STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0626

In re the Matter of:
Robert Burdette, petitioner,
Respondent,

vs.

Jacinda Raiche,
Appellant.

Filed November 5, 2018
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-FA-16-936

Nancy Zalusky Berg, Ruta Johnsen, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota (for respondent)

Jacinda Raiche, New Brighton, Minnesota (pro se 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

Appellant-mother challenges a district court order approving a framework to allow respondent-father to exercise his parenting time with less supervision, appointing a special

master to oversee parenting time, and apportioning between the parties the costs of the special master. We affirm.

FACTS

T.R.B. was born in 2009 to appellant Jacinda Raiche and respondent Robert Burdette, who never married. The parties began litigating child custody in 2010, and in 2015 a California court granted mother sole legal and physical custody of the child. In its custody order, the California court found that father "committed numerous acts of domestic violence" that included both physical and mental abuse, and granted father two-hour weekly supervised visitation through "a professional monitor or agency selected by" mother. Because mother and the child moved to Minnesota in 2012, the California custody order was registered here in July 2016. A district court referee was assigned to the case,[1] and granted father supervised parenting time every other week for two hours. The district court set the supervision at the highest level, including having a supervisor available to provide "immediate intervention" if needed during parenting time. In March 2017, the district court increased the number of father's two-hour parenting sessions to three days per month.

In September 2017, father moved the district court for less-restrictive community-based supervised parenting time. The district court denied the motion, citing father's history of increasingly supervised parenting time in California, but also noted the success

[1] A referee's recommended findings and orders become "the findings and orders of the court when confirmed by a judge." Minn. Stat. § 484.70, subd. 7(c) (2016). In this opinion, we refer to the referee as the district court.

of his most recent supervised visits. The district court found no evidence of safety concerns during the preceding four months. The district court directed father to "propose how the Court should determine whether parenting time should be modified" and to suggest a parenting-time plan to which mother could respond.

Acting on the district court's directive, father retained Kirsten Lysne, Ph.D., L.P., to conduct a parenting-time evaluation. Dr. Lysne did not meet with either parent or the child. But she reviewed numerous documents, including records examined by father's current parenting-time supervisors, notes concerning his supervised visits from June through December 2017, and the report of a psychologist who recently examined father. Dr. Lysne issued a report in which she determined that the risk of harm to the child from father is low because father's "aggression and anger are quite narrowly focused in [his] romantic relationships." She noted that the high level of supervision has both protected the child and allowed professionals to assess whether father could "manage his behavior" and "build a relationship that enhances [the child's] wellbeing." Dr. Lysne opined that continuing this high level of supervision "may jeopardize the ongoing relationship between father and son—a relationship that has been strained by previous periods of prolonged separation." She concluded that allowing community-based supervision would be "optimal," and recommended a gradual transition from therapeutic supervised parenting time to community-based supervised parenting time, and the eventual possibility of unsupervised parenting time.

Following a hearing, the district court appointed a special master to serve for two years, with the direction "to modify the current parenting time consistent with this Court's

previous orders implementing the California Order and the Lysne Report." The district court's order establishes a four-stage plan under which father must (1) successfully participate in an additional six months of therapeutic supervised parenting time; (2) begin community-based parenting time with a mutually agreeable supervisor; (3) successfully complete community-based parenting time, with supervision gradually reduced; and (4) begin unsupervised parenting time with gradual increases if father has not interacted with the child "in any way that creates physical or emotional harm."

The district court allocated the special master's costs between the parties, with father bearing 90% of the costs and mother bearing 10% of the costs. The district court found that father has "substantial resources" from his dual careers as a pilot and real-estate investor, and that mother's sole source of income is the $2,791 per month she receives in child support. Mother appeals.

D E C I S I O N

I. The district court did not abuse its discretion by approving a framework for allowing father to exercise his parenting time under less-restrictive conditions.

"The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). The purpose of parenting time is to "enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2016); *see Danielson v. Danielson*, 393 N.W.2d 405, 407 (Minn. App. 1986) ("The purpose of visitation is to maintain the parent-child relationship.").

As a preliminary matter, we note that the challenged order[2] does not actually modify the amount of father's parenting time—it establishes a framework for permitting father to exercise his existing parenting time under less-intensive supervision. If the special master later concludes it is appropriate to modify the amount of father's parenting time, mother may seek district court review.

