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DISTRICT III

April 28, 2026

To:

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Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Kristen Elizabeth Lonergan
Electronic Notice

Jeffrey S. Decker
Electronic Notice

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

2023AP1225

Amber M. Foley v. Jeffrey S. Decker (L. C. No. 2022FA151)

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).

Jeffrey S. Decker, pro se, appeals an order denying both his motion to enforce physical placement and his motion asking the circuit court to hold Amber M. Foley in contempt. Decker argues: (1) the circuit court erroneously exercised its discretion by concluding that Foley did not intentionally and unreasonably deny him placement with their child; (2) the court erroneously exercised its discretion by curtailing his presentation of evidence at the evidentiary hearing; and (3) the circuit court judge was biased against him. Based on our review of the briefs and record,

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We affirm.²

Decker and Foley were divorced in December 2012. Foley was awarded sole legal custody and primary physical placement of their children. Decker was awarded periods of physical placement.

As relevant to this appeal, on February 27, 2023, Decker filed a motion to enforce placement and a motion to hold Foley in contempt. At the June 27, 2023 evidentiary hearing, Decker identified July 12, 2022, through August 15, 2022, as a period during which he had no physical contact with the parties' remaining minor child. Decker then expanded his claim to assert that following a September 2022 temporary order limiting placement to one supervised hour per week, he did not consistently receive weekly placement and had seen the child only intermittently through early 2023.

Foley acknowledged that placement did not occur during the July-August 2022 period, but she explained that Decker's pending criminal matters and a no-contact order prompted her to seek court guidance regarding placement of their child. The circuit court recalled that in September 2022 it had issued an order limiting Decker's placement to one supervised hour per week with a supervisor selected by Foley, with Decker being permitted to submit names of additional supervisors.

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

² Foley argues that we should not consider Decker's arguments because he failed to file a brief with appropriate citations to the record, in contravention of our briefing rules. *See* WIS. STAT. RULE 809.19; *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Despite Decker's inadequate briefing, we have decided to address his arguments on the merits.

Decker called one witness, his mother, Kathleen Jordan. Jordan testified that she and her husband supervised placement when possible, but they were not able to do so every week. She stated that Foley never instructed her to deny placement to Decker. She also testified that at times, she declined to supervise the child due to her own conflicts with Decker.³

After Jordan's testimony, the circuit court concluded that Decker had not met his burden of proof and that any missed placement was not due to intentional or unreasonable conduct by Foley. Instead, the missed placements resulted from Decker's own conduct and the surrounding circumstances. This appeal follows.⁴

Decker contends the circuit court erroneously exercised its discretion by denying his motions to enforce physical placement and to hold Foley in contempt. Under WIS. STAT. § 767.471(5)(b), Decker bears the burden to prove that Foley intentionally and unreasonably denied placement. Contempt likewise requires proof of intentional disobedience of a court order. *See* WIS. STAT. § 785.01(1)(b).

A circuit court's decisions on a motion to enforce placement, under WIS. STAT. § 767.471, and a motion for contempt, under WIS. STAT. ch. 785, are each reviewed for an erroneous exercise of discretion. *See Lubinski v. Lubinski*, 2008 WI App 151, ¶5, 314 Wis. 2d

³ The circuit court repeatedly advised Decker that the relevant issue was whether Foley intentionally and unreasonably denied him placement.

⁴ We question whether we have jurisdiction to review the circuit court's order denying Decker's motion for reconsideration entered on July 25, 2023. Even if we assume that we do, that decision only further supports the circuit court's June 27, 2023 decision to deny Decker's motions to enforce physical placement and to hold Foley in contempt because the order explains the court's rationale in more detail. And even if we do not, the information that was available in the record before that motion was filed is sufficient for us to affirm, for the reasons stated herein.

395, 761 N.W.2d 676; *City of Wis. Dells v. Dells Fireworks, Inc.*, 197 Wis. 2d 1, 23, 539 N.W.2d 916 (Ct. App. 1995). A discretionary decision will be sustained if the court examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Storms v. Action Wis., Inc.*, 2008 WI 56, ¶34, 309 Wis. 2d 704, 750 N.W.2d 739. Factual findings underlying that decision will not be set aside unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

Jordan testified that Foley never directed her to deny placement to Decker. Jordan said that Foley neither discouraged nor encouraged Decker's placement with his child. Jordan acknowledged scheduling difficulties and her refusal to supervise for a period due to her own conflicts with Decker. In addition to Jordan's testimony, the circuit court reviewed a letter from an approved supervisor and an affidavit from the guardian ad litem. Those materials stated that supervisors had cancelled visits because of Decker's behavior.

Based on the evidence presented, the circuit court stated that Decker had produced "no facts whatsoever" demonstrating that Foley intended to deny him placement. The court correctly explained that missed placement alone did not establish an intentional denial of placement, concluding that missed visits resulted from Decker's own behavior and practical scheduling difficulties. The court further found that Foley "has done everything she can do" to facilitate placement under difficult circumstances.

The record supports these findings. The circuit court applied the correct legal standards and reached a rational decision supported by the evidence. *See Storms*, 309 Wis. 2d 704, ¶34. Accordingly, we conclude that the court properly exercised its discretion.

Decker also contends that Foley was categorically prohibited from deviating from the temporary placement order until it was formally modified. This argument misunderstands the applicable statute. WISCONSIN STAT. § 767.471 requires proof of intentional and unreasonable interference—not merely proof that placement did not occur. *See* § 767.471(5)(b). The circuit court properly focused on intent and reasonableness.

Decker next argues that the circuit court improperly curtailed his presentation of evidence at the evidentiary hearing because it did not allow him to call Foley as a witness. A circuit court has broad authority under WIS. STAT. § 906.11(1) to control the mode and order of interrogating witnesses and presenting evidence. *See State v. Smith*, 2002 WI App 118, ¶15, 254 Wis. 2d 654, 648 N.W.2d 15. We review such evidentiary and procedural rulings for an erroneous exercise of discretion. *See State v. Williams*, 2002 WI 58, ¶60, 253 Wis. 2d 99, 644 N.W.2d 919.

As we previously explained, Decker called Jordan to support his argument that Foley was intentionally interfering with his visitation. During her lengthy testimony, Jordan directly contradicted Decker’s claim. She stated that Foley never told her to prevent the child from seeing Decker.

After Decker’s meandering and, at times, irrelevant questioning of his mother, the circuit court asked Decker who else he intended to call. Decker stated that he wanted to call Foley, and the court engaged in the following discussion with Decker:

THE COURT: Do you have any witnesses before her? And here is why I’m asking. You brought up a witness who spent 30 minutes and she provided no proof; she actually was an antithesis of your theory. And before I have [Foley] come up and subject her to sworn testimony, I want you to put in some shred of proof, some prima facie case, to show that she has engaged in the behavior that

you are discussing. Something before that happens. So who else would you call?

MR. DECKER: Well, Your Honor, I have called the numbers eight and nine, you know, I've seen my son—

THE COURT: Listen.

MR. DECKER: —seventeen times in almost a year.

THE COURT: I just heard testimony as to ... —why that happened and why it had nothing to do with [Foley]. Now, I'm asking you one more time, you have ...

MR. DECKER: Your Honor—I'm sorry.

THE COURT: Okay. I'm beginning to believe you're wasting the Court's time, Mr. Decker, because you're saying you have all this proof that [Foley] sabotaged your placement. You brought up a witness who testified for 30 minutes who said nothing of the sort; in fact, said she was never instructed in any way by [Foley]. So what proof do you have before we proceed?

The circuit court afforded Decker the opportunity to present evidence and to question Jordan at length. The court's decision to prohibit Decker from calling Foley as a witness unless he had at least "some shred" of evidence in support of his claim was within the court's purview to avoid needless consumption of time and to focus on the dispositive issue. Decker was unable to articulate what information he believed Foley would provide, and the court was well aware of the extensive litigation that Decker had initiated over the years in this case. The court's decision to prohibit Decker from calling Foley under these circumstances was a proper exercise of discretion. *See* WIS. STAT. § 906.11(1).

Decker next argues that the circuit court judge was biased against him. Whether a circuit court judge was biased based on his or her statements at a hearing is a question of law that we review independently. *See State v. Herrmann*, 2015 WI 84, ¶23, 364 Wis. 2d 336, 867 N.W.2d 772. A judge is presumed to act fairly and impartially. *Id.*, ¶24. Judicial remarks that are

critical or stern do not establish bias “unless they display deep-seated favoritism or antagonism that would make fair judgment impossible.” *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

The transcript reflects that the circuit court judge repeatedly explained the governing legal standard and directed Decker to present evidence relevant to Foley’s intent. Although the judge expressed frustration when Decker failed to address the dispositive element, adverse rulings and firm courtroom management alone do not constitute bias. Nothing in the record reveals deep-seated antagonism or an inability to adjudicate fairly. The judge’s rulings were grounded in the evidence presented. Decker has not overcome the presumption of impartiality.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court 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