STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0099

In re the Marriage of:
Jessica Ann Jahraus Pesola, petitioner,
Appellant,

vs.

Caleb Samuel Pesola,
Respondent.

Filed March 11, 2024
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-FA-17-7666

Dan Rasmus, Hovland, Rasmus, Brendtro & Trzynka, PLLC, Edina, Minnesota (for appellant)

Caleb Samuel Pesola, Rush City, Minnesota (self-represented respondent)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Hooten, Judge.*

NONPRECEDENTIAL OPINION

REYES, Judge

In this parenting-time dispute, appellant-mother argues that the district court (1) lacked the authority to modify the parties' stipulated parenting-time agreement;

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

(2) erred as a matter of law by unilaterally modifying that agreement; and (3) abused its discretion by making clearly erroneous findings on the children's best interests that are not supported by the record. We affirm.

FACTS

The district court dissolved the marriage of appellant Jessica Ann Jahraus Pesola (mother) and respondent Caleb Samuel Pesola (father) by a judgment and decree entered in June 2018. The parties share two children, I.P., born in April 2013, and K.P., born in February 2017.

In August 2018, the parties entered into a stipulated agreement to modify the judgment and decree. The district court incorporated the stipulated agreement into an order in September 2018 (the stipulated order). The stipulated order provided, in part, that: (1) mother could move to Florida, or anywhere else, with the children; (2) the parties would continue to share joint legal custody of the children, but mother could independently make decisions regarding the children's education and religious beliefs; (3) father could have parenting time during winter break each year; and (4) father could exercise parenting time twice each summer. Father's summer parenting time was set forth in section 5 of the stipulated order as follows:

> a. During the months of June or July, depending on the Parties' schedules, Respondent shall pay for the children to travel to Minnesota to spend a total of 14 days with him. Petitioner will accompany the children for this trip and will pay for her own travel. During this trip, the children will not spend 14 consecutive days with [Respondent] – rather, Petitioner will stay with friends in Minnesota and the children will spend four days with Respondent, two days with Petitioner, and repeat this sequence three times. Then, Respondent will have a final, two-

> day parenting time-period with children before they return to Petitioner's residence with Petitioner.
>
> b. During the months of July or August, again depending on the Parties' schedules, Respondent may exercise another 14 days of parenting-time under the same condition as Par. 5.a., above. However, if Respondent exercises the parenting-time during June or July and desires parenting time for the second summer visit, Petitioner agrees she will pay for the children's travel costs related to the second summer trip.
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> c. After the parties' youngest child, K.P. reaches the age of four years, the 14 day time-periods in Paragraphs 5.a and 5.b, above shall change to allow Respondent to have seven consecutive days with the children, followed by two days with Petitioner, concluding with another seven-day parenting time-period for Respondent.

If father failed to schedule and complete the first summer parenting-time trip under paragraph 5.a, mother would have no obligation to pay for a summer trip for the children to visit him.

The parties' relationship is acrimonious, and they have repeatedly clashed over parenting time and other matters since 2018. Their disputes contributed to father not exercising his parenting time in 2019 and 2020 and the district court having to set parenting-time dates in 2021. In June 2022, father filed an emergency motion and requested, in part, that the district court: (1) find mother in constructive civil contempt for withholding parenting time in June 2022; (2) order mother to reimburse him for flights he purchased for the June 2022 trip; (3) order mother to bring the children to Minnesota for make-up visitation on dates that he would determine; (4) grant him the responsibility to determine all future trip dates; (5) order that he receive his fourteen days with the children during each trip; and (6) order that the children's visitation be from June 30 to July 16. In an accompanying affidavit, father alleged that mother consistently displayed an inability

or unwillingness to co-parent, resulting in scheduling conflicts and unexercised parenting time. Father requested that the district court clarify the proper counting of "parenting days" and order an alternative set of dates for his summer parenting time.

The district court heard the matter in June 2022. Mother, in part, denied that she was intentionally obstructing father's summer parenting time, but requested direction from the district court about how to proceed. The district court and the parties discussed the parties' needs for clarity in counting the parenting-time days and the possibility of setting a travel window.

