**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-0696**

In re the Marriage of:

Rebecca Lynn McNeil, petitioner,
Respondent,

vs.

Mark Aaron McNeil,
Appellant.

**Filed June 12, 2017**
**Affirmed**
**Rodenberg, Judge**

Anoka County District Court
File No. 02-FA-13-1199

David Sjoberg, Sjoberg Law Office, P.A., Ham Lake, Minnesota (for respondent)

Steven T. Hennek, Hennek Klaenhammer Law, PLLC, Roseville, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Klaphake, Judge.[*]

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

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

**RODENBERG**, Judge

Appellant-father Mark McNeil appeals from the district court's judgment and decree of dissolution and its denial of his motion for a new trial under Minn. R. Civ. P. 59.01(g). Father argues that the district court abused its discretion by awarding him less than the presumptive minimum amount of parenting time, granting respondent-mother Rebecca McNeil unilateral authority to enroll the children in extracurricular activities, limiting designated vacation parenting time to summer months, and ordering him to pay a portion of the children's extracurricular costs without sufficient findings. We affirm.

## FACTS

The parties were married in 2002. They have two minor children. Mother petitioned for dissolution of the marriage in June 2013. After a three-day trial, and after considering proposed findings of fact and conclusions of law submitted by each party, the district court filed findings of fact, conclusions of law, and order, and entered a judgment and decree of dissolution.

Father moved the district court for amended findings of fact under Minn. R. Civ. P. 52.02 and for a new trial under Minn. R. Civ. P. 59.01. He challenged the district court's finding that mother does not work at Target on Thursday evenings, its allocation of parenting time, its holiday parenting-time schedule, and its child-support award. Mother filed a responsive motion, asking the district court to, among other things, clarify whether father must pay a portion of the expenses for the children's extracurricular activities.

The district court denied father's motions (except for a holiday parenting-time modification not challenged on appeal). In response to mother's request for clarification of whether father must pay a portion of the children's extracurricular expenses, the district court amended its order and required mother to pay 65% of the extracurricular expenses and father to pay 35% of them.

This appeal followed.

## D E C I S I O N

Father identifies four issues on appeal, which we address individually.[1]

### I. The district court did not abuse its discretion in its parenting-time award.

Father argues that the district court abused its discretion by awarding him less than 25% of the parenting time for the parties' joint children without making findings of fact sufficient to justify an award below the presumptive minimum. Minnesota law creates a rebuttable presumption that parents are "entitled to receive a minimum of 25 percent of the parenting time for the child." Minn. Stat. § 518.175, subd. 1(g) (2016). District courts may determine the percentage of parenting time for a child by "calculating the number of

[1] Mother asks us to dismiss father's appeal because it is not timely and because father failed to preserve certain issues for appeal by raising them to the district court. She argues that father's posttrial motion to amend the judgment was improperly labeled and was actually a motion to reconsider, and as such, it did not toll the time period for father to appeal under Minn. R. Civ. App. P. 104.01, subd. 2. For purposes of rule 104.01, we look at the face of the document to determine its tolling effect. *Mingen v. Mingen*, 679 N.W.2d 724, 726 n.3 (Minn. 2004). Because father's posttrial motion was titled as a motion to amend, it extended the filing deadline and father's appeal was timely. Mother's argument that father did not raise certain issues to the district court is not supported by the record. Moreover and importantly, resolution of the issues on the merits is, on this record, uncomplicated.

overnights that a child spends with a parent or by using a method other than overnights . . . ." Minn. Stat. § 518.175, subd. 1(g).

District courts have broad discretion to decide parenting-time questions. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995); *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014). We will not reverse a parenting-time decision absent demonstrated abuse of the district court's broad discretion by misapplication of the law or by making findings of fact that are not supported by the record. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

Here, the district court awarded father parenting time "every other weekend from after school/work on Friday until Sunday at 7 pm and every Wednesday from after school/work to Thursday morning." Father therefore has parenting time two weekend nights every two weeks and one week night every week. This gives father a total of four overnights every fourteen days, or 28.57% of the nights. Using this calculation method expressly permitted by Minn. Stat. § 518.175, subd. 1(g), the district court awarded father more than the statutory-minimum parenting time. It was not required to make additional findings.

The district court's award of parenting time to father was within its discretion.

## II. The district court did not abuse its discretion by granting mother unilateral authority to enroll the children in extracurricular activities that might occur during father's parenting time.

In its judgment granting mother sole physical custody of the parties' joint children, the district court ordered that "[mother] shall have unilateral authority to enroll the minor children into extracurricular activities[.] . . . In the event these activities occur during

[father's] parenting time, [father] shall ensure that the minor children attend said activity." Father argues that the district court abused its discretion by awarding relief on an issue not litigated at trial and by delegating to a party the court's authority to allocate parenting time.

Father is correct that "a party must have notice of a claim against him and an opportunity to oppose it before a binding adverse judgment may be rendered." *Folk v. Home Mut. Ins. Co.*, 336 N.W.2d 265, 267 (Minn. 1983). Father had notice of mother's request that she be granted the authority to enroll the joint children in extracurricular activities and that she "may exchange" parenting time "of her choosing" to compensate appellant for any parenting-time losses caused by scheduling conflicts. That issue was litigated and addressed in each party's proposed findings. The district court's order is substantially similar to mother's proposed order. The district court did not exceed the scope of the issues litigated.

