State of Wisconsin Court of Appeals District II

In re the Paternity of C.J

Christian Danielle Jones, Petitioner-Respondent,
V.
Robert Ezell Carradine, Respondent-Appellant.

Date: June 19, 2023

District: 2

Appeal No. 2022AP001719

Circuit Court Case

No. 2016PA000565Pj

NOTICE OF APPEAL TO REVIEW

2022

ON NOTICE OF APPEAL TO REVIEW A DECISION AND ORDER ENTERED IN THE CIRCUIT COURT FOR RACINE COUNTY IN CASE NUMBER 2016 PA000565PJ , Branch 2 The Honorable Faye flancher

Trial Court Case No. 2016pa000565pj

PRESIDING BRIEF of APPELLANT

Robert Ezell Carradine

Prose Respondent-Appellant

2523 Charles Street,Racine,WI 53402 53404

262-752-3620

carradir2@mail.gtc.edu

Christian Danielle Jones

Petitioner-Respondent

2114 Clarence Ave,Racine,WI

262-880-6599

email not available

Description and statement of case

03-12-2021

Notice of motion, motion To change Legal Custody , Physical Placement, and

Arrears Payment filed by Robert Carradine

06-10-2021

Notice of hearing

Post-judgment hearing - FCC on July 13, 2021 at 10:00 am.

06-10-2021

Affidavit of mailing

Court mails NMM filed by Mr. Carradine and court NOH to Christian Jones 6/10/21

07-13-2021

Post-judgment hearing - FCC

10:11 AM Adjudicated father Robert Ezell Carradine in court. Mother Christian Danielle Jones not in court.

Mr Carradine: Provides position, seeking joint custody and shared placement.

BTC: Joint Custody & Temp placement schedule set. Matter set over for further review. *See Commissioner's Minutes for further details.

Review hearing scheduled for October 5, 2021 at 03:30 pm.

07-13-2021

Letters/correspondence

Re: missed hearing filed by Christian Jones. Forwarded to DFCC AL for review.

07-14-2021

Notes

Per DFCC AL, "This matter is scheduled for a review hearing on the temporary orders entered at today's hearing. Any orders entered today may be adjusted at the next date."

09-07-2021

Adjustment Number: 21A 628348,

Payable Number: 439759,

Receipt Number: 21R 008816F,

Amount: $20.00

09-07-2021

Electronic Notice Update

09-07-2021

Notice of retainer

Atty. Losey representing Christian Jones

10-05-2021

Review hearing

03:30 PM Mother Christian Danielle Jones in court with attorney Mary Alice Losey.

Adjudicated father Robert Ezell Carradine in court.

Matter here as a review hearing on temporary orders.

Atty Losey: Provides a statement. Requests reduced placement time.

Mr. Carradine: Provides a statement. Requests additional placement time.

Atty Losey: Provides further statement.

Mr. Carradine: Provides further statement.

Mr. Carradine becomes agitated and disrespectful during hearing.

BTC: The temporary order shall remain in place at this time. A GAL/FCW shall be appointed. Father is encouraged to enroll in the Focus on Father program through the YMCA. Parties are ordered to use OFW for all communication regarding the minor child. *See Commissioner's Minutes for further details.

Review hearing scheduled for January 11, 2022 at 03:30 pm.

10-05-2021

Notes

ANDREW PATCH FCW FROM 10/5/21 TO

ANDREA FENDRY GAL

10-05-2021

Order appointing GAL

Andrea Fendry

10-06-2021

Other papers

GAL/FCW Appointment Form (dad)

Electronic case file prepared and emailed to FCW AND GAL ref appointment to case. Order for Evaluation and Payment. Andrew Patch FCW.

10-07-2021

21R 009913F

Motion for and Notice of New (DeNovo) Hearing Filed by Robert Ezell Carradine

10-21-2021

Letters/correspondence

Adjournment request for 11/8/21 hearing received by court from Atty Losey. RE objects to request. Judge Flancher for review/approval status.

Per BR 8 CCJ - Brief adjournment approved. New date also needs to be confirmed with Mr. Patch and Atty. Fendry. /ljh**

10-22-2021

Notice of hearing

Hearing De Novo on November 15, 2021 at 10:00 am.

11-03-2021

Other papers

GAL/FCW Appointment Form

11-15-2021

Change of address notification for Carradine, Robert Ezell

ADDRESS INFO for Robert Ezell Carradine

Current: 2522 Charles Avenue, Racine, WI 53402 United States (Effective: 11-15-2021)

Prior: 812 College Ave Apt 2, Racine, WI 53403 United States

11-15-2021

Hearing De Novo

Judge Flancher, Faye M.

10:50 AM Mother Christian Danielle Jones in court with attorney Mary Alice Losey. Other FCW Andrew Patch in court. Adjudicated father Robert Ezell Carradine in court (pro se). Attorney Andrea L Fendry in court for Child C. E. C..

DSAT: Robert Carradine - Name and address and DOB, Testimony on events/

DSAT: Christine Jones - Name and address and DOB, Direct by/

FCW Patch - need time - to meet with father.

Atty Fendry - spoke to father not yet with mother. Temporary order should remain the same

BTC: Motion for DeNovo review is denied. The court will retain this case. 12/27 father shall have make-up time from 10 am to 5 pm. Father shall sign up for our family wizard/ and parenting class. Temporary order stays in effect. Mr. Carradine shall provide letter from doctor on ability to work /by the next hearing.

11-15-2021

ADDRESS INFO for Robert Ezell Carradine

Current: 2523 Charles Street, Racine, WI 53402 United States (Effective: 11-15-2021)

Prior: 2522 Charles Avenue, Racine, WI 53402 United States

01-11-2022

Review hearing

Flancher, Faye M.

1:36 PM Mother Christian Danielle Jones appeared in court, Attorney Mary Alice Losey appeared in court for Christian Danielle Jones, Adjudicated father Robert Ezell Carradine appeared in court (pro se), Child C. E. C. appeared in court, Attorney Andrea L Fendry appeared in court for C. E. C., Other The Therapy House FCW Andrew Patch appeared in court.

This matter is here as a review hearing

FCW Patch - report and recommendation - no change at this time.

Atty Fendry - report and recommendation - Tuesday and Thursday placement to stay the same - every other weekend - saturday to sunday

Atty Losey - statement

Robert Carradine - presents medical letter to court

BTC: placement order stays the same - Robert Carradine shall meet with FCW Patch Review hearing scheduled for March 28, 2022 at 10:30 am.

01-19-2022

Receipt

22R 001563C

22R 001564C

03-09-2022

Flancher, Faye M.

Order appointing GAL

Kelly Heckel replacing outgoing Andrea Fendry

03-09-2022

Notification of GAL appointment via email

03-11-2022

Notes

Mr. came to family court window indicating he wants to drop off a USB to offer as evidence. Supervisor informed him that he may bring it to the hearing as we do not take usb drives. He has a subpoena for Atty Lamberty; he was informed that he no longer works here and that he could have him served and subsequently file the subpoena with the court should he choose.

03-14-2022

Letter request for a hearing plus additional docs from Robert Carradine

03-16-2022

Proposed Exhibit 1 filed by Robert Carradine

03-18-2022

Transcript, motion, January 11, 2022

Transcript, motion, November 15, 2021

03-25-2022

Letters/correspondence

Adjournment request for 3/28/22 @ 10:30am hearing received by Judge Flancher for review/approval status.

03-30-2022

Request for substitution

Request for substitution for BR 8 CCJ filed by Robert Carradine

03-31-2022

Application for specific judicial assign denied Copy of denied request mailed to Mr.

Carradine Flancher, Faye M

04-05-2022

Letters/correspondence

Email from exchange administrator that email rejected

04-05-2022

Notice of hearing

Review hearing on June 1, 2022 at 01:30 pm.

04-06-2022

Proposed Exhibit

Pictures submitted and Facebook posts

Filed by Robert Carradine

04-06-2022

PROPOSED exhibit - News Articles and CCAP Record filed by R Carradine

04-07-2022

Substitution of Judge request

04-07-2022

Recusal letter of BR 8 CCJ submitted by R Carradine

04-11-2022

Change of address notification for Jones, Christian Danielle

ADDRESS INFO for Christian Danielle Jones

Current: 3544 Monarch Drive, Racine, WI 53406 United States (Effective: 04-11-2022)

Prior: 1121 Lewis Street Lower, Racine, WI 53404 United States

04-18-2022

Letters/correspondence

Letter to Mr. Carradine in regards to 4/7/2022 letter

04-25 -2022

Mr. Carradine contacts court with respect to status of his request for substitution of judge. Court supervisor assumes call and informs him that a letter from the Deputy Chief Judge went out; address read. He requested proof of the letter; court indicated he could come and obtain a copy gratis.

04-25-2022

22R 004110F

05-02-2022

PROPOSED Exhibit RAPD Call Detail

Filed by Robert Carradine

05-09-2022

Medical Checkup for Robert E Carradine filed by Robert Carradine

05-11-2022

Subpoena

For Samuel Christensen to remove judge flancher for not acting on a motion for over 30 days

05-11-2022

Letters/correspondence

From Clerk of Courts to Mr. Carradine regarding subpoena

06-01-2022

Review hearing

Flancher, Faye M.

Child Support Agency State of Wisconsin in court. Mother Christian Danielle Jones in court. Adjudicated father Robert Ezell Carradine in court (pro se). Attorney

Mary Alice Losey in court for Christian Danielle Jones. Attorney Kelly Joy Heckel in court for C. E. C. Other The Therapy House FCW Andrew Patch in court.

This matter is here as a review hearing

Atty Heckel - report and recommendation - supervised placement with father at family services - mother sole custody

FCW Patch - report and recommendation -

Atty Losey - statement

Robert Carradine - reads statement to the court

Court: colloquy on case

BTC: Temp order - sole custody with mother/primary placement with mother/fathers placement - supervised at Family Services. Mr. Carradine shall provide assessment - shall also a domestic violence case. Trial date - Mr. Carradine 9/2/22 witness list - 9/9/22 Atty Losey witness list. Atty Losey shall submit order

Evidentiary hearing scheduled for September 20, 2022 at 08:30 am.

06-06-2022

Affidavit

Affidavit of Victoria M Sterba filed by Robert Carradine

Affidavit of Robert Carradine filed by Robert Carradine

06-06-2022

Notice of motion, motion

Motion to Change Legal Custody, Physical placement, Child Support and Arrears filed by Robert Carradine

06-08-2022

Affidavit of Mailing for Christian Jones on 6/8/2022

06-10-2022

Letter to Robert Carradine from Judge Flancher

06-14-2022

Conflicting court dates from Atty Losey

Per FCC Herrera, "Father's motion can be heard on my calendar in conjunction with the trial date."

06-16-2022

Phone request received by court for Atty Losey and Christian D Jones for hearing scheduled on 6/28/22 @ 9:30am ; forwarded to FCC Herrera for review/approval status.

Court approves phone request for Atty Losey and Christian Jones as long as contact numbers are provided to the courts. Once the case is to be heard, the court will call the party who was approved for the phone appearance.

06-28-2022

9:28 AM Mother Christian Danielle Jones appeared by phone. Adjudicated father Robert Ezell Carradine in court. Attorney Mary Alice Losey appeared by phone for Christian Danielle Jones. Attorney Kelly Joy Heckel in court for C. E. C. Other The Therapy House FCW Andrew Patch not in court.

Matter here on motion to modify placement

Mr. Carradine states there has been substantial change. States his position.

BTC: No action will be taken as this case has been certified to CCJ. Matter is dismissed as there is already a pending action. No further hearings

08-15-2022

Letter to Court written by Brian Reynolds, APNP filed by Robert Carradine

09-02-2022

Letter requesting rescheduling filed by Robert Carradine

09-02-2022

Letter to Court: Motion for Reconsideration filed by Robert Carradine

Father's Proposed Witness List filed by Robert Carradine

09-07-2022

Status conference on September 13, 2022 at 11:30 am.

09-12-2022

FCW Final Recommendations and Report from Andrew J Patch

09-13-2022

Motion

09-13-2022

11:21 AM Attorney Mary Alice Losey appeared by video for Christian Danielle Jones. Adjudicated father Robert Ezell Carradine in court. Kelly Heckel appeared for C.E.C Other The Therapy House FCW Andrew Patch appeared by video.

This matter is here as Status Conference

Court: colloquy on case - Adjournment

Mr Carradine - does not want Trial - wants a summary judgment/discussion with court BTC: We will proceed to trial on 9/20/22 @ 8:30. Flancher, Faye M

09-13-2022

Motion for Discovery filed by Robert Caradine

09-19-2022

Motion to Compel filed by Robert Carradine

Letter regarding change of venue filed by Robert Carradine

Motion for Nolle prosequi filed by Robert Carradine

Motion to Strike filed by Robert Carradine

Motion to Limine filed by Robert Carradine

09-19-2022

Proposed Exhibit 3 filed by Robert Carradine

Proposed Exhibit 4 filed by Robert Carradine

Proposed Exhibit 5 filed by Robert Carradine

Proposed Exhibit 6 filed by Robert Carradine

Proposed Exhibit 7 filed by Robert Carradine

09-20-2022

Letter regarding work from Ascension filed by Robert Carradine

09-20-2022

8:25 AM Mother Christian Danielle Jones in court. Attorney Mary Alice Losey in court for Christian Danielle Jones. Adjudicated father Robert Ezell Carradine in court (pro se). Attorney Kelly Joy Heckel in court for C. E. C. Other The Therapy House FCW Andrew Patch in court.

This matter is here as an evidentiary hearing

Witnesses to be sequestered

Motions filed by Mr. Carradine

BTC: Motion for summary judgment - Is denied, Motion for domestic violence charge- denied, Motion for discovery compelling facts - Is denied - Objection on denial is preserved for Appeal purposes.

DSAT: Christian Danielle Jones - Adverse direct by Robert Carradine - offers exhibit 7 - court denies exhibit 7, Offers exhibit 5, 4 page 10,

Short Recess

Back on the record appearances as before

DSAT: Christian Danielle Jones - Direct by/Atty Losey - Cross by/Robert Carradine - Offers exhibit 4 pages 1,2,3,4,5, Cross by/Atty Heckel

Short recess

Back on the record appearances as before

DSAT: Victoria Sterba- - Direct by/Robert Carradine

DSAT: Robert Carradine - testimony, Cross by/Atty Carradine, Cross by/Atty Heckel,

DSAT: Corrina Moody - Direct by/Robert Carradine, Cross by/Atty HeckelDSAT: Jerry Lee - Direct by/Robert Carradine,

Rebuttal

DSAT: Christian Danielle Jones - Direct by/Atty Losey, Cross by/Robert Carradine

DSAT: FCW Andrew Patch - Direct by/Atty Heckel - report and recommendation - supervised placement continue with father/Sole custody with mother - primary placement., Cross by/Robert Carradine

Lunch break - return at 1:15pm

Back on the record - appearances as before

DSAT: FCW Andrew Patch - continued cross by/Robert Carradine, Cross by/Atty Losey, Re-direct by/Atty Heckel, Re-cross by/Robert Carradine.

Robert Carradine - argument

Atty Losey - argument

Atty Heckel - report and recommendation - sole legal custody/primary placement

with mother, Father supervised placement - eval/class Court: colloquy on case

BTC: The Court has jurisdiction - Mother shall have sole legal custody/primary placement, Father shall have supervised placement, OFW, eval/BTP program, Atty

Losey shall prepare order.

Motion for Summary of Judgement filed by Robert Carradine

A. Applicable Laws TABLE OF AUTHORITIES

Wisconsin Cases Pages Barstad v. Frazier, 118 Wis. 2d 549 (1984) 9, 10, 13 Grant County Service Bureau v. Treweek, 19 Wis. 2d 548, 552 (1963) 23

Johnson v Johnson, 78 Wis. 2d 137, 148 Wisc Statutes.

10

4 iv, 2, 5, 12, 28, 31

757.02 (1)
765.001 (2) and (3) 767.045(1)(a) 2 and (4) 767.11(10) and (14) 767.24(1m)
767.24(4)(a)
767.24(4)(b)
767.24(5)
767.32 (1) (a)
767.325 (1) (b)
806.04(10)
1987 by Wisconsin act 355

Administrative rules DWD 40

iv, 2, 5, 6, 14, 21, 22 iv, 2, 5, 6, 14, 21, 22

4 iv, 2, 3, 10, 12, 25, 28, 29

11 11, 18 11

iii

APPELLANT'S - STATEMENT OF ISSUES

Whether the application of Wis Stat. 767.045(1)(a)2, 767.045(4), 767.11(10), 767.11(14), second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b), in cases where there is no credible evidence that either parent is unfit or that a placement proposal that maximizes placement of the child with both parents would be harmful to the child, is unconstitutional, and whether the court therefore erred by not considering robert's request for costs to secure his fundamental rights and to bring this action.

STATEMENT ON ORAL ARGUMENT

1.The appellant, Robert carradine , believes oral argument will not be needed as the brief sufficiently provide the facts and arguments for the court to render a decision. However, if the court wishes the petitioner to present oral arguments in this case he will be happy to do so.

STATEMENT ON PUBLICATION

The appellant, Robert Carradine , would encourage publication of this case.

STATEMENT OF CASE AND FACTS

Back round parties was never married Racine county branch 3 violated my constitutional rights they did not consider evidence brady violation they ignored the constitution that they vowed to uphold judges flancher did not have any jurisdiction to restick access to my son I was supposed to receive 50 percent placement upon my request instead they waited and kept having unreasonable court dates because of

financial interest in the case in view of my constitutional right I was told and I quote " I should of never been awarded my son because of my disability "(Judge Flancher). Judge Flancher has not been proven that I am an unfit parent Judge Flancher did not prove that I was was an unfit parent or harmful to the child all of the evidence used against me was hearsay 908.02 Hearsay rule. Hearsay is not admissible except as provided by these rules or by other rules adopted by the supreme court or by statute.

.Under Wisconsin law, when a child's parents are not married, the mother has sole custody (to make legal decisions for the child) until the court orders otherwise." Wisconsin Statute 767.82(2m) concerns custody pending a court order. the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. Id. at 720.18 U.S. Code 4 241 - Conspiracy against rights If two or more persons conspire to injure, oppress,threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same 18 U.S. Code 4 242 - Deprivation of rights under color of law Whoever, under color of any law, statute, nordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both. 18 U.S. Code § 286, Conspiracy to defraud the U.S. Government

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false,fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both..

7/19/2023

ARGUMENTS

I. PARENTS IN DIVORCE AND PATERNITY CASES HAVE A FUNDAMENTAL AND STATUTORY RIGHT TO ASSUME EQUAL PERIODS OF PLACEMENT AND TO NOT ALLOW A PERSON TO EXERCISE THOSE RIGHT OF THEIR CHILDREN ARE A DIRECT VIOLATION OF 18 U.S. Code 4 241,18 U.S. Code 4 242 **AND THE APPLICATION OF WIS STAT. 767.045(1)(A)2, 767.045(4), 767.11(10),**

767.11(14), SECOND SENTENCE OF 767.24(4)(A), 767.24(5), AND 767.325 (1)(B),767.82(2m) Is gender discrimination **IN CASES WHERE THERE IS NO CREDIBLE EVIDENCE THAT EITHER PARENT IS UNFIT OR THAT A PLACEMENT PROPOSAL THAT MAXIMIZES PLACEMENT OF THE CHILD WITH BOTH** 767.82(2m)**PARENTS WOULD BE HARMFUL TO THE CHILD, IS THEREFORE**

UNCONSTITUTIONAL?

(Racine county) courthouse branch 3 violated my constitutional rights they did not consider evidence brady violation they ignored the constitution that they vowed to uphold Judges flancher did not have any jurisdiction to restick R.E.C access to my son I was supposed to receive 50 percent placement upon my request instead they waited and kept having unreasonable court dates because of financial interest in the case in view of my constitutional right I was told and I quote " I should of never been awarded my son because of my disability "(Judge Flancher) has not been proven that I am an unfit parent Judge Flancher did not prove that I was was an unfit parent or harmful to the child all of the evidence used against me was hearsay 908.02 Hearsay rule. Hearsay is not admissible except as provided by these rules or by other rules adopted by the supreme court or by statute. the GAL's improper invocation of the best interests of the child standard during her opening statements and closing arguments.contends that the trial court erred in admitting prejudicial hearsay

Under Wisconsin law, when a child's parents are not married, the mother has sole custody (to make legal decisions for the child) until the court orders otherwise." Wisconsin Statute 767.82(2m) concerns custody pending a court order. the Constitution, and specifically the Due Process Clause of the Fourteenth Amendment, protects the fundamental right of parents to direct the care, upbringing, and education of their children. Id. at 720.18 U.S. Code 4 241 - Conspiracy against rights If two or more persons conspire to injure, oppress,threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the

United States, or because of his having so exercised the same 18 U.S. Code 4 242 - Deprivation of rights under color of law Whoever, under color of any law, statute, nordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both. 18 U.S. Code § 286, Conspiracy to defraud the U.S. Government Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false,fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

The Fourteenth Amendment of the United States Constitution states,

"*no State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

The essence of this constitutional principle is that like persons in like circumstances will be treated similarly.

On June 5, 2000, the United States Supreme Court in *Troxel v. Granville,* 530 U.S. 57, 65 (2000) , affirmed

“ the interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interests recognized by this court.”

The Supreme Court also stated,

"In light of this extensive precedent, it cannot now be doubted that the due process clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children." Id. at p.66

and

"*So long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of that*

parent to make decisions concerning the rearing of that parent's children.” Id. at p.68, 69

and acknowledged a

“traditional presumption that a fit parent will act in the best interest of his or her child."Id. at p.68.

It also made clear that

"*the Due Process Clause does not permit a state to infringe on the fundamental right of parents to make child-rearing decisions simply because a state judge believes a 'better' decision could be made.”* Id. at p.72, 73.

While *Troxel* involved a placement dispute between a parent and a grandparent, in disputes between two fit parents, the due process and equal protection provision of the 14th amendment of the United States Constitution suggest the fundamental rights of both parents must be treated equally. The wisdom of *Troxel* is no less applicable to disputes between parents. If anything more applicable.

Numerous previous cases involving parental rights are cited in *Troxel* and other briefs in the record of this case. For the sake of not being redundant they are not repeated in this brief.

A parent's ability to make personal choices regarding the care and nurture of his or her children is directly proportional to that parent's physical access to his or her children. Thus, the only way two parents living separately can equally exercise this responsibility and right is if each is afforded the same opportunity to assume equal physical placement of his or her children. Thus, EACH PARENT HAS A FUNDAMENTAL RIGHT TO ASSUME EQUAL PERIODS OF PLACEMENT OF THE CHILDREN, unless there is credible evidence that a parent is not fit, that this placement would be harmful to the children, or that circumstances of the parties do not allow this. If a parent is not willing or able to assume equal periods of placement, or circumstances do not allow this to be practical, each parent has a fundament right to assume maximum placement periods with the children. This right is fundamental, not one that parents must win as a result of a lengthy, intrusive and costly legal battle, or compromise simply to reach a stipulated agreement to avoid such a battle.

Article VI, Clause 2 of the United States Constitution points out:

This constitution, and the laws of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The court's responsibility to support these fundamental rights is further established in Wis. Stat. 757.02 (1);

> *Every person elected or appointed justice of the supreme court, judge of the court of appeals, judge of the circuit court or municipal judge, shall take, subscribe and file the following oath: "I, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Wisconsin"*

Wis. Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , the second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b), are unconstitutional because they allow the state to intrude into the private realm of the family without first requiring a preliminary determination as to the unfitness of a parent or that a parent's placement proposal which maximizes placement of the child with both parents would be harmful to the children. These statutes allow a mediator, placement study evaluator, guardian ad litem or judge to be guided by *"the best interest of the child"* criteria and have no safeguards that a mediator, placement study evaluator, guardian ad litem or judge must strive first and foremost to equally support the fundamental rights of both parents. Thus they allow an unconstitutional intrusion into the family.

Furthermore, since Wis Stat. 767.325 (1)(b) provides unnecessary and irrational legal obstacles which preclude many fit parents from fully exercising this fundamental right, without any compelling state purpose, this provision is also unconstitutional.

This appeal does not challenge the application of these statutes in cases where *"the court has reason for special concern as to the welfare of a minor child."* It only challenges the constitutionality of applying these statutes in the large portion of cases when both parents want to fully participate in the raising of their children, there is no credible evidence that either parent is unfit or that a placement schedule which maximizes placement of the children with both parents would be harmful to the children, and legal custody or physical placement of the child is merely

contested.

B. Barstad v. Frazier

At first impression, this Court may believe *Barstad v. Frazier* , 118 Wis. 2d 549 is controlling in this case. In *Barstad*, which involved a third party dispute similar to *Troxel*, the Wisconsin Supreme Court did not deal with the issue of placement disputes between two fit parents. The court, however, made only a passing comment, without any analysis of this issue:

"*This court has accepted the principle that between parents in a divorce action the " best interest of the child" is generally applied as to which parent is awarded custody."* Id. at 555

Barstad is based on obsolete statutory law, old societal patterns on parenting in non-intact families, and is not as to the point as the higher court decision in *Troxel.* It is therefore incumbent on this Court to carefully examine

the validity of the *Barstad* decision in light of the following:

1. The United States Supreme Court has consistently and most recently in 2000, ruled parental rights are fundamental rights. This court has never made a distinction between mothers vs fathers, black parents vs white parents or parents in intact families vs non-intact families. The due process and equal protection provisions of the 14th amendment of the United States Constitution protect the responsibilities and rights of all parents regardless of their gender, race or marital status.

2. *Johnson v Johnson,* 78 Wis. 2d 137, 148 cited in *Barstad*, did not deal with the issues of placement or physical custody of children, but merely legal custody or decision making regarding medical treatment issues.

3. The term physical placement, which is the major source of conflict between parents such as those in this case, did not exist in statutes in 1984. The statutory provision 767.24(b) stating *"A child is entitled to periods of physical placement with both parents"* and the burden of proof "*unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental*

or emotional health" was created in 1987 by Wisconsin act 355. This act also allowed the court to award joint custody even if one parent does not agree to joint custody. Thus in 1987, the Wisconsin legislature overruled this Wisconsin Supreme Court finding, by requiring the same harm burden of proof

for divorce cases as in third party cases. This suggests that "the best interest of the child" criteria may be used only after a finding, that a parent is unfit or that maximizing placement with a parent would be harmful to the child. 4. Recent studies of Wisconsin cases by the Institute for Research on Poverty (IRP) (App: 51-54) indicate that prior to 1987, the number of shared placement cases accounted for less than 2.5% of all cases . This number has increased to 23.1% in 1996-8, with 15.1% of the cases being awarded equal placement. (App: 55-57). Another recent IRP report which found a 90% compliance rate three years after the original order further supports that equal placement orders are working.(App: 58-59) These reports demonstrate that parents can adequately exercise their fundamental parental responsibilities and rights during their respective equal placement periods. They also demonstrated that when state statutes reduce legal obstacles for non-custodial parents to exercise their responsibility and rights to their children, such as 1987 Wisconsin Act 355 did, many parents will do so.

5. To suggest that the fundamental rights of parents established by the Wisconsin and United States Supreme Court in the context of a parent and third party dispute does not similarly apply to disputes between two parents is in direct conflict with the very basis of our justice system. It suggests that when parents divorce, rather than each parent having an equal interest in this fundamental right,

both parents have no rights. It suggests both parents are presumed to be unfit and each must prove to the court that they are worthy of the right to raise their own children. This is contrary to the very foundation of the American system of justice because, rather than being innocent until proven guilty, both parents are presumed guilty until proven innocent.

In practice, partly due to historic societal roles of parents and statistics on court rulings, there is an unwritten presumption that the mother gets custody and primary placement of the children and the father pays child support to the mother. While this presumption is not defined anywhere in the statutes, and is contrary to

the equality principles established by law in 765.001(2) and the equal protection provision of the 14th amendment, it is very real. The net result is that the legal process treats a mother as innocent until proven guilty, and a father as guilty until proven innocent. In light of this presumption, in cases involving two fit parents, the equal fundamental right of the mother is usually fully supported, while the equal fundamental right of the father is subject to negotiation and compromise.

As in this case, fathers who merely want to fulfill their responsibilities to the children by providing for their care during equal periods of placement are often forced to accept 25-45% placement or endure a lengthy, intrusive and costly legal battle. This violates the civil rights of those fathers who are encouraged, coerced or threatened to agree to stipulated agreements that deny them equal

periods of placement against their will and denies the children the opportunity to an equally important relationship with their father.

6. In *Barstad* at p. 555, The Wisconsin Supreme Court noted.

> *"But a change of custody may result in as complete a severance of parent ties as does termination. The day to day contact between the child and one having custody can create a relationship that may leave the birth parent almost an intruder. All of the day to day interactions between a parent and child are bound to be diminished if not eliminated where the parent comes to the scene as a court permitted "visitor.""*

The court, however, did not address the issue of: Why the termination of parental rights standard should not be used to protect a natural parent from being turned into "a court permitted visitor" by the other natural parent?

C. The best interest of the child criteria is a insufficient legal basis to obstruct a parent's equal fundamental right

There are currently 16 factors in 767.24(5)(more since 5/1/2001), that a mediator, guardian ad litem or court may consider in determining what is "in the best interest of the child" in resolving a child custody and

placement conflict between two parents. As noted in *Troxel v. Granville,* 530 U.S. 57, 63 (2000) , in 1998, the Washington State Supreme Court found the states's third party visitation statutes, which allow the court to award custody to third parties based solely on what the court determines is "in the best interest of the child", to be

unconstitutional. The Washington court ruled "*the Constitution permits a State to interfere with the right of parents to rear their own children only to prevent harm or potential harm to a child."*

The application of Wis. Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b) dealing with determination of child placement in divorce and paternity cases, since they do not apply this same harm standard, is similarly unconstitutional. In *Bush v. Gore* 531 U.S. 98, 109 2000, the US Supreme Court, noted :

"When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal

protection and fundamental fairness are satisfied."

and ruled that

"The recount mechanism implemented in response to the decisions of the Florida Supreme Court (" to consider the intent of the voter") do not satisfy the minimum requirement for non-arbitrary treatment of voters necessary to secure the fundamental right." Id. at p. 105.

While "the best interest of the child" is a well-meaning legal concept in theory, the criteria set forth in 767.24(5) is so broad and vague as to be susceptible to arbitrary interpretation by a mediator, guardian ad litem, psychologist or a court thereby yielding significantly different results and constituting a convenient disguise for discrimination based on gender of the parent. Like "*the intent of the voter*", " *the best interest of the child*" does not satisfy the minimum requirement for non-arbitrary treatment of parents necessary to secure

the equal fundamental rights of both parents.

> The arbitrary nature of this criteria is clearly illustrated by the fact that in this case two psychologists, a GAL and a judge all came to a different conclusion as to what is in the best interest of the children, based on the same circumstances of the parties.
>
> In addition to father's every other weekend placement periods:
>
> Dr. AAA recommended placement every Thursday overnight, and two weeks in the summer. (R-144:101-102)
>
> Dr. BBB recommended no mid-week overnight placement but two dinner visits per week and three weeks during the summer. (R131:Trial Exhibit 17)
>
> The guardian ad litem, recommended every Thursday overnight placement and six weeks (equal placement) during the summer. (R-111)
>
> The Judge found this to be equal placement throughout the entire year.(R - 120)
>
> All of this speculation and opinioning, and the emotional and financial costs attached to it could have been avoided, with the same result being reached, had the court merely began with the constitutionally mandated position that both parents are entitled to assume equal placement of their children.
>
> Thus as demonstrated in this case, the best interest of the child criteria does not satisfy the minimum requirement for non-arbitrary treatment of parents necessary to secure the equal fundamental rights of both parents, even in the same county. This arbitrary treatment may further vary from judge to judge, county to county and based on the ability of each parent to afford and get effective legal representation.
>
> A child placement conflict usually arises between two fit parents, that both love their children and want to continue to be responsible for their care, but one parent acting out of anger, selfishness or vindictiveness doesn't want to

> share the joys of raising the children, wants to have full parental control over the children and/or wants the disproportionate child support entitlement that the greater placement parent is usually awarded in Wisconsin. These goals can be achieved by diminishing the parental role of the other parent. This leaves the other parent with the option of accepting a minimized parental role or enduring a long intrusive, destructive and expensive legal battle over the placement of the children, to determine what is in "the best interest of the child".

The adversarial contest encourages parents to throw mud at each other, make big issues out of small incidents, make false accusations about the other parent and use the children as weapons against the other parent. After the fight is over everyone then expects both parents to be nice to each other and co-parent these children. Many parents(particularly fathers) who cannot endure the emotional and financial cost of this process are disenfranchised from their children. This clearly is not in the best interest of the children.

> The legal community has also broadly embraced an unwritten philosophy that a stipulated agreement or order where both parties are unhappy is a good agreement or order. Thus, when a parent is respectful of the other parent's fundamental role and only asks the court for equal placement of the children, this parent is often denied his or her equal fundamental right merely because, "the best interest of the child" criteria is arbitrarily applied just to make sure both parents are unhappy in reaching a stipulated agreement or order.
>
> In *Troxel*, the grandparents wanted placement every other weekend. The mother asked the court to order placement with the grandparents one day a month. The trial court ordered placement with the grandparents one weekend a month. Since the United States Supreme Court ruled in *Troxel*, that the compromise placement schedule ordered by the trial court was an "*unconstitutional infringement*" of the parent's fundamental right to decide what is in the best interest of the child, the current process of encouraging, coercing or threatening fit parents to enter into stipulated agreements which deny a parent equal periods of placement of the children against his or her

> will, based merely on the recommendations of what a mediator, guardian ad litem, and psychologist thinks is

the best interest of the children, also fails to meet the heightened protection against government interference and is an *"unconstitutional infringement"* of that parent's equal fundamental right.

> Similarly, a court order which denies a fit parent equal periods of placement of their children against his or her will, based on merely what a court finds is in the best interest of the children, also fails to meet the heightened protection against government interference and is an unconstitutional infringement on that parent's right to due process and equal protection.
>
> The fact that approximately 90% of unequal or sole placement orders give the mother greater placement, (IRP report in R-App:113-115) support the conclusion that "the best interest of the child" criteria is also a convenient disguise for gender bias.
>
> In these cases the requirement for mediation, the appointment of a guardian ad litem and psychological evaluations, unnecessarily increase the conflict in the family, the cost of litigating this issue and deprive both parents of substantial amounts of money that could have instead been shared with the child. This expense not only damages the ability of one or both parents to provide for the emotional and economic needs of the children, it also uses up valuable court resources and is an unnecessary expense for taxpayers.
>
> The United States Supreme Court noted in the *Troxel* 530 U.S. 57, 75 (2000) that this further impinges on the fundamental rights of the parents:
>
> *"The burden of litigating a domestic relations proceeding can itself be "so disruptive of the parent-child relationship that the*
>
> *constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated."*
>
> While these statutes and "the best interest of the child" criteria is a well

meaning legal concept in theory, when it is used in an adversarial legal process, as demonstrated in the history of this case, it not only violates the fundamental rights of one or both parents, but in many cases it does more harm to the children and their families than good.

D. Courts must use "less-drastic means" to resolve placement disputes
The United States Supreme Court further noted in *Troxel* 530 U.S. 57, 65 (2000)

"We have long recognized that the (14th)Amendments's Due Process Clause, ... "guarantees more than a fair process."... The clause also includes a substantive component that "provides heightened

protection against government interference with certain fundamental rights and liberty interests."

In *Dunn v. Blumstein*, 405 US 330, 342-43(1972) the United States Supreme Court noted

"*The State cannot choose means that unnecessarily burden or*

restrict constitutionally protected activity. Statutes affecting

constitutional rights must be drawn with"precision," and *"If there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means."*

A reasonable and "less drastic means" to resolve placement disputes between two fit parents is to require both parents to submit a parenting plan which defines what each parent believes is in the best interest of the child to satisfy his or her responsibility to the child.

The court should then hold a preliminary hearing to determine if there is any credible evidence that a parent is unfit or that a placement schedule which maximizes placement of the children with both parents would be harmful to

the children. If the court finds there is no credible evidence to raise a concern as to the welfare of the child, the court should simply support equally each parent's fundamental right by setting an equal placement schedule or one that maximizes placement of the children with both parents, if equal placement is not feasible or desired by either parent. The court must simply presume that each parent will act in the best interest of the child while in his or her placement. This is a less drastic way to resolve the child placement conflict and equally support each parent's fundamental right and does not require the further intrusion of a mediator, guardian ad litem, psychologist or the court into this family as called for Wis. Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of

767.24(4)(a), 767.24(5) and 767.325 (1)(b).

The *"substantial change of circumstances"* criteria to modify an existing order in Wis. Stat. 767.325 (1)(b) may be intended to reduce the burden of litigating a domestic relations proceeding resulting from the application of the statutes being challenged in this appeal, but in light of the availability of this less drastic means to resolve placement disputes between parents, this provision acts to *"unnecessarily burden or restrict constitutionally protected activity*" and obstructs many fit, loving and responsible parents from exercising their full fundamental responsibility and right to participate in the upbringing of their children. It is therefore also unconstitutional.

Furthermore there is no compelling or even a rational state purpose to obstruct the fundamental role of fit parents per 767.325 (1)(b) 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.* Both of these provisions can provide a more positive environment for raising children and therefore there is not even a rational basis to obstruct fundamental rights based on these provisions.

E. Framework of "less drastic means" to resolve placement disputes already exists in statutes

Wisconsin statutes now partially mandate the framework of such a method

in the new provisions of *767.24(1m)* which sets for the requirements of a parenting plan, the last sentence of 767.24(4)(a) and 767.24(b) which read

> *767.24(4)(a) (third sentence was added by 1999 Wisconsin Act 9) "The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic*
>
> *separation and accommodations for different households."*
>
> *767.24(b) "A child is entitled to periods of physical placement with both parents" and the burden of proof "unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health"*
>
> Thus in addition to the court's responsibility to equally support fundamental rights, *Groh v Groh,* 110 Wis. 2d 117, 122, 327 N.W.2d 655,658 (1983), points out the courts further responsibility on this issue.
>
> *"Where the legislature has set forth a plan or scheme as to the*
>
> *manner and limitations of the court's exercise of its jurisdiction, that expression of the legislative will must be carried out and power limitations adhered to.*"
>
> While the framework for a less drastic approach is now set fort in the statutes, Wis. Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b) still mandate the intrusion of mediators, guardians ad litem, psychologists, merely if the parents do not reach agreement as to custody and placement of the children.

The directive in the second sentence of Wis. Stats 767.24(4)(a) *In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5)* and in 767.24(5) *"In determining legal custody and periods of physical placement, the court shall consider all facts relevant to*

the best interest of the child." conflict with the court's responsibility to equally support the fundamental and statutory right per 767.24(4)(b) to placement of both parents and the more recent directive in the last sentence of 767.24(4)(a) to maximizing placement with both parents .

Grant County Service Bureau v. Treweek, 19 Wis. 2d 548, 552 (1963) provides direction in resolving conflicts between competing statutes:

Under well-established rules of statutory construction, the more recent and more specific statute controls and exists as an exception to the general statute.

The provisions of *767.24(1m)* (added by 1999 Wisconsin Act 9) which sets forth the requirements of a parenting plan, the third sentence of 767.24(4)(a) which mandates maximizing placement with both parents and 767.24(4)(b), which establishes the harm standard, are more recent and specific than the vague "best interest of the child" or the "substantial change of circumstance" standard mandated in Wis. Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b).

The provisions of *767.24(1m)*, the third sentence of 767.24(4)(a) and 767.24(4)(b) are also consistent with the paramount legal standard for supporting equally the fundamental rights of both parents. Maximizing placement is quantitative and therefore much more specific that the subjective best interest of the child criteria. So is the word EQUAL as used in the 14th amendment.

Maximizing placement and equal placement are synonymous in cases where both parents are fit, both want to be fully involved in the parenting of their child, and no circumstances exist that would make equal placement impractical. In these cases, the only way a court can truly maximize placement is to order equal placement. Only if one parent wants less than equal placement and/or circumstances do not make equal placement feasible, can maximizing placement result in less than equal placement.

The "the best interest of the child" criteria in these statutes may be used

only after a finding, by the preponderance of the credible evidence, that a parent is unfit or that maximizing placement with both parents would endanger the child's physical, mental or emotional health.

The recent District III Court of Appeals decision in *Keller v. Keller* 2002 WI App is in conflict with *Groh* since the appellate court failed to carry out the statutory requirement in Wis. Stat. 767.24(4)(a) that "**The court shall set a**

placement schedule that maximizes the amount of time the child may spend with each parent." In *Keller*, the trial court's equal placement order was the only order that could not only satisfy this statutory requirement but also the court's responsibility to equally support the fundamental rights of both parents.

It is therefore incumbent on this court, not only to clarify the fundamental right of parents to assume equal placement of their children, but also to harmonize the application of existing statutes consistent with this finding.

F. Conclusion

In child placement disputes between two fit parents where there is no credible evidence that placement with a parent would be harmful to the children, the due process and equal protection provision of the fourteenth amendment to the United States Constitution demand the equal treatment of each parent's fundamental right established by numerous United States Supreme Court decisions as discussed in *Troxel v. Granville* and the right to placement as established by the Wisconsin legislature in 767.24(4)(b).

The state cannot allow one parent, a mediator, a guardian ad litem or a court to minimize, obstruct or interfere with the other's equal parental role. Wis Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b) allow the state to intrude into the

private realm of the family without any compelling state purpose. There is no requirement for a preliminary determination as to the unfitness of a parent or that a parent's placement proposal which maximizes placement of the child with both

parents would be harmful to the children. These statutes also provide no safeguards that the mediator, placement study evaluator, guardian ad litem or judge must first and foremost strive to equally support the fundamental rights of both parents. These statutes are therefore unconstitutional.

> First and foremost, Wisconsin laws regarding the family should act to serve the children and families in Wisconsin. They should promote cooperation between parents, not provide incentives for litigation. They should not be concerned about preserving the ability of family law professionals to continue to provide their services at the expense of Wisconsin children, parents, and taxpayers. Mediators, psychologists, guardians ad litem , court commissioners and judges do not love the children and don't have to live with the consequences of their recommendations or orders. While they serve a very important role in some cases, most placement disputes can be resolved more fairly and efficiently by a lesser involvement on their part.

It is the parents that know the children the best, that love the children and will have to live with the consequences of their decisions for the rest of their lives. A decision by this court, strongly supporting the equal fundamental rights of both parents, would act to assure both parents that their parental role will be equally supported in Wisconsin Courts, unless there is evidence of harm or potential harm to the children. It would make clear that they should focus on how to best co parent their children, rather than trying to use the legal system to diminish the role of the other parent. This should promote cooperation between the parents and allow families to save significant amounts of money currently being wasted to litigate this issue. This will, by itself, help secure the best interest of the children.
B. The statutes in question are as follows:

767.045(1)(a) Thecourtshallappointaguardianadlitemforaminorchildinany action affecting the family if any of the following conditions exists:
2. Legal custody or physical placement of the child is contested.

5

767.045(4) Responsibilities. 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

767.11(10) POWERS AND DUTIES OF MEDIATOR. A mediator assigned under sub. (6) shall be guided by the best interest of the child and may do any of the following, at his or her discretion.

767.11(14) LEGAL CUSTODY AND PHYSICAL PLACEMENT STUDY
... the court may order a person or entity designated to the county to investigate the following matters relating to the parties:
3. Any other matter relevant to the best interest of the child.

Wisc. Stats 767.24(4) Allocation of physical placement.
(a) ....(second sentence reads).. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5).

767.24(5) Factors in custody and physical placement determinations. 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 potential custodian over the other on the basis of the sex or race of the custodian. The court shall consider reports of appropriate professionals if admitted into evidence when legal custody or physical placement is contested. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents.
(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
(d) The child's adjustment to the home, school, religion and community.
(e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.
(f) The availability of public or private child care services.
(g) Whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
(h) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122

(1) (a), of the child, as defined in s. 48.02 (2)
(i) 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) (a).
(j) Whether either party has or had a significant problem with alcohol or drug abuse.
(k) Such other factors as the court may in each individual case determine to be relevant.

(These factors were revised somewhat in May 1, 2000).

767.325 Revisions of legal custody and physical placement orders. (1)(b) After 2-year period.

6

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.

Conclusion

For the foregoing reasons Robert carradine respectfully request that court of appeals grant me 50 percent custody of my son and overturn the lower courts

decision. It is unconstitutional and they violated my constitutional rights and my civil rights. I don't practice religion. The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex or national origin. .Under Wisconsin law, when a child's parents are not married, the mother has sole custody (to make legal decisions for the child) until the court orders otherwise." Wisconsin Statute In child placement disputes between two fit parents where there is no credible evidence that placement with a parent would be harmful to the children, the due process and equal protection provision of the fourteenth amendment to the United States Constitution demand the equal treatment of each parent's fundamental right established by numerous United States Supreme Court decisions as discussed in *Troxel v. Granville* and the right to placement as established by the Wisconsin legislature in 767.24(4)(b).

> The state cannot allow one parent, a mediator, a guardian ad litem or a court to minimize, obstruct or interfere with the other's equal parental role. Wis Stat. 767.045(1)(a) 2, 767.045(4) , 767.11(10), 767.11(14) , second sentence of 767.24(4)(a), 767.24(5), and 767.325 (1)(b) allow the state to intrude into the

private realm of the family without any compelling state purpose. There is no requirement for a preliminary determination as to the unfitness of a parent or that a parent's placement proposal which maximizes placement of the child with both parents would be harmful to the children. These statutes also provide no safeguards that the mediator, placement study evaluator, guardian ad litem or judge must first and foremost strive to equally support the fundamental rights of both parents. These statutes are therefore unconstitutional.

Dated this day of June 19, 2023.

Respectfully submitted by

Robert Ezell Carradine

7/19/2023

08/16/2023