STATE OF WISCONSIN

I N S U P R E M E C O U R T

Case No. 2019AP1105-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANGELINA M. HANSEN,

Defendant-Appellant-Petitioner.

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# PETITION FOR REVIEW

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ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant-Petitioner

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## ISSUE PRESENTED

1. Angelina Hansen, a divorced parent, was subject to a family court order that set the time and conditions under which she had the right to "physical placement" of her three children. "Physical placement" is a statutory term that encompasses "the right to have a child physically placed with that party and … the right and responsibility to make, during that placement, routine daily decisions regarding the child's care." Wis. Stat. § 767.001(5). Did Ms. Hansen's act of visiting with her children in their school lunchroom and giving them hugs constitute exercising the right to "physical placement" such that she could be criminally convicted of contempt of court?

   The circuit court and the court of appeals both sustained the convictions. This Court should reverse.

## CRITERIA FOR REVIEW

The meaning of the term "physical placement" in Wis. Stat. § 767.001(5) is of great import, as this case demonstrates. Ms. Hansen, like many parents in this state, has her relationship to her children governed by a family-court order dividing physical placement between their parents. If, as the court of appeals held, such orders are violated simply by

interacting with one's children in a public place, then many of these parents likely commit dozens of crimes each year, by attending school plays, recitals, little league games, and the like. Whether such parents are subject to criminal prosecution for such acts is a question of law of statewide importance. *See* Wis. Stat. Rule 809.62(1r)(c)2. Moreover, given the court of appeals' own uncertainty about the limitations of its rule, a decision from this Court will help to clarify the law. *See* Wis. Stat. Rule 809.62(1r)(c).

## STATEMENT OF THE CASE AND STATEMENT OF FACTS

The state charged Angelina Hansen with three offenses, all arising from an incident at her children's school. (2:1). Ms. Hansen had showed up during her triplets' lunch hour, and sat with them at their table. The children were in fourth grade. (97:83). When a teacher asked Ms. Hansen if she was the children's mother, she responded that she was their aunt. (97:80). The teacher asked Ms. Hansen to follow her to the office to sign in; Ms. Hansen instead left the building. (97:81). She returned a moment later, signed illegibly on the sign-in form, and left. (97:93).

The school's liaison officer and superintendent approached Ms. Hansen as she was walking away. (97:95). The officer called out that he wanted to talk with her, but she continued to her vehicle and started the engine. The officer stood in front of the vehicle,

preventing it from pulling out of its parking spot. (97:97). This encounter lasted for several minutes, with the officer asking Ms. Hansen to exit the vehicle and talk; she would back the vehicle up and move it forward. (97:97-102). Finally, the officer moved quickly out of the way as Ms. Hansen pulled forward and to the right, exiting the parking lot. (98:52-53).

The state charged Ms. Hansen with second-degree recklessly endangering safety (for her actions in the vehicle), obstructing an officer, and contempt of court (for having contact with her children)—specifically, for violating an order of the family court that had adjudicated Ms. Hansen's divorce. (2:1-3). Only the last charge is relevant to this petition. Ms. Hansen went to trial and was convicted of all counts.

The text of the order Ms. Hansen was said to have violated is:

> Pending report of guardian ad litem, and further order of the Court, Father shall have primary *physical placement* of the children. Mother shall have supervised *placement* only, once per week for 2 to 4 hours each time as can be arranged to be supervised by Parent Connection or Family Services or another supervisor acceptable to Father.

(36:1 (emphasis added)).

This order was received into evidence. (97:120). However, throughout Ms. Hansen's trial, it was frequently and inaccurately described not as outlining her right to have "physical placement" of her children, but instead as prohibiting her from "visiting" them. Specifically:

- The children's father (Ms. Hansen's ex-husband) repeatedly said the order pertained to "supervised visits." The state used the same terminology during its questioning of the father. (97:118-19). Ms. Hansen's counsel never objected to these misstatements.

