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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0908

In re the Custody of I. J. H. and M. J. S.-H.
Kidane Sante Shulbe, petitioner,
Appellant,

vs.

Ashley Rose Henke,
Respondent

Filed May 5, 2014
Affirmed
Worke, Judge

St. Louis County District Court
File No. 69DU-FA-12-611

Kidane Sante Shulbe, Hastings, Minnesota (pro se appellant)

Ashley Rose Henke, Saginaw, Minnesota (pro se respondent)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

WORKE, Judge

Appellant challenges the district court's refusal to hold respondent in contempt of court and to modify the parties' judgment and decree. We affirm.

FACTS

Appellant Kidane Sante Shulbe and respondent Ashley Rose Henke are the biological parents of I.J.H. and M.J.S.-H. The parties were never married. On July 31, 2012, the parties, both appearing pro se, met with evaluators to resolve issues regarding custody and parenting time. The parties entered into a mediated settlement agreement (MSA), which they voluntarily signed and acknowledged was binding and would be incorporated into a formal order.

The parties agreed to joint legal and joint physical custody of the children and that Henke would have primary placement of the children. They also agreed that until the children are enrolled in school, Shulbe would have ten overnights per month with the children. The parties agreed to change I.J.H.'s name to I.J.S.-H., with Shulbe to pay two-thirds of the name-change fee and Henke the remainder. Henke agreed to dismiss a harassment restraining order against Shulbe. And the parties agreed to attempt mediation prior to involving the district court in addressing future issues. The judgment and decree entered on September 11, 2012, adopted the MSA.

On February 25, 2013, Shulbe moved to hold Henke in contempt of court for failing to pay one-third of the name-change fee. He also requested changes to parenting time, the custody agreement, and the location where the parties exchanged parenting time, and sought tax-dependent credits. At a hearing, Henke indicated that Shulbe failed to file the name-change petition, leaving her unsure of the cost. Shulbe conceded that he had not filed the petition, but asserted that it would cost Henke $107. Henke agreed to

submit a check to the court administrator. The court instructed Shulbe to file the appropriate motions if he requested relief outside of the contempt motion.

On March 15, 2013, Shulbe moved to hold Henke in contempt of court for failing to take a court-ordered parenting-education course. Henke responded that she did not take the course because it was ordered before the parties entered into the MSA and she believed that with their issues resolved she was no longer required to take the course, but she agreed to take the course. Shulbe also argued to the district court that (1) the mediation evaluators were biased, (2) he was denied his request for court-appointed counsel, (3) the words "primary placement" of the children with Henke should be removed from the judgment because the phrase was easily "manipulated" and disadvantageous to him, (4) he and his immediate family should be granted more parenting time, and (5) he should be able to claim the children as tax dependents.

On April 4, 2013, the district court denied Shulbe's motion to find Henke in contempt of court because Henke paid the name-change filing fee and signed up for the parenting-education course. The district court also denied Shulbe's additional requests. The district court stated that Shulbe's request to modify the judgment appeared to be "based on [his] unwillingness to accept what he agreed to in writing last summer." The court found that a modification of the parenting-time schedule "would constitute a major alteration in the custodial care arrangement[,]" and stated that "[t]he law does not allow this substantial change under these circumstances." The district court concluded that the parties must follow the judgment and decree. This appeal followed.

D E C I S I O N

Contempt

Shulbe argues that the district court erred by not finding Henke in contempt of court based on a "futuristic assumption." Civil contempt occurs when a party fails to obey a court order in favor of an opposing party in a civil proceeding. *Minn. State Bar Ass'n v. Divorce Assistance Ass'n, Inc.*, 311 Minn. 276, 285, 248 N.W.2d 733, 741 (1976); Minn. Stat. § 588.01, subd. 3(3) (2012) (stating that a court may find a person in civil contempt of court for "disobedience of any lawful judgment, order, or process of the court").

"The [district] court has greater discretion in civil contempt cases than in criminal contempt cases." *Tatro v. Tatro*, 390 N.W.2d 461, 464 (Minn. App. 1986). This court will not disturb the district court's ruling on a contempt motion absent an abuse of discretion. *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986); *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001) (stating that this court reviews the decision whether to invoke contempt power for an abuse of discretion and will not reverse the district court's factual findings unless they are clearly erroneous), *review denied* (Minn. Oct. 16, 2001). We also defer to the district court's credibility determinations made in a contempt hearing. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 298 (Minn. App. 2007).

Shulbe argues that the district court should have held Henke in contempt for failing to (1) pay the name-change fee, (2) attend the parenting-education course,

(3) appear for a hearing on September 11, 2012, (4) abide by the ten-overnights-per-month arrangement, and (5) abide by an order issued by this court on May 24, 2013.

The district court found that Henke paid the name-change filing fee and arranged to attend the parenting-education course. There is no evidence in the record that Henke failed to pay the fee or refused to attend the parenting-education course. The record shows that Henke did not take the parenting-education course because it was ordered before the parties entered into the MSA and she believed that she was not required to take it after the parties resolved their issues. She agreed to register for the course after learning that the court order requiring the course was still valid. The district court believed Henke, and Shulbe provided nothing to counter her assurance. *See id.* (stating that we defer to district court credibility determinations).

Shulbe's contentions that Henke should be held in contempt for failing to attend a hearing and abide by the parenting-time schedule were not raised in district court in the context of ruling on contempt. As such, the district court did not rule on these issues. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a party may not raise for the first time on appeal an issue not raised below). Lastly, Shulbe's claim that Henke should be held in contempt for failing to abide by an order issued by this court on May 24, 2013, is outside of the scope of this appeal. Shulbe challenges the district court's order dated April 4, 2013. Anything that occurred after that date is not part of this appeal. The district court was within its discretion by declining to find Henke in contempt of court.

Judgment

Along with his contempt motion, Shulbe requested that the district court drastically modify the judgment by: (1) changing parenting time, (2) deleting the phrase "[Henke] shall have primary placement of the children," (3) awarding him dependent tax exemptions, and (4) changing the place of the parenting-time exchange. Shulbe argues that the district court erred by refusing to grant his requests, but he fails to present any legal argument to support reversing the district court; he argues only that "constitutional rights appl[y] to all issues [he] brought and requested to be resolved in the way that is equal and fair." Shulbe also states generally, without analysis, that Minnesota statutes governing child custody, parenting time, parenting plans, parenting-time dispute resolution, and replacing certain orders support reversal of the district court. *See* Minn. Stat. §§ 518.17, .1705, .175, .1751, .183. (2012).

While Shulbe's challenge is multi-faceted, he ultimately seeks modification of the judgment. The district court stated that Shulbe "basically want[ed] to throw out the agreement," but that "[t]he law does not allow this substantial change under these circumstances." *See Theis v. Theis*, 271 Minn. 199, 204, 135 N.W.2d 740, 744 (1965) (stating that a settlement is a binding contract); *Chalmers v. Kanawyer*, 544 N.W.2d 795, 797 (Minn. App. 1996) (stating that a settlement agreement is contractual in nature and binding on the parties).

Generally, the district court "shall" modify a parenting-time order if it is in the best interests of the child. Minn. Stat. § 518.175, subd. 5. But if the modification would "restrict" parenting time, the court may only modify parenting time if the nonmoving

parent is likely to endanger the child's physical or emotional health or has unreasonably failed to comply with court-ordered parenting time. *Id.* To determine whether a requested modification is substantial or is a restriction, a district court should consider (1) the reason for the proposed change, and (2) the amount of the reduction. *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993).

Shulbe claims that he wanted to change "parenting time from 10 overnights per month to 15 overnights" because the current parenting time is "unfair and unequal," and "is causing significant deprivation and stress in [his] life as well as [his] children['s] li[ves]." But he did not request only five additional overnights per month. He also requested a division of the children's birthdays, that his children be present for seven of his immediate family member's birthdays, and that the children be present to observe at least three holidays.

Shulbe's requested modification substantially modified and restricted Henke's parenting time. There is no evidence and no claim that Henke endangered the children or that modification was in the children's best interests. Further, Shulbe agreed to the parenting-time arrangement. He signed the MSA, which was adopted into the judgment and decree. He claims that the evaluators were biased against him, but he provides no evidence of bias. Therefore, the district court did not err by declining to modify the judgment.

Additional arguments

Shulbe also requested authority to claim the children as dependents on his taxes. The district court denied this request after concluding that Shulbe paid Henke only $139

per month in child support, which is far less than one-half of the support for the children. He argues that the district court's finding is "outrageous" because he meets his obligations and responsibilities. But the district court did not find that Shulbe failed to pay child support. The court simply ordered that he was not entitled to claim the children on his taxes when Henke provides for more than half of their support. Further, Shulbe's child-support payments represent the minimal obligation imputed to him when he was unemployed. He claims to have gained full-time employment but has not offered to pay Henke additional support.

Shulbe additionally argues that the district court "erred in denying [his] motion to secure safety" by refusing to change the place of the parenting-time exchange. But the district court ordered that "[n]o one accompanying [Henke] to parenting time exchanges shall have any contact with [Shulbe] or approach [Shulbe's] vehicle." That order addresses Shulbe's safety concern. Shulbe also argues that the district court ignored the issues related to Henke's lifestyle. The district court did not rule on this issue because Shulbe failed to present any evidence that Henke in any way endangered the children.

Finally, Shulbe argues that the district court "used unrelated cases in the memorandum [to] try to cover up what happened at mediation . . . and make assumption[s] about [him] and degraded [him]." The district court appropriately used caselaw to analyze Shulbe's claims. Further, Shulbe provides no evidence or legal argument to support these arguments. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived "unless prejudicial error

is obvious on mere inspection"); *see also Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987) (stating that issues not briefed are deemed waived on appeal).

Affirmed.