COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1239 **Cir. Ct. No. 2008FA2896**

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

IN RE THE PATERNITY OF M. A. M.:

KATRINA N. GADSBY,

PETITIONER-APPELLANT,

V.

JAMIE MARTINEZ, JR.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: MARSHALL B. MURRAY, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Katrina N. Gadsby appeals an order of the circuit court granting sole custody and primary placement of her minor son, M.A.M., to

his father, Jaime Martinez. Gadsby contends that the custody transfer was improper because neither party moved to modify custody, thus rendering the circuit court without the authority to modify the existing custody order. Gadsby also contends that the court erroneously exercised its discretion in applying the relevant statutes, and that the court erroneously refused to allow testimony from the minor child's out-of-state psychologist. For the reasons we explain below, we disagree with Gadsby and affirm.

BACKGROUND

¶2 This case has a long and complicated factual background with the parties being at odds since M.A.M.'s birth on January 16, 2008. M.A.M. is the non-marital child of Gadsby and Martinez. Within nine months of the child's birth, the parties began litigating custody and placement issues. The circuit court addressed custody and placement multiple times and ultimately ordered mediation on April 20, 2009. The mediation attempt failed approximately three weeks later when "[the] [p]etitioner disagreed to pursue mediation." M.A.M. was sixteen months old at the time. Ultimately, the circuit court ordered joint custody with primary placement of M.A.M. with Gadsby, and alternate periods of placement with Martinez.

¶3 On June 23, 2009, approximately one week after the circuit court entered its joint custody and alternate placement order, Gadsby filed a letter informing the court that she intended to move to Colorado in August of that same year. Martinez filed an "Order to Show Cause and Affidavit for Finding of Contempt," alleging that Gadsby—who had already moved at that point—moved to Colorado without his knowledge. By then, M.A.M. was approximately seventeen months old. Gadsby responded with a new placement proposal

reflecting her new residence in Colorado. Martinez moved for the modification of M.A.M.'s placement and custody. A guardian *ad litem* was appointed. The parties continued litigating, eventually leading to a trial held on March 10, 2010. The result of the trial established a custody and placement order following Gadsby's move to Colorado. The written order was signed and filed on May 30, 2010. We do not recount additional subsequent litigation except to the extent such activity is relevant to this appeal.

Motion Underlying This Appeal.

¶4 In August 2012, Gadsby filed a motion to modify placement on the grounds that M.A.M. was starting school full-time. By then, M.A.M. was four years and eight months old. A guardian *ad litem* was appointed. The parties continued to file motions, but ultimately reached an agreement as to placement at a hearing on July 30, 2013. The parties orally stipulated to maintaining joint legal custody, primary placement with Gadsby during the school year, and placement with Martinez over M.A.M.'s summer vacations. An order reflecting the parties' stipulation was entered by the court on August 21, 2013.

¶5 Between July 30, 2013 (the date of the stipulation), and August 21, 2013 (the date of the written order), however, Gadsby engaged in multiple acts which came to light in subsequent hearings. The record establishes that approximately one week after the stipulation, Gadsby made a referral to Broomfield Human Services in Colorado alleging that Martinez sexually abused M.A.M. This prompted a phone call to West Allis police and a subsequent police investigation. The investigation resulted in no action against Martinez. The same day Gadsby made the referral to Broomfield Human Services, she also took M.A.M. to a local children's hospital for a sexual assault physical examination and

forensic interview. No evidence of sexual assault was discovered. M.A.M. was six years old at the time.

¶6 On March 27, 2014, Gadsby filed an emergency motion to amend placement due to "concerns raised by [M.A.M.'s] therapist … that [M.A.M.] may have been subjected to physical and sexual abuse by his father." The motion requested that the circuit court suspend Martinez's contact and visitation with M.A.M. pending a psychological evaluation. The motion alleged that upon returning to Colorado in August 2013, following a visit with his father, M.A.M. "displayed several concerning behaviors, including sexualized behaviors, and reported having been inappropriately touched by [Martinez]…. [M.A.M.] further reported that [Martinez] requested that [M.A.M.] inappropriately touch [Martinez], but [M.A.M.] refused."

