STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1255

In re the Marriage of:
Katherine Theresa Blair, petitioner,
Appellant,

vs.

Campbell Johnston Blair,
Respondent.

Filed June 14, 2021
Reversed and remanded
Bratvold, Judge

Washington County District Court
File No. 82-FA-20-1204

Susan A. Daudelin, Joani C. Moberg, Henschel Moberg, P.A., Minneapolis, Minnesota (for appellant)

Campbell Johnston Blair, Hastings, Minnesota (pro se respondent)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from a final judgment dissolving the parties' marriage, appellant-mother argues the district court abused its discretion by altering the parties' stipulated provisions for joint legal and joint physical custody of their two minor children. Mother argues that the final judgment added two requirements, which were not in the

parties' stipulation. Mother challenges the district court's decision to require that the parties (1) obtain a court order to change the children's current school district (order requirement); and (2) set a hearing for judicial review of the award of joint physical custody if mother seeks to move outside the children's current school district (hearing requirement). Because the district court did not make adequate findings to support the two requirements challenged on appeal, we reverse and remand.

FACTS

The parties have two children, ages 11 and 12 at the time of dissolution. Before filing any pleadings with the district court, the parties amicably resolved all dissolution issues. They sold the Cottage Grove marital home, and each bought separate residences; appellant Katherine Theresa Blair (mother) moved to a different home in Cottage Grove, and respondent Campbell Johnston Blair (father) moved to Hastings, about eight miles away from mother's home. For several years before the dissolution, the parties' children attended school in Independent School District 833 (ISD 833) and, specifically, the school zone of Grey Cloud Elementary, Cottage Grove Middle School, and East Ridge High School (specific school zone).

In the dissolution proceedings, mother obtained counsel, while father represented himself. When, on March 11, 2020, mother petitioned to dissolve the parties' marriage, she submitted the parties' proposed dissolution judgment as a stipulation signed by both parties (proposed judgment). The proposed judgment included provisions that would award the parties joint legal and joint physical custody of their children, and would require the parties to "consult with each other regarding the schooling of the minor children and . . . agree on

where the children will attend school." The proposed judgment also included a mediation provision providing that "any claim or controversy arising under this Agreement involving any issue that cannot be resolved by the parties through direct communication without mediation, shall be promptly submitted to mediation." Only after mediation failed could the parties apply to the district court for relief.

The district court set a scheduling conference, and, on March 20, the district court identified concerns with the proposed judgment:

> The reason the Court put it on for a scheduling hearing is it appears to be a joint physical custody case and in the court's view there are deficiencies (i.e. parties still live in the same home, no commitment to reside in the same school district, . . .) in the provisions of the proposed Decree.

In response to the district court's March 20 comments, mother's attorney submitted a second proposed judgment, which clarified that the parties were purchasing and moving into separate residences. The second proposed judgment also was a stipulation signed by both parties. On April 10, the judge's law clerk sent mother's attorney an email explaining:

> [The judge] usually requires in joint physical custody cases that the parties live in the same school district, and agree to remain living in the same school district until the children graduate from high school. . . . If the parties agree to remain living in their current homes (both closing in April), or agree that any future moves will be into the same school district, for as long as they have joint physical custody, [the judge] would approve the document.

On May 4, mother's attorney filed a third proposed judgment, also signed by both parties. In the joint-custody provisions, the third proposed judgment provided that the parties "must agree on where the children will attend school," and added language

identifying the children's current school, their school district, and their specific school zone. The third proposed judgment also provided that "[t]he parties agree that the children will continue to attend school in this district and specific school zone unless they agree otherwise in writing (including by email) or this Court so orders." The third proposed judgment also contained the mediation provision mentioned above.

On June 5, the judge's law clerk emailed mother's attorney that the district court had reviewed the third proposed judgment. The email stated that the judge "does not see the language addressed in previous emails regarding current residences and any future moves being into the same school district. Without this specific language, the Court will not approve" this judgment and decree. Mother's attorney responded that she had "concerns about a blanket prohibition about moving." Because father was self-represented, mother requested a "default" hearing "where [she] could address these issues directly with the court."[1]

At the June 17 hearing, both parties appeared along with mother's attorney. The district court stated, "I don't have a material objection to joint physical custody. However, I do have a concern about the two of you moving again." Mother's attorney explained that

[1] Mother's attorney appears to have referred to a "default" hearing based on a statute that allows a district court to approve a proposed dissolution order "without a final hearing" where "there are minor children of the marriage, the parties have signed and acknowledged a stipulation, and all parties are represented by counsel." Minn. Stat. § 518.13, subd. 5(2) (2020). If this was the statutory provision to which mother's attorney alluded, its relevance here is unclear. It is correct that father was not represented by counsel. The same statute also provides that the district court "shall schedule the matter for hearing in any case where the proposed judgment and decree does not appear to be in the best interests of the minor children or is contrary to the interests of justice." *Id.*, subd. 5.

"it's very difficult to predict what's going to happen with this family. Either or both of the parties could have different jobs in the future that would necessitate a move. The school districts could change." In response, the district court hypothesized that if "mom gets a fantastic job offer in Rochester" and wants to move, and father remains in his current position, "then there becomes the conflict between the mom and the dad and where the kids get enrolled in school. . . . And that is the situation that cannot happen."

Mother's attorney responded that the parties' stipulation "already provides protection" because the parties cannot change the children's schools "absent an agreement or a court order." The district court explained that these terms were unacceptable.

> Nope. Nope. I'm telling you, that language is offensive to me. Because the parties cannot get around this requirement of living in the same school district by agreeing with each other that dad can move to St. Paul because he's taken a job as a St. Paul police officer . . . and still expect that they can have joint physical custody. They . . . can't make [an] agreement to get around that obligation.

The district court concluded, "You'll have to have a trial. I'll then decide what the appropriate language may be, based on the trial. . . . And the trial would be about the joint custody [and] physical custody access."

The trial occurred on July 29, 2020. Neither party called any witnesses; the district court examined both parties. Father testified that the children have attended school in the same district since February 2018, when the parties moved to Cottage Grove from Anchorage, Alaska. After he and mother decided to divorce, father moved to Hastings in April 2020, which is outside the children's current school district in Cottage Grove. Father's home is eight miles away from mother's home, and he intends to remain there.

The district court asked whether father believes "it is important that [he] continue to reside in the school district where [his] children go to school," and father replied, "Correct." The court also asked whether father "will reside in the current home all the time your children remain in the Cottage Grove school district," and father replied, "I will."

Mother's attorney then examined father. Father agreed that if his job changes, he might need to move. Father agreed that if the children need to change schools, he will discuss that with mother. Father also agreed that if they changed schools, he might change where he lived.

Next, the district court examined mother. She testified that she lives in Cottage Grove within the geographic boundaries of the children's current school district. Mother has "no plans to move." The district court asked whether she had "some other significant other or something else. . . that drives this issue about where you live." Mother responded that her concern about where she lives is "job-based and education-based for our children." She explained that her current employer "has gone through very difficult times" and "recently announced layoffs and job changes." She added, "[B]ecause I have committed to not leave the state, there's a possibility that my position could be—could change, or be eliminated." Mother testified that she needs "the flexibility to be able to find another job, which may be in another part of the major metro area."

The district court asked mother, if she had to move, "do you think it's important that you and [father] reside in the same school district where your kids are going to go to school?" Mother responded, "I don't think that it's necessarily important that we reside in

the school district . . . Because I think that we can cooperate and come up with an agreement between the two of us with how that would work."

Mother's attorney asked whether mother could foresee circumstances where the children would need to change schools, to which she responded, "I don't foresee anything in the immediate future, but both of our children have been diagnosed with ADHD and anxiety issues." Mother explained that one child has been working with a clinical psychologist since age six and that "there may come a time where that school that he is going to, which is 2,000 people and very large, might not be the right fit or might not be what he needs."

The district court entered a judgment on August 28, 2020 and awarded the parties joint legal and joint physical custody of the children. But the district court's judgment modified some of the proposed findings of fact and conclusions of law on custody, school attendance, and mother's change in residence. In the custody provisions, the judgment does not allow the parties to change their children's school or school district if they agree to do so in writing. Instead, the judgment provides, "The parties agree that the children will continue to attend school in this district and specific school zone, or as this Court orders." Also in the custody provisions, the judgment includes a footnote mandating a hearing and judicial review of joint physical custody if mother seeks to move: "if [mother] moves out of ISD 833, the parties must schedule a hearing, prior to any intended future move before the Court to review the ongoing appropriateness of future joint physical custody." The judgment also includes the mediation provision that the parties agreed to, as described above.

Mother appeals.

DECISION

Mother argues that the district court abused its discretion by including two requirements in the judgment dissolving the parties' marriage. The order requirement states that "[t]he parties agree that the children will continue to attend school in this district and specific school zone, or as this court orders." This precludes the parents from changing the children's school district or school zone without a court order. The hearing requirement states that, if mother seeks to move outside the children's current school district, "the parties must schedule a hearing, prior to any intended move before the Court to review the ongoing appropriateness of future joint physical custody." Father did not file a brief with this court, and we decide this appeal on the merits under Minn. R. Civ. App. P. 142.03.

For child-custody and residence issues, the district court "enjoys broad discretion." *Schisel v. Schisel*, 762 N.W.2d 265, 269, 270 (Minn. App. 2009). Generally, appellate review of custody determinations 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). "The bedrock principle underlying any decision affecting the custody of minor children is that their best interests must be protected and fostered." *Schisel*, 762 N.W.2d at 270. "The court must in every case exercise an independent judgment and is not bound by [a] stipulation." *Petersen v. Petersen*, 206 N.W.2d 658, 659 (Minn. 1973) (citation omitted).

I. The district court abused its discretion by requiring the parties to obtain a court order before changing the children's school district or school zone.

Recently, this court rejected the idea that, when joint legal custodians disagree about the schooling of their children, the schooling decisions are governed by the location of the children's "primary residence." *Wolf v. Oestreich*, 956 N.W.2d 248, 255 (Minn. App. 2021), *review denied* (Minn. May 18, 2021). Instead, this court held that "[d]ecisions regarding school choice are educational decisions within the ambit of legal custody." *Id.* at 254. While *Wolf* was released after the district court's judgment, it rested on long-standing statutory provisions that guide our analysis of the district court's decision to require a court order before the parties may change the children's school district. *Id.* at 253-54.

Here, the parties stipulated to joint legal custody. "'Legal custody' means the right to determine the child's upbringing, including education, health care, and religious training." Minn. Stat. § 518.003, subd. 3(a) (2020). "Joint legal custody" means that the parties "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). *Wolf* held that joint legal custodians "have equal rights and responsibilities regarding educational decisions, including school choice." 956 N.W.2d at 254.

Yet the judgment states that "[t]he parties agree that the children will continue to attend school in this district and specific school zone, or as this Court orders." Thus, despite the parties' stipulation to joint legal custody, the district court required that, *even if they agree*, the parties must obtain a court order to change the children's school district or school

zone. Thus, the judgment significantly curtails the joint legal custody to which the parties stipulated.[2]

A district court is not bound by the parties' stipulation (or proposed judgment) and must act in the children's best interests. *Peterson*, 206 N.W.2d at 659; *Schisel*, 762 N.W.2d at 269, 270. As a result, the district court's failure to award the parties full joint legal custody is not necessarily error if the curtailed custody award is in the children's best interests. When addressing custody matters, district courts must make findings that (a) show that the district court considered the relevant factors; (b) facilitate appellate review of its decision; and (c) assure the parties that the district court carefully and fairly reached its decision. *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976); *see Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (citing this aspect of *Rosenfeld*).

Mother argues that the district court abused its discretion by requiring a court order to change the children's school district because its decision is not supported by the record.[3] The district court's memorandum accompanying the judgment included two findings in support of the award to curtail joint legal custody. The district court first found that the

---

[2] Along with *not* awarding the parties the full joint legal custody to which they stipulated, the district court added a factual finding to the judgment that was not included in the parties' proposed judgment. The district court found that mother's new home is within the children's current school district "where the parties' agree that the children will continue to attend school going forward—post-decree." This finding is supported by the record and not challenged on appeal.

