STATE OF WISCONSIN
SUPREME COURT

In re the marriage of:

MICHAEL J. LANDWEHR,

Petitioner-Appellant-Petitioner,

v.

BERNADETTE N. LANDWEHR,

Respondent-Respondent.

PETITIONER'S BRIEF-IN-CHIEF AND APPENDIX

PETITION FROM A DECISION OF THE WISCONSIN COURT OF APPEALS, DISTRICT IV DATED JANUARY 27, 2005
Court of Appeals Case No.: 2003AP002555

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ISSUE PRESENTED

I. WHAT ROLE DOES THE LEGISLATIVE MANDATE IN SECTION 767.24(4)(A)2., STATS., STATING "THE COURT SHALL SET A PLACEMENT SCHEDULE . . . THAT MAXIMIZES THE AMOUNT OF TIME THE CHILD MAY SPEND WITH EACH PARENT, TAKING INTO ACCOUNT GEOGRAPHIC SEPARATION AND ACCOMMODATIONS FOR DIFFERENT HOUSEHOLDS," PLAY IN PLACEMENT PROCEEDINGS?

The court of appeals: implicitly answered that the statutory language plays no role.

The trial court: implicitly answered that the statutory language plays no role.

STATEMENT OF THE CASE AND FACTS

This case involves a father who requested that the trial court modify an existing placement order to equal placement for both parents. While the trial court modified the existing order and increased placement with the father during the summer, the resultant 129 days of placement the appellate court noted the father received constituted a 35%/65% placement schedule, not the equal placement(i.e., 50%/50%) schedule the father posited the court was obliged to order to meet the "maximize placement" requirement of section 767.24(4)(a)2., Stats., which is further consistent with the courts' responsibility to support the equal protection of fundamental rights of both parents. The court of appeals affirmed the order.

The petitioner father also asked the trial court to modify child support in light of a significant reduction in his income. Although the trial court denied this motion, the court of appeals reversed on this issue. The child support issue, however, has not been raised before this Court nor is the issue of joint custody insofar as neither party requested a change to the existing custody order. Accordingly, the following more detailed account of what has transpired to date in this case focuses on that portion of the record pertaining to placement, the issue currently before this Court.

On June 20, 2000, the petitioner-appellant-petitioner, Michael Landwehr, and the respondent-respondent, Bernadette Landwehr, were divorced. (R13-1). The parties have two minor children, Natalia and Elise, who at the time of the divorce were ages seven and three, respectively. (R13-2). At the default divorce hearing, Michael and Bernadette resolved the issues of custody and placement via a Marital Settlement Agreement. (R13). Under the terms of that Agreement, the parties agreed to share joint legal custody while Bernadette would have primary placement of the children. (R13-11). Michael, who had been the primary breadwinner of the family and upon whose income the parties would rely to get through the economic upheaval following divorce, would have placement of the children at specific alternate times and unspecified additional times upon request. (R13-11).

The original placement schedule reflected the practicalities of the parties' schedules and how those schedules interfaced with the children's circumstances. At the time of the divorce, Natalia (seven years old) was in first grade and Elise (three years old) was not yet in school. (R45-6). Bernadette, who lived in Brookfield, worked just 16 hours per week as a registered nurse at Froedtert Hospital.[1] (R42-Ex. 14; R13-2). Michael, on the other hand, lived in Milwaukee

[1] Prior to the children's births, she had worked full time.

and was employed as an operations manager for the Menasha Corporation in Mequon. (R13-2; R45-26). His position required him to undertake a considerable amount of travel in and out of Wisconsin for days at a time, including overnights. (R45-7-8). Menasha expected its employees to work a minimum of 45 hours per week. (R45-27). Michael's hours, given the time necessary for his travel, exceeded that minimum, and his hours were not flexible. (R45-27-28).

Accordingly, the children were primarily placed with Bernadette in her Brookfield home. The parties devised a placement schedule under which Michael would have placement for two and a half hours every Wednesday evening, every Thursday from 6:00 p.m. until Friday morning at 7:30 a.m. and every other weekend from Friday at 6:00 p.m. until Sunday at 5:00 p.m. (R13-11; R45-126). As noted earlier, Michael would also have additional times upon request as his schedule permitted. (*Id*.). The parties also agreed to give each other the "first right of refusal" if he or she could not care for the girls during a period of four hours or more. (R13-12).

In August of 2000, however, Michael was terminated from Menasha and started a new business: PackX, LLC. (R45-31). The change in employment allowed Michael to set his own work schedule and required very little business-related travel. (R45-11-12). Michael was also able to work from his home. (R45-14). Perhaps most importantly, while

he had previously been unable to leave his Menasha jot at 2:15 p.m. to pick up the girls from school, his new job allowed him to do so. (R45-28). Then, in June of 2001, Michael moved to Brookfield and purchased a home less than four minutes from his children's school and eight minutes from Bernadette's residence. (R45-14-15).

Consequently, by the summer of 2002, the circumstances of the parties and their children had changed dramatically. Michael now lived in Brookfield near the children and their school. Natalia had just finished third grade and would be starting the fourth grade that fall when Elise would be entering kindergarten. (R45-9). Both children would be at St. John Vianney School. (R45-8-9). Most importantly, Michael's new work schedule made it possible for him to exercise meaningful and equal periods of placement with his girls and his relocation to Brookfield made such a schedule geographically practical.[2] Conse-quently, on June 24, 2002, Michael filed a Notice of Motion and Motion to

[2] Moreover, since the divorce, the parties had voluntarily modified the placement schedule as a result of changes in Bernadette's work schedule. (R45-9-10; R46-83-84). The voluntary changes had increased Michael's placement with the girls. (R45-9-10).

Modify Physical Placement seeking equal placement of his children.[3] (R30).

On September 25, 2002, the Family Court Commissioner certified the placement issue to the trial court. (R14). On February 24, 2003, and July 2, 2003, the trial court heard testimony on the issue of placement. (R45; 46). On July 11, 2003, the trial court rendered its decision on placement, tacitly finding a substantial change in circumstances had occurred because thereafter, it proceeded to modify the placement schedule. (R47-4). The modification, however, only granted Michael ten additional overnights of placement during the summer by extending the Wednesday evening placement from 8:30 p.m. to Thursday morning at 7:30 a.m. (R47-4). The trial court, however, refused to make any modification or otherwise grant the girls any additional time with their father during the school year, contrary to the recommendation of the guardian ad litem. (R47-5).

On August 21, 2003, the trial court entered a written order memorializing its decision. (R36; App. B). On September 30, 2003, Michael filed a Notice of Appeal. (R43). On January 27, 2005, the court of appeals issued a decision affirming the order of the trial court. (App. A). On

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[3] Michael's motion also addressed other issues not relevant to this Petition. (R30).

February 28, 2005, Michael filed a Petition for Review. On June 1, 2005, this Court granted that petition.

ARGUMENT

I. THE PLAIN MEANING OF THAT PORTION OF SECTION 767.24(4)(A)2., STATS., WHICH REQUIRES COURTS TO MAXIMIZE THE AMOUNT OF TIME THE CHILDREN SPEND WITH EACH PARENT, IS THAT ABSENT GEOGRAPHICAL OR ACCOMMODATIONAL LIMITATIONS, TRIAL COURTS MUST DIVIDE PLACEMENT AS EQUALLY AS POSSIBLE.

A. Overview

The primary issue in this case is what role the recently added legal standards in 767.24(4), Stats., play in the establishing of placement orders. Specifically, the focal point of this appeal is the provision in section 767.24(4)(a)2., which was added by 1999 Wisconsin Act 9, and which states that in determining the allocation of periods of physical placement:

> **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.**

(Emphasis added).

The chair of the Family Law Section at the time this legislation was passed summed up the intended meaning by stating:

> The most important change to placement law is found in section 767.24(4)(a)2, which requires courts to set a placement schedule that "maximizes" a child's time with each parent after considering the enumerated placement factors. It is important to read the requirement to maximize placement in the context of the placement factors, and not as a requirement for equal placement in all cases. For example, placement for a long haul truck driver who is home one day a week can be maximized with placement on the one day a week when that parent is home. Similarly the statute requires courts to consider geographic separation when maximizing placement. **An equal place-ment schedule maximizes placement for two parents who live in the same neighborhood, or in the same school district.** But equal placement

> is a practical impossibility in cases of a substantial geographic separation.

See Walther, Wisconsin's Custody, Placement, and Paternity Reform Legislation, *Wisconsin Lawyer* (April 2000) (referenced in annotations to section 767.24) (emphasis added).[4]

The Family Law Chair was not alone in his understanding of the new legal standards. For example, in *Keller v. Keller*, 2002 WI App 161, 256 Wis. 2d 401, 647 N.W.2d 426, the trial court reached a similar conclusion:

> I think it is very clear that the statute indicates the policy, public policy of the State of Wisconsin is that children should have a mother and a father on an equal basis, that the mother and father should not one be preferred over the other unless there is some good reason to justify that. . . . And so barring some evidence that shows it is not in the best interest of the child, or is physically unworkable . . . the court believes that the

[4]For further background information on the origins of the statutory provisions at issue in this case, *see* The Chair's column in the July 1999 issue of Wisconsin Journal of Family Law.

> statutory admonition that equal and full contact at least as to the extent possible should be granted.

Keller, 2002 WI App 161 at ¶10.

These common sense interpretations, however, have not been embraced by the court of appeals. Indeed, *Keller* reject the trial court's interpretation of section 767.24(4)(a)2., Stats., and reversed the placement deter-mination. In so doing, as will be further discussed below, the court of appeals has effectively stripped this statutory mandate of any meaning or role in placement proceedings. Subsequent appellate court decisions have merely followed suit. *See In re the Marriage of Arnold v. Arnold*, 2004 WI App 62, 270 Wis. 2d 705, 679 N.W.2d 296 *; In re the Marriage of Lofthus*, 2004 WI App 65, ¶14, 270 Wis. 2d 515, 678 N.W.2d 393. Collectively, the appellate court decisions constitute a *de facto* veto of the most important legal standard in section 767.24(4)(a)2. It is therefore incumbent upon this Court to review what meaning and role this statutory language should play in placement proceedings.

B. Trial Courts Are Directed To Maximize Placement In All Proceedings.

The statutory mandate at the center of this appeal applies to all placement proceedings, including the post-judgment proceeding at issue in this case. Post-judgment modification of physical placement is governed by section 767.325, Stats. Section 767.325 (5m) directs trial courts back to the standards and factors of section 767.24 when deciding such cases:

> Factors to consider. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under s. 767.24 (5) (am), subject to s. 767.24 (5) (bm), **and shall make its determination in a manner consistent with s. 767.24.**

(Emphasis added).

Accordingly, the command to craft a placement schedule in a manner consistent with section 767.24 requires the post-judgment court to pay particular attention to section 767.24(4), the provision which governs the "[a]llocation of physical placement." It is that provision, and more specifically section 767.24(4)(a)2., which, as previously noted, constitutes the overarching standard the legislature has ordained must be a trial court's guide when allocating physical placement of children between parents:

> The court shall set a placement schedule . . . that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

(Emphasis added). The particular facts of this case present the question of what role this language plays in the modification of physical placement once a post-judgment court has found a substantial change of circumstances and decided the schedule should be changed.[5]

The meaning to be given statutory language is a question of law this Court reviews de novo, and without deference to the lower court. *Sprague v. Sprague*, 132 Wis. 2d 68, 71, 389 N.W.2d 823, (Ct. App. 1986). The initial inquiry on any question of statutory construction is the plain meaning of the statute. *In re Marriage of Abel v. Johnson*, 135 Wis. 2d 219, 226, 400 N.W.2d 22 (Ct. App. 1986).The primary goal of statutory construction is to determine and

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[5] Since the trial court did modify the placement schedule, it was required to do so consistent with section 767.24, Stats. *See* section 767.325(5m). The modification by the trial court constituted an implicit finding there had been a substantial change of circumstances and that Michael had overcome any presumption that continuing the current placement allocation was in the children's best interests.

effectuate legislative intent. *In re Marriage of Cullivan v. Cindric*, 2003 WI App 180, ¶10, 266 Wis. 2d 534, 669 N.W.2d 175. The first step is to examine the statute's language and, absent ambiguity, give the language its ordinary meaning. *Id*.

The ordinary meaning of the statutory language in question is not difficult to discern. It unambiguously requires the courts to grant as much placement as possible to both parents. By logical extension, this mandate requires a placement schedule that is as equal as possible. The language also recognizes two circumstances which could limit a court's ability to fully maximize placement with both parents: the geographic separation of the households; and (2) the accommodations for different households. If there are no geographical or accommodational impediments, placement should be equal (i.e., "maximized").

With this obvious and logical meaning in mind, it should be noted this case presented facts which posed no barriers to equalized placement schedules. From the standpoint of geography, Michael and Bernadette lived in the same city, both near the children's school, and just eight minutes from each other. From the standpoint of accommodations, both parties desired maximum placement of both children and had a residence and a work schedule capable of accommodating their respective desires. Under these circumstances, the meaning of section 767.24(4)(a)2., Stats., was plain: the

placement of the children should have been divided in equal fashion because doing so was the only way the court could have fulfilled the legislature's mandate to "maximize[] the amount of time the child[ren] [could] spend with each parent."

This ordinary meaning flows from the definition of the term "maximize." Although the legislature did not explicitly define the word "maximize," that may be because the term is unambiguous and therefore did not need to be specifically defined. If statutory language is unambiguous, this Court may apply the statute using the common and generally accepted meanings of the terms and may refer to a recognized dictionary to determine the term's common meaning. *Fox v. Catholic Knights Ins. Soc'y*, 2003 WI 87, ¶19, 263 Wis. 2d 207, 665 N.W.2d 181. The WEBSTER'S NEW WORLD DICTIONARY provides the following definition for the word "maximize:"

> 1. to increase to the maximum; raise to the highest possible degree; enlarge, intensify, etc. as much as possible. 2 to estimate or make appear to be of the greatest possible amount, value or importance.

Another commonly accepted dictionary defines "maximize" as "to increase to a maximum . . . to make the most of." MERRIAM WEBSTER DICTIONARY (1997). Legal dictionaries define "maximum" as "The highest or greatest amount,

quality, value or degree." BLACK'S LAW DICTIONARY (5th ed. 1983). Against the backdrop of these definitions, it is elementary that to give the fullest expression to the mandate to "*maximize* the amount of time the child may spend with *each* parent," the court would order equal placement.

This is not to say that the court must "equalize" placement in all cases. The language calling for the maximization of placement does not constitute a rigid standard stripping courts of all discretion and compelling them to count the hours allocated to each parent. There are a myriad of circumstances which could make equal placement impractical. The geographical separation between the parties may preclude equal placement. The parties' work schedules may mean that maximizing placement requires granting a schedule leaving the daytime hours for the parent who works the third shift. A party's unwillingness to accom-modate equal placement may mean splitting placement on an unequal basis. However, where both parents are available, willing, able to accommodate equal placement and geographically proximate to each other, the maximization standard compels equal placement. Under these circum-stances, the circumstances at play in this case, equalization of placement was the ideal to which the courts were directed to aspire. While acknowledging actual placement may vary a bit and not wind up exactly 50/50, this Court's decision should establish equal placement as the fundamental reference point for the parents and children.

The appellate courts have concluded the language in question does not constitute a presumption that even where practical, equal placement is in a child's best interests. *Keller*, *supra*. As discussed more fully in Section III of this brief, *Keller* did not adequately address the language brought into focus by the present appeal. Nevertheless, it is true the legislature did not create a presumption for equal placement. Indeed, it did not say the court should *presume* that maximizing placement with both parents is in the child's bests interests. Instead, it did something much more forceful. It *mandated* that placement be maximized. In short, section 767.24(4)(a)2. is not a presumption, it is a mandate.

II. APPLICATION OF THE RULES OF STATUTORY CONSTRUCTION CONFIRMS THE LEGISLATURE INTENDED TO MANDATE AS NEARLY EQUAL PLACEMENT AS POSSIBLE IN CASES SUCH AS THIS ONE.

Only when statutory language is ambiguous should legislative intent be determined by reference to the scope, history, context, subject matter and purpose of the statute. *Williams*, 190 Wis. 2d at 6. Statutory language is considered ambiguous if reasonable minds can differ as to its meaning. *State v. T. J. Int'l, Inc.*, 2001 WI 76, ¶20, 244 Wis. 2d 481, 628 N.W.2d 774. Assuming, *arguendo*, that reasonable minds could disagree as to what maximizing placement for both parents means, application of the general canons of statutory construction still reveals a legislative intent to divide placement as equally as possible whenever it is geographically and accommodationally practical to do so.

A. Construction Of The Maximization Standard Consistent With Public Policy Requires Equal Placement In Some Cases.

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 the limitations on power obeyed. *Groh v. Groh*, 110 Wis. 2d 117, 122, 327 N.W.2d 655 (1983). For

this reason, statutory language must be construed in a way which effectuates good public policy. This is true even when giving the meaning suggested by its plain terms might seem unreasonable. *Estate of Trojan*, 53 Wis. 2d 293, 305, 193 N.W.2d 8 (1972). As this Court once observed:

> In construing a statute the proper course is to start by gathering the intent from the language of the statute when that appears from the evil to be cured or the change to be accomplished, and then to follow that intent and adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.

Standard Oil Co. v. Industrial Comm., 234 Wis. 498, 501, 291 N.W. 826 (1940).

The public policy of this great state as it pertains to placement is not a mystery. The change to be accomplished, implicit in the very language of the statute and obvious to anyone with a studied historical perspective on the issue of placement, is to eradicate the traditional, but outdated and misguided, notion that even when both parents are fit, one parent should receive considerably more placement than the other. The evil to be cured is that the disfavored parent should be relegated to an every-other-weekend schedule, with a weekday evening thrown in simply to avoid what would

otherwise be a long stretch without contact. With this in mind, Michael's placement schedule fairly typified the evil to be cured. Unfortunately, the statutory interpretation favored by the lower courts in this case did nothing to cure it.

It is good public policy to encourage parents like Michael to structure their lives, whenever possible, to maximize their availability to their children. However, if the legislature's intent was to encourage both parents to be as active as possible in their children's lives, then the court's decision in this case soundly defeated that intent. When the opportunity presented itself, Michael restructured his life to fulfill an equal parenting role for his children. He became self-employed thereby eliminating the excessive travel from his weekly schedule and allowing himself to work from his home. He gained flexibility so he could pick up his children from school and be with them during the afternoon. He moved his residence to be near, and in the same school district, as his children. This is the approach to parenting the legislature has encouraged. The statutory construction which has thus far prevailed in this case, however, does nothing to promote that policy and in fact, fairly discourages it.

B. Construction Of The Statute To Require Equal Placement Is Consistent With Constitutional Standards.

Statutory language must also be construed to avoid any suggestion of unconstitutionality. *American Family Mut. Ins. Co. v. DOR*, 222 Wis. 2d 650, 667, 586 N.W.2d 872 (1998). 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." *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972).

The fundamental right of parents to raise their children without unnecessary governmental intrusion is such a constitutionally protected activity. *See, e.g.*, *Barstad v. Frazier*, 118 Wis. 2d 549, 348 N.W.2d 479 (1984). *See, also, Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Stanley v. Illinois*, 405 U.S. 645 (1972). Most recently, the Supreme Court ruled that:

> 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.

Troxel v. Granville, 530 U.S. 57, 66 (2000). Equal place-ment is the fullest expression of *both* parents' equal rights to the management of, and access to, their children. Indeed, equal placement is the only way a court can satisfy its responsibility

to assure equal protection of the fundamental rights of both parents under the Equal Protection Clause of the Fourteenth Amendment. [6]

This is not to say parents have an absolute constitutional right to equal placement that somehow supplants a trial court's discretion to fashion a schedule it determines is in a particular child's best interests. Indeed the courts retain this discretion when geographic separations or issues of accommodation do not allow for equal placement or equal placement would otherwise be harmful to the child. The right is not absolute, *see, e.g.*, *Barstad*, 118 Wis. 2d at 557, and to argue it trumps the State's interest in granting its trial courts discretion on the issue of placement would represent an extreme position this Court would surely never countenance. It is also an extreme of reverse polarity, however, to assert that statutory language which is woven throughout the very fabric of this fundamental right can be construed in a constitutional vacuum. While the Fourteenth Amendment may not dictate a particular interpretation, it most certainly shapes it, because knowledge of these fundamental principles,

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[6] Because it is a fundamental right, it may not be invaded by the state on a mere rational basis test. *Matter of A.M.K.*, 105 Wis. 2d 91, 312 N.W.2d 840, 847 (Ct. App. 1981). Statutes that directly and substantially impair fundamental rights require strict scrutiny and a compelling reason for its infringement. *Zablocki*, 434 U.S. at 387.

and the case law interpreting them, is wisely imputed to the legislature at the time the language was crafted. *See, e.g.*, *Reiter v. Dyken*, 95 Wis.2d 461, 471, 290 N.W.2d 510 (1980) (legislature is presumed to act with knowledge of existing case law).

It is not difficult to see how the interpretation of the maximization standard posited herein is consistent with and promotes this fundamental right for both parents. Since parents' ability to make personal choices regarding the care and nurture of their children is directly proportional to their physical access to their children, the only way two parents living separately can fully exercise this statutory and fundamental responsibility and right is for each to have an unobstructed opportunity to assume roughly equal physical placement of their children. Absent a compelling reason, the court cannot allow one parent, a guardian ad litem, a psychologist, a placement study evaluator, a court commissioner or the court's own personal feelings to obstruct the equal role of either parent to make this decision on behalf of the children without a compelling state interest.[7]

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[7] Michael does note argue, as the *Arnold* court construed the issue before it, that the Wisconsin physical placement statutes are unconstitutional. *Arnold*, *supra*, at ¶9. Nevertheless, this Court has recently noted, contrary to the reasoning *Arnold* used to distinguish *Troxel*, that the fundamental rights of parents do exist in disputes between

C. The History Of The Statutory Standards For Deciding Placement Also Favors An Interpretation Which Yields Equaling Placement As A Legislative Goal.

The public policy of Wisconsin as it pertains to "placement" is also revealed by the evolution of that concept

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two parents. *In re the Termination of Parental Rights to Alexander V., Steven V. v. Kelley H.*, 2004 WI 47, 271 Wis.2d 1, 678 N.W.2d 856.

Moreover, while *Arnold* cited *LeClair v. LeClair,* 624 A.2d 1350, 1357 (N.H. 1993) ("legislature contemplated the need to have . . . heightened judicial control over divorced families because of unique problems that exist in a home that is split by divorce."), it should be noted *LeClair* was premised on a law dissimilar to the placement laws in Wisconsin. *LeClair* concluded that because of the unique problems of divorced families, the legislature could rationally conclude that absent judicial involvement, children of divorced families may be less likely than children of intact families to receive postsecondary educational support from both parents. Interestingly, the reasoning of *LeClair* was rejected in *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995) ("we can conceive of no rational reason why those similarly situated with respect to needing funds for college education should be treated unequally").

from the sexist tender-years doctrine to the infinitely more enlightened embrace of the idea that children benefit most from two equally involved parents. A brief historical retrospective of the statutory provisions governing custody and placement shows the inexorable march toward equality.

There was a time when equality was not the touchstone for placement determinations. Traditional gender roles gave rise to the codification of the idea that mothers, who usually stayed at home and undertook child-rearing as one of their primary responsibilities, should enjoy most-favored-parent status. *See, e.g., Welker v. Welker*, 24 Wis.2d 570, 578, 129 N.W.2d 134 (1964). In 1971, the legislature responded by adding the following language to then section 247.24, Stats.:

> In determining the parent with whom a child shall remain, the court shall consider all facts in the best interest of the child and shall not prefer one parent over the other ***solely*** on the basis of the sex of the parent.

(Emphasis supplied.)

In 1977, the legislature went one step further, inserting as a preface to what later became section 767.24(2), Stats., the following:

> In making a custody determination, the court shall consider all facts in the best interest of the child and shall not prefer one potential custodian over the other on the basis of the sex of the custodian.

This amendment, the language of which is now found in section 767.24(5)(am), Stats., was a response to *Scolman v. Scolman*, 66 Wis.2d 761, 766, 226 N.W.2d 388 (1975), in which Chief Justice Wilkie opined that the prior incarnation of the statute had not changed existing case law, and that a trial court could still properly find young children are better off with their mother as long as court's decision was not *solely* based on the sex of the parent. *See Marriage of Pergolski v. Pergolski*, 143 Wis. 2d 166, 169-70, 420 N.W.2d 414 (Ct. App. 1988).

In 1987, the legislature added 767.24(4)(b), which established "a child is entitled to periods of physical placement with both parents." 1987 Wisconsin Act 355, §34. In the published notes of that same act, the legislature stated:

> The legislature declares that it is **the public policy of this state** that unless there is a specific reason to the contrary it is in the best interest of a minor child to have **frequent association and a continuing relationship with both parents.**

Id. at §1. (Emphasis added).

The legislature made further changes in 1999 Wisconsin Act 9, when they added the requirements that parents express their plans for raising their children in parenting plans , *see* section 767.24(1m), Stats., and required that courts maximize placement with each parent. Section 767.24(4)(a)2. This Act was clearly intended to give parents a greater role in the process of establishing placement orders and, by establishing the non-discretionary expectation that the court would maximize placement periods with each parent, it was intended to discourage either parent from trying to minimize the role of the other parent.

Legislative history also discloses an important observation with regard to section 767.325(5m), Stats., the pipeline which links the maximization standard to modification cases. This Court should note that both standards were created at the same time. *See* 1999 Wis. Act 9, §3065ck. In other words, when the legislature directed the courts to maximize the time children can spend with both parents, it simultaneously directed the courts to follow that standard when deciding modification cases. In short, the timing of the advent of both sections is strong proof that the legislature intended the maximization standard to apply in a modification case.

The maximization standard is therefore the culmination of a long series of legislative alterations of the custody and placement statutes designed to provide equal protection to

both mothers and fathers. Other changes along the way, (*e.g.*, the presumption favoring joint custody in section 767.24(2)(am), Stats.), confirm a shift in the paradigm toward equality, with a concomitant restraint of the trial court's discretion. The legislative mandate at issue in this case is an impressive manifestation of this movement.

D. The Language Of Section 767.24(4)(a)2., Stats., Trumps The Language Of Section 767.325(1)(b)2.b. Because It Is More Recent And Constitutes A More Compelling Legal Standard.

One issue which must be addressed in the construction of section 767.24(4)(a)2., Stats., is the potential for conflict with the language of section 767.325(1)(b)2.b. As we have already seen, the former statute instructs the courts to maximize the amount of time the child can spend with each parent. Such a directive must be understood to express the legislature's belief that doing so is in the child's best interests. Statutes must be construed, after all, to be in harmony with the larger scheme of which they are a part. *In re Estate of Flejter*, 2001 WI App 26, ¶¶10-11, 240 Wis. 2d 401, 623 N.W.2d 552.

The latter statute, it will likely be argued, suggests that keeping the status quo allocation of physical placement is in the child's best interests:

> With respect to subd. 1., there is a rebuttable presumption that . . . [c]ontinuing 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.

Section 767.325(1)(b)2.b., Stats. In fact, as more fully discussed below, this language is rather equivocal and could mean the court is instructed to continue some level of placement with the original primary placement parent. However, if this standard is understood to represent a presumption in favor of maintaining the status quo, then in a case such as this one, where the placement schedule under scrutiny was unbalanced, it comes into potential conflict with section 767.24(4)'s mandate to advance the scheduled toward equality.

There is, however, an interpretation, illustrated by the facts of the present case, which harmonizes the two statutes. Such interpretations are to be favored. *Highland Manor Assocs. v. Bast*, 2003 WI 152, ¶9, 268 Wis. 2d 1, 672 N.W.2d 709. A harmonious interpretation would hold that even if section 767.325(1)(b)2.b., Stats., presumes that maintaining the status quo is in the child's best interests, once that

presumption is rebutted, as it was in this case, the applicability of section 767.325(1)(b)2.b. evaporates and the maximization standard of section 767.24(4)(a)2. comes into play. Thus, in the context of this case, once the trial court determined the section 767.325(1)(b)2.b. pre-sumption had been rebutted, as it necessarily did as a prelude to modifying the placement schedule, it was required to apply the maximization standard of section 767.24(4)(a)2. Statutory language should be interpreted to give harmony to related language. *In re Marriage of Kerkvliet v. Kerkvliet*, 166 Wis. 2d 930, 939, 480 N.W.2d 823 (Ct. App. 1992).

On the other hand, if the two sections are deemed irreconcilable, it would then be of no small importance that the mandate calling for the maximization of placement is of more recent vintage. Under established rules of statutory construction, when there is a conflict between statutory directives, the more recent and more specific statute controls and exists as an exception to the general statute. *Grant County Service Bureau v. Treweek*, 19 Wis. 2d 548, 552, 120 N.W.2d 634 (1963). To this end, it should be noted the language of section 767.24(4)(a)2., Stats., which mandates the maximization of placement with each parent, is more recent and more specific.

The reason for examining the recency of the respective statutes is logical. When the legislature adopted the language of section 767.325(1)(b)2.b., Stats., there was no com-peting

language regarding maximization. One therefore cannot say the legislature intended the section 767.325(1)(b)2.b. presumption to trump the maximization standard because the maximization standard did not exist. However, when the legislature adopted the maximization standard of section 767.24(4)(a), it must have been aware of the status quo language of section 767.325(1)(b)2.b., because legislatures are presumed to be aware of the existing statutory framework. *Marriage of Hansen v. Hansen*, 176 Wis. 2d 327, 335, 500 N.W.2d 357 (Ct. App. 1993). The legislature therefore must have intended the maximization "mandate" to override the 767.325(1)(b)2.b. "presumption."

This is particularly true when one considers that when adopting the maximization standard, the legislature concomitantly adopted language to make it applicable in the modification context. When determining the meaning of statutory language, the entire section and any related sections must be considered. *Kerkvliet*, 166 Wis. 2d at 939. That the maximization standard was part of the same legislation making it applicable in the modification context is powerful grounds that it was intended to apply in a case such as this one.

All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it; they are therefore to be construed in connection with and in harmony with the existing law, and

as part of a general and uniform system of jurisprudence, that is, they are to be construed with reference to the whole system of law of which they form a part. *Town of Madison v. City of Madison*, 269 Wis. 609, 614, 70 N.W.2d 249 (1955). Therefore, the meaning and effect of statutes are to be determined in connection, not only with the common law, and the constitution, but also with reference to other statutes, and the decisions of the courts. *Id*. To this end, it should be noted that in section 765.001(2), Stats., the legislature stated, in pertinent part:

> It is the intent of the legislature to recognize the valuable contributions of both spouses during the marriage and at termination of the marriage by dissolution. . . . Each spouse has an **equal** obligation in accordance with his or her ability to contribute . . . services . . . which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse.

(Emphasis added). The legislature's recognition of the parties' "equal obligation" further chronicles the intent not to favor one party over the other wherever practical.

One court which grappled with a related issue is *Abbas v. Palmersheim,* 2004 WI App 126, 275 Wis. 2d 311, 685 N.W.2d 546. *Abbas* addressed the conflict between the presumption in section 767.325(1)(b)2. favoring the status

quo on custody and the presumption in section 767.24(2)(am) favoring joint custody. Like the present case, the conflict arose as a result of the mandate in section 767.325(5m), which requires courts to construe section 767.325 in a manner consistent with section 767.24.[8]

In a somewhat fractured opinion, *Abbas* concluded that the presumption that joint legal custody is in a child's best interests applies only in initial legal custody determinations, not in modification determinations. *Abbas* reasoned that were it to hold the presumption favoring joint custody applicable in modification cases, it would eliminate the section 767.325(1)(b) presumption favoring the status quo.

There are a number of reasons why the reasoning of *Abbas* is not compelling in the present case, not the least of which is the already noted confluence of the enactment of the maximization standard and the language making it applicable in modification cases. Unlike the maximization standard, the presumption favoring joint custody was not part of that same legislation. There are also tangible differences between custody and placement which make *Abbas* distinguishable.

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[8] *Abbas* initially appeared poised to address the very placement issue at play in this case. *Abbas* at ¶7. However, after noting that "Palmerstein pays scant attention to the physical placement aspect of this case," *Abbas* at ¶15, fn 2, the appellate court's opinion focused on sole custody.

Determinations of custody cannot abide competing presumptions because custody is an all-or-nothing concept. Placement, on the other hand, is a concept which exists along a continuum. Placement can be maxi-mized. Custody can only be granted or not granted.

The differences in the statutory language, too, is important. The 767.325(1)(b)2.b. presumption of place-ment in modification cases is not, for example, as forceful as the language used by the legislature in legal custody determinations. Where custody is at issue, the trial court is instructed to presume that:

> Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.

Section 767.325(1)(b)2.a. This is strong language and directly suggests a policy that no change should take place.

By contrast, the language addressing placement in modification cases instructs courts that:

> 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.

Section 767.325(1)(b) 2.b., Stats. This language is not as forceful insofar as it does not state that continuing the "current allocation" or any specific amount of placement is presumed to be in the child's best interests. Indeed, it does not even state that continuing the child's "primary" placement with whom the child resides for the greater period of time is in the child's best interests. In short, the language is equivocal because it fails to clarify whether simply continuing some placement or continuing the same level of placement is in the child's best interests. Moreover, while *Abbas* addressed a conflict between two equally specific presumptions, any perceived conflict in this case pits a somewhat ambiguous presumption against a very specific mandate. A legislative directive must trump a rebuttal presumption.

III. AT A MINIMUM, TRIAL COURTS MUST TAKE ACCOUNT OF THE MAXIMIZATION STANDARD AND EXPLAIN WHY GEOGRAPHIC CONSIDERATIONS AND HOUSEHOLD ACCOMMODATIONS DO NOT PERMIT EQUAL PLACEMENT, BECAUSE THE LANGUAGE MUST HAVE SOME MEANING.

A. The Lower Courts In Both This And Other Cases Have Rendered The Legislature's Maximization Standard Superfluous.

The interpretation of the maximization standard thus far given by the appellate courts must be altered because it fails to imbue the language with any meaningful impact on placement cases. The language must have some meaning. The legislature cannot have intended to simply throw out an empty platitude. Indeed, statutory language must be construed in a manner which gives meaning to the words, not in a way which renders the language superfluous. *Wagner v. Milwaukee County Election Comm'n,* 2003 WI 103, ¶33, 263 Wis. 2d 709, 666 N.W.2d 816. Unfortunately, not only have the courts of appeals been unwilling to interpret section 767.24(4)(a)2., Stats., in a way which promotes the policy of maximizing a child's time with both parents, they have been unwilling to ascribe any meaning to the language at all. It is

therefore incumbent upon this Court to breath life into this language.

It appears that in the appellate courts, the legislature's intent was dead on arrival. The first court to address the legislative changes - *Keller, supra* - considered whether the language constitutes a presumption of equal placement. As noted earlier, the trial court order in *Keller* had granted the parties equal placement with an interpretation of section 767.24(4)(a)2., Stats., which gave reasonable meaning to the verbiage:

> I think it is very clear that the statute indicates the policy, public policy of the State of Wisconsin is that children should have a mother and a father on an equal basis, that the mother and father should not one be preferred over the other unless there is some good reason to justify that. . . . And so barring some evidence that shows it is not in the best interest of the child, or is physically unworkable . . . the court believes that the statutory admonition that equal and full contact at least as to the extent possible should be granted.

Keller, 2002 WI App 161 at ¶10. This interpretation of section 767.24(4)(a)2. is fully consistent with the position advanced by Landwehr in Sections I and II of this brief.

Keller, however, disagreed with this interpretation, vacated the equal placement order, and remanded for the trial court to exercise its discretion under "the proper standard of law:"

> These statements demonstrate that the trial court believed there is, essentially, a statutory presumption of equal placement. The trial court started with the presumption or "policy" that equal placement is in the child's best interest and then placed the burden on the party opposing equal placement to show that such an arrangement would not be in the child's best interest.
>
> Under Wis. Stat. §767.24(2)(am), there is a statutory presumption of joint legal custody. However, there is no provision establishing a presumption of joint placement. While the physical placement statute, Wis. Stat. §767.24(4)(a)2, requires the court to provide for placement that allows the child to have regularly occurring, meaningful periods of physical placement with each parent, this is not tantamount to a presumption of equal placement.

Id. at ¶¶11-12. *Keller* remanded the matter with instructions that the trial court not presume equal placement was in the child's best interests, but instead, to presume those interests

would be served by "[c]ontinuing the child's placement with the parent with whom the child resides for the greater period of time." *Id*. at ¶13.

A careful review of *Keller*, however, reveals it addressed only the more vague criteria found in the earlier part of section 767.24(4)(a)2., Stats., as evidenced by its statement that:

> While the physical placement statute, Wis. Stat. § 767.24(4)(a)2, requires the court to provide for placement that **allows the child to have regularly occurring, meaningful periods of physical placement with each parent**, this is not tantamount to a presumption of equal placement.

Keller, at ¶12 (emphasis added). *Keller* therefore never addressed the more specific language which calls upon the courts to "maximize the amount of time the child may spend with each parent."

Nevertheless, *Keller* sounded the death knell for the legislature's maximization standard and unfortunately, the reverberations from that case have drowned out all efforts, including those in this case, to ascribe any meaning to the language. In the wake of *Keller*, all analysis of the maximization standard has atrophied. For example, the appellate court has decided its decision in *Keller* is not altered even

when the statutory language in question is interpreted jointly with a parents' fundamental, substantive due process right to participate equally in the raising of his or her children. *Arnold*, *supra*. The court of appeals also viewed its hands as tied by *Keller* in *Lofthus*, *supra*. *Lofthus* referred to the new language as "these two factors," suggesting it viewed the language as little more than a pair of additional factors for consideration, on par with the traditional factors of section 767.24(5). *Lofthus* at ¶13. It is as though the appellate courts have vetoed the legislature's enactment of this language.

The present case is illustrative of the significant void which has formed around the legislative mandate. In rendering its decision, the trial court neither referenced the applicable language of section 767.24(4)(a)2, Stats., nor its maximization language. After finding the children were doing well in school based on the testimony and the school records (the latter of which contained teachers' comments), the court went on:

> I have also taken into account the ages of the two children, and they are still what this court considers young children. Therefore, and taking into account the recommendation of the guardian ad litem, I do conclude that as to the summer schedule, the recommendation of the guardian ad litem is appropriate, and during the summer months while the girls are not in school, at least at this time until

such further order of the court, that the schedule will be adopted as recommended by the guardian ad litem, and I do feel that that is in the best interests of the children.

However, as to the school year and because of the age of the children and because they are doing so well, I am, however, going to order and I do find that it is in the best interests of the children to maintain the current schedule that they are on until such time or further order of the court that would modify that. I know that the guardian ad litem accepted his responsibility and tried to do what he could under the circumstances to have the parties reach an agreement that was fair yet in the bests interests of these children. I am satisfied, however, from the evidence in the record that at this time during the school year, to disrupt that schedule would not be in their interests, and until such time perhaps that they are older and more flexible in their schedule or certain things change at school, the court is not going to order that that placement schedule be modified. Therefore, it will remain as it has been and has been identified as the current schedule in the document that was presented to the court.

(R47-4-5).

This passage, which comprises the core of the trial court's rationale, contains no reference whatsoever to the maximization standard. No attempt is made to explain why maximization is not in the children's best interests. This despite a record that establishes equal placement was eminently practical. There were no geographical limitations as Michael had moved to within minutes of Bernadette and resided in the children's school district. Michael's job situation afforded him the freedom to be available for his children as needed. No doubt this is why the guardian ad litem recommended a "year-round" increase in placement for Michael, as opposed to just during the summer. Nevertheless, the court never explained how, with Michael's more flexible schedule and close location to Bernadette and the children's school, maintaining the placement schedule during the school year maximized the time the children had with each parent. In short, the maximization standard was ignored and had no impact on the case.

The court of appeals decision similarly failed to confer any meaning upon section 767.24(4)(a)2., Stats. With the obligatory nod to *Keller*, the appellate court merely stated the following regarding that section:

> The statute provides no definition of "maximizes." Nor does it explain how the court can maximize placement with one parent without reducing it for the other. In any event, Wis. Stat. §767.24(4)(a)2

> does not require nor presume equal placement. *Keller v. Keller*, 2002 WI App 161, ¶12, 256 Wis. 2d 401, 647 N.W.2d 426. Michael receives placement 129 days per year, and he cannot reasonably contend that he is deprived of "regularly occurring, meaningful periods of physical placement" with his children, nor that §767.24(4)(a)2 compels a different result.

(Appendix A, p. 8). Once again, it appears *Keller* suppressed any meaningful discussion of the language even though *Keller* never specifically addressed the concept of maximization. The appellate court simply lamented the absence of any definition of "maximize," and curiously noted that placement cannot be maximized with one parent without reducing it for the other. Why a "reduction" in placement for one parent posed such a problem for the appellate court is neither explained nor rational in the face of a legislative directive which advises the courts not to avoid a placement reduction for *one* parent, but to maximize placement for *both* parents.

Ironically, in light of the significant placement disparity the petitioner in *Keller* sought to rectify with the motion to modify placement in the first place, *Keller*'s instructions on remand constituted a mandate that the trial court should presume that any attempt to maximize the placement of the children with both parents was *not* in the best interests of the child. This anomaly arose because *Keller* gave greater weight

to the language of section 767.325 despite the fact that: (1) the more recent legislative mandate in section 767.24 requires courts to maximize the placement of children with both parents; and (2) section 767.325(5m) directs courts to make its determination in a manner consistent with section 767.24.

Following the legislature's adoption of the maximization standard, a litigant in a placement proceeding can remind the trial court it is required, indeed commanded, to maximize the placement with both parents. However, if the appellate court decisions are to be our guide, the trial court is not even obliged to presume that maximizing placement is in the child's bests interests. This oddity can be gleaned from the appellate courts' unwillingness to even require the courts to acknowledge the language, or otherwise explain how it views its decision as fulfilling the maximization standard. This last point betrays an irrational anomaly wrought by the failure to ascribe any meaning to the language: the legislature has mandated an approach (i.e., maximization of placement) that the courts are instructed *not* to presume is in the bests interests of the child.

B. At A Minimum, This Court Should Require The Courts To Account For The Maximization Standard.

Statutes are to be construed to avoid absurd results. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 305, 603 N.W.2d 541 (1999). It is a cardinal rule that when interpreting a statute a court must "attempt to give effect to every word, so as not to render any portion of the statute superfluous." *Osborn v. Board of Regents*, 2002 WI 83, ¶22, 254 Wis. 2d 266, 647 N.W.2d 158. The law prefers "a construction which gives meaning to every portion of a statute." *Unified S.D. No. 1 of Racine County v. WERC*, 81 Wis. 2d 89, 98, 259 N.W.2d 724, 730 (1977).

Maximizing placement with each parent is a very specific quantitative criteria, conditioned only on geographic considerations and the accommodations of the parents to assume placement of the children. When two fit parents wish to provide care for the children at least on an equal basis, and live in the same community and can make adequate accommodations to care for the children during equal periods of placement, the only way a court can maximize the amount of time the child may spend with each parent in such a case is to order equal placement of the children. This is not only the only conceivable interpretation of what the legislature meant with this mandate, but it is fully consistent with the principles of equal protection of the fundamental rights of

both parents, equal protection of the children's statutory right to placement with both parents pursuant to section 767.24(4)(b), and the very foundation of the principles of equity. The courts must acknowledge this standard.

The foregoing analysis begs the question as to how the language in question interacts with the best interest of the child standard found in sections 767.24(4)(a)(2) and 767.24(5), Stats. The question is easily answered: the legislature has concluded that maximizing placement with both parents *is* in the child's best interests. Any parent with the devotion to his or her children displayed by Landwehr would agree with the inherent logic of, and the good public policy underlying, this answer. Equal placement of the children with both parents, in cases where both are fit, willing and able to assume this responsibility, and live in the same community, does not conflict with the best interest of the child criteria. It secures the best interest of the child since it fully supports the presumption "that a fit parent will act in the best interest of his or her child," a proposition affirmed by *Troxel*. It is also the only order, in cases such as this, that will satisfy the court's responsibility to enforce the latest requirement of 767.24(4)(a)2, to maximize placement with each parent.

Admittedly, there will be cases where the guardian ad litem or the court may conclude that what is in the best

interests of the child yields a different result than equal placement. This does not present a problem, however, provided the proponent is prepared to proffer an explanation of how geographical hurdles and accommodations for different households compel a departure from the maximization mandate or that implementation of the maximization standard would be harmful to the child. Nevertheless, this newest statutory requirement is not *conditioned* on what a guardian ad litem or court may feel is in best interest of the children. Harmonizing this with section 767.24(4)(b), Stats., requires that unless the court first finds a compelling state interest (e.g., protecting the children from harm), its responsibility to enforce this most recent legislative mandate is not discretionary. [9] In other words, where the

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[9] To the extent these directives are viewed to be in conflict, as already noted, the most recent statute controls. The last sentence of 767.24(4)(a)(2) is more recent, and certainly more specific and quantitative than the vague and subjective "best interest of the child" standard in the first sentence of sections 767.24(4)(a)(2) and 767.24(5), Stats. The harm standard, as established in 767.24(4)(b), is also more specific. Therefore the harm and maximization standards are the proper legal standards in cases such as this one.

Furthermore, while the "best interest of the child" criteria is a noble and politically correct concept, it is an

court "finds that physical placement with a parent would endanger the child's physical, mental or emotional health," *id*., the maximization standard is trumped by this "harm" standard which allows the court not to grant any placement at all.

In short, the trial courts cannot be permitted to continue ignoring the legal standard mandated by the legislature in section 767.24 (4)(a)2. Stats. The trial courts must be required to acknowledge the standard and account for it in their decisions. At a minimum, they must be compelled to defend how the placement schedule they order maximizes the child's placement with both parents, in light of geographical and accommodational considerations.

CONCLUSION AND RELIEF REQUESTED

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ambiguous standard that has allowed the courts to do just about anything, and unintended or not, benefitted a huge profit- generating divorce industry, that derives income from families in difficult and vulnerable situations. It allows attorneys, social workers, and psychologists to intrude into the family unit at great expense to the families. It also allows some professionals to exploit the strong emotional attachments many parents have to their children to promote litigation, since many good parents will put their commitment to their children ahead of the financial devastation this may have on the family.

Under the facts of this case, the only way the trial court could have satisfied the statutory mandate to maximize placement with each parent, while also promoting each parent's substantive due process rights, was to order equal placement. An added benefit of such a ruling, and a byproduct the legislature surely understood, is that a more uniform expectation on placement will greatly reduce the need for two fit parents to litigate placement issues in Wisconsin courtrooms. The big winners of such a ruling would be the children who are spared the emotional stress and economic fallout of litigation, and reap the benefits of having both parents fully involved in their care.

As previously demonstrated, the public policy of this state is to encourage both parents to assume their full responsibility for their children and to promote the benefit children receive from the maximum involvement of both parents. Also discussed and beyond dispute is that the issue of placement impacts upon a fundamental right the courts are commanded to equally support in the case of each parent. It is a goal that must be achieved by the path of least resistance and not compromised without a compelling reason. The decision in this case is neither faithful to these principles nor consistent with the statutory language at issue. The record contains no reasonable justification for not allowing equal placement and therefore must be reversed.

For the foregoing reasons, the petitioner respectfully requests this Court rule that the statutory mandate to maximize placement with both parents requires that where geographically and accommodationally practical, equal

placement be ordered. In the alternative, this Court should rule that at a minimum, the court must take account of the directive and explain how geographic limitations and household accommodations prohibit it from further equalizing placement. In either event, this Court should vacate the lower court's placement order and remand for a placement decision consistent with this Court's decision.

Dated this _____ day of July, 2005.

_____

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CERTIFICATION

I certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced using a proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, minimum 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 9854 words.

Dated this _____ day of July, 2005.

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REX R. ANDEREGG