COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2942 **Cir. Ct. No. 2012FA5081**

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

STEPHANIE M. PRZYTARSKI, P/K/A STEPHANIE M. KRAMSCHUSTER,

PETITIONER-APPELLANT,

V.

TED B. VALLEJOS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: FREDERICK C. ROSA, Judge. *Affirmed.*

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. This is an ongoing child custody and physical placement dispute between the child's mother, Stephanie Przytarski, and the

child's adjudicated father, Ted B. Vallejos.[1] Stephanie and Ted both filed motions to modify custody and physical placement pursuant to WIS. STAT. § 767.451(1)(a) (2013-14).[2] Both requested sole custody and primary physical placement. After five days of trial over a thirteen-month period, the circuit court granted Ted's motion and denied Stephanie's motion, awarding Ted sole custody and primary physical placement. Stephanie appeals the order filed on November 14, 2014.

¶2 Stephanie argues that the circuit court erred in four respects: (1) not applying the "clean hands doctrine" to dismiss Ted's motion for sole custody and primary placement; (2) erroneously exercising its discretion by not applying the proper legal standard in its review of her motion for modification; (3) making certain erroneous findings; and (4) not granting Stephanie's motion to compel the guardian ad litem (GAL) to submit to a psychological evaluation. For the reasons below, we conclude that the circuit court did not err. Therefore, we affirm.

BACKGROUND

¶3 The custody and placement battle between Stephanie and Ted has been ongoing for almost nine years. We briefly summarize the facts and procedural history in this section, with additional pertinent facts referenced in the discussion section that follows.

¶4 Stephanie gave birth to the child in 2006. Ted was adjudicated the father in January 2007. Since at least December 2007, Stephanie has resided in

[1] For ease of discussion, we refer to the parties by their first names in this opinion.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Wisconsin and Ted has resided in New Jersey. Stephanie and Ted initially stipulated to joint legal custody and primary physical placement with Stephanie, and the Waukesha County circuit court entered an order adopting this stipulation in October 2007. That order was modified in January 2008, adopting written recommendations from Dr. Marc Ackerman and the guardian ad litem Attorney Laura Schwefel with respect to overnight placement with Ted.

¶5 Since the initial 2007 order, Stephanie and Ted have had a contentious co-parenting relationship, which includes allegations of Stephanie obstructing and denying placement with Ted, incidents involving law enforcement, and numerous motions filed and court hearings held concerning custody and placement.

¶6 In November 2010, Ted filed a motion for sole custody and primary physical placement. After a ten-day trial over a ten-month period in 2011, the circuit court found that there was a substantial change in circumstances and that the child's best interests would be served by retaining primary placement with Stephanie, but expanding placement with Ted. The circuit court entered a modified custody and placement order on March 26, 2012, granting Ted up to three nights of overnight placement every month, overnight placement during certain holidays and school breaks, and regular Skype communications with the child. The March 2012 modified order retained joint custody.

¶7 Stephanie and Ted returned to circuit court in May 2012 upon a contempt motion filed by Ted against Stephanie. The circuit court ultimately found Stephanie in contempt of a court order in three respects: (1) Stephanie unlawfully denied Ted placement on December 26, 2011; (2) Stephanie "willfully and wantonly violated the Court order … as it pertains to [Ted] having contact

with his daughter by means of Skype"; and (3) Stephanie violated the order for joint custody by denying Ted any opportunity to provide input into the selection of a therapist for the child.

¶8 Stephanie appealed both the March modified custody and placement order and the May contempt order. We affirmed both orders on July 24, 2013.

¶9 While the appeal was pending, Stephanie filed a motion to change venue, and this case was transferred from Waukesha County to Milwaukee County in August 2012. In September 2012, Stephanie filed a motion to modify custody and physical placement, and to change the child's last name. Before that motion was heard, Stephanie was arrested on December 27, 2012 and charged with interference with custody after she denied placement with Ted. The circuit court issued a no contact order on December 29, 2012, prohibiting Stephanie from contacting Ted or the child. The court later modified this order to allow Skype contact between Stephanie and the child. In May 2013, Stephanie received a stayed one-year sentence and was placed on probation.

