pattern of spousal battery and domestic abuse despite treatment, as well as his acts of emotional abuse and intimidation of others, including minors, amounted to a substantial change and that the potential harm to the child outweighed the factors

weighing in favor of continued placement with Moston. The court considered facts relevant to the statutory best interest factors enumerated in WIS. STAT. § 767.41(5)(am), and determined that it was in the child’s best interest to deny all placement with Moston. The court also considered the safety and well-being of the child and Jurci, as required under § 767.41(5)(bm). We disagree with Moston that as part of this analysis the circuit court could not consider Moston’s acts of spousal battery and domestic abuse against women other than Jurci. Moston has cited no authority for the proposition that the court could not consider Moston’s ongoing pattern of abusive conduct in considering whether there was a substantial change in circumstances and determining the child’s best interest. We have no basis to disturb the circuit court’s exercise of discretion.<sup>3</sup> See *Alice H.*, 239 Wis. 2d 194, ¶18 (placement decisions are committed to the circuit court’s discretion); see also *Pero v. Lucas*, 2006 WI App 112, ¶23, 293 Wis. 2d 781, 718 N.W.2d 184 (whether a substantial change in circumstances exists is a question of law; however, we “must give weight to a trial court’s decision because the determination is heavily dependent upon an interpretation and analysis of underlying facts” (internal quotation marks and quoted source omitted); we review the circuit court’s best interest determination for an erroneous exercise of discretion).

Finally, Moston contends that there was no evidence to establish that contact between Moston and his child would negatively impact his child and, therefore, there was no basis to

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<sup>3</sup> Jurci contends that the court was not required to find a substantial change in circumstances or that modification of placement was in the child’s best interest following its finding that placement with Moston would endanger the child’s mental or emotional health. She contends that WIS. STAT. § 767.451(4) contains its own standard for denying all placement with a parent, independent of the requirements for modifying placement under § 767.451(1)(b). Because we conclude that the circuit court properly exercised its discretion to modify placement under the standards set forth in § 767.451(1)(b), we need not address whether the court was not required to apply those standards in this case.

deny all contact between them. He distinguishes the facts in this case from the facts in *Alice H.*, pointing to the specific evidence of harm to the child in that case that, he submits, is not present here. He points out that there was no professional testimony as to any negative impact on the child based on Moston's pattern of spousal battery and domestic abuse. He argues that none of the allegations of abuse supported a finding that the abuse negatively impacted his child. He points to testimony by the placement supervisors as to the close relationship between Moston and his child and the successful visits between them. He argues, therefore, that the court's finding that any placement with Moston would result in harm to the child was erroneous. Again, we are not persuaded.

The circuit court's findings of fact supported its determination that any contact between Moston and his child would endanger the child's physical, mental, and emotional health. The circuit court found the following facts. Moston engaged in a pattern of spousal battery and domestic abuse with Jurci, his subsequent girlfriend, and his second wife. Although Moston completed a batterers' treatment program shortly after his divorce from Jurci, Moston's pattern of verbal and physical abuse towards women continued. Moston also had a history of violent behavior that included angry outbursts toward his mother as well as toward students and staff during Moston's employment as a teacher, and violence toward others, including a minor. The court credited a testifying expert's opinion that Moston is at a high risk for continuing to express his anger through physical violence, that Moston's agitation is directed across the board regardless of a person's age, and that it is damaging to children to witness anger and aggression toward people they love. The court found that Moston's child is in danger physically, mentally, and emotionally every time he is with Moston. Because the circuit court found facts sufficient to support its decision, we affirm.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*