

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 27, 2006**

Cornelia G. Clark  
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. 2005AP2663-FT**

**Cir. Ct. No. 2004FA147**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN RE THE MARRIAGE OF:**

**MARGARET S. FRAFJORD N/K/A MARGARET S. FOIX,**

**JOINT-PETITIONER-APPELLANT,**

**V.**

**TRAVIS C. FRAFJORD,**

**JOINT-PETITIONER-RESPONDENT.**

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APPEAL from an order of the circuit court for Portage County:  
THOMAS T. FLUGAUR, Judge. *Affirmed.*

Before Dykman, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Margaret Foix appeals an order awarding her former husband, Travis Frafjord, primary physical placement of their children.

She also appeals an order denying her motion for reconsideration. Foix contends that the circuit court did not comply with several statutes that govern divorce and custody proceedings. We affirm.

¶2 Foix first argues that the circuit court did not comply with WIS. STAT. § 767.24(6)(a) (2003-04).<sup>1</sup> That statute provides that “[i]f legal custody or physical placement is contested, the court shall state in writing why its findings relating to the legal custody or physical placement are in the best interest of the child.” Here, the circuit court stated in its order that the decision was made “for the reasons stated on the record.” Because it did not state its findings in writing, the circuit court erred. However, we conclude that the error is harmless because the transcript of the circuit court’s oral decision, which has now been produced, fulfills the requirement of the statute. Where, as here, a circuit court states its findings orally, the circuit court should order the court reporter to prepare the portion of the transcript in which the court sets forth its findings and attach the transcript to the order so that the reasons are “in writing,” as required by the statute.

¶3 In its oral decision, the circuit court made extensive findings and explained why its findings supported its decision to give primary physical placement of the children to Frafjord. The court stated that both parents were bonded with the children and would provide well for them. The court also found that both parents had problems. Noting that it was a very close, difficult decision, the court decided that the balance tipped in Frafjord’s favor because he had been

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the primary caregiver—although both parents had been very involved with the children—and he would likely have more time to spend with the children. The circuit court’s decision was based on the facts, well-reasoned and reasonable. *See Culligan v. Cindric*, 2003 WI App 180, ¶7, 266 Wis. 2d 534, 669 N.W.2d 175 (“Physical placement determinations are committed to the sound discretion of the circuit court.”). Therefore, the circuit court did not misuse its discretion in awarding primary physical placement to Frafjord.

¶4 Foix next argues that the circuit court did not comply with WIS. STAT. § 767.24(6)(am). That statute provides: “[i]n making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001(2m).” WISCONSIN STAT. § 767.001(2m) provides that “major decisions” include “but [are] not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator’s license, authorization for nonemergency health care and choice of school and religion.” While it is true that the circuit court did not specify who should make major decisions, the reason is that Foix did not ask the court to do so during the trial and, in an affidavit attached to her motion for reconsideration, Foix’s attorney asked only that the court “specify in writing major decisions,” but did not tell the circuit court *which* major decisions Foix wanted allocated. For these reasons, we reject this claim.

¶5 Finally, Foix argues that the circuit court failed to follow WIS. STAT. § 767.24(6)(f). That statute provides:

If the court finds under sub. (2)(d) that a party has engaged in a pattern or serious incident of interspousal battery, ... or domestic abuse, ... the court shall state in writing whether the presumption against awarding joint or sole legal custody to that party is rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to

legal custody and physical placement are in the best interest of the child.

¶6 The circuit court *did* specifically consider this statute. It concluded that, while Frafjord had exhibited controlling and angry behavior in the past, it did not reach the level contemplated in the statute. Because the circuit court found that there had been no pattern or serious incident of interspousal abuse or domestic abuse, the court did not need to address the presumptions set forth in the statute.

*By the Court.*—Order affirmed.

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

