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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1367**

In re the Marriage of: Adetola Omolola Allen,
n/k/a Adetola Omolola Abodunde, petitioner,
Appellant,

vs.

Temitope Oluwaseyi Allen,
Respondent.

**Filed June 15, 2020
Affirmed
Klaphake, Judge***

Washington County District Court
File No. 82-FA-16-3337

Maury D. Beaulier, Beaulier Law Office, St. Louis Park, Minnesota; and

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Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from a marriage dissolution, appellant-wife, Adetola Omolola Allen n/k/a Adetola Omolola Abodunde, argues that the district court erred in awarding the parties joint legal and joint physical custody of their two children and dividing the parties' marital property. Wife asserts that the evidence presented at trial does not support the district court's best-interests findings and that the evidence does not support its property division because respondent-husband, Temitope Oluwaseyi Allen, dissipated marital assets in a Nigerian bank account. Wife also argues that the district court erred by denying her request for conduct-based attorney fees. We affirm.

DECISION

I.

Wife contends that the district court abused its discretion by awarding the parties joint legal and joint physical custody of their children because the record does not support the district court's best-interests findings.

A district court has broad discretion in making child-custody determinations. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). This court's review of a district court's custody decision is "limited to determining whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Zander v. Zander*, 720 N.W.2d 360, 365-66 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). This court will sustain a district court's findings of fact unless they are clearly erroneous. *Id.* at 364. When determining whether findings are clearly

erroneous, this court views the record in the light most favorable to the district court's findings and defers to the district court's credibility determinations. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

The best interests of the child are central to custody determinations. *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019). In evaluating the best interests of the child to determine issues of custody and parenting time, the district court must consider and evaluate all relevant factors, including the best-interests factors in Minn. Stat. § 518.17, subd. 1(a) (2018). The statute articulates 12 factors to consider in evaluating the best interests of a child:

(1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;

(2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

(4) whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;

(5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;

(6) the history and nature of each parent's participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child's well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse . . . has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a)(1)-(12). The district court must make detailed findings on each factor based on the evidence presented, and “explain how each factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1) (2018). The district court is prohibited from using “one factor to the exclusion of all others.” *Id.*

In determining the child's best interests, the district court must consider “whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(4). Minn. Stat. § 518B.01, subd. 2(a) (2018), defines domestic abuse as “(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . criminal sexual conduct . . . or interference with an emergency call.”

The district court must use “a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child.” Minn. Stat. § 518.17, subd. 1(b)(9) (2018). But if domestic abuse has occurred between the parents as defined in Minn. Stat. § 518B.01, subd. 2(a), there is a rebuttable presumption that neither joint legal custody nor joint physical custody is in the best interests of the child. *Id.* “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’s safety, well-being, and developmental needs.” *Id.* “Rather than impose a presumption for or against a specific *custodian*, subdivision 1(b)(9) creates a rebuttable presumption against a *custodial arrangement*: joint custody.” *Thornton*, 933 N.W.2d at 791. “The subdivision does not assign a burden of production or persuasion to rebut the presumption to any particular party.” *Id.* at 793.

Wife argues that the district court’s findings and analysis of the domestic-abuse factor in Minn. Stat. § 518.17, subd. 1(a)(4), are “against logic” and unsupported by the record.

At trial, the evidence regarding physical abuse mainly consisted of husband and wife’s contradictory testimony. Wife testified that in May 2015, husband threatened to harm himself while brandishing a knife. She called 911 after the incident, but told police she called because husband was having chest pains. Wife testified that in June 2015, she and husband began arguing, and husband started hitting and slapping her, and dragged her down the stairs. Wife testified that she sustained an injury to her leg from the incident and went to the emergency room for treatment. Wife testified that she did not call the police

about the incident because she feared husband would go to jail. Wife testified that the instances of abuse in May and June 2015 occurred while the children were home. Wife also testified that in February 2015, husband “squeezed [her] hand,” and that after she ran outside to seek help, he would not let her back into the home, leaving her outside in the cold. Husband testified at trial and denied all allegations of abuse.

The district court also heard testimony from the custody evaluator and received the custody evaluator’s report into evidence. In the report, the evaluator noted that husband denied all allegations of domestic abuse and that a petition for an order for protection wife sought against husband had been dismissed. The evaluator stated that although some of wife’s allegations of domestic abuse were likely true, even if there was domestic abuse by husband, the abuse “most likely [fell] into the situational violence category.” The evaluator also opined that cultural tolerance and expectations of family roles may be a confounding factor as husband’s church “suggests that men rule the family, and that [wife] did not abide by [the church’s] rules, values, and traditions.” The evaluator also noted that the children “do not appear to have behaviors on the surface and it is unknown the extent that they cognitively internalized the experience or if they were indeed present.”

Based on the evidence at trial, the district court analyzed the domestic-abuse factor, noting that the incidents of alleged abuse occurred “when the children were quite young,” that a petition for an order for protection wife sought against husband was dismissed because the allegations had not been established, and that the alleged abuse “did not alter [the custody evaluator’s] recommendation that the parties share joint legal custody, with significant parenting time with [husband].” The district court concluded that “although the

incidents relayed [were] concerning, the presumption against joint legal and joint physical custody . . . ha[d] been rebutted.” Given the conflicting evidence on the domestic abuse and its impact on the children, the district court made a credibility determination and chose to rely mainly on the custody evaluator’s report to make its determination. As such, its resulting finding is not clearly erroneous. *See Vangsness*, 607 N.W.2d at 472 (“[A]ppellate courts defer to [district] court credibility determinations.”).

Wife also argues that the district court’s findings on the remaining best-interests factors are “scant in application both in evidence presented at trial” and in “analysis and application as required by statute.” In particular, wife challenges the district court’s findings on the first, second, fifth, sixth, seventh, eighth, ninth, tenth and eleventh factors.

Again, most of the evidence presented at trial was husband and wife’s conflicting testimony and the testimony and report of the custody evaluator. In addressing the best-interests factors, the district court found the custody evaluator to be credible, and as such, largely relied on the evaluator’s testimony and report. In making its determination on the first factor, the district court considered wife’s testimony that she had been the children’s primary caretaker during the marriage, and noted that the parties had “cultural similarities” and strong support from their communities and families. It concluded that the children’s “emotional, spiritual and cultural needs are being met by both parents,” and because wife resides in the home where the children have been raised, the first factor favored “joint physical custody, with primary residence with [wife].”

On the second factor, the district court found that the children did not have needs requiring special parenting arrangements, but noted wife’s testimony that the children had

several incidents at daycare shortly after the temporary parenting schedule was put into place and that those incidents indicated that the children were experiencing emotional turmoil. Regarding the fifth factor, the district court found that the custody evaluator's psychological testing of the parties indicated that husband "may be perceived as controlling" and that wife "may experience exaggerated distress." The district court also noted the custody evaluator's observation that although the parties appeared to have a "toxic" relationship, they agreed and compromised "on many more issues than the average conflictual custody litigants." On the sixth factor, the district court credited wife's testimony and the custody evaluator's report that wife had been the children's primary caretaker, and concluded that "both parents fully participate and are able to care for the children in an appropriate manner."

Similarly, on the seventh factor, the district court found that both parents could provide for the ongoing care of the children and meet their emotional, spiritual, and cultural needs, and that both parents appeared to be able to effectively follow through with a parenting schedule. On the eighth factor, the district court determined that there should be minimal impact on the children's well-being and development, because the parents lived close to each other and there would be no change in the children's community. As to the ninth factor, the district court found that the children would continue to have contact with their extended families and communities. And on the tenth factor, the district court again relied on the custody evaluator's recommendation, acknowledging that although there had previously been concerns regarding husband's abusive behavior, those incidents were described as situational, and the custody evaluator recommended shared joint legal

custody. Lastly, on the eleventh factor, the district court found that the parties “have the ability to foster a positive relationship between the children and the other parent” and adopted the custody evaluator’s recommendation that the parties use a parenting consultant to assist them with ongoing disputes.

