STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1122

In Re the Matter of the Custody of A. C. T. (DOB 8/01/2018),

Charles L. Thompson, petitioner,
Appellant,

vs.

Ashley R. Aydt,
Respondent.

Filed May 22, 2023
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-FA-19-5430

Shelly D. Rohr, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for appellant)

Joani C. Moberg, Susan A. Daudelin, Henschel Moberg, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Bryan, Judge; and Hooten, Judge.[*]

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision denying his motion to vacate an award of permanent joint legal custody for the following two reasons: (1) the district court did not hold an evidentiary hearing before deciding the motion to vacate; and (2) the district court erred as a matter of law and abused its discretion in weighing the statutory best interests factors. We affirm.

FACTS

Appellant Charles L. Thompson (father) and respondent Ashley R. Aydt (mother) are the parents of A.C.T. (the child). Father and mother were never married but lived together and cared jointly for the child until they separated in April 2019. In July 2019, father petitioned to establish custody and parenting time. The parties completed a custody and parenting time evaluation, and the custody evaluator recommended that father receive sole legal and sole physical custody. The evaluator concluded that mother engaged in domestic abuse against father, displayed "physical aggression" and "emotional dysregulation," had a "history of rageful outbursts," and had "repeatedly made threats to kill herself, [the child], and [father]." The evaluator recommended that custody "be re-evaluated at such time as [mother] can demonstrate that she has made significant progress in therapy, is no longer an emotional or physical threat to [the child] and can communicate effectively with [father] with a parenting consultant in place for resolving disputes."

The matter was scheduled for trial in March 2021. However, prior to the start of the scheduled trial, the parties reached a settlement. On March 8, 2021, the district court filed

a stipulated decree, signed by both parents, regarding custody, parenting time, and child support (the stipulated decree). The stipulated decree provided that mother would exercise parenting time on five out of every fourteen overnights and father would exercise parenting time for the other nine overnights. The stipulated decree also granted father temporary sole legal custody and temporary sole physical custody of the child, although father agreed to seek mother's input regarding legal custody decisions. The stipulated decree further required that a parenting consultant—not the district court—would decide the permanent custody dispute. Specifically, the stipulated decree stated that the parenting consultant would review the temporary legal custody award and decide permanent legal custody six months after mother began a dialectical behavior therapy (DBT) treatment program or on August 30, 2021, whichever occurred first. The stipulated decree also provided that the parenting consultant would determine permanent physical custody after five years.

The parties subsequently stipulated to the appointment of the parenting consultant, and on May 26, 2021, the district court issued the stipulated order (the May 2021 stipulated order). The May 2021 stipulated order provided that the parenting consultant had authority to "[d]etermine the permanent legal custody label" and did "not have to provide a full best interest analysis" in doing so. Under the heading "Review by the Court and/or Appeals" and under the subheading "Motion Practice," the May 2021 stipulated order mandated that if either parent was "in disagreement with a decision of the [parenting consultant]," that party "shall bring a motion to contest the [parenting consultant's] decision." There is no provision requiring the district court to hold an evidentiary hearing, and the May 2021

stipulated order specified that upon a party's motion, "the [district] court shall review the decisions of the [parenting consultant] using a de novo standard of review."

The parenting consultant issued the permanent legal custody decision on February 1, 2022. He awarded the parties permanent joint legal custody and instructed them to work with a co-parenting coach. The parenting consultant noted that "there is no doubt . . . that [mother's past] approach and behaviors were deeply concerning and problematic." However, he observed from his review of mother's mental health records that "[mother] has appropriately and consistently engaged in therapy" and "recognizes that she behaved poorly and states that she does not behave that way any longer." He noted one therapist's belief that mother's actions were "more trauma based than personality (or organically) based," because mother experienced trauma. He further stated that mother "owns and takes responsibility for her most outrageous and inexcusable behavior," and that in his "discussions with [one of mother's therapists], it seems clear to [the therapist] that [mother] has made a good deal of progress and is fairly and appropriately tackling the issues of concern."

Father moved to vacate the parenting consultant's permanent legal custody decision without an evidentiary hearing. In the alternative, father requested an evidentiary hearing and removal of the parenting consultant. The parties both submitted written arguments and exhibits to the district court to support their positions. Father's exhibits included audio and video recordings from 2019 regarding mother's past conduct, as well as documentary evidence, including reports from two experts criticizing the parenting consultant's decision. Mother's evidence included affidavits from her family generally praising her

parenting, reports from her mental health providers discussing her positive progress in therapy, and additional mental health records.

On July 7, 2022, the district court filed an order denying father's motion to vacate the parenting consultant's decision, his request to remove the parenting consultant, and his alternative request for an evidentiary hearing. The district court described the parenting consultant's analysis as "thorough," and engaged in a de novo analysis of the statutory best interests factors set forth in Minnesota Statutes section 518.17, subdivisions 1(a)(1)-(12) (2022).[1] The district court found that of the eleven best interests factors it addressed, ten favored joint legal custody and one was neutral.

At the beginning of this analysis, the district court cited subdivision 1(b)(9) (2022), which contains a rebuttable presumption against joint legal custody that applies in cases in which domestic abuse has occurred. The district court made the following findings specifically relating to this subdivision:

> There is a history of abuse perpetrated by [mother] against [father]. The videos and audio are harrowing and depict [mother] at what appears to be her absolute lowest point. She is out of control. Her behavior was directed at [father], it terrified [father], and her behavior also frightened [the child]. Two years ago, the custody evaluator opined: 'Additionally, if [mother] is not able to regulate herself, it will be difficult for her to teach [the child] how to regulate himself.' What is important at this point, is that [mother] acknowledges how awful her behavior was and has worked diligently to address

[1] The district court did not expressly address one of the twelve best interests factors in its analysis—"the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent." *See* Minn. Stat. § 518.17, subd. 1(a)(4). However, the district court made findings that addressed this factor in various parts of its order and father does not contest the district court's analysis regarding this factor on appeal.

> her trauma and regulate her behavior. This leads to a deeper understanding of one's self and the delicate nature of mental health. As a parent, this leads to an ability to impart to one's child how to communicate about mental health, how to deal with issues, and how to move forward. It may be too soon for [father] to recognize that [mother's] trauma journey could be an asset in a co-parenting relationship. It is obvious to the Court that one's story of survival and healing can make a person into a wiser and better parent.
>
> There is no evidence that [father] ever perpetrated any abuse against [mother]. Therapists can choose to tolerate narratives with no evidence, but not the Court. That issue is closed, and it will be counterproductive for [mother] to continue with that narrative.
>
> All of this—each parent's struggle and each parent's unique abilities—is why it is in [the child's] best interests for his Mom to be as engaged in his legal custody decisions as his Dad. Both of these parents have a lot to bring to the table on behalf of their son. And, both parents face the challenge of seeing issues through the lens of the other.

The district court also made pertinent findings regarding the other best interests factors. For instance, the district court found that mother has acknowledged her behavior, engaged in therapy, and made progress with her mental health. The district court determined that "[mother] is in a completely different emotional and mental health position than she was two years ago during the custody evaluation." The district court also noted that mother had "experienced a deeply traumatic event" and that "outside events resulted in [mother's] emotional dysregulation," observing that "through therapy, [mother] has been able to come to terms with the trauma and how it affected her."

The district court further determined that the other best interests factors generally favored joint legal custody, noting the following: the challenges facing a developing child

"are best met with two parents who can work together"; any special needs of the child would be better "addressed by two parents instead of one"; "[i]t will benefit both parents—and contribute to the energy they bring to their decision-making—to have a co-parent"; the parents "can draw from their different backgrounds and experiences to jointly make decisions in [the child's] best interests"; and "two parents working together are less likely to make abrupt changes to the child's life that would exclude the other parent . . . [or] extended family members and friends." Finally, the district court addressed the parties' willingness to cooperate. It reasoned that some future conflict is likely, but "joint legal custody means the court would potentially become involved sooner to help the parties navigate disputes." Based on these findings, the district court denied father's motion, deciding that joint legal custody was in the child's best interests. Father appeals.

DECISION

I. Decision Not to Have an Evidentiary Hearing

Father first argues that he was entitled to an evidentiary hearing and that the district court abused its discretion when it decided not to hold one. We conclude that father was not entitled to an evidentiary hearing in this case and the district court did not otherwise abuse its discretion in declining to hold an evidentiary hearing.

While parties in custody disputes are generally entitled to a contested evidentiary hearing prior to an initial determination of custody, *see Christianson v. Henke*, 831 N.W.2d 532, 543 (Minn. 2013) (quoting Minn. Stat. § 518.168(c)), the parties in this case relinquished their right to a trial. In the stipulated decree and the May 2021 stipulated order, the parties elected to proceed through a form of alternative dispute resolution when

they stipulated that the parenting consultant would make the initial permanent custody decision. *See* Minn. Gen. R. Prac. 114.02(d)(4) (noting that parties may create alternative dispute resolution processes by written agreement).

The May 2021 stipulated order addressed the scope of the parenting consultant's authority and created a process for appealing the parenting consultant's decision: a party disagreeing with the decision "shall bring a motion to contest" the decision, and the district court "shall review the decisions of the [parenting consultant] using a de novo standard of review." Nothing in the express language of the May 2021 stipulated order or the stipulated decree states that the district court must hold an evidentiary hearing as part of this review process.[2] We see nothing in either order that requires an evidentiary hearing here.

Because father was not entitled to an evidentiary hearing based on principles of due process, applicable statutory provisions,[3] or the stipulated orders, we treat the district court's denial of an evidentiary hearing as a procedural ruling that we review for an abuse

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[2] To the extent that father argues we must infer a right to an evidentiary hearing from the parties' stipulation to a de novo standard of review of the parenting consultant's decisions, we remain unconvinced to reverse on this basis. District courts often exercise de novo review without holding an evidentiary hearing. *See, e.g.*, Minn. R. Civ. P. 53.07 (providing for de novo review of a master's findings); *Davis v. Davis*, 631 N.W.2d 822, 825 (Minn. App. 2001) (stating that district courts review child support magistrate decisions de novo); *Thompson v. Thompson*, 385 N.W.2d 55, 57 (Minn. App. 1986) (stating that district courts do not review family court referee findings for clear error).

[3] Although father does not assert that he has a statutory right to an evidentiary hearing, father's written arguments include citations to two cases involving a person's statutory right to an evidentiary hearing. Neither case relates to custody determinations, issues that the parties agreed would be resolved outside of court, or the review of a parenting consultant's decision. *See Volkmann v. Volkmann*, 688 N.W.2d 347, 348 (Minn. App. 2004) (holding that evidentiary hearing was required under an arbitration statute); *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995) (discussing type of hearing required under the harassment restraining order statute).

of discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *rev. denied* (Minn. Oct. 24, 2001). "The Minnesota Rules of Civil Procedure allow a court to take evidence either by the submission of written documents, through oral testimony, or both." *Id.* at 722 (citing Minn. R. Civ. P. 43.05). Here, the parties each submitted several exhibits and made extensive written arguments based on these documentary and testimonial statements. Indeed, the parties' written submissions relating to father's motion to vacate the parenting consultant's decision exceeded 1,000 pages. The substance of father's motion to vacate also indicates that at the time father made the motion, he believed the district court had discretion to decide the motion without holding an evidentiary hearing. In the motion to vacate, father made a principal request that the district court award him permanent sole legal custody without an evidentiary hearing. Father's request for an evidentiary hearing was made only in the alternative. Given the extent and substance of these submissions, we are not persuaded that the district court abused its discretion when it decided father's motion without an evidentiary hearing.

II. Denial of Motion to Vacate the Award of Joint Legal Custody

Father also argues that the district court erred as a matter of law and abused its discretion when it denied the motion to vacate the parenting consultant's decision to grant the parties joint legal custody. We conclude that the district court applied the correct legal standard and that its decision was not against logic or the facts in the record.

"The guiding principle in all custody cases is the best interest of the child," *Pikula v. Pikula*, 374 N.W.2d 705, 711 (Minn. 1985), and a court's "paramount commitment" is to that best interest, *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). "In considering

the child's best interests, a district court must 'consider and evaluate all relevant factors,' including 12 factors set forth by statute." *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019) (quoting Minn. Stat. § 518.17, subd. 1(a)(1)-(12)). These enumerated factors include "whether domestic abuse . . . has occurred in the parents' . . . relationship," Minn. Stat. § 518.17, subd. 1(a)(4), and "any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs," *id.*, subd. 1(a)(5). A district court "must provide detailed findings" on each of these statutory factors "and explain how each led to its conclusions and to the determination of custody and parenting time." *Thornton*, 933 N.W.2d at 789 (quotations omitted).

In addition to the 12 best interests factors, the custody statute includes "nine provisions that govern the application of the best interests of the child factors by the court." *Id.* (quoting Minn. Stat. § 518.17, subd. 1(b)(1)-(9)) (quotation marks omitted). One of these provisions requires the district court to employ "a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents." Minn. Stat. § 518.17, subd. 1(b)(9). In determining whether this presumption has been rebutted, district courts "consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs." *Id.* These considerations mirror the language of the fourth statutory best interests factor that must be evaluated in all child custody cases. *See* Minn. Stat. § 518.17, subd. 1(a)(4). The rebuttable presumption in subdivision 1(b)(9) does not apply

against any particular party and "does not assign a burden of production or persuasion to rebut the presumption to any particular party." *Thornton*, 933 N.W.2d at 793.[4]

We review a district court's custody determination for an abuse of discretion. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018) (district courts exercise "broad discretion" when deciding custody matters). A district court abuses its discretion when its decision is against logic or contrary to the factual findings of the district court. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). There is "scant if any room for an appellate court to question the [district] court's balancing of best interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). This court will not reverse a district court's custody determination simply because we may have decided differently in the first instance. *Meyer v. Meyer*, 375 N.W.2d 820, 826-27 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985). However, when the appeal involves a challenge to the district court's findings of fact, we review the findings for clear error, and we review questions of law de novo. *Thornton*, 933 N.W.2d at 790.

First, father argues that the district court failed to address the rebuttable presumption in subdivision 1(b)(9), asserting that "there is no mention" of the statutory presumption in the district court's order and that the district court failed to make specific findings of fact

[4] The parties do not dispute the meaning or effect of subdivision 1(b)(9), and neither party argues that this subdivision is ambiguous. The parties also acknowledge that the considerations listed in subdivision 1(b)(9) ("the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs") overlap with the majority of the applicable best interests factors, which also require consideration of the parties' history of care, their parenting abilities, and the well-being and developmental needs of the child, *see* Minn. Stat. § 518.17, subd. 1(a)(1), (2), (4), (5), (6), (7), (10), and (12).

regarding the considerations listed in subdivision 1(b)(9). We conclude that this argument does not accurately characterize the district court's analysis. Although the district court did not expressly state as a conclusion of law that the statutory presumption had been rebutted, the district court cited subdivision 1(b)(9) at the beginning of its analysis and made several factual findings addressing the considerations listed in that subdivision. It also expressly determined that joint legal custody was in the best interests of the child, notwithstanding the prior occurrence of domestic abuse, and made extensive findings regarding the best interests factors, including those that overlap with the considerations listed in subdivision 1(b)(9). When the district court's analysis is placed in its proper context, the district court did not fail to apply the proper legal standard.

Second, father also argues that the district court abused its discretion when it decided not to vacate the parenting consultant's decision to award the parties joint legal custody despite the occurrence of domestic abuse. While we acknowledge that this is a close case, we are mindful that there is "scant if any room for an appellate court to question the [district] court's balancing of best interests considerations," *Vangsness*, 607 N.W.2d at 477, and this court will not reverse a district court's custody determination simply because we may have decided differently, *Meyer*, 375 N.W.2d 826-27. Here, although there are facts in the record that weigh against an award of joint legal custody, there are also facts that support the district court's decision.[5]

[5] Although portions of father's brief are critical of some factual findings, father does not assign error to these findings, arguing instead that the district court did not give proper weight to conflicting evidence and did not accurately weigh the best interests factors. Given the arguments as presented, we need not review the district court's findings of fact.

In addressing the considerations of subdivision 1(b)(9), the district court acknowledged that "[t]here is a history of abuse perpetuated by [mother] against [father]," that the recordings depicting mother's conduct are "harrowing," and that mother's behavior "terrified [father]" and "frightened [the child]." However, the district court also found that this occurred two years in the past, when mother was at "what appear[ed] to be her absolute lowest point." The district court emphasized that mother "acknowledges how awful her behavior was and has worked diligently to address her trauma and regulate her behavior." The district court weighed this recent conduct more heavily, noting that mother's progress was "[w]hat is important at this point." The district court also noted that mother could meet the child's developmental needs, in part because of the progress that she had made: "[a]s a parent, this leads to an ability to impart to one's child how to communicate about mental health, how to deal with issues, and how to move forward"; "one's story of survival and healing can make a person into a wiser and better parent."[6]

In addition, the district court made findings regarding the considerations in subdivision 1(b)(9) when it discussed the overlapping best interests factors. For instance, the district court made findings regarding the context and nature of mother's prior conduct, noting that "outside events resulted in [mother's] emotional dysregulation" and observing that mother "is in a completely different emotional and mental health position than she was two years ago." The district court ultimately focused on its finding of fact that "through

[6] Father does not argue that district courts are precluded from considering how a parent's past conduct and struggles can aid that party's future ability to care for the child. Accordingly, we need not review this portion of the district court's analysis.

therapy, [mother] has been able to come to terms with the trauma and how it affected her." The district court also made both general and specific findings that having both parents working together would benefit the child more than having one parent designated as the sole custodian to the exclusion of the other. The district court did not need to repeat its findings regarding the ability of both parents to safely care for the child and meet the child's needs in the specific discussion relating to subdivision 1(b)(9).

Finally, we are mindful that in the stipulated decree, father stipulated that mother would exercise unsupervised overnight parenting time on five of every fourteen overnights and that even when he was the temporary sole legal custodian, he agreed to seek mother's input before making decisions regarding the child's education. Father further agreed that this arrangement was in the child's best interests. At the time father entered into the stipulation, he apparently believe that mother's prior conduct did not prevent her from ably caring for the child during her stipulated parenting time.

In sum, the findings in the district court's order adequately address "the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs." Minn. Stat. § 518.17, subd. 1(b)(9). Given these findings and the district court's findings regarding the best interests factors, it was not against logic for the district court to deny father's motion to vacate the parenting consultant's decision to award the parties permanent joint legal custody.

Affirmed.