¶7 The circuit court issued a temporary order suspending Martinez's placement and appointed a guardian *ad litem*. Martinez responded by filing his own motion to modify placement, alleging that Gadsby made unfounded and unsubstantiated allegations against Martinez that were causing emotional harm to M.A.M. Martinez stated that he was questioned about Gadsby's allegations by West Allis police, that police found the allegations unsubstantiated, and that the police did not refer the matter to the district attorney's office for charges. Martinez requested primary placement of M.A.M. and an order for M.A.M. to be evaluated in Milwaukee by a psychologist chosen by Martinez.

¶8 The circuit court held multiple hearings before it ordered a trial on placement and custody. In April 2014, before the first hearing, Gadsby filed a motion asking that Dr. Michele Kelly, M.A.M.'s psychologist in Colorado, be allowed to testify by telephone. At the hearing on May 12, 2014, the court ruled

that Dr. Kelly could not testify by telephone because the courtroom's sound system was not adequate for phone testimony. Gadsby did not suggest or request alternatives for Dr. Kelly's testimony. Nothing in the record suggests that Gadsby made any effort to secure Dr. Kelly's testimony by means other than the telephone before trial.

¶9 Approximately nine months after the May 12, 2014 hearing, a trial of the competing motions began. Based on the testimony of multiple witnesses, along with court records, the circuit court made numerous findings. The court found that despite the fact that the West Allis Police Department's investigation, the investigation of the Broomfield Human Services, M.A.M.'s physical examination, and M.A.M.'s forensic interview uncovered no proof of abuse, Gadsby started M.A.M. in therapy sessions with Dr. Kelly to focus on the alleged abuse. The court concluded that Gadsby unnecessarily subjected M.A.M. to exposure to law enforcement involvement in the battle between his parents by having West Allis police come to Martinez's home multiple times during Martinez's placement periods following the August 21, 2013 order. The circuit court also concluded that Gadsby "engaged in a course of conduct which adversely impacts the emotional well being of [M.A.M.]" because M.A.M. was subjected to a physical sexual assault examination and a forensic interview as a result of Gadsby's unsubstantiated allegations.

¶10 The circuit court expressed concern for M.A.M.'s well-being, based on M.A.M.'s behavioral difficulties and Gadsby's "unwavering conviction Mr. Martinez has sexually and physically abused their son." The court noted that Gadsby's belief ignored the "volume of evidence to the contrary" and ignored the possibility that "there may be some other issue presenting itself which could easily warrant therapy for this young child."

¶11 Based on all of these findings, the circuit court found that a substantial change in circumstances warranted a transfer of M.A.M.'s primary placement and sole custody to Martinez.

¶12 Gadsby now appeals, raising what we consider to be essentially two issues. First, Gadsby claims the circuit court made errors of law when it modified joint *custody* because neither party moved for that particular relief. Second, she claims the circuit court erroneously exercised its discretion by: (a) finding a substantial change in circumstances which supported modification of the placement order; and (b) by refusing to allow her expert witness from Colorado, Dr. Kelly, to testify. Additional facts are included as necessary to the discussion of these issues.

DISCUSSION

I. The circuit court did not make an error of law.

¶13 Gadsby contends that because neither party moved for custody modification, the circuit court had no authority to transfer sole legal custody of M.A.M. to Martinez. She contends that the court either lost competency to change custody, or the court made the change *sua sponte*, which is prohibited by our holding in ***Pero v. Lucas***, 2006 WI App 112, 293 Wis. 2d 781, 718 N.W.2d 184.

¶14 A circuit court's competency to act is a question of law, which we review *de novo*. *See* ***Village of Shorewood v. Steinberg***, 174 Wis. 2d 191, 200, 496 N.W.2d 57 (1993). Because competency does not equate to subject matter jurisdiction, a challenge to the circuit court's competency will be deemed waived if not raised in the circuit court. ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶¶27, 29, 273 Wis. 2d 76, 681 N.W.2d 190.

¶15 WISCONSIN STAT. § 767.451(1)(b)1. (2013-14)[1] provides: "Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following...." Gadsby contends that neither she nor Martinez filed a motion to modify custody, although both requested modification of placement, hence the circuit court lacked competency to address custody.

¶16 The statute does not specify the manner in which a motion is to be made. Martinez made an oral request at the end of trial when his counsel explicitly asked the circuit court whether it would make a custody ruling. Gadsby did not object then, nor did she object later when the court issued its written decision. To raise an objection to the court's competency to resolve custody for the first time on appeal, after months of notice that custody was being considered, is both disingenuous and an issue that has been waived by the failure to object. "As a general rule, issues not raised in the circuit court will not be considered for the first time on appeal." ***State v. Dowdy***, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691.

¶17 Noticeably, Gadsby does not claim she had no advance notice that custody was an issue in these proceedings. That is likely because custody and placement had been repeatedly mentioned by the court—over the course of several months—as the purposes of the eventual trial. CCAP[2] entries and transcripts of the proceedings indicate that custody had been an issue since May 12, 2014. The

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

[2] "CCAP" refers to "Wisconsin Court System Circuit Court Access."

CCAP report from May 12, 2014 states: "Court orders this matter be set for full *custody and* placement hearing." (Some capitalization omitted; emphasis added.) At the first pretrial hearing, the court described the trial as "[b]asically a *custody* and placement hearing." (Emphasis added.) When setting a date for trial, the court reiterated: "Okay. Then that is the date for the *full custody hearing*…." (Emphasis added.) No objections were made by any party.

¶18 Alternatively, Gadsby relies on ***Pero*** to argue that the circuit court erroneously modified custody *sua sponte*. In ***Pero***, the circuit court modified custody *sua sponte*, essentially telling the parties that their inability to communicate with each other rendered a change in custody appropriate.[3] ***Id.***, 293 Wis. 2d 781, ¶¶9-10. We held the circuit court committed an error of law because WIS. STAT. § 767.325 (2003-04),[4] the statute governing revision of legal custody orders, does not authorize a circuit court to modify custody orders on its own initiative. *See* ***Pero***, 293 Wis. 2d 781, ¶31. We noted that the statute "emphasizes the need to give advance notice to parties of the issues to be addressed so that they can be adequately prepared." *See* ***id.***, ¶30.

¶19 ***Pero*** is clearly distinguishable from this case. Here, all of the parties had many months of notice that both custody and placement were being considered. A "custody and placement" evaluation was ordered by the circuit court in May 2014, at the initial hearing, which was nine months before the trial.

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[3] The circuit court told counsel, on the record: "I don't know who is not cooperating or communicating, but this case, on [its] face, … about needing firm definite dates, because of the inability to cooperate, it's not a shared placement case." *See* ***Pero v. Lucas***, 2006 WI App 112, ¶10, 293 Wis. 2d 781, 718 N.W.2d 184.

[4] WISCONSIN STAT. § 767.325 has since been renumbered by 2005 Wis. Act 443 and 2007 Wis. Act 96. The section of § 767.325 relevant to this appeal now appears in WIS. STAT. § 767.451. The language of § 767.325 as applied in ***Pero*** does not differ in any way that affects this appeal.

Gadsby did not object. On the first day of trial, the circuit court summarized the purpose of the proceedings: "[W]e are here for me to decide where your child is going to live and who is going to get *custody* and placement." (Emphasis added.) Gadsby did not object, nor did she claim that she was unprepared to litigate custody. When the circuit court rendered its final decision at the conclusion of the trial, it had not specifically mentioned custody. Martinez, by counsel, reminded the court of the custody omission. Gadsby did not object.

¶20 We conclude that under the facts here, the circuit court did not commit an error of law. First, Gadsby had approximately nine months notice that custody was an issue before the circuit court. That is certainly adequate time to prepare. Second, Gadsby has not identified how she would have litigated differently had Martinez filed a written motion for custody modification. Finally, Gadsby made no objection to the circuit court's consideration of custody, although she had multiple opportunities to do so over many months. As such, she has waived a claim that the court was not competent to change custody.

II. The circuit court properly exercised its discretion.

(a) Modification of custody and placement.

¶21 Gadsby argues that the circuit court erroneously exercised its discretion when: (a) it found that a substantial change in circumstances warranted modification of M.A.M.'s physical placement; and (b) it refused to allow Gadsby's expert to testify by telephone.[5]

[5] In her brief, Gadsby also describes this exercise of discretion as "refusing to hear expert testimony." That characterization is misleading and incorrect. The circuit court did not reject the expert; the court merely rejected one method of presenting the expert's testimony.

¶22 Child custody and 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." *See* ***Liddle v. Liddle***, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). We affirm the circuit court's findings of fact unless they are clearly erroneous, *see* WIS. STAT. § 805.17(2), but we independently review any questions of law. *See* ***Clark v. Mudge***, 229 Wis. 2d 44, 50, 599 N.W.2d 67 (Ct. App. 1999). "Our task as the reviewing court is to search the record for reasons to sustain the [circuit] court's exercise of discretion." *See* ***Hughes v. Hughes***, 223 Wis. 2d 111, 120, 588 N.W.2d 346 (Ct. App. 1998).

¶23 WISCONSIN STAT. § 767.451(1) governs substantial modifications to legal custody and physical placement orders after the initial two-year period. A circuit court considers such modification requests using a two-step process. *See* ***Greene v. Hahn***, 2004 WI App 214, ¶22, 277 Wis. 2d 473, 689 N.W.2d 657. First, when a requested modification "'would substantially alter the time a parent may spend with his or her child,' the moving party must show that there has been 'a substantial change of circumstances since the entry of the last order[.]'" ***Id.*** (citation omitted). The change must be something substantially affecting physical placement. ***Id.*** A substantial change of circumstances "requires that the facts on which the prior order was based differ from the present facts, and the difference is enough to justify the court's considering whether to modify the order." ***Licary v. Licary***, 168 Wis. 2d 686, 692, 484 N.W.2d 371 (Ct. App. 1992). Second, if the circuit court finds a substantial change in circumstances, it must determine whether modification would be "'in the best interest of the

child.'" ***Greene***, 277 Wis. 2d 473, ¶22 (citation omitted). In making this determination, the court must consider factors set forth in WIS. STAT. § 767.41(5)(am). In addition, there is a rebuttable presumption that "[c]ontinuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child." *See* WIS. STAT. § 767.451(1)(b)2.b.

¶24 Whether a party has established a substantial change in circumstances is a question of law we review independent of the circuit court. *See* ***Pero***, 293 Wis. 2d 781, ¶23. However, "we must give weight to a [circuit] court's decision because the determination is heavily dependent upon an interpretation and analysis of underlying facts." ***Id.*** (citations and multiple sets of quotation marks omitted). As to whether modification is in the best interest of the child, "we consider whether the [circuit] court has properly considered and weighed the appropriate factors to determine what is in the child's best interest[s], using the erroneous exercise of discretion standard." ***Id.***

¶25 The circuit court found that since the entry of the last order regarding placement (the August 2013 order), Martinez discovered he was the subject of an abuse investigation by the West Allis Police Department's Sensitive Crimes Unit. This investigation was ongoing at the time Gadsby agreed to the terms of the August 21, 2013 order, which was a fact unknown to Martinez. Gadsby made this referral on August 7, 2013, only weeks after the oral stipulation was put on the record by the parties and just fourteen days prior to the entry of the order. The investigation into the alleged abuse continued until November of 2013, and turned up no evidence of any alleged abuse. Consequently, no action was taken against Martinez. Gadsby admitted that as a result of her allegations,

M.A.M. was subjected to a forensic evaluation for abuse in Colorado on September 19, 2013.

¶26 As to whether modification of the custody and placement order was in M.A.M.'s best interest, the circuit court expressly considered the rebuttable presumption that continued placement with Gadsby was in M.A.M.'s best interest, but in consideration of the factors set forth in WIS. STAT. § 767.41(5)(am),[6]

[6] WISCONSIN STAT. § 767.41(5)(am) provides:

> Subject to pars. (bm) and (c), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to pars. (bm) and (c), the court shall consider the following factors in making its determination:
>
> 1. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.
>
> 2. The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
>
> 3. The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
>
> 4. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.
>
> 5. The child's adjustment to the home, school, religion and community.
>
> 6. The age of the child and the child's developmental and educational needs at different ages.
>
> 7. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.
>
> 8. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.
>
> 9. The availability of public or private child care services.

determined that the presumption was overcome. We review the facts in the record impacting the statutory factors relevant to this case, which support the circuit court's ultimate decision to award both sole custody and primary placement to Martinez.

¶27 M.A.M. was very young when Gadsby disrupted his placement time with Martinez by inserting police officers into the placement twice. At a time when stability and predictability are especially important for a child of such tender years, Gadsby made things unstable. Thus "[t]he age of the child and the child's developmental … needs" factor in WIS. STAT. § 767.41(5)(am)6. and the

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10. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

11. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

12. Whether there is evidence that a party engaged in abuse, as defined in s. 813.122(1)(a), of the child, as defined in s. 813.122(1)(b).

12m. Whether any of the following has a criminal record and whether there is evidence that any of the following has engaged in abuse, as defined in s. 813.122(1)(a), of the child or any other child or neglected the child or any other child:

a. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12(1)(ag).

b. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.

13. Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20(1m) or domestic abuse as defined in s. 813.12(1)(am).

14. Whether either party has or had a significant problem with alcohol or drug abuse.

15. The reports of appropriate professionals if admitted into evidence.

16. Such other factors as the court may in each individual case determine to be relevant.

"regularly occurring … periods of physical placement to provide predictability and stability" factor in WIS. STAT. § 767.41(5)(am)8. support the court's decision.

¶28 The circuit court expressed concern about M.A.M.'s emotional well-being in light of the fact that Gadsby subjected the four-year-old child to a sexual assault physical examination and a forensic examination based on unsubstantiated allegations, and in turn disrupted M.A.M.'s placement with his father. The court found that Gadsby, as a joint-custodian with primary placement, "negatively affects the child's … emotional well-being." This is a proper consideration under WIS. STAT. § 767.41(5)(am)7.

¶29 The record is also replete with evidence of Gadsby's lack of cooperation and communication with Martinez. The circuit court concluded that this was mostly the result of Gadsby's refusal to communicate with Martinez and her efforts to thwart Martinez's contact with M.A.M. *See* WIS. STAT. §§ 767.41(5)(am)10. and 11. Early in this litigation saga, in Spring 2009, Gadsby "disagreed to pursue mediation" on custody and placement. Almost immediately thereafter, Gadsby moved to Colorado with M.A.M. There is no evidence she spoke to Martinez about her intent to put many hundreds of miles between M.A.M. and his father. This unilateral action substantially reduced Martinez's contact with his toddler son. Later, after M.A.M. started school full-time, and shortly before Martinez was to have summer placement of M.A.M. (to which Gadsby had stipulated on the record), Gadsby filed an "emergency motion" to bar contact by Martinez based on her belief that Martinez had sexually abused M.A.M. This deprived Martinez of summer placement, and was based solely on Gadsby's belief that he had abused his son. After a police investigation of Gadsby's claims, and after M.A.M. was subjected to physical and forensic sexual assault examinations, no substantiating evidence of Gadsby's allegations was

found. Nonetheless, Gadsby continued to cling to her belief throughout the trial that underlies this appeal.

¶30 Based on Gadsby's demonstrated lack of communication and cooperation, and her fiercely held, but utterly unsupported, belief that Martinez abused M.A.M., the court reasonably concluded that Gadsby is "likely to unreasonably interfere with the child's continuing relationship with" his father, and that Gadsby was not able to "support [Martinez's] relationship with the child, including encouraging and facilitating frequent and continuing contact with the child." *See* WIS. STAT. § 767.41(5)(am)11.

¶31 Moreover, there is simply no actual evidence that Martinez "engaged in abuse, as defined in s. 813.122(1)(a), of the child, as defined in s. 813.122(1)(b)." *See* WIS. STAT. § 767.41(5)(am)12. The court found that Martinez: was a credible witness; was willing to encourage M.A.M.'s contact with Gadsby; and agreed to Gadsby having reasonable placement of M.A.M. because M.A.M. wanted contact with his mother.

¶32 The circuit court commented at length about Gadsby's conduct following the entry of the 2013 stipulated order. The court found specifically that Gadsby violated the joint custody order by unilaterally—with no input from Martinez—arranging for M.A.M. to start therapy in Colorado with Dr. Kelly based on Gadsby's uncorroborated allegations of abuse. In addition, Gadsby personally contacted West Allis police twice during Martinez's placement period. Once, while M.A.M. was at his paternal grandmother's home, Gadsby called the police asking them to check on M.A.M. because M.A.M. used a "safe word" while on the phone with Gadsby. Police went to the home and determined that M.A.M. was safe and there were no unsafe activities taking place. M.A.M. was aware of the

police presence. Another time, Gadsby called the police asking them to "assist [her] with [M.A.M.'s] transfer" to Colorado for his return. Police "assisted" with the transfer. Again, M.A.M. was aware of the police presence. There is no evidence in this record of any potentially or actually disruptive activity attributable to Martinez or his family.

