WISCONSIN COURT OF APPEALS

DISTRICT III

SARAH YACOUB,

f/k/a SARAH SLICE,

PETITIONER – APPELLANT,

v.

STEVEN RYAN PEDRINI,

RESPONDENT – RESPONDENT.

Appeal No. 2023AP001558
Circuit Court No. 15FA326

BRIEF OF RESPONDENT – RESPONDENT

Appeal from the circuit court for St. Croix County, Hon. James M. Peterson, circuit court judge, presiding.

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[1] All further references are to the 2022 - 2023 version unless otherwise noted. All authorities are separated by precedent.
[2] Unknown year, as is cited by Yacoub in her circuit court pleadings.

[3] *See* Footnote no. 2, *supra*.

POSITION ON ORAL ARGUMENT & PUBLICATION

Oral Argument is not requested. Oral Argument is unnecessary for a determination the circuit court's decision on the motions before it was discretionary, that it applied the facts to the applicable law, explained its decision in its oral ruling, as well as subsequent order, that is somewhat different than the new issues Petitioner – Appellant attempts to advance for a first time, as well as argue a court-appointed attorney's misrepresentation in her appeal. This case can be correctly and efficiently decided without oral argument.

Publication is not requested.

STATEMENT OF FACTS

The case at bar concerns the trial court's (hereinafter "circuit court") ruling on Petitioner – Appellant's (hereinafter "Yacoub") May 26, 2023, stamped filed motion for sole legal custody. *Cf.* R.151, at Orders ¶ 2., *with* R.71; *see also id*., at Orders ¶ 1.

The parties, Yacoub and Respondent – Respondent (hereinafter "Pedrini") were granted a divorce in the State of California on March 16, 2015. R.3. The parties were granted joint legal custody and shared equal placement of two minor children, L.S. – P. (D.O.B. 03/24/2012) and W.S. – P. (D.O.B. 10/12/2013). *Id*. The parents and their minor children moved to Wisconsin in 2015. R.151.

The circuit court case was registered in St. Croix County on September 2, 2015, therein being assigned case file number 2015FA000326. R.1. An application for specific judicial assignment issued December 15, 2015. R.6. On December 16, 2015, an application for specific assignment of the Honorable James M. Peterson, issued. R.7. In addition, a letter from St. Croix County, Branch II, the Honorable Edward F. Vlack, presiding, requested judicial transfer, with a motion for change of venue and proposed order for change of venue being filed by Yacoub. R.9 – 10, 11. On December 28, 2015, Pedrini filed an objection to a change in venue. R.12.

On January 15, 2016, Yacoub sought referral to mediation. R.15. On February 24, 2016, the Honorable Steven J. Dunlap, St. Croix County Family Court Commissioner (hereinafter "FCC Dunlap") writes the parties "regarding court procedures." R.24. Yet, on March 28, 2016, Yacoub sought another referral to mediation. R.19. In a letter dated April 27, 2016, stamped filed April 29, 2016, Yacoub sought referral, yet again, to mediation. R.23. On May 4, 2016, Yacoub requested rescheduling of the latest mediation referral order. *Cf*. R.25, *with* R.27. A mediation referral subsequently issued May 18, 2016. R.29.

Then, on June 23, 2016, the record indicates three (3) different letters are filed, one from each: 1) Yacoub; 2) Pedrini; and, 3) the mediator re: "regarding mediation and fees." R.31 – 33.

On July 1, 2016, Pedrini's counsel of record withdraws. R.35.

On July 20, 2016, an "Order – Holiday Schedule" issues. R.37.

On December 27, 2016, another "Stipulation and Order" issues, without record of any referral to mediation. R.40.

Next, after a period of almost six years, and without indication in the record of any request of any sought referral order to mediation, on October 31, 2022, another "Stipulation re: Holiday & Vacation Schedule" issues. R.44. Between July 2016, and October 2022, three stipulated orders issue modifying the parties' 2015 judgment.

On February 21, Yacoub files a "Notice of Retainer" for herself, *pro se*, as well as a "Notice of Motion and Motion to Change Legal Custody." R.48 – 49.

On February 28, 2023, Yacoub files another motion regarding the minor children's passports citing therein "Wis. Stat. s. 767.01 (1) and 802.01 (2)." R.50. On March 10, 2023, Yacoub writes directly to the circuit court (sometimes hereinafter "Judge Peterson"). R.51.

On March 22, 2023, an order issues appointing a Guardian *ad litem*, Attorney Jennifer N. Brown (hereinafter "GAL Brown"), pursuant to Wis. Stat. §767.407 (e.g., Form GF-131A). R.55.

On April 26, 2023, Yacoub moves to "Seal/Redact" court filings. R.57. On May 8, 2023, Pedrini's prior counsel of record, Barbra K. Miller (hereinafter "Atty. Miller") files a Notice of Retainer. R.58.

On May 16, 2023, Yacoub files, and serves upon Pedrini through Atty. Miller, a "Motion to Withdraw Pending Motions." R.62.[4] Yacoub's May 16th motion does not specify which of her prior filed motions are withdrawn, writing only "…the pending motions before the court..." *Id.*

[4] Yacoub's "Notice of Motion and Motion to Withdraw Motions and Cancel Hearing" notices no hearing, place, time or date, though admits: "In light of the guardian ad litem's report (i.e., Document 63), I move to withdraw the pending motions before the court (sic) and cancel the hearing set for May 24, 2023. The report is contrary to evidence provided the guardian ad litem but she is not a witness and not subject to cross examination. I will not put the Court in a position to have to go against the recommendations of the guardian ad litem to grant the pending motions." R.62.