- The liaison officer testified that he was "aware" that "there needed to be supervised visitation" and that the ex-husband had told the school that Ms. Hansen was "not allowed in school without someone present." Ms. Hansen's counsel did not object or attempt to correct the record. (98:26).

- The interrogating officer testified about Ms. Hansen in a way suggesting she needed supervision or permission from her ex-husband to "visit" the children. There was no objection. (98:72).

- When Ms. Hansen testified, her counsel also questioned her in terms of "supervised visits" and the need for supervision or her ex-husband's permission. (98:89-90).

- On cross-examination, the State asked Ms. Hansen if she "[was] ordered to have supervised visits," to which she answered "Correct." (98:105). Ms. Hansen's counsel did not object or attempt to correct the record.

- Later during cross, Ms. Hansen was asked whether "that order that you got from Shawano County said that you had to clear any visitation or supervised placement with your ex," to which she answered "Yes." Again, there was no objection. (98:114).

- The prosecutor also showed Ms. Hansen a copy of the family court order, and asked her "is there anything under that section that says you can have a brief visit at the school with your children?" (98:122). There was no objection.

- During jury instructions, the court told the jury that the state had to prove that "a court ordered the defendant to have

only supervised visitation with her children." (98:148).

- In closing argument, the State again indicated that the family court "ordered her to have supervised visitation with her children," and repeatedly used the terminology of "visits" instead of "physical placement." Though the family court order did not concern visits, Ms. Hansen's lawyer did not object. (98:156-58).

- In her own closing, Ms. Hansen's counsel said that Ms. Hansen had "wanted to visit her kids that day" and "knew it had to be supervised." (98:172).

Postconviction, Ms. Hansen challenged all three convictions, but again, only one challenge is pertinent here. (72:5-9). In her motion, Ms. Hansen alleged that the family court order she was supposed to have violated did not, in fact, prohibit her from visiting her children; she raised this issue in terms of both ineffective assistance (for its impact on her credibility as to all counts) and sufficiency of the evidence (seeking dismissal on this ground of only the contempt of court count). (75:9-15).

At the *Machner* hearing, trial counsel testified that she had been public defender her entire career

and had never practiced family law. (106:3,18). She testified that she had not objected or made any issue regarding the fact that the family law order concerned physical placement, not visits, because "I didn't even know the difference." (106:25, 26).

The circuit court denied Ms. Hansen's claims regarding the mischaracterizations of the family court order, relying on a passage from a 2010 court of appeals case, *Rick v. Opichka*, 2010 WI App 23, 323 Wis. 2d 510, 780 N.W.2d 159 to conclude that "physical placement" is not distinct from "visiting." (81:7-8; App. 28-29).

Ms. Hansen appealed. The court of appeals affirmed. It concluded that a family court order limiting "physical placement" forbids a parent from "'visiting'—or otherwise personally interacting with—a child" outside the terms of that order. *State v. Hansen*, 2019AP1105, Slip op. ¶2 (July 7, 2021) (App. 3-21). It also rejected Ms. Hansen's claims as to the other counts.

## ARGUMENT

### I. This Court should accept review and hold that simple proximity to or interaction with one's children does not constitute an exercise of "physical placement."

The court order Ms. Hansen was convicted of violating awarded her between two and four hours of "physical placement" with her children per week. It also imposed a condition under which she was entitled to that placement: that it be supervised, either by certain named entities or by someone else agreed to by the children's father. It's important to note that these hours of physical placement were a legal *entitlement* of Ms. Hansen's—not, as the children's father (along with the liaison officer, the prosecutor, and ultimately the circuit court) seemed to think, a no-contact order forbidding any other interaction with the children.

"Physical placement" is a legal term of art in Wisconsin. It's defined, in Wis. Stat. § 767.001(5), as "the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody." And "major decisions"—i.e. those decisions that are *not* necessarily committed to the discretion of a parent

exercising "physical placement" rights—are further defined as truly major ones: "includ[ing], but … not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for nonemergency health care and choice of school and religion." Wis. Stat. § 767.001(2m).

