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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1558**

County of Dakota,
Respondent,

Christine Marie Hromadko,
n/k/a Christine Marie Ackerman,
Respondent,

vs.

Scott Andrew Kohser,
Appellant.

**Filed November 25, 2008
Affirmed
Kalitowski, Judge**

Dakota County District Court
File No. F1-92-8297

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appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Pro se appellant father, Scott Andrew Kohser, challenges several orders issued by the district court. Appellant argues that the district court abused its discretion when it (1) denied his motion to forgive past child support arrears without making adequate findings; (2) failed to make adequate findings to support its parenting-time rulings; (3) denied his request for additional discovery from respondent, and his request for discovery costs and sanctions against respondent and her attorney; and (4) denied his motion to amend the district court's findings. We affirm.

DECISION

I.

Appellant was incarcerated from 2000 to 2008. In February 2007, appellant moved to modify his child support obligations or, in the alternative, to forgive past child support arrears. Appellant's child support obligations were set at a July 2000 hearing, shortly before appellant's incarceration, and stayed during his imprisonment. Appellant argues that the district court abused its discretion when it denied his motion to forgive his child support arrears. Appellant also argues that the district court erred by failing to make adequate findings to support its denial of his request for forgiveness of child support arrears. We disagree.

Failure to retroactively modify child support obligations

Whether to modify child support is discretionary with the district court, and its decision will be reversed on appeal only if it reached a clearly erroneous conclusion that

is against logic and the facts on the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002); *Moylan v. Moylan*, 384 N.W.2d 859, 864 (Minn. 1986).

Here, the district court denied appellant's motion for forgiveness of child support arrears in an April 2007 order. Appellant argues that his request for forgiveness should have been granted because of his inability to work due to an injured knee, student loan debts which were unknown to him at the 2000 hearing, and a mistaken belief that his case files were being consolidated to reduce his child support arrears.

Forgiveness of unpaid past child support arrears that have accrued before the party has brought a motion to modify child support is a retroactive modification governed by Minn. Stat. § 518A.39, subd. 2 (2006). A support order may be modified upon a showing of changed circumstances which make the terms of the existing award unreasonable and unfair. *Id.*

Here, appellant failed to establish that either his injured knee or his student loans constitute a change in circumstances. Appellant knew of his knee injury before the 2000 hearing and appellant, in his brief to this court, expressed his intent to get the student loans forgiven after his incarceration. In addition, appellant failed to submit evidence as to when he discovered his student loan debts. Because there is evidence to support the district court's denial of appellant's motion for forgiveness of support arrears, the court did not abuse its discretion.

Appellant also argues the district court abused its discretion when it declined to reopen the 2000 judgment. The district court's decision regarding whether to reopen a judgment will be upheld unless the district court abused its discretion. *See Hestekin v.*

Hestekin, 587 N.W.2d 308, 310 (Minn. App. 1998). A district court may reopen a judgment and decree because of “mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence” Minn. Stat. § 518.145, subd. 2 (2006). Here, appellant’s arguments regarding his knee injury do not support a reopening of the judgment because appellant was aware of the injury at the 2000 hearing. And appellant failed to establish that his student loan debts constituted newly discovered evidence. Therefore, we conclude that the district court did not abuse its discretion when it did not reopen the 2000 judgment.

Failure to make adequate findings to support its ruling

“That the record might support findings other than those made by the trial court does not show that the trial court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In order to successfully challenge a district court’s findings of fact, the party challenging the findings “must show that despite viewing that evidence in the light most favorable to the trial court’s findings . . . the record still requires the definite and firm conviction that a mistake was made.” *Id.* Appellant’s argument that the district court made a “blanket dismissal and denial” of his requests for relief without making adequate findings is without merit.

Here, the district court made findings regarding appellant’s child support and status, noting (1) appellant was ordered to pay child support after a paternity judgment; (2) appellant had been incarcerated since 2000; (3) appellant made numerous requests for review of the amount in support arrears and interest; and (4) Dakota County’s agreement

that interest on appellant's support arrears be suspended during his incarceration. There is evidence in the record to support these findings.

Appellant argues that he presented evidence to support his requests for retroactive modification of child support obligations. But appellant fails to show how the evidence in the record is inadequate to support the challenged findings. *See id.* (stating that only if findings are "clearly erroneous" does it become relevant that the record may support findings other than those made by the district court).

II.

During appellant's incarceration, after he and respondent began to dispute the amount of contact that appellant should have with his children, appellant brought a motion in June 2006 to enforce his parental rights. In February 2007, appellant made several motions to the district court. An order was issued by the district court in April 2007 regarding appellant's parenting time. Appellant argues that the district court abused its discretion when it failed to make adequate findings to support its parenting-time rulings and when it restricted the content of future conversations between appellant and his children. We disagree.

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).

Parenting-time restrictions

Here, the district court issued an order, granting appellant one 30-minute phone call every month with his children from prison. Appellant argues that since his only

means of parenting time during his incarceration consisted of phone calls to his children from prison, the district court abused its discretion by this limitation. Appellant also argues that the district court erred by failing to consider all of the best interests of the child factors required under Minn. Stat. § 518.17. We disagree.

The parenting-time statute does not require the district court to make specific findings on those factors. *See* Minn. Stat. § 518.175, subs. 1(a), 5 (2006) (providing for establishment and modification of parenting time). Instead, the parenting-time statute simply states that “[i]f modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time.” *Id.* § 518.175, subd. 5. Moreover, this court has held that although significant modifications of parenting time must be supported by findings that the modifications are in the child’s best interests, mere clarifications or insubstantial modifications of parenting time need not be supported by such findings. *Funari v. Funari*, 388 N.W.2d 751, 753 (Minn. App. 1986).

