STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1871

In the Marriage of: Erik Paul Adolphson, petitioner,
Respondent,

vs.

Susan Kay Yourzak,
Appellant.

Filed October 21, 2008
Affirmed in part, reversed in part, and remanded.
Minge, Judge

Hennepin County District Court
File No. 27-FA-06-5229

Carole M. Megarry, Law Office of Carole M. Megarry, 220 South Sixth Street, Suite 2000, Minneapolis, MN 55402 (for respondent)

Susan Yourzak, 3305 Birch Place, Minnetonka, MN 55305 (pro se appellant)

Considered and decided by Lansing, Presiding Judge; Minge, Judge; and Connolly, Judge.

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

MINGE, Judge

Appellant challenges a district court decision granting respondent joint legal custody of the parties' minor child, claiming that the district court failed to make all the findings required by Minn. Stat. § 518.17, subd. 2 (2006), or to provide the explanation required by the same statutory provision of how joint legal custody would be in the best

interests of the child. Appellant further claims that the district court's finding regarding methods for resolving disputes over major life decisions are not supported by the record and that it erred in requiring appellant to mediate future child custody disputes. We affirm joint legal custody. We reverse the mediation requirement and remand.

FACTS

Appellant Susan Yourzak (mother) and respondent Erik Adolphson (father) were married on August 6, 1994. The parties have a minor child, L.A.Y., born on July 28, 1999.

The parties had a difficult marriage. An incident on June 22, 2006 led to claims of abuse and an order for protection (OFP). The record indicates that on that date father confronted mother after she lit a bonfire in the parties' backyard. During the course of the dispute, father threw items that struck mother. Father contacted police about the fire. Police responded and filed a report detailing the incident, noting that the criteria for domestic assault had not been met. Nonetheless, on July 14, 2006, mother requested an OFP. On July 27, 2006, father initiated this dissolution action. Following an evidentiary hearing in August 2006, a referee found that father committed domestic assault, issued the OFP against father for one year, and entered an interim order in the dissolution action.

The parties entered into a marital termination agreement resolving all issues except legal custody of L.A.Y. The district court approved the agreement and incorporated its terms, including the grant of sole physical custody of L.A.Y. to mother. Following a hearing, the district court granted joint legal custody of L.A.Y. and ordered

that the parties participate in modified mediation to resolve any future issues regarding custody and parenting time. This appeal followed.

D E C I S I O N

A district court has broad discretion to provide for the custody of the parties' children. *Schallinger v. Schallinger*, 699 N.W.2d 15, 18-19 (Minn. App. 2005). In general, the law "leaves scant if any room for an appellate court to question the trial court's balancing of best-interest considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). Consequently, appellate review of a custody determination is limited to determining whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Zander v. Zander*, 720 N.W.2d 360, 365-66 (Minn. App. 2006). A district court's findings of fact will be sustained unless they are clearly erroneous. Minn. R. Civ. P. 52.01. A finding is "clearly erroneous" if the reviewing court is "left with the definite and firm conviction that a mistake has been made." *Vangsness*, 607 N.W.2d at 472. Lastly, this court defers to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

I.

The first issue is whether the district court abused its discretion by granting joint legal custody because it failed to make the findings in support of joint legal custody required by Minn. Stat. § 518.17, subd. 2 (2006), or explain how its findings led to the determination that joint legal custody serve the best interests of L.A.Y.

The controlling principle in all child custody determinations is the best interests of the child. *Schallinger*, 699 N.W.2d at 19. The "best interests of the child" are defined by statute as meaning "all relevant factors," including the 13 factors listed in the statute. *See* Minn. Stat. § 518.17, subd. 1 (2006). Where joint legal custody is at issue, the district court must also consider the following four factors:

> (a) the ability of parents to cooperate in the rearing of their children;
> (b) methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
> (c) whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and
> (d) whether domestic abuse, as defined in section 518B.01, has occurred between the parents.

Minn. Stat. § 518.17, subd. 2 (2006).

The district court uses a rebuttable presumption that joint legal or physical custody is *not* in the best interests of the child if domestic abuse, as defined in Minn. Stat. § 518B.01 (2006), has occurred between the parents. *Id*. (emphasis added). Moreover, if a district court grants joint legal custody over the objection of a party, the district court must make detailed findings on each of the factors listed in section 518.17, subdivision 2, and explain how the factors led to the determination that joint custody would be in the best interests of the child. *Id.* Although the district court must make written findings which reflect consideration of all the custody decision factors in Minn. Stat. § 518.17, subds. 1 and 2, this does not mean that the district court must specifically address each factor. *Schultz v. Schultz*, 358 N.W.2d 136, 138 (Minn. App. 1984). Rather, "it is

sufficient if the findings as a whole reflect that the trial court has taken the statutory factors into consideration, insofar as they are relevant, in reaching its decision." *Id.* (quotation omitted).