So a parent with "physical placement" is, during those placement times, empowered to *parent*—to make all sorts of decisions about and for the child. The law denies such a parent only the most serious decisions: those involving long-term commitments, legal obligations, and the like. "[W]hile physical placement encompasses the act of having a child physically present with the parent, it also grants that parent rights consistent with legal custody." *Lubinski*, 314 Wis. 2d 395, ¶8.

This legal concept—the right to have children "placed with" one, and to make certain decisions about their care—is a very different one from either the legal concept of "visitation" or the commonsense notion of "visiting." "Visitation," in Wisconsin, is not a term that's applicable to parents, but only to other relations—grandparents, great-grandparents, step-parents, and others who have "maintained a relationship similar to a parent-child relationship with the child." Wis. Stat. § 767.43.

Importantly, visitation "does not incorporate the rights associated with legal custody or physical placement. Instead, it allows certain people who have established parent-child relationships with children to maintain contact with those children following actions affecting the family unit, when such contact is in the best interest of the child." *Lubinski*, 314 Wis. 2d 395, ¶9. This is in accord with the usual meaning we ascribe to the word "visit": "to go or come to see" or "to stay with a guest." *Id.*

The simple act of going to see a child is thus completely distinct from having "physical placement" of that child. When she sat down at her children's school lunch table to greet and hug them, Ms. Hansen was no more exercising "physical placement" than would any other person who did the same—whether that person be a relative, friend, or acquaintance. She was not "mak[ing] routine daily decisions regarding the child[ren]'s care" nor exercising "rights consistent with legal custody." What she was doing was visiting them, in the same colloquial sense that anyone might.

Her ex-husband and the school staff (who'd apparently been misinformed by the ex-husband) thought the court had entered a species of no-contact order that prevented Ms. Hansen from even seeing the children for 164 of the 168 hours in any given week. But it hadn't; it had only set the hours and terms of her right to exercise custodial supervision over them. Ms. Hansen violated the school's policy on

signing in. She may also have violated common sense by misinforming school staff about her identity. But she didn't take "physical placement" of the children, so she didn't violate the court's order.

The circuit court court's conclusion to the contrary was founded in a misreading of *Opichka*, 323 Wis. 2d 510. In that case, the circuit court awarded grandparent visitation rights including one weekend per month, and one week each summer, at the grandparents' home. *Id.*, ¶2. The children's father appealed, arguing that this grant of "visitation" was so broad as to amount to "physical placement," which the statutes permit only to parents.

The *Opichka* court disagreed for two reasons. First, it noted that the statutes do not specify any amount of time that is particular to physical placement or to visitation—the distinction between the two legal statuses isn't one of quantity. *Id.*, ¶12. It went on:

> We believe that when children visit their grandparents and stay with them as a guest, the grandparents have the responsibility to make routine daily decisions regarding the child's care but may not make any decisions inconsistent with the major decisions made by a person having legal custody. The same is true of a parent who does not have joint legal custody, but does have a right to physical placement. In both instances, the same rules apply: routine daily decisions may be made, but nothing greater. Examples of these minor matters are what and

> when to eat, what clothes to wear and when to go to bed. Therefore, the amount of time spent on the visit, whether for a few hours or an overnight is still a visit. The proper amount of that time is a decision made by the family court in the best interests of the children. In sum the quantity of time ordered does not depend on whether it is a visitation order or a physical placement order.

*Id.*, ¶13 (citation omitted).

*Opichka* was a two-judge majority decision; Judge Snyder dissented. *Id.* ¶¶23-30. He argued that the majority opinion was inconsistent with *Lubinski*, a prior (and binding) court of appeals case. His view was that by permitting the grandparents to host their children in the home against the wishes of the father, the court was necessarily expanding "visitation" (which, as noted above, entails "contact" but not the right to make decisions for the child) "into something indistinguishable from physical placement." *Id.*, ¶30.

