STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1626

In re the Custody of Derek Mausolf and
Claire Mausolf, Nicholas Mausolf, petitioner,
Appellant,

vs.

Ashley Heglund,
Respondent.

Filed July 6, 2021
Affirmed
Reyes, Judge

Crow Wing County District Court
File No. 18-FA-14-3051

Nicholas Mausolf, Deerwood, Minnesota (pro se appellant)

Virginia J. Knudson, Borden, Steinbauer, Krueger & Knudson, P.A., Brainerd, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this parenting-time dispute, self-represented appellant-father asserts that the district court abused its discretion by suspending his parenting time and determining that he is a frivolous litigant. Father also claims violations of the First Amendment and Sixth Amendment, improper use of a prior domestic-abuse no-contact order (DANCO), that the

district court judge violated a criminal statute, and various errors in transcripts underlying this proceeding. We affirm.

FACTS

Appellant-father Nicholas Mausolf and respondent-mother Ashley Heglund began dating in 2007 and never married. The parties' relationship ended when mother and the parties' two minor children, born in 2008 and 2011, moved out of father's home in February 2014.

While represented by counsel, father filed a petition seeking joint legal custody and joint physical custody of both children in August 2014. Mother filed a counter-petition, seeking sole legal custody and sole physical custody subject to a parenting-time schedule "that is in the best interests of the minor children." In April 2015, the district court issued an order temporarily granting mother's custody petition. The order granted father temporary unsupervised parenting time every other Saturday and Sunday from 8 a.m. to 6 p.m. each day. The district court noted that, even without a custody evaluation, father's "conduct at the hearing did rise to the level of creating concern for the well-being of the minor children during his parenting time" and that it is not in the best interests of the children to award joint legal custody and joint physical custody.

Between March and September 2015, father began requesting that the police conduct welfare checks on the children at mother's home, calling law enforcement to the residence 13 times. The children reported being afraid of police officers due to frequent police contact. In September, before the first trial in this matter, father was arrested and

charged with felony stalking and terroristic threats against mother. Father's probationary sentence was conditioned in part on the issuance of a DANCO.

In November 2015, the district court modified father's parenting time to supervised visits once a week at a child-safety center. But the child-safety center would not work with father due to his behavior during the intake and phone calls to schedule supervised visits.

In November 2016, based on the parties' agreement and an associated custody evaluation, the district court entered a stipulated judgment granting mother sole legal custody and sole physical custody of the children subject to father's supervised parenting time. The judgment also states that father's parenting time would "be suspended" if he "misse[d] more than three supervised visits in a row."

Father moved for "a change in parenting time" in June 2018. Declining to modify father's supervised visits, the district court directed Crow Wing County Social Services (the county) to supervise visits because the service the parties previously used for supervised visits closed and the child-safety center "continued to decline to work with [father]."

Despite being represented by counsel, father, acting on his own behalf, filed his first motion to remove the district court judge in February 2019, which the district court denied because he did not timely file it. Father's counsel then withdrew from representation, and father began to file multiple motions with the district court, including additional motions requesting to remove the district court judge. The district court, upon its own motion, set a hearing to determine if father is a frivolous litigant.

The county scheduled and notified father of supervised visits between January and April 2020. After father did not attend the scheduled visits or notify anyone that he could not attend, the county requested that the district court relieve it of its obligation to facilitate father's supervised parenting time. Following an evidentiary and motion hearing, the district court relieved the county of its obligation to supervise father's parenting time, suspended father's parenting time, and determined that father is a frivolous litigant. This appeal follows.

DECISION

I. The district court did not abuse its discretion by suspending father's parenting time under the stipulated judgment and Minn. Stat. § 518.175 (2020).

Father first appears to argue that he believed he had effectively canceled all supervised parenting-time appointments with the county, taking issue with the resulting "no call no shows" and suspension of his parenting time. We are not persuaded.

District courts have "broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotation omitted). A district court abuses its discretion if it misapplies the law or relies on findings of fact that are unsupported by the record. *Id.*

The district court, following an evidentiary hearing, suspended father's parenting time pursuant to the stipulated judgment which directed that father's parenting time would be suspended if he "misse[d] three supervised visitations in a row."

The record shows that father canceled his first county-supervised visit scheduled for January 10, 2020. The county sent father a letter on January 15, scheduling three visits

between the remainder of January and through February. The county sent another letter on February 5, scheduling four additional supervised visits between March and April. Father did not attend any visits between January and April.

The district court's rejection of father's alleged belief that he canceled all supervised-visitation appointments with the county is supported by the record. First, the letter father cites in support is not in the record in this appeal. *See* Minn. R. Civ. App. P. 110.01 (defining record on appeal). Second, after the date on which father stated that he believed he cancelled all appointments, he received two letters from the county scheduling seven visits between January and April. Finally, at the evidentiary hearing, father stated that, "Th[is] is why [he] quit going to [the county]. They lied once. They will lie again." Father's contention fails.

Additionally, a district court may modify parenting time if it is in the child's best interests, but may not restrict parenting time unless continued parenting time is "likely to endanger the child's physical or emotional health or impair the child's emotional development." Minn. Stat. § 518.175, subds. 5(b), (c)(1). The district court examined the extensive evidence in the record and explained the importance of consistent parenting time for the stability and well-being of the children. It found that the children have not had visitation with father since May 17, 2019, and determined that father's reasons for failing to attend supervised visits with the children "are neither reasonable nor justified," and that father lacked insight into the impact of both his actions and inactions on their health and well-being. The district court found that the children became emotional and withdrawn after visits with father and would be "upset and anxious when [father] failed to have

consistent contact with them. The district court concluded that "further visits [with father] . . . would likely endanger the children's emotional health and impair the children's emotional development." Because the district court's findings are supported by the record, it did not abuse its discretion by restricting father's parenting time.

II. The district court did not abuse its discretion by determining that father is a frivolous litigant.

Father does not appear to argue directly that the district court abused its discretion by determining that he is a frivolous litigant. Rather, he discusses the Sixth Amendment, presumably to the United States Constitution, and contends that he has a right to proceed pro se. Father's arguments are not persuasive.

First, to the extent that father is arguing that Minnesota's frivolous-litigant rule is unconstitutional, father did not raise this argument before the district court. We generally consider only issues that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We therefore do not address this argument as it is not properly before this court. In addition, father cites no legal authority in support of his constitutional argument, only citing the district court's order and "the right to represent [him]self." His argument is additionally forfeited as inadequately briefed. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (declining to address inadequately briefed arguments) (citing *Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997)). We therefore decide only whether the district court abused its discretion by determining that father is a frivolous litigant.

A district court may restrict a party's right to file motions after determining that the party is a frivolous litigant. Minn. R. Gen. Prac. 9.01-.07. Minn. R. Gen. Prac. 9.02(b) sets forth seven criteria for determining if a party is a frivolous litigant. Under these rules, "[a]n order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts." Minn. R. Gen. Prac. 9.02(c). We review a district court's frivolous-litigant determination for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 290, 295 (Minn. App. 2007).

Here, the district court noted all seven frivolous-litigant factors under the Minnesota Rules of Practice and made appropriate findings, supported by the record, with respect to the applicable factors. The district court found that father "repeatedly filed motions that have resulted in [] adverse ruling[s]," that his conduct is "harassing," and that his filings did not appear to have been made in good faith. The district court further found that mother has responded to father's many filings, and, as a result, mother has "incurred significant financial expenses" and "about every penny [mother] has goes to pay [] lawyer's fees as a result of this matter."

In addition, the district court's 2015 order found that father sent "threatening text messages and emails" to the children's grandmother, telling her that "[father] is keeping the matter in court for as long as he can in order to 'bankrupt' her." After proceeding pro se in early 2019, father's motion history is extensive, and each motion has been unsuccessful. Additionally, each of father's four motions to remove the district court judge argued the same factual allegations as a basis for removal.

The district court ultimately determined that "no less severe sanction" would protect mother's rights and ordered that only an attorney who would be subject to sanctions could file father's future motions. On this record, we find no basis to reverse the district court's determination that father is a frivolous litigant and that preconditions on father's future motions are necessary.

III. Father's additional claims are forfeited and meritless.

Father raises claims of generalized errors, asserting violations of the First Amendment and Sixth Amendment, presumably to the United States Constitution. Father also raises arguments relating to a prior DANCO, alleging that the district court violated Minnesota's false-reporting-of-child-abuse criminal statute, and alleging errors in the evidentiary hearing's transcript.

While all but two of father's claims are not properly before this court because they were not first brought before the district court, *Thiele*, 425 N.W.2d at 582, all are forfeited as conclusory arguments made without support of legal authority. *Brodsky*, 733 N.W.2d at 479; *see also Weitzel v. State*, 883 N.W.2d 553, 554 n.1 (Minn. 2016) (clarifying distinction between waiver and forfeiture). Nonetheless, we have carefully reviewed the record and conclude that father's additional arguments are without merit. *See Moore v. Moore*, 391 N.W.2d 42, 44 (Minn. App. 1986) (summarily disposing of arguments without merit).

Affirmed.