

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2014AP2444

Cir. Ct. No. 2013PA39PJ

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE PATERNITY OF E. O.:

JEFF OMANN,

PETITIONER-RESPONDENT,

V.

TRANDY BLUE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

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

¶1 PER CURIAM. Trandy Blue, pro se, appeals an order addressing several issues arising after entry of a paternity judgment involving E. O., her child

with Jeff Omann. Blue challenges the shared placement schedule established by the circuit court, as well as the determination that E. O. remain in the St. Croix County School District. Blue also contends she is entitled to additional child support from Omann. We reject Blue's arguments and affirm the order.

BACKGROUND

¶2 E. O. was born in June 2009. He lived with his parents and Blue's son from a previous relationship in Omann's Hammond, Wisconsin house. The couple ended their relationship in May 2013. In December of that year, Omann initiated the underlying paternity action and was subsequently adjudicated as E. O.'s father. Blue and her older son relocated to Afton, Minnesota in July 2014.

¶3 Although the parties agreed to joint custody and equal shared placement of E. O., they disputed where E. O. should begin kindergarten. Omann wanted E.O. to remain in the St. Croix County School District, where E. O. had attended four-year-old kindergarten (4K), and Blue wanted him transferred to the Stillwater School District where she resides. The parties also disagreed about which days of the week each should have physical placement of the child. After an evidentiary hearing, the circuit court decided E. O. would remain in the St. Croix County School District. The court also set a placement schedule and ordered a four-hour right of first refusal, requiring whichever parent had placement of E. O. to give the other parent the option to pick him up for those periods in which the placement parent was going to be gone for more than four hours. In determining child support, the court determined Blue's income to be \$2200 per month and ordered Omann to pay \$610 per month, utilizing a 50-50 shared placement formula. This appeal follows.

DISCUSSION

¶4 Blue challenges the shared placement schedule and the determination that E. O. remain in the St. Croix County School District.¹ WISCONSIN STAT. § 767.41 authorizes circuit courts to make any provisions they deem “just and reasonable” concerning the legal custody and physical placement of minor children subject only to the limitations imposed by statute. Joint legal custody is presumed to be in the best interests of the child. *See* WIS. STAT. § 767.41(2)(am). There is no parallel presumption about equal placement. *See Keller v. Keller*, 2002 WI App 161, ¶12, 256 Wis. 2d 401, 647 N.W.2d 426. Instead, the court is required to set a schedule that allows the child to have “regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent.” WIS. STAT. § 767.41(4)(a)2.

¶5 Placement determinations are committed to the sound discretion of the circuit court. *Gould v. Gould*, 116 Wis. 2d 493, 497, 342 N.W.2d 426 (1984). We will sustain a discretionary decision if the court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). “Although the proper

¹ In his brief, Omann suggests this court should strike Blue’s brief-in-chief because it fails to properly cite the record and refers to matters outside the record, contrary to this court’s appellate rules. Although Blue is admonished that any future brief submitted to this court must be in substantial compliance with WIS. STAT. RULE 809.19, the request to strike the brief is denied.

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision.” *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. In addition, we affirm the circuit court's findings of fact unless they are clearly erroneous, WIS. STAT. § 805.17(2), but we independently review any questions of law, *Clark v. Mudge*, 229 Wis. 2d 44, 50, 599 N.W.2d 67 (Ct. App. 1999).

¶6 Here, Blue neither acknowledges nor applies our standard of review. Rather, she essentially asks this court to consider the issues and evidence de novo. Blue does not assert that the evidence relied upon by the circuit court was in error, or that the court relied upon incorrect law. She merely contends the circuit court failed to appreciate the facts that supported her position, and she ultimately disagrees with the weight the court accorded to the evidence in reaching its decision. Although Blue's arguments are not framed under the proper standard of review, we will nevertheless reach their merits. We conclude the circuit court's discretionary decisions are supported by the facts of record.

¶7 After reviewing information the parties provided regarding the academic standards of both school districts, the circuit court determined that the balance “would tilt in favor of St. Croix Central.” The court also noted that E. O. was already familiar with the school district, having attended 4K there. Emphasizing that familiarity is important, the court acknowledged that some of the same students from E. O.'s 4K class would be in his kindergarten class. Further, the court found that Omann had been significantly more involved in E. O.'s education and personally knew teachers at the school.

