COURT OF APPEALS
DECISION
DATED AND FILED

September 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1805 **Cir. Ct. No. 2010FA208**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN RE THE MARRIAGE OF:

KRISTIN M. KARCZEWSKI,

PETITIONER-RESPONDENT,

V.

JOHN C. KARCZEWSKI,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: FAYE M. FLANCHER, Judge. *Affirmed*.

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. John C. Karczewski appeals from a judgment of divorce from Kristin M. Karczewski. John contends that the circuit court erroneously exercised its discretion in awarding primary placement of his minor children to Kristin and limited secondary placement to him. He further contends

that the court erred in assigning replacement value to personal property for purposes of the property division. We reject John's claims and affirm the judgment.[1]

¶2 In February 2010, Kristin filed this action for divorce from John. They have three minor children. Contested matters were tried to the circuit court over two and one-half days.

¶3 The judgment of divorce awards primary placement of the minor children to Kristin and limited secondary placement to John. It also orders John to pay Kristin $2,500 as an equalization of the personal property that John wished to retain. This appeal follows.

¶4 Child placement determinations are committed to the sound discretion of the circuit court. ***Culligan v. Cindric***, 2003 WI App 180, ¶7, 266 Wis. 2d 534, 669 N.W.2d 175. We will sustain a discretionary decision if the circuit court "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). The valuation of assets, meanwhile, is a factual finding that will not be disturbed unless clearly erroneous. *See* ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987).

¶5 John first contends that the circuit court erroneously exercised its discretion in awarding primary placement of his minor children to Kristin and

[1] John also contends that the circuit court and family court social worker were biased against him. Because this argument is insufficiently developed, we decline to address it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

limited secondary placement to him. Specifically, he complains that (1) the court ignored evidence that Kristin was an alcoholic, (2) the court failed to follow WIS. STAT. § 767.41(4)(a)2. (2009-10)[2] in awarding limited secondary placement to him despite his testimony that he had a plan to adjust his work schedule to facilitate equal placement, (3) the court erred when it adopted the child placement recommendations of the guardian ad litem (GAL), and (4) the court did not articulate its findings of ultimate facts upon which its decision on placement rests. We address each complaint in turn.

¶6 With respect to John's first complaint, the record reveals that the circuit court extensively considered evidence of Kristin's alcohol use at trial. Ultimately, the court determined that evidence of current alcohol abuse was inconclusive and that the factor was not compelling enough to award placement to John. Although John maintains that this finding is clearly erroneous, none of the substance abuse experts who testified diagnosed Kristin as an alcoholic. Moreover, John's efforts to prove Kristin's current alcohol abuse via a private investigator failed miserably.[3] Given these facts, we are satisfied that the court properly exercised its discretion in considering Kristin's alcohol use.

¶7 With respect to John's second complaint, the record reveals that the circuit court complied with WIS. STAT. § 767.41(4)(a)2. in awarding primary placement to Kristin and limited secondary placement to John. That statute provides in relevant part, "The court shall set a placement schedule that allows the

[2] All references to the Wisconsin Statutes are to the 2009-10 version.

[3] At trial, the private investigator testified regarding a fundraiser he had attended to observe Kristin's behavior. He admitted that he had seen only one drink being poured. At no point did he testify that he observed Kristin acting as if she were intoxicated.

child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households." Section 767.41(4)(a)2. Here, the court considered the children's need for meaningful periods of placement with John; however, it reduced those periods based upon his unavailability due to work. Although John maintained that he could change his work schedule, the court expressed skepticism of his claim based upon his past behavior.[4] Because John's past behavior did not suggest that he was willing and able to care for his children for longer periods of time, we conclude that the court properly exercised its discretion in awarding primary placement to Kristin and limited secondary placement to John.

¶8 With respect to John's third complaint, there was nothing improper about the circuit court adopting the child placement recommendation of the guardian ad litem. John suggests that the GAL's recommendation was incomplete, as it relied upon the recommendation of the family court social worker, who was not in court for certain sworn testimony. The problem with this argument, of course, is that the GAL was in court for the entire trial, and there is no indication that he simply rubber-stamped the social worker's recommendation despite the testimony that he heard. Accordingly, we conclude that the circuit court properly exercised its discretion in adopting the recommendation of the GAL.

[4] In its remarks at the conclusion of the trial, the circuit court observed, "Mr. Karczewski testified at length how he can change and modify his work schedule to be more available for his children. Well, if that's the case, sir, and if you're truly concerned that your wife is driving drunk with your children, then I have to wonder why, instead of hiring a private investigator to the tune of $450, $500, whatever you spent, why didn't you go to the fundraiser also? Why didn't you drive the children[?]"

¶9 With respect to John's fourth complaint, the record reveals that the circuit court addressed the various factors to be considered in making its placement determination. The court began by noting the factors it was required to consider in WIS. STAT. § 767.41(5)(am). It then discussed the factors that were most applicable to the case and incorporated them into its decision. These included the wishes of the children, the interaction of the children with their parents, the children's adjustment to their new home, school, and community, Kristin's alcohol use, and John's demonstrated lack of judgment and interference in the children's relationship with their grandparents. Reviewing the court's remarks, we are satisfied that it engaged in a thorough analysis in reaching its placement determination. Consequently, we conclude that it properly exercised its discretion.

¶10 John next contends that the circuit court erred in assigning replacement value to personal property for purposes of the property division. In particular, he complains that the court created its own estimation of replacement value with nothing in the record to support its finding.

¶11 When dividing John and Kristin's marital property, the circuit court noted that there were some household items with which John did not wish to part. They included a crystal beaded Victorian lamp, the vacuum cleaner, the children's bicycles, the self-propelled lawnmower, the swimming pool, filter, and supplies, the rice cooker, the crock pot, and the electric buffet server/cooker with warming trays. The court expressed disappointment that after a two and one-half day trial John was still arguing over such items. Nevertheless, it allowed John to retain a majority of those items in exchange for a payment to Kristin. The court stated, "I don't think $2500, given the replacement value of what we're looking at here, is outrageous based on my own personal experience."

¶12 Here, the circuit court based its valuation upon its own personal experience. Given the nature of the assets at issue, which required no specialized knowledge in determining their worth, we cannot say that the court's valuation was clearly erroneous. As a result, we conclude that the court did not err in ordering John to pay Kristin $2,500 as an equalization of the personal property that John wished to retain.

¶13 For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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