

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1133**

In re the Marriage of:

Teresa Corinne MacNabb, petitioner,
Respondent,

vs.

John Michael Kysylyczyn,
Appellant.

**Filed April 11, 2022
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-FA-08-2020

Teresa Corinne MacNabb, Little Canada, Minnesota (pro se respondent)

Carl A. Blondin, Oakdale, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Despite a court order stating that respondent Teresa MacNabb (mother) had parenting time with her children on Christmas Day, appellant John Kysylyczyn (father) left a letter at mother's office informing her that he would be taking their children on an extended Christmas vacation. He then followed through with the trip. After father returned

two days late into mother's regular parenting time, the district court heard motions on parenting issues, including a request for full custody by father and a request for compensatory parenting time by mother. The district court found that the deprivation of time by father was intentional and substantial and awarded mother the following Christmas Day as well as two additional regular parenting days in compensatory parenting time. Father appeals, arguing that his deprivation of mother's parenting time does not meet the requirements of the compensatory-parenting-time statute. Because the record supports the district court's determination that father's interference was substantial, we affirm.

FACTS

Father and mother were married in 1999.¹ They divorced in 2010. The parties have two children, a 19-year-old daughter S.C.K. and a 16-year-old son M.A.K. Because S.C.K. is no longer a minor, the parties' only joint minor child is M.A.K.

Father filed a motion in December 2020 requesting in part that he be granted full legal and physical custody of M.A.K. At the time in question, an existing court order awarded father holiday parenting time on Christmas Eve, and mother holiday parenting time on Christmas Day and regular parenting time starting January 4, 2021. The order also required the parties to communicate via the computer messaging application Our Family Wizard. But before mother responded to father's motion, father took the children on a

¹ The facts are not disputed.

Christmas vacation, days before initially planned. In a letter dated December 21, 2020, left at mother's office, father explained the updated holiday plans, stating:

[Daughter], [son], and I are driving to Florida today, first stopping in Chicago to pick up two additional passengers. [Son] and I will be back either Monday, January 4th or Tuesday, January 5th.

....

At present time, you have dropped [son] off late at my home 19.5 hours. This only accounts for time you have been late more than 30 minutes. I think it is petty to be counting time less than this. You were informed of this in my letter to you on May 1, 2020. I am willing to consider all of this time to now be equalized.

Not only did father's unilateral alteration of the court-ordered parenting-time schedule deprive mother of parenting time on Christmas Day, they did not return until January 6—two days into mother's regular parenting week.

Mother responded to father's December motion, requesting that the district court deny father's motion and award her compensatory parenting time.

At a motion hearing, the district court heard testimony on the compensatory-parenting-time issue. Mother asked for Christmas Day in 2021 and two make-up days of regular parenting time for her missed time on January 4 and January 5. She emphasized that, based on father ignoring past court-ordered compensatory time, the district court should also require father to pay a cash bond to ensure that the compensatory

parenting time occur.² In response, father stated that mother had a pattern of refusing to cooperate, pointing to her delay in sending proper paperwork for M.A.K.'s passport to facilitate travel with father.

In an order following the hearing, the district court concluded that, based on Minnesota Statutes section 518.175, subdivision 6(a) (2020) (the compensatory-parenting-time statute), mother was entitled to compensatory parenting time and ordered three days of compensatory parenting time including Christmas Day 2021.³ The court reasoned that father was aware that he was denying mother her parenting time and, as shown by his letter and testimony, was acting vindictively due to her being late to parenting exchanges and failing to sign a document to secure M.A.K.'s passport—separate issues that were unrelated to mother's parenting time. The district court also took into account the duration and significance of the time mother missed.

Father appeals.⁴

² Father asserts that there has been no parenting-time issue before. This assertion is false. Father was held in contempt of court for failing to comply with the parenting-time schedule and interfering with mother's parenting time in 2019.

