STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0773

In re the Marriage of: Sarah Meagan Gallo,
Respondent,

vs.

Robert Warren Gallo, petitioner,
Appellant.

Filed February 28, 2022
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Hennepin County District Court
File Nos. 27-FA-16-5898, 27-FA-17-4203

Sarah M. Gallo, Bloomington, Minnesota (pro se respondent)

Robert A. Manson, Robert A. Manson, P.A., Roseville, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this parenting-time dispute, appellant-father challenges the district court's decisions (1) restricting his parenting time with his child without a finding of endangerment; (2) ordering a parenting assessment; (3) denying his motion to hold mother in civil contempt of court; and (4) denying his request for attorney fees. Because the district court's parenting-time orders are unclear and contradictory, we reverse and remand those

portions of the district court's order. The district court may also review its parenting-assessment order on remand. We affirm the remaining aspects of the district court's orders.

FACTS

Appellant-father Robert Warren Gallo and respondent-mother Sarah Meagan Gallo are the parents of a minor child, L.G., born in 2013. The parties divorced in October 2017. On April 4, 2018, the district court issued a custody order awarding mother sole legal and sole physical custody of L.G. and establishing parenting time for father.

In June 2018, mother unilaterally suspended father's parenting time with L.G. Six months later in December 2018, mother moved the district court to formally suspend father's parenting time. In response, father moved to (1) deny mother's motion, (2) find mother in constructive contempt for denying his parenting time, (3) award father compensatory parenting time, and (4) order mother to pay conduct-based attorney fees. The district court found that mother made a prima facie showing that the child's parenting time with father endangered the child and set a date for a future evidentiary hearing. The district court also ordered that, pending that hearing, father's parenting time be supervised. The district court did not rule on the remaining issues.

In July 2019, father moved the district court to (1) find that father made a prima facie case for modification of custody, and (2) award father attorney fees, among other things. Mother moved the district court to (1) deny father's motion, and (2) award her conduct-based attorney fees. The district court held an evidentiary hearing to consider mother's motion to suspend father's parenting time. In March 2020, the district court filed

an order requiring that father's parenting time with L.G. be supervised and reserving all other issues.

Father then moved for amended findings or for a new trial, the district court denied that motion in September 2020, and father appealed the March 2020 and September 2020 orders. This court dismissed that appeal as premature and remanded for the district court to "promptly resolve" the outstanding issues. *Gallo v. Gallo*, No. A20-1438 (Minn. App. Dec. 16, 2020) (order). After a hearing on remand, the district court entered a final judgment in April 2021, denying father's motions for contempt and for conduct-based attorney fees. Father appeals.

DECISION

I. We reverse and remand the district court's parenting-time decisions.

Father challenges the district court's parenting-time determinations. Generally, questions of child custody are discretionary with the district court. *See Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018) (noting that "a district court has broad discretion in determining custody and parenting time"); *see also* Minn. Stat. § 518.003, subd. 3(f) (2020) (defining a "[c]ustody determination" to include a parenting-time decision). 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. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A reviewing court will "set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Goldman v. Greenwood*, 748

N.W.2d 279, 284 (Minn. 2008). Findings are clearly erroneous if they are not reasonably supported by the evidence as a whole or are manifestly contrary to the weight of the evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing, in a commitment appeal, the clear-error standard for reviewing findings of fact and noting that the standard applies "across many contexts").

We begin by addressing the district court's orders related to father's parenting time. The April 2018 custody order awarded father parenting time every other weekend "from after school on Friday until drop off at school/daycare on Monday morning," and every Wednesday evening but did not require father's parenting time to be supervised.

In its March 2020 order requiring father's parenting time with L.G. to be supervised, the court also ordered that:

> Father's current parenting time schedule should remain in place if the parties are able to arrange for supervised parenting time. Accordingly, the Court finds that Father shall have two hours of supervised parenting time . . . on every other Friday, Saturday, Sunday, and Monday, and every Wednesday.

Thus, the April 2018 order awards father parenting time "from after school on Friday until drop off at school/daycare on Monday morning," and every Wednesday evening. And the March 2020 order states that "[f]ather's current parenting time schedule should remain in place if the parties are able to arrange for supervised parenting time." But the March 2020 order also identifies father's parenting time as "two hours of supervised parenting time . . . on every other Friday, Saturday, Sunday, and Monday, and every Wednesday." Under these circumstances, it is unclear to us whether, and how much (if any), the March 2020 order reduced father's parenting time.

The district court's September 2020 order does not clarify the March 2020 order. That order recognizes that the "baseline" parenting-time schedule for L.G. is set by the April 2018 order, states that "[t]he [March 2020] Order converted Father's parenting time to supervised parenting time on those same days," and asserts that it "maintain[ed] Father's parenting time days," such that he "still sees [L.G.] every other weekend from Friday to Monday, and every Wednesday." The September 2020 order also claims that the "parenting time days remain the same," without acknowledging that the number of hours decreased from 24 hours a day of unsupervised time to two hours a day of supervised time.

But in the April 2021 order filed on remand, the district court states that "the Court ordered that Father should have supervised parenting time with [L.G.] every other weekend from Friday to Monday for two hours each day and every Wednesday for two hours." Thus, the April 2021 order suggests that the district court reduced father's parenting time from the entire weekend to just two supervised hours per day.

