STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1759

In re the Marriage of:
Ross Edward Rehbein, petitioner,
Respondent,

vs.

Robyn Elizabeth Rehbein,
Appellant.

Filed July 22, 2013
Affirmed
Smith, Judge

St. Louis County District Court
File No. 69DU-FA-08-580

Bill L. Thompson, Duluth, Minnesota (for respondent)

Leah Sonstelie Warner, Vogel Law Firm, Fargo, North Dakota (for appellant)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, Judge

In this parenting-time dispute, appellant alleges that the district court abused its discretion by awarding respondent parenting time because the district court failed to (1) engage in a best-interests-of-the-child analysis; (2) make findings that were supported by the evidence; and (3) follow or mention the recommendations of the guardian ad litem

(GAL). Because the record supports the district court's parenting-time determination, we cannot conclude that the district court abused its discretion. We affirm.

FACTS

Appellant-wife Robyn Rehbein and respondent-husband Ross Rehbein married in 1999. The parties have two children, A.R., born November 27, 2003, and L.R., born December 7, 2006.

Upon returning home on December 27, 2007, A.R. requested that wife take her to the bathroom to change her underwear. This request was not uncommon as A.R. had been suffering from vaginal redness and discomfort that required wife and husband to regularly apply lidocaine spray and/or Desitin cream. Once in the bathroom, wife observed that A.R.'s labia appeared red and inquired whether someone had touched A.R. where they should not have. A.R. responded that husband had touched her with his hand but that it had occurred only twice. When wife confronted husband, he indicated that A.R. had a big imagination.

Wife took A.R. for a medical examination the next day. Throughout the examination, A.R. was fearful, hesitant, and only responded to questions by whispering into wife's ear. Wife informed the examining doctor of A.R.'s disclosure of possible sexual abuse. The physical examination revealed "erythema all along the edges of both labia majora . . . [and] a small 'mound' of tissue just inferior to the uretheral meatus." The doctor never directly inquired regarding the alleged sexual assault and A.R.'s fearful nature rendered a more thorough physical examination impossible. The doctor concluded that although sexual abuse was a possible cause of the vaginal redness, bad hygiene or an

infection may also explain the symptoms. However, based on wife's disclosure of the possible abuse, the doctor reported a possible assault to social services.

On January 3, 2008, the district court issued an emergency order for protection (OFP) that granted wife temporary physical custody of the children. The finalized OFP awarded husband supervised parenting time. As part of the OFP proceeding, husband voluntarily agreed to undergo a psychological evaluation. The evaluation revealed no basis for limiting husband's contact with the children. On February 11, 2008, St. Louis County child protection, investigating the alleged abuse based on the doctor's report, indicated that "[w]e did not determine that abuse occurred or that child protective services are needed. The reasons for the determinations were based on interviews with members of [the] family and reports from [the] doctors regarding examinations of [A.R.]." On May 27, 2008, husband moved to dismiss the OFP, which the district court denied. However, the district court noted that supervised parenting time must recommence immediately and that unsupervised parenting time should be considered in the future. On May 30, 2008, husband filed for divorce.

Following the alleged abuse, A.R. began therapy. Although initially helpful, the sessions began deteriorating when the therapist would mention husband. The therapist referred A.R. to a female colleague. After three sessions, that therapist noted that A.R. displayed symptoms of post-traumatic stress disorder and noticed that A.R.'s artwork during play therapy "included inappropriate material," that A.R. exhibited signs of physical illness following visits with husband, and that A.R. displayed signs of disassociation. Based on these conclusions, the therapist recommended that husband's

parenting time with each of his daughters be suspended due to the "high potential that [A.R.'s] younger sibling may have also been abused." A second recommendation requested continued suspension of parenting time, noting that A.R. continued to display signs of physical illness following parenting time, was beginning to have behavioral trouble at school, and had begun vocalizing her desire not to see husband.

On October 22, 2008, husband and wife began a psychosexual evaluation intended to "assist the court in the early neutral evaluation process with respect to determining [parenting time], custody, and parenting matters." This evaluation would continue until March 9, 2009, with a final report issued on March 10, 2009. The completed report indicated that the parties had experienced some marital tension prior to the alleged abuse but noted that husband had been a good father and that both girls were attached to him. The report concluded that wife appeared incapable of hypothesizing explanations as possible causes for A.R.'s symptoms other than the alleged abuse. The report noted wife's "unresolved" issues regarding abuse she had previously experienced and determined that wife was "vulnerable to excessive and hypervigilant observations of her daughter." The report also determined that husband "consistently throughout testing demonstrates a failure to meet any of the typical symptoms or criteria seen in sex offenders." The report concluded that both parents were suitable for custody.[1]

[1] Wife moved to exclude this report, alleging that the assessors were biased and aided husband in the presentation of his case. Wife argued that the assessors made "sarcastic" notes regarding A.R.'s treatment and then destroyed their documentation to render it undiscoverable. The district court denied Wife's motion.

On December 20, 2008, the district court appointed a GAL to study the parties' situation and make a custody recommendation. On January 6, 2009, the district court denied wife's motion to terminate supervised parenting time. In its written denial, the district court concluded that "insufficient evidence was presented to demonstrate that [husband] was the cause of any [of the] problems that [A.R.] is having. In particular, the Court reviewed the logs for the [parenting time] . . . and finds nothing in them that suggests [husband] is doing something in particular to get his daughter upset." On June 30, 2009, the district court allowed wife to relocate to Lake Park, Minnesota but emphasized the issue would be "revisited" should the move impact husband's parenting-time rights.

On November 2, 2009, the district court lifted the OFP against husband based on the stipulation of the parties that their divorce negotiations would "provide all of the protections that are needed while things are being sorted out." On November 24, 2009, the district court issued an order to show cause requiring wife's personal appearance to explain why she was not in contempt of court for failure to follow the parenting-time schedule. On December 1, 2009, the district court dissolved the parties' marriage and issued a partial judgment and decree dividing the parties' property and assets while continuing the matters of custody, child support, and parenting time for a further evidentiary hearing. On December 2, 2009, wife was found in civil contempt of court for failing to follow the parenting-time schedule and was ordered to serve 30 days in county jail, stayed on the condition that she comply with the parenting-time schedule and compensate husband for his attorney fees in bringing the motion.

The district court originally scheduled the evidentiary hearing to resolve custody, child support, and parenting time for January 2010. However, after moving to Lake Park, A.R. began seeing a new therapist, Dr. Angela Cavett. On October 16, 2009, A.R. made her first independent allegation of abuse against husband. A.R. informed Dr. Cavett that she did not want to attend supervised visits with husband because "he touched my private parts in the living room." Dr. Cavett reported the allegation to the relevant county agency, which led to an investigation. This series of events prompted the district court to continue the January 2010 evidentiary hearing to allow the county to complete its investigation. On March 2, 2010, a county social worker concluded: "We did receive a credible disclosure of sexual abuse from [A.R.]. She does name her father as the person who abused her . . . I would recommend that visits stop at least during the pendency of the investigation into this matter." On March 4, 2010, based on this recommendation, along with the recommendations of Dr. Cavett and the GAL, the district court suspended Husband's parenting-time rights.

Due to a variety of procedural delays, the evidentiary hearing to address husband's parenting-time privileges did not occur until November. On November 3, 2010, the parties entered an oral stipulated agreement resolving the custody issues. However, due to a "mutual mistake of fact," the parties were unable to agree on finalized written language. Thereafter, the district court voided the oral stipulation. On July 8, 2011, the district court issued a custody determination based on a stipulated agreement by the parties. The district court granted wife sole physical and legal custody of A.R. and L.R. subject to husband's supervised parenting time. The district court dismissed the GAL.

husband's parenting time was set to increase over time pending a six-month review hearing. It had been 17 months since husband had exercised any type of parenting-time privileges.

Prior to the six-month review hearing, wife moved to modify the dissolution judgment award by terminating husband's parenting time. *See* Minn. Stat. § 518.175, subd. 5 (2012) (addressing modification of parenting time). Wife argued that the girls were unwilling to attend the visits. Wife supplemented her motion with Dr. Cavett's recommendation that parenting time be terminated because both girls had vocalized a desire to end parenting time, and Dr. Cavett indicated it was important to the children's therapy that their wishes be respected. husband countermoved for increased parenting time. On April 12, 2012, the district court held an evidentiary hearing. The district court heard testimony from wife and Dr. Cavett, received four exhibits, and reviewed depositions from various witnesses. The district court took the matter under advisement and indicated that it would review all of the evidence submitted with the parties' previous motions.