[3] Mother makes a second argument to overturn the order requirement, contending that the order requirement limits the residence of mother or the children or both. It is accurate that the district court's memorandum referred to the order requirement as "a residency requirement." Because we conclude that the order requirement is defective for the reasons discussed above, we need not address this alternative challenge.

possibility of mother moving to a new school district would be "contrary to the parties' expressed intent and the current Stipulation" to maintain the current school district. The district court also found that changing the children's school district by agreement would be "contrary to this Court's obligation to assure for the ongoing best interests of the children, and not in the best interests of the children."

For at least four reasons, we conclude that these findings are inadequate to support the district court's refusal to award the parties full joint legal custody.

The district court's first finding, that mother moving to a new school district would be "contrary" to the parties' stipulated intent to maintain the current school district for the children, is clearly erroneous. The parties stipulated that "the children will continue to attend [school] in [ISD 833] and [their current] school zone *unless they agree otherwise in writing* (including by email) or [the district] Court so orders." (Emphasis added.) Thus, contrary to the district court's finding, the parties did not agree to maintain the current school district indefinitely, but only for so long as they both believed it appropriate for their children.

Second, the district court's first finding, at heart, recognizes that the judgment rests on current circumstances. But, in family cases, facts evolve, and district courts, when appropriate, can modify their judgments if what was originally appropriate is no longer appropriate. *See Angelos v. Angelos*, 367 N.W.2d 518, 519-20 (Minn. 1985) (explaining that family cases are "sui generis" because, unlike most civil cases, judgments in family cases can be modified to reflect post-judgment changes in the parties' circumstances); *see also* Minn. Stat. § 518.175, subd. 5; .18 (2020) (addressing modification of parenting time

and custody, respectively); Minn. Stat. § 518A.39, subd. 2 (2020) (addressing modification of child support and spousal maintenance). Thus, the possibility of an inconsistency between a current judgment and a party's future circumstances exists, and is inherent, in *all* family cases. Because this possibility exists in all family cases, a finding recognizing the existence of this possibility, by itself, does nothing to facilitate appellate review of the district court's decision not to award the parties the full joint legal custody to which they stipulated, does not assure the parties that the decision (which contradicted their stipulation) was carefully made, and does not otherwise explain why the district court made the decision it did. *See Rosenfeld*, 249 N.W.2d at 171.

Third, the district court's second finding, that allowing the parties to change the children's school district by agreement would be "contrary" to the district court's "obligation" to ensure the best interests of the children and would not be in those best interests, is flawed in several ways. The finding is conclusory and based on speculation. It is unclear how the district court can know what will (or will not) be in the children's best interests when, at some unspecified future point, either parent may (or may not) want to change school districts.

But more fundamentally, the district court's second finding rests on legal error. While it is "bedrock" that a district court must protect the best interests of children, *see Schisel*, 762 N.W.2d at 270, this is not enough to sustain the district court's order requirement. A district court resolves questions based on the children's best interests *when the joint legal custodians disagree*, for example, on educational matters. *See Novak v. Novak,* 446 N.W.2d 422, 424 (Minn. App. 1989) (noting that joint legal custodians'

disagreement regarding schooling of their child should be resolved based on the child's best interests), *review denied* (Minn. Dec. 1, 1989). Here, the joint legal custodians do not disagree. We are mindful that "[c]ourts favor stipulations in dissolution cases as a means of simplifying and expediting litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Requiring these parties to obtain a court order to change the children's school district or school zone even when they agree to a change will neither simplify nor expedite litigation.

We have a fourth related reason for rejecting the order requirement: the district court made no finding that rebutted the legal presumption that these parents would act in their children's best interests. The Supreme Court has stated that "there is a presumption that fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68, 120 S. Ct. 2054, 2061 (2000); *see SooHoo v. Johnson*, 731 N.W.2d 815, 824 (Minn. 2007) (citing *Troxel*, and making the same point). Further,

> so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

Troxel, 530 U.S. at 68-69, 120 S. Ct. at 2061; *see Rohmiller v. Hart*, 811 N.W.2d 585, 594-95 (Minn. 2012) (discussing *Troxel*). The record presented to the district court would not support any finding that these parents are unwilling, unable, or unfit to care for their

children, or otherwise are likely to act contrary to their children's best interests.[4] Without something more, we cannot reconcile the district court's decision with the deference generally accorded to a family's custodial decisions.

In sum, while a district court is not bound by a stipulation presented to it and has an obligation to protect the children's best interests, neither the district court's findings of fact nor the underlying record support its decision to limit the parties' stipulation to full joint legal custody. Thus, the district court abused its discretion by requiring a court order to approve a change of the children's school district or school zone even when the parents agree to that change.

II. The district court abused its discretion by requiring a hearing at which the district court will review the award of joint physical custody if mother seeks to move outside the children's current school district.

The judgment awards joint physical custody but states that "if [mother] moves out of ISD 833, the parties must schedule a hearing, prior to any intended future move before the Court to review the ongoing appropriateness of future joint physical custody." Mother asserts that the hearing requirement "is not supported by any factual findings, or by any record evidence or testimony presented at trial, and is contrary to statutory procedural requirements for the potential modification of custody." "Minnesota Statutes § 518.18 governs the modification of custody orders after a judgment and decree." *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017). Because the hearing requirement runs afoul of

[4] Indeed, the parties' ability to agree on a detailed dissolution judgment and their testimony show that the parties can make joint decisions in the best interests of their children. While mediation of future disputes is a possibility for any divorced parent, the judgment has a mediation provision.

Minn. Stat. § 518.18 (2020) and associated caselaw in at least two ways, we conclude that the district court abused its discretion by imposing this requirement.

First, Minn. Stat. § 518.18 does not make a parent's move out of a school district a basis for a hearing on whether to modify custody. *See* Minn. Stat. § 518.18(d). A district court may impose reasonable conditions on an aspect of child custody if it is in the best interests of the child to do so and the district court makes adequate explanatory findings of fact. *See, e.g.*, *Schisel*, 762 N.W.2d at 271 (reversing a requirement on where a child had to live when the requirement was imposed without best-interest findings); *Dailey v. Chermak*, 709 N.W.2d 626, 630 (Minn. App. 2006) (holding "there is no absolute prohibition under Minnesota law against awarding child custody on the condition of maintaining a specific geographic residence for the child, as long as that residence is shown clearly and genuinely to serve the child's best interests"), *review denied* (Minn. May 16, 2006).

The district court, however, made no findings addressing why a move by mother out of ISD 833 would automatically trigger a hearing that could lead to a modification of joint physical custody. Without findings explaining why the district court imposed the hearing requirement on mother, and why this requirement is in the best interests of the children, we lack a basis to affirm the hearing requirement.

Second, the parties have not agreed in writing to the application of a standard other than that provided by Minn. Stat. § 518.18(d) for modification of custody. Under Minn. Stat. § 518.18(e),

> [i]n deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

Further, in a separate provision not at issue in this appeal, the judgment precludes the parties from moving out of Minnesota absent a court order or the other party's permission. Thus, any modification of custody prompted by mother's move out of ISD 833 and within Minnesota is governed by Minn. Stat. § 518.18(d). And, under Minn. Stat. § 518.18(d), a move out of a school district is not a sufficient basis to modify custody. Thus, to the extent that the hearing requirement allows the district court to modify the award of joint physical custody based solely on a move by mother out of ISD 833, the provision conflicts with Minn. Stat. § 518.18.

For these reasons, we conclude that the district court abused its discretion by requiring a hearing at which the district court will review joint physical custody if mother seeks to move outside the children's current school district.

In reversing the district court's decision to include a hearing requirement, we note that the district court stated its belief that mother's residence should be within the boundaries of ISD 833 so the children have a home in their current school district.[5] We also understand that the district court believes the children's best interests would be served

[5] It is unclear why the district court found the possibility of mother moving out of the school district inconsistent with an award of joint physical custody when father had recently moved outside the school district. Indeed, father acknowledged that "in the event [his] job changes," he may need to move again.

by remaining in the same school district, and this would outweigh a parent's (future) reasons for moving. But neither the district court's findings nor the underlying record support the district court's beliefs.

On remand, the district court shall remove from the judgment the portion of conclusion of law 2.D.B. stating, "or as this Court orders." The district court shall also remove footnote 1, from conclusion of law 2.A., mandating a hearing and judicial review of the award of joint physical custody if mother seeks to move out of the school district. The current mediation provision in the judgment—conclusions of law section 26—sufficiently provides the parties with the ability to change their children's school district upon mutual agreement or, if that fails, upon court order.

Reversed and remanded.