COURT OF APPEALS
DECISION
DATED AND FILED

October 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP59 **Cir. Ct. No. 2010PA121**

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

IN RE THE PATERNITY OF WILL A. SCHUMACHER-WIDZISZ AND LIAM M. SCHUMACHER-WIDZISZ:

DAVID C. WIDZISZ,

PETITIONER-APPELLANT,

V.

EMILY J. SCHUMACHER,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County: PHILLIP A. KOSS, Judge. *Affirmed*.

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. David C. Widzisz and Emily J. Schumacher are the nonmarital parents of twin boys. David appeals pro se from an order awarding Emily primary physical placement and ordering him to pay child support. We reject David's claims that the trial judge, child custody consultant and guardian ad litem (GAL) were biased, the placement arrangement was unfair, and child support was miscalculated. We affirm.

¶2 David's and Emily's interactions throughout these proceedings have been contentious. Their relationship was over before the boys' October 2010 births. David's paternity was adjudicated. A series of hearings and two trials ensued.[1] From the outset, the parties have had joint custody and Emily has had primary placement. David has had periods of placement as well.

¶3 David's appeal stems from the denial of his motions to change venue and to change the GAL and from rulings made at the second trial. His ability and earnest desire to parent are not disputed. He appears to believe, however, either that any ruling or recommendation more favorable to Emily stems from bias or error or that an appeal presents the opportunity for a "do-over." He is mistaken.

¶4 The standards by which we review trial court actions are the pillars of this decision. We must sustain the court's discretionary calls if it examined the relevant facts, applied a proper standard of law and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. ***Luciani v. Montemurro-Luciani***, 199 Wis. 2d 280, 294, 544 N.W.2d 561 (1996). If

[1] Judge David Reddy confessed error after the first trial for referring to a study not admitted into evidence regarding the impact on children of parents' cooperation and communication. He sua sponte ordered a new trial before a new judge.

necessary, we search the record to sustain a discretionary decision. *See* ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. We must accept all factual findings unless they are clearly erroneous and must defer to any credibility determinations. WIS. STAT. § 805.17(2) (2011-12)[2]; *see* ***Appleton Chinese Food Serv., Inc. v. Murken Ins., Inc.***, 185 Wis. 2d 791, 800, 519 N.W.2d 674 (Ct. App. 1994). If more than one reasonable inference can be drawn from the credible evidence, we must accept the reasonable inference the trial court drew. ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979). Looking at the issues through the appropriate lens, we proceed.

¶5 Whether the trial judge was a "neutral and detached magistrate" is a question of constitutional fact we review de novo and without deference to the trial court. ***State v. McBride***, 187 Wis. 2d 409, 414, 523 N.W.2d 106 (Ct. App. 1994). Judicial bias has both subjective and objective components. ***Id.*** at 415. The subjective component is based on the judge's own assessment of his or her ability to act impartially. ***Id.*** The objective component "asks whether a reasonable person could question the judge's impartiality." ***State v. Gudgeon***, 2006 WI App 143, ¶21, 295 Wis. 2d 189, 720 N.W.2d 114. We presume "the judge was fair, impartial, and capable of ignoring any biasing influences." ***Id.***, ¶20. This presumption is rebuttable, ***id.***, but the party asserting judicial bias must prove it by a preponderance of the evidence, ***McBride***, 187 Wis. 2d at 415.

¶6 Judge Koss denied that he was biased and nothing to which David points defeats the presumption of impartiality. Similarly, the examples David offers to illustrate objective bias instead depict credibility findings, evidentiary

[2] All references to the Wisconsin Statutes are to the 2011-12 version.

rulings, and discretionary calls with which he happens not to agree. Even if the rulings were incorrect, however, it does not logically follow that they were motivated by bias. Judge Koss's efforts to offer the parties a clean slate by refraining from reviewing the transcript, exhibits or custody report from the first trial reflect his even-handedness.

¶7 David's motions to change venue and GAL also are premised on alleged bias. These decisions lie within the trial court's discretion. *See* ***Hoppe v. State***, 74 Wis. 2d 107, 110, 246 N.W.2d 122 (1976) (change of venue); *see also* ***Paige K.B. v. Molepske***, 219 Wis. 2d 418, 434, 580 N.W.2d 289 (1998) (change of GAL). Asserting that "a bell cannot be unrung," David worried that the outcome of and recommendations made at the first trial would taint a second trial in the same county and that Emily's role as a social worker in a school district in the county played in her favor. He also claimed the GAL showed bias against him by allegedly not returning his calls and e-mails, being sarcastic, having more contact with Emily, and favoring Emily's mother over him as a caregiver.

¶8 The trial court explained why it denied the motions. It again denied any bias, repeated its unfamiliarity with the first trial, rejected the suggestion that Emily's role as a school district social worker had any impact, pointed out that the GAL was there not to please the parties but to act in the children's best interests, and found that the GAL was "nothing but professional." The findings are not clearly erroneous and these reasons represent a proper exercise of discretion.

¶9 The placement determination also is within the trial court's wide discretion. ***Wiederholt v. Fischer***, 169 Wis. 2d 524, 530, 485 N.W.2d 442 (Ct. App. 1992). The court reviewed the WIS. STAT. § 767.41(5) factors and explained why it gave most weight to the parties' ongoing cooperation and communication

problems. *See* § 767.41(5)(am) 10. and 11. It set forth its credibility conclusions, emphasizing their centrality to its decision. We will not second-guess the court on credibility. *See* ***Appleton Chinese Food Serv., Inc.***, 185 Wis. 2d at 800.

¶10 Finally, we consider whether the trial court overcalculated past child support by denying David's request for "equivalent care" credit. Determining child support is within the trial court's discretion. *See* ***Luciani***, 199 Wis. 2d at 294. Equivalent care is a period of non-overnight care that the court determines would require a parent to assume basic support costs substantially equivalent to that spent for overnight care. *See* WIS. ADMIN. CODE § DCF 150.02(10). Equivalent care must be "something of substance." ***Rumpff v. Rumpff***, 2004 WI App 197, ¶31, 276 Wis. 2d 606, 688 N.W.2d 699.

¶11 David conceded at trial that he was "totally unprepared" to produce firm numbers. He said that he purchased car seats and cribs, but those expenses arose because the children live in two separate homes. It is not clear if David was responsible for feeding the boys supper before Emily picked them up but, even if so, providing the evening meal "does not rise to the level of equivalent care." ***Id.***

¶12 The trial court recognized the many positives that both Emily and David bring to the parenting of their sons. It gave the parties ample time to address their positions and fully explained its decisions. David may not agree with the outcome but he had a full airing of his issues. We must affirm.

By the Court.—Order affirmed.

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