STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0974

In re the Marriage of: Philip Lynn Knutson, petitioner,
Appellant,

vs.

Alissa Ann Knutson,
Respondent,

Polk County Human Services,
Intervenor.

Filed May 22, 2023
Affirmed
Reilly, Judge

Polk County District Court
File No. 60-FA-20-1242

Sarah M. Kyte, Kyte Law Office, Grand Forks, North Dakota (for appellant)

Laura June, Julie K. Seymour, Seymour Family Law, Lakeville, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this parenting dispute, appellant-father argues that the district court abused its discretion in modifying the schedule for parenting time with respondent-mother. We affirm.

FACTS

Appellant-father and respondent-mother were married in May 2003 and have three children: Child 1, born in November 2004[1]; Child 2, born in July 2006; and Child 3, born in September 2010. In September 2020, the district court approved a stipulated judgment and decree dissolving the parties' marriage. The judgment and decree ordered father and mother to share joint legal custody and joint physical custody of the children. The parties developed a schedule for parenting time (the schedule). The schedule provided that the children would live with father Monday through Friday and the parties would split weekends, summers, holidays, and school-release days. The schedule did not set specific dates, days, or times for these exchanges. The parties expected that father would have 260 (71%) overnights with the children each year, while mother would have 105 (29%) overnights each year.

In November 2021, mother filed a motion for parenting-time assistance to modify the schedule. Mother requested an order (1) specifying that the parties meet for custody exchanges at 7:00 p.m. on Fridays and 3:00 p.m. on Sundays; (2) specifying that mother would have the children either two weekends per month or alternating weekends; (3) setting a holiday schedule; (4) setting a summer schedule; and (5) ordering telephone contact between mother and the children. Mother requested parenting time with all three children. The parties attended mediation to resolve these issues, but they failed to reach an agreement.

[1] Child 1 has since turned 18 years old.

In April 2022, father filed a response and countermotion, along with a proposed parenting-time schedule. Father suggested that mother could have parenting time with Child 3—but not with Child 1 or Child 2—one weekend per month during the school year, with the possibility of a second weekend per month under certain conditions. Father proposed that mother would "not be entitled to any parenting time with [Child 1] and [Child 2]." Father also proposed that mother could have parenting time with Child 3 during summer breaks and holidays.

The district court held a hearing on the parties' competing motions. The district court issued an order in May 2022. The order recognized that the parties shared joint legal and joint physical custody of the children, "with an unequal parenting time schedule." The order also recognized that "[t]he parties specifically allocated parenting time with the children at 71% to [father] and 29% to [mother]." The district court then specified parenting time, parenting-time changes, transportation details, and other matters. In so doing, the district court rejected father's proposal. Instead, the district court ordered that mother "shall have regular parenting time with the minor children on alternating weekends" from 7:00 p.m. on Friday until 3:00 p.m. on Sunday. The district court also set a schedule for summer breaks and holidays. Father appeals.

DECISION

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"). 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 way that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022); *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 Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021).

I. The district court did not abuse its discretion when it determined that father's proposal would constitute a restriction of mother's parenting time.

The district court first considered whether each parent's proposed changes to the schedule constituted a restriction or a modification of parenting time. Generally, the standard for modifying parenting time requires the moving party to show only that the proposed "modification would serve the best interests of the child." Minn. Stat. § 518.175, subd. 5(b) (2022). But a district court 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," or where "the parent has chronically and unreasonably failed to comply with court-ordered parenting time." *Id.*, subd. 5(c) (2022). While a "restriction" of parenting time is not defined by statute, when addressing "whether a reduction in parenting time constitutes a restriction or modification [of parenting time], the court should consider the reasons for the changes as well as the amount of the reduction." *Suleski v. Rupe*, 855 N.W.2d 330, 336 (Minn. App. 2014) (quotation omitted).