In sum, the district court appears to have made credibility determinations based on the evidence introduced during the trial. Its findings on the best-interests factors are supported by the record, and those findings address the required statutory factors. Thus, the district court’s determination that the parties share joint legal and joint physical custody was not an abuse of discretion. *See Vangsness*, 607 N.W.2d at 477 (stating that the law “leaves scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations”).

II.

Wife contends that the district court erred by finding that husband did not dissipate the Nigerian bank account.

Parties to a marriage dissolution owe each other “a fiduciary duty . . . for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets.” Minn. Stat. § 518.58, subd. 1a (2018). Dissipation occurs when a party to a marriage, without the consent of the other party, in contemplation of commencing or during the pendency of the current dissolution, “transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life.” *Baker v. Baker*, 753 N.W.2d 644, 653

(Minn. 2008). A district court may attribute dissipated assets to the party who “transferred, encumbered, concealed, or disposed of” them. Minn. Stat. § 518.58, subd. 1a.

Whether a party has dissipated marital assets is a question of fact. *See id.* (“If the court *finds*” (emphasis added)). Appellate courts review a district court’s factual findings for clear error, viewing the evidence in the light most favorable to the district court’s findings and reversing only if the record “requires the definite and firm conviction that a mistake was made.” *Vangness*, 607 N.W.2d at 474.

After the dissolution trial, in April 2019, the district court held a separate hearing on the parties’ Nigerian property. Wife argued that husband had dissipated marital assets in a Nigerian bank account. Wife testified that she knew about the account, but was unaware of the transactions going in and out of that account and that some transactions occurred around the time she filed for dissolution. Wife suspected that husband was hiding assets from her, but acknowledged that he started making “huge transactions” from the account starting around May 2012. Husband testified that the account was his “salary account” while he was working in Nigeria and that he also used it to manage family business transactions. He testified that he used the account for family transactions because “not everyone . . . has a bank account in Nigeria. It’s only people that can afford it that would have a bank account.” He agreed that money went out of the account several times in the months before wife filed for dissolution, but stated that the transactions were for land-development projects and that he did not spend any of his money or the parties’ money.

The district court concluded that wife “[had] not proven her claim of dissipation” and that the funds in the Nigerian bank account should therefore be equally divided as of the date of valuation. In making its determination, the district court appears to have credited husband’s testimony that the transfers were used for family transactions and that no marital funds were dissipated in the account, and acknowledged wife’s testimony that she had never been told that the account was used by other family members. The district court also noted husband’s testimony that he had provided true and accurate copies of the bank statements. Again, the district court appears to have made a credibility determination, and the record supports its determination that wife had not proved husband dissipated marital assets.

III.

Wife contends that the district court erred in denying her motion for conduct-based attorney fees.

Conduct-based attorney fees may be imposed “against a party who unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2018). Conduct-based attorney fees may be “based on the impact a party’s behavior has had on the costs of the litigation regardless of the relative financial resources of the parties.” *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). “While bad faith could unnecessarily increase the length or expense of a proceeding, it is *not* required for an award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1.” *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001). The requesting party bears the burden of establishing that the other party’s conduct unreasonably contributed to the length or

expense of the proceeding. *Id.* at 818. This court reviews a district court's award of conduct-based attorney fees for an abuse of discretion. *Dabrowski*, 477 N.W.2d at 766.

Throughout the proceedings, wife argued that she was entitled to conduct-based attorney fees because she had incurred substantial costs in obtaining records and information from husband regarding the Nigerian bank account. At the April 2019 hearing on the parties' Nigerian property, the district court heard testimony regarding husband's disclosure of those records to wife. Husband testified that he disclosed information about the Nigerian bank account three times, and explained that the discovery process was somewhat confusing because wife had been represented by three attorneys during the case. He also testified that none of the documents he disclosed were fraudulent.

In its written order following the April 2019 hearing, the district court found that information about the bank account had been provided in 2016, and that the records provided were consistent with each other and did not establish wife's claim that the records were fraudulent. Those findings are supported by husband's testimony and therefore are not clearly erroneous. Thus, the district court did not abuse its discretion in ordering each party to pay their own attorney fees.

Affirmed.