Mother does not challenge the district court's findings related to the 13 best-interests factors listed in Minn. Stat. § 518.17, subd. 1. Mother's contention is that in this joint legal custody dispute the district court failed to (1) make the required findings under Minn. Stat. § 518.17, subd. 2; or (2) explain how these statutorily-required findings led to the district court's conclusion that joint legal custody would be in the best interests of the child.

A. Ability of the Parents to Cooperate

Mother contends that the district court clearly erred by finding that the parties had an ability to cooperate in the rearing of L.A.Y. "When evidence shows that parties to a dissolution are completely unable to communicate and cooperate, joint legal custody is not appropriate." *Zander*, 720 N.W.2d at 368.

Here, the district court found that the parties had a parenting-time schedule that had been in place for most of a year, which resulted in L.A.Y. being with each of his parents approximately one-half of the time. The district court found that the "parents have had little if any difficulty working within that schedule and have made adjustments, from time to time, when circumstances required." The district court found that both parties are active in relation to their son, father's schedule as a teacher affords him considerable time with L.A.Y., the parents take turns caring for the child, and both parents attend school conferences and medical appointments. The district court noted

that L.A.Y. had adjusted to the parenting-time arrangement. The district court further noted that L.A.Y. was generally healthy, was doing well academically, and exhibited no particular behavioral problems. The district court also found that the parties used a notebook to exchange information about schedule changes.

Mother bases her challenge to these findings primarily on conflicting testimony provided at the hearing on this issue. She testified regarding discipline and behavior problems that L.A.Y. had in school and at activities and introduced letters from school confirming the problems. However, father provided evidence that L.A.Y. was comparatively well-adjusted, that the letters were prepared at mother's request to assist in enrolling L.A.Y. in a special education program, and that they did not fairly reflect L.A.Y.'s condition. Mother points to communication problems. Father points to disagreements that were resolved. Mother points to testimony that the parties exchange notes, rather than a single notebook, to communicate with each other. This court defers to a district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210. Even if the district court erred by equating notes to a notebook, the larger conclusion about successful communication is not erroneous. Because our examination of the record does not leave us with a definite and firm conviction that a mistake has been made (*Vangsness*, 607 N.W.2d at 472) and because the district court's order, as a whole, adequately demonstrates how the district court's findings related to the cooperation factor led to the court's final conclusion that joint legal custody is in the best interests of L.A.Y., we conclude that the district court made the required findings related to this first factor.

B. Methods for Resolving Disputes Regarding Major Decisions

Mother emphasizes that the parties have disagreed over a whole range of major decisions regarding L.A.Y.'s life from school to religion to health care to an early haircut. However, father asserts matters were resolved and that he does not object to L.A.Y. being raised in the Lutheran faith. Father also points out how the parties have resolved property, support, and physical custody issues incident to the dissolution. The record includes the report from a custody and parenting-time evaluation by Hennepin County Family Court Services (HCFCS) based on several interviews and home visits. The evaluation discussed in detail all 13 best-interest factors and the four factors specific to joint legal custody. Although it noted no known methods of resolving disputes other than litigation, it stated that the

> Parties have the ability to cooperate in the rearing of [L.A.Y.] as they have similar values regarding education, religion, and medical care [and that the] Guardian Ad Litem has worked extensively with the family and reports that she has not been aware of any disputes between the parties since they have separated.

The district court observed that in this joint legal custody dispute it is in the mother's interest to indicate that there is no method for resolving major decisions and that her position in this regard is thus self-serving. It is troublesome for a party to intentionally decline to cooperate and then attempt to use her uncooperative posture for her advantage. On this record, the lack of a formal structure to resolve disputes is not indicative of an inability to work through matters. Rather, it may be an indication of the untoward effect of litigation posturing. Perhaps to shore up any problem caused by a lack

of a method for resolving disputes, the district court ordered what it termed "modified mediation." Although, as discussed in part two of this opinion, that requirement is not appropriate, we conclude that the district court's willingness to look beyond the lack of a structure is supported by the record and that no useful purpose is served by remanding for a detailed finding.

C. Detriment of One Parent Having Sole Authority Over the Child's Upbringing

Mother argues that the district court clearly erred by finding that sole legal custody would be detrimental to L.A.Y. Mother disputes the district court's finding that she has acted to alienate father from L.A.Y. and asserts that it is in L.A.Y.'s best interests to grant her sole legal custody.

