STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0156

Sokkhan Ka,
Appellant,

vs.

Mai Yia Vang,
Respondent.

Filed September 23, 2019
Affirmed in part, reversed in part, and remanded
Worke, Judge

Ramsey County District Court
File No. 62-FA-17-2304

Sokkhan Ka, Shoreview, Minnesota (pro se appellant)

Janell M. Stanton, Wagner, Falconer & Judd, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Kirk, 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

WORKE, Judge

In this custody dispute, appellant argues that the district court clearly erred by implicitly: (1) denying his motion to amend its finding that he agreed to the guardian ad litem's (GAL) custody recommendation; and (2) declining to make additional findings regarding his child-support obligation, and domestic-abuse and chemical-dependency programming. We affirm in part, reverse in part, and remand.

FACTS

In September 2017, appellant-father Sokkhan Ka petitioned for parenting time and joint legal and joint physical custody of his son, P.K., who was residing with his mother, respondent Mai Yia Vang. Mother counter-petitioned seeking sole legal and sole physical custody of P.K., the appointment of a GAL, an order allowing father supervised parenting time only, and an order establishing child support.

Following a hearing, the district court appointed a GAL and allowed father supervised parenting time. The district court also granted mother's motion for child support, awarding her $382 per month, effective July 6, 2018.

The district court held a review hearing on December 3, 2018, to receive the GAL's testimony and accompanying report. Prior to the hearing, father filed his objections to the GAL's report, including an objection to the GAL's recommendation that mother be granted sole physical and sole legal custody of P.K. Father also testified at the hearing that he "would like to be able to make decisions for [P.K.] too, . . . Like medical stuff, school,

anything that has to do with him." The district court later asked father: "Do you agree with the [GAL]'s recommendations?" to which father replied: "Yes."

On December 31, 2018, the district court filed an order finding that "[t]he parties agree with the recommendations made by the [GAL]" with the sole exception of a modification to the telephone-contact schedule. The district court awarded mother sole physical and sole legal custody of P.K. as recommended by the GAL. Father moved for amended findings, asserting, among other things, that he did not agree with the GAL's custody recommendation. The district court did not issue a written order in response to father's motion to amend, but instead issued an amended order on January 24, 2019, that corrected only clerical errors. This appeal followed.

D E C I S I O N

GAL's custody recommendation

Father argues that the district court erred by denying his motion to amend the finding of fact that he assented to the GAL's custody recommendation. This court will "set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation and citations omitted).

Following the GAL's testimony at the December 3, 2018 hearing, the district court found that "[t]he parties agree with the recommendations made by the [GAL]," with the exception of the telephone-call schedule. The district court did not amend this finding in

its amended order, or otherwise address father's motion. "[G]enerally, a district court's failure to specifically address . . . a motion constitutes a denial of that motion." *Anderson v. Anderson*, 897 N.W.2d 828, 832 (Minn. App. 2017), *review granted* (Minn. Aug. 22, 2017) *and appeal dismissed* (Minn. Jan. 30, 2018).

Presumably, the district court based its finding on the following testimony:

> The Court: Anything else you want to tell me on the [GAL]'s recommendations?
> Father: No.
> The Court: All right. Do you agree with the [GAL]'s recommendations?
> Father: Yes.

Viewed in isolation, this exchange supports the district court's finding that father agreed to the GAL's custody recommendation, but put in context of the entire review hearing, the finding is clearly erroneous.

As an initial matter, father's indication that he agreed with the GAL's recommendations followed lengthy discussions of the GAL's recommendations unrelated to custody. Prior to father's indication of assent, the district court questioned father regarding his assertion that the outpatient program he planned to attend should satisfy the GAL's recommendation to attend anger management and regarding the apportionment of the costs of recommended drug testing. The district court then concluded with the following statement, which immediately preceded father's assent to the GAL's recommendation:

> So, you understand that you've got at least six months to . . . go through and work every day to figure out how, for your own sake, as well as your son's, how you can sort of get your act together and deal with either mental health issues or

> chemical dependency issues or any issues you might have with anger that perhaps in the past has led to domestic abuse allegations. All right?

At no point did the district court question father regarding the GAL's custody recommendation.

More importantly, father specifically objected to the GAL's custody recommendation both in writing and during the hearing, and never withdrew his opposition. In the first sentence of his written objections, father stated that he "does not agree with [the] custody recommendations contained within the [GAL's] report." Father concluded by asking the district court to "not rule on custody labels or parenting time yet and instead schedule a review hearing in six . . . months."

