



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 17, 2023

To:

Hon. David P. Wilk
Circuit Court Judge
Electronic Notice

Brushinta L. Finley
4313 32nd Ave.
Kenosha, WI 53144

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Heather R. Iverson
Kenosha County Child Support
8600 Sheridan Rd., Ste. 301
Kenosha, WI 53143-6506

Christopher William Rose
Electronic Notice

Debra L. Zarovy
Kenosha County Child Support
8600 Sheridan Rd., Ste. 301
Kenosha, WI 53143-6506

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

2021AP1584

In re the Paternity of E.E.S.:
Brushinta L. Finley v. Leonard E. Harris, Jr. (L.C. #2014PA295PJ)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Brushinta L. Finley, pro se, appeals a July 29, 2021 order altering the parties' custodial and placement arrangement for their minor child based on a substantial change in circumstances. She argues that the circuit court applied an improper legal standard and that there was insufficient evidence to support its findings. 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 (2021-22).¹ We affirm.

The parties have one minor child, E.E.S., born in 2014. In 2017, Finley was granted sole legal custody and primary physical placement. In 2016, Finley obtained a domestic abuse injunction against the father, Leonard E. Harris, Jr.² In 2019, Harris, who had in the interim moved to Iowa, sought modification of legal custody and placement, as well as ancillary relief, expressing a desire to be involved in E.E.S.’s life and citing “instability in the Mother’s home.” The circuit court held a two-day evidentiary hearing, after which it found that there had been a substantial change in circumstances. The court granted the parties joint legal custody, with Harris having primary physical placement during the school year. Finley now appeals.

We review a circuit court’s determinations concerning custody and placement of a minor child under an erroneous exercise of discretion standard. *See Landwehr v. Landwehr*, 2006 WI 64, ¶7, 291 Wis. 2d 49, 715 N.W.2d 180. We will generally affirm if the court applies the correct legal standard and reaches a reasonable conclusion. *Id.* Additionally, we may search the record for reasons to sustain the court’s exercise of discretion. *Keller v. Keller*, 2002 WI App 161, ¶6, 256 Wis. 2d 401, 647 N.W.2d 426. Finally, pro se litigants are generally granted a degree of leeway in recognition of the fact that they are often unfamiliar with procedural rules and substantive law that might govern their appeal. *Rutherford v. LIRC*, 2008 WI App 66, ¶27, 309 Wis. 2d 498, 752 N.W.2d 897.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² Due to the restraining order, Finley and Harris used a third party to communicate regarding E.E.S. It appears that at some point the order was extended past the original expiration date in November 2020.

Finley argues she is a victim of rape and domestic violence, and she asserts the circuit court erred by failing to give sufficient deference to the restraining order's prohibition on contact. She also appears to argue the court failed to apply a statutory rebuttable presumption that it is not in the best interests of a child to award joint legal custody to a parent who has engaged in a pattern of serious incidents of interspousal battery or domestic abuse. *See* WIS. STAT. § 767.41(2)(d)1.

We perceive no reversible error related to Finley's abuse allegations. The circuit court regarded Finley's allegations of abuse as unsubstantiated and designed to manipulate the court proceedings and E.E.S.'s beliefs regarding his father's parental fitness.³ Additionally, we note that Harris testified the restraining order was entered based on his failure to appear to contest those proceedings. The court explicitly acknowledged the existence of the rebuttable presumption and, at least implicitly, found it inapplicable. The court thereafter considered the statutory factors enumerated in WIS. STAT. § 767.41(5)(am) and applied the proper standard of law—best interest of the child—to reach its custody and placement determinations.⁴

Finley also argues there was insufficient credible evidence to support the circuit court's custody and placement determinations. The court conducted a two-day evidentiary hearing at

³ We recognize that regardless of the circuit court's findings, Finley continues to assert that she has been the victim of domestic violence. However, these continued assertions are not a basis on which we can declare the circuit court's finding to the contrary clearly erroneous. This court's appellate functions do not include weighing the credibility of the various witnesses. *See Lang v. Lowe*, 2012 WI App 94, ¶16, 344 Wis. 2d 49, 820 N.W.2d 494.

⁴ Finley also cites to WIS. STAT. § 767.41(5)(bm), which makes the safety and well-being of the child and the safety of the parent-victim "paramount concerns" in determining legal custody and periods of physical placement. But this becomes the operative legal standard only if the court determines that a pattern or serious incident of interspousal battery or domestic abuse has occurred, a finding the court here declined to make.

which several witnesses testified. Based on our review of the transcripts, the testimony adequately supported the court's findings of fact, in particular those regarding multiple police contacts at Finley's residence, Finley's efforts to interfere in the relationship between E.E.S. and Harris, and the anticipated stability that Harris's steady employment and living space would provide.

Based upon the foregoing,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals