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COURT OF APPEALS

Case No. 2025AP002492

**In the
State of Wisconsin
Court of Appeals
District III**

In re the marriage of
SARAH ANN FOX,
Petitioner-Respondent,
v.
MATHIEW RAE FOX,
Respondent-Appellant

**BRIEF OF RESPONDENT-APPELLANT
MATHIEW RAE FOX**

On Appeal from the
“Order on Hearings Held September 29, 2025 and September 30, 2025”
and related rulings, in the Circuit Court for Kenosha County,

Case No. 2021FA000047

The Honorable Heather Iverson, Presiding Judge

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TABLE OF CONTENTS

Cover Page	1
Table of Contents	2
Table of Authorities	3
Statement on Oral Argument and Publication	4
Statement of the Issues	5
Statement of the Case	7
A. Procedural History	7
B. Disposition in the Circuit Court	8
Statement of Facts	9
Argument	11
I. The circuit court misapplied Wis. Stat. § 767.41 and imposed extreme supervised-only placement without adequate best-interests findings or evidentiary support.	11
II. The Final Order is legally defective because it improperly delegates placement feasibility and scheduling to a third party and creates an indefinite, non-enforceable placement regime.	13
III. The court failed to properly weigh Wis. Stat. § 767.41(5)(am) gatekeeping/co-parenting factors, rewarding obstruction and enabling a veto-by-refusal structure.	15
IV. The court's handling of GAL/provider conflicts created a structurally unfair process that undermined the custody/placement decision.	18
V. The court misused contempt and speech-related enforcement as de facto custody/placement tools contrary to ch. 785 and § 767.41.	22
VI. The court's comments and handling of the case create an appearance of bias and an objective risk of actual bias requiring reassignment on remand.	25
VII. Cumulative error requires reversal and remand, and reassignment is warranted.	28
Conclusion.....	31
Certification of Compliance with Rule 809.19(8)(b), (bm), and (c)	32
Certificate of Compliance with Wis. Stat. § 809.19(12)	33

TABLE OF AUTHORITIES

CASES:

<i>Biel v. Biel</i> , 114 Wis. 2d 191, 336 N.W.2d 404 (Ct. App. 1983)	14–16
<i>Caperton v. A.T. Massey Coal Co.</i> , 556 U.S. 868 (2009)	26
<i>Frisch v. Henrichs</i> , 2007 WI 102, 304 Wis. 2d 1, 736 N.W.2d 85	23, 24, 26
<i>Goberville v. Goberville</i> , 2005 WI App 58, 280 Wis. 2d 405, 694 N.W.2d 503	19, 21, 22
<i>Hartung v. Hartung</i> , 102 Wis. 2d 58, 306 N.W.2d 16 (1981)	12, 14, 16, 19
<i>Herrell v. Herrell</i> , 144 Wis. 2d 479, 424 N.W.2d 403 (1988)	14, 16
<i>Hollister v. Hollister</i> , 173 Wis. 2d 413, 496 N.W.2d 642 (Ct. App. 1992)	19, 21, 22
<i>Keller v. Keller</i> , 2002 WI App 161, 256 Wis. 2d 401, 647 N.W.2d 426	12
<i>Landwehr v. Landwehr</i> , 2006 WI 64, 291 Wis. 2d 49, 715 N.W.2d 180	12, 14, 16, 18, 19, 22, 31
<i>Lawrence v. Lawrence</i> , 2004 WI App 170, 276 Wis. 2d 403, 687 N.W.2d 748	15, 16
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	19, 22
<i>Miller v. Carroll (In re Paternity of B.J.M.)</i> , 2020 WI 56, 392 Wis. 2d 49, 944 N.W.2d 542	26
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982)	12, 14
<i>State v. Gudgeon</i> , 2006 WI App 143, 295 Wis. 2d 189, 720 N.W.2d 114	26, 28, 31
<i>State v. Herrmann</i> , 2015 WI 84, 364 Wis. 2d 336, 867 N.W.2d 772	26, 29, 31
<i>State v. Thiel</i> , 2003 WI 111, 264 Wis. 2d 571, 665 N.W.2d 305	29, 31
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000)	12, 14
<i>Wolfe v. Wolfe</i> , 2000 WI App 93, 234 Wis. 2d 449, 610 N.W.2d 222	12, 13

STATUTES AND RULES:

<i>Wis. Stat.</i> § 767.41	5–7, 10, 12–19, 22–32
<i>Wis. Stat.</i> § 767.407	7, 19, 21
<i>Wis. Stat.</i> § 767.471	24, 25
<i>Wis. Stat.</i> ch. 785	5, 7, 23, 24, 26, 30
<i>Wis. Stat.</i> § 785.01	23, 26
<i>Wis. Stat.</i> § 785.04	23, 24
<i>Wis. Stat.</i> Rule 809.19	33, 34
<i>Wis. Stat.</i> Rule 809.22.....	5
<i>Wis. Stat.</i> Rule 809.23.....	5
<i>Wis. Stat.</i> Rule 809.801	34

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument may assist the Court because the appeal presents interrelated legal questions concerning (1) the permissible limits on supervised-only placement under Wis. Stat. § 767.41, (2) improper delegation and indefiniteness where a third-party provider controls feasibility and scheduling, and (3) the boundary between contempt enforcement under Wis. Stat. ch. 785 and substantive best-interests placement determinations. The issues are fully briefed, but oral argument may help the Court test the practical effects of the Final Order's placement structure and clarify the legal framework governing nondelegation and enforceability. See Wis. Stat. § 809.22(1)(b).

Publication is requested because the appeal implicates recurring issues of statewide importance in custody and placement litigation, including the enforceability limits of placement orders that depend on third-party providers for feasibility and scheduling, and the proper separation between contempt remedies under ch. 785 and custody/placement determinations under § 767.41. A published decision would provide guidance to circuit courts and litigants and help ensure consistent application of these standards. See Wis. Stat. § 809.23(1)(b).

STATEMENT OF THE ISSUES

1. Wis. Stat. § 767.41—Extreme supervised-only placement without adequate best-interests findings or evidentiary support.

Did the circuit court erroneously exercise its discretion under Wis. Stat. § 767.41 by awarding Mother sole legal custody and primary placement while limiting Father to one (1) to two (2) hours per week of supervised placement, without a defined step-up or reunification plan and without findings sufficient to justify a near-denial of meaningful placement, despite unsubstantiated maltreatment findings and record evidence of the children's positive relationship with Father?

Circuit court answer: No.

2. Improper delegation and indefiniteness—Third-party control over whether placement occurs.

Did the circuit court commit legal error by ordering that Father's placement occur only through Hope Council, with dates determined between the parties and Hope Council, and by providing that Hope Council remains the default absent parental agreement—thereby placing effective control over the feasibility and scheduling of placement in a third party and enabling one party's refusal to agree to alternate supervisors to function as a veto of meaningful placement?

Circuit court answer: No.

3. Failure to weigh gatekeeping and co-parenting factors required by § 767.41(5)(am).

Did the circuit court erroneously exercise its discretion by failing to properly weigh the statutory best-interests factors concerning (a) each parent's willingness and ability to support the other parent's relationship with the children and (b) the need for regularly occurring, meaningful periods of placement, where the record reflects Mother's gatekeeping and stated inability or unwillingness to co-parent, yet the court imposed the most restrictive placement regime against Father?

Circuit court answer: No.

4. Structural unfairness—GAL/provider conflict handling undermining the custody/placement decision.

Did the court's handling of conflicts involving PSG/Pathways and

therapist Hollie White, and its reliance on that provider framework and the GAL's narrative, create a structurally unfair process that undermined the custody and placement determination, contrary to Wis. Stat. § 767.407 and due process?

Circuit court answer: No.

5. Contempt and speech sanctions used as de facto custody tools.

Did the circuit court misapply Wis. Stat. ch. 785 and § 767.41 by using contempt-based restrictions and sanctions as functional custody/placement levers and then relying on that contempt framework as part of the best-interests reasoning supporting the final placement restriction?

Circuit court answer: No.

6. Objective judicial bias / misstatement of the record requiring reassignment on remand.

Did the court's on-record remarks and treatment of Father's filings—together with misstatements or misattributions of testimony on a dispositive best-interests factor (co-parenting)—create an appearance of bias and an objective risk of actual bias requiring reassignment on remand?

Circuit court answer: No.

7. Cumulative error requiring reversal and remand.

Even if any individual error might be deemed harmless in isolation, does the cumulative effect of the extreme supervised-only placement, improper delegation/indefiniteness, failure to weigh § 767.41(5)(am) factors, unresolved conflicts, misuse of contempt, and appearance of bias require reversal and remand for a new custody and placement hearing?

Circuit court answer: No.

STATEMENT OF THE CASE

A. Procedural History

This appeal arises from a custody and physical-placement dispute in Kenosha County Circuit Court involving the parties' two minor children, Eden Fox and Michael Fox. The orders under review are the circuit court's oral rulings following the September 29–30, 2025 trial and the written "Order on Hearings Held September 29, 2025 and September 30, 2025," entered October 24, 2025. (R.258). This appeal proceeds in Case No. 2025AP002492.

Following allegations against Father, the circuit court ordered supervised placement through Out & About and later Hope Council. During that period:

1. Child Protective Services investigated the allegations and did not substantiate maltreatment in Father's home. Tr.1-21-25:15:10–14 (R.192).
 - Detective Justin McCoy conducted a criminal investigation and concluded there was insufficient evidence to request charges for mental harm or neglect, and no charges were filed. Tr.9-29-25:195:1–18 (R.312).
2. Father, through counsel and later pro se, filed motions addressing (among other issues) supervised placement, requests to move toward unsupervised placement, enforcement of placement and communication, and conflict concerns involving PSG/Pathways and therapist Hollie White. (See, e.g., R.96; R.173; R.201; R.203).

On May 29, 2025, the court addressed placement and concerns related to Father's online commentary; the GAL reported that visit videos reflected appropriate interactions and that the children enjoyed time with Father, and the GAL relayed that the son's therapist believed he had the tools to handle more time. Tr.5-29-25:8–9 (R.156). The court declined to authorize unsupervised time and imposed restrictions related to online content. Tr.5-29-25:6–8, 13–14 (R.156).

On June 9 and June 11, 2025, the circuit court entered additional contempt-related restrictions regulating Father's access and conduct,

including restrictions affecting Father's presence at the children's school. (R.112; R.151; Tr.6-11-25:4–7 (R.157)). Those restrictions remained part of the case background leading into the September 2025 trial and the Final Order's continued reliance on contempt/speech compliance as a placement factor. (R.258:5–18).

On June 26, 2025, the court again declined to authorize unsupervised placement despite the children's expressed wishes for more time with Father and continued the supervised placement structure. Tr.6-26-25:5–8 (R.177).

On August 13, 2025, following counsel's withdrawal, the court heard multiple pro se motions and made on-record comments regarding Father's filings. Tr.8-13-25:3:14–21, 37:1–7 (R.193).

A two-day trial on custody and placement occurred on September 29–30, 2025. The circuit court issued its oral ruling on September 30, 2025. Tr.9-30-25 (R.258:5–18). On October 24, 2025, the circuit court entered the written Final Order. (R.258).

B. Disposition in the Circuit Court

In the October 24, 2025 Final Order, the circuit court found a substantial change in circumstances, awarded Mother sole legal custody and primary physical placement, and ordered that Father “shall have supervised secondary physical placement” through the Hope Council for one (1) to two (2) hours one (1) time per week, with dates to be determined between the parties and the Hope Council. (R.258:2–3). The order further stated that the parties may agree to additional periods of placement and additional supervisors, but if the parties are unable to agree, the Hope Council supervision order continues. (R.258:2–3).

Consistent with the oral ruling appended to the Final Order, the Final Order contains no written step-up schedule, no benchmarks for expanding placement, and no defined endpoint for supervision. (R.258:2–3, 5–18).

The Final Order designates Hope Council as the default supervisor and contemplates alternatives only through agreement-dependent mechanisms, leaving placement feasibility and scheduling functionally

outside direct judicial control. (R.258:2–3). Father’s post-order filings and the GAL’s correspondence reflect that Hope Council later terminated services. (R.341; R.343).

The circuit court’s oral ruling included remarks attributing the cause of the situation to Father personally. Tr.9-30-25:11–12 (R.258). Father appeals the custody and placement provisions of the Final Order and related rulings affecting the statutory best-interests determination under Wis. Stat. § 767.41.

STATEMENT OF FACTS

The following facts are drawn from the appellate record.

1. CPS and law enforcement did not substantiate the core allegations as charged.

Child Protective Services investigated allegations concerning Father and did not substantiate maltreatment in Father’s home. Tr.1-21-25:15:10–14 (R.192). Detective Justin McCoy testified at trial that there was insufficient evidence to request charges for mental harm or neglect and that no related criminal charges were filed. Tr.9-29-25:195:1–18 (R.312).

2. Despite that, Father remained restricted to supervised contact under successive orders.

Notwithstanding the unsubstantiated CPS finding and the absence of criminal charges, Father’s contact with the children remained supervised—first through Out & About and later through Hope Council—under temporary orders and ultimately the final order at issue. (R.258:2–3).

3. The record reflects a positive parent–child relationship and the children’s desire for more time.

The record includes evidence that the children love Father, enjoy contact, and want to see him more. Tr.5-29-25:8–9 (R.156); Tr.6-26-25:5–7 (R.177). Eden expressed a desire to return to an equal shared placement schedule; Michael expressed a desire for more time with Father, though not yet in Father’s home. Tr.6-26-25:5–6 (R.177).

4. The GAL and therapist input reflected progress beyond permanent supervision.

After reviewing supervised-visit videos and consulting the son's therapist, the Guardian ad Litem reported the children's interactions with Father were appropriate, the children enjoyed time with Father, and the son's therapist believed the child had tools in place to move toward more time and some unsupervised placement. Tr.5-29-25:8–9 (R.156). The court nonetheless declined to authorize unsupervised time and continued strict supervision. Tr.5-29-25:13–14 (R.156).

5. The Final Order imposed a near-minimal supervised-only regime, with no step-up plan or endpoint.

The Final Order ordered that Father “shall have supervised secondary physical placement” through Hope Council for one (1) to two (2) hours one time per week, with dates “to be determined between the parties and THE HOPE COUNCIL.” (R.258:2–3). The court further stated the parties “may agree upon additional periods of placement and additional supervisors,” but absent agreement the Hope Council structure “will continue.” (R.258:2–3). The order contains no written step-up schedule, no objective benchmarks, and no defined endpoint for supervision. (R.258:2–3).

6. Hope Council later terminated services, demonstrating the order's dependence on third-party gatekeeping.

After entry of the Final Order, Hope Council later terminated services. Father filed an Emergency Motion regarding Hope Council termination. (R.341). The Guardian ad Litem submitted correspondence regarding the termination. (R.343). As a result, the Final Order's placement structure became practically contingent on the continued willingness and availability of the third-party provider—without any new judicial findings modifying placement. (R.341; R.343; R.258:2–3).

ARGUMENT

I. THE CIRCUIT COURT MISAPPLIED WIS. STAT. § 767.41 AND IMPOSED AN EXTREME, OPEN-ENDED SUPERVISED-ONLY PLACEMENT REGIME WITHOUT ADEQUATE BEST-INTERESTS FINDINGS OR EVIDENTIARY SUPPORT.

The Final Order is reversible because it imposes supervised-only placement without the findings and record support required by Wis. Stat. § 767.41 and Wisconsin due-process standards.

A. Standard of review and governing law

Custody and placement determinations are discretionary. This Court will uphold them only if the circuit court examined the relevant facts, applied the correct legal standard, and reached a conclusion a reasonable judge could reach through a rational process. *Landwehr v. Landwehr*, 2006 WI 64, ¶¶13–14, 291 Wis. 2d 49, 715 N.W.2d 180; *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). Whether the circuit court applied the correct legal framework under Wis. Stat. § 767.41 presents a question of law reviewed de novo.

Placement orders also implicate the constitutional dimension of the parent–child relationship. A fit parent has a fundamental liberty interest in the care, custody, and control of his children. *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000). When state action substantially threatens that relationship, due process requires reliability proportional to the severity of the deprivation. *Santosky v. Kramer*, 455 U.S. 745, 753–54 (1982).

Wis. Stat. § 767.41(4)(a)2 requires the court to set a placement schedule providing “regularly occurring, meaningful periods of physical placement” and maximizing time with each parent consistent with the children’s welfare and practical constraints. Placement may be denied only upon findings that it “would endanger the child’s physical, mental or emotional health.” Wis. Stat. § 767.41(4)(b). Wisconsin law recognizes that severe restrictions approaching the practical denial of placement must be justified by the statutory standard and supported by the record. *Wolfe v. Wolfe*, 2000 WI App 93, ¶¶8–10, 234 Wis. 2d 449, 610 N.W.2d 222. Section 767.41 does not create a presumption of equal placement, but it requires

genuinely meaningful time absent a record-supported statutory basis for extreme restriction. *Keller v. Keller*, 2002 WI App 161, ¶¶2, 12, 256 Wis. 2d 401, 647 N.W.2d 426.

B. The Final Order imposes an extreme, near-minimal supervised-only regime with no step-up plan, benchmarks, or endpoint

The Final Order orders that Father “shall have supervised secondary physical placement” through Hope Council for one (1) to two (2) hours one time per week, with dates “to be determined between the parties and THE HOPE COUNCIL.” (R.258:2–3). It provides that additional placement or supervisors may occur only by agreement, and absent agreement the Hope Council structure continues. (R.258:2–3). The order contains no step-up schedule, no objective benchmarks, and no endpoint. (R.258:2–3).

A one-to-two-hour weekly supervised-only schedule imposed without any defined reunification path is an extreme restriction. It does not resemble a placement schedule that provides “regularly occurring, meaningful periods” and “maximizes” time as required by § 767.41(4)(a)2. Where an order approaches a near-denial of meaningful placement, the court must explain—based on record evidence—why more meaningful placement cannot safely occur. *Wolfe*, 2000 WI App 93, ¶¶8–10; Wis. Stat. § 767.41(4)(b).

C. The record does not bridge the gap between the evidence and an open-ended near-minimum placement order

The record includes: (1) CPS’s unsubstantiated maltreatment finding as to Father, and (2) law-enforcement testimony that no criminal charges were requested or filed for mental harm or neglect. Tr.1-21-25:15:10–14 (R.192); Tr.9-29-25:195:1–18 (R.312). The record also includes evidence that the children love Father, enjoy contact, and wish to see him more. Tr.5-29-25:8–9 (R.156); Tr.6-26-25:5–7 (R.177). The GAL further reported appropriate interactions and therapist input supporting progress beyond strict supervision. Tr.5-29-25:8–9 (R.156).

Yet the Final Order imposed near-minimum supervised-only placement without identifying evidence demonstrating that placement beyond one to

two hours weekly would “endanger” the children under § 767.41(4)(b), and without explaining why less restrictive alternatives could not protect the children. (R.258:2–3). Where the practical effect is a severe diminution of the parent–child relationship, due process underscores the need for a statute-faithful, evidence-based decision-making process. *Troxel*, 530 U.S. at 65–66; *Santosky*, 455 U.S. at 753–54.

D. The absence of a defined reunification structure renders the schedule unreasonable on this record

A reasonable exercise of discretion on this record would, at minimum: (1) specify objective conditions for expansion; (2) implement a defined step-up schedule; or (3) explain with record support why any placement beyond one to two hours—supervised or partially unsupervised—would endanger the children. The Final Order does none of these. (R.258:2–3). This failure is incompatible with § 767.41(4)(a)2’s requirement that the court set a meaningful schedule maximizing time consistent with the children’s welfare.

E. Relief requested under Issue I

Because the circuit court imposed an extreme, indefinite supervised-only regime without the required statutory findings and without a rational, evidence-based explanation, the custody and placement provisions must be reversed and remanded for a new determination consistent with Wis. Stat. § 767.41. *Landwehr*, 2006 WI 64, ¶¶13–14; *Hartung*, 102 Wis. 2d at 66.

II. THE FINAL ORDER IS LEGALLY DEFECTIVE BECAUSE IT IMPROPERLY DELEGATES PLACEMENT FEASIBILITY AND SCHEDULING TO A THIRD PARTY AND CREATES AN INDEFINITE, NON-ENFORCEABLE PLACEMENT REGIME.

The Final Order is reversible because it improperly delegates the feasibility and scheduling of placement to a third-party provider, leaving no definite, enforceable placement schedule.

A. Standard of review and governing principles

Whether the circuit court applied the correct legal standard in structuring a placement order under Wis. Stat. § 767.41 is reviewed de novo. *Landwehr*, 2006 WI 64, ¶¶13–14. A court may consider professional input, but it may not delegate core judicial responsibilities regarding placement to third parties. *Biel v. Biel*, 114 Wis. 2d 191, 199–201, 336 N.W.2d 404 (Ct. App. 1983). Child-related provisions remain subject to continuing judicial responsibility and review consistent with best interests. *Herrell v. Herrell*, 144 Wis. 2d 479, 486–88, 424 N.W.2d 403 (1988).

B. The Final Order delegates operative placement control to Hope Council and makes the “agreement” clause illusory

The Final Order provides that placement occurs “through THE HOPE COUNCIL” and that dates are “to be determined between the parties and THE HOPE COUNCIL.” (R.258:2–3). It provides that additional supervisors may occur only by agreement, and absent agreement the Hope Council structure continues. (R.258:2–3).

This is not the court “set[ting]” a schedule as required by § 767.41(4)(a)2. It is the court placing the feasibility and scheduling of court-ordered placement into a third party’s hands and turning “agreement” into the controlling mechanism for alternatives. *Biel* holds that a court may not abdicate placement control to a third party; the court must retain judicial responsibility for the operative terms of placement. 114 Wis. 2d at 199–201.

C. Lawrence illustrates the boundary—and this order crosses it

In *Lawrence v. Lawrence*, the Court of Appeals upheld a limited mechanism in a narrow context where the circuit court’s authority and oversight remained intact and the mechanism did not substitute for judicial decision-making. 2004 WI App 170, ¶¶13–18, 276 Wis. 2d 403, 687 N.W.2d 748. The controlling principle is not that third-party involvement is always prohibited; it is that third-party mechanisms cannot become a replacement for the court’s duty to set enforceable terms and retain meaningful control.

Here, the Final Order does precisely what Lawrence cautions against: it makes Hope Council the default gatekeeper; it makes dates “to be determined” with Hope Council; and it conditions alternatives on agreement. (R.258:2–3). That structure permits placement to become contingent on provider availability and external conditions rather than judicially set, enforceable terms grounded in § 767.41 findings.

D. The delegation defect caused concrete harm: Hope Council termination demonstrates the order can function as an unreviewed elimination of placement

Hope Council later terminated services. (R.341; R.343). Once Hope Council terminated services, the Final Order’s placement regime became practically unworkable without new judicial findings or a judicially set alternative schedule. (R.341; R.343). That is the predictable failure mode of an improperly delegated placement order: a provider decision becomes the functional determinant of whether placement occurs, without any new endangerment finding under § 767.41(4)(b). This is incompatible with the court’s continuing responsibility over child-related provisions. Herrell, 144 Wis. 2d at 486–88.

E. Remedy under Issue II

Because the Final Order improperly delegates placement feasibility and scheduling and creates a non-enforceable, veto-prone structure, the placement provisions must be reversed and remanded with directions that the circuit court set a definite, enforceable placement schedule under § 767.41(4)(a)2, including a structured reunification/step-up framework with objective benchmarks and review. Landwehr, 2006 WI 64, ¶¶13–14; Hartung, 102 Wis. 2d at 66; Biel, 114 Wis. 2d at 199–201; Herrell, 144 Wis. 2d at 486–88; Lawrence, 2004 WI App 170, ¶¶13–18.

III. THE CIRCUIT COURT ERRONEOUSLY EXERCISED ITS DISCRETION BY FAILING TO PROPERLY WEIGH THE § 767.41(5)(am) GATEKEEPING AND CO-PARENTING FACTORS AND BY IMPOSING A PLACEMENT STRUCTURE THAT REWARDS OBSTRUCTION.

The Final Order is reversible because the court failed to properly weigh the gatekeeping/co-parenting factors required by Wis. Stat. § 767.41(5)(am), thereby rewarding obstruction and enabling a veto-by-refusal placement structure.

A. Standard of review and governing law

Custody and placement determinations are discretionary, but a discretionary decision must be grounded in the correct legal framework and must reflect a rational process that considers the relevant statutory factors. *Landwehr v. Landwehr*, 2006 WI 64, ¶¶13–14, 291 Wis. 2d 49, 715 N.W.2d 180; *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

Wis. Stat. § 767.41(5)(am) requires the circuit court to consider “all facts relevant to the best interest of the child,” including, as relevant here:

1. “the need for regularly occurring and meaningful periods of physical placement with each parent,” § 767.41(5)(am)10; and
2. “the extent to which each parent is willing and able to support the other parent’s relationship with the child,” § 767.41(5)(am)11.

These factors matter most in cases where one parent controls access to the children through supervision logistics, scheduling, and consent-based “agreement” provisions. A placement order that makes the noncustodial parent’s ability to exercise placement dependent on the other parent’s cooperation must be evaluated against § 767.41(5)(am)11, because it risks converting parental obstruction into a best-interests outcome.

B. The record reflects gatekeeping and an unwillingness or inability to co-parent, yet the Final Order does not reconcile that evidence with its placement structure

The record reflects evidence that Mother was unwilling or unable to co-parent effectively. Tr.9-29-25:54:15–22 (R.312). The Final Order nonetheless imposed a supervised-only structure that expressly depends on parental agreement for any meaningful alternative supervision or additional placement time. (R.258:2–3).

That structure makes the § 767.41(5)(am)11 factor dispositive in practice: if one parent refuses to support the other parent’s relationship with the children—by refusing to agree to alternate supervisors or additional placement—the order ensures the restrictive regime continues by default. (R.258:2–3).

This is not hypothetical. The Final Order makes placement feasibility contingent on Hope Council’s availability and makes alternatives dependent on parental agreement—so placement can stagnate or collapse without any new best-interests findings under Wis. Stat. § 767.41. (R.258:2–3). After entry of the order, Hope Council terminated services. (R.341; R.343.) That sequence confirms the delegation defect has real-world consequences: the parent-child relationship can be functionally suspended by third-party unavailability without renewed judicial findings.

C. The court did not meaningfully apply § 767.41(5)(am)10–11 to the specific placement structure it imposed

The Final Order contains no analysis explaining how an open-ended one-to-two-hour weekly supervised regime—dependent on agreement for any expansion—satisfies § 767.41(5)(am)10’s directive to provide regularly occurring and meaningful placement with each parent. (R.258:2–3). Nor does it explain how the chosen structure accounts for § 767.41(5)(am)11’s requirement to weigh each parent’s willingness and ability to support the other parent’s relationship with the children.

The omission is outcome-determinative. In a case where the court elects a consent-driven supervisory structure, the court must address whether the parent with primary placement is willing to cooperate with mechanisms that allow the children to maintain a meaningful relationship with the other parent. Failure to do so is a failure to consider a mandatory

factor, and that is an erroneous exercise of discretion. Landwehr, 2006 WI 64, ¶¶13–14.

D. The order’s structure converts gatekeeping into a best-interests outcome and undermines § 767.41’s policy of meaningful placement

Section 767.41 is structured to protect the child’s interest in maintaining a relationship with both parents, absent evidence-based findings that such placement would endanger the child. § 767.41(4)(a)2; § 767.41(4)(b). The Final Order’s design—Hope Council supervision as the default, alternatives only by agreement, and continuation of the restrictive regime absent agreement—does the opposite. It creates an incentive structure in which non-cooperation preserves the status quo and can be used to argue that Father’s time is “impractical” or “not feasible,” even though the impracticality is created by obstruction and veto power.

That placement architecture is inconsistent with § 767.41’s directive to maximize meaningful time with both parents. § 767.41(4)(a)2. It is also inconsistent with a rational best-interests process because it fails to address the predictable consequences of gatekeeping where one parent has expressed inability or unwillingness to co-parent. Tr.9-29-25:54:15–22 (R.312); (R.258:2–3).

E. Remedy under Issue III

Because the circuit court failed to properly weigh § 767.41(5)(am)10–11 and imposed a placement structure that rewards obstruction and places meaningful placement at the mercy of consent and third-party availability, this Court should reverse the placement provisions of the October 24, 2025 Final Order and remand with directions that the circuit court:

- (1) make explicit findings under § 767.41(5)(am)10–11; and
- (2) enter a definite, enforceable placement schedule that does not condition meaningful placement on unilateral parental veto.

Landwehr, 2006 WI 64, ¶¶13–14; Hartung, 102 Wis. 2d at 66.

IV. THE COURT'S HANDLING OF GAL/PROVIDER CONFLICTS AND ITS RELIANCE ON THAT PROVIDER FRAMEWORK CREATED A STRUCTURALLY UNFAIR PROCESS THAT UNDERMINED THE CUSTODY AND PLACEMENT DETERMINATION.

The Final Order is reversible because the court's handling of GAL/provider conflicts created a structurally unfair process that undermined the custody/placement decision.

A. Standard of review and governing law

The ultimate custody and placement determination is discretionary, but whether the process satisfied statutory and constitutional requirements—including whether the court's management of conflicts created a structurally unfair proceeding—is reviewed de novo. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Landwehr v. Landwehr*, 2006 WI 64, ¶13, 291 Wis. 2d 49, 715 N.W.2d 180.

Under Wis. Stat. § 767.407(4), a guardian ad litem “shall be an advocate for the best interests of a minor child” and “shall function independently, in the same manner as an attorney for a party.” A GAL is not a neutral fact-finder or expert witness whose views substitute for the circuit court's independent analysis under § 767.41. *Goberville v. Goberville*, 2005 WI App 58, ¶17, 280 Wis. 2d 405, 694 N.W.2d 503; *Hollister v. Hollister*, 173 Wis. 2d 413, 418–19, 496 N.W.2d 642 (Ct. App. 1992). Where the court is repeatedly alerted to conflicts affecting providers or the information pipeline into the custody decision but declines to address them, the risk of an erroneous deprivation of meaningful placement increases, implicating due process. *Mathews*, 424 U.S. at 335.

B. Father repeatedly placed provider-conflict concerns before the court, including PSG/Pathways and Hollie White

The record reflects repeated, formal conflict notice regarding PSG/Pathways and therapist Hollie White, including written preservation and litigation-hold correspondence and motion practice challenging the use of conflicted providers and testimony. (R.173; R.201; R.203). Counsel raised on the record concerns related to the therapy-provider framework

and the presence of overlapping roles and relationships within the provider setting. Tr.3-4-25:12–16 (R.191); Tr.1-21-25 (R.192).

At trial, Mother testified that Father raised objections to the provider framework and expressed his concern that the Hollie/PSG–Pathways situation created a conflict, while Mother maintained that the providers were professional and that it “shouldn’t be an issue.” Tr.9-29-25:67–68 (R.312).

C. The court dismissed the conflict concerns without an on-record analysis sufficient to protect structural fairness

Rather than conduct an evidentiary or analytical inquiry into whether the provider structure created divided loyalties, distorted documentation, or unreliable information flow into the custody decision, the court rejected the conflict concerns in generalized terms and endorsed the provider framework. Tr.3-4-25:15–16 (R.191).

That response did not address the operative question: whether, in this case, the provider framework and witness roles created a material risk of distorted evidence in a proceeding deciding the scope of a parent’s relationship with minor children. A generalized statement of trust in “professional ethics” is not a substitute for the court’s duty to ensure a structurally fair process in a case where placement is reduced to near-minimal supervised contact and the record is heavily shaped by provider documentation and summaries.

D. The GAL’s role and reliance on provider information magnified the structural risk

The custody and placement record in this case was substantially shaped by institutional information from the same provider framework whose neutrality was repeatedly challenged. The GAL reported reviewing supervised-visit videos and communicated therapist opinions regarding readiness for increased time. Tr.5-29-25:8–9 (R.156). The GAL also discussed provider-generated documentation in describing progress and needs. Tr.6-11-25:4–7 (R.157).

Because the GAL functions as an attorney-advocate for best interests under § 767.407, the GAL's recommendations do not relieve the court of the duty to test the reliability of the information pipeline into the best-interests analysis—especially where one side repeatedly asserts that the provider framework is conflicted and the court's remedy is essentially to accept the framework without inquiry. *Goberville*, 2005 WI App 58, ¶17; *Hollister*, 173 Wis. 2d at 418–19.

E. The court ignored or failed to implement progress toward less restrictive placement even when the GAL and therapist supported it

In May 2025, the GAL reported that this was not a permanent supervision case and relayed that the son's therapist believed the child had the tools to handle more time and some unsupervised placement. Tr.5-29-25:8–9 (R.156). Defense counsel proposed limited unsupervised time in public settings. Tr.5-29-25:12–13 (R.156). The court nevertheless declined to authorize unsupervised time and continued supervision without a defined step-up structure. Tr.5-29-25:13–14 (R.156).

By June 26, 2025, the GAL again reported that Eden wanted equal shared placement and Michael wanted more time with Father. Tr.6-26-25:5–7 (R.177). The court still declined to move toward unsupervised time or to adopt a written reunification plan. Tr.6-26-25:6–8 (R.177).

The result is a record where (1) the court rejected conflict concerns and endorsed the provider framework, (2) the GAL and therapist information supported progress beyond strict supervision, yet (3) the court imposed and later finalized an open-ended near-minimum supervised-only regime. (R.258:2–3). That combination undermines confidence that the final placement determination reflects a reliable and fairly developed record.

F. Prejudice: the conflict-handling failures distorted the evidentiary foundation for an extreme placement restriction

The prejudice here is not speculative. The Final Order imposed one to two hours per week of supervised placement with no step-up plan and no endpoint. (R.258:2–3). When a court adopts a placement restriction that

severe, the integrity of the evidentiary foundation matters. A process that (a) declines to address repeated conflict warnings about the provider framework, (b) relies on that framework and related narratives, and (c) fails to adopt any defined reunification path even when the GAL/therapist supported progress, creates an unacceptable risk that the final order rests on an unreliable or structurally distorted record. Mathews, 424 U.S. at 335.

G. The court relied on therapist testimony and diagnostic labels without a developed foundation, while conflict concerns remained unresolved

The Final Order's oral reasons relied on therapy-driven mental-health concerns as a placement predicate while imposing an extreme, provider-controlled placement structure. (R.258:2–3, 5–18). When a court uses therapy testimony and diagnostic labels to justify a restriction approaching a near-denial of meaningful placement, the record must establish the scope and inputs of that testimony and the reliability of the predicate.

Here, the therapist testimony the court invoked was expressly bounded. Michael's therapist testified she has never met Father and that her understanding of family dynamics came "from Mom." (R.312:102:22–103:4; R.312:103:15–23). She described periods of dysregulation as correlating with either visitation with Father or a rough week at school—correlation that does not, by itself, establish causation sufficient to support an extreme restriction. (R.312:102:15–17). She further testified that the PTSD diagnosis and assessment were rooted in clinical intake and behaviors reported through intake, and that an alleged incident was not the sole basis. (R.312:107:37–108:23).

The record also contained conflict-risk evidence within the same provider ecosystem, reinforcing the need for careful judicial scrutiny before treating the therapy lane as neutral and dispositive. (R.312:106:1–107:14; R.201:1–2). Yet the court did not develop or analyze those concerns on the record and instead used the therapy premise to support a placement regime that remains indefinite and contingent on provider

availability. (R.258:2–3, 5–18). That combination—bounded inputs, undeveloped conflict concerns, and an extreme provider-controlled remedy—reflects an erroneous exercise of discretion.

H. Remedy under Issue IV

Because the court’s handling of GAL/provider conflicts and its reliance on that provider framework created a structurally unfair process undermining the custody and placement determination, this Court should reverse the custody and placement provisions of the October 24, 2025 Final Order and remand with directions that the circuit court ensure a conflict-free evidentiary foundation—including consideration of neutral providers where necessary—and conduct a full § 767.41 best-interests analysis on a structurally fair record. *Landwehr*, 2006 WI 64, ¶¶13–14; *Goberville*, 2005 WI App 58, ¶17; *Hollister*, 173 Wis. 2d at 418–19.

V. THE COURT MISUSED CONTEMPT AND SPEECH SANCTIONS AS DE FACTO CUSTODY TOOLS, CONTRARY TO WIS. STAT. CH. 785 AND WIS. STAT. § 767.41.

The Final Order is reversible because the court misused contempt and speech-related enforcement as de facto custody/placement tools contrary to Wis. Stat. ch. 785 and Wis. Stat. § 767.41.

A. Standard of review and governing law

This argument does not seek review of the separate contempt/speech-restriction appeal; it addresses how contempt-based restrictions were used as substantive placement drivers in the Final Order now before this Court. (R.258).

Whether the circuit court acted within its statutory authority under Wis. Stat. ch. 785, and whether sanctions were properly characterized and imposed as remedial or punitive, are questions of law reviewed de novo. *Frisch v. Henrichs*, 2007 WI 102, ¶¶32–35, 304 Wis. 2d 1, 736 N.W.2d 85. The selection and scope of remedial sanctions are reviewed for erroneous exercise of discretion, but only after the court has applied the correct statutory framework. *Id.* ¶22.

Chapter 785 defines contempt and limits sanctions to those authorized by statute. Wis. Stat. §§ 785.01, 785.02, 785.04. Remedial sanctions are forward-looking and designed to terminate a continuing contempt or compensate a party for losses. § 785.04(1); Frisch, 2007 WI 102, ¶27. Punitive sanctions punish past conduct and require criminal-type procedures. § 785.04(2); Frisch, 2007 WI 102, ¶¶32–35. Contempt sanctions may not be used as an end-run around the custody/placement framework of Wis. Stat. § 767.41 or the placement-enforcement procedures of § 767.471 by converting speech compliance into a custody determinant.

B. The court imposed broad speech restrictions and stayed jail sanctions and then treated the resulting “contempt history” as a placement factor

The record reflects that the court entered broad restrictions on public commentary and online content and imposed contempt-related sanctions, including a stayed jail term, in response to alleged violations. (R.112; R.151; Tr.6-11-25:4–7 (R.157)). These restrictions extended beyond narrow child-privacy measures and operated as an ongoing regime regulating speech and access.

June 11 is illustrative: the court expanded contempt-based restrictions to regulate routine parent access (including school-related access), and the case then treated the resulting “compliance history” as a best-interests placement consideration rather than confining enforcement consequences to the ch. 785 framework. (Tr.6-11-25:4–7 (R.157); R.258:5–18).

The problem in this appeal is not merely the existence of contempt sanctions in a vacuum. It is that the court treated the contempt framework—and Father’s compliance or perceived noncompliance with speech-related restrictions—as part of a “pattern” used to justify severely restricted placement in the Final Order. (R.258:2–3; Tr.9-30-25 (R.258:5–18)). In effect, contempt became a continuing custody lever rather than a discrete enforcement mechanism confined to the ch. 785 framework.

C. Using contempt as a custody lever distorts the § 767.41 best-interests inquiry and bypasses the statutory placement framework

Section 767.41 requires custody and placement decisions to be made based on the children’s best interests and the statutory factors. §§ 767.41(1), (5)(am). When contempt sanctions are used to impose broad speech restrictions with stayed incarceration exposure, and then the existence of those sanctions is treated as “character evidence” supporting severe placement restriction, the custody decision becomes tethered to the contempt framework rather than to a best-interests analysis grounded in child welfare evidence.

That approach bypasses the statutory structure in two ways:

1. It displaces § 767.41 with compliance-driven reasoning. Instead of making explicit findings explaining why increased placement would endanger the children’s physical, mental, or emotional health (§ 767.41(4)(b)), the analysis becomes: “contempt history” and “speech compliance” justify continued restriction. That is not the statutory test.
2. It circumvents § 767.471’s placement-enforcement scheme. Placement enforcement and disputes over compliance are addressed by § 767.471 and related procedures. Contempt cannot be used as a substitute custody mechanism that functionally controls placement outcomes without the required best-interests findings.

D. The contempt regime created asymmetric litigation consequences and then fed the final placement restriction

The contempt and speech restrictions had collateral effects relevant to this appeal because they shaped the posture and evidentiary framing of Father’s efforts to seek relief. The record reflects that Father raised concerns and sought reconsideration or enforcement in later proceedings, yet the court maintained the restrictive structure and treated Father’s litigation conduct and speech as part of the negative “pattern” supporting supervision. (See Tr.8-13-25 (R.193); R.258).

This dynamic matters because it shows how contempt became a continuing, self-reinforcing mechanism: sanctions were imposed, the existence of sanctions then became a “pattern” factor, and that “pattern” was used to support the most restrictive placement outcome—without the

findings required to justify an order that approaches the denial of meaningful placement under § 767.41. (R.258:2–3; Tr.9-30-25:11–12 (R.258)).

E. Remedy under Issue V

Because the circuit court used contempt and speech sanctions as functional custody/placement levers and then relied on that contempt framework as part of the basis for the Final Order’s severe placement restriction, the custody and placement provisions of the October 24, 2025 Final Order must be reversed and remanded for a new custody/placement determination under Wis. Stat. § 767.41, free from contempt-driven distortion. Frisch, 2007 WI 102, ¶¶32–35; Wis. Stat. §§ 785.01–.04, 767.41.

On remand, any contempt sanctions must be confined to the statutory limits of ch. 785 and may not be used as substitutes for, or determinative drivers of, the best-interests placement analysis required by § 767.41.

VI. THE COURT’S ON-RECORD COMMENTS AND MISSTATEMENTS OF TESTIMONY CREATE AN APPEARANCE OF BIAS AND AN OBJECTIVE RISK OF ACTUAL BIAS REQUIRING REASSIGNMENT ON REMAND.

Reassignment is warranted because the court’s on-record remarks and treatment of the case create an appearance of bias and an objective risk of actual bias.

A. Standard of review and governing law

Due process guarantees a fair hearing before an impartial decision-maker. Whether a judge is objectively biased is a question of law reviewed de novo. *State v. Gudgeon*, 2006 WI App 143, ¶¶11, 21–24, 295 Wis. 2d 189, 720 N.W.2d 114; *State v. Herrmann*, 2015 WI 84, ¶3, 364 Wis. 2d 336, 867 N.W.2d 772. The test is objective: whether a reasonable, well-informed person, knowing the relevant facts and circumstances, would question the judge’s impartiality. *Gudgeon*, 2006 WI App 143, ¶24.

Judicial bias is structural error not subject to harmless-error analysis. *Herrmann*, 2015 WI 84, ¶27. The Wisconsin Supreme Court’s decision in *Miller v. Carroll (In re Paternity of B.J.M.)*, 2020 WI 56, ¶¶22–25, 35, 392

Wis. 2d 49, 944 N.W.2d 542, applying *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), recognizes that due process requires reassignment when circumstances create a serious, objective risk of actual bias.

B. The court disparaged Father’s filings in a manner suggesting devaluation of his advocacy after he proceeded pro se

At the August 13, 2025 hearing, the court described Father’s pro se motions as a “cacophony of filings,” stated it was “not sure if you’re using AI or not,” and characterized filings as “double speak,” “nonsensical,” and “duplicative.” Tr.8-13-25:3:14–21, 37:1–7 (R.193). These were not narrow critiques of a single motion’s form. They were global statements that portrayed Father’s written advocacy as suspect and unreliable.

An objective observer could reasonably conclude that such remarks reflect a predisposition to discount Father’s submissions as inherently not credible or not worthy of careful consideration—particularly where Father was proceeding pro se and relying on written motions to preserve issues and seek relief.

C. The court personalized blame in the final ruling rather than grounding the decision in statutory best-interests findings

In its September 30, 2025 oral ruling, the court told Father:

“You are clearly the issue and the problem here. I’m not sure if your ego and pride won’t let you see that or if you honestly are incapable of self-reflection.” Tr.9-30-25:11:21–25 (R.258).

The court further stated:

“You testified that you are ‘fighting an uphill battle to prove’ yourself, but you don’t seem to realize that you are the hill. You’ve created the hill. This is all on you... And you have made this all about you and not about the best interest of your children.” Tr.9-30-25:12:4–11 (R.258).

These remarks frame the outcome in terms of Father’s personal traits (“ego,” “pride,” “incapable of self-reflection”) and assign sweeping responsibility (“this is all on you”), rather than explaining how the statutory best-interests factors under § 767.41 justify an open-ended,

near-minimum supervised-only placement regime. When such remarks accompany the imposition of the most restrictive placement structure, they contribute to the appearance that the decision was driven by a negative personal view of Father rather than a neutral statutory analysis.

D. The court's misattribution of the co-parenting evidence reinforces the appearance of a predetermined narrative

A dispositive best-interests factor in high-conflict cases is each parent's willingness and ability to support the other parent's relationship with the children. Wis. Stat. § 767.41(5)(am)11. The record reflects Mother's testimony acknowledging she was not an effective co-parent and/or was unwilling to co-parent. Tr.9-29-25:54:15–22 (R.312).

Father contends the court misattributed or misstated testimony regarding co-parenting in its oral ruling, treating co-parenting failure as Father's admission rather than accurately reflecting the record. Tr.9-30-25 (R.258:5–18); Tr.9-29-25:54:15–22 (R.312). On this record, where the court simultaneously imposed a placement structure that becomes dependent on Mother's cooperation and agreement, misstatement of the co-parenting evidence is not a trivial error. It supports the objective appearance that the court adopted a narrative in which Father was the sole cause of the children's restricted relationship with him, while minimizing contrary record evidence of Mother's gatekeeping.

E. In context, the remarks and misstatements create an appearance of bias and serious risk of actual bias

These statements occur alongside other record features that an objective observer would view as compounding the risk of partiality, including:

- a) the court's repeated rejection of conflict concerns without meaningful analysis (Tr.3-4-25:15–16 (R.191));
- b) the extreme placement structure lacking a defined reunification path (R.258:2–3); and

- c) the order's dependence on agreement and third-party availability, combined with the order's agreement-dependent structure to alternate supervision. (R.258:2–3; R.258:2–3).

Taken together, the record supports more than subjective dissatisfaction. It supports an objective concern that Father's evidence and statutory arguments were not weighed with the neutrality due process requires. Gudgeon, 2006 WI App 143, ¶24; Miller, 2020 WI 56, ¶¶22–25.

