STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0104

In re the Marriage of: John Sterling Ross, petitioner,
Appellant,

vs.

Tiiu Mikki Maide,
Respondent.

Filed December 14, 2020
Affirmed
Hooten, Judge

Dakota County District Court
File No. 19AV-FA-10-2070

John Sterling Ross, Eagan, Minnesota (pro se appellant)

Kathleen E. Rusler O'Connor, O'Connor Law and Mediation PLLC, Burnsville, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, T., Judge; and Frisch, Judge.

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

HOOTEN, Judge

In this parenting dispute, appellant father argues that the district court erred by (a) considering certain evidence; (b) denying him sufficient time to respond to respondent-mother's ex parte motions; (c) failing to schedule a hearing within 14 days of temporarily suspending reunification therapy; (d) suspending his parenting time without holding an

evidentiary hearing; (e) terminating his parental rights; (f) denying his motion to present testimony; and (g) committing other errors. We affirm.

FACTS

This appeal is the most recent in a long line of litigation involving appellant John Sterling Ross, respondent Tiiu Mikki Maide-Jones, and the parties' minor daughter (daughter). Contrary to what the case name would suggest, the parties were never married. Both parties lived in Oregon before moving to Minnesota, and daughter was born there in July of 2003. In February of 2005, respondent moved to Minnesota with daughter. On June 15, 2005, the Jackson County, Oregon circuit court awarded respondent the care, custody and control of daughter, subject to appellant's parenting time.

Appellant moved to Minnesota in 2010. On July 3, 2012, appellant filed a motion with the Dakota County district court seeking joint legal custody of daughter and modification of the parenting time schedule the parties had been following since 2005. The district court denied appellant's motion for joint legal custody and in a related order established a new parenting time schedule in accordance with an agreement reached by the parties. Under this schedule, appellant had parenting time every other weekend, Wednesday evenings, and every other Monday evening during the school year. The parties followed a week-on, week-off schedule during the summers.

For the next 18 months, the parties appear to have experienced difficulties in sharing parenting time. On February 18, 2014, the district court issued an order—at the request of both parties—appointing a parenting time expeditor (PTE) to handle ongoing parenting time disputes. Dissatisfied with the performance of the first PTE, appellant filed a motion

seeking the appointment of a replacement PTE, modification of the parenting time schedule, and other relief on January 12, 2015. On February 10, 2015, the district court issued an order appointing a new PTE. Parenting time difficulties persisted.

While appellant blamed respondent for the parties' parenting time difficulties, respondent claimed that she tried to foster an ongoing parent-child relationship between appellant and daughter. Appellant's parenting style and home life appear to have been the root causes of many of these difficulties. The district court found that appellant was often obstinate in his discipline and treatment of daughter, contributing to the growing rift between them. Appellant had also married after moving to Minnesota, and his new wife had a daughter from a previous relationship.[1] Daughter became uncomfortable visiting appellant's home for parenting time because of difficulties with her stepmother and stepsibling, particularly those centered on the stepsibling's revelation of her personal information to others. Appellant, however, refused to agree to modifications of parenting time that daughter requested.

Ultimately, there was a breakdown in appellant and daughter's relationship. Following what appellant describes as respondent's repeated interference with his exercise of parenting time—but what appears to have been a refusal by daughter, who was by then a teenager, to attend further parenting time with him—appellant filed a motion on April 11, 2018, requesting that respondent be held in contempt of court. Appellant also sought compensatory parenting time, attorney fees, and other relief. Following an evidentiary

[1] It also appears that appellant and his new wife have two biological children together who are their daughter's half siblings.

hearing, the district court issued an order denying appellant's motion to hold respondent in contempt, directing appellant and daughter to attend reunification therapy together, reducing appellant's parenting time to one day per week for up to two hours, denying appellant's motion for attorney fees, and denying appellant's motion for access to daughter's medical records. Appellant's motion for amended findings of fact, his renewed motion for respondent to be held in contempt of court, and his motion for a new hearing were subsequently denied.

Rather than alleviate the pressures on their relationship, appellant and daughter's reunification therapy appears to have exacerbated them. On July 9, 2019, respondent filed an emergency motion for immediate, temporary cessation of the reunification therapy, on the grounds that it was "physically and emotionally endangering" daughter. She also sought permanent modification of appellant's parenting time and other relief. That same day, the district court issued an order temporarily suspending reunification therapy and setting a hearing for August 22 to determine whether reunification therapy should continue going forward and to address the other permanent portions of respondent's motion. The reunification therapist resigned due to the ongoing conflict between the parties.