¶10 In January 2013, Ted filed a motion to modify custody and placement, which led to the order Stephanie challenges on appeal. A family court commissioner granted temporary sole custody and placement with Ted and the circuit court reviewed that decision de novo. Additionally, the circuit court considered a motion filed by Stephanie requesting an order compelling the GAL to submit to a psychological evaluation.

¶11 At the August 2013 hearing, the circuit court held that both Ted and Stephanie were entitled to an evidentiary hearing on their motions for sole custody and physical placement. The court also authorized Stephanie to have supervised visits with the child in New Jersey, but Stephanie did not make any such visits.

The case proceeded to trial over five days between October 2013 and October 2014.

¶12 On November 14, 2014, the circuit court issued a final order modifying custody and placement. The court ordered sole custody and primary placement with Ted, and authorized Stephanie to have supervised placement in New Jersey. The court also ordered Ted, upon written notice from Stephanie, to bring the child to Wisconsin the first full weekend in August for a supervised visit with Stephanie.[3] The court did not grant Stephanie's request that the GAL submit to a psychological evaluation.

DISCUSSION

¶13 Stephanie appeals the November 14, 2014 order. Stephanie argues that the circuit court erred in four respects: (1) not applying the "clean hands doctrine" to dismiss Ted's motion for sole custody and primary placement; (2) erroneously exercising its discretion by not applying the proper legal standard in its review of her motion for modification; (3) making certain erroneous findings; and (4) not granting Stephanie's motion to compel the GAL to submit to a psychological evaluation. Stephanie's arguments generally lack both a coherent legal theory and support in the record. Nevertheless, we address her arguments as best as we can understand them in the sections below, and conclude that the circuit court did not err.

[3] The order also affected the maternal grandparents, who have separately appealed the order. We address the grandparents' appeal in a separate opinion issued this same day.

A. Ted's Motion Barred by Unclean Hands

¶14 At the August 2013 status hearing, Stephanie briefly argued that Ted has "unclean hands" and, therefore, Ted's motion to modify custody and placement should not be heard or granted. She renews that argument on appeal. In support, Stephanie makes the following allegations as evidence of Ted's unclean hands:

- "[Ted] was and is not current on medical bill payment."
- "[Ted] stopped [the child's] court ordered therapy – medical care."
- "[Ted] changed [the child's] school on January 8, 2013 while [Stephanie] had shared custody in contravention of Wis. Stat. § 767.001(2) and (2m) and without [Stephanie's] permission."
- "[Ted] changed [the child's] religion from Catholic in contravention of Wis. Stat. § 767.001(2) and (2m) and in contravention of his parenting plan."
- "[Ted] changed [the child's] residence to New Jersey while [Stephanie's] motion for modification was pending and prior to the no contact order. The act is in contravention of Wis. Stat. § 767.117(1)(c)."
- "[Ted] attempted to take placement of [the child] on December 25, 2012 without the court ordered notice that he was exercising placement."
- "With the assistance of the Milwaukee District Attorney and Milwaukee Police, [Ted] took placement of [the child] on December 27, 2012 with the intention to permanently take, and did permanently take [the child] to New Jersey in contravention of Wis. Stat. § 948.31(3)(b) ...."

¶15 As an initial matter, we note that Stephanie did not present all of the allegations, which she now asserts in her brief on appeal, in support of her unclean hands argument at the August 2013 hearing. Regardless, Stephanie fails to explain

how any of the allegations that she makes on appeal constitute "unclean hands" as that term is defined by case law. "For relief to be denied a plaintiff in equity under the 'clean hands' doctrine, it must be shown that the alleged conduct constituting 'unclean hands' caused the harm from which the plaintiff seeks relief." ***Security Pacific Nat. Bank v. Ginkowski***, 140 Wis. 2d 332, 339, 410 N.W.2d 589 (Ct. App. 1987). "The court must clearly see that it is the fruit of *his own* wrong, or relief from the consequences of *his own* unlawful act, which the plaintiff seeks, before his action can be dismissed." ***Timm v. Portage Cnty. Drainage Dist.***, 145 Wis. 2d 743, 752, 429 N.W.2d 512 (Ct. App. 1988) (quoted source omitted) (emphasis in original). Stephanie does not explain how her allegations satisfy these standards.

¶16 While we make some allowances for the failings of parties who, like Stephanie, appear pro se, Stephanie's argument is undeveloped, and therefore, we reject her argument as inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals may "decline to review issues inadequately briefed").

¶17 Moreover, the allegations that Stephanie makes are not supported by the record. For example, Stephanie alleges that Ted moved the child to New Jersey and enrolled the child in school there, in contravention of Wisconsin law. The record refutes this allegation. Ted averred in his affidavit to the circuit court that Stephanie unlawfully denied him placement in June, July, August, September, October, November, and December of 2012, and Stephanie so testified. Stephanie was arrested for interference with custody on December 27, 2012, and a no contact order was entered subsequently against her with respect to

the child and Ted.[4] It was then that Ted relocated the child to New Jersey. Given these facts that are supported by evidence in the record, the circuit court properly found that the child's placement in New Jersey with Ted was a result of the no contact order against Stephanie, not of any misconduct by Ted:

> I note for the record that Mother [Stephanie] was facing a felony, interference with custody, and had a no contact order at the time the commissioner temporarily placed the child with the father in New Jersey. There's nothing out of line with that particular order. The parties don't get along. And as the child is in New Jersey with the father he should be able to make important decisions concerning the child.

In sum, Stephanie's "unclean hands" argument is legally undeveloped and factually unsupported.

B. Modification of Custody and Placement

¶18 Stephanie argues that the circuit court erred in not granting her motion, and instead granting Ted's motion, for modification of custody and physical placement. In support of this argument, she asserts that the circuit court applied the wrong legal standard because her motion was for "modification for harm" instead of "change in circumstances." Her only discussion in support of this assertion comprises extensive references to statements by the circuit court in January 2012 about therapy for the child, an assertion that Ted did not proceed with therapy for the child contrary to the March 2012 order, and an assertion that a

[4] In her reply brief, Stephanie points out that the no contact order was not filed until December 29, 2012, and that Ted relocated the child to New Jersey on December 27, 2012. Stephanie, again, ignores the context of the situation. Ted presented himself for placement on December 25, 2012, but the transfer did not occur because Stephanie did not appear. Stephanie was then arrested and charged with interfering with placement on December 27, 2012.

doctor had then testified that Ted caused the trauma to the child that necessitated therapy. We understand Stephanie to be arguing that the circuit court erroneously exercised its discretion in light of the evidence related to the child's trauma and need for therapy. As we proceed to explain, we conclude that the circuit court properly exercised its discretion based on the record before it.

¶19 As a general matter, "[w]e give deference to the circuit court's decisions regarding the modification of placement under an erroneous exercise of discretion standard of review, and affirm the circuit court's decisions when the court applies the correct legal standard and reaches a reasonable result." ***Landwehr v. Landwehr***, 2006 WI 64, ¶7, 291 Wis. 2d 49, 715 N.W.2d 180 (citations omitted).

¶20 WISCONSIN STAT. § 767.451(5m)(a) requires the circuit court to consider in "all actions to modify legal custody or physical placement orders," certain factors listed under WIS. STAT. § 767.41(5)(am), which includes:

> 1. The wishes of the child's parent or parents ….
>
> 2. The wishes of the child ….
>
> 3. The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
>
> 4. The amount and quality of time that each parent has spent with the child in the past ….
>
> 5. The child's adjustment to the home, school, religion and community.
>
> 6. The age of the child and the child's developmental and educational needs at different ages.
>
> 7. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial

> household negatively affects the child's intellectual, physical, or emotional well-being.
>
> 8. The need for regularly occurring and meaningful periods of physical placement ….
>
> 9. The availability of public or private child care services.
>
> 10. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
>
> 11. Whether each party can support the other party's relationship with the child ….
>
> 12. Whether there is evidence that a party is engaged in abuse ….
>
> ….
>
> 16. Such other factors as the court may in each individual case determine to be relevant.

¶21 During trial, the circuit court asked both Stephanie and Ted to testify as to each of the above factors. Stephanie's testimony on these factors took up approximately fifty pages of transcript. Ted's testimony spanned approximately twenty-three pages of transcript. Both Stephanie and Ted addressed all of the pertinent factors.

