STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0390

In re the Marriage of:
Dodamwalage Dinesh Jayawardena, petitioner,
Appellant,

vs.

Mallikaarachchige Sathsarani Jayawardena,
Respondent.

Filed August 26, 2019
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-FA-17-4061

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Tifanne E. E. Wolter, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, 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

BJORKMAN, Judge

In this appeal from a dissolution judgment, appellant-father argues that the district court abused its discretion by (1) conditioning the restoration of father's parenting time on both parties' agreement that the children are ready for parenting time to resume, (2) awarding mother sole legal custody, and (3) awarding mother spousal maintenance and child support based on erroneous budgetary findings. We affirm the district court's parenting-time and custody decisions. But because the district court's findings understate father's expenses, we reverse the spousal-maintenance and child-support awards and remand for reconsideration of those matters.

FACTS

Appellant Dodamwalage Jayawardena (father) and respondent Mallikaarachchige Jayawardena (mother) were married in January 2002. They had four children between 2004 and 2011. In late 2016, father hit mother across the face during an argument, and mother obtained an order for protection against him. The parties separated the following June, and father petitioned for dissolution.

After a two-day trial in July 2018, the district court awarded mother sole legal and physical custody, spousal maintenance, and child support. The district court did not award father parenting time, noting that father voluntarily stopped seeing the children in late 2017 and the "children have been deeply emotionally affected by [his] actions and the history of emotional abuse and controlling behavior that occurred before he left the home." Instead, the court ordered father to first participate in reunification therapy with the children. The

court authorized father to receive parenting time when, "[b]ased on the information available from the therapist, . . . the parties agree that the children's comfort level is ready for parenting time." Father moved for a new trial or amendment of numerous factual findings, which the district court denied. Father appeals.

D E C I S I O N

I. The district court did not abuse its discretion by conditioning restoration of father's parenting time on both parties' agreement that the children are ready.

"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). A district court abuses its discretion if its findings are unsupported by the evidence or if it misapplies the law. *Id.*

Father argues that the district court abused its discretion by denying him parenting time until the parties agree that the children are ready.[1] He contends this condition gives mother "veto power" over his parenting time and he has "no prompt recourse" if mother withholds her agreement. Both arguments are unavailing.

The district court empowered father to select the reunification therapist and made "information available from the therapist" the focus of the determination whether "the children's comfort level is ready for parenting time." We discern no factual or legal error by the district court in requiring mother's agreement. The district court wisely engaged the children's sole legal and physical custodian in making this critical determination, rather

[1] We observe that father does not dispute, and the record supports, the finding that it is in the children's best interests for father and the children to participate in reunification therapy to ensure they are comfortable with him before he resumes parenting time.

than placing the decision solely in father's or the therapist's hands, or imposing an arbitrary timeline regardless of the children's readiness. And the district court expressly provided father the recourse he claims to lack: if the parties have not agreed to resume father's parenting time after six months of reunification therapy, father may "request a review hearing." The parenting-time order reflects an appropriate exercise of discretion to afford father parenting time under conditions that serve the children's best interests.

II. The district court did not abuse its discretion by awarding mother sole legal custody.

A district court has broad discretion in determining custody matters. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008). Our review is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). When determining whether findings are clearly erroneous, we view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

When evaluating what custody arrangement serves the children's best interests, a district court must consider "all relevant factors," including, among 12 enumerated factors, any history of domestic abuse. Minn. Stat. § 518.17, subd. 1(a)(4) (2018). If domestic abuse has occurred between the parents, the court must "use a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child[ren]." *Id.*, subd. 1(b)(9) (2018). "In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the

domestic abuse for parenting and for the child[ren]'s safety, well-being, and developmental needs." *Id.*

The district court analyzed all 12 statutory factors, noting the presumption against joint legal custody because of the parties' history of domestic abuse. And the court found that there is ongoing discord between the parties, and between the children and father, because of father's history of physical violence and coercive and controlling behavior toward mother. In light of these considerations, the district court found it unlikely that the parties could "cooperatively navigate custodial matters without impasse or free of coercion or intimidation." Father does not argue that any of the custody findings are clearly erroneous, and our review of the record reveals ample supporting evidence. That the record might have supported the alternative findings that father urges—that the children do not fear him and the parties could cooperate in co-parenting—does not undermine the district court's findings or its decision to award mother sole legal custody.

III. The district court abused its discretion in awarding mother child support and spousal maintenance based on erroneous budgetary findings.