On August 2, 2012, the district court issued an order denying wife's request and proceeded to modify the parenting-time arrangement. The order outlined the lengthy procedural history of the case and took judicial notice of all previous orders. Ultimately, the district court identified "multiple red flags" regarding the alleged sexual abuse. The district court noted that husband did not meet the normal indicators of a sex offender, that wife had unresolved issues regarding past abuse against her that caused her to be hypersensitive to her own children's experiences, that leading questions were asked on

the night of the alleged incident, and that L.R. was experiencing many of the same behavioral abnormalities as A.R., despite no allegation of abuse. The district court also determined that wife's testimony at the hearing was evasive and that Dr. Cavett's testimony supported neither a finding of abuse nor limiting husband's parenting time. Also, the district court noted its belief that the children were absorbing the negative feelings of wife and her family members regarding husband. The district court concluded that, "[i]n the absence of evidence of any inappropriate sexual conduct by [husband] toward either child, the deprivation of his relationship with his children simply cannot continue." The district court ordered the parties to follow a graduated parenting-time schedule that would increase to unsupervised overnight parenting time over a six-month period. Finally, the district court determined that wife be held in constructive contempt for a further failure to follow the preexisting schedule. This appeal followed.

D E C I S I O N

Wife contends that the district court committed multiple errors and that we should reverse its determination or remand for further consideration. As a preliminary matter, wife asserts that the district court erred by failing to address the custody recommendations of the GAL when it modified the parties' parenting-time arrangement. On the merits, wife asserts that the evidence does not support a number of the district court's factual findings. Finally, wife challenges the district court's parenting-time decision, arguing that the district court failed to engage in an explicitly detailed best-interests-of-the-child analysis as required by Minnesota law. We first address the

preliminary argument regarding the GAL's recommendations before addressing the merits of the parenting-time determination.

I.

An independent evaluator's custody recommendations are not binding upon a district court. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991). It is uncontested that, if the GAL's report is relevant, Minnesota law requires that a district court follow certain steps if it opts not to follow the recommendations of a GAL. *See Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994) (explaining that rejection of GAL's recommendations requires express reasons or detailed findings examining issues similar to those considered by the GAL). A district court's failure to fulfill one of these requirements necessitates a remand. *Id.* at 166.

Prior to the July 8, 2011 custody order, the GAL issued four detailed reports containing parenting-time recommendations. The last report was issued on June 14, 2011. However, the July 8 order stemmed from a stipulated agreement of the parties, which incorporated portions of the GAL's recommendations but rejected others.[2] The district court then dismissed the GAL. The order specified that, should a GAL be required in the future, the parties must select a new GAL by mutual agreement. Nothing in the record indicates that the parties sought reappointment of a GAL. At the time of wife's final motion to terminate husband's parenting time, there was no GAL assigned to

[2] "Courts favor stipulations . . . as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). We accord stipulations the sanctity of binding contracts. *Id.*

the case. Therefore, there were no GAL recommendations before the district court at the time of its August 2012 order. The district court did not err by failing to consider or distinguish the GAL recommendations issued prior to the parties' stipulated agreement.[3]

II.

The district court has broad discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). "A district court abuses [its] discretion [regarding parenting time] by making findings unsupported by the evidence or improperly applying the law." *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citing *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)). A district court's findings of fact will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978). "It is well established that the ultimate question in all disputes over [parenting time] is what is in the best interest[s] of the child." *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984). By definition, parenting time has the explicit goal of "enabl[ing] the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2012). Actions that "allow a child to maintain a two parent relationship" are in the best interests of the child. *Clark*, 346 N.W.2d at 385. The

[3] Even if we deemed the recommendations of the GAL relevant, the district court issued detailed findings examining the procedural history of this case as it related to the well-being of the children. Such an analysis would be sufficient to distinguish a GAL's recommendations. *See Rogge*, 509 N.W.2d at 166 (requiring detailed findings examining factors similar to those in a custody evaluation by a neutral evaluator if the district court rejects the evaluator's recommendations).

district court maintains "broad discretion to determine what [is in a child's] best interests . . . in the area of [parenting time]." *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984). Despite this broad discretion, it is important that a district court sets forth its decision with a high degree of particularity. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989). The party seeking modification of a previous parenting-time order bears the burden of establishing that the proposed modification is in the children's best interests. *Griffin*, 267 N.W.2d at 735.

Sufficiency of the Evidence

Wife challenges a multitude of the district court's factual findings, contending that the district court erred by determining that (1) insufficient evidence existed to establish that husband had in fact committed sexual abuse; (2) the psychosexual reports were relevant, unbiased, evidence; (3) the children's separation from husband contributed to their behavioral problems; and (4) that third parties' views of husband had contaminated the children's perceptions. "So long as there is evidence to support the [district] court's decision, there is no abuse of discretion." *Doren v. Doren*, 431 N.W.2d 558, 561 (Minn. App. 1988). To successfully challenge the district court's findings, "the party challenging the findings must show that despite viewing [the] evidence in the light most favorable to the [district] court's findings . . . the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). This court defers to the district court's credibility determinations. *Id.* at 472. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.* at 474.

