**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-1049**

In re the Marriage of: Winston Trevor Leak, petitioner,
Appellant,

vs.

Helena Lee Leak,
Respondent.

**Filed August 9, 2021**
**Affirmed**
**Johnson, Judge**

Carver County District Court
File No. 10-FA-13-10

Victoria A. Elsmore, Sarah Peterson, Collins, Buckley, Sauntry & Haugh, P.L.L.P., St. Paul, Minnesota (for appellant)

Helena Lee Howard, Excelsior, Minnesota (*pro se* respondent)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Gaïtas, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON**, Judge

In this post-dissolution matter, the district court modified the pre-existing parenting-time arrangement to provide for an equal amount of parenting time for each parent. The district court also ordered one parent to pay that parent's previously determined share of a

minor child's unreimbursed medical expenses. We conclude that the district court did not err in either of its rulings and, therefore, affirm.

## FACTS

Winston Trevor Leak (who commonly uses his middle name, Trevor) and Helena Lee Leak (who now is known as Helena Lee Howard) were married in 2010. They have two minor children: a daughter, who was born in 2006, and a son, who was born in 2011. The parties' marriage was dissolved in 2013 by a stipulated dissolution decree. In the decree, the parties agreed that Helena would be awarded the marital home in the city of Carver in Carver County, that her home would be the children's primary residence, and that she would have the majority of parenting time. The decree also required the parties to mediate any dispute between them concerning "custody, parenting time, or any other matter."

In 2015, Helena relocated her residence to Maple Grove, which is in Hennepin County. Trevor continued to live in Carver County, near the children's schools. In October 2015, a parenting consultant amended the parenting-time schedule to provide for equal parenting time so that the children would spend less time commuting between their schools and their parents' homes. In June 2016, the parenting consultant determined that equal parenting time was not in the children's best interests during the school year, primarily because of the distance between Helena's residence and the children's schools, and determined that Trevor would have the majority of parenting time. Helena asked the district court to vacate the parenting consultant's decision, but the district court declined to do so. The district court reasoned that it was appropriate "to limit the time the children

spend traveling between their schools and the parties' homes and provide consistency for them in light of Mother's move to Maple Grove."

In January 2019, Trevor moved for sole legal custody and approximately 75 percent of parenting time. The district court denied both parts of Trevor's motion. Meanwhile, Helena moved for increased parenting time based on the fact that she had relocated to a home in Minnetonka, which was closer to Carver than was her previous home in Maple Grove. The district court denied Helena's motion on the ground that she had "not established that she had the required stability in her residence."

In April 2019, Helena moved to Excelsior, which also is closer to Carver than her prior home in Maple Grove. In June 2020, Helena again moved to modify the parenting-time schedule to provide for equal amounts of parenting time. She submitted an affidavit describing her most recent relocation and its proximity to the children's schools and activities. She described her new home as "a long-term residence," stated that she recently had renewed the annual lease, and stated further that she did not intend to move again. The district court granted Helena's motion, reasoning that she had "demonstrated that she will have a stable residence in a neighboring community."

In the same motion, Helena also requested an order requiring Trevor to pay his previously determined share of the parties' daughter's unreimbursed medical expenses. Trevor opposed the motion on the ground that Helena had unilaterally decided to use a particular health-care provider who was not in his health insurer's network. The district court granted this part of Helena's motion and ordered Trevor to pay his percentage of the unreimbursed medical expenses. Trevor appeals.

## DECISION

### I. Modification of Parenting Time

Trevor first argues that the district court erred by granting Helena's motion to modify the parenting-time schedule to provide for equal parenting time.

In dissolving a marriage, a district court shall determine the parties' parenting time by evaluating all factors that are relevant to the best interests of the parties' child or children, including 12 factors identified by statute. Minn. Stat. § 518.17, subd. 1(a) (2020); *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). If a party later moves to modify a parenting-time order, a district court shall resolve the motion according to a different statute: section 518.175. *Hansen*, 908 N.W.2d at 596. Section 518.175 provides, in part, "If modification [of parenting time] would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b) (2020). In considering a motion to modify a parenting-time order, the statutory best-interests factors in section 518.17, subdivision 1(a), apply. *Christensen v. Healey* (*In re Custody of M.J.H.*), 913 N.W.2d 437, 440-41 (Minn. 2018). This court applies an abuse-of-discretion standard of review to a district court's ruling on a motion to modify a parenting-time schedule. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014).

