COURT OF APPEALS
DECISION
DATED AND FILED

September 24, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2672

Cir. Ct. Nos. 2009FA715
2009FA716

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN RE THE MARRIAGE OF:

GREG S. VANDERHEIDEN,

PETITIONER-RESPONDENT-CROSS-APPELLANT,

V.

HUYNH BICH VANDERHEIDEN,

RESPONDENT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from a judgment and orders of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Huynh Bich VanderHeiden appeals from a judgment of divorce and from an order granting her former husband, Greg

VanderHeiden, periods of visitation with Huynh's son Evan.[1] Huynh argues the circuit court misapplied the law by granting Greg visitation with Evan, and she also challenges several of the court's other rulings. Greg cross-appeals, arguing the court should have granted him primary physical placement of Evan. We reject both parties' arguments and affirm.

BACKGROUND

¶2 Huynh and Greg met in Virginia in 1996. They dated on and off until the fall of 2004. Huynh subsequently began dating Michael Nguyen and became pregnant. Their son, Evan, was born on July 9, 2005.

¶3 Greg moved to Wisconsin in March 2006. In December 2006, Huynh and Evan moved to Wisconsin and began living with Greg. Huynh and Greg were married on July 23, 2007. Their son, Alex, was born on January 25, 2008.

¶4 In August 2009, Huynh told Greg she wanted to move back to Virginia with Evan and Alex to be closer to her family. The following month, Greg filed for divorce and filed a separate petition for stepparent visitation with Evan, pursuant to WIS. STAT. § 767.43.[2] In March 2010, Huynh moved to Virginia with Evan. Shortly thereafter, a family court commissioner entered a temporary order awarding Greg primary physical placement of both Evan and Alex. Evan was returned to Wisconsin, but Huynh continued residing in Virginia.

[1] Because Huynh and Greg have the same last name, we use their first names to avoid confusion.

[2] The cases were subsequently consolidated. All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 Following a three-day contested divorce hearing, the circuit court awarded Huynh and Greg joint legal custody of Alex and awarded Greg primary physical placement. The court awarded joint legal custody of Evan to Huynh and Nguyen. Huynh was awarded primary physical placement of Evan, and Nguyen was awarded "reasonable visitation upon reasonable notice." The court also awarded Greg the following periods of annual visitation with Evan, pursuant to WIS. STAT. § 767.43: (1) ten days between September 1 and December 31; (2) five consecutive days during Evan's winter break from school; (3) ten days between January 1 and June 1; and (4) eight weeks during Evan's summer break.

¶6 Greg moved for reconsideration, arguing the court should have awarded him primary physical placement of Evan. The court denied Greg's motion following a hearing. Huynh now appeals, and Greg cross-appeals.

DISCUSSION

I. Standard of review

¶7 Huynh and Greg challenge the circuit court's determinations regarding third-party visitation, physical placement, and property division. Decisions on these subjects are discretionary, and we will affirm unless the circuit court erroneously exercised its discretion. *See* ***LeMere v. LeMere***, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789; ***Rogers v. Rogers***, 2007 WI App 50, ¶7, 300 Wis. 2d 532, 731 N.W.2d 347; ***Wiederholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992). "A circuit court erroneously exercises its discretion if it applies an improper legal standard or makes a decision not reasonably supported by the facts of record." ***260 N. 12th St., LLC v. DOT***, 2011 WI 103, ¶38, 338 Wis. 2d 34, 808 N.W.2d 372. "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court

does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. In addition, we affirm the circuit court's findings of fact unless they are clearly erroneous, WIS. STAT. § 805.17(2), but we independently review any questions of law, ***Clark v. Mudge***, 229 Wis. 2d 44, 50, 599 N.W.2d 67 (Ct. App. 1999).

II. Huynh's appeal

¶8 Huynh raises six issues on appeal in what is the third brief she has filed with this court. We struck her first two briefs for failure to comply with the rules of appellate procedure. Huynh's third attempt is little better. Huynh fails to present developed arguments to support any of her appellate issues, and she also advances conclusory, undeveloped arguments on topics not identified in her statement of the issues. Her legal arguments are superficial at best, and her brief contains virtually no analysis of the evidence presented to the circuit court. We need not consider arguments that are undeveloped or unsupported by legal authority, ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992), and we will not abandon our neutrality to develop arguments for a party, ***Industrial Risk Insurers v. American Engineering Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

¶9 In addition, Huynh fails to provide record citations for many of the factual assertions in her brief's argument section. We do not consider arguments based on factual assertions that are insufficiently supported by record citations. *See, e.g.*, ***Dieck v. Unified Sch. Dist. of Antigo***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990). WISCONSIN STAT. RULE 809.19(1)(e) requires an appellant's brief to contain an argument section "with citations to the … parts of

the record relied on[.]" We could summarily dismiss Huynh's appeal on this basis alone. *See* WIS. STAT. RULE 809.83(2). We also caution Huynh's attorney that future violations of the rules of appellate procedure may result in sanctions. *See* ***id.***

¶10 Moreover, Greg's response brief raises developed arguments in support of the circuit court's rulings, but Huynh failed to file a reply brief. Arguments not refuted are deemed conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979). Again, we could affirm the circuit court's decisions solely on this basis. Nevertheless, we address Huynh's appellate issues and conclude they are meritless.

¶11 First, Huynh argues the circuit court "misapplied and misinterpreted WIS. STAT. [§] 767.43 in awarding custody and placement of Evan … to Greg[.]" However, the court did not award Greg either legal custody[3] or physical placement[4] of Evan. It awarded Greg periods of visitation,[5] pursuant to § 767.43.[6]

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[3] Legal custody of a child means "the right and responsibility to make major decisions concerning the child, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order." WIS. STAT. § 767.001(2)(a).

[4] Physical placement means "the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody." WIS. STAT. § 767.001(5).

[5] The term visitation is not defined in WIS. STAT. ch. 767. However, this court has observed that "the dictionary defines visitation as '[a]n act of visiting …:VISIT,' and 'visit' is defined as '[t]o go or come to see' or 'to stay with as a guest.'" ***Lubinski v. Lubinski***, 2008 WI App 151, ¶9, 314 Wis. 2d 395, 761 N.W.2d 676 (quoting RIVERSIDE WEBSTER'S II NEW COLLEGE DICTIONARY 1235 (1995)).

Huynh's argument that the court erred by awarding Greg custody and placement of Evan is therefore without merit.

¶12 Further, any argument that the court erroneously exercised its discretion by awarding Greg visitation under WIS. STAT. § 767.43 would fail. Section 767.43(1) allows a court to award certain third parties, including stepparents, reasonable visitation if: (1) the third party has maintained a relationship similar to a parent-child relationship with the child; (2) the child's parents have notice of the hearing; and (3) the court determines visitation is in the child's best interest.[7] Huynh concedes Greg had a parent-child relationship with

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[6] Admittedly, the court's written order granting Greg periods of visitation with Evan initially stated the court was granting Greg "placement[.]" However, the court then clarified it was awarding "visitation" to Greg, pursuant to WIS. STAT. § 767.43. Section 767.43 allows a court to award visitation to certain third parties, but it does not give the court any authority to award physical placement. The circuit court recognized this fact in its written order, explaining that it "decline[d] to award Greg … custody or placement of Evan based upon … § 767.43, which the [c]ourt deems to preclude an award of same."

[7] Under ***Troxel v. Granville***, 530 U.S. 57, 68 (2000), when a court is asked to grant visitation to a third party over a fit parent's objection, the court must apply a presumption that the parent's decision regarding visitation is in the child's best interest. A court must apply this presumption when considering a request for third-party visitation under WIS. STAT. § 767.43. ***Roger D.H. v. Virginia O.***, 2002 WI App 35, ¶19, 250 Wis. 2d 747, 641 N.W.2d 440 (applying a previous version of § 767.43). The court must "tip the scales in the parent's favor by making that parent's offer of visitation the starting point for the analysis and presuming it is in the child's best interests." ***Martin L. v. Julie R.L.***, 2007 WI App 37, ¶12, 299 Wis. 2d 768, 731 N.W.2d 288. The party advocating for third-party visitation must then "rebut the presumption by presenting evidence that the offer is not in the child's best interests." ***Id.*** Finally, the court must "make its own assessment of the best interests of the child." ***Id.***

