

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 17, 2015

Diane M. Fremgen
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. 2013AP2856

Cir. Ct. No. 2011FA349

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

MICHAEL SCHUMACHER,

PETITIONER-RESPONDENT,

V.

JAIME BARTEL,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed.*

Before Curley, P.J., Brennan, J. and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Appellant Jaime Bartel appeals a divorce judgment awarding sole legal custody and primary physical placement of their son James to Michael Schumacher. Bartel challenges the circuit court's factual finding that

Schumacher did not engage in a pattern or serious incident of interspousal battery or domestic abuse. *See* WIS. STAT. § 767.41(2)(d)(1) (2013-14).¹ We affirm.

¶2 Schumacher and Bartel were married on May 25, 2010, and their son James was born on July 21, 2010. Schumacher petitioned for divorce on January 18, 2011. The guardian *ad litem* appointed to represent James recommended that Schumacher be awarded sole legal custody and primary physical placement. Bartel argued that she should receive sole legal custody and primary physical placement, and contended that there should be a rebuttable presumption in her favor under WIS. STAT. § 767.41(2)(d)1. The circuit court found that the circumstances in the case did not present a pattern or serious incident of interspousal battery or domestic abuse as defined by § 767.41(2)(d)1. The circuit court also found that Bartel did not appear to be a stable person, she showed a lack of judgment and was not a credible witness. The circuit court awarded sole legal custody and primary physical placement to Schumacher, with physical placement to Bartel on alternate weekends and one day per week.

¶3 There is a rebuttable presumption that it is detrimental to the child and contrary to the best interests of the child to award joint or sole legal custody to a party if the court finds by the preponderance of the evidence that the party has engaged in a pattern or serious incident of interspousal battery or domestic abuse. WIS. STAT. § 767.41(2)(d)1. We will affirm a circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). “[A] finding of fact is clearly erroneous when ‘it is against the great weight and clear preponderance of

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the evidence.’” *Phelps v. Physicians Ins. Co.*, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615 (citation omitted).

¶4 Bartel challenges as clearly erroneous the circuit court’s factual finding that Schumacher had not engaged in a pattern or serious incident of interspousal battery or domestic abuse. She recounts her extensive trial testimony about her interactions with Schumacher in support of her argument. The problem with this line of reasoning is that the circuit court did not find Bartel’s testimony to be credible. In a lengthy and well-reasoned oral decision, the circuit court explained:

It goes without saying that I did not find the mother to be a particularly credible witness. So I could not really take to heart many of the things that she said because I simply did not believe her on many occasions. I know that in the past the family court commissioner found her to be credible. I think that I have had a much greater and more complete understanding about her as a witness and certainly as a mother, and so it should be clear from the record that the behavior in the courtroom over the progress of this case has been that [of] a less than credible witness.

The circuit court’s finding that there was not a pattern or a serious incident of interspousal battery or domestic abuse was premised on its rejection of Bartel’s testimony as not credible. The circuit court explained that Bartel was extraordinarily hostile, that she lacked self-control, that her inappropriate behavior in the courtroom showed “a true lack of judgment and stability” and that she needed psychological help. Bartel’s credibility and the weight to be given her testimony were decisions for the circuit court to make, not this court, because the circuit court had an opportunity to observe her demeanor. See *Patrickus v. Patrickus*, 2000 WI App 255, ¶26, 239 Wis. 2d 340, 620 N.W.2d 205. Bartel contends that the circuit court should have accepted her testimony because Schumacher did not refute all of the points she raised. As pointed out by the

guardian *ad litem*, however, a court is not obliged to adopt even uncontradicted testimony if it is inherently improbable. *See Lazarus v. American Motors Corp.*, 21 Wis. 2d 76, 84, 123 N.W.2d 548 (1963). The circuit court's factual finding that there was not a pattern or a serious incident of interspousal battery or domestic abuse is not clearly erroneous.

¶5 Bartel raises other arguments, but they are premised on her claim that the circuit court's factual finding discussed above was clearly erroneous. Therefore, we need not consider them. *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (If a decision on one point disposes of an appeal, we will not decide the other issues raised.).

By the Court.—Judgment affirmed.

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