There is evidence in the record that the limitation of one 30-minute phone call every four weeks was not a substantial modification because appellant generally maintained telephone contact with his children only once every three weeks while incarcerated. Consequently, the district court did not abuse its discretion when addressing parenting time.

Content restrictions

The district court’s April 2007 order limited the content of future conversations between appellant and his children by prohibiting appellant from discussing law

enforcement, prison, the court system, or any other legal issues. Appellant argues that the district court abused its discretion and infringed upon his First Amendment rights by prohibiting the content of future conversations with his children. We disagree.

This court has held that limitations on a parent's free-speech rights that are required by children's best interests do not improperly restrict the parent's free-speech rights. *Geske v. Marcolina*, 642 N.W.2d 62, 68-70 (Minn. App. 2002); *see also LaChapelle v. Mitten*, 607 N.W.2d 151, 163-64 (Minn. App. 2000) (holding that the best interests of a child is a compelling state interest justifying infringement on a mother's fundamental right to travel), *review denied* (Minn. May 16, 2000); *Sina v. Sina*, 402 N.W.2d 573, 576 (Minn. App. 1987) (holding that the best interests of children took precedence over a father's First Amendment freedom of religion).

Here there was evidence in the record indicating that appellant discussed inappropriate topics with the children. Thus, we conclude that the district court did not abuse its discretion by determining that it was in the best interests of the children to limit the content of appellant's future conversations with them.

III.

Appellant challenges several discovery-related rulings issued by the district court. These discovery issues stem from various motions brought by appellant, after appellant and respondent began to dispute the amount of contact appellant should be permitted to have with his children during his incarceration. Appellant argues that the district court abused its discretion in (1) denying appellant's requests for additional discovery from respondent; (2) denying appellant's motion for costs pursuant to his motion for contempt;

and (3) denying appellant's motions for rule 11 and rule 37 sanctions against respondent and her attorney. We disagree.

Additional discovery

The district court has considerable discretion in granting or denying discovery requests. See *Baskerville v. Baskerville*, 246 Minn. 496, 507, 75 N.W.2d 762, 769 (1956); *Connolly v. Comm'r of Pub. Safety*, 373 N.W.2d 352, 354 (Minn. App. 1985). Absent a clear abuse of discretion, a district court's decision regarding discovery will not be disturbed. *Connolly*, 373 N.W.2d at 354. Rule 26.03 of the Minnesota Rules of Civil Procedure gives the district court broad discretion to fashion protective orders and to order discovery only on specified terms and conditions. *Erickson v. MacArthur*, 414 N.W.2d 406, 409 (Minn. 1987).

Here, the district court granted respondent's motion for a protective order to limit discovery sought by appellant. Appellant then requested discovery of information respondent submitted in support of her motion for a protective order and claims on appeal that the district court abused its discretion in denying this request. We disagree.

In order to prevail on a motion for a protective order a movant must show good cause, and the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. Minn. R. Civ. P. 26.03. Here, the record shows that respondent submitted an affidavit supporting her motion requesting that she not be required to address questions unrelated to the case, including inappropriate and private information. The district court properly granted this motion.

We conclude that because there is evidence to support the district court's denial of appellant's requests for additional discovery, the court did not abuse its discretion.

Motion for costs

Appellant asserts that the district court abused its discretion by denying his motion for costs incurred in preparing a motion for contempt against respondent. We disagree.

“Costs and disbursements shall be allowed as provided by statute.” Minn. R. Civ. P. 54.04. And “[c]osts may be allowed on motion . . . in the discretion of the court or judge” Minn. Stat. § 549.11 (2006). Generally, an award of costs and disbursements is a matter within the district court's sound discretion and will not be disturbed absent an abuse of that discretion. *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 482 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

Here, because appellant was not the prevailing party in bringing the contempt motion the district court did not abuse its discretion when it denied appellant's motion for costs.

Discovery sanctions

This court has determined that “[w]e review the propriety of rule 11 sanctions generally under an abuse-of-discretion standard.” *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000). Similarly, “[t]he choice of sanctions under Minn. R. Civ. P. 37.02(b) for failure to comply with discovery is within the trial court's discretion.” *Przymus v. Comm'r of Pub. Safety*, 488 N.W.2d 829, 832 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992).

Here, the district court did not explicitly address appellant's motions for discovery sanctions against respondent and her attorney. But the record indicates that the district court ordered respondent to comply with appellant's discovery requests. And on this record we cannot say the district court abused its broad discretion when it concluded that sanctions were not warranted.

IV.

Appellant brought a motion to amend the findings of the April 2007 district court order on the issues of parenting time, discovery sanctions, and visiting time with his children while he was incarcerated. Appellant argues that the district court abused its discretion when it denied his motion to amend findings. We disagree.

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the trial judge to judge the credibility of witnesses.” Minn. R. Civ. P. 52.01. In applying rule 52.01, “we view the record in the light most favorable to the judgment of the district court.” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). The court's factual findings must be “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole” to warrant reversal. *Id.* (quotation omitted). Appellant's argument that the district court abused its discretion in denying this motion is without merit.

Here, as discussed above, the record supports the district court's findings regarding the time and content of appellant's conversations with his children, and the district court's findings denying appellant discovery sanctions against respondent and her attorney. We conclude these findings are not clearly erroneous. Thus, the district court

did not abuse its discretion in denying appellant's motion to amend the findings of the April 2007 order.

Affirmed.