STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1091

In re the Marriage of:

Katherine Ella Hoene, petitioner,
Respondent,

vs.

Matthew Arnold Kramar,
Appellant.

Filed June 21, 2021
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-FA-19-1683

Shane C. Perry, Perry & Perry, PLLP, Minneapolis, Minnesota (for respondent)

Erika N. Donner, Remington & Associate, P.A., Bloomington, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Rodenberg, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this marital-dissolution appeal, appellant Matthew Arnold Kramar (father) challenges the district court's award of sole legal and sole physical custody of the parties'

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

children to respondent Katherine Ella Hoene (mother) and the district court's determination of parenting time for father. As part of his argument, father contends that the district court clearly erred by finding that he engaged in domestic abuse against mother. Because the record supports the district court's findings and because the district court's custody and parenting-plan determinations were within its discretion, we affirm.

FACTS

The parties were married in 2007. Their twin sons were born in 2009. In November 2018, the parties separated and mother petitioned the district court for an order for protection (OFP) on behalf of herself and the children. An emergency ex parte OFP was granted for mother but denied for the children. The following month, the parties stipulated to a no-contact order and mother's petition for an OFP was dismissed without a finding of domestic abuse.

In February 2019, mother initiated this dissolution action. After the parties resolved many issues in the dissolution proceeding, the district court held a bench trial on the disputed issues of custody, parenting time, and child support. Mother sought sole legal and sole physical custody of the children with limited parenting time for father. Father sought joint legal and joint physical custody of the children with equal parenting time.

At trial, mother testified that father had a history of committing domestic abuse against her and the children. She testified that father has anger-management issues and would have regular outbursts towards mother and the children, causing mother to fear for the safety of herself and the children. She testified to a specific incident on November 20,

2018, that prompted the parties' separation and her petition for an OFP. Father disputed that he ever engaged in domestic abuse.

Both of the children have special needs, and both were seeing a therapist. At trial, the therapist testified that, when other people are around, the children enjoy spending time with father, and she stated that she does not have concerns about them spending time with father. The therapist testified that both parents are meeting the children's emotional needs. Mother testified that father's visits with the children since their separation went well.

The district court determined that domestic abuse had occurred between the parties but stated that, based on the evidence, it could not determine that domestic abuse had occurred against the children. The district court found that father failed to rebut the presumption in cases involving domestic abuse between the parents that joint custody is not in the children's best interests. The district court awarded sole legal and sole physical custody to mother with parenting time for father on alternating weekends and Wednesdays.

Father appeals.

DECISION

When a district court is deciding a custody dispute, the court's "paramount commitment" is to a child's best interests. *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). In determining a child's best interests, a district court must "consider and evaluate all relevant factors," including 12 statutory factors. Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2020). One of those factors involves whether domestic abuse has occurred in the household. *Id.*, subd. 1(a)(4). The court must provide "detailed findings" on each of the

statutory best-interests factors and explain how each "led to its conclusions and to the determination of custody and parenting time." *Id.*, subd. 1(b)(1) (2020).

We review a district court's determinations regarding custody and parenting time for an abuse of discretion. *See Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). When the issue turns on the district court's findings of fact, we review its findings for clear error, "giving deference to the district court's opportunity to evaluate witness credibility" and reversing only 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) (citations and quotations omitted). We review the record in the light most favorable to the district court's findings and will not reconcile conflicting evidence or decide issues of witness credibility because those issues "are exclusively the province of the factfinder." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted).

Father makes three arguments challenging the district court's custody and parenting-time determinations. First, he asserts that the district court clearly erred when it found that father committed domestic abuse. Second, he contends that, even if the finding of domestic abuse was not erroneous, the district court clearly erred when it found that father had failed to overcome the presumption against joint legal or joint physical custody and abused its discretion in its award of custody. Third, he argues that the district court abused its discretion in setting father's parenting time. We address each argument in turn.

I. The domestic-abuse finding is supported by the record.

Father argues that the district court clearly erred by finding that domestic abuse occurred between the parties. "Domestic abuse" includes, as relevant here, "the infliction

of fear of imminent physical harm, bodily injury, or assault" against a family or household member. Minn. Stat. § 518B.01, subd. 2(a)(2) (2020). "Present intent to inflict fear of imminent physical harm, bodily injury, or assault can be inferred from the totality of the circumstances, including a history of past abusive behavior." *Pechovnik*, 765 N.W.2d at 99. If domestic abuse has occurred between the parents, there is a rebuttable presumption that joint legal or joint physical custody is not in the child's best interests. Minn. Stat. § 518.17, subd. 1(b)(9) (2020).

The district court found that, on November 20, 2018, father acted in "an intimidating manner" towards mother and that, given father's history of intimidating behavior towards mother, mother was in reasonable fear of imminent physical harm. Based on these findings, the district court found that domestic abuse occurred between father and mother.

Father argues the district court's finding of domestic abuse was clearly erroneous because he never physically abused mother, he never threatened her, and the totality of mother's reaction to the November 20 incident shows that she was not reasonably fearful of imminent physical harm.

We conclude that the record supports the district court's findings. First, the statute does not require that some act of physical abuse occur in order to meet the definition of domestic abuse. On the contrary, we have held that an overt physical act is unnecessary to establish domestic abuse under the statutory language. *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987).

Second, the evidence of father's words and conduct on November 20, 2018, are sufficient to establish that he caused mother to reasonably fear imminent physical harm.

