

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 17, 2005

Cornelia G. Clark
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. 04-2299-FT
STATE OF WISCONSIN**

Cir. Ct. No. 02FA000100

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

NANCI K. LA VALLIERE N/K/A NANCI K. OLSON,

PETITIONER-APPELLANT,

v.

GERARD J. LA VALLIERE,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Waushara County:
LEWIS MURACH, Judge. *Affirmed.*

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Nanci La Valliere appeals from a judgment of divorce from Gerard La Valliere. The issue relates to primary physical placement of their child. We affirm.

¶2 The circuit court concluded that primary physical placement of their daughter Melanie should be with Gerard. Nanci argues that the court erred by basing its decision in part on findings that she had a “diffusion of interests” and “a little bit less maturity.” She argues these findings were not supported by the record and were made for inappropriate reasons. We disagree.

¶3 In making its decision, the court said that the main issue before it should be “the stability of the parental situation.” The court then compared the two parents. The court noted that Gerard is “functioning essentially as a mature adult,” is “reasonably well settled,” “pretty independent, able to do what needs to be done,” and “doesn’t have terribly many competing interest[s] as far as the welfare of the child is concerned.” Nanci’s situation, in contrast, “in many ways kind of resembles what you see so often with younger people who are in the process of completing their education who are somewhat uncertain as to just what their life will be concerning future employment,” and the court noted she was also preparing to start a new marriage to her fiance, and therefore “has a lot of concerns and a lot of issues surrounding her that are fairly unresolved at this point in time.” The court noted it would be her fourth marriage. Summing up, the court said: “I think the diffusion of interest and the diffusion of commitments and the somewhat dependant status that she seems to be in is indicative of a little less maturity, a little less focus, and was principally I think the reason why the Court determined [Gerard] to be the better choice”

¶4 The court’s finding that Nanci had a diffusion of interest and commitments was supported by the record. As the court noted, she was preparing to start a new marriage within the next year. She was a full-time student. She was working sixteen to eighteen hours per week at a convenience store. She expected to graduate in January 2005, and then expected to be seeking work as a full-time

correctional officer in the central Wisconsin area. These activities and transitions, while having the potential to be positive and lead to a more stable lifestyle, can reasonably be expected to result in reduced ability or opportunity to focus on parenting issues in the shorter term.

¶5 Nanci also argues that the court's decision was improperly based in part on the fact that she was now involved with another man (her fiance) and had married before. She argues that her case is similar to one in which we reversed a placement decision and concluded as follows:

In sum, we are persuaded that the trial court's finding that Lambert's living situation was "unstable" was based primarily not upon evidence in the record, but rather upon the trial court's negative view of her unmarried status. We further agree with Lambert that the trial court's comments reflect an impermissible consideration of her nonmarital relationship with a third party as a negative factor absent any showing that the relationship was harmful to the child, in violation of her associational rights.

Helling v. Lambert, 2004 WI App 93, ¶17, 272 Wis. 2d 796, 681 N.W.2d 552 (citation omitted).

¶6 We see little similarity between Nanci's case and *Helling*. In *Helling*, the circuit court appeared to have found that the mother was in an unstable situation because she was involved in an unmarried relationship. *Id.*, ¶¶11-13. No such conclusion can reasonably be read from the circuit court's discussion in Nanci's case. Nor would it be a reasonable reading to say that the court was suggesting her new marriage would be unstable or short-lived. Instead, the court appears to have regarded the impending marriage as destabilizing to her situation in the sense that a new marriage requires the participants' energy and causes changes in living situations. That would be a reasonable inference. As to the court's noting that it was Nanci's fourth marriage, at most the court appears to

have been concluding that for a person to be planning a fourth marriage at age forty-three and so soon after divorce indicated a certain amount of dependency and lack of maturity. This conclusion has little resemblance to *Helling* and is also not an unreasonable inference.

¶7 And, moreover, even if the court's consideration that it was a fourth marriage was improper, it is clear enough from the court's discussion that this was not the only factor in its analysis and that its decision was amply supported by the other factors we discussed above. In addition to its assessment of the stability of Gerard's situation, the court noted there appeared to be more support from extended family near his residence.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