Here, the circuit court did not apply a presumption that Huynh's decision regarding visitation with Greg was in Evan's best interest. However, Huynh has never argued, either in the circuit court or on appeal, that the court was required to apply this presumption. We therefore decline to address the effect of the court's failure to apply the presumption. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (arguments not raised before circuit court are forfeited on appeal); ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (court of appeals will not develop arguments for a party).

Evan, and she does not argue that either she or Nguyen lacked notice of any hearing on Greg's petition for visitation. However, Huynh argued to the circuit court that Greg's visitation with Evan should take place only in Virginia at times and under circumstances determined by Huynh. The circuit court found the specific visitation ordered would be in Evan's best interest because Greg had been a father figure to Evan for an extended period of time, and Evan would suffer if that bond were severed. The court also determined awarding Greg that visitation would maximize the amount of time Evan spent with Alex, which would be in both boys' best interest. The evidence—including the custody study and the recommendation of Evan's guardian ad litem—amply supported these findings. The court properly exercised its discretion by awarding Greg visitation.

¶13 Second, Huynh argues the circuit court "misapplied and misinterpreted ***Barstad v. Frazier***, 118 Wis. 2d 549, 348 N.W.2d 479 (1984), in granting custody and placement" of Evan to Greg. This argument misses the mark because ***Barstad*** does not apply to a petition for third-party visitation under WIS. STAT. § 767.43. In ***Barstad***, a circuit court granted a grandmother "custody"[8] of her grandchild, even though the child's mother was alive and the court found her to be a fit parent. ***Id.*** at 551-52, 553-54. The supreme court reversed, holding that a parent is entitled to custody of his or her children "unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party." ***Id.*** at 568. Here, the circuit court did not award either legal custody or physical placement of Evan to Greg—it awarded him

[8] The 1979-80 version of WIS. STAT. ch. 767, which the supreme court applied in ***Barstad v. Frazier***, 118 Wis. 2d 549, 348 N.W.2d 479 (1984), referred simply to "custody," without distinguishing between legal custody and physical placement. *See* WIS. STAT. § 767.24 (1979-80).

visitation under § 767.43. Nothing in ***Barstad*** limits a court's ability to award visitation under § 767.43, a version of which was in effect when ***Barstad*** was decided. *See* WIS. STAT. § 767.245(4) (1979-80).

¶14 Third, Huynh argues the circuit court "exceeded its authority" when it granted Greg "the right to obtain educational information for his stepson Evan[.]" Huynh asserts that "federal law … prohibits the sharing of educational information with a stepparent." In response, Greg argues Huynh failed to raise this argument in the circuit court and therefore forfeited her right to raise it on appeal. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (arguments raised for first time on appeal generally deemed forfeited). Huynh failed to file a reply brief and thus has not responded to Greg's forfeiture argument. Arguments not refuted are deemed conceded. ***Charolais***, 90 Wis. 2d at 108-09. Consequently, we decline to address Huynh's argument that the circuit court erred by giving Greg the right to obtain Evan's school records.

¶15 Fourth, Huynh argues the court erroneously exercised its discretion by failing to give her a credit in the property division for "the $8,210.77 that her aunt [Jacqueline Trinh] loaned to the parties to remodel their basement." The court concluded this amount was a gift, rather than a marital debt, and Huynh was therefore not entitled to a credit. The evidence supports the court's finding that the money was a gift.

¶16 Trinh testified that she and Huynh lived together and had a joint bank account before Huynh married Greg. They continued to share an account after Huynh moved to Wisconsin. Trinh explained:

> So I tell her when she move with him in here, I say, whenever you need it, just spend it and use it. Just let me know, that's all. I'm not—I got no problem with they use

> my account, I willing, because that's the way I love her. I share for her. That's it.

When asked whether she knew what Huynh spent the money from the joint account on, Trinh responded, "Food. … The house, the basement or something like that, fix the basement or something like that. I never questioned her." Trinh also stated, "I don't pay attention. I say, do whatever you needed. Just cash out, do whatever." Trinh explained she allowed Huynh to withdraw money from the joint account because Huynh and Greg were family and she wanted to help them. She did not testify to any formal agreement with Huynh and Greg for repayment of the money, and Huynh did not produce any receipt or other document suggesting a formal agreement. When asked about repayment of the money, Trinh merely testified:

> I asked him one time, I say, Greg, when do you pay me back? He said, I don't have no money. That's okay. … [H]e said when he had money he'd pay me. And I don't want to talk about money. The love, I give, I trust, that's it. I trust.

On this record, the court's finding that the money Trinh gave Huynh and Greg was a gift, rather than a loan, is not clearly erroneous. The court properly exercised its discretion by refusing to give Huynh a credit for that money.

¶17 Fifth, Huynh faults the circuit court for "fail[ing] to order a psychological examination of Greg to complement the examination of Huynh[.]" However, it is not clear that Huynh ever requested a psychological examination of Greg in the circuit court. Huynh asserts her former attorney requested an examination, but she does not provide any record citation in support of her claim. Greg contends he cannot locate a document in the record showing that Huynh requested he submit to a psychological examination. We will not sift through the record for facts to support a party's argument. *See* ***Tam v. Luk***, 154 Wis. 2d 282,

291 n.5, 453 N.W.2d 158 (Ct. App. 1990). Without showing that she requested a psychological examination of Greg, Huynh cannot establish the circuit court erred by failing to order one.

¶18 Moreover, Huynh does not cite any authority in support of the proposition that a court must order a psychological examination of one parent simply because it ordered an examination of the other parent. Instead, a court has discretion to order a party to submit to a psychological examination when the party's mental condition is "in issue." *See* WIS. STAT. § 804.10(1); *see also* ***Kettner v. Kettner***, 2002 WI App 173, ¶6, 256 Wis. 2d 329, 649 N.W.2d 317 (holding that a court's decision to order psychological testing under § 804.10(1) is discretionary). Huynh cites some evidence suggesting that Greg's mental condition was in issue,[9] but, even so, the court had discretion not to order an examination. Assuming Huynh actually requested a psychological examination of Greg, she does not explain why the court's decision not to order an examination was an erroneous exercise of discretion. Eric Knutson, the family court program evaluator who performed the custody study, testified he did not see any need for Greg to undergo a psychological examination. Knutson testified he had fifteen years' experience as a family court program evaluator and also had a master's degree in counseling psychology. The court could have reasonably relied on Knutson's testimony that an examination of Greg was unnecessary.

[9] Specifically, Huynh cites the testimony of Dr. Allen Hauer, the psychologist who conducted her psychological examination. Hauer testified that some of Greg's behavior "raised concerns" about his ability to handle conflict and suggested Greg had "a very controlling attitude[.]" Hauer recommended that Greg undergo a psychological examination, explaining, "[I]n my mind, the one missing piece of this was Mr. VanderHeiden's psychological status."

¶19 Sixth, Huynh contends that, by awarding Greg visitation with Evan, the court erroneously "[gave] greater weight to the importance of the sibling relationship as argued by Greg's attorney … [than] to the parent child relationship as argued by Huynh[.]" She contends, without citation to the record or any authority, that "the parent child bond is the most important and strongest bond." However, the evidence does not indicate that the court improperly elevated Evan's relationship with Alex above Evan's relationships with his parents. Instead, the circuit court's decisions show an appropriate attempt to respect Evan's relationships with Huynh and Nguyen, while also being sensitive to his close bond with Alex. We also observe that, in the circuit court, Huynh emphasized the importance of Evan and Alex's relationship and repeatedly argued they should not be separated. It is therefore disingenuous for Huynh to argue on appeal that the circuit court erred by attempting to maximize the boys' time together.

¶20 Finally, although not identified in her statement of the issues, Huynh also argues the court erred by awarding Greg primary physical placement of Alex. Because neither she nor Greg was found to be an unfit parent, Huynh contends the court "should have followed the presumption that each parent has 50 percent placement." Huynh does not cite any legal authority in support of this alleged presumption. WISCONSIN STAT. § 767.41(4), which governs physical placement, merely requires a court to "set a placement schedule that allows the 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[.]" WIS. STAT. § 767.41(4)(a)(2). "[T]his is not tantamount to a presumption of equal placement." ***Keller v. Keller***, 2002 WI App 161, ¶12, 256 Wis. 2d 401, 647 N.W.2d 426.

¶21 In addition, the record supports the court's decision to award Greg primary physical placement of Alex. Multiple witnesses testified to the close bonds Alex has with Greg and with Greg's extended family in the Appleton area. Further, Greg testified that, when Huynh left for Virginia in March 2010, she did not tell Greg where she was going, did not express any concern about leaving Alex with Greg, and did not express any concern about separating Evan and Alex. She did not say goodbye to Alex before leaving. After she moved to Virginia, there were times when she would not call to speak to Alex for several days. Both Alex's guardian ad litem and Eric Knutson recommended that the court award Greg primary physical placement of Alex. Knutson testified Huynh was consistently more focused on her own needs and rights than on her sons' best interests. On this record, the court could reasonably conclude it was in Alex's best interest to award Greg primary physical placement. Huynh has not shown that the court erroneously exercised its discretion.

III. Greg's cross-appeal

¶22 In his cross-appeal, Greg contends the circuit court should have awarded him primary physical placement of Evan. As discussed above, a court may award primary physical placement of a child to a person other than the child's biological parent if the court finds that: (1) the biological parents are unfit or unable to care for the child; or (2) there are compelling reasons to award custody to a third party. *See* ***Barstad***, 118 Wis. 2d at 568. If the court finds that compelling reasons exist, it may award placement to a third party "if the best interests of the [child] would be promoted thereby." ***Id.*** at 568-69.

¶23 Here, the circuit court concluded neither Huynh nor Nguyen was unfit or unable to care for Evan. It also concluded there were no compelling

reasons to award Greg primary physical placement. Greg argues the court erroneously exercised its discretion by finding a lack of compelling reasons. Admittedly, the court's explanation of its reasoning was not extensive. Nonetheless, we conclude the record adequately supports the court's decision. *See* ***Randall***, 235 Wis. 2d 1, ¶7.

¶24 Although the ***Barstad*** court did not explicitly define the phrase "compelling reasons," it cited abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, and "other similar extraordinary circumstances" as examples of compelling reasons to award a third party physical placement. ***Barstad***, 118 Wis. 2d at 568. Greg suggests that Huynh abandoned Evan or neglected her parental responsibilities by moving to Virginia in March 2010. Although Huynh initially took Evan to Virginia with her, Greg emphasizes that Huynh chose to remain in Virginia after a family court commissioner ordered Evan returned to Wisconsin. Greg also observes that, from January 25, 2011 until July 2011, Huynh did not return to Wisconsin to visit Evan.

¶25 We do not agree that Huynh's decision to move to Virginia constitutes a compelling reason to award Greg primary physical placement of Evan. A comparison with ***Barstad*** is instructive. There, a child and his mother moved in with the child's grandmother in early 1974, when the child was about three months old. ***Id.*** at 551. They moved out of the grandmother's home in February 1977, but the child returned to live with the grandmother in August 1977. ***Id.*** at 551-52. The child's mother lived elsewhere from August 1977 until November 1978. ***Id.*** at 552. Thereafter, the child, mother, and grandmother lived together in the grandmother's home until June 1980. ***Id.*** At that point, the mother again moved out, but she returned to visit the child on a weekly basis. ***Id.*** at 552-53. The grandmother commenced an action for custody of the child in June 1981.

Id. at 552. On these facts, our supreme court concluded there were no compelling reasons to award the grandmother custody of the child. ***Id.*** at 570. Although the mother had lived apart from the child for over two years, the court concluded the periods of separation "[did] not reflect a neglect on [the mother's] part of parental responsibilities or lack of interest in the child's welfare." ***Id.*** at 569.