The next day, appellant filed a motion requesting a hearing within 14 days, arguing that such a hearing was required because the district court's July 9 order had suspended his parenting time. Appellant also moved for the allowance of oral testimony by the reunification therapist at the hearing. While this motion was pending, appellant filed an additional motion for the appointment of a new PTE, recommencement of reunification therapy, and attorney fees.

The district court denied appellant's motion for an expedited hearing in an order issued July 11, 2019. On August 16, 2019, the district court issued an order denying appellant's motion to allow testimony by the reunification therapist based on the therapist's submission of an affidavit and the district court's determination that the motions set for hearing could be decided on the parties' submissions and arguments without the need for testimony from the therapist.

Following that hearing, the district court issued an order on November 19, 2019, suspending appellant's parenting time and the reunification therapy and ordering appellant and daughter to meet in person once per month for at least 30 minutes. This decision appears to have been based, at least in part, on daughter's request that parenting time and reunification therapy be replaced by monthly meetings and on the recommendation from the former reunification therapist that the parties follow daughter's proposal. The district court issued an amended version of its order correcting a clerical error on December 6, 2019. Ross appeals.

D E C I S I O N

The bedrock principle underlying all child custody decisions is that the best interests of the child must be protected and fostered. *Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009). A court's analysis of parenting time disputes likewise focuses on what is in the best interests of the child. *Hansen v. Todnem*, 891 N.W.2d 51, 57 (Minn. App. 2017), *aff'd on other grounds*, 908 N.W.2d 592 (Minn. 2018). Minnesota law supplies 12 factors that the district court must consider and evaluate in determining issues of custody and parenting time in the best interests of the child. Minn. Stat. § 518.17, subd. 1(a) (2018).

Nevertheless, the district court has broad discretion in deciding parenting time and custody questions and will not be reversed absent an abuse of that discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017).

Appellant raises ten claims of error in his pro se informal brief. Six of those claims appear in the section devoted to claims of error, while the remaining four appear elsewhere throughout the brief. "While an appellant acting *pro se* is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). Many of the issues appellant raises are not supported by clear arguments or legal authority, and we could decline to address them substantively. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) ("We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority."). Nevertheless, we have considered all ten of appellant's claims.

I. Consideration of Evidence

First, appellant claims that the district court erroneously considered the following evidence: (1) two letters written by daughter, (2) a letter from daughter's individual therapist, (3) testimony from respondent at the June 22, 2018 evidentiary hearing, and (4) reunification therapy session summaries. We discuss each in turn.

A. Daughter's Letters

Daughter wrote two letters that appellant claims were considered in error: one to appellant and the reunification therapist, dated June 24, 2019, and one to the district court,

dated August 2019. In the letters, daughter detailed her emotional reactions to the ongoing legal disputes between appellant and respondent. The letters also reveal daughter's feelings about appellant, reunification therapy, and parenting time. The district court's July 11, 2019 order indicates that the district court relied on this letter to appellant and the reunification therapist in deciding to suspend reunification therapy. This suspension was extended in the district court's December 6, 2019 order. Daughter's second letter, addressed to the district court, was cited in the district court's analysis of daughter's "physical, emotional, cultural, spiritual, and other needs and the effect of the proposed arrangements on the child's needs and development," contained in its December 6, 2019 order.

Appellant argues that the district court's consideration of both letters was a violation of Minnesota Rule of Evidence 801 because the letters amounted to hearsay. But while the two letters from daughter were included with motions filed by respondent before the August 22, 2019 hearing, appellant did not object to the district court's consideration of the letters, either at that hearing or elsewhere. Appellate courts generally will not decide issues that were not raised before the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The interest of justice may, in the exceptional case, require consideration of an issue for the first time on appeal. *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002). Here, however, appellant was represented by counsel at the August 22 hearing and has asserted no reason why the interest of justice requires deviation from the general rule that appellate courts will not consider issues raised for the first time on appeal. For these

reasons, we will not consider appellant's objection to the consideration of daughter's letters.

B. Therapist's Letter

The letter from daughter's individual therapist that appellant claims was erroneously considered does not itself appear in the record, but some mention of it does. The letter appears to have discussed daughter's distress with appellant's attempts to gain access to her mental health records. Appellant contends that the district court refers to this letter in its August 28, 2018 order denying his access to daughter's mental health records, and that this reference was in error both because the letter amounted to hearsay and because it violated appellant's constitutional right to confrontation.[2] It is unclear, however, whether the district court's findings are based on the therapist's letter or on other evidence; the letter is not cited in the district court's order, and the district court typically cited to letters when they served as the basis for its findings.

More importantly, two procedural bars prevent us from reaching the issue of whether the district court erred in considering this letter. First, the Minnesota Rules of Civil Appellate Procedure generally restrict the scope of review on appeal to the judgment or order from which appeal is taken. Minn. R. Civ. App. P. 103.04. Rule 103.04 also permits review of "any order affecting the order from which the appeal is taken," and "any other matter as the interest of justice may require." *Id*. Here, appellant does not appeal from the August 28, 2018 order that he claims referenced the therapist's letter, and that

[2] This right is not implicated by the present, non-criminal family court proceedings. *See* U.S. Const., amend. VI; Minn. Const. art. 1, § 6.

order was not incorporated into, and did not otherwise affect, the December 6, 2019 order from which he does appeal. Further, appellant asserts no reason why the interest of justice requires review of the district court's consideration of the letter from daughter's therapist. Based upon this record, and given the arguments presented, the issue of whether the district court abused its discretion by considering the therapist's letter is beyond the scope of review. Minn. R. Civ. App. P. 103.04.

Second, the issue of whether the letter constitutes hearsay was not raised before the district court. Appellant's counsel initially objected to respondent's counsel questioning appellant about the letter at the June 20, 2018 evidentiary hearing, but eventually agreed that it served the interest of judicial economy to permit such questioning rather than to require respondent to call appellant in her case-in-chief. When appellant's counsel objected to questions related to the letter a second time, it was on the ground that the questions appellant was being asked were beyond the scope of direct examination, not on the ground that the letter was hearsay. The issue of whether the letter constitutes hearsay thus was not raised before the district court. Finally, appellant points to no reason why the interest of justice requires this court to reach this issue. *See Putz*, 645 N.W.2d at 350. Accordingly, we will not consider the issue of whether the letter constitutes hearsay. *Id*.; *Thiele*, 425 N.W.2d at 582.

C. Respondent's Testimony

As to respondent's testimony at the July 22, 2018 hearing, appellant argues that the district court erred by considering this testimony because the testimony contained hearsay and "was prejudicial to the case." Appellant contends that the district court erred by

referencing this testimony in its November 19, 2019 order. But because the district court did not cite or otherwise refer to this testimony, either in its original order or in the amended version thereof from which he appeals, appellant has failed to demonstrate that the district court abused its discretion by referring to respondent's testimony in its order.

D. Therapy Records

The reunification therapy session summaries describe the reunification therapy sessions held with appellant and daughter. The district court cited to one of the session summaries in its December 6, 2019 order as support for the proposition that respondent is not causing daughter's alienation from appellant. Appellant contends that the district court erred by permitting submission of these summaries in violation of the reunification therapy contract and that it further erred by referring to these summaries in its November 19, 2019 order without permitting the reunification therapist to testify.

As to the reunification therapy contract, enforcement of that contract is not an issue properly before this court. As to the district court's consideration of the session summaries, appellant did not object to such consideration at the August 22, 2019 hearing or elsewhere. Again, appellant was represented by counsel at this hearing and does not offer any reason why the interest of justice requires deviation from the general rule that appellate courts will not consider issues raised for the first time on appeal. *See Putz*, 645 N.W.2d at 350. Accordingly, we will not consider appellant's argument that the district court abused its

discretion by allowing the submission of the session summaries. *Id*.; *Thiele*, 425 N.W.2d at 582.

II. Emergency Motions

Second, appellant argues that the district court violated his constitutional right to due process by ruling on respondent's July 9 and July 17, 2019 emergency motions on the same day those motions were filed, thereby denying appellant's attorney adequate time to respond. Respondent contends that this issue is moot, because the emergency orders are no longer in effect and this court thus cannot provide any relief from those orders even if they were issued in violation of appellant's right to due process.

Respondent is correct. An appeal will be dismissed as moot when intervening events render an award of effective relief impossible. *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 283 (Minn. 2016). The emergency orders issued on July 9 and July 17, 2019, were superseded by the order that was issued on November 19, 2019, and amended December 6, 2019; that order incorporated all relief awarded in the previous emergency orders. It would be impossible for this court to award any relief appellant might seek from the July 9 and July 17 orders, given that the December 6, 2019 order now controls. Accordingly, appellant's claim of error on this point fails to present a live controversy, and we may not consider it. *Wayzata Nissan*, 875 N.W.2d at 283.

III. Suspension of Reunification Therapy

Third, appellant argues that the district court erred by failing to hold a hearing within 14 days after issuing its order of July 9, 2019. Specifically, appellant contends that failing to schedule a hearing within 14 days was a violation of Minnesota General Rule of Practice

303.05, because the July 9 order affected his parenting time. Respondent again argues that the issue is moot, because this court cannot retroactively order that a hearing be scheduled within 14 days of the July 9 order, given that over a year has now passed.

Respondent is again correct. The district court issued its order denying appellant's motion for a hearing within 14 days on July 11, 2019. The hearing on parenting time was eventually held on August 22, 2019. Because this court cannot now award any relief from the district court's alleged error in scheduling the hearing beyond 14 days of the order, this issue is moot, and we may not consider it. *Wayzata Nissan*, 875 N.W.2d at 283.

IV. Suspension of Parenting Time

Fourth, appellant argues that the district court erred in suspending his parenting time. Specifically, appellant contends that the district court was required by Minn. Stat. § 518.175 (2018) to hold an evidentiary hearing before suspending his parenting time as it did in its November 19 and December 6, 2019 orders, and that such modification was also a violation of Minn. Stat. § 518D.106 (2018) and Minnesota General Rule of Practice 364.01.

In its December 6, 2019 order, the district court replaced appellant's zero-to-two-hour, once-per-week parenting time session with a once-per-month "meeting" for at least 30 minutes with daughter.[3] Importantly, only appellant and daughter, who is now 17 years old, will attend these meetings. Unlike during appellant's parenting time under the

[3] Labeling this time a "meeting" rather than "parenting time," and giving daughter input in scheduling it, appears to have been an attempt by the district court to give daughter more responsibility for and control over her relationship with appellant.

previous schedule, daughter's stepmother and stepsibling are not allowed to be present for this meeting. This arrangement appears to have been an attempt to find a way for appellant and daughter to spend time together and work on their relationship without exacerbating daughter's anxiety regarding her relationship with her stepmother and stepsibling. Finally, the district court's order leaves the addition of further parenting time at daughter's discretion, stating that "[i]f Child seeks additional contact with Father, nothing in this order prohibits additional contact."

We review parenting time decisions for an abuse of discretion. *Shearer*, 891 N.W.2d at 75. For the reasons that follow, the district court did not abuse its discretion by suspending appellant's parenting time and replacing it with a once-per-month meeting.

First, the suspension of appellant's parenting time did not implicate § 518.175, subd. 5(c). Minn. Stat. § 518.175, subd. 5, deals with modifications of both parenting plans and orders for parenting time. Substantial modifications of parenting time under § 518.175 require an evidentiary hearing. *Matson v. Matson*, 638 N.W.2d 462, 466 (Minn. App. 2002). Here, the district court did not modify the order for parenting time; it merely suspended appellant's parenting time after finding that such suspension was in daughter's best interests. The suspension thus did not implicate section 518.175. Rather, it allowed appellant and his daughter—by then nearly an adult—an opportunity to work on their relationship and increase parenting time commensurate with their level of mutual comfort.

Second, the suspension did not violate § 518.175, subd. 1(g). In arguing that the district court abused its discretion by suspending his parenting time, appellant references the rebuttable presumption—set forth in Minn. Stat. § 518.175, subd. 1(g)—that a parent

is entitled to receive a minimum of 25% of the parenting time with the child. Appellant argues that the district court erred by reducing his parenting time below this level in its November 19 and December 6 orders. Under the August 28, 2018 order, however, appellant was only entitled to zero to two hours—or less than 1%—of weekly parenting time. The November 19 and December 6 orders thus did not reduce appellant's parenting time below 25%, but merely maintained it below that threshold. Further, the district court's order suspended appellant's parenting time and did not permanently modify the parenting plan, as is discussed above. That suspension therefore did not implicate section 518.175's presumption in favor of a minimum of 25% parenting time. Minn. Stat. § 518.175, subd. 1(g).

Finally, the suspension did not violate section 518D.106 or rule 364. Appellant argues that Minn. Stat. § 518D.106 and Minnesota General Rule of Practice 364 required the district court to hold a hearing before suspending his parenting time. Section 518D.106 sets forth the legal impact of a child custody determination made by the courts of this state and is thus inapplicable here. *See* Minn. Stat. § 518D.106. Rule 364 articulates the basic principle that any party has a right to a hearing unless otherwise stated in the General Rules of Practice. Minn. R. Gen. Prac. 364. Appellant did receive a hearing on this matter—on August 22, 2019. The district court thus did not violate rule 364.

In sum, appellant has failed to show that the district court abused its discretion by suspending his parenting time and replacing it with a monthly meeting.

