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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2090

In re the Marriage of:
Jacqueline Alice Jones, petitioner,
Respondent,

vs.

Robert Ernest Jones,
Appellant.

Filed December 16, 2019
Affirmed
Bjorkman, Judge

Nicollet County District Court
File No. 52-FA-15-669

Michael H. Kennedy, Christopher M. Kennedy, Kennedy & Kennedy, Mankato, Minnesota (for respondent)

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Cochran, Judge; and Smith, John, Judge.[*]

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant father challenges the denial of his motion to modify parenting time, arguing that the district court (1) applied the wrong modification standard and (2) abused its discretion by failing to make best-interests findings and declining to interview the parties' minor children. We affirm.

FACTS

Appellant Robert Ernest Jones and respondent Jaqueline Alice Jones were married for 14 years, and have two children who were born in 2003 and 2004. In 2016, the marriage was dissolved by a stipulated judgment. The parties agreed to share legal and physical custody of the children and agreed that mother's home would be the children's primary residence. The judgment grants father parenting time on alternating weekends during the school year and alternating weeks during the summer. And the judgment affords him additional parenting time after school on Monday through Thursday until mother gets home from work, but "no later than 5:30 p.m. (or at their scheduled school activities)."

In June 2017, father moved the district court to appoint a parenting-time expeditor, asserting that he had difficulties communicating with mother and making minor schedule changes. Mother objected, citing in her responsive affidavit father's history of frequent harassing communications and the fact that he lived in a secluded and intimidating home setting. She characterized father's proposed transportation right of first refusal as a way "to . . . continue[] to engage with me" and his expeditor request as another means for him to engage in unnecessary interactions. She also alleged that father consistently dropped off

the children late and diverted them from their scheduled activities. Following a hearing, the district court ordered the parties to use the "family wizard" communication tool but reserved ruling on father's request for a parenting-time expeditor.

In February 2018, father again sought court intervention, asking the district court to: modify parenting time to an alternating week schedule for the entire year; appoint a parenting-time consultant; and, if necessary, interview the children about their parenting-time preferences. The district court appointed a parenting-time expeditor and directed the parties to communicate through "family wizard." But the court denied father's parenting-time motion, concluding that father's request would change the children's primary residence and that he failed to establish "endangerment" under Minn. Stat. § 518.18(d)(iv) (2018). And the district court denied father's request to interview the children because there was no "pending motion to modify custody/parenting time."

After the supreme court released *In re Custody of M.J.H.*, 913 N.W.2d 437 (Minn. 2018), father moved for amended findings granting his requested parenting-time modification. In the alternative, father requested a "slight increase," consisting of a daily one-hour extension of his parenting time and weekly overnights on Wednesdays during the school year. Following a hearing, the district court denied father's motions in an amended order. The district court rejected father's request to make "specific findings" under *M.J.H.*, and in the accompanying memorandum of law stated that its prior findings were adequate because they addressed the "primary factors or considerations." In denying father's motion for a "slight increase" in parenting time, the district court stated that the proposed change would alter the parties' stipulation and that father failed to show that it was in the children's

best interests to do so. The court also found that disrupting the children's evening schedule was not in their best interests because they needed an "uninterrupted period" to do their school work, and a change could "exacerbate" the already "quarrelsome relationship" between the parties. Father appeals.

D E C I S I O N

A district court has broad discretion in deciding parenting-time matters. *See Hansen v. Todnem*, 908 N.W.2d 592, 597 (Minn. 2018). On review, we examine findings of fact for clear error and do not reassess witness credibility. *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010). The district court abuses its discretion when it either "mak[es] findings unsupported by the evidence or improperly appl[ies] the law." *Id*. The question of what legal standard governs a motion to increase parenting time is a question of law that we review de novo. *M.J.H.*, 913 N.W.2d at 440.

I. The district court did not abuse its discretion by denying father's motions to modify parenting time.

Modification of parenting time is governed by Minn. Stat. § 518.175, subd. 5(b) (2018), which provides: "If modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child's primary residence." Modification of custody is governed by Minn. Stat. § 518.18(d) (2018), which states that a district court shall not modify an existing custody order unless it finds that "a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child." Among other circumstances, the district court must "retain the custody arrangement . . .

specifying the child's primary residence . . . unless the child's present environment endangers the child[]." Minn. Stat. § 518.18(d)(iv).

Father argues that the district court erred by applying the endangerment standard to his motion to modify parenting time. And he contends that the district court abused its discretion by not making findings regarding the children's best interests and failing to interview them regarding their preferences. We consider these arguments in the context of father's primary request for an alternating week parenting-time schedule and his more limited modification request.

A. Alternating Week Parenting-Time Schedule

Father asserts that the district court erred by failing to apply the factors articulated in *M.J.H.* to determine the legal standard applicable to his parenting-time request. Accordingly, we begin our analysis by reviewing that precedent.

In *M.J.H.*, the mother lived in Minnesota and the father lived an hour away in Iowa. 913 N.W.2d at 439. The parties stipulated to joint legal custody of their child and agreed that mother would have sole physical custody and provide the child's primary residence. *Id.* As in this case, father had parenting time every other weekend during the school year and on alternating weeks during the summer, and moved to increase his parenting time to a year-round, alternating week schedule. *Id.* The district court denied the motion, concluding father's request would modify physical custody and father failed to present prima facie evidence of endangerment necessary to do so. *Id.* On appeal, the supreme court considered whether father's motion implicated the endangerment standard required for custody modification (Minn. Stat. § 518.18(d)(iv)), or the best-interests analysis

required for parenting-time modification that would not change a child's primary residence (Minn. Stat. § 518.175, subd. 5(b)). *Id*. at 441. To answer that question, the supreme court first analyzed whether father's requested modification would effectively modify physical custody. *Id*. The court held that a totality-of-the-circumstances assessment is necessary and identified a non-exhaustive list of factors including "apportionment of parenting time, the child's age, the child's school schedule, and the distance between the parties' homes." *Id*. at 443.[1] Because it concluded that father's parenting-time request would modify physical custody of the child, the supreme court did not consider whether father's requested modification would change the child's primary residence. But the court noted that Minn. Stat. § 518.175, subd. 5(b), is silent as to what legal standard governs parenting-time modifications that would change a child's primary residence. *Id.* at 441.

Here, father contends that his proposed alternating week parenting-time schedule would not constitute a change in physical custody requiring a showing of endangerment. We agree. Unlike *M.J.H.*, these parties already share joint legal custody of their children. But that does not mean the district court abused its discretion in denying father's motion.

As noted above, a district court must consider whether a proposed parenting-time modification serves a child's best interests "if the modification would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b). The legislature does not define "primary residence." *See* Minn. Stat. § 518.003 (2018); *M.J.H.*, 913 N.W.2d at 440. Under such circumstances, we construe statutory terms according to their "common

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[1] The *M.J.H.* court recognized that "parenting time," "physical custody," and "primary residence" are "distinct yet overlapping concepts." *Id.* at 440.

meaning and usage." *Suleski v. Rupe*, 855 N.W.2d 330, 335 (Minn. App. 2014). In *Suleski*, this court defined primary residence as "the principal dwelling or place where the child lives." *Id.* And we have observed that "identifying a child's primary residence is a broader inquiry than simply identifying which parent has a majority of parenting time," and includes consideration of other relevant factors. *In re Custody of M.J.H.*, 899 N.W.2d 573, 578 (Minn. App. 2017), *rev'd on other grounds*, 913 N.W.2d 437. Those factors may include "where the child attends school, participates in extracurricular activities, socializes with peers, or worships" as well as other "important aspects of a child's life." *Id.*

The district court found that father's motion for an alternating week parenting-time schedule would change the children's primary residence. The district court considered not only the requested change in the apportionment of time between the parties, but also how the change would affect overnights "and the presumed ramifications of such an impact." And the record supports the district court's findings that the parties' stipulation reflects the "perceived educational benefit" of having the children primarily with one parent during the school week. Father's proposal would greatly disrupt the continuity of parental involvement in school matters that the parties envisioned. Under these circumstances, we discern no error in the district court's determination that father's requested alternating weeks of parenting time would change the children's primary residence.

This conclusion leads us to the question *M.J.H.* left unanswered: what standard governs a parenting-time modification that would change a child's primary residence? Minn. Stat. § 518.175, subd. 5(b)'s directive that a district court shall modify parenting time consistent with the child's best interests "if the modification would not change the

child's primary residence" does not answer this question. If the legislature's silence means that Minn. Stat. § 518.175, subd. 5(b), does not authorize a district court to modify parenting time if it would change a child's primary residence, the district court did not err or otherwise abuse its discretion by denying father's motion. Alternatively, if, as the district court concluded, the legislature's silence means that the endangerment standard applies in such circumstances, this record shows that the district court did not clearly err in finding that father did not show endangerment. *See Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015) (affirming a district court's finding regarding endangerment as not clearly erroneous), *review denied* (Minn. Dec. 15, 2015). Because the result here is the same under either reading of the statute, we need not decide the legal standard that applies to parenting-time motions that would change a child's primary residence.

B. Alternative Parenting-Time Request

Father next argues that the district court abused its discretion by denying his alternative motion for Wednesday overnights and an additional hour of parenting time each school night. Father specifically challenges the adequacy of the court's best-interests findings. We are not persuaded.

In determining a child's best interests with regard to establishing parenting time in the first instance, the district court must "consider and evaluate all relevant factors" among a list of best-interests factors. Minn. Stat. § 518.17, subd. 1(a) (2018). But when the court considers whether to modify parenting time, it need not revisit every statutory best-interests factor and must consider only the factors relevant to the modification request. "[T]he Legislature did not intend to require detailed findings on *each and every* best-interest factor

when a court decides a request to modify parenting time," and requires the district court to "*consider* only the *relevant* best-interest factors." *Hansen*, 908 N.W.2d at 599 (addressing a modification request under Minn. Stat. § 518.175, subd. 8 (2016) (with respect to child-care parenting time)).

Review of the amended order demonstrates that the district court properly identified and considered the applicable best-interests factors.[2] The district court specifically found that father failed to establish that his requested "slight increase" in parenting time would "do anything to promote or further what is best for the children." The court also found that even granting father the one extra hour of parenting time on school days "could interfere or disrupt their evening schedule" and prevent them from having an "uninterrupted period during which they [could] do their school work." The district court further recognized that "the parties have a very quarrelsome relationship" and expressed "significant concerns" that changes in parenting time "without . . . a compelling reason, would exacerbate that aspect of the case, which . . . would be contrary to what is best for the children."

While the district court did describe the parties' stipulation as evidence of a "bargained for" schedule, we are not persuaded that the court elevated the stipulation itself over the children's best interests. The court expressly disclaimed following such an approach, stating that "the overriding consideration in deciding matters involving parenting time is not 'preserving' the 'benefit of the bargain,' . . . it is the best interests of the children that 'drives' such a determination." We are satisfied that the district court carefully

[2] Mother does not contend that father's alternative parenting-time request would change the children's primary residence. Accordingly, the best-interests analysis applies.

examined how father's limited parenting-time modification would affect the children's overall best interests, as well as their care, school performance, and the already strained relationship between the parents. The district court did not abuse its discretion in denying father's alternative motion to modify parenting time.

II. The district court did not abuse its discretion by declining to interview the children.

A district court has discretion to interview children in order to determine their parenting preferences. *Knott v. Knott*, 418 N.W.2d 505, 509 (Minn. App. 1988). In its order denying father's initial parenting-time motion, the district court stated that it would "serve no purpose" to interview the children because father did not make a sufficient showing of endangerment to warrant an evidentiary hearing. During the motion hearing, the district court expressed concern that seeking the children's opinions on parenting time could place them in an awkward role that may be contrary to their best interests. Father did not ask the district court to revisit this issue in his motion for amended findings. On this record, we discern no abuse of discretion by the district court's failure to interview the children or further address this issue in response to father's subsequent motion. *See Johnson v. Johnson*, 563 N.W.2d 77, 78 (Minn. App. 1997) (stating that purpose of a motion for amended findings is to allow the district court to review its own exercise of discretion), *review denied* (Minn. June 30, 1997); *First Nat'l Bank of Cold Spring v. Jaeger*, 408 N.W.2d 667, 670 (Minn. App. 1987) (stating that an appellant's "failure to properly seek amendment of the trial court's findings . . . precludes consideration of the issue[] as presented by appellant").

In sum, the district court did not clearly err in finding father's request for an alternating week parenting-time schedule would change the children's primary residence. And the court did not abuse its discretion in denying father's motions to modify parenting time.

Affirmed.