STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0159

In re the Marriage of:
Samuel H. Boimah, petitioner,
Appellant,

vs.

Felitrice Nina Boimah,
Respondent.

Filed December 6, 2021
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-10-8320

Samuel H. Boimah, Brooklyn Park, Minnesota (pro se appellant)

Felitrice Boimah, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Father appeals from an order cancelling a second-opinion evaluation of daughter's readiness for reunification therapy. He argues the district court abused its discretion by: (A) misinterpreting the order allowing father to request a second-opinion evaluation, (B) relying on facts outside the record, and (C) adding a new requirement before the

evaluation could take place. Because the district court did not abuse its discretion, we affirm.

FACTS

In December 2004, appellant Samuel H. Boimah (father) and respondent Felitrice Torres (mother) were married. One year later, they had a daughter. In February 2011, they divorced.

Custody over daughter has changed several times. At first, father and mother shared joint legal custody, while mother received sole physical custody. A few months later, mother left daughter with father along with a letter stating she was homeless and intended to give up her parental rights. The district court issued an ex parte order granting father temporary sole legal and temporary sole physical custody. In December 2011, the district court again ordered joint legal custody, while father received sole physical custody. Between March 2013 and May 2014, mother filed three motions to modify custody, alleging father abused and endangered daughter. The district court ordered daughter to enter therapy but did not modify legal or physical custody.

On August 4, 2015, father left mother a voicemail threatening to kill mother. Citing the voicemail, mother petitioned for and, after an evidentiary hearing, received an order for protection (OFP), which among other things prohibited father from contacting daughter except for reunification therapy. The OFP also granted mother temporary sole legal and temporary sole physical custody of daughter. And the OFP included detailed factual findings about father's physical and emotional abuse of daughter.

The state filed criminal charges based on the voicemail threat and, after a bench trial, a district court convicted father of gross-misdemeanor stalking in October 2015.[1] The district court also issued a criminal domestic-abuse-no-contact order (DANCO) that prohibited father from contacting mother and daughter; the DANCO expired in August 2018.

In October 2017, mother and father presented the district court with a stipulated order about parenting time, which the district court adopted. As part of this order, the district court reserved father's parenting time and provided that daughter was to keep meeting with her therapist and preparing for reunification therapy. The order also stated reunification therapy was to begin at "some time and to occur as frequently as recommended by [father's therapist] . . . in consultation with [daughter's] therapist."

In May 2018, mother moved to modify custody so she would have sole legal and sole physical custody, arguing father had endangered daughter, as found in the OFP and reiterated in a guardian ad litem's report. The district court found mother presented a prima facie case and ordered an evidentiary hearing.

January 2019 order modifying custody

After an evidentiary hearing, the district court issued written factual findings in a January 2019 order. The district court found daughter's therapist to be credible when testifying about certain subjects: daughter's reports of physical and sexual abuse by father,

[1] Father appealed from the judgment of conviction and we affirmed. *See State v. Boimah*, No. A16-1346, 2017 WL 2332723 (Minn. App. May 30, 2017), *rev. denied* (Minn. Sept. 27, 2017).

daughter's "demeanor and reactions" including daughter's "stress response when her Father is mentioned," and daughter's fear that father would punish her because she "told on him." The district court made detailed best-interest findings, including that forced reunification therapy "risks significant and perhaps permanent damage to [daughter's] long-term emotional health." The district court found a substantial change of circumstance had occurred and parenting time between father and daughter was "likely to endanger [daughter's] emotional health, mental health or cause [daughter] to regress in all the progress she [had] made thus far in her mental health therapy."

Based on these findings, the district court determined it was in daughter's best interest to modify custody and granted mother sole legal and sole physical custody of daughter. The district court also restricted father's parenting access "until such time as he [could] receive services to assist in appropriate parenting and receive counseling about endangerment of [daughter]." The district court directed father and daughter to keep working with their respective therapists and ordered father to "follow all recommendations." The district court also ordered mother to ensure that daughter attended therapy "on a regular basis and follow[ed] all recommendations of her therapist."

Relevant to the issues on appeal, the January 2019 order also stated, "[r]eunification therapy between [daughter] and Father shall commence only when [daughter's] therapist recommends she is ready." The order continued, "[i]f the child is still reported to be unamenable to participation in a restorative parenting session by July 1, 2019, Father may request that the child be evaluated by another mental health professional for a second opinion." The January 2019 order described this provision as an alternate "mechanism" for

father and explained that daughter's therapist was "effectively the gatekeeper to the restorative process."

September 2019 order allowing a second-opinion evaluation

In June 2019, the case was reassigned to a different district court judge. In August 2019, father moved for a second-opinion evaluation, stating daughter's therapist had not recommended reunification therapy. After a hearing, the district court issued an order stating a second-opinion evaluation was appropriate "as to whether the minor child is ready for the therapeutic process of reunification with Father" and appointed an evaluator (September 2019 order).

More than one year later, in November 2020, the court-appointed evaluator informed the district court that mother had withdrawn her consent for the evaluator to access daughter's therapeutic record. The district court, mother, father, and the evaluator participated in a phone conference on December 10, 2020. Following the phone conference, the district court ordered a review hearing on December 23, 2020.

December 2020 order cancelling the second-opinion evaluation

After the December 23 review hearing, the district court issued a written order (December 2020 order). After summarizing the long procedural history, the district court noted daughter had been estranged from father for six years and would be 15 years old "at the end of th[e] month." The district court found father had received services from a therapist who had reported during earlier custody proceedings that father had made "some progress." But the district court also noted earlier orders "made clear that Father had to

progress to a point of acknowledging the child's fears and accepting responsibility before the child would be required to meet with him."

Based on father's statements at the December phone conference and review hearing, the district court stated, "Father continued to assert that he has done nothing wrong, that Mother is to blame for the child's accusations and fears, that [daughter's therapist's] involvement is somehow suspicious, and that Father is the victim in this case." The district court also found "Father ha[d] made no progress towards being able to meet the child halfway and listen to her." The district court then concluded "[i]t is not in the child's best interest at this point to have the prospect of a reunion with Father hanging over her head." The December 2020 order cancelled the second-opinion evaluation and closed the case until father could provide proof of "sufficient progress in his own therapy to be able to accept the child's claims of abuse and acknowledge her fears."

Father appeals.[2]

DECISION

I. The district court did not abuse its discretion by cancelling the second-opinion evaluation of daughter's readiness for reunification therapy.

Decisions about a child's medical care are questions of legal custody. Minn. Stat. § 518.003, subd. 3(a) (2020). Generally, questions of child custody are discretionary with the district court. *Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018); *see Novak v. Novak,* 446 N.W.2d 422, 424 (Minn. App. 1989) ("the law makes no distinction between

[2] Mother did not file a brief with this court; still, "the case shall be determined on the merits." Minn. R. Civ. App. P. 142.03.

general determinations of custody and resolution of specific issues of custodial care"), *rev. denied* (Minn. Dec. 1, 1989). A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *see Honke v. Honke*, 960 N.W.2d 261, 265 (2021) (citing this aspect of *Dobrin*).

Father's brief to this court states six arguments, but several overlap and we understand him to support his position that the district court abused its discretion by making three arguments. First, father contends the district court misinterpreted the January 2019 order that restricted his parenting time and allowed him to request a second-opinion evaluation. Second, father argues the district court relied on facts outside the record to cancel the second-opinion evaluation. Third, father contends the district court added a new requirement before he could request a second-opinion evaluation. We address each argument in turn.

A. The district court correctly interpreted the January 2019 order by limiting the scope of the second-opinion evaluation to daughter's readiness for reunification therapy.

Father argues the district court erred in the December 2020 order by limiting the second-opinion evaluation to daughter's readiness for reunification therapy. He contends this is "an error" because the evaluation should "reinvestigate the case or the therapeutic work of [daughter's therapist]." The district court rejected this argument and found earlier proceedings had "made clear that the purpose of the 'second opinion' was not to reinvestigate the original claims of abuse but to provide a second opinion of the child's

readiness to engage in reunification therapy." Generally, "[w]hether a provision in a dissolution judgment and decree is clear or ambiguous is a legal question." *Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014) (quotations and citations omitted). If a provision is unambiguous, courts apply its plain meaning. *Wolf v. Oestreich*, 956 N.W.2d 248, 253 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021).

Father does not argue the provisions in the January 2019 order are ambiguous. Our review of the January 2019 order supports the district court's interpretation of the scope and purpose of the second-opinion evaluation, which the January 2019 order mentioned in two places. First, the January 2019 order described the second-opinion evaluation as an "attempt[] to create a mechanism for Father, at the appropriate time, to seek a second opinion on whether restorative parenting contact is appropriate." Second, the January 2019 order stated, "[i]f the child is still reported to be unamenable to participation in a restorative parenting session by July 1, 2019, Father may request that the child be evaluated by another mental health professional for a second opinion."

Because the unambiguous provisions of the January 2019 order support the district court's conclusion that the scope and purpose of the second-opinion evaluation is limited to daughter's readiness for reunification therapy, the district court did not err in its reading of the order.

B. The district court did not rely on facts outside the record.

Father argues the district court relied on facts outside the record when deciding to cancel the second-opinion evaluation. He points to the December 2020 phone conference and review hearing, for which no transcripts were available. We understand father's

argument to challenge two statements in the December 2020 order, both of which summarize father's statements during the phone conference and review hearing. First, the district court stated, "Father continued to assert that he has done nothing wrong, that Mother is to blame for the child's accusations and fears, that [daughter's therapist's] involvement is somehow suspicious, and that Father is the victim in this case." Second, the district court reasoned:

> Given Father's very strongly stated position that he has done nothing wrong and his continued discounting of the child's view, there is no reason to continue to focus on the validity of the opinions of the child's therapist or to have a second opinion. Father has made no progress towards being able to meet the child halfway and listen to her. It is not in the child's best interest at this point to have the prospect of a reunion with Father hanging over her head.

While father's argument is not entirely clear, he appears to dispute the accuracy of the two statements in the December 2020 order.

In his brief to this court, father cites no legal authority supporting his claim that the district court relied on facts outside the record. Generally, appellate courts decline to consider issues that are inadequately briefed. *State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal); *see also State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (stating the supreme court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.") Even if we consider the issue, however, our review discloses that neither of the challenged statements is based on facts outside the record.

To begin, the record on appeal includes "documents filed in the trial court, the exhibits, and the transcript of the proceedings." Minn. R. Civ. App. P. 110.01. Thus, the district court's December 2020 order is in the record. *Id.* If there were transcripts for the December telephone conference and review hearing and the transcripts were filed with the court then those transcripts would be part of the record. *Id.* Both the telephone conference and the review hearing, however, were held off the record so no transcripts are available to this court.

Still, father had the option of preparing a record of the December telephone conference and review hearing: "[I]f a transcript is unavailable, the appellant may prepare a statement of the proceedings from the best available means, including recollection." Minn. R. Civ. App. P. 110.03. Father did not prepare a statement of the proceedings, so the available record is the December 2020 order. Father argues, "it is important for the court to produce the transcript or recoding of those two days hearing," but we reject that claim. It is appellant's duty to provide an adequate record for appellate review. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995).

We conclude the district court did not rely on facts outside the record for three reasons. First, father does not identify any statements in the order that are based on facts outside the record and none are apparent to us. The challenged portions of the December 2020 order merely summarize father's statements and positions during the telephone conference and review hearing. Arguments are neither facts nor evidence. *See generally State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004) (discussing argument of legal counsel).

The record also supports the district court's summary of father's statements and positions. Indeed, father's brief to this court makes assertions similar to those identified in the December 2020 order. For example, father's brief to this court asserts, in part, that the district court erred by cancelling the second-opinion evaluation because "he is innocent and he didn't do anything wrong to his child," and mother "connived with" child's therapist and "defrauded the court system and place[d] the child in therapy with the motive of getting Father in serious criminal charges." Father also argues on appeal that he should not need to make progress in his therapy before a second-opinion evaluation is ordered. While the merits of father's argument are analyzed below, the point here is straight-forward: father's positions on appeal align with the district court's summary of his positions in the December 2020 order.

Second, if father is asserting that the district court's order misidentified the relevant facts, his failure to provide a transcript dooms his argument: Appellate courts do not review factual disputes without a transcript. *See Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (Minn. 1970) (noting lack of a transcript precludes review of factual questions); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that "on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

Third, even if we assume father contradicted some or all statements during the December telephone conference and review hearing, and that we could review the question, we conclude the district court essentially weighed those statements or made a credibility

determination about father's actual position during district court proceedings. We will not reweigh father's statements or second-guess a district court's credibility determination. *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder").

C. The district court did not abuse its discretion by requiring father to make sufficient progress in therapy before he can move to reopen the issue of reunification therapy.

Father argues the district court is "changing the rules" by stating in the December 2020 order that father must make sufficient progress in therapy before the case can be reopened. Father's argument assumes the January 2019 order, which allowed father to request the second-opinion evaluation, did not require father to progress in therapy. Father is not correct.

In the January 2019 order, the district court determined that father's parenting time would be restricted "until such time as he [could] receive services to assist in appropriate parenting and receive counseling about endangerment of [daughter]." It is also important to observe that the September 2019 order allowing a second-opinion evaluation recognized that father's desire for reunification was not sufficient and daughter's readiness for reunification was paramount. The district court stated it was "concerned that Father views the minor child's therapy solely as the means to facilitate reunification with Father." The September 2019 order noted,

> Father should be mindful of the possibility that the minor may not soon—or perhaps ever—be emotionally prepared to handle a reunion with Father without suffering serious psychological

> harm. Doubtless that outcome would be painful for Father, but a minor child's best interests must take priority over a parent's desire for reunification.

The district court's statement on this point follows caselaw: "While obviously parents have real and substantial rights in rearing and educating their children, it is axiomatic that such rights are subordinate to the welfare of the child where there is a conflict." *Eisel v. Eisel*, 110 N.W.2d 881, 884 (Minn. 1961).

Both the January 2019 order and the September 2019 order provided that reunification therapy has two prerequisites—father's progress in his therapy and daughter's readiness. Thus, the district court did not add a new requirement when it stated father can seek to reopen the case after he makes sufficient progress in therapy.

For these reasons, we conclude the district court did not abuse its discretion by canceling the second-opinion evaluation of daughter's readiness for reunification therapy.

Affirmed.