On May 17, 2023, there are what appear in the Index as a number of 'simultaneous' filings relevant to Petitioner – Appellant's Brief's (hereinafter "Yacoub's Brief") arguments and this appeal. Numerically first, presuming GAL Brown filed her 'report' ("GAL Report and Recommendation"), as well as 'letter' on the same day, together, wherein she requests the "sealing of the recommendation." R.63, 66. Also on May 17, 2023, an order is issued noticing "withdrawal of all pending motions" signed by Judge Peterson, as well as an "Order on Motion to Seal." R.64, 65.

On May 19, 2023, Yacoub files a proposed order on terminating the guardian ad litem. R.68. On the same day, GAL Brown files an objection and a request to deny her termination. R.69.

On May 26, 2023, Yacoub files a 'new' "Notice of Motion and Motion to Modify Legal and Physical Custody" (sic) citing no statutory or case law authority, while specifically requesting a Wisconsin circuit court "modify physical custody."[5] R.71. At the time of proceedings before the circuit court subject to this appeal, Wis. Stat. § 767.001 defined "Joint legal custody" and "Legal custody" and "Physical Placement" and "Sole legal custody." *Id*., at (1s), (2), (5) – (6).

[5] Sarah Slice Yacoub is listed on The Minnesota Supreme Court Lawyer Registration Office website (https://lro.mn.gov/for-the-public/lawyer-registration-database-search-public/) with "Lawyer ID" 0396286, "Date Admitted" as 10/17/14, "Last Payment" 08/23/23, and "Authorized" to practice law, yet with "Lawyer does NOT represent private clients" in red.

There was not then, or currently, a statutory definition or use in Wis. Stat. ch. 767 for the term "physical custody" as in Yacoub's 'new' motion, though Minnesota does define such term. Minn. Stat. § 518.003, subd. 3. *See* Footnote 5, *supra*.

On June 2, 2023, Atty. Miller files a motion and Pedrini's supporting affidavit requesting Pedrini be awarded "sole legal custody" based on a "substantial change in circumstances" and "demonstrated inability to agree on major decisions" R.72. Pedrini also moves for an order "prohibiting the petitioner (Yacoub) from removing the children from school for vacations." *Id*.

On June 6, 2023, Yacoub moves for a temporary order. R.73. On that same day, Yacoub moves to 'rescind motion to terminate GAL appointment.' R.75; *cf. id*., *with* R.68 *and* R.62.

On June 12, 2023, a status hearing is held; an order issues from that hearing on June 21, 2023, detailing the requirements for an evidentiary hearing set for July 26, 2023. R.79.

On July 7, 2023, a temporary order hearing was held; subsequent to the temporary order hearing, where the record indicates two (2) exhibits were admitted, Judge Peterson declines to issue Yacoub's proposed temporary order. R.84; *see also* R.80 – 81.

On July 13, 2023, GAL Brown requests an extension to submit her position paper for the July 26, 2023, evidentiary hearing, though submits her witness list. R.86 – 87.

On July 14, 2023, Yacoub and Pedrini submit position statements and witness lists. R.88 – 91. On July 17, 2023, a "Temporary Order" issues from July 7, 2023, hearing. R.92.

On July 18, 2023, Judge Peterson grants GAL Brown's requested extension to submit her position. R.93. On July 19, 2023, GAL Brown files her position statement on the "Best interests for the Children." R.94.

On July 26, 2023, an evidentiary hearing is held before Judge Peterson. R.170. On August 1, 2023, an oral ruling is issued. R.171.

Subsequent to the oral ruling of August 1st, on August 7, 2023, Yacoub files a motion for reconsideration, pursuant to Wis. Stat. § 805.18, advancing further argument with conclusory statements, yet without noticing any hearing, without a time, date and/or place. R.146.

On August 16, 2023, Judge Peterson issues a three-page Decision & Order, denying Yacoub's "Motion for Reconsideration (Doc. No. 146), adopting in addition to the written order his oral ruling of August 1, 2023, and denying Pedrini's June 2, 2023, motion. R.151, at Orders, ¶¶1. – 3.

This appeal follows.

ARGUMENT

Yacoub's appeal, and Yacoub's Brief, attempt to raise, what appears intertwined in the argument, three (3) issues: 1) whether the circuit court erred in applying the correct statutory factors to the parties' two pending motions, not those dismissed, namely Yacoub's motion of May 26, 2023 (R.71)[6]; 2) whether the circuit court abused its discretion in denying her May 26th motion; and, 3) whether Yacoub was denied "due process" by the court-appointed guardian ad litem. Yacoub's Brief, at Issues Presented, at p. 5, *and* at Argument, at pp. 31 – 32, 38 – 43.

Neither of Yacoub's submissions to the circuit court—in her May 26th motion, *supra*, nor in her August 7, 2023, motion for reconsideration—raise the issue of the applicable statutes' constitutionality. Instead, Yacoub argues, and raises for the first time in Yacoub's Brief, that there is some type of constitutional rights violation of a parent (e.g., "due process") by the statutorily defined, court—appointed attorney. Yacoub's Brief, at Issues Presented, at p. 5, *and* at Argument, at pp. 31 – 43. However, Yacoub seems to concede and admit that Wisconsin law is constitutional. *Id*., at Conclusion pp. 43 – 44. In other words, Yacoub fails to develop the constitutionality argument.

[6] While Yacoub's Brief is ambiguous, the record reflects the only two (2) motions before the circuit court on July 26, 2023, were: 1) Yacoub's Notice of Motion and Motion to Modify Legal and Physical Custody, stamped filed May 26, 2023 (R.71) (as she signed for, served and withdrew all her previously filed motions on May 16, 2023 (R.62)); and, 2) Pedrini's Motion to Modify Custody, stamped filed June 2, 2023 (R.72).

I. STANDARD OF REVIEW.

Yacoub's Brief states the "substantial change in circumstances" review is *de novo,* as one of law, as well as whether or not she met her burden, and her "due process" complaints. *Id*., at VI. Standard Op (sic) Review, at pp 30 – 31. The assertions are incomplete. However, Yacoub does acknowledge the circuit court's discretionary authority. *Id*.

A restrictive standard of review involves questions of fact, for a verdict will not be reversed if any credible evidence supports it. *Morden v. Continental AG*, 2000 WI 51, Par. 38, 235 Wis.2d 325, 351, 611 N.W.2d 659; *see also*, Wis. Stat. § 805.14 (1). Yacoub attempted reconsideration, with her post-oral ruling August 7, 2023 motion, though the motion did not state applicable authority, or notice a time, date and/or place regarding her subsequent frustration that she did not meet her burden. *Cf*. Wis. Stat. §§ 767.41 (5) (am), 767.451 (5m), 805.14 (1), 805.17 (3), *and* R.151, R.171, *with* R.146. This was one of her errors.

In actions tried to the court, as here, findings will be affirmed unless clearly erroneous. *See Halverson v. River Falls Youth Hockey Association*, 226 Wis.2d 105, 115, 593 N.W.2d 895 (Ct. App. 1999); *see also* Wis. Stat. § 805.17 (2). Yet, an appeals court may only search for evidence to sustain a finding, not for evidence to support a factual conclusion that could have been but was not reached. *Morden*, 2000 WI 51, Par. 39, 235 Wis.2d at 352.

Concerning questions of combined fact and law, as appears complained of in Yacoub's Brief, requires a two-step analysis. The clearly erroneous standard applies to the factual components, and the legal issues are independently reviewed. *See State v. McMorris*, 213 Wis.2d 156, 165, 570 N.W.2d 384 (1997). This is not present here.

A broader—as appropriate here—standard of review applies to discretionary determinations, which are reviewed for the erroneous exercise of discretion. *See Ness v. Digital Dial Communications, Inc.*, 227 Wis.2d 592, 599-600, 596 N.W.2d 365 (1999). A trial court will not be reversed for coming to a conclusion which another court might not reach, if the decision is one that a reasonable judge could reach after considering the law and facts through a reasoned process. *Filppula-McArthur v. Halloin*, 2000 WI App. 79, Par. 16, 234 Wis.2d 245, 257-258, 610 N.W.2d 201, aff'd 2001 WI 8, 241 Wis.2d 110, 622 N.W.2d 436. The court of appeals will find that discretion has been exercised erroneously where the trial court fails to exercise its discretion, the facts do not support the court's decision, or the court applies the wrong legal standard. *J.L. Phillips & Associates, Inc. v. E & H Plastic Corp.*, 217 Wis.2d 348, 364-365, 577 N.W.2d 13 (1998).

Discretionary determinations may include the admission / exclusion of evidence or testimony. *Morden*, 2000 WI 51, Par. 81, 235 Wis.2d at 369; *Magyar v. Wisconsin Health Care Liability Ins. Plan*, 211

Wis.2d 296, 302, 564 N.W.2d 766 (1977). Judge Peterson's discretion is what Yacoub's Brief details is the problem, from her perspective.

The broadest standard of review—that is incorrect for most of the case at bar—is for legal questions, which are reviewed *de novo*. *See In re Disciplinary Proceedings against Jacobson*, 2005 WI 76, Par. 16, 281 Wis.2d 619, 626, 697 N.W.2d 831. In a *de novo* review, the court of appeals analyzes legal issues without deference to the trial court and may include the application of undisputed facts to a legal standard.

In the midst of all these standards addressed, *supra*, is the harmless error rule where the claimed error involves the "improper admission of evidence," or "any matter of pleading or procedure," the appellate court may not set aside a judgment or grant a new trial on that basis unless the error "has affected the substantial rights of the party" claiming the wrong. *See* Wis. Stat. § 805.18 (2); *see also infra*, at III., B.

Pedrini argues the appropriate standard of review for the case at bar is that of erroneous exercise of discretion. While Yacoub's Brief advances a pseudo – constitutional argument that is undeveloped, for the first time, as is illustrated through a comparison of Yacoub's Brief to her circuit court pleadings, she concedes in the Conclusion that she is not challenging the constitutionality of any specific Wisconsin statute. *Id*., at VIII. Conclusion, at pp. 43 – 44 (". . . the Circuit Court failed to follow Wisconsin law . . ."). On other words, she does not question the "law."

II. THE ST. CROIX COUNTY CIRCUIT COURT MADE NO ERROR "AS A MATTER OF LAW" IN THE AUGUST 1, 2023 ORAL RULING, OR IN THE AUGUST 16, 2023 DECISION & ORDER, REFERENCING SUCH RULING.

One applicable statute for Yacoub's May 26th motion (i.e., R.71) seeking ". . . sole legal custody and to modify physical custody, while maintaining 50/50, . . . " is Wis. Stat. § 767.451 Revision of legal custody and physical placement orders.[7] Wis. Stat. § 767.451 (1) states:

> **(1)** Substantial modifications.
> **(a)** *Within 2 years after final judgment.* Except as provided under sub. (2), a court may not modify any of the following orders before 2 years after the final judgment determining legal custody or physical placement is entered under s. 767.41, unless a party seeking the modification, upon petition, motion, or order to show cause, shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:
> **1.** An order of legal custody.
> **2.** An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.
>
> **(b)** *After 2-year period.*
> **1.** Except as provided under par. (a) and sub. (2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:
> **a.** The modification is in the best interest of the child.
> **b.** There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
> **2.** With respect to subd. 1., there is a rebuttable presumption that:
> **a.** Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.
> **b.** Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.
> **3.** A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

[7] Yacoub's circuit court notice of motion and motion does not cite any authority for her requests, much less the appropriate legal authority, as well as fails to acknowledge Wisconsin has only one custody, "legal custody," and 'physical placement,' not "physical custody" as moved. *Cf*. R.71, *with* Wis. Stat. §§ 767.001 (1) (e), (2), (5), *and* 767.407 (4), 767.41 (2) - (4), 767.451 (2). These are her errors understanding the law.

Yacoub's May 26th motion notices a request for modification over seven (7) years after registration of the parties' California judgment. *Cf. id*., at (1), *supra*, *with* R.71 *and* R.1. – 3. Thus, 'after 2-year period' where "substantial evidence that the modification is necessary" does not apply. *See id*., at (b). Of significant and important note, however, is that the May 26th motion request is after entry of three (3) stipulated orders modifying the registered judgment. *Cf*. R.37, 40, *and* 44, *with* R.1. – 3, *and* R.71. This is important for two reasons: 1) change in circumstances; and, 2) 'arguments' that the parties could not reasonably communicate. *See* R.71, at ¶¶ nos. 4. – 18.; *compare id*., *with* R.37, 40, *and* 44.

Additional subsections of Wis. Stat. § 767.451 provide the circuit court discretionary authority that are directly applicable to Yacoub's motion (i.e., R.71), ones she did not address in either her motion or appeal, making her assertions of the circuit court's failure to apply the applicable law, arduous at best. Wis. Stat. § 767.451 (2), (3), (5) provide:

> **(2)** Modification of substantially equal physical placement orders. Notwithstanding sub. (1):
>
> > **(a)** If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion, or order to show cause by a party, **may** modify the order if it is in the best interest of the child.
> >
> > **(b)** In any case in which par. (a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion, or order to show cause of a party, **may** modify the order based on the appropriate standard under sub. (1). However, under sub. (1) (b) 2., there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

> **(3)** Modification of other physical placement orders. Except as provided under subs. (1) and (2), upon petition, motion or order to show cause by a party, a court **may** modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

Id. Emphasis in numbering in original; emphasis on "may" added.

> **(5)** Reasons for modification. If either party opposes modification or termination of a legal custody or physical placement order under this section the court **shall** state, in writing, its reasons for the modification or termination.

Id. Emphasis in numbering in original; emphasis on "shall" added.

In each applicable subsection, *supra*, the word "may" is used regarding the circuit court's discretionary authority on granting Yacoub's requests. The statute describes the burden that must be met—in the best interest of the child—for the circuit court to use its discretionary authority, as well as upon which party that burden resides due to the "presumption." *See* Wis. Stat. §§ 767.451 (2) – (3) and 767.41 (5) (am).

Of critical importance on the discretionary authority a circuit court has when hearing a motion to modify legal custody and/or physical placement is that contained in Wis. Stat. § 767.451 (5m) regarding the "factors" it must address. Wis. Stat. § 767.451 (5m) (a) – (b) provide:

> **(5m)** Factors to consider.
>
> **(a)** Subject to pars. (b) and (c), in all actions to modify legal custody or physical placement orders, the court **shall** consider the factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and shall make its determination in a manner consistent with s. 767.41.
>
> **(b)** In determining the best interest of the child under this section, in addition to the factor under s. 767.41 (5) (am) 11., the court **shall** consider whether a stepparent of the child has a criminal record and whether there is evidence that a stepparent of the child has engaged in abuse, as defined in s. 813.122 (1) (a), of the child or any other child or neglected the child or any other child.

Id. Emphasis in numbering in original; emphasis on "shall" added. The 'factors in custody and physical placement determinations' are referenced in the statute, *supra*, for Wis. Stat. § 767.41 (5) (am) states:

> **(5)** Factors in custody and physical placement determinations.
> **(am)** Subject to pars. (bm) and (c), in determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. Subject to pars. (bm) and (c), the court shall consider all of the following factors, which are not necessarily listed in order of importance, in making its determination:
>
> **1.** The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.
>
> **2.** The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
>
> **3.** The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
>
> 4. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
>
> 5. The interaction and interrelationship of the child with his or her siblings, and any other person who may significantly affect the child's best interest.
>
> 6. The interaction and interrelationship of the child with his or her parent or parents and the amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles, and any reasonable lifestyle changes that a parent proposes to make to maximize placement with the child.
>
> 7. Whether any of the following has or had a significant problem with alcohol or drug abuse:
>
> a. A party.
> b. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12 (1) (ag).
> c. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.
>
> 8. The child's adjustment to the home, school, religion, and community.

> 9. The age of the child and the child's developmental and educational needs at different ages.
>
> 10. Whether the mental or physical health of a party, minor child, or other person living in a proposed custodial household negatively affects the child's intellectual, physical, or emotional well-being.
>
> 11. Whether any of the following has a criminal record or whether there is evidence that any of the following has engaged in abuse, as defined in s. 813.122 (1) (a), of the child or any other child or neglected the child or any other child:
>
> a. A party.
> b. A person with whom a parent of the child has a dating relationship, as defined in s. 813.12 (1) (ag).
> c. A person who resides, has resided, or will reside regularly or intermittently in a proposed custodial household.
>
> 12. Whether there is evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am).
>
> 13. The reports of appropriate professionals if admitted into evidence.
>
> 14. Any other factor that the court determines to be relevant.

Yacoub's Brief starts is 'argument' stating that the circuit court did not examine relevant facts, apply the appropriate law and or use a demonstrated reasoning process. *Id.*, at VII. Argument, at p. 31. However the record does not support these advancements in any conceivable way.

The first error in Yacoub's Brief, contrary to the record, is in her Statement of the Case. *Id.*, at p. 6. Yacoub incorrectly asserts "[t]he prior court order on placement and custody dates back to 2015." *Id*. The parties' divorce judgment was registered in St. Croix County in September 2015. R.1. However, the record illustrates a 'modifying' order in July 2016 (R.37), a Stipulation and Order (R. 40) in late December 2016, with yet another modification order issued in October 2022 (R.44).

Second, and contrary to inaccurate facts advanced about the operative orders, appears ignorance of Wis. Stat. § 767.34, and the circuit court's statutory authority to approve stipulations modifying the registered judgment. *See generally*, R.37, 40 *and* 44. This reality seems odd due to the record's clarity, for Yacoub is listed as a licensed Wisconsin attorney; yet, mostly because of the three mediation requests, combined with the recorded fact the parties were sent a letter on February 24, 2016, by FCC Dunlap regarding specifically, "court procedures." R.17. Indeed, odd, given four mediation referrals (R.16, 21, 25 *and* 29), three after the family court commissioner explained procedure, *supra*, thus presumably empowering the three modifications to the physical placement schedule by 'sometimes' cooperating parents.

Third, the motion (R.71) filed by Yacoub for modifying legal and physical custody—besides the error on "physical custody," in lieu of "placement" modification (that sought and achieved, three times)—is replete with notice and authority omissions due Pedrini. *See generally*, Wis. Stat. §§ 801.14 *and* 802.05. While technicalities, as a licensed Wisconsin attorney, Yacoub is held to know she was required to plead, for notice, exactly what she wanted modified within the already three-time-modified physical placement arrangement; all to modify placement when Yacoub's Brief 'admits' exercising a physical placement schedule different than that ordered. *Id*., at Statement of Case, at p. 6.

Fourth, Yacoub makes many factually conclusory statements about Pedrini throughout these proceedings, her motion (R.71) contains thirty, and Yacoub's Brief contains them throughout each section. However, what is not clear is if Yacoub understood it was her burden to prove her allegations to the circuit court's satisfaction, while connecting them to the statutory factors (Wis. Stat. § 767.41 (5) (am) 1. – 14., *supra*) she neither listed in her motion or brief. Instead of just complaining about a result she does not like, it is expected Yacoub's Brief would illustrate where the circuit court errored by incorrectly apply the statutory factors.

A. Circuit Court Applied Factors & Law to the Presented Facts.

A review of the oral ruling (R.171), referenced in the Decision & Order (R.151), along with reference to the evidentiary hearing transcript (R.170), illustrates the inaccuracy of Yacoub's advancements concerning erroneous application of admitted evidence and facts, to the correct law.

Candidly, the circuit court advised the parties that it did not "see the circumstances" to find a "substantial change in circumstances" when it explained its ruling on August 1, 2023. R.171, at p. 35, at lines 7–8. The circuit court acknowledged "opportunities" and concluded the evidence presented is not something it "would justify upsetting the status quo." *Id*., at lines 10–12. The circuit court's reference to the correct statutory "presumption" regarding Yacoub's burden to present "best interest" evidence is most illustrative, for its discretionary analysis continues.

The circuit court next meticulously delves into the "best interest of the children" and "one of the more significant factors" (Wis. Stat. § 767.41 (5) (am)). *Id*., at pp. 35–36, at lines 19—20, and 1–3. It details its analysis of the history of the case, the parties' relationship, communications, stipulations, accommodations, specific disputes, allegations and co-parenting ((5) (am) factors 1., 3.– 4., *and* 6.), contrary to that argued by Yacoub. *Id*., at lines 4–21. It references the guardian ad litem's updated recommendation, by document number (R.94). *Id*., at lines 21–24; *see also infra*. It explains its understanding of the very different manner in which the parties communicate. *Id*. It gives examples from testimony and admitted evidence about conflicts re "orthodontist" (R.109, 125–127), and "vaccinations," again, contrary to that argued by Yacoub. *Id*., at p. 37, at lines 1–7. It explains how people can reasonably differ, after noting the communication differences (exceptionally well—illustrated by the Trans. of Proc. (R.170), at pp. 77–130), then moves to the stability of the children in each parent's home (factors 6., 8. *and* 14.). *Id*., at lines 8–18. It details the practical aspect of the presumption and the parties' differences on school (factor 8.). *Id*., at pp. 37–38, at lines 19–25, *and* 1–6, 11–14. It even addressed the presented facts on the grandparents, transportation, and unilateral changes impacting placement, all contrary to that argued by Yacoub, stating: "going back to the various statutory factors." *Id*., at pp. 38–39, at lines 15–25, *and* 1–12.

While expressly applying the correct statutory factors to the evidence presented, the circuit court specifically addressed the "wishes of the parents" and the guardian ad litem's input on that issue. *Id*., at lines 9–11. It expressly informed the parties "from what the guardian ad litem has communicated versus what, Yacoub, you have communicated, it seems that there's somewhat of a conflict in terms of what the wishes of the children are. . . . You know, the kids are pretty young at this point to really appreciate the whole picture of what would be going on" in referencing its comments on granting either parent sole legal custody or the right to change schools. *Id*., at pp. 40–41, at lines 21–25, 1–3; *cf. id*., *with* Yacoub's Brief, at VII. Argument, at pp. 33–38.