"A majority of courts, including Minnesota courts, agree that a sustained course of conduct by one parent designed to diminish a child's relationship with the other parent is unacceptable and may be grounds for denying or modifying custody." *Lemcke v. Lemcke*, 623 N.W.2d 916, 919-20 (Minn. App. 2001), *review denied* (Minn. Jun. 19, 2001). Based upon the report of a HCFCS custody evaluator and testimony introduced at the hearing, the district court concluded that mother would engage in parental alienation if granted sole authority over L.A.Y. As an example of this, the district court noted that, after father marked one of L.A.Y.'s karate shin guards with the boy's full initials, "L.A.Y.," mother blacked out the "A," which stands for the father's last name.

The district court also agreed with the custody evaluator's assessment that having both parents involved in decisions regarding L.A.Y. would provide continuity in the decision-making process if one parent or the other were unable to participate due to

mental-health problems that have challenged both parents in the past. The district court's findings on this factor have evidentiary support and do not appear to be clearly erroneous.

D. Whether Domestic Abuse Occurred Between the Parents

Mother argues that the district court did not make a required finding related to domestic abuse, and, as a result, the presumption against joint legal custody where domestic abuse exists was not overcome. *See* Minn. Stat. § 518.17, subd. 2.

Contrary to this assertion, the district court recognized that domestic abuse as defined by Minn. Stat. § 518B.01 had occurred between the parties and considered the circumstances supporting the grant of an OFP against father. This included the police report that the criteria for domestic assault had not been met. The district court concluded that there did not appear to be a pattern of domestic abuse in the household and that, as stated in the custody evaluator's report, there was no evidence that L.A.Y. was affected by the incident that led to the OFP. The district court also found that mother sought to cast father in a bad light with unsubstantiated allegations of child abuse.

The district court ultimately concluded that an award of joint legal custody was appropriate notwithstanding the existence of the OFP and that father had rebutted the resulting statutory presumption against joint legal custody. The district court's conclusion is supported by a thorough custody evaluation, testimony introduced at trial, and implicit credibility determinations. This court defers to credibility determinations. *See Sefkow*, 427 N.W.2d at 210. Accordingly, we conclude that the district court effectively made the required finding related to domestic abuse, explained how the

consideration of this fourth factor impacted the ultimate custody determination, and did not clearly abuse its discretion by granting joint legal custody despite the OFP.

In sum, we conclude that with respect to three of the four factors set forth in Minn. Stat. § 518.17, subd. 2, the district court made the required findings for a grant of joint legal custody over the objection of mother. The one factor where there is not an explicit finding is the existence of a method for resolving disputes over major decisions and the parties' willingness to use that method. As we have stated, there is strong record support for concluding the parties have successfully handled such matters. In this situation, we conclude that the record and the district court's findings support the district court's determination that joint legal custody is in the best interests of L.A.Y. Accordingly, we affirm the district court's joint legal custody determination.

II.

The second issue is whether the district court erred in ordering modified mediation. The statute provides that a victim of domestic abuse cannot be required to engage in mediation. Minn. Stat. § 518.091, subd. 1 (2006); *cf.* Minn. Stat. § 518.1751, subd. 1a (party cannot be required to use a parenting-time expeditor if there has been domestic abuse).

Mother objects to the district court's finding that she was willing to participate in "modified mediation" with father and ordering such mediation. Mother points out an OFP was issued against father. This order states that mother is a victim of domestic abuse. However, at the custody hearing, father's counsel sought to elicit testimony from mother that she was willing to participate in some type of dispute-resolution process as

long as she did not have to be in the same room with the father to discuss matters. Mother stated that she was aware that mediation did not necessarily require her to be in the same room as father. But when mother was directly asked whether she would be willing to use this form of dispute resolution, her attorney objected on relevancy grounds, and the district court sustained the objection. There is nothing in the record to support a finding that mother is willing to participate in mediation of any form. Moreover, the custody and parenting-time evaluation provided to the district court in this case noted that there were "currently no known methods to resolve disputes other than litigation."

Given statutory and rule-related limits on mediation in cases where abuse has occurred and the error the district court made in finding that mother had agreed to engage in "modified mediation," we conclude that the district court erred in ordering mediation and reverse that part of its order. Because on this record we conclude that provisions for court monitoring of disputes between the parties may be appropriate or the parties may agree upon a method of their choosing, we remand for further consideration of the subject of resolving disputes. The district court may reopen the record and reconsider custody-related determinations incident to the remand.

Affirmed in part, reversed in part, and remanded.

Dated: