

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 30, 2004

Cornelia G. Clark
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. 04-0375-FT

Cir. Ct. No. 00FA000019

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KIMBERLY R. JOHNSTON,

PETITIONER-APPELLANT,

v.

DENNIS E. EGERER, JR.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Adams County:
CHARLES A. POLLEX, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Kimberly Johnston appeals the circuit court's order granting her and Dennis Egerer joint legal custody of Kaitlyn E. and granting Egerer primary physical placement. Johnston argues that the circuit court's decision to award Egerer primary physical placement of Kaitlyn E. is not

supported by the evidence and that it is based on an erroneous view of the law. We affirm.¹

¶2 Johnston first argues that the circuit court's decision is not supported by the evidence. Her brief sets forth in detail the evidence she believes supports a decision that *she* should be given primary physical placement of Kaitlyn E.

¶3 Johnston's argument is improperly framed. Where, as here, a discretionary decision of the circuit court is challenged, we do not review all of the evidence in an effort to decide for ourselves the best course of action. *See Culligan v. Cindric*, 2003 WI App 180, ¶7, 266 Wis. 2d 534, 669 N.W.2d 175 (“Physical placement determinations are committed to the sound *discretion of the circuit court.*” (Emphasis added.)). Instead, we give deference to the circuit court's decision and will sustain that decision if the court has applied the proper law to the facts of the case and reached a reasoned and reasonable result. *Id.* Johnston does not dispute any particular factual finding of the circuit court and does not contend the court applied the wrong law. Johnson argues only that the circuit court should have reached a different decision.

¶4 We conclude that the circuit court properly exercised its discretion because it reached a reasonable decision in light of the facts and the law governing custody and placement decisions. The court heard testimony from Dr. Nina Bartell, who testified that Johnston was psychologically troubled. It also heard testimony from Crystal Robinson, a friend of Johnston's, who testified that Johnston was sometimes a neglectful mother. The court heard evidence that

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Kaitlyn E. was doing well in her current preschool, which she attends while living in her father's house, and that she has good relationships with other children at the preschool. It also heard testimony that Kaitlyn E. had a very warm relationship with both her father and her stepmother. The court explained that, although Kaitlyn E. appeared "to be thriving at both homes," the scales tipped in favor of primary physical placement with Egerer. Because the court reached this decision based on its considered weighing of the various circumstances of Kaitlyn E.'s life, its decision was a proper exercise of discretion.

¶5 Johnston next argues that the decision to award primary physical placement to Egerer was based on an erroneous view of the law. However, she does not explain what legal error she believes the court made. Because this argument is undeveloped, we will not consider it further. *See Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998).

¶6 Finally, Egerer moves for costs and attorney's fees on the grounds that the appeal is frivolous. *See* WIS. STAT. RULE 809.25(3). We deny the motion.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