Mother filed an affidavit on June 24, 2022, opposing father's motion and affidavit. That same day, the district court issued an order modifying the parties' parenting time. The order set father's 2022 summer parenting time from June 30 to July 16, and set a summer and holiday parenting-time schedule to be followed by the parties beginning in 2023 and extending through 2034. The new schedule expanded father's summer parenting time to be continuous and within June 14 to August 1 each year. The order also required father to arrange the airline flights for the children. The district court denied father's motion for contempt but granted his motion for reimbursement of costs he incurred for the June 2022 flights.

Mother subsequently moved the district court to amend its June 2022 order. The district court heard mother's motion in October 2022 and denied it in December 2022. This appeal follows.

DECISION

Mother argues that the district court (1) lacked the authority to modify the parties' stipulated parenting-time agreement; (2) erred as a matter of law by unilaterally modifying parenting time; and (3) abused its discretion by making clearly erroneous findings on the children's best interests that are not supported by the record.[1] We address each of mother's arguments in turn.

I. The district court had the authority to modify the stipulated order.

As an initial matter, mother argues that the district court lacked authority to modify the parties' stipulated parenting-time agreement and that the issue is one of contract interpretation that requires de novo review. Mother's argument is misguided.

Determining the proper legal standard to apply is a question of law that appellate courts review de novo. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

"Stipulations are a judicially-favored means of simplifying and expediting dissolution litigation and . . . are accorded the sanctity of binding contracts." *Toughill v. Toughill*, 609 N.W.2d 634, 638 (Minn. App. 2000) (quotation omitted). Generally, a district court "cannot . . . impose conditions on the parties to which they did not stipulate." *Id.* at 638 n.1. However, "after the court incorporates the stipulation into a judgment, the stipulation is treated as a judgment, not as a contract," and the law "expressly allows for modification of such judgments *as they relate to parenting time*." *Shearer v. Shearer*, 891 N.W.2d 72, 76 (Minn. App. 2017) (emphasis added).

[1] Father did not file an appellate brief, and we therefore decide this case on the merits. Minn. R. Civ. App. P. 142.03.

Because the district court incorporated the parties' stipulation into its stipulated order, the district court had the authority to modify the stipulated order.[2] We therefore review the district court's decision to modify parenting time for an abuse of discretion and the district court's interpretation of Minn. Stat. § 518.175 (2022), which governs parenting time, de novo. *Shearer*, 891 N.W.2d at 75-77.

II. Based on the plain language of Minn. Stat. § 518.175, the district court did not err by modifying parenting time.

Mother maintains that the district court erred by modifying parenting time because neither party requested modification of the terms of the stipulated order, and further, that Minn. Stat. § 518.185 (2022) requires a party seeking to modify a parenting-time order to submit moving papers and an affidavit. We disagree.

Parenting-time modifications are governed by Minn. Stat. § 518.175. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). Under subdivision 5(b), "[i]f modification would serve the best interests of the child, the [district] 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." Minn. Stat. § 518.175 (emphasis added). District courts have broad discretion to decide parenting-time issues. *Hansen*, 908 N.W.2d at 596.

[2] Mother also argues that the modification ignores the valuable consideration mother exchanged for the right to move to Florida and to have a clear parenting-time schedule. However, parenting-time modifications are based on the best interests of the children, not the preference of the parent. Minn. Stat. § 518.175, subd. 5(b) (2022).

Mother's first argument fails for three reasons. First, the plain language of subdivision 5 does not preclude a district court from modifying parenting time, even absent a party's request, as long as the modification is in the best interests of the child. Minn. Stat. § 518.175. Mother cites to *Rogers v. Rogers*, 606 N.W.2d 724, 728 (Minn. App. 2000), *aff'd in part and rev'd in part*, 622 N.W.2d 813 (Minn. 2001), and *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471 (Minn. 1981), to argue that a district court does not have the authority to modify prior orders on its own initiative. Both cases are distinguishable. In *Rogers*, the district court's modification involved *child support*, not parenting time, and was based on a clerical error in the order. 606 N.W.2d at 728. Further, the Minnesota Supreme Court subsequently held that the modification was allowed under those circumstances. *Rogers*, 622 N.W.2d at 822. In *Nice-Petersen*, the supreme court affirmed a district court's denial of a father's motion to modify *custody*, which is governed by a different standard than that applied to parenting-time-modification decisions. 310 N.W.2d at 472.