On the issue of easing the level of parenting-time supervision, mother contends that the district court abused its discretion by (1) failing to hold an evidentiary hearing, (2) issuing its order without having access to all of the California court records, and (3) adopting an avenue for father to receive more parenting time. We address each argument in turn.

First, the record demonstrates mother did not request an evidentiary hearing on father's motion. Minn. R. Gen. Prac. 303.03(d)(2) permitted her to do so, but she did not. And, as noted above, the challenged order does not increase father's parenting time. *See Hansen v. Todnem*, 891 N.W.2d 51, 58 (Minn. App. 2017) (generally requiring the district court to "hold an evidentiary hearing to determine whether a modification is in the child's best interests"), *aff'd on other grounds*, 908 N.W.2d 592 (Minn. 2018). Because mother did not request an evidentiary hearing and the challenged order does not modify the amount of parenting time, the district court did not abuse its discretion in proceeding without an evidentiary hearing.

[2] In a special-term order, this court referenced the challenged order as a modification order. That label is not dispositive; it simply recognizes that the challenged order is final for appeal purposes.

Second, we are not persuaded that the record is inadequate because it fails to include all the court records from California. When accepting registration of the California order in July 2016, the district court directed the California court administrator "to transfer the full and complete file directly to Ramsey County." The district court later specifically requested copies of three custody evaluations dated May 24, 2010, June 12, 2012, and March 4, 2015. The custody evaluations and other California court orders were added to the record in late 2016.

In short, although the record does not include all California court records concerning these parties, the district court had the essential California court orders and custody evaluations when it decided father's motion. The record includes Dr. Lysne's report, which is founded on current evidence. As the district court acknowledged during the motion hearing, parenting time is not designed to be static and parenting-time decisions should be founded on current evidence. And the court noted that the California order did not contemplate that father would have only supervised parenting time until the child turns 18. On this record, we discern no abuse of discretion by the district court in granting father's motion based on the existing record.

Third, we are not convinced that the district court relied solely on Dr. Lysne's recommendations. We disagree with mother's characterization of the basis for the district court's ruling and conclude that the district court's decision was a proper exercise of its discretion. The parenting-time order was based on the facts that were received into evidence, including substantial evidence from California, detailed information on father's current successful supervised parenting time, and Dr. Lysne's opinions, which considered

father's current psychological condition. The district court gave mother ample opportunity to respond to Dr. Lysne's report, and the findings supporting the order are not clearly erroneous. *See Dahl*, 765 N.W.2d at 123 (stating that an appellate court will uphold the findings of fact supporting a parenting-time decision unless the findings are clearly erroneous). Indeed, the order is carefully crafted and includes many safeguards and restrictions to promote the child's safety and overall best interests. The order also furthers the overall goal of parenting time—to promote the child's relationship with his father. *See* Minn. Stat. § 518.175, subd. 1(a). We are satisfied that the district court did not abuse its discretion.

II. The district court did not abuse its discretion by appointing a special master and apportioning the related costs between the parties.

"[A] district court may appoint a special master . . . to . . . address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge." Minn. R. Civ. P. 53.01(a)(3). "[T]he court must consider the fairness of imposing the likely expenses on the parties" in appointing a special master, Minn. R. Civ. P. 53.01(c), but the decision to appoint a master is discretionary. *See Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 712 (Minn. App. 2007) (stating that appointment of a special master to determine costs and fees involving a voluminous record "was an appropriate use of the skills of a special master"), *review denied* (Minn. Mar. 19, 2008).

Mother argues that the district court abused its discretion by appointing a special master and by apportioning the special master's fees between the parties, with mother's share of the fees set at 10%. We are not persuaded.

Citing rule 53.01, the district court found that it was ill-equipped to implement and monitor the gradual easing of parenting-time supervision that Dr. Lysne recommended. The district court expressly stated that the parties need "a more nimble process" that permits a decision-maker to make early "real time decisions" to provide them the "possibility to change their behavior for the best interest of the child" and to "eliminate the[ir] unhealthy power dynamic." Given the history of interactions between the parties, the record fully supports the district court's discretionary decision to appoint a special master.

The district court also addressed the fairness of requiring both parties to pay a portion of the special master's costs. While noting the great income disparity between the parties, the court also recognized that assigning mother 10% of the fees ensured that both parties have a financial stake in promoting efficient and effective use of the special master. And the district court specifically authorized the special master to alter the fee apportionment "if . . . one party is unnecessarily contributing to the costs of the proceedings." We discern no abuse of discretion by the district court in apportioning the costs of the special master.

Affirmed.