¶8 The court also expressed concern about the logistics of picking up E. O. from school if he were placed in the Stillwater School District. The court heard testimony that E. O.'s 4K teacher was unable to contact Blue by phone when calls were attempted during the school year, and Blue confirmed at the hearing that she did not have good phone service at her Afton home.² E. O.'s paternal grandmother agreed to "pitch in" when E. O.'s parents were unavailable. She lived ten to fifteen minutes from the St. Croix County school and forty minutes from the Stillwater school. The court stated: "[I]f [the grandmother] is going to be the backup, which I think you both recognize is a valuable resource, then making it doable, accessible for her, as well as for snow days, makes perfect sense to me." Based on the record, the circuit court properly exercised its discretion when determining E. O. would remain in the St. Croix County school district.

¶9 With respect to the placement schedule, Blue sought placement from Sunday evening until Thursday after school, with every other Sunday starting at 1 p.m. The court ultimately determined Blue would have placement every Sunday through Tuesday night; Omann would have placement every Wednesday through Friday night; and the parties would alternate Saturday nights. The record showed that Blue, who is a professional musician, usually performed with her band on Friday and Saturday nights, and practiced on Wednesday nights. The band routinely played at an "open mic" on Wednesday night that provided an opportunity for networking with other musicians and was an important way to

² On appeal, Blue indicates she "has invested in the highest quality cell phone that works perfectly" even where there is generally poor reception. This court's review, however, is limited to the record as it existed at the time the circuit court made the decision on appeal. It is not the function of this court to take additional evidence. See *State ex rel. Wolf v. Town of Lisbon*, 75 Wis. 2d 152, 155-56, 248 N.W.2d 450 (1977).

book jobs. Based on Blue's schedule, the circuit court reasonably exercised its discretion when it equally divided placement and determined that E. O. would spend Wednesday nights with Omann.

¶10 Next, Blue challenges the circuit court's decision to set a four-hour right of first refusal, citing her preference for a six-hour right of first refusal. Blue does not dispute that she failed to raise this argument in the circuit court. As a general matter, "an issue must be raised in the [circuit] court to be eligible for review upon appeal." *Schinner v. Schinner*, 143 Wis. 2d 81, 94 n.5, 420 N.W.2d 381 (Ct. App. 1988). In any event, Blue fails to establish that the circuit court erroneously exercised its discretion when imposing a four-hour, rather than six-hour, right of first refusal. In order to maximize the amount of time E. O. spent with his parents, the circuit court ordered: "[I]f you're going to be gone more than four hours, you call the other and say, instead of hiring a babysitter, calling grandma or calling someone else, can you come pick up [E. O.] and have him?" The court was well within its discretion to allow the other parent the choice of placement during those periods when E. O. would otherwise be with a nonparent, and the record supports the court's decision to trigger that call at four hours.

¶11 Finally, Blue argues the circuit court overestimated her income when setting Omann's child support obligation at \$610 per month. Blue seeks \$824 in monthly child support from Omann. This court reviews circuit court decisions relating to child support for an erroneous exercise of discretion. *Schwantes v. Schwantes*, 121 Wis. 2d 607, 630-31, 360 N.W.2d 69 (Ct. App. 1984). Blue testified that when she worked as a musician before her children were born, she earned \$38,000 per year. Her present Financial Disclosure Statement, however, reflects income of \$693 per month for her music engagements and \$307 per month

for her part-time work at Life Touch, a photo studio in Hudson where she earns \$9.50 per hour.

¶12 Blue asserts that the circuit court incorrectly averaged her annual income from her musical career, because summer is more lucrative than winter. Blue, however, presented a list of her band's engagements from January 1, 2014 until early August 2014. The circuit court used this list to extrapolate a yearly income of \$12,000 for her work as a musician taking into account income from parts of both the winter and summer months. With respect to the Life Touch job, the court determined, based on testimony presented at trial, that Blue could work thirty hours per week during the school year and fifteen to twenty hours per week during the summer. Accordingly, the circuit court properly exercised its discretion when concluding Blue had an income of \$2200 per month for purposes of child support.

By the Court.—Order affirmed.

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