Second, father's June 2022 motion for emergency relief requested a modification of the stipulated order and parenting time. Father moved, in part, for an order "that [father] be responsible for the determination of all future trip dates," and, in his affidavit, requested that the district court order an alternative set of dates for his summer parenting time. Conversely, the stipulated order provided that father "may exercise parenting-time twice each summer . . . depending on the Parties' schedules." As the district court noted when it denied mother's motion for amended findings, granting father's requested relief required a

modification of the stipulated order to allow father to schedule summer parenting time. The district court did not modify parenting time on its own initiative.

Third, during the June 2022 hearing, the district court even proposed an alternative parenting-time schedule to both parties that contemplated modifying the stipulated order. The district court clarified that the stipulated order's requirement that mother travel with the children to Minnesota was based on mother's preference, not the needs of either child. When the district court asked mother what her position would be regarding a travel window as opposed to set parenting time for father, mother indicated that, so long as there was clear direction on the travel window parameters, she would do "whatever I need to do to support whatever needs to be done." During the hearing, the district court also told the parties that its intent for the resulting order would be to remove flexibility from the parties because their history showed that "flexibility doesn't work."

Mother's second argument also fails, as Minn. Stat. § 518.185 only applies to parties "seeking . . . modification of a *custody order*," not to parties seeking a modification of parenting time. (Emphasis added.)

We conclude that Minn. Stat. § 518.175, subd. 5(b), allowed the district court to modify parenting time.

III. The record supports that the district court's modification of parenting time is in the best interests of the children.

Mother argues that the district court abused its discretion by modifying the parties' stipulated order because its findings on the best interests of the children are clearly erroneous. We are not persuaded.

"It is well established that the ultimate question in all disputes over [parenting time] is what is in the best interest of the child." *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *rev. denied* (Minn. June 12, 1984). As noted above, district courts have broad discretion in deciding parenting-time issues, *Hansen*, 908 N.W.2d at 596, and we will not reverse absent an abuse of that discretion, *Shearer*, 891 N.W.2d at 75. A district court "abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey*, 975 N.W.2d at 506 (quotation omitted). Appellate courts review the district court's factual findings "regarding the best-interest[s] factors . . . for clear error." *Hansen*, 908 N.W.2d at 599.

When applying the clear-error standard of review, we view the evidence in the light most favorable to the findings, do not reweigh the evidence, do not find our own facts, and do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021).

Here, the district court's order reflects that it considered the statutory best-interests factors under Minn. Stat. § 518.17, subd. 1(a) (2022), to make its decision. Although the district court's findings focus on the parties' conflict, the record and circumstances of this case demonstrate that the district court's findings provided background and informed its decision to modify parenting time to serve the best interests of the children. *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (avoiding remanding case to district court to make specific findings when "it seems clear from reading the files, the record, and the court's

findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language.").

The record is replete with evidence that the parties' attempts to plan summer parenting-time together have failed. The district court's modest expansion of summer parenting-time ensures that father's parenting time, which is in the best interests of the children, occurs consistently moving forward and accommodates for lost parenting time. Further, the district court emphasized repeatedly that minimizing parental conflict was in the best interests of the children. These findings relate directly to multiple best-interests factors under Minn. Stat. § 518.17, subd. 1(a), including "(7) the willingness and ability of each parent to provide ongoing care for the child . . . and to maintain consistency and follow through with parenting time," "(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life," "(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent," and "(12) the willingness and ability of parents to cooperate in the rearing of their child; to . . . minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child."

Because the record supports the district court's findings on the best interests of the children, we conclude that the district court's findings are not clearly erroneous. As a result, the district court did not abuse its discretion by modifying parenting time.

Affirmed.