

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2001

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. 00-3188-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE PATERNITY OF Z.N.:

SHAWN N.,

PETITIONER-RESPONDENT,

v.

TAMMY N.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Reversed and cause remanded with directions.*

Before Dykman, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Tammy N. appeals from a paternity judgment. The issue is whether the court erred in determining physical placement. We conclude

that the court acted based on an erroneous view of law, and therefore we reverse and remand.¹

¶2 Appellant Tammy is the mother of Z.N. The paternity judgment determined Shawn N. to be Z.N.'s father. In setting the periods of physical placement, the trial court made several references to a statutory presumption of equal physical placement. Tammy argues, and Shawn does not dispute, that no such statutory presumption exists.² There is a statutory presumption of joint legal custody, WIS. STAT. § 767.24(2)(am) (1999-2000).³ There is no similar provision for physical placement. However, the physical placement statute does require the court to set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent. WIS. STAT. § 767.24(4)(a)2. This provision does not impose a presumption of equal placement.

¶3 Shawn argues that even if the trial court's error of law had not occurred, there was ample evidence presented to the trial court to support its placement decision. That may well be true, and we express no opinion on that point. Our concern, in reading the way the trial court used this "presumption" in its analysis, is that we cannot be confident that the trial court would actually have reached the same decision. Therefore, we think the better course is to reverse and

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (1999-2000).

² On appeal, the guardian ad litem joins in the appellant's argument. In fact, the guardian ad litem's brief repeats many portions of the appellant's brief verbatim.

³ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

remand for the trial court to exercise its discretion without the possible interference from an error of law.

By the Court.—Judgment reversed and cause remanded with directions.

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