Although wife contends that many of the district court's determinations were based on evidence that was unreliable, we are unable to conclude that the record establishes a "definite and firm conviction that a mistake was made." *Id.* Rather, the district court considered the entire procedural history of the case, weighed the credibility of the witnesses who testified at the hearing or through deposition, and rendered a decision based on the evidence received. On our review, the district court carefully weighed all of the evidence presented. The record amply supports the factual findings rendered by the district court. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that an appellate court need not "discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings," and that its "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings"); *Peterka v Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (applying *Wilson* in dissolution case); *Vangsness*, 607 N.W.2d at 474-75 n.1 (same).

Modification of Parenting Time

Wife asserts that the district court failed to follow Minnesota law, and specifically analyze the best-interests factors, when it modified the parties' parenting-time arrangement. Under Minnesota law, if, after a hearing, a district court finds that parenting time with one parent is "likely to endanger the child's physical or emotional health or impair . . . emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant." Minn. Stat. § 518.175, subd. 1(a) (2012).

Modification of parenting time must comport with what is in the best interests of the child. *Id.*, subd. 5. It is undisputed that the district court's order significantly modified the Rehbein's parenting-time arrangement, as the need for supervised visits was gradually extinguished. *See Funari v. Funari*, 388 N.W.2d 751, 753 (Minn. App. 1986) (stating that mere clarifications or insubstantial modifications need not be supported by written best-interests findings).

Wife's contention that the district court failed to explicitly address the best interests of the children is unavailing. During oral argument before this court, wife repeatedly asserted that, despite the district court's assurances that it would consider and address the best interests of the children, its order makes no reference to the statutory factors inherent in a best-interests analysis. Although the district court never directly references the phrase "best interests," the supreme court has determined that parenting-time considerations require less explicit best-interests findings than custody determinations. *Olson*, 534 N.W.2d at 550 n.5. Specifically, the supreme court stated that, "[w]hile the record does not contain the detailed findings on 'best interests' required, for example, in the determination of custody pursuant to Minn. Stat. § 518.17, subd. 1 . . . we conclude that the [district] court here has made sufficient findings on the issue of best interests and that the record adequately supports those findings." *Id.* at 550.

In this case, the district court undertook a similarly detailed analysis that contains sufficient findings to support its modified parenting plan. Specifically, the district court considered the age of the children and noted its concern that "irreparable" harm had been caused due to the lengthy separations that occurred throughout litigation. *See In re*

Welfare of B.K.P., 662 N.W.2d 913, 916 (Minn. App. 2003) (explaining that in a modification-of-parenting-time order, a district court must consider the age of the child and the child's relationship with the noncustodial parent when considering the child's best interests). Beyond this, the district court specifically notes its consideration of the following circumstances: (1) wife's unresolved issues stemming from her own victimization that renders her "hypervigilant and [likely to] misinterpret" normal behavior as abnormal; (2) wife immediately suspected and suggested sexual abuse at the time of A.R.'s revelation; (3) husband's failure to display any of the typical indicators of a sex offender; (4) wife's evasiveness on cross-examination and its impact on her credibility; (5) similarities existed between L.R.'s behavioral issues and those of A.R., despite the lack of allegations of sexual abuse between husband and L.R.; (6) A.R. continued to display troublesome behavior even though a sexually abused victim should demonstrate signs of improvement when removed from the alleged abuser; and (7) a review of parenting-time-log records between husband and the children revealed an appearance that wife's negative feelings toward husband were influencing the children's behavior. That the record could support other inferences does not mandate reversal even though wife adamantly disagrees with a number of these findings and the district court's interpretation of the evidence. *Vangsness*, 607 N.W.2d at 474.

The district court was in the unenviable position of sifting through a voluminous record of alleged, although never definitively established, sexual abuse. The record contains competing evidence as to what actually occurred and illuminates no clear path forward. However, after reviewing all of the evidence and weighing the credibility of the

witnesses, the district court determined that it could not conclude that husband abused A.R. and that "the deprivation of [husband's] relationship with his children simply cannot continue." The evidence supports this conclusion, and the district court adequately considered the best interests of the children. On this record, wife has not demonstrated that the district court abused its discretion.

Affirmed.