STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0515

Myles John Sterling Mankus,
Respondent,

vs.

Melanie Marie Warren,
Appellant.

Filed November 30, 2020
Affirmed
Hooten, Judge

St. Louis County District Court
File No. 69HI-FA-19-100

James Perunovich, Law Offices of James Perunovich, Hibbing, Minnesota (for respondent)

Hannah N. C. Forti, Prebich Law Office, Hibbing, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaïtas, Judge.

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

HOOTEN, Judge

In this appeal from an order establishing custody and parenting time, appellant mother argues that the district court erred because it made clearly erroneous findings of fact, abused its discretion by awarding the parties joint legal and physical custody, and abused its discretion and erred as a matter of law in awarding parenting time. We affirm.

FACTS

Appellant Melanie Marie Warren and respondent Myles John Sterling Mankus are the mother and father of a six-year-old child, L.L.M. Although appellant and respondent were never married, the parties have signed and filed a recognition of parentage. DNA testing has confirmed that respondent is L.L.M.'s biological father. The parties lived together for the first three years of L.L.M.'s life, but separated in September of 2017. For the next 19 months, the parties voluntarily shared parenting time and caregiving responsibilities equally.

On May 1, 2019, however, respondent petitioned for an adjudication of paternity, sole legal and physical custody, and child support. Appellant answered and counter-petitioned, requesting joint legal and sole physical custody. After a trial, the district court adjudicated respondent as the father of L.L.M. and issued an order awarding the parties joint legal and physical custody and setting a parenting schedule.

The district court's award of parenting time can be summarized as follows: L.L.M. will reside primarily with respondent during the school year, with appellant having parenting time on alternating weekends. Appellant's weekends include extended weekends as allowed by L.L.M.'s school schedule and also include Monday mornings if she can get L.L.M. to school. Appellant will also have parenting time every Wednesday evening after school until 8:00 p.m. or on another night as the parties agree. L.L.M. will reside primarily with appellant during the summer, with respondent having parenting time on alternating weekends. Respondent will have additional parenting time of one week each, non-consecutive, in the months of June, July, and August. Finally, the parties will

alternate holidays, except that appellant will always have parenting time on Mother's Day and her birthday, and respondent will always have parenting time on Father's Day and his birthday.

In response to the district court's order, appellant moved for amended findings of fact and for a new trial. After a hearing, the district court issued an order denying appellant's motion. This appeal follows.

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 argues that the district court erred because it (1) made clearly erroneous findings of fact, (2) abused its discretion by awarding the parties joint legal and physical custody of L.L.M., and (3) abused its discretion and erred as a matter of law in awarding parenting time as it did. For the reasons that follow, appellant's arguments fail.

I. The district court's findings of fact are not clearly erroneous.

First, appellant argues that the district court made clearly erroneous findings of fact. The district court's findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009); *see* Minn. R. Civ. P. 52.01 (stating that only clearly erroneous findings of fact are set aside). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (internal quotations omitted). In reviewing findings of fact, appellate courts give deference to the district court's opportunity to evaluate witness credibility. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Finally, there is scant if any room for an appellate court to question the district court's balancing of best-interests considerations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Appellant points to three findings of fact included in the district court's assessment of the best-interests factors that she claims are clearly erroneous.

A. *The finding that L.L.M.'s "physical, emotional, cultural, spiritual and other needs, and the effect of the proposed arrangement on the child's needs and development," did not favor either party*

Appellant argues that it was clearly erroneous for the district court to find that L.L.M.'s "physical, emotional, cultural, spiritual and other needs, and the effect of the proposed arrangement on the child's needs and development," did not favor either party. On this factor, the district court found: "Both parties are capable of providing for [L.L.M.]'s physical, emotional, cultural, spiritual, and other needs. [Appellant] has Native

American heritage and it is anticipated that she will involve [L.L.M.] in some traditional Native American activities. Neither party testified that they practice any specific religion. This factor favors neither party."

Appellant argues that these findings are clearly erroneous in two respects. First, appellant contends that the district court's finding that respondent is capable of providing for L.L.M.'s cultural and spiritual needs is clearly erroneous, because "[t]he record contains no evidence that Father intends to or has any capability to provide for the child's cultural and spiritual needs." Respondent's testimony, however, provides a basis for concluding that he is capable of providing for L.L.M.'s cultural needs by fostering relationships with family members. Respondent also testified that he intends to provide for L.L.M.'s spiritual needs by taking him to church services. Appellant admitted at trial that she herself has not yet involved L.L.M. in any Native American cultural or spiritual activities. This undercuts her argument that the district court should have found that this factor favored her. As such, appellant has failed to establish that the district court's finding was clearly erroneous in this respect.

Second, appellant argues that the district court's finding on this factor is clearly erroneous because the district court's "findings, order and memorandum fail to explain how mother's nominal parenting time will permit her to 'involve [L.L.M.] in some traditional Native American activities.'" The parenting time schedule ordered by the district court results in appellant having the majority of the parenting time during the summer and a minimum of four overnights per month during L.L.M.'s school year. Appellant has offered no reason why this amount of parenting time will be insufficient to

permit her to involve L.L.M. in Native American cultural and spiritual activities. In fact, appellant admitted at trial that she does not foresee respondent's custody and parenting time being an impediment to L.L.M.'s involvement in such activities. Appellant has failed to establish that the district court's finding was clearly erroneous in this respect.

In sum, it was not clearly erroneous for the district court to find that L.L.M.'s "physical, emotional, cultural, spiritual and other needs, and the effect of the proposed arrangement on the child's needs and development" did not favor either party.

B. The finding that the history and nature of each parent's participation in providing care did not favor either party

Next, appellant argues that it was clearly erroneous for the district court to find that the history and nature of each parent's participation in providing care did not favor either party. On this factor, the district court found that, "[d]uring the time that the parties were living together the respondent provided the majority of the caregiving for [L.L.M.]," but that "since the parties separated in September of 2017, they have equally shared the caregiving responsibilities for [L.L.M.]. Both parties have developed a close bond with [L.L.M.]. This factor does not favor either party."

Appellant argues that this finding is clearly erroneous in two respects. First, appellant contends that the district court could only have found that this factor did not favor either party by ignoring the history of the parties' participation in providing care. This argument rests on appellant's calculation that, because she was found to be the primary caretaker for the first three years of L.L.M.'s life, while the parties were found to have divided caretaking responsibilities evenly in the two years between their separation and the

date of trial, she had provided more caretaking overall. Appellant goes on to assert that, given this disparity in caretaking time, the district court must have ignored the history of the parties' participation in providing care and thereby erred in applying this best-interests factor.

Appellant is correct that, mathematically, she has likely provided more hours of caretaking time over the course of L.L.M.'s life than respondent. It does not necessarily follow, however, that the district court ignored the parties' history of participation in providing care. The district court's order reflects a careful consideration of this caretaking history. Further, the fact that one party has provided a mathematical majority of caretaking time does not preclude a finding that the other party has been deeply involved in providing care.

As the district court found, the record contains evidence that respondent has provided as much care for L.L.M. as appellant since the parties separated. For instance, respondent testified that he continued to co-parent L.L.M. following the parties' separation, and that he provided for all of L.L.M.'s needs while the child was in his care. Further, A.W., a friend of appellant, testified that the parties had voluntarily shared parenting time equally since their separation, as appellant herself admitted. Based on this record, appellant has failed to establish that the district court's finding was clearly erroneous in this respect.

Second, appellant argues that the district court's finding on this factor is clearly erroneous because the district court omitted reference to respondent's work schedule and the amount of care that respondent's fiancé provides for L.L.M. While the district court did not discuss respondent's current work schedule and his use of third-party caregivers in

its analysis of this factor, it did so elsewhere in its best-interests analysis. Further, the record contains evidence of respondent's history of providing care for L.L.M. in spite of his busy work schedule, which the district court presumably relied on in determining that respondent has participated equally in caring for L.L.M.