Father's second argument concerning extracurricular activities also fails. A district court has broad discretion to decide parenting-time questions. *Olson*, 534 N.W.2d at 550; *Suleski*, 855 N.W.2d at 334. We will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record. *Dahl*, 765 N.W.2d at 123. "[T]o the extent practicable an order for parenting time must include a specific schedule for parenting time . . . ." Minn. Stat. § 518.175, subd. 1(e) (2016). We have held that a district court does not abuse its discretion by giving one party discretion to modify the visitation schedule in order to provide "a reasonable degree of flexibility to permit the parties to respond to special events." *See Bliss v. Bliss*, 493 N.W.2d 583, 589 (Minn. App. 1992) (stating that a district

court did not err by allowing father to modify the visitation schedule so long as mother was notified), *review denied* (Minn. Feb. 12, 1993). The district court had discretion to allow mother, as the sole physical custodian, the authority to schedule appropriate activities for the children and to adjust the parenting-time schedule to meet their needs. We see no abuse of the district court's discretion.

## III. The district court did not abuse its discretion by limiting vacation parenting time to the summer.

Father next argues that the district court abused its discretion by limiting vacation parenting time to the summer, when neither party requested such a limitation.

A district court has broad discretion to decide parenting-time questions. *Olson*, 534 N.W.2d at 550; *Suleski*, 855 N.W.2d at 334. On request, a district court must grant parenting time "that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2016).

Father is correct that neither party specifically requested that vacation parenting time be limited to the summer months. The district court so limited vacation parenting time on its own initiative. We are aware of no authority requiring that a district court, presented with two options concerning parenting time, must select one of them. "[T]he paramount issue remains the welfare and best interests of the children." *Petersen v. Petersen*, 296 Minn. 147, 148, 206 N.W.2d 658, 659 (1973); *see also Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009) (noting that the fundamental focus is on the child's best interests). The district court acted within its discretion concerning vacation parenting time.

## IV. The district court did not abuse its discretion when it ordered father to pay a portion of the costs for the children's extracurricular activities.

In her proposed order, mother requested that the district court order father to pay 50% of the children's extracurricular costs, over and above child support. In its original order, the district court awarded father a downward deviation from the presumptive child-support amount and did not require father to contribute separately to the children's extracurricular-activity expenses. By post-trial motion, mother asked the district court to "clarify" the issue of whether father must contribute to the costs of those extracurricular activities. Stating that it inadvertently failed to include a provision in the order requiring father to pay for 35% of such extracurricular expenses, the district court ordered him to pay that amount in its amended judgment and decree.

Father raises three issues concerning extracurricular activities. First, he argues that the district court erred by deciding an issue that the parties did not litigate at trial. Second, he argues that the district court erred by amending its order after mother raised the issue at the posttrial hearing. Finally, he argues that the district court does not have statutory authority to order him to pay extracurricular costs as part of child support without first making findings sufficient to support an upward deviation from the child-support guidelines.

### A. The district court did not grant relief on issues not raised at trial.

Father's first and second argument are both founded on the principle that the district court may not grant relief on issues not litigated. "[A] party must have notice of a claim against him and an opportunity to oppose it before a binding adverse judgment may be

rendered." *Folk*, 336 N.W.2d at 267. "A trial court, therefore, is required to base relief on issues either raised by the pleadings or litigated by consent." *Id.*

While the parties never specifically addressed at trial precisely how the children's extracurricular expenses should be divided, they did address the issue of child support. Mother's proposed findings addressed the extracurricular-activity question directly. The district court awarded the extracurricular expenses as part of child support, which was litigated at trial.

### B. The district court did not exceed its statutory authority when it ordered father to pay a portion of extracurricular costs as part of child support.

Father next argues that the district court did not have statutory authority to order him to pay extracurricular-activity costs as part of child support without making findings to support an upward deviation from the guidelines.

A district court has broad discretion to address issues related to child support. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). The district court must resolve a question in a manner "that is against logic and the facts on record before this court will find that the trial court abused its discretion." *Id.* A district court must make findings if it deviates from the presumptive child support obligation calculated in Minn. Stat. § 518A.34. Minn. Stat. § 518A.37, subd. 2 (2016). However, it need not make findings when it follows the child support guidelines. Minn. Stat. § 518.37, subd. 1 (2016); *State ex rel. Rimolde v. Tinker*, 601 N.W.2d 468, 471 (Minn. App. 1999).

Here, the district court ordered a downward deviation from the child-support guidelines and reduced father's monthly monetary child-support payment to $500 from the

presumptive amount of $864. In its post-trial amendment of the judgment and decree, the district court indicated that it was requiring father to pay a portion of the children's extracurricular-activity costs based, in part, on this downward deviation. Father's obligation to pay a portion of the children's extracurricular-activity expenses will not increase father's overall monthly obligation above the presumptive monthly support amount of $864. The district court did not abuse its discretion by obligating father to contribute to extracurricular-activity costs, where his net monthly support payment remains less than the presumptive-guideline amount.[2]

**Affirmed.**

[2] In the future, should mother enroll the children in activities which increase father's overall monthly financial contribution to the children's care and support above the presumptive-guidelines amount, the district court has the authority to modify father's support obligation under Minn. Stat. § 518A.39, subd. 1 (2016), on motion duly noted.