STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1746

In re the Matter of:
Sedina Glover, petitioner,
Respondent,

Hennepin County,
Petitioner Below,

vs.

Clement Olertey Totimeh,
Appellant.

Filed July 17, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-PA-FA-14-753

Sedina Glover, Golden Valley, Minnesota (pro se respondent)

Clement Totimeh, Torrington, Connecticut (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Toussaint, 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

BJORKMAN, Judge

In this custody matter, appellant-father argues that the district court abused its discretion in granting respondent-mother sole legal custody of the parties' child and awarding father less than 25% of the parenting time. We affirm.

FACTS

Appellant-father Clement Olertey Totimeh and respondent-mother Sedina Glover are the parents of M.T., born November 2, 2012. After Hennepin County and mother initiated a paternity action, father's parentage was established on April 23, 2015. Father saw M.T. three or four times in the year following his birth, but did not see him again until October 2015. In between, mother offered father numerous opportunities to spend time with M.T. But he declined, stating he only wanted to see M.T. if they could be alone. The district court authorized supervised parenting time in a September 2015 temporary order. Father did not exercise any parenting time for six months.

Jason Chinander from Hennepin County Family Court Services conducted a custody evaluation during the fall of 2015. He met with both parties, observed them with M.T., obtained medical and other records, and obtained collateral information concerning the parties. Chinander reported that M.T. was thriving in mother's care and is a jubilant child. He noted that father had not seen M.T. in the two years preceding the custody evaluation despite mother's invitations to do so. And he expressed concern that father did not understand or appreciate M.T.'s emotional needs. Chinander concluded that it would be

in M.T.'s best interests for mother to have sole legal and physical custody, and for father to initiate parenting time in a monitored setting to establish a relationship with M.T.

The parties submitted the issues of custody, parenting time, and child support to the district court.[1] Following a May 2016 trial, the district court found that it is in M.T.'s best interests for mother to have sole legal and physical custody, and for father to begin having unsupervised parenting time on a graduated schedule. Father appeals.

D E C I S I O N

I. The district court did not abuse its discretion in awarding mother sole legal custody of M.T.

A district court has broad discretion to provide for the custody of children. *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 378 (Minn. App. 2011). We limit our review of custody determinations to "whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Father does not challenge the district court's best-interests findings. But he argues that the court abused its discretion in granting mother sole legal custody of M.T. because the court did not make findings of domestic abuse or inability to cooperate in raising the child to defeat the presumption of joint legal custody. We disagree.

[1] Child support is not at issue on appeal.

Minn. Stat. § 518.17, subd. 1(a) (2016), lists 12 factors a district court must consider when evaluating what custody status serves a child's best interests. "Joint legal custody is presumed to be in a child's best interests." *Wopata v. Wopata*, 498 N.W.2d 478, 482 (Minn. App. 1993). But joint legal custody should be granted "only where the parents can cooperatively deal with parenting decisions." *Id*. (quotation omitted). "Where the evidence indicates that the parties lack the ability to cooperate and communicate, joint legal custody is not appropriate." *Id*. And there is a rebuttable presumption that joint legal custody is not in a child's best interests if domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 1(b)(9) (2016).

Father's contention that the district court did not find domestic abuse between the parties is accurate. But the district court did make findings regarding the parties' inability to cooperate in parenting M.T. The district court found that "[t]he parties have no history of cooperating and working together to raise the child." And the court noted the parties' communication problems, finding that "[t]he parties' animosity toward each other, [f]ather's disregard for [m]other's wishes when the child was an infant, the circumstances of the conception and [f]ather's absence from the child's life (mostly due to his own behavior) all contribute to difficulty in communication and cooperation." The district court credited mother's testimony that working with father would be difficult because he was on a "constant power trip," and concluded that father's involvement in M.T.'s life thus far has shown that a "co-equal decision-making relationship would not be successful between the parties." These unchallenged findings support the district court's determination that joint legal custody is untenable.

Other best-interests findings further demonstrate that joint legal custody is not appropriate at this time. Father has not been a significant part of M.T.'s life and has provided little support to mother. Despite mother's efforts, father chose not to see M.T. more than three or four times during the first year of his life. As a result, M.T. never got to know father, and did not see him again until the custody-evaluation process, almost two years later. Father did not exercise his court-ordered parenting time until shortly before trial, seeing M.T. only six times since the temporary order.

On one of his earliest supervised parenting sessions, father brought along his two sons from another relationship. This surprised and confused M.T. Bringing these other children without mother's consent or a court order also violated the policy of the facility where father met with M.T. Based on this evidence, the district court found that father is unable "to put the child's emotional needs over his own" because he has shown a lack of regard for M.T.'s emotional needs to become acquainted in a gradual way.

In sum, father's assertion that he is entitled to joint legal custody because the district court did not find domestic abuse or non-cooperation fails on this undisputed record. Evidence of father's non-cooperation with mother, lack of presence in M.T.'s life to this point, and lack of regard for M.T.'s emotional needs amply supports the district court's custody determination. On this record, we discern no abuse of discretion by the district court in awarding mother sole legal custody of M.T.

II. The district court did not abuse its discretion in awarding father less than 25% of the parenting time.

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 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). Parenting-time allocations less than 25% can be justified by reasons related to the child's best interests. *Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010).

Father argues that the district court abused its discretion by awarding him only 7% of the parenting time without making findings of fact sufficient to justify an award below the 25% presumptive minimum. The parenting-time schedule grants father four hours of unsupervised time with M.T. each week during the first month. Thereafter, father's parenting time gradually increases; within six months father has a weekend overnight.[2] The district court found that this graduated schedule is in M.T.'s best interests because it will reduce his stress and allow him to gradually develop a bond with father over time. Father does not challenge a graduated approach, but asserts that the schedule should be

[2] The parenting-time schedule is similar to what the custody evaluator and mother recommended.

extended so he has equal parenting time when M.T. begins kindergarten. We are not persuaded. The district court made numerous unchallenged findings that support its parenting-time determination. Father has not yet established a meaningful presence in M.T.'s life. He chose to see M.T. only six times since the September 2015 temporary order. And his limited interactions demonstrate he is unable to fully understand and meet M.T.'s emotional needs. In addition, he could not explain how he would get M.T. to daycare or to school when father and mother live in different school districts. Contrary to father's suggestion, the parenting-time award is not a restriction. Prior to the challenged order, father had no parenting time with M.T. whatsoever. The district court's findings regarding father's prolonged absence from M.T.'s life and M.T.'s emotional needs rebut the presumption that father should have 25% of the parenting time. As father's relationship with M.T. develops, father may ask the court to modify the parenting-time schedule. Until then, and on this record, we conclude that the district court did not abuse its discretion with respect to father's parenting time.[3]

Affirmed.

[3] Father forfeited his remaining arguments that the district court erred in keeping mother's address confidential and in not awarding him conduct-based attorney fees because he did not raise them in the district court. *See Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (stating that issues not raised in the district court will not be considered on appeal).