For example, respondent testified at trial that, in spite of his busy work schedule, he fed, bathed, changed, and entertained L.L.M. and took the child to medical appointments. Respondent's fiancé testified that, after the parties' separation, respondent transported L.L.M. to school on a majority of the days when L.L.M. was in his care.

Given this evidence in the record, appellant has failed to establish that the district court's finding that the history and nature of each parties' participation did not favor either party was clearly erroneous.

C. The finding that the effect on the child's well-being and development of changes to home, school, and community favored respondent

Finally, appellant argues that it was clearly erroneous for the district court to find that "the effect on the child's well-being and development of changes to home, school, and community" favored respondent. The district court made extensive findings of fact on this best-interests factor. Perhaps most importantly, the district court found that respondent "appears to have a more stable lifestyle and there is more support at home for [L.L.M.] because [respondent]'s [fiancé] is also very capable of caring for [L.L.M.]," while appellant's "situation seems much more in flux with regard to employment, her living situation, and who she is in a relationship with."

Appellant argues that this finding is clearly erroneous in two respects. First, appellant contends that the district court failed to consider how change would affect the child's well-being and development. The crux of this argument is that changes in L.L.M.'s residence, school, and community will result from the parenting time schedule ordered, and that the district court failed to consider these changes. The district court's order, however, reflects careful consideration of these prospective changes in analyzing this best-interests factor.

Second, appellant argues that the district court's finding on this factor was clearly erroneous because it is overly reliant on the relative stability of the parties; because the district court failed to relate that stability to the parties' ability to care for L.L.M.; and because the district court erred in concluding that respondent's life was stable while appellant's was in flux. These contentions are unconvincing.

Minn. Stat. § 518.17, subd. 1 permits, and indeed requires, consideration and evaluation of all factors relevant to the child's best interests, including the stability of the parents. *See Hansen*, 908 N.W.2d at 599 ("[W]e conclude that the district court did not abuse its discretion by considering 'stability' in reaching its decision."). The district court did not err by considering the parties' relative stability in its analysis of this best-interests factor.

There is ample evidence in the record to support the district court's finding that respondent's life is more stable than that of appellant. For instance, respondent testified that he has owned and lived in the same single-family home for several years; that his work schedule has been consistent for several years as is evidenced by a copy of his work

schedule for calendar year 2020; that he has had only one romantic relationship since the parties' separation with his current fiancé; that his fiancé regularly provides care for L.L.M. and the couple's other child; and that his fiancé's work schedule is also stable.

Appellant, meanwhile, admitted at trial that she had lived with L.L.M. in at least five different places between the parties' separation and the date of trial; that she had recently moved with L.L.M. to a new apartment; that her future employment was somewhat uncertain; and that she had had at least two romantic relationships since the parties' separation. In comparing the parties' narration of their life after their separation, the district court did not clearly err when it concluded that respondent's life was more stable than that of appellant.

Third, the district court directly related the parties' relative stability to their ability to care for L.L.M. In particular, the district court found that there is more support in respondent's home for L.L.M. The district court also found that uncertainty surrounding appellant's romantic relationships raised questions as to who would be providing care for, and influencing the development of, L.L.M. when the child was in appellant's care.

Finally, the district court's analysis of this factor was not limited to consideration of the parties' relative stability. The district court also assessed the proximity of extended family, the parties' ties to their communities, the school L.L.M. will be attending, and the parties' use of third-party caregivers in analyzing this best-interests factor. In sum, it was not clearly erroneous for the district court to find that "the effect on the child's well-being and development of changes to home, school, and community" favored respondent.

Appellant has thus failed to establish that the district court's findings of fact were clearly erroneous in any respect.

