

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 8, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

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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.

**No. 00-0191**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**PRESTON W. MCGUIRE,**

**PETITIONER-RESPONDENT,**

**V.**

**DANIELLE M. MCGUIRE N/K/A DANIELLE M. REUTER,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Green County:  
JAMES R. BEER, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Danielle Reuter appeals an order changing the primary physical placement of her daughter, Stephanie McGuire. The issue is

whether the trial court's order was an erroneous exercise of its discretion. We conclude that it was not, and affirm.

¶2 Stephanie was born to Reuter and Preston McGuire in May 1992. They subsequently divorced on December 8, 1998. Their stipulated divorce judgment provided for joint legal custody, with Reuter receiving primary physical placement. McGuire, who had moved to Oklahoma, received a lengthy period of physical placement during the summer, and shorter periods throughout the year.

¶3 On or about January 25, 1999, Reuter left her home in Middleton on what was reportedly a week to ten-day business trip. Nearly four weeks later, when she had still not returned, her sister notified McGuire, who had the child brought to his home on February 19. He commenced this action four days later, and received a temporary transfer of primary placement.

¶4 At the hearing on his petition for a permanent transfer of placement, the evidence before the court included the following. Until December 1998, Reuter was employed as an insurance agent earning over \$50,000 per year. On the day of the divorce, she went to Colorado for five days, for personal reasons. She left Stephanie in the care of James Gladney, who was then on probation for a felony drug conviction. During Reuter's absence Stephanie missed two days of school, she came late and was inappropriately dressed on another day. Until Reuter's return from Colorado, her sister, Angelique Foy, had regularly provided preschool and after-school care for Stephanie. However, Reuter terminated the arrangement when Foy expressed concerns about Stephanie's care.<sup>1</sup> On or about

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<sup>1</sup> Foy's concerns included the fact that Reuter was constantly "pawning Stephanie off" onto friends; that Reuter was not providing meals for Stephanie and not getting her ready for school on time; and that Stephanie was feeling neglected, scared and exhausted from constantly being left with other people.

December 1, Reuter moved from her apartment owing a substantial amount of overdue rent. She moved into a new apartment in Middleton with Gladney, his wife, Jennifer Jarik, and their child. After the holiday break, Stephanie began attending a new school. Around this time Reuter gave up her job.

¶5 On or about January 25, Reuter and Jarik left on what Reuter described as a seven- to ten-day business trip to New Orleans. Stephanie was again left in Gladney's care. While Reuter was gone, witnesses observed that Stephanie was frequently dirty, hungry, wearing ill-fitting clothes, and visibly upset with her situation. She was described as sad, withdrawn, angry and aggressive.

¶6 Reuter was informed of the situation while in New Orleans, and she told her sister she would be home shortly. Instead, she went to California. There, she was again informed of the situation by three persons: Foy, the stepmother of her other child, and her mother. Foy told her "you need to get back here. Your daughter is being neglected." Reuter's mother told her "I am very concerned that Stephanie is not being cared for properly." In these and several other conversations, Reuter stated that she would return soon, but did not do so. Instead, she traveled to Colorado.

¶7 Meanwhile, McGuire was regularly calling Stephanie, but Gladney often did not let him speak with her. McGuire did not know about Reuter's prolonged absence until Foy contacted him and told him of the situation. Shortly afterward, on February 19, McGuire had the child brought to him in Oklahoma.

¶8 Only after hearing of Stephanie's move to Oklahoma did Reuter return to Madison. Although she testified that her prolonged trip was devoted to business, she produced no documents or other proof to support that assertion.

¶9 A psychologist evaluated Stephanie in May and concluded that she was suffering from serious emotional problems including depression. She further concluded that Stephanie was at risk of a psychotic break if the events of January and February were repeated. She stressed Stephanie's need for structure and consistency in her upbringing. Stephanie did not present any significant concerns about her father's care for her. The psychologist concluded that Stephanie's continued placement with Reuter was both physically and emotionally harmful to her best interests.

¶10 Reuter was scheduled to have her first visitation with Stephanie on May 29, 1999. She arrived at McGuire's home for the visit more than twelve hours late, without a plausible excuse.

¶11 Based on the evidence presented, the court found that Reuter's "total irresponsibility" had caused Stephanie substantial emotional harm. The court therefore concluded that substantial evidence showed that changing Stephanie's placement was necessary because placement with Reuter was emotionally harmful to her.

¶12 The trial court may change the terms of a physical placement order within two years of its entry only if the party seeking the change "shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child." WIS. STAT. § 767.325(1)(a) (1999-2000).<sup>2</sup> In determining whether the requirements of the statute have been met, the trial court exercises discretion.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

*Andrew J.N. v. Wendy L.D.*, 174 Wis. 2d 745, 765-66, 498 N.W.2d 235 (1993). We review discretionary decisions to determine whether the trial court relied on facts of record, applied a proper legal standard, and used a rational process to reach a reasonable conclusion. *Id.* at 766. We will affirm if there is a reasonable basis for the trial court's determination. *Id.*

¶13 The trial court reasonably determined that a transfer of physical placement was necessary. Reuter contends that there was no significant evidence that Stephanie suffered harm while in her care. We disagree and have summarized above evidence which the trial court expressly found credible that supports its determination. There was substantial evidence that a transfer of placement was necessary to protect Stephanie from further, serious emotional harm. In a related argument, Reuter cites other evidence introduced during the proceeding that was favorable to her and damaging to McGuire. However, the trial court did not give significant weight to that evidence, and chose to focus more on recent events. Its decision in this regard goes to the weight and credibility of the evidence, and we will not disturb it. *See Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988).

¶14 Reuter further contends that numerous references to her religion during the proceedings were prejudicial. However, she made no objection to those references during the hearings. Additionally, there is no indication that her religious beliefs played any part in the trial court's decision.

*By the Court.*—Order affirmed.

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