F. Remedy: reassignment is required on remand

Where objective bias is established, the error is structural and requires reassignment on remand. Herrmann, 2015 WI 84, ¶27; Miller, 2020 WI 56, ¶35. The combination of global disparagement of Father's filings, personalized blame in the final ruling, and misstatement of key co-parenting evidence creates at minimum an appearance of bias with a serious, objective risk of actual bias.

Accordingly, if this Court remands for a new custody and placement hearing, it should direct that further proceedings occur before a different circuit judge.

VII. CUMULATIVE ERROR AND STRUCTURAL UNFAIRNESS REQUIRE REVERSAL AND REMAND, WITH REASSIGNMENT.

Even if any single error were deemed harmless, the cumulative effect of the errors requires reversal and remand, and reassignment is warranted.

A. Standard of review

Whether cumulative error deprived a litigant of a fair proceeding is a question of law reviewed de novo. State v. Thiel, 2003 WI 111, ¶¶59–60, 264 Wis. 2d 571, 665 N.W.2d 305. While a single error may be deemed harmless in isolation, multiple errors can combine to undermine confidence in the outcome. Id. Structural error—such as objective judicial bias—cannot be treated as harmless. State v. Herrmann, 2015 WI 84, ¶27, 364 Wis. 2d 336, 867 N.W.2d 772.

B. The combined effect of the errors undermines confidence in the Final Order

Even if any individual defect were viewed as insufficient alone, the combined effect of the record errors and structural defects here undermines confidence that the Final Order reflects a neutral, reasoned application of Wis. Stat. § 767.41 to the children's best interests.

1. Extreme supervised-only placement at the margins of § 767.41.
The Final Order restricts Father to one (1) to two (2) hours of supervised placement one time per week through Hope Council, without any written reunification or step-up plan, objective benchmarks, or endpoint. (R.258:2–3). The record includes unsubstantiated CPS findings and no criminal charges, as well as evidence of the children's positive relationship with Father and desire for more time. Tr.1-21-25:15:10–14 (R.192); Tr.9-29-25:195:1–18 (R.312); Tr.5-29-25:8–9 (R.156); Tr.6-26-25:5–7 (R.177).
2. The Final Order makes placement contingent on Hope Council and contemplates alternatives only through agreement-dependent mechanisms, leaving placement feasibility and scheduling functionally outside direct judicial control. (R.258:2–3). Hope Council later terminated services. (R.341; R.343).
3. Failure to weigh gatekeeping and co-parenting evidence required by § 767.41(5)(am)10–11.
The record includes Mother's testimony acknowledging she was not an effective co-parent and/or unwilling to co-parent. Tr.9-29-25:54:15–22 (R.312). The Final Order's structure—mutual agreement required for alternate supervision; restrictive default otherwise—magnifies the importance of § 767.41(5)(am)11, yet the outcome effectively rewards refusal to cooperate rather than addressing it through enforceable placement structure. (R.258:2–3).
4. Unresolved provider-conflict concerns and structural unreliability in the evidentiary record.
Father repeatedly raised conflicts involving PSG/Pathways and Hollie White through formal filings and record statements. (R.173; R.201; R.203; Tr.3-4-25:12–16 (R.191)). The court dismissed these concerns without meaningful on-record analysis and continued reliance on the same provider framework. Tr.3-4-25:15–16 (R.191); Tr.9-29-25:67–68 (R.312). In

a case turning heavily on therapist/provider information and narrative framing, leaving conflict concerns unresolved creates an unacceptable risk that the best-interests record was structurally distorted.

5. Contempt/speech sanctions used as functional custody tools.

The contempt/speech framework imposed broad restrictions and significant sanctions under ch. 785. (R.112; R.151; Tr.6-11-25:4–7 (R.157)). The court later relied on this regime as part of the “pattern” supporting the placement restriction in the Final Order, thereby folding enforcement sanctions into substantive best-interests decision-making. (R.258:2–3; Tr.9-30-25 (R.258:5–18)). That is an improper substitution of contempt enforcement for the § 767.41 framework.

6. Appearance of bias and misstatement of key testimony.

The court made global remarks disparaging Father’s filings (“AI,” “double speak,” “nonsensical,” “duplicative”) and personalized blame in the final ruling (“you are clearly the issue and the problem”). Tr.8-13-25:3:14–21, 37:1–7 (R.193); Tr.9-30-25:11–12 (R.258). The court also misattributed or misstated co-parenting evidence central to § 767.41(5)(am)11. Tr.9-29-25:54:15–22 (R.312); Tr.9-30-25 (R.258:5–18). These features, taken together, create at minimum an appearance of bias and an objective risk of actual bias. Gudgeon, 2006 WI App 143, ¶24; Herrmann, 2015 WI 84, ¶27; Miller, 2020 WI 56, ¶¶22–25.

C. Remedy

The cumulative effect of these errors and structural defects requires reversal of the custody and placement provisions of the October 24, 2025 Final Order and remand for a new custody/placement determination consistent with Wis. Stat. § 767.41. Thiel, 2003 WI 111, ¶¶59–60; Landwehr, 2006 WI 64, ¶¶13–14.

Because the record also establishes an appearance of bias and an objective risk of actual bias, any remand should be to a different circuit judge. Herrmann, 2015 WI 84, ¶27; Miller, 2020 WI 56, ¶35.

CONCLUSION

For the reasons set forth above, Respondent–Appellant Mathiew Rae Fox respectfully requests that this Court:

Reverse the custody and physical-placement provisions of the circuit court’s October 24, 2025 “Order on Hearings Held September 29, 2025 and September 30, 2025.” (R.258).

1. Remand for a new custody and placement determination consistent with Wis. Stat. § 767.41, including:
 - explicit findings under § 767.41(5)(am), including § 767.41(5)(am)10–11; and
 - a definite, enforceable placement schedule that does not condition meaningful placement on third-party discretion or a party’s refusal to agree to alternate supervisors, and that includes a structured reunification/step-up framework with objective benchmarks and review.
2. Direct reassignment on remand to a different circuit judge.
3. Grant such other and further relief as this Court deems just and proper.

Dated this 22nd day of December, 2025.

Electronically signed by:
Mathiew Rae Fox
Respondent–Appellant, Pro Se

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief produced using a proportional serif font. The length of this brief is 7,968 words.

Dated this 22nd day of December, 2025.

Electronically signed by:
Mathiew Rae Fox
Respondent–Appellant, Pro Se

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

1. I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).
2. This electronic brief is identical in content to the paper copy of the brief, if a paper copy is required.
3. The text of the electronic brief is the same as the text in the paper copy, if a paper copy is required.

Dated this 22nd day of December, 2025.

Electronically signed by:
Mathiew Rae Fox
Respondent–Appellant, Pro Se