II. The district court did not abuse its discretion by awarding the parties joint legal and physical custody.

Appellant argues that the district court erred by awarding the parties joint legal and physical custody. The district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate courts review custody decisions to determine whether the district court abused that discretion, including by making findings unsupported by the evidence or by improperly applying the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

Appellant contends that, because the district court based its award of joint legal and physical custody in part on the above three findings of fact, which she alleges are clearly erroneous, the custody award amounts to a reversible abuse of discretion. As discussed above, however, none of the district court's findings of fact are clearly erroneous. Accordingly, and because appellant advances no other arguments in support of her assertion that the custody award was an abuse of discretion, appellant has failed to demonstrate that the district court abused its discretion by awarding the parties joint legal and physical custody of L.L.M.

III. The district court did not abuse its discretion or err as a matter of law in awarding parenting time.

Appellant argues that the district court abused its discretion and erred as a matter of law by awarding parenting time as it did. The district court has broad discretion in awarding parenting time, and we will not reverse parenting time decisions absent an abuse

of that discretion. *Shearer*, 891 N.W.2d at 75. Reversible abuses of discretion include misapplication of the law and reliance on findings of fact that are not supported by the record. *Id*.

Appellant argues first that the district court erred as a matter of law in awarding parenting time because the district court inadequately addressed L.L.M.'s best interests when setting the parenting schedule. Second, appellant argues that the district court abused its discretion in awarding parenting time because the parenting time award is contrary to the district court's own findings of fact. Third, appellant argues that the district court abused its discretion by ordering a parenting time schedule that does not enable L.L.M. and appellant to maintain a relationship. For the reasons that follow, appellant has failed to show that the district court erred in awarding parenting time.

A. Consideration and application of the best-interests factors

Appellant has failed to show that the district court's award of parenting time failed to adequately address L.L.M.'s best interests. As noted, Minnesota law requires the district court to consider and evaluate 12 specific factors in making parenting time decisions. Minn. Stat. § 518.17, subd. 1. The district court's order reflects a thorough and thoughtful consideration of all 12 statutory best-interests factors. Further, the order makes clear that the district court's award of parenting time was made to serve L.L.M.'s best interests. Although the district court did not reanalyze the best-interests factors in its discussion of parenting time, it incorporated its prior analysis by reference.

B. Award of parenting time related to findings of fact

Appellant has failed to show that the district court abused its discretion in awarding parenting time that was contrary to its own findings of fact. Rather, the parenting schedule ordered is in accord with the district court's findings that (1) when L.L.M. begins full-time kindergarten in the fall, continuing with the parenting schedule previously in place would not be feasible; (2) respondent appears to have a more stable lifestyle and there is more support for L.L.M. in his home; (3) if L.L.M. resides with respondent, respondent's fiancé can get him to school in the morning on days when respondent is not able to do so; (4) appellant frequently stays at her boyfriend's house with L.L.M. rather than at her own residence; and (5) even if L.L.M. is living primarily in respondent's residence, L.L.M. will have ample opportunity to be in contact with various relatives on both sides of his family. Based upon this evidence, it was reasonable for the district court to conclude—given the distance between the parties' residences—that the schedule ordered would maximize L.L.M.'s time with appellant to the greatest extent feasible while also ensuring that L.L.M. can attend a single school during the school year and have a stable home environment during that time.

Parent-child relationship

Finally, appellant has failed to show that the district court abused its discretion by awarding a parenting time schedule that will not enable appellant and L.L.M to maintain a parent-child relationship. The parenting schedule that the district court ordered will ensure appellant a majority of the parenting time, including a majority of the overnights, during the summer months. Under this schedule, appellant is guaranteed a minimum of four

overnights per month during L.L.M.'s school year, with additional parenting time on Wednesday evenings. This is not a "nominal" award of parenting time, as appellant frequently contends in her brief. While it is true that appellant will have less than 50% of the overnights each year, appellant fails to show how the parenting schedule ordered will prevent her from maintaining a relationship with L.L.M., beyond making conclusory assertions to that effect.

In conclusion, none of the district court's findings of fact were clearly erroneous, the district court did not abuse its discretion in awarding the parties joint legal and physical custody, and the district court did not err as a matter of law or abuse its discretion in awarding parenting time. Appellant has thus failed to demonstrate that the district court erred in any respect in issuing its custody and parenting time order.

Affirmed.