In the memorandum attached to its order, the district court explained its ruling on Helena's request for equal parenting time as follows:

> Mother has now demonstrated that she will have a stable residence in a neighboring community. It is in the children's best interests for them to maximize time with both parents, and based on this change in circumstances, an equal parenting time schedule now accomplishes this goal. The parties' inability to co-parent is still an issue that the parties must resolve, but it does not negate the fact that a 5/2/2/5 schedule is appropriate at this time.

Trevor contends that the district court erred by not considering the best-interests factors in section 518.17, subdivision 1(a). A district court is not required to consider *all* of the 12 statutory best-interests factors in every modification motion. Rather, in ruling on a motion to modify a parenting-time order, a district court is "required to consider only the *relevant* best-interest factors in section 518.17, subdivision 1" but is "not required to make specific findings on every factor listed in" that statute. *Hansen*, 908 N.W.2d at 597.

Trevor contends more specifically that the district court erred by not considering the parties' abilities to co-parent their two children. He contends that the parties' co-parenting abilities are encompassed by two of the twelve statutory factors: the sixth factor, which is concerned with "the history and nature of each parent's participation in providing care for the child," and the twelfth factor, which is concerned with "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." *See* Minn. Stat. § 518.17, subd. 1(6), (12). In essence, he contends that those two factors were relevant to Helena's motion and that the district court erred by not specifically considering those two factors.

The district court was well aware of the parties' difficulties in co-parenting their children. The district court approved the parties' agreement to use a parenting consultant in 2015. In ruling on prior motions, the district court referred to the parties' co-parenting abilities by stating that they "need to work on communication for the best interests of their children" and "need to learn how to effectively and respectfully communicate by email, text, phone call, and in person." Helena's latest motion to modify was based on only one change in circumstances since the prior motion: her relocation to Excelsior and her intent to stay there. Because Helena's motion and Trevor's response did not indicate any change in the parties' co-parenting abilities, that was not relevant to the resolution of Helena's motion. *See Hansen*, 908 N.W.2d at 599.

At the motion hearing, Helena's attorney stated that Helena had been living in her residence for approximately 16 months and that it was only one mile from the children's school district. In its written ruling, the district court expressly noted Helena's relocation and reasoned that, "based on this change in circumstances, an equal parenting-time schedule now accomplishes the goal" of allowing the children "to maximize time with both parents." The district court's ruling appropriately recognized the relevance of the tenth statutory factor: "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." *See* Minn. Stat. § 518.17, subd. 1(10).

Thus, the district court did not err by granting Helena's motion to modify the parenting-time schedule to provide for equal amounts of parenting time.

## II. Unreimbursed Medical Expenses

Trevor also argues that the district court erred by granting Helena's motion to require him to pay his share of unreimbursed medical expenses.

A child-support order must include a provision for the payment of unreimbursed medical expenses. Minn. Stat. § 518A.41, subd. 2(b)(4) (2020). The term "unreimbursed medical expenses" means "a joint child's reasonable and necessary health-related expenses if a joint child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred." *Id.*, subd. 1(h). The medical-support statute provides procedures by which parties may collect payments of unreimbursed medical expenses and, if necessary, enforce payment obligations. *See id.*, subds. 17-18.

In this case, the parties' stipulated dissolution decree provided that Trevor would provide health insurance for the parties' minor children, that he would be responsible for 61 percent of unreimbursed medical expenses, and that Helena would be responsible for 39 percent of unreimbursed medical expenses. In 2016, the parenting consultant determined that Helena should identify three therapists for the parties' minor daughter who are in the network of Trevor's insurer and within 25 minutes of Trevor's home, and that Trevor then should select one of those three. It appears that the parties did not follow the parenting consultant's directives. In 2017, the parties mediated disputes concerning various child-support issues and agreed, among other things, that Trevor's share of unreimbursed medical expenses would be 56 percent and that Helena's share would be 44 percent.

Between 2018 and 2020, Helena took the parties' daughter to a therapist who is not in the network of Trevor's health insurer. Helena continued to schedule therapy sessions with the out-of-network therapist even after she learned that the therapy sessions would not be reimbursed by Trevor's insurance company. Trevor repeatedly communicated to Helena and the therapist by e-mail that a therapist in his insurer's network should provide the therapy and that he should not be responsible for paying any of the fees of the out-of-network therapist.

