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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1577

In re the Marriage of:

County of Isanti,
Respondent,

Olivia Cecile Margaret Voss, petitioner,
Respondent,

vs.

Christopher James Grecula,
Appellant.

Filed September 7, 2021
Affirmed
Gaïtas, Judge

Isanti County District Court
File No. 30-FA-20-68

Jeff Edblad, Isanti County Attorney, David Kraemer, Assistant County Attorney, Cambridge, Minnesota (for respondent county)

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Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-father challenges the district court's denial of his request for redetermination of his basic child-support obligation. Specifically, he argues that a portion of his parenting time should have been treated as an overnight equivalent for purposes of calculating the parenting-time expense adjustment for his child-support obligation. We affirm.

FACTS

Appellant Christopher James Grecula (father) and respondent Olivia Cecile Margaret Voss (mother) are the parents of two minor children, ages 6 and 9. Mother and father's marriage was dissolved in July 2020 by a stipulated judgment and decree, which awarded mother and father joint legal custody and mother sole physical custody of the children. The judgment and decree adopted the parents' agreed-upon parenting schedule. During the school year, father has parenting time "[e]very Tuesday at 3:00 p.m. until Wednesday at 7:30 p.m. and every other weekend from Friday at 3:00 p.m. to school or 8:00 a.m. on Monday." His parenting time during the summer occurs "[e]very Tuesday at 3:00 p.m. until Wednesday at 7:30 p.m. and every other weekend from Friday at 3:00 p.m. to Monday morning to daycare or 8:00 a.m. unless [father] does not work on Monday then until 3:00 p.m."

Also in July 2020, the parties appeared before a child-support magistrate (CSM) pursuant to a summons and complaint to establish child support filed by Isanti County. At the hearing, father asked the CSM to consider his Wednesday parenting time an "overnight

equivalent" for the purpose of calculating child support. He testified that on Wednesdays, he tends to all of the children's needs, including meals and activities, until they return to mother at 7:30 p.m. The children then soon go to bed, typically around 8:30 or 9:00 p.m.

The CSM rejected father's request and used father's "scheduled, overnight parenting time" from the judgment and decree, which amounted to 130.5 overnights per year, to calculate his parenting-time expense adjustment. (Emphasis omitted.) The CSM's order noted that "[t]he court was not provided with any testimony or evidence that would indicate an alternate method should be utilized in determining the parenting time adjustment." Based on father's income and the parenting-time expense adjustment, the CSM determined that father's basic child-support obligation under the Minnesota Child Support Guidelines is $756 per month.

Father moved the district court for review of the CSM's decision, arguing, among other things, that his parenting time on Wednesdays ought to have been considered "an overnight equivalent" for the purposes of calculating his parenting-time expense adjustment. He advised that, with an overnight equivalent added to his scheduled overnight parenting time, the annual number of overnights would be equally split (182.5 for each parent), making his basic monthly support obligation $140, rather than $756. Mother argued in response that father does not provide all of the care for the children on Wednesdays, and specifically asserted that father's parents provide dinner for the children and mother provides the clothes for their stay.

The district court affirmed the CSM's decision, noting that Minnesota Statutes section 518A.36, subdivision 1(a) (2020), permits the court to use "overnights *or* overnight

equivalents" to determine the parenting-time expense adjustment. The district court reasoned that "[g]iven the testimony provided at the hearing, the facts in this case are not such that the law would require the [CSM] to use a method other than scheduled overnights to calculate [father's] basic support obligation." Moreover, the district court explained, "[t]he fact that evidence was received regarding the characterization of Wednesday overnights, in the context of the Parties' overall situation, is not evidence supporting or requiring use of overnight equivalents to determine the parenting expense adjustment."

Father appeals.

DECISION

The district court reviews the decision of a CSM de novo, and we examine the district court's decision to affirm the CSM for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 825-26 (Minn. App. 2001). The district court has broad discretion to provide for the support of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record, or when it misapplies the law. *Id.*; *see also Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) ("A court abuses its discretion if it improperly applies the law."). Interpretation of the child-support statutes presents a question of law that appellate courts review de novo. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013); *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009) (interpreting a prior version of the parenting-expense-adjustment statute de novo).

Child support is an amount of money that a parent must pay "for basic support, child care support, and medical support" of their minor child. Minn. Stat. § 518A.26, subd. 20

(2020); *see also* Minn. Stat. § 256.87, subd. 1 (2020) (discussing how the state or county may initiate an action against a parent for assistance furnished for their child). "The child-support statute reflects a presumption that during parenting time a parent incurs expenses associated with the costs of raising a child." *Jones v. Jarvinen*, 814 N.W.2d 45, 48 (Minn. App. 2012) (citing Minn. Stat. § 518A.36, subd. 1(a) (2010)). A parent is accordingly allowed a parenting-time expense adjustment of their basic support obligation. The amount of that parenting-time expense adjustment "may be" based on the number of overnights or overnight equivalents the child spends in each parent's care. *See* Minn. Stat. § 518A.36, subds. 1, 2 (2020) (addressing overnights and overnight equivalents, and the formula for calculating a parenting-time expense adjustment, respectively). "[O]vernight equivalents are calculated by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight." *Id.*, subd. 1(a).

Here, father argues that the district court erred by declining to recognize his Wednesday parenting time as "an overnight equivalent" under section 518A.36, subdivision 1(a). He contends that the district court lacked discretion to use only scheduled overnights in calculating the parenting-time expense adjustment for his child-support obligation because he provides most of the care for the children during the day on Wednesdays. Father also argues that the district court erred as a matter of law by interpreting section 518A.36, subdivision 1(a), to allow a parenting-time calculation based on either overnights or overnight equivalents, but not a combination of the two.

We begin by disagreeing with father that the district court erroneously interpreted section 518A.36, subdivision 1(a). The district court's order does not state that the CSM could use *only* overnights or *only* overnight equivalents. Instead, the district court correctly observed, consistent with the plain language of the statute, that a CSM may calculate parenting time by using court-ordered overnights or overnight equivalents. "[T]he statute plainly permits the district court to use either the overnight method of calculating parenting time or an alternative method." *Jones*, 814 N.W.2d at 48-49. The district court went on to reason that, "Given the testimony provided at the hearing, the facts in this case are not such that the law would require the [CSM] to use a method other than scheduled overnights to calculate [father's] basic support obligation." Because the district court ruled that the record did not support the use of overnight equivalents, it did not consider whether the statute authorizes a court to use both overnights and overnight equivalents in calculating the parenting-time expense adjustment. Therefore, that question is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate court address only those questions presented to and considered by the district court). We also discern no error in the district court's summary of the law it did apply. Thus, we reject the parties' invitation to engage in statutory interpretation to address whether section 518A.36, subdivision 1(a), allows a district court to use a combination of overnights and overnight equivalents. *Cf. Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them.").

We next turn to the district court's application of the law. Initially, we observe that the legislature used a discretionary term in directing that the amount of parenting time a parent spends with a child "*may* be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order." Minn. Stat. § 518A.36, subd. 1(a) (emphasis added). Generally, a statute's use of "may" confers discretion on the court regarding the matter addressed by the statute. *Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000) (making this observation in the context of a child-support appeal); *see* Minn. Stat. § 645.44, subd. 15 (2020) (stating that "'[m]ay' is permissive").

Father argues that the district court's decision not to include his Wednesday parenting time as an overnight equivalent is against logic and the facts in the record. He asserts that the record shows that "the children are in his direct care beginning at 12:00 a.m. on Wednesdays until they return to [mother] at 7:30 p.m.," before going to bed a few hours later. According to father, mother incurs no "costs for raising the children" on Wednesdays, and it is contrary to the purpose of the child-support statute to not count Wednesday as an overnight equivalent.

After considering the record and examining the parties' agreed-upon parenting schedule, we conclude that the district court did not abuse its broad discretion in affirming the CSM's use of scheduled overnights to calculate father's parenting-time percentage. *See Rutten*, 347 N.W.2d at 50 (explaining that the district court has broad discretion in matters of child support). While father emphasizes that he has the children for 19.5 hours on Wednesdays, much of that time is already accounted for by his Tuesday overnight, which

extends into the morning.[1] Father essentially requested that his time on "Tuesday at 3:00 p.m. until Wednesday at 7:30 p.m." be counted as *two* overnights. He does not explain why the district court was bound to credit his time in this expansive fashion.

This court considered a similar argument in *Jones*, where a parent claimed he was entitled to credit for parenting time beyond scheduled overnights because "he care[d] for the children for a significant amount of non-overnight parenting time, including one day per week after school." 814 N.W.2d at 48. We rejected that argument, explaining that section 518A.36, subdivision 1(a), "plainly permits the district court to use either the overnight method of calculating parenting time or an alternative method," and thus concluded that "[t]he CSM, affirmed by the district court, did not abuse its discretion by using the overnight method of calculating parenting time, which conformed to the parties' parenting time as stated in the judgment." *Id.* at 49.

Similarly, we conclude that the district court was not required to include an additional overnight in calculating father's parenting time here. Again, section 518A.36, subdivision 1(a), gives the district court discretion to calculate parenting time using scheduled overnights or overnight equivalents. Father has not demonstrated that it was an abuse of discretion to rely on the overnight method here. Likewise, the district court acted

[1] We do not base our analysis on mother's argument that father's Wednesday parenting time is not an overnight equivalent because father's parents, and not father, provide dinner for the children. Mother did not present this argument to the CSM, and the district court did not indicate that it relied on this argument in affirming the CSM's decision. Our review here is limited to considering whether father's time with the children on Wednesdays was properly accounted for under section 518A.36, and the dinner arrangements during this time do not factor into our decision. *See Davis*, 631 N.W.2d at 825-26.

within its discretion to reject father's request to include his additional time with the children on Wednesdays as an overnight equivalent. We therefore decline to reverse the district court's exercise of its discretion on these matters.

Affirmed.