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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1929**

In re the Marriage of:
Michaela Dojcinovic Bachmayer, petitioner,
Respondent,

vs.

Kyle Dalke Bachmayer,
Appellant.

**Filed August 3, 2020
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-FA-18-4040

Susan A. Cragg, Lynn Klicker Uthe, Lynn Klicker Uthe, Ltd., Minnetonka, Minnesota (for respondent)

Misty K. Myers, Groshek Law, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

FRISCH, Judge

In this appeal from a marriage-dissolution proceeding, father argues that the district court abused its discretion by ordering limited, supervised parenting time for father and

clearly erred in its factual findings supporting an award of sole legal and sole physical custody to mother. We affirm.

FACTS

The parties married in 2016, and their child was born in 2017. Both parties describe incidents of domestic abuse throughout the marriage, and child was present during some of the incidents. One such incident resulted in the arrest of father, leading to a criminal conviction of disorderly conduct and a probationary order for domestic-abuse programming.

On May 25, 2018, mother commenced marriage-dissolution proceedings. Beginning in June 2018, father exercised supervised parenting time for several hours per week. The parties asked the district court to temporarily modify the parenting schedule and waived their right to a hearing on the temporary modification. On August 21, 2018, the district court issued an order temporarily granting father two overnights per week. The district court scheduled an evidentiary hearing to determine permanent parenting-time and custody arrangements. The district court ordered mother and father to participate in a custody and parenting-time evaluation and individual psychological evaluations.

Between the date of the temporary order and date of the evidentiary hearing, mother and father interacted in person when exchanging child. Both parties describe conflict during at least some of these exchanges. Father started bringing family members and recording the exchanges. Mother also brought an observer to one exchange. At the evidentiary hearing, mother testified that the exchanges were uncomfortable and that she felt unsafe. The parties moved the exchanges to a public location to reduce the potential

for conflict, but mother maintained that the exchanges remained uncomfortable and intimidating.

On December 6, 2018, a custody evaluator produced a report to the parties and the district court. The evaluator recommended that mother have sole legal custody and sole physical custody of child and that father be granted daytime parenting time every Saturday. The evaluator also recommended that father complete further domestic-abuse programming and work with a parenting coach to increase his early childhood developmental knowledge and develop constructive co-parenting behaviors.

The psychological evaluations were filed on February 14, 2019. The evaluator opined that father lacked the ability to effectively co-parent and stated that, absent significant intervention, father would likely continue to perpetuate themes of intimidation against mother “without insight into the potential harm this can cause to a child.” The evaluator recommended clinical intervention but lacked sufficient information to make a precise diagnosis or determine the likelihood that clinical intervention would be successful.

On April 18, 2019, father notified child’s pediatrician of three incidents in which child sustained injury while in the care of mother. Two days earlier, child protective services had contacted mother regarding an anonymous report of potential child abuse. The investigation was closed with no substantiation of the allegations, and the district court later found that mother credibly described all three incidents.

On May 16 and 30, 2019, the district court held an evidentiary hearing. The district court received testimony from the parties, father’s father, the godfather of child, the custody evaluator, and mental-health professionals who had counseled one or both parties

on domestic abuse and other issues. The district court also received the custody evaluation, psychological evaluation, and various written exchanges between the parties.

Immediately at the conclusion of the hearing, the district court issued an interim order instructing the parties to move parenting-time exchanges to FamilyWise. The district court found the current exchange arrangement problematic, because child was getting older and “picking up on things.” The district court expressed particular concern with the continued recording by father of the exchanges, which seemed to increase the level of conflict. The court found that the level of conflict during the exchanges had not improved over time and would likely worsen. Because FamilyWise is not open during the early morning hours, the district court determined that early morning exchanges would no longer be possible during the week, effectively removing one overnight from the temporary parenting time that father previously received. Father did not object at the time of this schedule adjustment.

On October 8, 2019, the district court permanently awarded father nine hours of supervised parenting time per week: three hours on Tuesday evenings and six hours on Saturdays. The district court noted that father may request a change in parenting time after completing one year of therapy. The district court found that it would be in the best interests of child to award sole legal custody and sole physical custody to mother. Father appeals.