V. Parental Rights

Fifth, appellant argues that the district court erred by terminating his parental rights without making the findings required by law or attempting to reunify the family. This contention lacks merit. Appellant's parental rights have not been terminated. The district court did not err in this respect.

VI. Oral Testimony

Sixth, appellant argues that the district court erred by denying his motion to present oral testimony at the August 22, 2019 hearing. Appellant moved for the allowance of oral testimony on July 10, 2019, and renewed this motion on August 12, 2019. The district court denied appellant's motion in its order issued August 16, 2019. In deciding to deny appellant's motion to allow oral testimony, the district court determined that the motions set for hearing on August 22 could be decided based on the parties' submissions and arguments—without oral testimony—because the reunification therapist had already provided the district court with both an affidavit and summaries of the reunification therapy sessions. The district court's determination of such an evidentiary issue is reviewed for abuse of discretion. *Kroning v. State Farm Auto Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997).

The district court did not abuse its discretion by denying appellant's motion to allow oral testimony. The record shows that the reunification therapist resigned on July 10, 2019. The therapist thus could not have possessed any additional information about the parties, daughter, or the outcomes of reunification therapy beyond what she provided in the affidavit that she submitted on August 12, 2019 and the session summaries that were

submitted on July 9 and August 16, 2019. Under these circumstances, it was not an abuse of discretion for the district court to conclude that it could decide the parties' motions without additional testimony from the reunification therapist.

VII. Other Claims of Error

In addition to the six issues that were raised in the portion of appellant's informal brief devoted to claims of error, an additional four claims of error appear elsewhere in appellant's brief. We discuss each in turn.

First, appellant argues that the district court erred because it allowed its application of the best-interests standard to be tainted by hearsay evidence and judicial bias. Appellant's claims related to purported hearsay evidence are dealt with above. As to his claim of judicial bias, appellant has presented no evidence that the district court was tainted by bias, but merely makes conclusory assertions to that effect. Appellant fails to show that the district court erred in this respect.

Second, appellant argues that the district court erred by considering daughter's statements, made both during an in camera interview with the district court and to her reunification therapist, that appellant alleges were coached. This argument fails for three reasons. First, even though appellant claims that the district court erred by considering these statements in preparing its September 21, 2018 order denying appellant's contempt motion, appellant does not appeal from that order. Second, appellant did not raise this evidentiary issue below, and there is no reason why the interest of justice requires us to consider it for the first time on appeal. *See Putz*, 645 N.W.2d at 350; *Thiele*, 425 N.W.2d at 582. Third, appellant has offered no evidence of any coaching, beyond the fact that he

was not permitted to attend the interview and thus does not know what daughter said during the interview. Appellant fails to show that the district court erred in this respect.

Third, appellant argues that the district court erred because its order suspending his parenting time undermines daughter's relationships with her two half siblings. While maintenance of familial relationships is an important consideration in custody and parenting time decisions, all such decisions are ultimately to be made in the best interests of the child. *Schisel*, 762 N.W.2d at 270; *Hansen*, 891 N.W.2d at 57. As noted, this court reviews the district court's resolution of parenting time questions for abuse of discretion. *Shearer*, 891 N.W.2d at 75.

The district court's December 6, 2019 order shows that it conducted a careful analysis of all 12 statutory best-interests factors before deciding to suspend appellant's parenting time. Further, the district court's order shows that it specifically considered the effect a suspension of parenting time would have on daughter's relationships with her half siblings. Although the suspension might have a negative impact on those relationships, the district court did not abuse its discretion in suspending appellant's parenting time.

Fourth, and finally, appellant argues that the district court erred because its order violates his fundamental rights as a parent. It is unclear whether appellant is arguing that Minnesota's statutory best-interests framework, applied by the district court in this case, violates his right to substantive due process. If he is, appellant has failed to give notice to the state attorney general of his intent to challenge the constitutionality of a legislative act of this state as required by Minnesota Rule of Civil Appellate Procedure 144, and we will not consider such a challenge.

If, instead, appellant is arguing that the district court misapplied the best-interests statutory framework in a manner that violated his constitutional rights, he fails to identify how it did so. The only specific issue appellant raises is that the district court's order prohibits him from discussing allergies, mental health, or parenting time in responding to the emails that daughter is required to send him on a weekly basis. Appellant fails to argue how this requirement violates his fundamental rights as a parent. Further, appellant and daughter are required to meet in person once per month, with no restrictions on permissible topics of conversation—meaning allergies, mental health, and parenting time could potentially be discussed at such meetings if appellant feels it necessary to do so. Appellant fails to show that the district court violated the fundamental rights he possesses as a parent.

Affirmed.