Mother testified that, on that day, the parties argued about how to respond to reports regarding one child's behavioral issues at school. According to mother, father began loudly calling her derogatory names. Mother went upstairs to the parties' bedroom to get away from father. When she heard father coming up the stairs, she tried to hold the door shut to keep him out of the room. Father pushed his way inside, and mother moved to the far side of the bed and sat down. Father followed and stood over her, a couple of inches away, "screaming" at her. Father raised his fist, and she "was afraid he was going to hit [her]." Father then "brought his fist down on the end table so hard that part of it broke off." In his testimony, father did not deny that he yelled at mother, that he followed her into the bedroom, or that he slammed his fist on a table. Although father did not physically harm mother, the parties' testimonies provide ample support for the district court's finding that father's words and conduct caused mother to reasonably fear imminent physical harm. The record thus supports the district court's finding that domestic abuse occurred.[1]

[1] Father asserts that the district court abused its discretion because it failed to consider "social research" on domestic violence and custody or parenting plans, citing to two law review articles on the topic. Father did not introduce any research on domestic violence as evidence in the district court, and he makes this argument for the first time on appeal. We will not consider arguments made for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Aljubailah on behalf of A. M. J. v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (applying *Thiele* in affirming a district court's grant of an OFP).

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

Father argues that, even if the domestic-abuse finding was not clearly erroneous, the district court abused its discretion by awarding sole legal and sole physical custody to mother.

First, father contends that the district court legally erred by interpreting section 518.17 to create a presumption against both joint legal and joint physical custody when domestic abuse has occurred. We review questions of statutory interpretation de novo. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2020). "When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect." *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001).

Section 518.17 provides as follows with respect to custody when domestic abuse has occurred:

> [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. 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.

Minn. Stat. § 518.17, subd. 1(b)(9).

Father contends that, based on the plain language of the statute, the presumption may be applied to either joint legal *or* joint physical custody, but not to both. We are not

persuaded. First, the statute does not include a phrase such as "but not both," and we do not supply language that the legislature omits. *See State v. Caldwell*, 803 N.W.2d 373, 382 (Minn. 2011). Second, as to the language that *is* present in the statute, the only reasonable reading of that language in context is that the presumption applies if legal custody is at issue and it applies if physical custody is at issue; there is no reason to believe that the legislature meant the presumption to apply to only one type of custody should both legal and physical custody be disputed. *See Thornton v. Bosquez*, 933 N.W.2d 781, 791 (Minn. 2019) (interpreting the plain language of subdivision 1(b)(9) to "express[] a preference for sole legal *and* physical custody when domestic abuse has occurred" (emphasis added)). In other words, the statute is written with the understanding that there is not always a dispute as to both legal *and* physical custody, so the "or" allows the district court to apply the presumption depending on the nature of the dispute. Under a plain-language review of a statute, the term "or" may be read as conjunctive when context requires. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385 (Minn. 1999). We conclude that, based on the statute's plain language in context, the rebuttable presumption applies to both legal and physical custody.

Second, father argues that the district court clearly erred by determining that he did not overcome the presumption and abused its discretion by awarding sole legal and sole physical custody to mother. He focuses on the district court's findings regarding seven of the statutory best-interests factors: (1) the effect of the proposed arrangement on the children's physical and emotional needs; (2) the children's special medical, mental health, or educational needs; (3) whether domestic abuse has occurred; (4) the ability of father to

provide ongoing care; (5) the benefit to the children of maximizing parenting time with father; (6) each party's ability to support the children's relationship with the other parent; and (7) each party's ability to cooperate with the other parent in the rearing of their children. *See* Minn. Stat. § 518.17, subd. 1(a)(1)-(2), (4), (7), (10)-(12).

Based on our careful review of the record, although the evidence was conflicting, the district court's findings have evidentiary support. We need not rehearse in detail husband's arguments concerning each factor or recite the evidence that contradicts his arguments. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951) (stating that 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 trial court's findings," and that an appellate court's "duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings"); *Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (applying this aspect of *Wilson* in a family law appeal), *review denied* (Minn. Apr. 17, 2018); *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (same). Moreover, we will not reweigh or rebalance the statutory best-interests factors. *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018) ("[T]here is scant if any room for this court to question a district court's balancing of best-interests considerations." (quotation omitted)), *review denied* (Minn. Mar. 19, 2019).

Because we conclude that the district court's findings under the best-interests factors have evidentiary support, we determine that the district court did not clearly err by finding that father failed to rebut the presumption against joint legal and joint physical custody due to domestic abuse or by awarding sole legal and sole physical custody to mother.

III. The district court did not abuse its discretion in determining parenting time.

Finally, father argues that the district court abused its discretion by not awarding equal parenting time. The district court rejected father's request for equal parenting time and rejected mother's request for parenting time of only alternating Friday and Saturday overnights. Instead, the district court awarded father parenting time on alternating weekends from Friday afternoon until Monday morning and every other Wednesday night, plus holidays and two one-week vacations per year.

The district court did not abuse its discretion. Father complains that the determination of scheduling time departs from the temporary parenting-time arrangements that had been in place during the proceedings. He argues that the departure is not justified, since even mother acknowledged that visits with the children have gone well. But, in determining the ultimate parenting-time schedule, the district court appropriately took into account the trial evidence to make factual findings regarding, and to weigh, the statutory best-interests factors. *See* Minn. Stat. § 518.17, subd. 1(a). The district court determined that, based on the evidence, a schedule for father that favored extended weekend parenting time over weekday parenting time was in the children's best interests. It reasoned that extended weekend time for father would afford the children time with both parents while minimizing the children's potential exposure to father's anger, which could be triggered by weekday stress regarding the children's homework and school issues. The district court's parenting-time determination is supported by the record and falls within the district court's broad discretion.

Affirmed.