STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0506

In re the Marriage of:

Heidi Ann Kingsley, petitioner,
Appellant,

vs.

Isaiah Thomas Kingsley,
Respondent.

Filed November 18, 2019
Reversed and remanded
Jesson, Judge

Fillmore County District Court
File No. 23-FA-15-348

Ashley M. Kuhn, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for appellant)

Isaiah Thomas Kingsley, Cedar Rapids, Iowa (pro se respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant mother Heidi Ann Kingsley challenges the district court's decision to appoint a parenting-time expeditor. While the district court did not abuse its discretion by hearing respondent father Isaiah Thomas Kingsley's motion, we conclude that the district

court erred by appointing a parenting-time expeditor because father was convicted of domestic assault for pointing a BB gun at the head of the parents' young child. As a result, we reverse the district court's order appointing a parenting-time expeditor.

FACTS

Appellant Heidi Ann Kingsley (mother) married respondent Isaiah Thomas Kingsley (father). Mother and father had three children before divorcing in 2015. In the dissolution order, the parties agreed to shared legal custody of the children, with mother as the sole physical custodian. Father was awarded parenting time, generally every other weekend, two weeknight evenings, and alternating holidays.

In May 2017, the children reported to mother that father threatened one of them with a BB gun. Mother called the police, and the police interviewed the children. The children were ten, seven, and five at the time of the incident. Father was convicted after he entered an *Alford* plea to domestic assault for his conduct.[1] After father's conviction, he had only supervised parenting time with the children on a less-frequent basis than before.

In January 2019, father filed a pro se motion seeking appointment of a parenting-time expeditor. This filing did not include any supporting affidavits or

[1] An *Alford* plea is a type of guilty plea where a defendant may maintain their innocence yet admit there is a strong factual basis for the plea. *See State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007) (stating that "the court must be able to determine that the defendant, despite maintaining his innocence, agrees that evidence the [s]tate is likely to offer at trial is sufficient to convict"). The name of the plea comes from *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970), adopted in Minnesota in *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). Following his *Alford* plea, father was convicted of misdemeanor domestic assault for intending to cause fear of immediate bodily harm or death against a family member under Minnesota Statutes section 609.2242, subdivision 1(1) (2016).

memoranda describing the basis for father's request. Mother did not file any responsive documents other than reports from the children's therapists recommending supervised contact only with father. The district court heard father's motion.

At the motion hearing, father explained that he wanted a parenting-time expeditor to facilitate seeing the children and having phone contact with them. Mother opposed father's request, questioning whether a parenting-time expeditor would be able to help resolve their disputes.

Mother also described issues related to the domestic assault in May 2017 and its effect on the children. Mother reported that, because of the assault, the children refuse to talk to their father and that "[t]hey don't feel safe" or trust him. The children started therapy shortly after the incident. And mother shared letters from the children's therapists recommending that the children have only supervised contact, if any, with father following the incident. Because of the way the children feel towards father, mother argued that a parenting-time expeditor would not be able to help the family's situation. Instead, she suggested they consider a parenting consultant, a guardian ad litem, or assessments and therapy.

After reviewing the parenting-time-expeditor statute with the parties on the record, the district court agreed with father. The court found that the appointment of a parenting-time expeditor was in the children's best interests. The order appointed a specific expeditor, under Minnesota Statutes section 518.1751 (2018), and required father to pay the cost. The parenting-time expeditor issued a decision about a month later. Mother appeals.

D E C I S I O N

Mother alleges that the district court erred by appointing a parenting-time expeditor. First, mother argues that the district court abused its discretion by hearing father's motion when it lacked necessary supporting documents. Second, mother argues that the district court erred by appointing a parenting-time expeditor because father was convicted of domestic assault of their joint child. We review each argument in turn.

I. The district court did not abuse its discretion by hearing father's motion when it was not supported by affidavits or memoranda.

Mother first challenges the district court's decision to allow a hearing on father's motion absent a supporting affidavit or memorandum. Procedural rulings are within the district court's discretion and are reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). Minnesota Rule of General Practice 303.02(a) requires all motions be supported by affidavits relevant to the motion. And rule 303.03(a)(1)(ii)-(iii) states that a motion shall not be heard unless the movant files appropriate documents, including "[r]elevant affidavits and exhibits" and "[a]ny memorandum of law the party intends to submit." If the movant fails to file documents required under this rule, the district court *may* cancel the hearing. Minn. R. Gen. Prac. 303.03(b) (emphasis added).