Following the GAL's testimony at the hearing, the district court asked father if he would like to question the GAL, and stated "I did note that you filed a memorandum with the [c]ourt about the report." However, the district court did not address the merits of father's memorandum. Father then testified that "as far as seeing [P.K.], I'm fine with those decisions, but I would like to be able to make decisions for him too."

Father unequivocally disagreed with the GAL's recommendation that mother be granted sole physical and sole legal custody of P.K. The only evidence in the record that supports the district court's finding is father's statement that he agreed with the GAL's recommendations regarding domestic-abuse counseling and drug-treatment programming. At no point did father either indicate that he assented to the GAL's custody recommendation, or withdraw his objections to that recommendation. Therefore, the district court's finding is clearly erroneous and the issue of custody is remanded to the

district court to make the required best-interests findings in accordance with Minn. Stat. § 518.17, subd. 1 (2018).

Right to jury trial

Related to his contention that he did not assent to the GAL's custody recommendation, father asserts that he was denied the right to a jury trial under the Seventh Amendment. On remand, under Minn. Stat. § 518.168(c) (2018), the district court is to determine questions of law and fact without a jury. Father does not challenge the constitutionality of section 518.168(c) or provide any legal support for his contention that he is entitled to a jury trial in a custody proceeding. Father also cites Minn. R. Civ. P. 39, without providing a specific subsection of that rule, or authority supporting his contention that he is entitled to a jury trial in a custody proceeding pursuant to that rule of civil procedure. 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. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Therefore, father's unsupported claim is forfeited.

Child-support modification

Father argues that the district court clearly erred by implicitly denying his motion to amend its findings of fact regarding his child-support obligation. In his motion to amend, father asserted that during the December 3, 2018 hearing, "[t]he parties agreed that support payments would be suspended starting August 1, 2018. This eliminates [the question of] are arrearage payments owed by Petitioner." However, the record does not support father's characterization of the parties' agreement.

At the hearing, the district court noted that a medical report stated father was unable to work from August 27 – November 27, 2018. Based upon this evidence, mother agreed to reduce father's child-support obligation for the period in which he was unable to work to the statutory minimum of $50 per month. *See* Minn. Stat. § 518A.35, subd. 2 (2018). The parties did not discuss either a complete elimination of father's child-support obligation for that period, or a reduction applicable to any other period. The district court asked father if he understood the modification mother agreed to, and he responded: "Yes[,]" and "I understand." The district court also asked father if he had any additional comments, to which he responded: "No."

The district court's order following the review hearing does not address child support, and the district court ruled from the bench that it would modify father's child-support obligation for the three months he was unable to work. The district court's implicit denial of father's request for additional findings not contemplated by the parties' on-the-record agreement is not clearly erroneous.

Father also argues that the requirement that he pay the statutory minimum in child support for the period in which he was medically unable to work violates the Americans with Disabilities Act (ADA). But father does not provide any authority in support of his assertion that the ADA provides relief from an otherwise valid child-support obligation. Therefore, father's unsupported assertion is forfeited. *Schoepke*, 187 N.W.2d at 135.

Programming requirements

Father argues that the district court clearly erred by implicitly denying his motion for amended findings of fact regarding the requirements of his domestic-abuse and

chemical-dependency programming. Father asserts that the district court erred by not amending its findings to include provisions for father's proposed alternatives to the GAL's recommended programming. The record does not support father's characterization of the district court's allowance for alternative programming.

At the December review hearing father asked the district court if an outpatient program he planned to attend could satisfy the GAL's recommendation that he complete an intensive domestic-abuse/anger-management program. The district court responded: "I'm not saying it's not possible, but I would have to see . . . if your doctors say, this program contains an anger management program, that's fine . . . . But . . . you're going to need to show me that you've fulfilled an anger management program." Based on this record, the district court neither granted nor denied father's request for alternative domestic-abuse programming. Therefore, the district court did not clearly err by implicitly denying father's request to make a specific finding that his alternative programming is acceptable.

Father also asserts that the district court clearly erred by implicitly denying his request for additional findings regarding the specifics of his drug-testing program. In his motion for amended findings, father asserted only that Minnesota Monitoring requires more specificity regarding the type of screening and number of negative tests. Father does not allege any asserted error committed by the district court necessitating appellate review, only that the testing program requires additional clarification from the district court regarding the terms of its order. Therefore, this is a matter for father to coordinate between Minnesota Monitoring and the district court, as this court is an error-correcting court only.

Sefkow v. Sefkow, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them.").

Affirmed in part, reversed in part, and remanded.