A district court has broad discretion in its decisions regarding child support and spousal maintenance. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008) (child support); *Melius v. Melius*, 765 N.W.2d 411, 414 (Minn. App. 2009) (spousal maintenance). We will not disturb a district court's factual findings regarding the parties' income and expenses unless they are clearly erroneous. *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004).

A. Income Findings

Father argues that the district court clearly erred by calculating mother's income based on her current position working 35 hours per week during the school year as a childcare assistant. He contends that additional income should be attributed to her because she is able to work "full time year-round." We disagree. Mother testified that she is not qualified for the employment father suggested she pursue, she is unable to work additional hours in her current position, and summer work elsewhere is not feasible in light of the children's needs and the off-setting expense of childcare. We see no clear error by the district court in crediting mother's testimony.

Father also asserts that the district court erred by including bonus pay in his income. He acknowledges that bonus payments are properly included in a party's income, even if not guaranteed or uncertain as to amount, so long as they are a "dependable" form of payment and expected to continue. *Desrosier v. Desrosier*, 551 N.W.2d 507, 509 (Minn. App. 1996). But he insists that his receipt of a bonus for only one year makes the future bonus payments too speculative to be included as income. We are not persuaded. Receipt of bonus payments over multiple years amply demonstrates the dependability of such income. *See id.* at 508 (four years of bonus ranging from $7,000 to $17,000); *cf. Haasken v. Haasken*, 396 N.W.2d 253, 261 (Minn. App. 1986) (affirming exclusion of bonus from income because determination that payments ranging from $0 to $9,000 were not "dependable" was "not clearly erroneous" (quotation omitted)). But nothing in the caselaw precludes a finding of dependability based on one year's receipt of a bonus where, as here, the record establishes ongoing eligibility for and likely receipt of bonuses.

Father was promoted to executive chef at Radisson Blu in late 2016. Upon that promotion, he immediately became eligible to receive a bonus. The 2017 incentive plan identifies the employees eligible to receive a bonus and sets out the timing (annual) and amount (8%) of the bonus payments. As long as father retains his position as executive chef, he will be eligible to receive a bonus. Father testified that the bonus depends on his performance and that of the business. But he received the full amount of the bonus during the only year of eligibility for which information was available at the time of trial. On this record, the district court did not clearly err by finding that the bonus, while "not guaranteed," is likely to "remain a regular and dependable form of periodic payment" and including the bonus in father's income.

B. Expense Findings

As to mother's expenses, father claims error in the finding that her current mortgage payment is reasonable because "she is eligible to refinance." But the record reflects that the parties had not been approved to refinance immediately because of financial uncertainties related to the dissolution. We discern no error by the district court in affording mother three years to refinance or sell the homestead.

Father also asserts error in the district court's acceptance of mother's claimed expenses for home maintenance, utilities, transportation, and a personal allowance, claiming they exceed the marital standard of living and are unreasonable. *See* Minn. Stat. § 518.552, subd. 1 (2018) (requiring consideration of marital standard of living in determining need for spousal maintenance). The district court duly considered the marital standard of living, including crediting mother's testimony that father withheld financial

information from her, making it difficult for her to calculate her expenses, and that father "unreasonably" restricted the family's expenditures on groceries and utilities. The district court also considered mother's testimony about the actual expenses she and the children have incurred since the separation and specific anticipated expenses to address deferred home and vehicle maintenance. On this record, the district court did not clearly err by finding mother's claimed expenses to be reasonable.

Regarding his own expenses, father contends the district court clearly erred by rejecting some of his claimed expenses. With respect to father's claimed "reserve" for potential uninsured medical expenses and attorney fees, we disagree. Father's testimony that "anything can happen" does not justify a "reserve" for uninsured medical expenses. And the district court did not err by holding each party responsible for his or her own attorney fees and excluding any such expenses from both parties' budgets.

But father's argument regarding his credit card debt has merit. At the time of the dissolution trial, father had more than $30,000 in credit card debt, which the district court allocated to him as nonmarital debt. Father claimed $1,716.19 in monthly expenses to pay off this debt. The district court excluded this expense as duplicative of father's claimed expenses for groceries, clothing, eating out, travel, and gasoline. But that very reasoning reveals the court's error. Father's prior expenditures on groceries, clothing, and so forth (resulting in current debt) cannot duplicate future monthly expenses toward those items. Father will continue to incur expenses toward those items, and will also continue to face an obligation to pay off his credit card debt. The district court clearly erred by excluding that expense from father's budget. That error necessarily undermines the district court's

calculation of spousal maintenance and child support. We therefore reverse those awards and remand for the district court to recalculate father's budget and reevaluate spousal maintenance and child support accordingly.

Affirmed in part, reversed in part, and remanded.