



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT II

September 23, 2026

To:

Hon. Jon E. Fredrickson
Circuit Court Judge
Electronic Notice

Victoria Ellyn Dietel-Bargender
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Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Richard E. Reilly
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Christopher William Rose
Electronic Notice

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

2025AP892

Christopher William Rose v. Tammy Jo Rose (L.C. #2019FA529)

Before Lazar, P.J., Gundrum, and Grogan, 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).

Christopher William Rose appeals a circuit court order denying his motion to receive a credit for overpayment of child support from October 2022 through February 2023 pursuant to WIS. STAT. § 767.59(1r)(e) (2023-24).¹ Christopher argues he established at an evidentiary hearing that he is entitled to the credit. Based upon 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. We affirm.

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

This is the second time this case is before us. The circuit court originally denied Christopher’s request for a credit on the basis that he failed to establish he had placement of the children for more than 60 *consecutive* days beyond the court-ordered placement. On appeal, “[w]e conclude[d] as a matter of law that WIS. STAT. § 767.59(1r)(e) does not require the payer of child support to exercise placement for a period of sixty consecutive days in order to be eligible for a child support credit.” **Rose v. Rose**, 2024 WI App 64, ¶18, 414 Wis. 2d 305, 14 N.W.3d 707. We reversed and remanded “to the circuit court for a determination of whether Christopher should be granted the credit he sought for overpayment of child support from October 2022 through February 2023.” *Id.*

On remand, the circuit court held an evidentiary hearing where Christopher and his ex-wife, Tammy Jo Rose, testified regarding placement of the children during the relevant time period. Following briefing, the court ultimately denied Christopher’s motion. It explained that to be entitled to the credit, Christopher had to establish that he had the children for 60 days beyond the court-ordered placement. *See* WIS. STAT. § 767.59(1r)(e). It stated,

In order to get over 60, [Christopher’s] got to have eight Sundays or at least going to have to add it to the other dates that you guys seem to agree to. And I don’t have any clarity on whether those eight Sundays[,] what happened.

It emphasized that at the evidentiary hearing, both Christopher and Tammy Jo testified along the lines of:

I’ve got something on my cell phone that will prove this, or I’ve got something here that will prove this. But [Christopher], you’ve got to prove it. You’ve got the burden....

And you came in here telling me that you might have it on a cell phone or you might have it somewhere else, or it might be here. And [Tammy Jo], she’s digging through calendars and school schedules, and this Court is clearly trying to refresh your

recollection from a couple of years ago. But both of you didn't have a specific recollection of exactly how many days there were.

The circuit court also pointed to Christopher's post-hearing brief where he made statements such as Tammy Jo "had very few if any overnights with the minor children on ... Sundays." The court stated his brief did not establish Christopher had the children on Sundays. The court also observed that Tammy Jo testified she had the children on some Sundays because she drove them to school on Mondays. The court found "Neither party testified with any clarity exactly what happened on the Sundays." Ultimately, the court concluded that "[Christopher] did not meet his burden of proof and prove that he went over 60 days because the Sundays were not clear." Christopher appeals.

On appeal, Christopher argues the circuit court erred as a matter of law by concluding he needed to establish he had more than 60 days of *overnights*, not just placement time. *See* WIS. STAT. § 767.59(1r)(e). He also argues that he established at the evidentiary hearing that he had the children for more than 60 days beyond the court-ordered placement.

We conclude the record does not establish that Christopher proved by a preponderance of the evidence that he had 60 days, whether they were overnights or not, beyond the court-ordered placement. *See* WIS. STAT. § 767.59(1r)(e) ("preponderance of the evidence"). As such, we need not resolve whether § 767.59(1r)(e) requires overnights or some other measure of a day. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed); *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

For the October 2022 through February 2023 time period at issue here, it was factually a close call as to whether Christopher had the children for more than 60 days beyond his

court-ordered placement. As such, specific testimony was necessary for Christopher to meet his burden of proof. However, the record in this case supports the circuit court's factual determination that neither party had a specific recollection of who had placement of the children on specific days. See *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983) (“[W]hen the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses.” (citation omitted)).

Instead, the parties' testimony was based largely on generalities. For example, Christopher testified that he generally had the children most of the time because of their school schedule. He testified that Tammy Jo generally had the children on three of the four monthly Saturdays and Sundays during the day, but that he often picked the children up from Tammy Jo's on Sunday nights. He conceded, however, that Tammy Jo occasionally had the children until Monday morning because “[t]here were probably a couple of occasions that she took them to school[.]” In a case that presents a close call, this testimony without more is not enough to establish who had placement of the children and when placement occurred. Because the record supports the circuit court's determination that Christopher failed to meet his burden of proof, the court's denial of the child support credit is affirmed. See *id.*

IT IS ORDERED that the order of the circuit court is summarily affirmed. See 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