¶22 In modifying the custody and placement order, the circuit court stated that it considered the relevant statutory factors under WIS. STAT. § 767.41(5)(am). The court found that the child is "bonded to [Stephanie]" and "appeared happy to see [her]" during two supervised visits in August 2014.

¶23 But the circuit court also found many factors weighing against custody and primary physical placement with Stephanie. Specifically, the court found that "[Ted's] efforts to form a relationship with the child were thwarted by [Stephanie] and [Stephanie's father]," and that the "evidence in this case strongly

suggests that [Stephanie] does not recognize [Ted's] right to have a relationship with the child and [Stephanie] is likely to continue to interfere with placement in the future." The court found that Stephanie repeatedly denied Ted his rights by refusing placement as well as Skype communications, and that "[d]espite numerous warnings from the Court, [Stephanie] continued to deny [Ted's] placement." The situation came to a point where Stephanie was charged with interference with custody on December 27, 2012, and a no contact order prohibited Stephanie from contacting Ted or the child. As a result of the arrest and no contact order, the child has been living with Ted in New Jersey since December 2012. The court found that the child has adjusted to her placement in New Jersey with Ted, is doing well in school, and is involved with activities such as Girl Scouts.

¶24 The circuit court further found that looking forward, Ted "appears to be more inclined to cooperate with [Stephanie]" and "has made the child available for Skype sessions with [Stephanie] and the grandparents." The court found that Stephanie, on the other hand, refuses to cooperate with Ted. For example, Stephanie stated at trial that placement with Ted should only be allowed upon "mutual agreement of the parties" and, as the circuit court noted, this would effectively give Stephanie veto power.

¶25 The circuit court also specifically addressed and rejected as unpersuasive the testimony from Stephanie's two expert witnesses who based their testimony on conversations with Stephanie about the child's mental health. The court explained that the first expert had been prohibited by prior orders from evaluating the child, and had retired her psychotherapy license in 2013. The court explained that the second expert had never met the child or Ted and did not address the potential for Stephanie to cause emotional harm to the child.

¶26 In sum, the circuit court applied the proper legal standard and reached a reasonable result after it examined the evidence in light of the statutory factors as set out in detail in its November 14, 2014 order.

C. Erroneous Findings in the November 14, 2014 Order

¶27 Stephanie argues that the circuit court made certain erroneous findings in its November 14, 2014 order modifying custody and placement. Although Stephanie does not specifically explain why this matters, we understand Stephanie's argument to be that had the circuit court not made these erroneous findings, the court would or should have granted Stephanie's motion for sole custody and physical placement. Stephanie's argument fails for several reasons.

¶28 First, Stephanie challenges findings in previous orders that have already been affirmed by this court. For example, Stephanie argues that "[t]he finding on page 2 of the order concerns the contempt finding by Judge Ramirez [and] erroneously ignores that there were four judges involved in the matter while in Waukesha with contradicting orders to which [Stephanie] could not physically simultaneously obey." Stephanie's argument is essentially a disagreement with Judge Ramirez's findings on May 11, 2012. That order was affirmed by us on July 24, 2013.

¶29 Second, many of the findings that Stephanie alleges to be erroneous are not clearly erroneous and, instead, are supported by evidence in the record. "In reviewing findings of fact, we determine whether the [circuit] court's findings are clearly erroneous. *See* WIS. STAT. § 805.17(2). Under this standard, even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a *reasonable person* to

make the same finding." ***Reusch v. Roob***, 2000 WI App 76, ¶8, 234 Wis. 2d 270, 610 N.W.2d 168 (emphasis added).

¶30 For example, Stephanie challenges the circuit court's finding that Ted "was denied placement [by Stephanie] with the child from June through December, 2012, even though [Ted] gave proper notice of all requested placement." However, Stephanie's own testimony indicates that she denied Ted placement during this period, and emails admitted into evidence demonstrate that Ted gave the proper notice. In sum, Stephanie fails to demonstrate that any of the allegedly erroneous findings are clearly erroneous.

