

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 20, 2011

A. John Voelker
Acting 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. 2010AP3067

Cir. Ct. No. 2006PA390PJ

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE FINDING OF CONTEMPT IN
IN RE THE PATERNITY OF SARAH L. VALLEJOS-KRAMSCHUSTER:**

STATE OF WISCONSIN,

PETITIONER,

v.

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

RESPONDENT-APPELLANT,

TED B. VALLEJOS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Stephanie M. Przytarski appeals from the denial of her motion to find Ted B. Vallejos, the father of her child, in contempt of court for violating a physical placement order by taking their child out of state. *See* WIS. STAT. § 767.41(6)(d). Przytarski alleges that the placement order in force when Vallejos took their daughter out of state precludes Vallejos from exercising physical placement outside of Wisconsin. At the hearing on Przytarski’s motion, the trial court found that it contained no limitations on the exercise of placement out of state and dismissed the motion. We affirm.

¶2 Przytarski and Vallejos entered into a stipulated placement order regarding their daughter in October 2007. The stipulation prescribed: (1) joint legal custody to both parents; (2) primary physical placement to Stephanie; and (3) placement with Vallejos under certain conditions. Specifically, the stipulation conditioned placement with Vallejos on Vallejos “mak[ing] himself available in the State of Wisconsin.” Additionally, the order prescribed a specific location for the “pick up and drop off exchanges of the minor child.” The order also stipulated that Vallejos should have placement that is “unsupervised.” Two subsequent orders contained similar provisions, along with specific dates of placement with Vallejos.

¶3 Przytarski alleges that the applicable physical placement order precluded Vallejos from exercising physical placement outside of Wisconsin. Vallejos admits that he left Wisconsin with his daughter while she was placed with him, but contends that doing so was not in violation of any order. Przytarski filed

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

a motion to find Vallejos in contempt of court based on the trips out of state. *See* WIS. STAT. §§ 767.41(6)(d) and 785.01(1)(b).

¶4 At the conclusion of the motion hearing, the trial court found that the orders neither authorized nor prohibited Vallejos from exercising out-of-state placement. Instead, it interpreted the current placement orders as limiting the location and terms under which custody was to be exchanged. It therefore denied Przytarski’s motion for contempt. Przytarski appeals.

¶5 We will not disturb the trial court’s contempt findings unless there has been an erroneous exercise of discretion. *Gugenski v. Dugenski*, 80 Wis. 2d 64, 68, 257 N.W. 2d 865 (1977). Moreover, a discretionary decision by the trial court will be upheld if the trial court examined “the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982).

¶6 Przytarski bases her argument on WIS. STAT. § 767.41(6)(d), which states that “[n]o party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes the action.” She claims that because the court did not expressly authorize out of state travel, Vallejos violated the order when he took their daughter out of state.² She cites no statute or case saying that travel out of state

² Przytarski frames the issue as whether the trial court erred by “modifying” the physical placement order in its order denying her motion for contempt. We infer that she is arguing that her motion for contempt was improperly denied because Vallejos violated the order that was in place at the time of her motion. We reject her argument regarding modification of the placement order for the same reason we find the order was not violated.

must be expressly authorized by a family court. This is probably because there is no statute or case. We agree with Vallejos and the trial court that the applicable physical placement order did not touch upon out of state travel and there was no condition that Vallejos had to seek court authorization to do so.

¶7 The order’s limitations pertain to the exchange of custody, not the exercise of placement. Out of state travel is nowhere mentioned. Additionally, as the trial court noted, the order states that Vallejos’ placement shall be “unsupervised.” The trial court did not erroneously exercise its discretion when it determined that unsupervised and unimpeded placement permits a parent “to take the child or go where they deem to be appropriate.”³ See WIS. STAT. § 767.41(6)(d).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

³ Przytarski makes one other argument—that the trial court erred when it mentioned a prior contempt finding against her that was later overturned on appeal. We fail to see how mentioning the past historical record is in any way relevant to the issue that Przytarski raises on appeal. If she is claiming that this is proof of bias by the trial court, the claim falls way short of the mark since the historical record is neutral.