³ The district court ruled that father's motions to allow S.C.K. to obtain personal property from mother's home and for full legal and physical custody over S.C.K. moot because she became a legal adult. A tax-related motion was reserved.

⁴ Mother did not file a brief in this appeal and this court ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

DECISION

Father does not dispute the factual findings underlying the district court's order but argues that the district court erred in awarding compensatory parenting time because the interference was not "substantial."⁵

The district court has broad discretion in determining parenting-time issues. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). We review issues of compensatory parenting time for an abuse of discretion. *See id.* (addressing restricting parenting time). A district court's findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous. *Id.* (citing *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978)).

With this standard of review in mind, we turn to the compensatory-parenting-time statute, which lays out different remedies for parenting-time disputes and includes factors for how to determine the length and type of compensatory parenting time that should be awarded. The relevant portion for this appeal states:

The court may provide compensatory parenting time when a *substantial amount* of court-ordered parenting time has been made unavailable to one parent unless providing the compensatory parenting time is not consistent with the child's best interests.

Minn. Stat. § 518.175, subd. 6(a) (emphasis added). Neither this statute nor the marriage dissolution chapter defines "substantial."⁶ *See* Minn. Stat. § 518.003 (2020).

⁵ Father initially argued that the compensatory-parenting-time statute should be interpreted as requiring a "repeated and intentional" interference in all compensatory-parenting-time matters but waived that assertion at oral argument.

⁶ Father does not propose or point to a definition for "substantial."

Here, based on father’s letter left at mother’s office before Christmas and testimony at the hearing, the district court found that father deprived mother of slightly more than 50 hours of parenting time. The district court noted that the deviation was significant, particularly considering the interference with Christmas Day. Given the context that there is a specific provision about Christmas Eve and Christmas Day in the dissolution judgment and decree, father was aware that holiday time was important to both parties.⁷ In sum, the record supports the district court’s determination that father interfered with a substantial amount of mother’s parenting time. Because the finding was not clearly erroneous, the district court did not abuse its discretion in awarding compensatory parenting time.

Still, father asserts this court should create a bright line to distinguish between a de minimis amount of time and the amount considered a “substantial” interference with parenting time. But this court “will not supply that which the legislature purposefully omits

⁷ Father argues that we should focus on the word “amount,” and not give any weight to the “type” of day that was missed, meaning we should remove any significance from interference during a holiday. Even if we were to ignore the importance of holidays to the parents, in other circumstances father acknowledged the gravity of fewer missed hours. He sent one letter to mother about a combined 19.5 hours missed due to tardiness, and an additional letter complaining about an additional 7.25 hours in missed parenting time—both fractions of the time he interfered with mother’s parenting time in this case.

or inadvertently overlooks” when considering statutes.⁸ *Green Giant Co. v. Comm’r of Revenue*, 534 N.W.2d 710, 712 (Minn. 1995).⁹

Because the record supports the district court’s determination that father substantially interfered with a substantial amount of parenting time, the district court did not err by awarding compensatory parenting time to mother.

Affirmed.

⁸ Further, we observe that the idea of a mathematically-based “bright line” rule is simply inconsistent with the inherently discretionary nature of decisions regarding parenting time. *See Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018) (refusing to create a “bright-line rule” for determining whether a request to change parenting time was actually a motion to modify custody, in part because a “mathematical rule” would “conflict[] with the governing principle that a district court has broad discretion in determining custody and parenting time matters”).

⁹ There has only been one case, albeit nonprecedential, involving the compensatory-parenting-time statute after the substantial-deviation language was added. In *Tandoh v. Nelson*, we concluded the district court did not abuse its discretion in determining that Nelson intentionally interfered with court-ordered parenting time by allowing her child to miss a weekend with the father. No. A18-0807, 2019 WL 418610, at *3 (Minn. App. Feb. 4, 2019). While we were not asked to and did not define “substantial” in that case, the amount of time that the parent interfered with parenting time in *Tandoh* is roughly the same amount as here. *Id.* at *1.