Here, the district court considered the competing proposals from the parties and determined that mother's request constituted a proposed modification of the schedule, while father's proposal constituted a restriction of mother's parenting time. The district court noted that father's proposal would only allow mother to have parenting time with Child 3, but not with Child 1 or Child 2. Additionally, mother's parenting time with Child 3 would be reduced from every other weekend to one weekend per month, with a possible second weekend. Under father's proposal, mother's parenting time would be subject to Child 3's sports schedule, which the district court noted mother "has no involvement in selecting." The district court determined that father's proposal "would reduce [mother's] parenting time by nearly 10% or one-third. That reduction, coupled with the other constraints, are substantial changes to [mother's] parenting time and, therefore, are considered restrictions under the law."

While not all reductions in parenting time constitute restrictions, a restriction "can occur when a change to parenting time is substantial." *Boland v. Murtha*, 800 N.W.2d 179, 182 n.1 (Minn. App. 2011) (quotation omitted); *see also Suleski*, 855 N.W.2d at 336 (noting that because the reason for the reduction in the mother's parenting time in that case was not a defect in that mother's ability or willingness to care for the child, "the reason-for-the-change [in parenting time] prong of the restriction analysis is not at issue, and if this case involves a restriction, that restriction must arise solely from the amount-of-the-reduction prong of the analysis, rather than the reason-for-the-change prong, or from a combination of the two prongs"). Here, father's proposal would deprive mother of all parenting time with Child 1 and Child 2 and would limit her time with Child 3. We agree

with the district court that father's proposal would substantially change mother's parenting time and therefore operates as a restriction.

We also agree that a restriction of mother's parenting time is not warranted based on the record before us. "[A] 'restriction' requires a finding of endangerment or noncompliance with court orders." *Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010); *see also* Minn. Stat. § 518.175, subd. 5(c). Father did not claim that the children were endangered in mother's care or that mother was not complying with court orders. And the district court found that neither of these circumstances existed in this case. Absent at least one of these circumstances, the district court lacked authority to restrict mother's parenting time.

Moreover, father's proposal would deprive mother of her statutory 25% parenting-time expectation. "In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child." Minn. Stat. § 518.175, subd. 1(g) (2022). The parties allocated parenting time with the children at 71% to father and 29% to mother. Father's proposal would reduce mother's parenting time with Child 1 and Child 2 from 29% to zero. And as for Child 3, the district court found that father's proposal would "reduce [mother's] parenting time [with Child 3] by nearly 10% or one-third." The district court determined this would mark a "substantial change[]" to mother's parenting time and would not be in the children's best interests. *See Hagen*, 783 N.W.2d at 218 (noting that "parenting-time allocations that merely fall below the 25% presumption can be justified by reasons related to the child's best interests and considerations of what is feasible given the circumstances of the parties"). Father's

proposal would frustrate mother's expectation that she is entitled to at least 25% of the parenting time with the children and further supports the district court's decision to deny his request.

In sum, we conclude the district court properly determined that father's proposal constituted a restriction to mother's parenting time. We also agree that the prerequisites for a restriction are absent in this case.

II. The district court did not abuse its discretion by determining that mother's proposed modification is in the children's best interests.

The district court determined that mother's proposal was a request to modify, rather than restrict, the schedule. As for mother's request, the district court found that:

> [Mother] is requesting modifications . . . that would specifically alternate weekends, holidays, and equally divide the children's summer break. [Her] requests are for the Court to follow the general provisions of the September 3, 2020 Decree, but provide specific dates and times for exchanges as a way to reduce conflict between the parties. As such, [mother's] requests are not restrictions to [father's] parenting time, but instead are modifications to [the schedule].

In finding that the best interests of the children would be satisfied by the modification, the district court stated, "The Court has considered the relevant best interest[s] factors. The Court finds that the alternating weekend parenting time proposed by [mother] is in the children's best interests."

Father argues the district court failed to make sufficient findings on the relevant best-interests factors outlined in Minn. Stat. § 518.17, subd. 1(a) (2022). When making custody determinations in the first instance, the district court must consider 12 statutory factors to "evaluat[e] the best interests of the child for purposes of determining issues of

custody and parenting time." Minn. Stat. § 518.17, subd. 1(a). But when the district court considers whether to modify parenting time, it need not revisit every factor. Minn. Stat. § 518.175, subd. 5(b).