Reading these three orders together, it is unclear to us what parenting time, exactly, the district court ordered. On remand, the district court shall clarify the nature and extent of the parenting time awarded to father. When doing so, the district court may reevaluate the propriety of any reduction, restriction, or modification of father's parenting time, considering that clarification. Whether to reopen the record on remand shall be discretionary with the district court.

II. The district court may reconsider its parenting-assessment decision on remand.

Father challenges the portion of the district court's April 2021 order making his participation in a parenting assessment a prerequisite to the district court addressing his motion for unsupervised parenting time. We assume for the purpose of this opinion that the district court's order for a parenting assessment is analogous to an order for a custody evaluation. And we review a district court's decision to order a custody evaluation for an abuse of discretion. *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 696 (Minn. App. 2001) (addressing custody evaluations), *rev. denied* (Minn. Aug. 15, 2001).

In custody disputes, the district court "may order an investigation and report concerning custodial arrangements for the child." Minn. Stat. § 518.167, subd. 1 (2020); *see also id.*, subd. 2(b) (2020) (addressing the content of the report produced by an investigation). On remand, the district court may consider whether a parenting assessment is still necessary, after it clarifies its parenting-time decision.

III. The district court did not abuse its discretion by denying father's motion to hold mother in civil contempt of court.

Father argues the district court improperly denied his motion to hold mother in constructive civil contempt of court. Civil contempt orders are remedial and "are designed to induce future performance of a valid court order, not to punish past failure to perform." *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). The Minnesota Supreme Court has outlined the minimum requirements, known as *Hopp* factors, that a civil-contempt proceeding must meet:

(1) the court has jurisdiction over the subject matter and the person;
(2) a clear definition of the acts to be performed;
(3) notice of the acts to be performed and a reasonable time within which to comply;
(4) an application by the party seeking enforcement giving specific grounds for complaint;
(5) a hearing, after due notice, to give the nonperforming party an opportunity to show compliance or the reasons for failure;
(6) a formal determination by the court of failure to comply and, if so, whether conditional confinement will aid compliance;
(7) an opportunity for the nonperforming party to show inability to comply despite a good faith effort; and
(8) the contemnor's ability to gain release through compliance or a good faith effort to comply.

Hopp v. Hopp, 156 N.W.2d 212, 216-17 (Minn. 1968). The district court has broad discretion to hold an individual in contempt, which we review for an abuse of discretion. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *rev. denied* (Minn. Oct. 16, 2001).

In June 2018, mother unilaterally suspended father's parenting time with L.G., and father did not have parenting time with L.G. until March 2019. In January 2019, father moved the district court to find mother in constructive civil contempt of court for denying him his parenting time during this period. The district court held a hearing in January 2021 to give mother an opportunity to explain why she disregarded the custody order, and to consider the *Hopp* factors. *See Hopp*, 156 N.W.2d at 216 (stating that "upon due notice[,] a hearing [shall] be conducted and at such hearing the party charged with nonperformance be given an opportunity to show compliance or his reasons for failure").

In its resulting order, the district court found that mother "did not comply with the parenting time ordered in the Custody Order" but declined to find mother in contempt of court because it found that mother's noncompliance with the custody order was, under the circumstances, reasonable. The district court found that mother had "good reason" for failing to comply with the custody order because a child protection services (CPS) social worker advised mother that she did not have to allow father to have parenting time with L.G. if she was concerned for L.G.'s safety.[1] Based on its finding that mother's noncompliance with the custody order was, under the circumstances, "reasonable" (or at least excusable), the district court determined that mother did not act "contumaciously, in bad faith, or out of disrespect for the judicial process." *See Minn. State Bar Ass'n v. Divorce Assistance Ass'n*, 248 N.W.2d 733, 740 (Minn. 1976).

Upon review, we are satisfied both that the district court adequately addressed each *Hopp* factor, and that the record supports its determinations on those factors. As for the final three factors, the district court determined that mother failed to comply with the custody order by denying father parenting time, but that mother's noncompliance was excusable because she relied on representations from CPS that L.G. should not have parenting time with father. While father disagrees with the district court's analysis, we

[1] Father argues that the instruction of a CPS social worker should not supersede a district court order. We agree with father that the CPS social worker lacked the authority to direct, or even to suggest, that mother disregard the existing court order. The better course for mother would have been to file a motion in the custody case and have the district court resolve parenting-time concerns.

discern no abuse of discretion. We therefore affirm the district court's decision denying father's motion for contempt.

IV. Father's challenge to the district court's denial of his motion for attorney fees is not properly before this court.

Finally, father challenges the district court's denial of his motion for attorney fees, but his brief includes only two sentences on this point and he cites no legal authority to support his assertion. "[E]rror is not presumed on appeal, and the burden of showing error rests on the party asserting it." *Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011). A party forfeits a claim by failing to support it with argument or authority. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017). Father failed to adequately brief his attorney-fee argument because he cited neither the relevant portions of the record nor relevant legal authority. As a result, we consider the argument forfeited. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (noting that reviewing court may decline to reach issues that are not adequately briefed); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).

Affirmed in part, reversed in part, and remanded.