¶31 Third, certain alleged erroneous findings appear to simply be Stephanie's disagreement with the circuit court's exercise of discretion. For example, Stephanie challenges the circuit court's finding that Dr. Kavanagh's testimony is unpersuasive. However, "whether to credit [an] expert's testimony and the weight to give it are judgments for the fact finder to make." ***City of Stoughton v. Thomasson Lumber Co.***, 2004 WI App 6, ¶18, 269 Wis. 2d 339, 675 N.W.2d 487 (WI App 2003). The circuit court "may reject an expert's opinion even if it is uncontradicted." ***Bray v. Gateway Ins. Co.***, 2010 WI App 22, ¶24, 323 Wis. 2d 421, 779 N.W.2d 695 (WI App 2009). Stephanie provides no reason for us to disturb the circuit court's credibility determinations on appeal. *See* ***Dickman v. Vollmer***, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202 ("we will uphold [the circuit court's] calls as to witness credibility unless they are inherently or patently incredible").

¶32 Finally, Stephanie argues that the circuit court erred in its "finding" with respect to the guardian ad litem fees. Stephanie suggests that the circuit court erroneously exercised its discretion because it ordered her to "pay $200 per month

to [the GAL] whether or not [the GAL] is owed any money." Stephanie misunderstands the order. The order indicates that Stephanie "shall pay a *minimum* of $200 per month *towards [her] share of GAL fees.*" In other words, if Stephanie does not owe the GAL any fees, then she pays nothing. If she does owe fees, then she must pay a minimum of $200 per month until her obligations are paid in full. Stephanie fails to show that the circuit court erred in its exercise of discretion here. *See generally* ***Lofthus v. Lofthus***, 2004 WI App 65, ¶33, 270 Wis. 2d 515, 678 N.W.2d 393 ("Determining who pays [the guardian ad litem] is a discretionary decision."); *see also* WIS. STAT. § 767.407(6) ("The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem.").

D. Motion to Compel the GAL to Submit to Psychological Evaluation

¶33 Stephanie argues that the circuit court erred in not granting her June 2013 motion to compel the GAL, Attorney Laura Schwefel, to submit to a clinical psychological evaluation. Stephanie alleges that the record "provide[s] a clear pattern of lying and deception by [the GAL]," and indicates that the GAL has a mental disorder that "requires an evaluation by a mental health professional."

¶34 Stephanie fails to develop her argument with any cognizable legal theory. Stephanie merely asserts in her brief, "In the event that [Attorney] Schwefel were to be diagnosed with a mental disorder it is unreasonable to accept that [the child's] best interests have ever been professionally represented before any court, including this court of appeals." If Stephanie intends to argue that a psychological evaluation of the GAL is somehow in the "best interest" of the child, we reject that argument as undeveloped. *See* ***Pettit***, 171 Wis. 2d at 646-47

(court of appeals need not consider arguments that are either unsupported by adequate factual and legal citations or are otherwise undeveloped).

¶35 Moreover, Stephanie cites to no law that authorizes the circuit court to compel a GAL to submit to a psychological evaluation. The circuit court is, of course, allowed to oversee the conduct of a GAL and may, on its own or at the request of a party, remove and replace the GAL. ***Paige K. B. v. Molepske***, 219 Wis. 2d 418, 434, 580 N.W.2d 289 (1998); *see also* WIS. STAT. § 767.407(5). Thus, if Stephanie believes that the GAL is not serving the "best interest" of her child, it appears to us that the avenue Stephanie should have pursued was to move to have the GAL removed pursuant to § 767.407(5). And, indeed, Stephanie did file a motion to have a GAL appointed, requesting that the GAL not be Attorney Schwefel. The circuit court denied Stephanie's motion, and on appeal Stephanie does not challenge the appointment of Schwefel.

CONCLUSION

¶36 For the reasons stated above, we reject Stephanie's arguments that Ted's motion for modification of custody and placement is barred by unclean hands, that the circuit court erroneously exercised its discretion in modifying the custody and placement order, that the court's factual findings are erroneous, and that the court improperly denied her motion to compel the GAL to submit to a psychological evaluation. Accordingly, we affirm.

By the Court.—Order affirmed.

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