

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 1, 2011

A. John Voelker
Acting 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. 2010AP607

Cir. Ct. No. 2007FA1111

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JOHN J. RINDFLEISCH,

PETITIONER-APPELLANT,

V.

KATHRYN M. RINDFLEISCH,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Brown County: JOHN D. MCKAY, Judge. *Affirmed in part; reversed in part and cause remanded for further proceedings.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. John Rindfleisch appeals from his judgment of divorce, arguing the circuit court erroneously exercised its discretion with regard

to the issues of primary placement and maintenance. We affirm the court's determination regarding placement. We reverse on the issue of maintenance and remand for further proceedings.

¶2 John and Kathryn Rindfleisch were married on June 28, 1997 and divorced on December 9, 2009. Two children were born to the marriage. At the time of the divorce, John was a software developer and Kathryn was unemployed. The circuit court adopted the recommendation of the guardian ad litem in granting Kathryn primary placement. The circuit court awarded Kathryn temporary maintenance in the amount of \$650 monthly for two years. John now appeals.

¶3 Physical placement and maintenance determinations are committed to the sound discretion of the circuit court. *See Bohms v. Bohms*, 144 Wis. 2d 490, 496, 424 N.W.2d 408 (1988); *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. We will affirm a discretionary determination as long as it represents a rational decision based on the application of the correct legal standards to the facts. *See Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

¶4 John insists the GAL and the circuit court failed to consider relevant facts regarding placement, including Kathryn's anger and stress issues noted by one psychological expert. John also argues that "the best interests of the two minor children require[d] a more thorough analysis and application of the statutory factors than was done by the GAL or the court in this case." This argument essentially challenges the sufficiency of the evidence and credibility. The circuit court is the ultimate arbiter of credibility. *See Brandt v. Witzling*, 98 Wis. 2d 613, 619, 297 N.W.2d 833 (1980). We conclude credible evidence supports the placement determination.

¶5 Here, the GAL's comprehensive recommendation contained, among other things, an extensive analysis of the statutory factors. The court noted that the GAL considered placement in light of the psychological evaluations and, "most importantly, he has addressed the issue from the best interests of these two little boys." The court stated:

Neither parent has given this issue the proper perspective, to-wit: What is in the best interests of the children. The issues between the parents have gotten in the way. They merely pay lip service to the needs of the boys in light of their own selfish interests and their desire to 'get' the other parent. This court must make an effort to put an end to that approach and to address the needs of the children. The children have been disrupted enough and that must come to an end. The Guardian ad Litem's recommendation attempts to do that. After thorough analysis and consideration of all of the experts' reports, this Court believes the Guardian ad Litem has got it right. Attorney Borchardt has taken into account all of the appropriate statutory factors which this court must consider.

¶6 The GAL's report was attached to the divorce judgment and the court incorporated the placement recommendation as if set forth in the court's decision. The court's decision regarding placement went beyond a mere cursory review. As a whole, the decision demonstrates a reasoned process that incorporated appropriate considerations. The court appropriately exercised its discretion by primarily placing the children with Kathryn.

¶7 However, we find insufficient support in the record for the maintenance award. The court's entire analysis regarding maintenance was as follows:

As to maintenance, this is a case for limited term maintenance based on the respondent's need to transition into a self-supporting lifestyle. This can be done over a two-year period which should have begun June 1, 2009. After considering all of the statutory factors and the financial data provided to the Court, maintenance will be

paid by the petitioner to the respondent for a period of two years in the amount of \$650 per month. The term of maintenance is from June 1, 2009, to May 31, 2011.

¶8 In contrast to the placement determination that reflected the court's consideration of the statutory factors as amply detailed in the GAL's recommendation, we have no basis to review to what extent the court considered the maintenance factors as set forth in WIS. STAT. § 767.56.¹ Moreover, we are left to wonder why Kathryn's need to transition into a self-sufficient lifestyle could be accomplished with \$650 monthly payments for two years. The court's decision failed to "exhibit a reasoned, illuminative mental process with which to logically connect its decision, findings and conclusions to the maintenance award." See *Steinke v. Steinke*, 126 Wis. 2d 372, 388-89, 376 N.W.2d 839 (1985).

¶9 Therefore, we conclude the court erroneously exercised its discretion in determining maintenance, and reverse and remand for further proceedings. Upon remand, the court may, in its discretion, revisit the amount and duration of maintenance. However, the court must set forth the factors on which it relied and illuminate its reasoning in reaching the award.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded for further proceedings. No costs awarded to either party on appeal.

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

¹ References to the Wisconsin Statutes are to the 2007-08 version unless noted.