Here, father filed a pro se motion requesting that the district court appoint a parenting-time expeditor, but did not include any supporting memoranda or affidavits. And the district court decided to hear father's motion despite the lack of supporting documents. This falls squarely within the court's discretion—while it *may* have cancelled the hearing,

it was not required to do so. *Id.* We discern no abuse of discretion here.

Still, mother argues that failure to file supporting documents resulted in her not knowing the basis on which father sought relief. But mother did not file any pleadings opposing the motion. *See Id.* (noting that "[i]f responsive documents are not properly served and filed, the court may deem the initial motion unopposed and may issue an order without a hearing"). Nor did she file a request for more information. And mother and father spoke before the hearing and tried to reach a resolution but were unable to do so. Because the rule is permissive, we conclude that the district court did not abuse its discretion in hearing the motion without supporting documents.

II. The district court erred by appointing a parenting-time expeditor because father was convicted of domestic assault of the parties' child.

Even if the district court properly heard father's motion, mother contends that it was error to appoint a parenting-time expeditor because father was convicted of domestic assault of the parties' child.[2] A party may not be required to submit to a parenting-time expeditor if the district court determines there is probable cause that "a child of the parties

[2] Mother also argues that the district court erred in two other ways. First, according to mother, the district court erred by appointing a parenting-time expeditor because the parties are unable to afford it. A party may not be required to work with a parenting-time expeditor if the party cannot pay for the expeditor unless the other party agrees to pay for the expeditor. Minn. Stat. § 518.1751, subds. 1a(3), 2a. Because father agreed to pay for the expeditor and the district court ordered him to do so, this argument fails.

Second, mother contends that the district court erred by granting the parenting-time expeditor authority to make decisions inconsistent with the existing parenting-time order without mutual consent of the parties. Because we reverse the district court's order on other grounds, we do not reach the merits of this argument but note that Minnesota Statutes section 518.1751, subdivision 3(c), requires a parenting-time expeditor's decisions to be consistent with the existing parenting-time order unless the parties mutually agree to expand that authority.

has been physically abused or threatened with physical abuse by the other party." Minn. Stat. § 518.1751, subd. 1a(2). And while a district court's decision to appoint a parenting-time expeditor is reviewed for an abuse of discretion, *Nolte v. Mehrens*, 648 N.W.2d 727, 731-32 (Minn. App. 2002), its compliance with the statutory requirements governing the appointment of a parenting-time expeditor is a question of law, reviewed de novo. *Braith*, 632 N.W.2d at 724.

The central issue before us is not whether probable cause exists that the child was abused or threated with abuse by father. Here, it is clear that father was convicted of domestic assault of one of the parties' children. Rather, the question is whether mother adequately raised this issue in response to father's motion.

We acknowledge that mother did not point to the statute precluding appointment when raising the domestic assault issue at the hearing regarding the parenting-time expeditor. But we assess mother's argument here in light of the fact that father failed to file any supporting documents to give mother notice of the arguments he intended to make. In response to father's general motion, we view her general assertions about the domestic assault to be sufficient to raise the issue before the district court and preserve this issue for appeal.

Several times in the hearing, the parties and the district court discussed the domestic assault. Mother's counsel stated, "this case involved, I think, a domestic assault. I think it was a BB gun. And there was an *Alford* plea." The district court reviewed the family's related court files in the hearing and acknowledged the criminal file, stating, "I see there's a criminal matter, and there's a sentencing order in that one." And the district court judge

presiding over the motion hearing was the same judge that presided over father's criminal matter. Mother's counsel even referenced the criminal case and commented to the judge, "[y]ou know what the background is." This suggests that the district court judge had knowledge of the domestic assault conviction and that the parties expected him to consider that knowledge when assessing the motion.

Because of the repeated discussion of the criminal matter in the motion hearing, we conclude that mother sufficiently raised this issue with the district court. And the statute is clear: a district court may not appoint a parenting-time expeditor if a child of the parties has been abused or threated with abuse by the other party. Minn. Stat. § 518.1751, subd. 1a(2). As a result, the district court should have viewed father's domestic assault conviction as barring the appointment of a parenting-time expeditor. Because the district court failed to do this and appointed an expeditor, the district court erred. We reverse the appointment.

Reversed and remanded.