STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2022

In re the Marriage of:
Sarah L Braun, petitioner,
Respondent,

vs.

Joseph Patrick Braun,
Appellant.

Filed October 22, 2018
Affirmed
Bjorkman, Judge

Brown County District Court
File No. 08-FA-15-526

Sarah L. Braun, Minnesota (pro se respondent)

Linda S.S. de Beer, de Beer & Associates, P.A., Lake Elmo, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

In this appeal from a dissolution judgment, appellant-father argues that the district court abused its discretion by (1) awarding respondent-mother sole physical custody of their child and permitting them to move to another state, (2) considering the parties'

settlement discussions in support of its best-interests analysis, and (3) awarding him less than 25% parenting time. We affirm.

FACTS

Appellant Joseph Braun and respondent Sarah Braun met online in 2008. Mother was living in Virginia at the time, and father flew her to Minnesota to visit. She remained in Minnesota and secured employment. They married in August 2013, and their joint child was born in July 2014.

In November 2014, the parties separated due to conflict between them and mother's ongoing concern about father's alcohol consumption. Mother petitioned for dissolution in May 2015.[1] The parties disputed custody, particularly whether mother could move back to Virginia with the child, and parenting time. But they agreed to a temporary order allocating parenting time between them, with mother receiving the majority of the parenting time and all overnights, and requiring father to refrain from consuming alcohol while the child was in his care.

After a four-day trial in late 2016 and early 2017, the district court awarded the parties joint legal custody of the child and mother sole physical custody, permitting her to move to Virginia with the child. The court delayed the move for longer than five months to enable the child to adjust to longer stretches of parenting time and overnights with father. Effective after the move, the court awarded father one week of parenting time each quarter, to increase the following year and be reevaluated in August 2019. Father appeals.

[1] Shortly thereafter, paternal grandfather let the air out of mother's car tires while at the marital home, and mother obtained a harassment restraining order against him.

D E C I S I O N

I. The district court did not abuse its discretion by awarding mother sole physical custody and permitting her to move to Virginia with the child.

The district court has broad discretion in making custody decisions. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). A district court abuses its discretion if it makes findings unsupported by the evidence or improperly applies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We defer to the district court's findings of fact, unless they are clearly erroneous, and defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). A party challenging a district court's factual findings must show that, despite viewing the evidence in the light most favorable to the findings, "the record still requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.*

In determining custody, the district court must consider all relevant information, including the best-interests factors set forth in Minn. Stat. § 518.17, subd. 1(a) (2016). In an initial custody proceeding, a parent proposing a change of residence need not prove the move is in the child's best interests; the district court simply "treats a proposed change of residence by a party as one factor to balance in determining custody of a child." *LaChappelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). A proposed change of residence bears particularly on stability and continuity of care. *Id.*

The district court addressed each of the best-interests factors in a ten-page memorandum, determining that several factors favor mother's request for sole physical custody. It found that mother has been the child's primary caretaker, responsible for most if not all medical care and the large majority of daily care, including all overnights. The court determined that affording the child continuity in that relationship is crucial to her well-being and ongoing development. And the district court found that father's history of "problematic" alcohol use makes him a riskier potential custodian. In addressing mother's proposed move, the district court acknowledged that it would be somewhat disruptive and the distance would necessarily limit father's parenting time and impact the child's relationships with father and father's family. But in view of the child's very young age, the court found those concerns outweighed by the importance of fostering the primary-caretaker relationship, including permitting the primary caretaker to take advantage of the increased family support, financial relief, and educational opportunities in Virginia. The district court also noted that father told mother in May 2015 that he was "okay" with her taking the child to Virginia. While acknowledging that awarding mother sole physical custody and permitting the move to Virginia is not a "perfect or optimal" outcome, the district court found that it is in the child's best interests.

In challenging that determination, father first argues that the district court made numerous unsupported findings. This argument is unavailing. He contends the evidence is insufficient to support the finding that moving to Virginia is unlikely to substantially disrupt the child's "home, school, and community," *see* Minn. Stat. § 518.17, subd. 1(a)(8), because mother did not testify or present other evidence of the home, school, and

community the child would experience there. But the finding reflects the child's very young age—she does not yet attend school or otherwise engage in community life. More importantly, the district court's determination that the move would be more beneficial than disruptive finds ample support in undisputed evidence that mother lacks a support network in Minnesota, mother's written explanation of her plan to move in with her mother (near numerous other relatives) and attend school to improve her employment prospects, and father's prior approval of the move.[2] And the parenting evaluator recommended that mother be permitted to move to Virginia with the child.

We are similarly unpersuaded by father's challenge to the finding that mother, who is black, "may" be better able to meet the "ongoing cultural needs" of the parties' biracial child. Mother's testimony about experiencing racial prejudice, including from father's family, supports this finding. And we discern no improper "speculation" in the district court's finding that mother would be "miserable" and "unlikely" to fulfill her educational and vocational goals in Minnesota, or the finding that either proposed custody arrangement would likely have positive implications for the child's relationships with those near her and negative implications for her relationships with those in the other state.

Father next contends that the district court abused its discretion by considering parental circumstances that do not bear on the child's best interests—mother's improved prospects in Virginia, and father's "problematic" history of alcohol use. We disagree. The

[2] The district court noted that any evidentiary shortfall is at least partially attributable to father successfully moving to exclude the testimony of mother's mother, who traveled from Virginia to testify at trial. We agree that father cannot limit the record and then complain about its insufficiency.

statutory best-interests factors expressly recognize that a parent's circumstances, particularly "any physical, mental, or chemical health issue[s]," may impact the child. Minn. Stat. § 518.17, subd. 1(a)(5). The district court did not abuse its discretion by considering mother's well-being or father's "history of excessive alcohol consumption and adverse effects relating thereto."

Finally, father asserts that the district court improperly discredited his claim of domestic abuse. He points to his testimony that mother threatened him by displaying a large knife during an argument while she was pregnant with the child and emphasizes that mother "did not refute his claim." But "[t]he finder of fact is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987). The district court considered the surrounding facts and circumstances, including that father did not report the incident to authorities and made other questionable claims of similarly unreported conduct. The district court did not abuse its discretion by discrediting father's "current version" of the knife incident.

In sum, the district court thoroughly addressed the statutory best-interests factors in numerous factual findings that have substantial evidentiary support. On this record, the district court did not abuse its discretion by awarding mother sole physical custody and permitting her to move the child to Virginia.

II. The district court did not err by considering father's prior statement in support of the proposed move.

We generally review evidentiary rulings for an abuse of discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). But a district court does not have discretion to admit a statement "made in compromise negotiations" if Minn. R. Evid. 408 requires its exclusion. *C.J. Duffey Paper Co. v. Reger*, 588 N.W.2d 519, 524 (Minn. App. 1999), *review denied* (Minn. Apr. 28, 1999).

Father argues that the district court violated rule 408 by considering the parties' May 2015 "settlement communications" during which father stated that he was "okay" with mother moving to Virginia with the child. This argument is unavailing. Rule 408 prohibits admission of statements made in compromise negotiations "to prove liability for or invalidity of the claim or its amount"; it does not require exclusion of such evidence when offered "for another purpose." Minn. R. Evid. 408. The focus of a custody analysis is the child's best interests, not either parent's "claim" to the child. The district court did not err by considering father's prior statement for that purpose.

III. The district court did not abuse its discretion by awarding father less than 25% parenting time.

District courts have broad discretion to decide parenting-time questions. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014). 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." *Id.*

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). The presumption is overcome if "other evidence" supports a different parenting-time allocation. *Id.*; *see Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010) (citing Minn. R. Evid. 301 cmt.). Parenting-time awards of less than 25% may be justified by "reasons related to the child's best interests and considerations of what is feasible given the circumstances of the parties." *Hagen*, 783 N.W.2d at 218.

Father argues that the district court abused its discretion by awarding him less than 25% parenting time because it did not address the presumption. This argument has merit. If a parent raises the issue, as father did, the district court must address the presumption when it awards less than 25% parenting time. *Id.* at 217. The district court did not do so. But we are not persuaded that this omission requires remand. The purpose of such findings is to clearly communicate both the court's decision and the underlying reasons for that decision. *Id.* When that purpose is satisfied, no remand is warranted. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand when the record and the district court's findings demonstrate that on remand the district court "would undoubtedly" make the required findings and reach the same result). Such is the case here.

The district court clearly communicated its parenting-time decision. Between the date of its order and the date of mother's anticipated move, the court awarded father parenting time three days, with overnights, every two weeks, and 12 additional days of holiday parenting time (totaling approximately 25%). After the move, the district court awarded father 7 days each quarter, with an increase to 10 days per quarter in 2019. The district court also awarded father "additional reasonable parenting time with [the child] that he can exercise by travelling to Virginia," as well as three hour-long Skype or FaceTime

sessions each week. And it indicated that, upon either party's motion, it would review parenting time and issue a new schedule in August 2019 (just after the child's fifth birthday).

And the district court clearly communicated its reasoning—that this award is in the child's best interests. It expressly and repeatedly recognized that awarding mother sole physical custody and permitting her to move the child to Virginia presented a barrier to father's parenting time, but this barrier was outweighed by the benefits of the move. The court sought to maximize father's parenting time in light of the parties' circumstances, most fundamentally, the child's very young age and the fact she was unaccustomed to spending extended periods of time with father. By delaying mother's move to Virginia, "gradually expand[ing]" father's time with the child before the move, and building increased parenting time and court review into its decision, the district court did what the circumstances permitted to support father's relationship with the child. The district court also recognized the financial burden of the arrangement, ordering father to cover the cost of transportation but reducing his child-support obligation accordingly.

Overall, the district court's decision reflects careful consideration of the child's best interests, father's right to parenting time, and the parties' challenging circumstances. We discern no abuse of discretion in its parenting-time award.

Affirmed.