STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0636

Miguel Lionel Garza, petitioner,
Appellant,

vs.

Minh Van Tran Thi,
Respondent.

Filed June 20, 2022
Affirmed
Segal, Chief Judge

Ramsey County District Court
File No. 62-FA-17-1486

James C. Lofstrom, Lofstrom Law Office, P.C., Eagan, Minnesota (for appellant)

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal, father challenges the district court's reversal of the parenting consultant's decision regarding which school the joint child of the parties would attend. We affirm.

FACTS

Appellant-father Miguel Lionel Garza and respondent-mother Minh Van Tran Thi are the parents of J.H.G. (the child), who was born in August 2009. The parties never married and live separately. In May 2017, father served mother with a petition to establish custody and parenting time, and mother filed a counterpetition. Following a lengthy dispute, the parties reached agreement on all issues at a settlement conference in June 2019. The district court issued an order for custody in July 2019 that was consistent with the terms agreed upon by the parties. Relevant to this appeal, the order provided that the child would attend school in Burnsville starting in the fall of 2019. The order also noted that the parties agreed to the appointment of a parenting consultant "to resolve any conflicts arising from custody decisions or parenting time disputes."

By separate order, the district court appointed the agreed-upon parenting consultant. The order set out the scope of the parenting consultant's authority and a nonexhaustive list of powers, which included the authority to "[d]ecide the appropriate school placement for the child[]." The order allowed either parent to obtain district court review of parenting-consultant decisions and specified that the district court "shall review the decisions of the [parenting consultant] using the abuse of discretion standard."

In January 2020, mother made a request to the parenting consultant that the child be transferred from Burnsville, where the child was attending fifth grade, to the Woodbury school district for middle school, beginning with the 2020-21 school year. Father proposed that the child continue to attend school in Burnsville. Both parents submitted written arguments to the parenting consultant and mother provided a report from an expert she had

retained that compared the quality of the Woodbury and Burnsville schools. The parenting consultant spoke with one of the child's teachers, the child's therapist, and the parties' custody evaluator. The parenting consultant also had a psychologist interview the child and report her general findings to the parenting consultant. In August 2020, the parenting consultant issued a decision determining that the child would attend middle school in Burnsville.

In September 2020, mother filed an emergency motion in the district court challenging the parenting consultant's decision. Mother requested that the district court not follow the recommendations of the parenting consultant and instead order that the child attend school in Woodbury effective immediately. The district court denied the request for emergency relief. Mother requested reconsideration, but the district court again denied emergency relief.

The district court held a hearing in December 2020 on mother's challenge to the decision of the parenting consultant. The parties made their arguments on school placement for the child, but the district court determined that it needed more information. As a result, the district court continued the motion hearing to allow time for in camera review of the records from the psychologist who interviewed the child at the request of the parenting consultant and from the child's therapist. The district court held a second hearing on mother's motion in February 2021.

The district court issued an order in May 2021 reversing the decision of the parenting consultant. The district court determined that the parenting consultant's decision is not in the best interests of the child. The district court then analyzed the best-interests

factors set out in Minn. Stat. § 518.17, subd. 1(a) (2020), and determined that it is in the best interests of the child to attend school in Woodbury. The district court granted mother's motion and ordered that the child attend Woodbury Middle School starting in the fall of 2021 and that the child is to remain in the Woodbury school district through her graduation from high school. Father appeals.

DECISION

Father argues that the district court erred by reversing the decision of the parenting consultant regarding which school the child is to attend. A district court's decision concerning the school to be attended by a child is a custody determination that we review for an abuse of discretion. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008); *see Wolf v. Oestreich*, 956 N.W.2d 248, 253 (Minn. App. 2021) (noting that "[d]ecisions regarding school choice are educational decisions within the ambit of legal custody"), *rev. denied* (Minn. May 18, 2021). Our review is therefore "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).

"A child's best interests are the fundamental focus of custody decisions." *Vangsness v. Vangsness*, 607 N.W.2d 468, 476 (Minn. App. 2000). The district court's factual findings "regarding the best-interest factors are reviewed for clear error." *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018). The clear-error standard of review "does not permit an appellate court to weigh the evidence as if trying the matter *de novo*" or "to engage in fact-finding anew." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted). Rather, appellate courts "fairly consider[] all the

evidence" and determine whether "the evidence reasonably supports the [district court's] decision." *Id.* at 222.

Minnesota Statutes section 518.17, subdivision 1(a), provides that "[i]n evaluating the best interests of the child for purposes of determining issues of custody . . . the court must consider and evaluate all relevant factors," and the subdivision contains a nonexhaustive list of factors for consideration. In determining that the parenting consultant reached a decision that was not in the best interests of the child, the district court noted that "based on the evidence, the [parenting consultant's] report and recommendation did not take into account the Child's preference for Woodbury Middle School, her need and desire for close friendships available to the Child at Woodbury Middle School, and the academic benefits of a more superior curriculum to help the Child reach her fullest potential." Thus, the district court determined that the parenting consultant failed to consider relevant factors when evaluating the best interests of the child. The district court conducted an independent analysis that addressed each statutory best-interests factor and determined that the factors weighed in favor of the child attending school in Woodbury.[1]

[1] We note that the order appointing the parenting consultant provided that the district court would review decisions by the parenting consultant using the abuse-of-discretion standard. But this court has previously observed that "if the parenting consultant's determination of school attendance [is] not in the child[]'s best interests, the decision [is] an abuse of discretion, and the district court [cannot] adopt[] it." *Schultz v. Ruff*, No. A14-1762, 2015 WL 4715189, at *4 (Minn. App. Aug. 10, 2015). Although *Schultz* is nonprecedential and therefore only of persuasive value, *see* Minn. R. Civ. App. P. 136.01, subd. 1(c), its holding is consistent with the established principle that the "paramount issue" in custody-related matters is always the best interests of the child. *See Petersen v. Petersen*, 206 N.W.2d 658, 659 (Minn. 1973). And a district court "must in every case exercise an independent judgment" regarding best interests. *Id.*

Father challenges the district court's best-interests determination. He first argues that the district court abused its discretion because the parties stipulated that the child would attend school in Burnsville. Mother disputes this assertion and contends that the stipulation only covered the child's fifth grade year and left open for future resolution which school the child would attend for middle school and high school. We need not resolve this dispute because, while "considerable weight is given to stipulations intelligently entered . . . , in determining questions of custody[,] the paramount issue remains the welfare and best interests of the child[]." *Petersen*, 206 N.W.2d at 659. As a result, "[t]he [district] court must in every case exercise an independent judgment and is not bound by the stipulation." *Id*. Thus, even if the parties previously agreed that the child would attend school in Burnsville, the district court was not bound by such stipulation and was instead required to conduct an independent best-interests analysis. *See generally Spratt v. Spratt*, 185 N.W. 509, 510 (Minn. 1921) (stating that "[e]ven a written agreement with reference to the custody of a child is not binding on the courts when the best interests of the child is shown to require a disposition contrary to that provided under the agreement"); *Aumock v. Aumock,* 410 N.W.2d 420, 421 (Minn. App. 1987) (rejecting parents' agreement to waive child support because doing so would be contrary to the best interests of the children).

Father next argues that "[m]any of the [district] court's findings [are] simply not supported by the evidence." As noted above, we review factual findings for clear error and may not reweigh the evidence or "engage in fact-finding anew." *Kenney*, 963 N.W.2d at 221-22 (quotation omitted). Rather, we must consider the evidence presented and

determine whether "the evidence reasonably supports the [district court's] decision." *Id.* at 222.

Here, the record reasonably supports the district court's findings and ultimate best-interests determination. The district court found:

> The heart of the issues for the Child is her need to maintain a close circle of friendships, and enrollment in a school district with strong academics that will allow her to reach her full potential—which the Woodbury School District can offer to the Child more so than the Burnsville School District.

The district court acknowledged that the child needs stability, but also noted that the child had attended school in the Woodbury school district before and has close friends in that district. This finding is supported by the notes from the psychologist who interviewed the child, which listed the child's four close friends who attend school in Woodbury. By contrast, the parenting consultant's decision notes that the two children identified by the child as friends from fifth grade in Burnsville would not be returning to the Burnsville school district for middle school. The record also reveals that the child expressed feeling anxiety over whether her friends will be there for her and be a constant in her life, which supports the district court's determination that attending a school district where she has identified close friends would best serve her emotional needs.

The district court noted that it was not basing its finding solely on which school offered better academics, but "which school is better for *this* Child's educational and personal needs." The district court found that, "[g]iven the Child's abilities, curiosities, and desire to be challenged, the Child's academic needs will be better met at Woodbury

Middle School." The district court also made note of the fact that the child is a strong academic student and that Woodbury offers a stronger academic challenge and the opportunity to participate in more activities. Finally, the district court considered the child's description of her ideal school setting, including a quiet classroom, "kind" classmates, a locker and desk to store her personal items, and the ability to participate in more extracurricular activities. Based on the evidence presented to the district court concerning the attributes of the two schools, the district court determined that the Woodbury school district would be the better fit for the child based on the child's stated preferences.

On this record, we discern no clear error in the district court's factual findings, and those findings reasonably support the determination that it is in the best interests of the child to attend school in Woodbury. The district court therefore did not abuse its discretion in reversing the decision of the parenting consultant and ordering that the child attend school in Woodbury.

Affirmed.