¶33 Based on this conduct, the circuit court reached multiple conclusions, including: (1) Gadsby never intended to abide by the 2013 placement order because within a week of reaching the oral stipulation on which the written order was based, she made an unsubstantiated referral to Broomfield Human Services alleging that Martinez abused M.A.M.; (2) Gadsby's referral, in turn, led to Martinez becoming the subject of a West Allis Police Department investigation; (3) the police investigation produced no evidence of abuse; and (4) Gadsby admitted that M.A.M. was subjected to a forensic interview because of her allegations.

¶34 The circuit court was also not persuaded by Gadsby's testimony that M.A.M. engages in concerning behaviors. Rather, the court found Martinez's testimony that M.A.M. does *not* engage in the behaviors Gadsby described while in Milwaukee, was credible. Martinez also testified that M.A.M. did appear to be withdrawn when M.A.M. had to return to Colorado. The court found these facts "extreme[ly] significan[t]" and "sufficiently compelling to warrant significant concern for this young child's emotional well being and [concern for] the heightened risk of [Gadsby] impairing the relationship between father and son."

¶35 The court paid particular attention to the fact that "[t]here is overwhelming evidence to support a conclusion that there has been no abuse." The court expressed "extreme[] concern" about M.A.M.'s well-being, noting that

the child "is already manifesting behavioral issues which impact this child at school and in his home environment" because of "[the] continued pursuit of allegations made against the Father." The court noted that continuous allegations would only serve to "harm this child … and will have an adverse impact on the significant relationship between a parent and a child." The court stated that Gadsby's "continued commitment to the belief in the allegations" would cause more potential harm to M.A.M. The court also noted that M.A.M. "needs to be in an environment where the relationship between this child and both of his parents is supported by the primary custodian." The court found that Gadsby's actions clearly indicated that she would not support M.A.M.'s relationship with his father.

¶36 We conclude that the circuit court examined the relevant facts, applied the proper legal standard, and used a demonstrated rational process to reach a reasonable conclusion regarding custody and placement of M.A.M. *See* ***Brown Cty. v. Shannon R.***, 2005 WI 160, ¶37, 286 Wis. 2d 278, 706 N.W.2d 269.

(b) The circuit court reasonably refused testimony by telephone.

¶37 Gadsby also contends that the circuit court erroneously refused to allow testimony from Dr. Kelly, M.A.M.'s therapist in Colorado. As we have explained, the court only refused to accept the anticipated lengthy testimony of the witness *by telephone*. The circuit court made this ruling at a pretrial hearing nine months before the date of trial. The court explained its rationale for refusing the telephonic testimony: "I don't have a sound system that works so either you are going to have to get Dr. Kelly here and your client is going to have to be here as well on the trial date because we just don't have a very good sound system in this courtroom."

¶38 The circuit court never forbade Dr. Kelly's testimony. The circuit court's reason for rejecting telephone testimony, particularly testimony that would be lengthy, was rational and reasonable. Moreover, regardless of the court's comment that Gadsby was "going to have to get Dr. Kelly here," there remained other ways to produce Dr. Kelly's testimony. For example, Gadsby could have taken a video deposition of Dr. Kelly as testimony for trial. *See* WIS. STAT. §§ 885.40-885.47. Gadsby also could have arranged for a traditional deposition to be taken and then used the transcript at trial. *See* WIS. STAT. § 804.07. However, Gadsby never raised the issue of Dr. Kelly's testimony following the pretrial hearing, and the record contains no evidence that she tried any of these other possibilities.

¶39 For all of the foregoing reasons, we affirm the circuit court's decisions involving custody, placement, and the manner in which expert testimony could be presented.[7]

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[7] To the extent Gadsby raises issues not addressed by this opinion, we conclude that the record does not support those issues and that our resolution of the issues addressed is dispositive of this appeal. Accordingly, we affirm the circuit court.