The circuit court then explained its position, after the closing of evidence, on "the interaction and interrelationship of the children with their parents, siblings" and "quality time with the children" and parent's individual involvement, the adjustment to each's home and the children's to the current school (factors 4.–6.). *Id*., at lines 4–14. The circuit court expressly noted it had no evidence introduced on religion, "so that's not a factor whatsoever." *Id*., at lines 22–24. The point is, the circuit court expressly went onward in its oral ruling about the statutory (767.41 (5) (am)) factors by number, one by one, and explained its position on the evidence it had been presented. *Id*., at pp. 41–43, at lines 25, 1–25, 1–25. Judge Peterson then returned to communications. *Id*., at p. 44.

Finally, the circuit court informed the parties it did not find "that there's been a significant or substantial change in circumstances. But if there have, I don't believe it would be in the best interest of these kids to change and to grant sole legal custody for any purpose to one of the parents. So I am going to deny the motion made by both parents and the status quo will remain. So – and I would ask the guardian ad litem to draft an order accordingly. And just a simple order, for the reasons stated on the record here today." *Id*., at lines 14–24.

B. Circuit Court Did Not Make Error of Law on Circumstances.

Yacoub's Brief advances the notion the circuit court failed to apply the facts accurately to the law regarding a "substantial change in circumstances" citing *Rath v. Rath*, 2009 WI App 77, 319 Wis. 2d 232, 769 N.W.2d 572. *Rath* is a court of appeals case on abuse of discretion regarding a contempt finding without an evidentiary hearing. It is not on point, and is distinguishable because a full day hearing was held here.

What remains, although the circuit court did not find a substantial change in circumstances, is that it nonetheless went through the correct statutory factor analysis. The record details the application of the presented facts introduced on July 26, 2023, as well as the allegations, facts and argument of June 12, 2023 (temporary order hearing), to the correct statute for both parents' motions. It denied each for failure to meet either's factual burdens, or to overcome the statutory presumption.

III. YACOUB'S CONSTITUTIONAL RIGHTS HAVE NOT BEEN VIOLATED BY THE ST. CROIX COUNTY CIRCUIT COURT OR THE COURT—APPOINTED GUARDIAN AD LITEM.

No one shall be "deprived of life, liberty or property without due process of law." U.S. CONST. am. 5., U.S. CONST. am. 14., § 1.

Liberty protected by the Due Process Clause includes the right of parents to "establish a home and bring up children." *Meyer v. Nebraska*, 262 U.S. 390. 399. 401 (1923).

"The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

"All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed." WI CONST. art. 1 § 1.

The Wisconsin state and the federal constitution provide identical due process and equal protection safeguards. *County of Kenosha v. C & S. Management, Inc.*, 223 Wis. 2d 373, 588 N.W. 2d 236 (1999). Yacoub's Brief is unclear on the specifics of a constitutional violation.

A. The Parties Were Provided Due Process Under Applicable Law.

The governing statutory authority for modification of custody in Wisconsin in 2023 was Chapter 767 "Actions Affecting the Family."[8] *Id*. Wis. Stat. § 767.001 (1) states: "'Actions affecting the family' means any of the following actions:" where several subsections are relevant to the statutorily required procedures in the case at bar. *Id*.

Wis. Stat. § 767.001 (1) (e) states: "Custody." *Id*. Wis. Stat. § 767.001 (1) (i) states: "To enforce or modify a judgment or order in an action affecting the family granted in this state or elsewhere . . . " *Id*. Subsection (1) (k) states: "Concerning periods of physical placement or visitation rights to children, including an action to relocate and reside with a child under s. 767.481." *Id*.

Further, the next immediate part of the applicable statute, that Yacoub does not cite or constitutionally complain of after its changes in 'Acts'[9] is Wis. Stat. § 767.005 (Scope), that states: "This chapter applies to actions affecting the family." Wis. Stat. § 767.01 Jurisdiction, subd. (2m) Child Custody, states: "All proceedings relating to the custody of children shall comply with the requirements of (Wis. Stat.) ch. 822."

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[8] Yacoub argues she was deprived of "due process" while citing an inapplicable statute (Wis. Stat. s. 767.045 (1) (a)), a statute that was renumbered and amended by 2005 Wisconsin Act 443 (2005 Senate Bill 123), enacted May 23, 2006, published June 5, 2006. Yacoub's Brief does not develop a cogent argument on its unconstitutionality.

[9] *See* 2005 Act 443, §§10 – 13, 2009 Act 321, *and* 2015 Act 82, § 12.

Wis. Stat. ch. 822, Uniform Child Custody Jurisdiction and Enforcement Act, is not a subject of this appeal because neither party challenges the jurisdiction of the St. Croix County Circuit Court after registration of the parties' California divorce decree on September 2, 2015. R.1; *see also* R.3 – 4. Further, Wis. Stat. § 767.201 expressly states: "Except as otherwise provided in the statutes, chs. 801 to 847 govern procedure and practice in an action affecting the family." *Id*.; *see also* R.17. The rules of civil procedure, and "notice," govern this case.

Yacoub's repetitive reference to amended, revised and/or removed statutes is illustrative of her arguments' lack of merit. Yacoub's Brief even admits, in her VIII. Conclusion, that "the Circuit Court failed to follow Wisconsin law" conveying there is no constitutional problem with the 'law.' *Id*., at p. 43. Simply put, Yacoub does not state, argue or notice where the applicable statutes[10] are defective or unconstitutional, anywhere. *See generally*, Yacoub's Brief. More importantly, for any appellate review *de novo*, Yacoub does not cite to any of her pleadings submitted to the circuit court to rule on her now 'new' advancements of being deprived of "due process" through its use of the correct and applicable statutes, *supra* and *infra*. This failure is fatal to her appeal.

[10] Yacoub makes reference and cites numerous amended, revised, renumbered statutes in her trial court submissions, and in Yacoub's Brief. *See supra and infra*. These errors are not determinative, yet make analyzing her undeveloped constitutional arguments problematic. *See Dilger v. Metropolitan Prop. & Cas. Ins. Co.*, 2015 WI App 54, ¶25, 364 Wis. 2d 410, 868 N.W.2d 177, *and infra*.

1. *The Court–Appointed Attorney Acted Within Her Appointment, Pursuant to Wis. Stat. § 767.407.*

Wis. Stat. § 767.407 (1)–(6) details the appointment, timing, qualifications, responsibilities, termination and/or extension, as well as compensation for the Wisconsin licensed attorney appointed to represent the "Best Interest" concept. *Id*.

It is well established in Wisconsin a guardian *ad litem* is an advocate, not a fact—finder or consultant for the court; the court may weigh a recommendation, but cannot rewrite the statute. *Goberville v. Goberville*, 2005 WI App 58, 280 Wis. 2d 405, 694 N.W.2d 405.

Wis. Stat. § 767.407, under 'Qualifications' states:

> The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

Id. at (3).

Wis. Stat. § 767.407, under 'Responsibilities' states:

> The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall consider the factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and custody studies under s. 767.405 (14). The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.405 (12) and on any parenting plan filed under s. 767.41 (1m). Unless the child otherwise requests, the guardian ad litem shall communicate to the court the wishes of the child as to the child's legal custody or physical placement under s. 767.41 (5) (am) 2. The guardian ad litem has none of the rights or duties of a general guardian.

Id., at (4).

In the case at bar, the guardian ad litem (hereinafter "GAL") was appointed March 22, 2023, after Yacoub filed her initial notices and motions for modification of custody. *Cf.* R.55, *with* R.49 – 50. The GAL proceeded to conduct her investigation between her appointment, and May 10, 2023, the date of the GAL's first petition for fees. R.60. As addressed in her cover letter to Judge Peterson, dated and stamped filed May 17, 2023, she had completed her "Report and Recommendation" and supplied such to the "parties/counsel" on May 17, 2023. R.66. An evidentiary hearing was scheduled for May 24, 2023. *See* R.64.

A strange event happened immediately before the GAL's submissions, the day before, on May 16, 2023: Yacoub filed a Notice of Motion and Motion to Withdraw Motions and Cancel Hearing, writing only in such:

> In light of the guardian ad litem's report, I move to withdraw the pending motions before the court and cancel the hearing set for May 24, 2023. The report is contrary to evidence provided to the guardian ad litem but she is not a witness and not subject to cross examination. I will not put the Court in a position to have to go against the recommendations of the guardian ad litem to grant the pending motions.

R.62.

This motion and admission is both, telling and problematic. First, it is written by a Wisconsin licensed attorney, recognized by the bar and public as educated on the differences between challenging an advocate's position, including introducing your own evidence that may be contrary.

Second, Yacoub's withdrawal of her motions, regardless of being a licensed attorney, suggests as a *pro se* parent, Yacoub was not certain she was correct in her analysis of the facts and position detailed in GAL Brown's initial, statutory–factor–listed, "GAL Report and Recommendation." *Cf.* R.2, *with* R.63. Here, it more strongly suggests Yacoub knew she could not meet her burden to overcome the statutory presumption and evidence to be presented and argued by GAL Brown.

Third, and most importantly, neither GAL Brown's initial "GAL Report and Recommendation" nor Yacoub's withdrawal of all her pending motions before the court was either's final position before the evidentiary hearing. *See* generally, R.71, R.86 *and* 94. And this is exactly where Yacoub's allegations against the court-appointed guardian ad litem must be found to succinctly fail. *Cf.* R.94, *with* Yacoub's Brief.

Contrary to Yacoub's various arguments, GAL Brown conducted an initial, and an updated, totally comprehensive, statutory–factor–listed, GAL report and recommendation. R.94. A cursory review of the updated, and filed "GAL Position Paper on the Best Interests for the Minor Children" instantly reveals the following: 1) Incorporation of the initial "GAL Report and Recommendation" (R.63); 2) Details of the court—appointed GAL's investigation on what, who, where the investigation is based; and, 3) an updated, additional, "Evaluation of Statutory Factors" citing Wis. Stat. § 767.41 and detailing 17 factors.

The fact GAL Brown conducted an investigation and provided the parties (parents) her report and recommendations is customary. The fact one, or both parties did not like the recommendations is common. The withdrawal by the initially moving party, a licensed attorney, seeking to withdraw her initial motions is conclusive: Yacoub knew she could not prevail, and instead has unnecessarily placed her failure to meet her second motion's burden upon GAL Brown and Judge Peterson. This conclusion is supported by GAL Brown contesting her removal (R.66), then requesting the ability to extend her investigation time (R.86), such being granted by the circuit court (R.93), and her submitting an even more detailed investigation and statutory–factor–listed update (R.94), is determinative on the baseless argument a statutorily appointed guardian deprived a parent of due process. It is the Wisconsin family law process, Yacoub acknowledged such in withdrawing her initial motions, as she well knew there was due process. Her advancement in fallacious on its face, as conclusively demonstrated by the record, without Yacoub's repetitive re-introduction of her version of the facts, that where either not produced before the circuit court and/or found through her presentation of evidence at the temporary hearing (R.85), the evidentiary hearing (R.170), her closing argument (R.171), or properly addressed in her reconsideration motion (R.146). *See generally*, R.151 (that incorporates R.171). Yacoub has simply not developed a "due process" violation.