¶26 Similarly, that Huynh chose to remain in Virginia after the family court commissioner ordered Evan returned to Wisconsin does not constitute a compelling reason to award Greg primary physical placement. Although Evan was primarily placed with Greg from May 2010 until August 26, 2011, that is less than the total amount of time the child in ***Barstad*** was separated from his mother. Further, Huynh testified she was Evan's primary caregiver from the time he was born until she moved to Virginia. She admitted she did not visit Evan from January 25, 2011 until July 2011, but she explained she was unable to travel to Wisconsin during that time without risking her job. She also testified that, while she and Evan were separated, she communicated with him every night using Skype.[10] These facts do not support a conclusion that Huynh abandoned Evan or persistently neglected her parental responsibilities.

¶27 Greg also observes that Evan's guardian ad litem, attorney Angela Boelter, recommended Greg be awarded primary physical placement of Evan. Boelter argued the following facts constituted compelling reasons for Evan to be placed with Greg:

> [T]here has been a substantial parental relationship between Evan and Mr. Vander[]Heiden, he has provided for him

[10] Skype is a "software application and online service that enables voice and video phone calls over the Internet[.]" *See* ***State v. Stuckey***, 2013 WI App 98, ¶20 n.5 (citation omitted).

> emotionally, financially, Evan has been residing with him for some time now, Evan has been residing with his sibling, with his brother, Alex, they have a bond, it was testified to by several people in this case, and it has been agreed by Mrs. Vander[]Heiden that there is this bond, that the children should be together. Evan has called Mr. Vander[]Heiden "Dad" or "Daddy." There has not been significant contact between Evan and his biological father.
>
> ….
>
> [T]he fact that Mr. Vander[]Heiden has had placement of Evan for approximately a year and a half; the fact that the boys should be together would be another compelling interest, as stated by every party in this case; the fact that Evan is in a stable home; the fact that if Evan were to reside in Virginia with [Huynh] he would not have a father figure like he has in Mr. Vander[]Heiden; and the fact that Evan's school is here, his friends are here, his grandparents are here, who he spends [a] significant amount of time with.

¶28 On these facts, a court could reasonably find that primary physical placement with Greg would be in Evan's best interest. However, when a child's parents are fit, a court must find *compelling reasons* to award physical placement to a third party. ***Id.*** at 568. This is a higher standard than the best interest test. *See* ***id.*** at 556 (holding that the best interest standard "cannot be the test" when deciding whether to place a fit parent's child with a third party). The ***Barstad*** court stated compelling reasons to award a third party primary physical placement would arise in "extraordinary circumstances[.]" ***Id.*** at 568. The facts of this case are not so extraordinary to justify awarding primary physical placement of Evan to Greg. Evan's strong ties with Greg, Greg's relatives, Alex, and Wisconsin do not constitute sufficient reasons to deny Huynh, his biological mother, primary physical placement. Moreover, by awarding Greg substantial periods of visitation and coordinating the boys' placement schedules to maximize their time together, the court ensured that Evan's ties to Greg, Alex, and Wisconsin would not be

severed. The court properly exercised its discretion by declining to award Greg primary physical placement.

¶29 In a separate section of his brief, Greg argues the circuit court "erred when it assumed that Mike Nguyen maintained a constitutional right to the placement of Evan despite [Nguyen's] continuous disregard of his parental duties." More specifically, Greg contends the court could have awarded him primary physical placement of Evan without infringing on Nguyen's constitutional rights because "under the law, [Nguyen's] 'rights' are not absolute due to his inaction and neglect as a biological father." We decline to address this issue because we have already determined the circuit court properly exercised its discretion by concluding there were no compelling reasons to award Greg primary physical placement of Evan. As a result, it is irrelevant whether Nguyen's constitutional rights would have been violated by awarding Greg primary physical placement. Stated differently, the court's finding that Nguyen maintained a constitutional right to parent Evan, even if erroneous, did not affect Greg's substantial rights because the court would nevertheless have declined Greg's request for primary placement. We need not address every issue raised when one is dispositive. *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

By the Court.—Judgment and orders affirmed.

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