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DISTRICT III

August 26, 2025

To:

Hon. Annette M. Barna
Circuit Court Judge
Electronic Notice

Lori Gorsegner
Clerk of Circuit Court
Rusk County Courthouse
Electronic Notice

Andrew John Laufers
Electronic Notice

Daniel Michael Ruff
N6005 County Highway X
Tony, WI 54563

You are hereby notified that the Court has entered the following opinion and order:

2024AP1411 Jennifer Ann Ruff v. Daniel Michael Ruff
(L. C. No. 2022FA11)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jennifer Ruff appeals from a post-divorce order that denied her motion to change the school district for the three minor children she shares with respondent Daniel Ruff. The sole issue on appeal is whether the circuit court erred as a matter of law by evaluating Jennifer's motion according to the standard for custody modifications set forth in WIS. STAT. § 767.451(1)(a)1. (2023-24).[1] Based upon our review of Jennifer's brief and the record, we

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

conclude at conference that this case is appropriate for summary disposition.[2] *See* WIS. STAT. RULE 809.21. We affirm.

On January 24, 2023, the circuit court entered a judgment of divorce, which granted the parties joint legal custody of their three minor children. On February 8, 2024, Jennifer filed a motion seeking, among other things,[3] to change the children's school district. Jennifer argued that the change would be in the children's best interests because Jennifer was moving to another city and the proposed new school district could better handle the special needs of two of the children.

The circuit court denied the motion on the ground that Jennifer had failed to satisfy the standard set forth in WIS. STAT. § 767.451(1)(a)1. for the substantial modification of a custody order. That provision prohibits the modification of an "order of legal custody" within two years after the entry of a final order unless the party seeking modification "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." ***Id.***

Jennifer contends that the "physically or emotionally harmful" standard should not apply to her motion because she was not seeking to modify the legal custody provisions of the divorce judgment; rather, she was seeking the resolution of an impasse between two joint custodians on the choice of their children's schools. She cites ***Lawrence v. Lawrence***, 2004 WI App 170, ¶16, 276 Wis. 2d 403, 687 N.W.2d 748, for the proposition that an assignment of impasse-breaking

[2] Neither Daniel nor the guardian ad litem have filed response briefs. We therefore decide this case based solely upon the record and Jennifer's brief.

[3] The motion sought additional relief that is not at issue on appeal.

authority is not equivalent to the determination of legal custody. ***Lawrence*** is not applicable, however, because the question there was whether it was permissible for a court to assign impasse-breaking authority to a third party. The question here is whether a proposed change of a child's school district qualifies as the modification of an order of legal custody.

Legal custody means "the right and responsibility to make major decisions concerning the child." WIS. STAT. § 767.001(2). The choice of what school a child will attend qualifies as a "major decision." Sec.767.001(2m). Joint legal custody is defined as "[t]he condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the court or the parties in the final judgment or order." Sec. 767.001(1s).

The judgment of divorce in this case gave the parties joint legal custody with shared decision-making over major decisions, which would include the choice of what school each of the children would attend. The parties did not litigate, and the circuit court did not assign, who would have impasse-breaking authority on the question of school choice. Jennifer's motion sought to modify the parties' joint custody decision-making by instead having the circuit court determine what school each of the children would attend, thus taking that decision out of their shared decision-making.

As noted in ***Lawerence***, "[t]he court may of course make a particular decision that falls into the category of 'major decisions' when there is a dispute between the parties *and the dispute is properly before the court*." ***Lawrence***, 276 Wis. 2d 403, ¶16 (emphasis added). In order for a resolution of the parties' dispute over school choice to be properly before the court, however, we have determined that there must first be a showing that the children's current school conditions

were physically or emotionally harmful to their best interests under WIS. STAT. § 767.451(1)(a)1. This approach is consistent with the statutory scheme, which is designed to avoid having parties repeatedly returning to court within the first two years after a judgment, unless required to avoid harmful conditions.

Jennifer made no showing that the current school placement was emotionally or physically harmful to the children. Therefore, the circuit court properly declined to resolve the parties' dispute over which school the children should attend.

Jennifer makes an alternative argument that the circuit court's order should be deemed moot because the two-year period during which the heightened standard would apply has now passed. We note that Jennifer is free to file a new motion. We will not, however, consider Jennifer's motion de novo under a standard that did not apply at the time she filed it or the circuit court decided it.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals