

In re the Marriage of:

Petitioner,	Case No.
-and-	
Respondent.	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
REGARDING CHILD CUSTODY AND PHYSICAL PLACEMENT
(DRAFT OF A TYPICAL ORDER IN CONTESTED CASES.)**
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On, (date) the court conducted a hearing on the motions to modify placement, in response to the father’s motion to modify the existing placement order. Present were(father’s name), (Name) and his attorney, (name) ; (mother’s name) and her attorney, (name) ; and the Guardian ad Litem, (name). The court considered the briefs and affidavits submitted by the parents, testimony was taken and exhibits were received.

Based upon those hearings, the court’s file and all of the proceedings herein, the Court makes the following Findings of Fact and Conclusions of Law and enters the following Orders.

FINDINGS OF FACT

1. (name of both parents) are parents of (name and DOB of all children)
2. The existing placement order which was entered on (date) by (name of judge or court commissioner) calls for: (define the existing placement schedule)
3. The children currently go to school at (name and address of school).
4. The children attend day care at .
5. The mother lives at , works as an (type of occupation) at (name and address). This is approximately ___miles from the children’s school. She lives in a (number of bedrooms or rooms) home that provides sufficient space for the children. The mother has(name and location of extended family) available to help in the raising of the children while in his placement. She has sufficient flexibility to accommodate the children’s needs during his placement periods.
6. The father lives at (address), works as an (type of occupation) at (name and address). This is approximately ___miles from the children’s school. He lives in a (number of bedrooms or rooms) home that provides sufficient space for the children. The father has(name and location of extended family) available to help in the raising of the children while in his placement. He has sufficient flexibility to accommodate the children’s needs during his placement periods.
7. There has been at least two years since the date of the existing placement order, and the children are now substantially older.
8. Both parents live in the same community within miles of each other. Each party can facilitate an environment where the children can maintain contact with their school activities and friends. Each parent has adequate financial

resources, an adequate home, a flexible work schedule, and is fully capable of providing for the needs of the children.

9. The father has presented a parenting plan that states he wishes to satisfy his equal parental responsibility to his children by providing for their day to day needs during equal periods of placement. He believes this is the best interest of the children.

CONCLUSION OF LAW

1. This court has a responsibility to enforce the most recent and specific provisions in Wis. Stat. 767.24(4)(a)(2) which states,

“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.”

2. Wis Stat. 767.24(4)(b) establishes a child’s and the corresponding parents’ right to placement and a burden of proof before this right can be denied as:

“A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child’s physical, mental or emotional health”.

3. 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.”

and,

"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.

4. This court has a responsibility to support the statutory and fundamental responsibilities and rights of parents and their children consistent with the due process and equal protection provisions of the fourteenth amendment to the United States Constitution.

5. 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.'"

6. The "substantial change of circumstances" criteria to modify an existing order in Wis. Stat. 767.325 (1)(b) "unnecessarily burden or restrict constitutionally protected activity" and is therefore unconstitutional.

Notwithstanding this finding, the court is satisfied that there has been a substantial change in circumstances in this case since the entry of the last placement order.

The children are substantially older now, and (any other factor to support this conclusion)

7. The court has taken into account the geographic separations of accommodations of the parties and finds no reason why maximizing placement of the children with each parent would not be workable. There is also nothing in the record that would support the conclusion that either parent is unfit and that equal placement of the children with both parents would be harmful to the children, or that neither parent will not act in the best interest of the children while in his care.
8. The court sees no other way to fulfill the court's responsibility in this case per Wis. Stat. 767.24(4)(a)(2), to ***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***, other than ordering equal placement with each parent.
9. It is in the best interest of the children to allow them to benefit from the fullest emotional and financial support of both parents since this will provide them the greatest opportunity to establish a positive unobstructed lifelong relationship with both parents. An equal placement schedule that provides predictability, stability and extended uninterrupted periods of placement with both parents is most likely to achieve this goal. Continued greater placement of the children with the mother will in all likelihood continue to obstruct the father's relationship with the children and prolonged legal conflicts in this family. This would not be in the best interest of the children.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS
HEREBY ORDERED:

The existing order in this case is modified as follows:

Both parents shall have joint legal custody, and equal periods of physical placement to be as follows:

1. Both parents shall have placement of the children every other week starting from after school on Friday until after school the following Friday. The first week with the father shall start on (date of first Friday).
2. During the summer vacation, or when children do not have school, placement of the children on Fridays shall start or end at 5:30PM.
3. The parent shall alternate placement during the children's Christmas and Easter school vacation and on Thanksgiving Day, with the father having placement in odd numbered years, and the mother having placement in even numbered years. The mother shall have placement on Mother's Day, for at least 8 hours. The father shall have placement on Father's Day for at least 8 hours. The holiday schedule shall take priority over the normal placement schedule. In the event that a parents' placement for the children's school or Easter vacations falls on the other parent's normal week, to assure that the children do have placement with either parent for more than two weeks at a time, the parent that would be losing his or her normal week of placement may substitute the week immediately before or after the holiday week being lost.
4. The children will be driven to school by one parent, and picked up at school by the other parent. When there is no school, the children will be dropped

off at the other parent's home, unless other arrangements are agreed upon by both parents.

5. If any parent is unable to provide for the children during his or her period of placement for more than 12 hours, the other parent shall have the right of first refusal to provide for the children during this period of time. Each parent shall have up to 7 makeup days per year, for the days that he or she is not available to care for the children and the other parent provides for them during their absence.
6. Neither parent will engage in any actions, which would lessen the intent of the court's order to have equal placement with both parents.
7. The parties shall submit to this court and to each other, within 14 days of this order, their last two years of income tax returns and any other information they feel is necessary for the court to establish their current income level for the purpose of setting a new child support order consistent with the new placement order. Within 24 days of this order, the parties shall submit either a stipulated child support order on Wisconsin Court Form 604 for this court to sign or statement that such an agreement could not be reached. The court will then hold a hearing regarding the child support order.
8. All other provisions of the existing order shall remain in effect.

Dated this _____ day of _____ .

BY THE COURT:

The Honorable
Circuit Court Judge

(option, you could also include the following under conclusion of law)

Notwithstanding the above, the court has also considered the statutory factors of §767.24(5)

- a. ***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.***

Both parents wish to spend at least 50% of the time caring for the children.

- 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.***

The children wish to spend more/less/equal time with their father.

- 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.***

The court is concerned that positive interaction of the children with the father is being hindered by their mother's behavior, as well as the ongoing litigation in this case. The record indicates that both parents love and care for the children and are actively involved in their day to day care.

cm. ***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 life-style changes that a parent proposes to make to be able to spend time with the child in the future.***

Both parents have been involved with the raising of the children in the past and both are available to provide for their care on an equal basis.

- d. ***The child's adjustment to the home, school, religion and community.***

The children at this time are well adjusted to the home, school, religion and community. They are doing fine academically and in their extra curricular

activities. They have many suitable friends, and are not involved in any negative or anti social behavior.

(dm) The age of the child and the child's developmental and educational needs at different ages.

The court has considered this.

e. The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.

Both parents appear to be in good physical health. No evidence was presented that either parent is unfit or unable to care for the children.

(em) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

An equal placement schedule satisfies this need.

f. The availability of public or private child care services.

This is not an issue in this case.

(fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

Because there appears to be a lack of cooperation between the parents in this case, a change of placement is necessary to give each parent an equal opportunity to establish a positive relationship with the children.

g. 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.

The record indicates that continued greater placement of the children with the mother obstructs their relationship with their father.

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).

This is not an issue in this case.

- 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).***

This is not an issue in this case.

- j. ***Whether either party has or had a significant problem with alcohol or drug abuse.***

This is not an issue in this case.

(jm) The reports of appropriate professionals if admitted into evidence.

The court has considered all the evidence in this case.

- k. ***Such other factors as the court may in each individual case determine to be relevant.***

This is not an issue in this case.