COURT OF APPEALS
DECISION
DATED AND FILED

January 8, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1944 **Cir. Ct. No. 2000FA974**

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

IN RE THE MARRIAGE OF:
KATHLEEN M. SNYDER P/K/A KATHLEEN M. INNIS,

PETITIONER-RESPONDENT,

V.

DAVID N. INNIS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed*.

Before Dykman, Vergeront and Bridge, JJ.

¶1 PER CURIAM. David Innis, pro se, appeals an order granting Kathleen Snyder's request to relocate to Missouri with their daughter, Sadie. Innis argues the circuit court erroneously exercised its discretion by allowing the move

and by altering the terms of his visitation. We reject Innis's arguments and affirm the order.

BACKGROUND

¶2 Innis and Snyder were married in 1997, and adopted Sadie (d.o.b. 5/4/1999) during their marriage. When the couple divorced in 2001, Snyder was awarded sole custody of Sadie and Innis was allowed supervised visitation. In June 2007, Snyder filed a notice of her intent to move with Sadie to Sheldon, Missouri, as she had accepted a full-time teaching position there. Innis objected to the move. After a hearing, the court granted Snyder's request to relocate and altered the terms of Innis's visitation. This appeal follows.

DISCUSSION

¶3 Innis argues the circuit court erroneously exercised its discretion by allowing the move. We are not persuaded. A removal determination is committed to the sound discretion of the circuit court. ***Pergolski v. Pergolski***, 143 Wis. 2d 166, 171, 420 N.W.2d 414 (Ct. App. 1988). We affirm a circuit court's discretionary decision if the court applies the correct legal standard to the facts of record and in a reasoned manner reaches a rational result. ***Hokin v. Hokin***, 231 Wis. 2d 184, 190, 605 N.W.2d 219 (Ct. App. 1999). We accept all findings of fact made by the circuit court unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶4 The statute governing a child's removal from the state provides, in relevant part:

> If the parent proposing the move or removal has sole legal or joint legal custody of the child and the child resides with that parent for the greater period of time …, the parent

> objecting to the move or removal may file a petition, motion or order to show cause for an order prohibiting the move or removal. The court may prohibit the move or removal if, after considering the factors under sub. (5), the court finds that the prohibition is in the best interest of the child.

WIS. STAT. § 767.481(3)(c)1. In determining whether to prohibit the move, the court must consider:

> (a) Whether the purpose of the proposed action is reasonable.
>
> (b) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.
>
> (c) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

Section 767.481(5). The burden of proof, however, is on the parent objecting to the move. Section 767.481(3)(c)2.

¶5 At the hearing, Snyder testified that she had obtained a third-grade teaching position in Missouri, with a starting salary of $31,000. It had been over a year since Snyder's last full-time teaching job in Beloit, for which she earned a salary of $25,000. Snyder had left that position after a job change required her to teach high school and she was not certified to do so. Snyder then worked as a substitute teacher, while attempting to obtain full-time employment.

¶6 Snyder testified that she attempted to stay in the area, applying unsuccessfully for twenty-four jobs in Janesville. Snyder also applied for seventy-one jobs statewide and was given one interview, but was not offered the job. Snyder also testified that although Innis had the opportunity for two supervised visits with Sadie every week, he had not taken full advantage of that for the last

three or four years. According to Snyder, Innis attended between 75 and 85% of the visits allotted.

¶7 In turn, Innis questioned why Snyder could not find adequate employment in Wisconsin. Innis, however, was unable to identify specific positions available to Snyder. Innis also argued the move would disrupt the relationship he had built with Sadie. In fact, Innis claimed Snyder wanted to remove Sadie from the State in order "to destroy that relationship and make it even more difficult … to continue having contact with Sadie."

¶8 The circuit court ultimately allowed the move, concluding Innis had not met his burden of proof. The court noted Snyder had a good economic reason for moving—a full-time teaching position that paid a yearly salary of $31,000. With respect to the move's effect on Sadie's relationship with Innis, the court emphasized that Innis had neither legal custody nor primary placement. The court ordered that telephone contact continue as before, but modified visitation. Noting that video conferencing would not reduce the relationship between father and child, the court ordered two video conferences per month in lieu of face-to-face visitation. The court considered the appropriate factors in determining the best interests of the child and, therefore, properly exercised its discretion by allowing the move.

¶9 Innis nevertheless challenges the modification of visitation. This court reviews a circuit court's decision to grant or deny visitation for an erroneous exercise of discretion. *See* ***Rogers v. Rogers***, 2007 WI App 50, ¶7, 300 Wis. 2d 532, 731 N.W.2d 347. It is worth noting that approximately four months before Snyder filed her motion to relocate to Missouri, the court heard Innis's motion for increased and unsupervised visitation. At that time the guardian ad litem (GAL)

recommended that "current custody and placement arrangements continue as previously ordered." The GAL recounted that the woman who had been supervising the visits between Innis and his daughter thought Sadie, then seven years old, would be "very uncomfortable with unsupervised visits" and there were occasions when Innis would say "inappropriate things to the child," including: (1) telling Sadie she was adopted without first talking to Snyder about sharing this information; (2) asking Sadie to talk to her mother about an allowance because he had too many bills; (3) telling Sadie he likes girls until they are about fourteen, then it "goes all to hell"; (4) telling Sadie her mother wanted him to disappear; (5) telling Sadie her mother was jealous of Innis's other children; and (6) asking Sadie whether it was "strange for a daughter to not care about her father." The court denied Innis's motion to modify visitation.

¶10 At the subsequent hearing on Snyder's motion to relocate, Snyder expressed a willingness to talk about supervised visits if she were allowed to move. Snyder noted that her mother and three adult children lived in Stoughton, so she did not "plan on evaporating" and would be back in Wisconsin on occasion. The court ultimately stated it had heard the case two or three different times, and adopted by reference the GAL's earlier comments regarding inappropriate things Innis had said to his daughter.

¶11 The court concluded that, based on the distance involved, continued telephone contact and video conferencing in lieu of face-to-face contact was appropriate. Although Innis asked for a continuation of supervised visitation, the court implicitly decided this was logistically not feasible. The court indicated it would not force the parties to meet halfway by driving over 300 miles for one hour of supervised placement. Innis nevertheless argued there were occasions when Sadie would be visiting Wisconsin with her mother. The court, emphasizing that

Snyder had a job in Missouri, concluded it was "not going to dictate a fixed schedule to [Snyder] when she has got to come back to this area." When Innis then argued he was willing to travel to Missouri for supervised visits, the court stated:

> I am not going to do that. I think it's apparent to the court that supervised visits have not been working. And in saying that, I refer to page four to five of [the GAL's report] about things that have been said to that little girl during supervised placement. And, you know, that's harmful to that little girl. So I don't believe that it's so important that there be face-to-face supervised placement. I think video conferencing is going to have to do that. Take its place. And I think you'll be surprised at the quality of the videotape or video conferencing the resolution and the ability to see and hear people. But that's the limit of my order.

¶12 The court emphasized it had a background in this case, having heard from a number of witnesses in the past, including childcare advocates. Based on the logistics of scheduling face-to-face supervised visitation, and the court's reliance on a history of inappropriate statements made by Innis to Sadie, the court reasonably exercised its discretion by modifying the visitation structure in a way that conformed to the new circumstances.

By the Court.—Order affirmed.

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