Father's argument suggests that a district court must apply the relevant statutory best-interests factors set forth in section 518.17, subdivision 1(a), when modifying an existing division of parenting time under section 518.175. This analysis requires us to engage in statutory interpretation. The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2022). We begin by analyzing whether the statute's language is ambiguous on its face. *In re Welfare of J.P.–S.*, 880 N.W.2d 868, 871 (Minn. App. 2016). We apply the plain meaning of a statutory provision if the legislative intent "is clear from the unambiguous language of the statute." *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716-17 (Minn. 2014). Statutory interpretation presents a question of law, which we review de novo. *Getz v. Peace*, 934 N.W.2d 347, 353 (Minn. 2019).

The modification request here arises under section 518.175. This section begins:

> In all proceedings for dissolution . . . the court shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.

Minn. Stat. § 518.175, subd. 1(a) (2022).

When modifying an existing parenting plan, this section provides that:

> If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time,

> if the modification would not change the child's primary residence. Consideration of a child's best interest includes a child's changing developmental needs.

Id., subd. 5(b).

The plain and unambiguous language of section 518.175, subdivision 5(b), only requires the district court to consider "the best interests of the child." *Id.* It does not reference the 12 best-interests factors in section 518.17. Other subdivisions within section 518.175, by contrast, *do* specifically require the district court to apply the 12 best-interests factors. For example, subdivision 8, which addresses parenting time for a child-care parent, specifically references section 518.17, subdivision 1. *Id.*, subd. 8 (2022). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted); *see also* Minn. Stat. § 645.17 (2022) (noting that courts assume the legislature "intends the entire statute to be effective and certain"). The legislature incorporated section 518.17 into section 518.175, subdivision 8, but elected not to incorporate that section into section 518.175, subdivision 5. We presume this omission is intentional. *See Persigehl v. Ridgebrook Invs. Ltd. P'ship*, 858 N.W.2d 824, 833 (Minn. App. 2015) (recognizing the presumption that "any omissions in a statute are intentional") (quotation omitted).

The plain language of the statute, viewed as a whole, supports the conclusion that a determination of whether to modify an existing division of parenting time under section 518.175, subdivision 5(b), does not require the district court to apply the 12 best-interests factors in section 518.17, subdivision 1(a). We therefore determine that the best-interests

standard in section 518.17, subdivision 1(a), does not govern the district court's analysis of a modification request under section 518.175. Here, the district court determined that a modification of parenting time was in the children's best interests. A district court has broad discretion to decide questions of parenting time, *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995), and we will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by making findings unsupported by the record, *Woolsey*, 975 N.W.2d at 506. Given the record before us and the plain language of the statute, we conclude that the district court did not abuse its discretion by determining that modification was in the children's best interests and granting mother's modification request.[2]

Lastly, we briefly address father's argument that mother has not spent time with Child 1or Child 2, and that the district court failed to give adequate weight to the parties' agreement to engage in family therapy to reunite Child 1 and Child 2 with mother. We are not persuaded by father's argument. The district court acknowledged the parties' agreement to engage in family therapy. The district court noted that "the parties agreed that family therapy is necessary and in the children's best interests." The district court approved the parties' agreement on that issue. The district court acknowledged that mother

[2] This conclusion follows our recent decision in *Robbins v. Robbins*, No. A22-1061, A22-1261, 2023 WL 2960917, at *3 (Minn. App. Apr. 17, 2023) (concluding that the district court did not err "when it did not explicitly apply the best-interest factors in Minn. Stat. § 518.17 to [the moving party's] Minn. Stat. § 518.175, subd. 5, motion" and instead properly "assess[ed] whether the parenting-time modification served 'the best interest of the minor child'"). *Robbins* is nonprecedential and is cited only for its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (noting that nonprecedential decisions of this court are nonbinding but may be cited as persuasive authority).

did not regularly communicate with the children and ordered the parties to address this issue in family therapy. The district court also examined the parties' disputes over transportation and parenting-time exchanges and concluded that it was "reasonable and appropriate for the parties to share transportation responsibilities." Upon review, we are persuaded that the district court adequately addressed the parties' agreements about family therapy, communication, and transportation and did not abuse its discretion.

Affirmed.