

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 31, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2781

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

SUSAN K. KUYKENDALL,

PETITIONER-APPELLANT,

V.

KELLY R. KUYKENDALL,

RESPONDENT-RESPONDENT.

APPEAL from a judgment and order of the circuit court for Crawford County: MICHAEL KIRCHMAN, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Susan Kuykendall appeals a judgment of divorce and an order denying her motion for reconsideration. The issue is whether the court should have awarded her custody of one of her children. We affirm.

¶2 Susan's first argument is that the trial court erred by not finding that respondent Kelly Kuykendall committed violent acts against her. The finding by the court was that "the Court was not convinced Mrs. Kuykendall was subjected to abuse by Mr. Kuykendall. Specifically, the Court does not find that the incident of domestic abuse as testified by Mrs. Kuykendall occurred." Because the court concluded that there was insufficient evidence to find that abuse occurred, for the purpose of this case, it was essentially a finding that the abuse did not occur.

¶3 On appeal, Susan argues that the trial court did not actually make a finding on the alleged incident of domestic abuse, but only on a different incident at a festival. We do not agree with that reading of the record. At the hearing on the reconsideration motion, when counsel attempted to remind the trial court of the testimony about the alleged domestic abuse, the court said: "I recall that. I don't believe that happened."

¶4 Susan argues that this finding was clearly erroneous because, in addition to Susan's own testimony, there was certain other corroborating evidence. Kelly, on the other hand, denied that the abuse occurred. Credibility of witnesses and inferences from conflicting evidence are for the trial court to determine. *See Hughes v. Hughes*, 223 Wis. 2d 111, 128, 588 N.W.2d 346 (Ct. App. 1998). In light of the conflicting testimony in this case, we cannot say the court's finding was clearly erroneous.

¶5 Susan also argues that the court erroneously exercised its discretion in awarding custody of K.K. to Kelly. The parties agree on the factors the trial court is to consider, and on our standard of review. Susan's argument is based in part on the claim of abuse, but because we have affirmed the finding that no abuse occurred, we do not further consider that part of the argument.

¶6 In addition, Susan argues that the record does not contain any comments by the court which would suggest a rational deliberation of the relative merits of placing K.K. with Susan or Kelly. We disagree with this reading of the record, as well. The court discussed several factors, including its negative view of Susan's parenting skills and philosophy, and its belief that Susan might make visitation with Kelly difficult if she had custody. The court concluded: "I think that it will be in the long run more harmful for [K.] to live with her mother, absent any change in the situation, than it will be to live with her father." This shows a sufficient exercise of discretion.

By the Court.—Judgment and order affirmed.

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