In her June 2020 motion, Helena requested an order requiring Trevor to pay his share of the unreimbursed medical expenses. Trevor opposed the motion on the ground that Helena had unilaterally decided to use the out-of-network therapist, even after he had communicated his disagreement with that decision. The district court granted that part of Helena's motion and explained its ruling as follows: "Pursuant to the parties' Stipulated Judgment and Decree, the parties are responsible to share unreimbursed costs for the children. Unless and until the parties agree otherwise, [Trevor] cannot unilaterally determine that he is not financially responsible for providers that are outside of his health insurance network."

Trevor appears to contend that the expenses of the therapy were not necessary and, thus, not within the statutory definition of "unreimbursed medical expenses." *See* Minn. Stat. § 518A.41, subd. 1(h). He does not contend that the therapy itself is unnecessary; he merely contends that it was unnecessary for Helena to choose a therapist who is not in his insurer's network. Trevor did not make that argument to the district court. He argued to the district court that he should not be responsible for his share of unreimbursed medical

expenses because he did not agree with the selection of an out-of-network therapist. Consequently, the district court did not determine whether the expenses are within the statutory definition of unreimbursed medical expenses. Accordingly, Trevor has forfeited that argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because Trevor's argument has been forfeited, we will not consider it for the first time on appeal. *See id.*

Trevor also reiterates his contention that he should not be responsible for any of the unreimbursed medical expenses because Helena unilaterally selected an out-of-network therapist, even after he had voiced his objections and his insistence on an in-network therapist. The district court properly reasoned that Trevor "cannot unilaterally determine that he is not financially responsible for providers that are outside of his health insurance network." Likewise, Helena may not unilaterally select a therapist of her own choosing if Trevor does not agree. The parties were awarded joint legal custody, which means that they "have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training." Minn. Stat. § 518.003, subd. 3(b) (2020).

As stated above, the stipulated decree provides that parties must mediate any dispute between them concerning "custody, parenting time, or any other matter." In August 2015, the parties agreed to retain a parenting consultant for a two-year term, and they mediated certain disputes with the parenting consultant in late 2015 and early 2016. But the parenting consultant ceased work in this case in June 2016 because he had not been fully paid for his services. In the absence of a parenting consultant or mediator, either of the

parties could have sought relief from the district court to resolve their disagreement about the selection of a therapist.[1] But neither party sought such a ruling.

As a result of the parties' disagreement and their respective unilateral actions, unreimbursed medical expenses were incurred. Because such expenses were incurred, they must be allocated to the parties according to the previously determined shares. Because the parties agreed in 2017 that Trevor's share is 56 percent, Trevor is responsible for 56 percent of the unreimbursed medical expenses identified in Helena's motion.

Thus, the district court did not err by granting Helena's motion to require Trevor to pay his share of unreimbursed medical expenses.

**Affirmed.**

[1]Neither party has cited a precedential opinion in which this court has resolved a disagreement between joint legal custodians concerning a child's health care. We are aware of only one nonprecedential opinion of that type. *See In re Custody of B.L.F.*, No. A20-0658, 2021 WL 567260, at *7 (Minn. App. Feb. 16, 2021), *review denied* (Minn. Apr. 28, 2021) (part V). The issue is akin to a major decision concerning a child's education, an issue for which there is precedential caselaw. In *Novak v. Novak*, 446 N.W.2d 422 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989), this court concluded that a district court should consider the best interests of the child (not the "nature or weight of competing joint custodial rights") when resolving a disagreement between joint legal custodians about a child's education. *Id.* at 424. This court has applied *Novak* on several occasions when joint legal custodians could not agree on the selection of a school. *See Welch v. Welch*, No. A18-0764, 2019 WL 1430506, at *2-4 (Minn. App. Apr. 1, 2019); *Schultz v. Ruff*, No. A14-1762, 2015 WL 4715189, at *3-6 (Minn. App. Aug. 10, 2015); *Ramsey County v. Washington*, Nos. A13-1485, A14-0174, 2014 WL 7343785, at *3-4 (Minn. App. Dec. 29, 2014) (part II); *Himley v. Himley*, No. A12-1876, 2013 WL 4504379, at *3 (Minn. App. Aug. 26, 2013) (part I); *Martin v. Martin*, No. A04-1977, 2005 WL 1869474, at *1-4 (Minn. App. Aug. 9, 2005).