

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 00-3203

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

THOMAS M. EUGSTER,

PETITIONER-APPELLANT,

v.

DAWN R. EUGSTER N/K/A DAWN R. BREEDLOVE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
DANIEL L. LaROCQUE, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Thomas Eugster appeals from the trial court's order allowing Dawn Breedlove, his former wife, to move to Antigo, Wisconsin, with their daughter, Michaela. Eugster argues that Breedlove's motion for

permission to move with Michaela to Antigo should have been dismissed because Breedlove failed to comply with WIS. STAT. § 767.327(1) (1999-2000).¹ He also argues that the trial court erroneously exercised its discretion when it gave Breedlove permission to move. We affirm.

¶2 Eugster and Breedlove were divorced in 1996 and share legal custody of their daughter, Michaela. Breedlove has had primary physical placement of Michaela and was allowed, under the terms of the marital settlement agreement, to take Michaela to Idaho each winter for four months. Eugster had physical placement three days and two overnights each week at other times of year.

¶3 In April 1999, Breedlove sought permission to move Michaela to Idaho for the entire school year because Michaela was about to enter kindergarten. Eugster objected. On December 10, 1999, the trial court allowed Breedlove to take Michaela to Idaho for the remainder of her kindergarten year under the terms of their prior agreement. However, the court deferred its decision on whether to allow Michaela to live in Idaho during the entire school year on a permanent basis until the summer. In July 2000, Eugster and Breedlove reached an agreement that Breedlove would not take Michaela to Idaho during the school year. About one week after that agreement was reached, Breedlove sought permission from the trial court to take Michaela to Antigo, Wisconsin, where Breedlove wanted to operate a bed and breakfast and pursue employment as a dog musher. Again, Eugster objected. The trial court granted Breedlove permission to move to Antigo with Michaela.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 Eugster first argues that Breedlove's motion for permission to move Michaela to Antigo should have been dismissed because she did not comply with the notice provision of WIS. STAT. § 767.327(1). That statute provides that a parent with legal custody and physical placement rights to a child must provide not less than sixty days written notice to the other parent of his or her intent to move the child to a location within Wisconsin that is 150 miles or more from the other parent. *Id.* The notice must include the specific date and location of the move and inform the other parent that he or she may object. *Id.* Eugster contends that Breedlove failed to comply with the statute for two reasons: (1) she sent notice to his attorney rather than to him; and (2) she did not provide the date of the proposed move, the specific location, or inform Eugster that he had a right to object.

¶5 As for the first claim, the notice was not defective because WIS. STAT. § 801.14(2) allows service on a person's attorney in place of the person. As for Eugster's claim that the notice did not include required information, we conclude that the notice was sufficient despite the omissions because it gave Eugster enough information to alert him that he needed to object if he opposed the move, which he promptly did.

¶6 Eugster next argues that the trial court erroneously exercised its discretion in allowing Breedlove to move with Michaela. Where a parent objects to a move, the court may prohibit the move if the court finds that the prohibition is in the best interest of the child. *See* WIS. STAT. §§ 767.327(3) and (5).

¶7 The trial court properly exercised its discretion in concluding that prohibiting the move was not in the best interest of Michaela. In support of its decision, the court pointed to Breedlove's testimony that her employment in

Antigo would allow her to spend substantial time enjoying outdoor activities with Michaela. The court found that the schools in the Antigo area had the resources necessary to address Michaela's educational needs and that several witnesses had emphasized that Michaela was unusually adaptable. The court explained that the move would increase Breedlove's potential for financial success in her chosen career and was thus "reasonable," as required by the statute, because Michaela would benefit as a result. The court rejected Eugster's argument that Michaela was endangered by exposure to such a large number of sled dogs, reasoning that Breedlove would use common sense to safeguard her daughter. The trial court also rejected Eugster's argument that the fact that he had permitted Michaela to go to Idaho for four months each winter had no bearing on the dispute. To the contrary, the court concluded that this showed that both Eugster and Breedlove believed that Eugster could maintain a close father-daughter relationship despite distance. A trial court properly exercises its discretion when it bases its decision on the facts and the appropriate legal standard and explains the reasons for its decision, which is what the trial court did here. *See Smith v. Smith*, 177 Wis. 2d 128, 133, 501 N.W.2d 850 (Ct. App.1993). We conclude the trial court properly exercised its discretion.

¶8 Eugster argues that the trial court did not accord proper weight to certain statutory factors in making its decision and did not apply the "best interest of the child" standard. The weight to be afforded the various considerations is committed to the trial court's discretion and, as explained, we conclude that the trial court applied the appropriate legal standards to the facts and made a reasonable decision. Our reading of the trial court's decision convinces us that its overarching concern was Michaela's best interest. Accordingly, we reject these arguments.

¶9 Eugster argues that Breedlove has made factual assertions based on affidavits that are not part of the record and that she has misstated certain facts. After reviewing Eugster's allegations and the record, we agree that Breedlove's brief does not comply with the rules of appellate procedure pertaining to briefing. *See* WIS. STAT. RULE 809.19(1)(e). Accordingly, we disallow costs to Breedlove for this appeal. *See* WIS. STAT. RULE 809.83(2). No costs to either party.

By the Court.—Order affirmed.

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