B. There Are No Errors or Omissions Denying Yacoub' "Due Process" or "Insufficient Process" Under Applicable Law.

Wis. Stat. § 805.18 (1)–(2) details how the circuit court "shall" handle mistakes, omissions and harmless error. *Id*. It states:

> **(1)** The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.
>
> **(2)** No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of selection or misdirection of the jury, or the improper admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

Id. Emphasis in numbering in original.

The circuit court in the instant case did not use the erroneous statutes advanced by Yacoub in some of her pleadings; instead, it and the GAL applied the correct statutes to her motion request, because her incomplete 'notice' and conclusory, unsubstantiated, factual allegations, was her harmless error. *Cf*. Wis. Stat. §§ 767.451 *and* 767.41 (5) (am), *with* R.71. The same must be said of Yacoub's conclusory statements, those not accurately noticing authority, contained in her motion of May 26th (R.71), when compared to the court-appointed GAL's detailed recommendation (R.63) and updated recommendation and report (R.94). When a court-appointed attorney investigates, pursuant to an applicable statute, it becomes hard to see a "mistake" or "omission" or "error" when the complaining party does not develop how she was harmed.

Thus, Yacoub's arguments of a lack of "due process" or "insufficient process" to her motion's conclusory advancements, that the circuit court did not find, are completely undeveloped. In *D. R. v. B. D. (In re M. L. D.)*, the Court of Appeal held it does not need to address the validity of undeveloped constitutional arguments. 2019 WI App 15, ¶12, 386 Wis.2d 353, 927 N.W.2d 168 (Ct. App. 2019), *citing Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

In *D. R.*, as here, Yacoub broadly asserts in her motion (R.71), as well as in her reconsideration request (R.146), and again in Yacoub's Brief, her conclusory statements of her opinion, on presumably the facts she 'believed' she demonstrated to the circuit court, but not specific findings from the circuit court's oral ruling (R.171) or Decision and Order(s) (R.151) that denied her "procedural" or "substantive due process." As proof, as in *D. R.*, it is unclear whether Yacoub is making a "procedural or substantive due process claim" in her various arguments. *See and compare id*., at ¶12, with R.71, 146 *and* Yacoub's Brief.

Yacoub admits, through her various submissions, she does not agree with the facts found and applied to the correct statute. She also admits she does not share GAL Brown's position. However, because she does not develop how those two entities' application of the correct statutory factors to the evidence actually presented each, her appeal on a violation of her "due process" rights or "insufficient process" must fail.

CONCLUSION

This is a simple case. Parents with minor children were divorced in California, each relocated, and their divorce judgment was registered in St. Croix County, Wisconsin. For more than six years the parties sought assistance in co-parenting and working through disputes regarding their children. The record is clear on their ability to reach compromise and modify their original California divorce judgment. Not being happy, one parent, an attorney licensed in the state the parties registered their divorce judgment, invoked her right to move for relief.

Pursuant to state law, an experienced, licensed advocate was appointed to represent the best interest concept for the minor children. Pursuant to the directly applicable statute, the appointed advocate investigated the desires of the parents, interviewed witnesses, reviewed prior proceedings and stipulations, met with the minor child and issued a preliminary recommendation. The moving parent, withdrew her motions, only to file another. A temporary order and evidentiary hearing were held. The trial court noted the updated recommendation of the GAL. Each parent failed to meet their burden to obtain relief on their motions. The unhappy parent, a licensed attorney, requested reconsideration without express reasons on why, just that she did not think the circuit court or appointed guardian were right, later claiming violations of her rights. That parent initiated this appeal, and must be found to have failed.

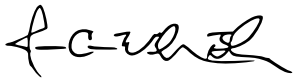
The State of Wisconsin Court of Appeals should find the appellant's argument are not sustainable, and affirm the circuit court's Decision and Order.

MOTION

In addition to appeal costs and expenses, sought by Pedrini, he requests the Court of Appeals should award him attorney fees of $5,000.00, as well as his costs and expenses, in this appeal, due to Yacoub's frivolous framing, nature and inaccurate representations. Pedrini, though his limited scope attorney, requests such award, pursuant to Wis. Stat. §§ 809.14 and 809.25.

Dated at Hudson, Wisconsin, this 14th day of March, 2024.

Respectfully Submitted,



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WISCONSIN COURT OF APPEALS

DISTRICT III

SARAH YACOUB,

f/k/a SARAH SLICE,

PETITIONER – APPELLANT,

v.

STEVEN RYAN PEDRINI,

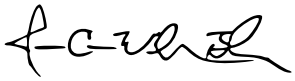
RESPONDENT – RESPONDENT.

Appeal No. 2023AP001558
Circuit Court No. 15FA326

Certification of Form & Length

I certify that this brief meets the form and length requirements of Rule 809.19 (8) (b), (bm) and (c) in that it is: monospaced font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of characters per line. The text is 13 point type and the length of the brief is less than 11,000 words (8,216 words).

Respectfully Submitted, this 14th day of March, 2024,



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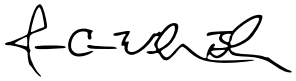
Certification of Electronic Filing

I hereby certify that I have submitted an electronic copy of this brief, excluding appendix, if any, which complies with the requirements of section 809.19, stats.

I further hereby certify, pursuant to Rule 809.19(12)(f), that the text of the electronic copy of this brief is identical to the text of the paper copy of this brief.

Respectfully Submitted, this 14th day of March, 2024,



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