DECISION

I. The district court did not abuse its discretion by establishing limited, supervised parenting time for father.

Citing a statutory presumption that a parent is entitled to at least 25% parenting time, father argues that the district court erred by failing to expressly address that presumption.¹ We review parenting-time decisions for an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). We review factual findings for clear error and questions of law de novo. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

The district court must “grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.” Minn. Stat. § 518.175, subd. 1(a) (2018). “*In the absence of other evidence*, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time.” *Id.*, subd. 1(g) (2018) (emphasis added). The district court may restrict parenting time following a hearing, however, when “a parent is likely to endanger the child’s physical or emotional health or impair the child’s emotional development.” *Id.*, subd. 1(b) (2018). The concept of “endangerment” denotes a qualitative standard that requires a showing of a “significant degree of danger.” *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). An endangerment finding may be based

¹ Mother argues that father forfeited this argument because father did not expressly raise the 25% presumption before the district court or move for a new trial. As set forth herein, the district court made adequate findings that parenting time with father is likely to endanger the emotional health and development of child. Accordingly, we need not address whether the issue was properly preserved for appeal.

solely on danger to the emotional development of a child. Minn. Stat. § 518.175, subd. 1(b); *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997).

After a hearing, the district court found that the inability of father to co-parent would “endanger [child’s] emotional health and impair his emotional development” and that maximizing time between child and father “could be detrimental, while minimizing time could be beneficial.” The district court appropriately considered age and stage of development of child, expressing concern that father “will continue to undermine [mother] as a parent, which will become more evident to [child] as he gets older.” The district court also discussed the relationship between father and child, finding that mother had been the primary caretaker when the couple lived together, and observing specific characteristics and behaviors that raised concern about the ability of father to meet child’s physical and emotional needs. The district court made adequate findings that the circumstances warrant restricting the parenting time of father.

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

Father challenges the award of sole legal custody and sole physical custody to mother. When establishing legally mandated family arrangements, the paramount consideration is the best interests of the child. *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). The marriage-dissolution statute sets forth 12 factors that the district court must consider in determining the best interests of a child for purposes of custody and parenting time. Minn. Stat. § 518.17, subd. 1(a) (2018). Father argues that the findings of the district court were clearly erroneous with respect to several of the statutory factors.

The district court has broad discretion in determining custody matters, although it must set forth the basis for its decision “with a high degree of particularity.” *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989) (quotation omitted). 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.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We sustain findings of fact unless clearly erroneous. *Id.*; see Minn. R. Civ. P. 52.01. A finding of fact is clearly erroneous if we are 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 omitted). We defer to the district court in its assessment of witness credibility. *Id.*

When balancing the best-interests considerations, “[t]he court may not use one factor to the exclusion of all others, and the court shall consider that the factors may be interrelated.” Minn. Stat. § 518.17, subd. 1(b)(1) (2018). The law “leaves scant if any room” for us to question the balancing of best-interests considerations by the district court. *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

After reviewing the entire order in light of the record, we conclude that the district court made adequate findings to support each factor. The function of “an appellate court does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court’s findings,” and our “duty is performed when we consider all the evidence . . . and determine that it reasonably supports the findings.” *Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951); see also *Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying principle from *Wilson*). Our review

shows support in the record for the district court's findings of fact. Although some factual findings relevant to certain factors were included under headings relating to other factors, the manner in which the district court organized its factual findings is not a basis to conclude that the district court clearly erred in the substance of those factual findings. As specified by the statute, the best-interests findings are necessarily interrelated.

The physical, emotional, cultural, and spiritual needs of child.

First, the statute requires the district court to consider “a child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child’s needs and development.” Minn. Stat. § 518.17, subd. 1(a)(1). The district court expressly found that mother had “clearly established a developmentally appropriate routine and care schedule for [child].” Conversely, the district court found that father did not sustain a regular routine for child and pointed to identified problems with child’s sleep schedule as an example. Father contends that he is taking classes to improve his parenting skills, but he presented no evidence at trial that he plans to implement any improvements to child’s sleep schedule or otherwise.

Father also argues that the district court erred by finding that father had accused mother of child abuse. Father is correct that the record does not conclusively establish that he made the accusation that led to the investigation by child protective services. Rather, the record shows that child protective services received an anonymous report. However, the district court does not appear to rely on its finding regarding *who made the report* to assess the impact on the emotional health of child. Instead, the district court considered whether mother had actually engaged in child abuse. The district court found that mother

credibly described all three incidents underlying the abuse allegation and observed that child protective services had closed the file with no findings of abuse. Father does not dispute the ultimate finding that mother did not engage in child abuse.

Domestic abuse between the parents.

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). “[T]he court shall use a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents.” *Id.*, subd. 1(b)(9) (2018). “Domestic abuse” as defined in section 518B.01 includes the infliction of fear of imminent physical harm. Minn. Stat. § 518B.01, subd. 2(a) (2018).

It is undisputed that incidents of domestic abuse occurred between the parties. Father argues, however, that the district court failed to consider whether the abuse had any continuing impact *on child*. Father is incorrect. The district court expressly addressed the impact of father’s lack of acceptance of responsibility for domestic abuse and ongoing hostility toward mother in the context of father’s ability to co-parent child.

A parent’s physical, mental, or chemical health issues that affects the child’s safety or developmental needs.

The district court must consider “any physical, mental, or chemical health issue of a parent that affects the child’s safety or developmental needs.” Minn. Stat. § 518.17,

subd. 1(a)(5). Father argues that the district court mischaracterized his psychological evaluation. According to father, the evaluator opined on father's ability to co-parent only *without intervention*. Father is incorrect. The report emphasizes that father *currently* lacks the ability to effectively co-parent. Further, the evaluator expressed uncertainty that father would improve, even with clinical intervention.

The willingness and ability of each parent to provide ongoing care, meet the child's needs, and maintain consistency.

The district court must consider “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.” Minn. Stat. § 518.17, subd. 1(a)(7). “[T]he court shall recognize that there are many ways that parents can respond to a child’s needs with sensitivity and provide the child love and guidance, and these may differ between parents and among cultures.” *Id.*, subd. 1(b)(3) (2018).

Based on facts set forth in the custody evaluation, the district court found that father is unable to meet child’s physical and emotional needs. Father argues that the district court should have also considered mother’s purported inability to parent and the possibility of different parenting styles. But father cites no evidence that mother is unable to parent. Nor does father cite any evidence that the parties’ differences in parenting style are due to cultural differences or even deliberate choices.

The effect on ongoing relationships with other significant persons in the child's life.

The district court must consider “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.” Minn. Stat. § 518.17, subd. 1(a)(9). The district court found that mother expressed credible concerns regarding interactions with father’s parents, who became involved in the parties’ conflicts and were present during exchanges of child. Father argues that the district court erroneously focused on the interactions between *mother* and the parents of father, rather than focusing on *child’s* relationship with his grandparents. But the district court specifically found that the exchanges—in which grandparents were involved—had a negative impact on child.

The benefit in maximizing time with both parents and detriment in limiting time with either parent.

The district court must consider “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.” Minn. Stat. § 518.17, subd. 1(a)(10). Father argues that the district court erred in its findings on this factor by relying on the custody evaluation, which was five months old by the time of the hearing. But the district court received testimony from multiple witnesses regarding the efforts of father following the evaluation and additional events that transpired after the evaluation. The district court was in the best position to assess the credibility of these witnesses.

Father also claims that the custody evaluator admitted that he was not a neutral evaluator. Father cites to confusing cross-examination testimony from the evaluator

regarding the meaning of the term “neutral.” The district court expressly found that the work of the custody evaluator was “child-focused and neutral.” This finding was not clearly erroneous.

Remaining best-interests factors.

The district court also made findings on the other best-interests factors, which father does not challenge. The statute requires the court to consider “the history and nature of each parent’s participation in providing care for the child.” Minn. Stat. § 518.17, subd. 1(a)(6). The district court found that during the marriage, mother was the primary caretaker of child, and father spent a significant time away from home. The statute also requires the court to consider “the effect on the child’s well-being and development of changes to home, school, and community.” Minn. Stat. § 518.17, subd. 1(a)(8). The district court found that equal parenting time “would be a significant change for [child]” and that father “did not adequately address how this drastic change would impact [child.]”

Balancing of the factors.

Based upon its analysis of all of the best-interests factors and the rebuttable presumption that arises in the context of domestic abuse, the district court found that awarding sole legal custody and sole physical custody to mother would be in the best interests of child. The court specified that father could request an expansion of parenting time after participating in one year of therapy. The district court did not clearly err in its factual findings and did not abuse its discretion in weighing the best-interests factors.

Affirmed.