But it doesn't matter, for purposes of this case, whether the majority or dissent in *Opichka* was correct. Even accepting the majority's more expansive view of the permissible scope of a "visitation" order, it provides no support for the circuit court's conclusion here: that *any* contact with a child constitutes "physical placement." The court said:

> In terms of practical authority granted to a parent, however, the Wisconsin Court of Appeals has found that, while placement and visitation

> are not the same, there is no meaningful difference between types of decisions that can be made under a grant of "physical placement" and a grant of "visitation" for a parent. *Id.* at ¶ 13-14. In *In re Opichka*, the Court of Appeals explained that placement is granted to the parent without primary placement where custody is not equally shared, and visitation is usually granted to persons with a parent-like relationship with the child. *Id.* But, the court continued, "[i]n both instances, the same rules apply." *Id.* Therefore, whether Hansen's rights under the family court order were described as "placement" or "visitation" had no discernable impact on what authority she had with respect to the children. Thus, the use of placement or visitation did not have an impact on whether she in fact violated the family court order.

(81:7; App. 28).

Contrary to the court's suggestion, Ms. Hansen, by sitting down at her children's table—surrounded by other students and teachers—was not exercising any "authority" over them. If the circuit court were correct, divorced parents could never be in the same room with each other and their children: one of them would necessarily be violating the physical placement rights of the other. Saying hello to a child or giving a hug is not "exercising rights consistent with legal custody."

The court of appeals' decision employed slightly different reasoning than the circuit court, but it creates the same problems. That court conceived of

"physical placement" as comprising two distinct rights: the right to make decisions regarding the child's care, and "the act of having a child physically present with the parent." *Hansen*, 2019AP1105 at ¶19 (App. 13). It went on to declare that a parent who is "physically present with the children" is exercising *one* of the rights incorporated within the notion of "physical placement"; thus it said that physical proximity outside of the times or circumstances laid out in the family court order is unlawful. *Id.* This is so, said the court of appeals, if the person is "in a position" where he or she could make decisions about the children's care, regardless of whether he or she actually does so. *Id.*, ¶2 (App. 4-5).

This holding subjects parents to criminal liability for an astonishingly broad range of commonplace (and socially desirable) conduct. Divorced parents and other parents who share physical placement of children routinely engage with them at school events, social gatherings, and other community functions outside of their physical placement hours; often this is welcomed by the parent having placement. The court of appeals seemed to recognize that criminalizing this behavior creates a serious problem: it suggested its holding was limited in various ways. None of these limitations solves the problem.

The court first posited that the fact that contempt of a court order requires intent on defendant's part, *see* Wis. Stat. § 785.01(1), would

protect a parent from being charged with a crime for "happenstance" encounters with his or her children. *Hansen*, 2019AP1105 at ¶24 (App. 15). Even if this is so, it does nothing to insulate the parent who *intentionally* attends a school play and congratulates his or her child on the performance afterward: that would still be crime.

The court also suggested that there may be *some* circumstances—like "a sporting event"—where a parent could be present without putting him- or herself in a position to exercise authority, and thus would not be exercising physical placement. *Id.*, ¶20 n.6 (App. 14). The court does not explain how parents are to decide, in advance, which type of event they are going to, and thus whether their physical proximity may be criminal.

Last, the court suggested that "an intentional, yet reasonable, violation" of a court order might not be a crime. *Id.* But there is no general "reasonableness" defense to contempt of court. What's more, the fact that the court of appeals saw the need to exclude "reasonable" conduct from its holding only demonstrates the unreasonable sweep of the rule it announced. This Court should step to ensure that parents are not subject to criminal prosecution under the court of appeals' murky, unpredictable new standard.

## CONCLUSION

Because Ms. Hansen's brief visit with her children did not constitute an exercise of "physical placement," there was insufficient evidence to support her conviction for contempt of court. She thus respectfully requests that this Court accept review, reverse the court of appeals, vacate her conviction of this count and remand with instructions that the charge be dismissed with prejudice.

Dated this 26th day of August, 2021.

Respectfully submitted,

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant-Petitioner

## CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§ 809.19(8)(b) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 2,874 words.

## CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 26th day of August, 2025.

Signed:

_____

ANDREW R. HINKEL
Assistant State Public Defender