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**DISTRICT III**

August 15, 2023

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2021AP243

Jason T. Soldner v. Jennifer L. Soldner (L. C. No. 2018FA1296)

Before Stark, P.J., Hruz and Gill, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Jennifer Soldner appeals the child custody portion of a judgment dissolving her marriage to Jason Soldner. Jennifer argues that the circuit court erroneously exercised its discretion by awarding sole legal custody of the couple's minor children to Jason. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary

disposition. We reject Jennifer’s arguments and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

The parties were married in January 2005 and have four children together. Jason filed for divorce in November 2018, and a temporary order gave the parties joint legal custody, with Jennifer having primary physical placement of the children. Jason subsequently sought sole legal custody and equal physical placement of the children. Based on competing allegations of physical and emotional abuse made on the first day of trial, the circuit court ordered both parties to undergo psychological evaluations “for the presence of mental or behavioral health disorders, the presence of any anger or control issues, the presence of any domestic abuse between the parties, and any evidence of a porn addiction.”

After the psychological evaluations were submitted to the circuit court, legal custody and placement were further litigated. The court awarded sole legal custody of the children to Jason, with physical placement divided equally between the parties. Property and debt division were addressed several weeks later, and after disputes over the wording of the Findings of Fact, Conclusions of Law and Judgment, the divorce judgment was ultimately entered on December 16, 2020.<sup>2</sup> This appeal follows.

On appeal, Jennifer challenges the circuit court’s decision to grant Jason sole legal custody of the children. Child custody is 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

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

<sup>2</sup> The contested divorce trial occurred over three nonconsecutive days, with custody and placement litigation occurring on the first two days of trial.

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. *Liddle v. Liddle*, 140 Wis. 2d 132, 136, 410 N.W.2d 196 (Ct. App. 1987). “Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court’s discretionary decision.” *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. In addition, we affirm the circuit court’s findings of fact unless they are clearly erroneous, WIS. STAT. § 805.17(2), but we independently review any questions of law, *Clark v. Mudge*, 229 Wis. 2d 44, 50, 599 N.W.2d 67 (Ct. App. 1999).

In determining legal custody, the circuit court must consider several factors relevant to “the best interest of the child.” See WIS. STAT. § 767.41(5). Jennifer does not claim that the court failed to consider proper statutory factors. Rather, she argues that there were insufficient findings for the court to grant sole legal custody to Jason. While joint legal custody is presumed pursuant to § 767.41(2)(am), the court may give sole legal custody to one parent if it finds that doing so is in the child’s best interest and, as relevant here, that “[t]he parties will not be able to cooperate in the future decision making required under an award of joint legal custody.” Sec. 767.41(2)(b)2.c. The statute adds: “In making this finding the court shall consider, *along with any other pertinent items*, any reasons offered by a party objecting to joint legal custody.” *Id.* (emphasis added). Further, “evidence of interspousal battery ... or domestic abuse ... creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.” *Id.*

In the divorce judgment, which was drafted by Jennifer’s attorney, the “Findings of Fact” noted, in relevant part:

[Jason] is awarded sole legal custody of the minor children. Joint legal custody would not be in the best interests of the children, as there has been interspousal battery or domestic abuse and the parties are in constant conflict. The [circuit c]ourt cannot conclude that joint legal custody would be anything but catastrophic.

Although Jennifer concedes that the court cited reasons other than “battery” to support its decision to award sole legal custody to Jason, she claims that none of those reasons “disturb the presumption [of joint legal custody]” like interspousal battery does.

If Jennifer is suggesting that evidence of interspousal battery or domestic abuse is a prerequisite to awarding sole legal custody, she is mistaken. In determining that “[t]he parties will not be able to cooperate in the future decision making required under an award of joint legal custody,” the plain language of the statute requires the circuit court to consider, “along with any other pertinent items, any reasons offered by a party objecting to joint legal custody.” WIS. STAT. § 767.41(2)(b)2.c. Among these considerations may be evidence of interspousal battery or domestic abuse, in which case a rebuttable presumption that the parties will not be able to cooperate in future decision making is created. *See id.*

To the extent Jennifer intimates that the findings outlined in the judgment itself were insufficient to establish that the parties would not be able to cooperate in future decision making, she appears to ignore all of the findings the circuit court made during the trial. After recounting that it had appointed an independent expert to conduct psychological evaluations related to the parties’ respective parental fitness, the court emphasized the expert’s opinion that while the children are “doing well,” they are “significantly adversely affected by this constant conflict that’s going on between the parties.” The court added: “[Psychological testing] strongly suggest[s] that [Jennifer] has a controlling personality, that she misrepresents herself, and ... in

[t]he [c]ourt’s view ... her own view of the children’s view of her is inconsistent.” The court continued:

Now, the testimony of [Jennifer] today ... only magnifies the concerns I have because every single thing is a disagreement. Every single thing is a lie. So ... there is ... basically no ability for [t]he [c]ourt to conclude that ... joint legal custody will be anything but catastrophic and will accomplish nothing other than perpetuating all the fighting that has gone on here, and the psychological profile of [Jennifer] suggests that unless there is an effort at ... co-parenting in which there is a demonstration to [t]he [c]ourt that that is exactly what’s going to happen[,] to continue joint legal custody is simply not in the best interests of these children.

While the circuit court recognized “an absence of any cooperation or communication between the parties,” it concluded, based on the expert’s report, that Jennifer “would more likely be controlling and constantly be arguing with [Jason] with regard to all the choices that go with joint custody.” These findings are by no means clearly erroneous, and they are sufficient to support the court’s conclusion that awarding sole legal custody to Jason was in the children’s best interests.

Jennifer nevertheless contends that the finding of “interspousal battery” was insufficient to overcome the presumption of joint custody because the circuit court did not assign fault for the battery. As noted above, a finding of interspousal battery or domestic abuse is not required in order to award sole legal custody. In any event, when acknowledging the allegations of domestic abuse, the court stated that “the instrument that would measure proclivity to that suggests that [Jennifer] might very well engage in domestic abuse.” Ultimately, the court’s decision sufficiently implies that it found Jennifer to be the primary aggressor, further supporting its conclusion that awarding sole custody to Jason was in the children’s best interests. *See State v.*

*Echols*, 175 Wis. 2d 653, 672, 499 N.W.2d 631 (1993) (implicit finding of fact sufficient when facts of record support court's decision).

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*