STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0376

In re the Marriage of: Teresa Corinne MacNabb, petitioner,
Respondent,

vs.

John Michael Kysylyczyn,
Appellant.

Filed February 18, 2020
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-FA-08-2020

Teresa Corinne MacNabb, Little Canada, Minnesota (pro se respondent)

Carl A. Blondin, Oakdale, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly, Judge.

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

CONNOLLY, Judge

In this child-custody modification dispute, appellant father argues that the district court erred in denying his motion because he had not attempted to mediate the matter before taking it to the district court. Because there was no error in the denial, we affirm.

FACTS

During their marriage, appellant John Kysylyczyn and respondent Teresa MacNabb had two children, S.C, born in March 2003, and M.A., born in November 2005. Their marriage was dissolved in 2010. The dissolution judgment provided that:

> The parties agree that they be awarded joint legal and joint physical custody, and have worked out a parenting and holiday schedule. The parenting provisions are set out in Attachment A. The [c]ourt finds that these provisions are in the best interests of the children, are fair under the circumstances, and provide the clarification required to minimize confusion and possible conflict between the parties. These provisions maximize the time the children can spend with their parents, maximize the quality of the co-parenting, and *provide a framework for mutual decision-making between the parents*.

(Emphasis added.)

Attachment A on "Parenting Time and Other Parenting Provisions" lists "Custody" as the first item and provides specifically that, when parenting issues arise, the parties are to consult with each other and attempt to reconcile, then attempt reconciliation with the aid of an involved professional. If they are still unsuccessful, they seek the services of a parenting consultant/coordinator, who has authority to make a decision that may be challenged in family court, but "will be binding unless and until the [c]ourt determines otherwise."

In March 2018, the parties, with a parenting-time expeditor, agreed to a new parenting-time arrangement, and the court approved it. In September 2018, S.C., then 15

and a half, wrote to respondent stating that she was changing her parenting time to spend more time at appellant's house because he lived closer to her school.

In December 2018, respondent moved for an order enforcing the parenting-time schedule set out in the parties' March 2018 agreement and notified the court that she had purchased a house in the children's school district. Appellant moved the court for sole physical custody of S.C. and stated in an affidavit that respondent's purchase of a home close to S.C.'s school had "little or no impact on the overall situation," despite S.C. having stated in her letter that she was moving to appellant's house because it was more convenient for her school activities.

At the hearing on their motions, both parties informed the district court that they had not complied with the requirement for mediation or with the dispute-resolution provisions of the 2010 parenting plan. The district court denied appellant's motions for sole physical custody of S.C. or an evidentiary hearing "in light of the 2010 Dispute Resolution provision," and granted respondent's motion for enforcement of the March 2018 parenting-time decision, because enforcement of previous orders is not subject to the dispute-resolution provision.[1]

Appellant challenges the denial of his motions, arguing that the requirement for the parties to attempt to resolve parenting disputes did not pertain to custody.

[1] Respondent, now pro se, took no part in this appeal, which by order of this court proceeded under Minn. R. Civ. App. P. 142.03 (providing that, when the respondent does not submit a brief, the case shall be determined on the merits).

D E C I S I O N

"Courts . . . favor the use of stipulations in dissolution proceedings. Stipulations are treated as binding contracts. . . . A mediated settlement agreement is in the nature of a contract." *Tornstrom v. Tornstrom*, 887 N.W.2d 680, 685-86 (Minn. App. 2016) (citation omitted), *review denied* (Minn. Feb. 14, 2017). Appellant does not deny that he agreed to the provisions of the dissolution and its attachments.

He argues instead that the district court erred in basing the denial of appellant's motions to modify custody or for an evidentiary hearing on the attachment provision that, if the parties were unable to resolve a dispute on their own or with an involved professional, they would use the services of a parenting consultant/coordinator whose decisions could be challenged in family court but would be binding unless overruled by the family court. In appellant's view, although custody is the first item listed on the attachment pertaining to "Parenting Time and Other Parenting Provisions," the requirement that disputes be submitted to a parenting consultant/coordinator does not apply to custody disputes. His only support for this view is *Richardson v. Richardson*, No. C6-02-1002, 2003 WL 105378 (Minn. App. Jan. 14, 2003). As an unpublished decision of this court, that opinion has no precedential value. *See* Minn. Stat. § 480A.08, subd. 3(c) (2018).

Moreover, *Richardson* is factually distinguishable. In that case, the dissolution judgment provided that one parent had sole physical custody, the parents had joint legal custody, and "disputes over the access schedule and requests for modification of the schedule were to be handled by submitting the matters to mediation." *Richardson*, 2003 WL 105378, at *1. One party moved for a change in custody and challenged the denial of

this motion. *Id*. This court rejected the argument that the mediation clause in the dissolution judgment applied to the custody dispute because "[a] request for sole physical custody is not a 'dispute regarding the access schedule,' nor is it a request for 'a modification of the schedule.'" *Id.* at *4.

Here, the first item listed in the "Parenting Time and Other Parenting Provisions" attachment to the dissolution judgment is "Custody" and the attachment provides that, if neither direct communication nor consultation with an involved professional produces resolution of a parenting dispute, the parties will "seek out the services of a parenting consultant/coordinator." There is no indication that custody disputes are excluded from this provision. Thus, *Richardson* is irrelevant.

The district court did not err in declining to address appellant's motion for custody modification before the parties attempted to resolve the issue with a parenting consultant/coordinator.

Affirmed.