STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1152

In re the Custody of:

K. M. M., born 1/8/2009
Kenneth D. McCraley, petitioner,
Respondent,

vs.

Stephine Marks,
Appellant.

Filed April 26, 2011
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-FA-09-2231

Naomi S. Garfinkel, Katz, Manka, Teplinsky, Graves & Sobol, Ltd., Minneapolis, Minnesota (for respondent)

Paul F. Shoemaker, Shoemaker & Shoemaker, PLLC, Bloomington, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Stauber, Judge; and Collins, Judge.*

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

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

In this appeal from a judgment determining custody, parenting time, and child support, appellant (1) challenges the district court's findings of fact in support of its joint-custody determination; (2) argues that the district court abused its discretion by granting respondent's parenting-time request; and (3) abused its discretion in determining the parties' incomes for purposes of child support. We affirm.

D E C I S I O N

Appellant Stephine Marks and respondent Kenneth McCraley began a relationship in 2005 and lived together in respondent's home for approximately seven months until appellant moved out in December 2006. The parties attempted to conceive a child together in 2007 and 2008 and eventually succeeded through in vitro fertilization. K.M.M. was born in January 2009. In March 2009, respondent petitioned for joint physical and legal custody, parenting time, and determination of child support. The parties stipulated to joint legal custody, and after a trial, the district court granted respondent joint physical custody, parenting time based on his proposed schedule, and ordered respondent to pay child support based on the average of appellant's and respondent's 2007 and 2008 gross incomes as reported in their federal tax returns.

I.

In custody matters, this court's review is "limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996) (quotation

omitted). We view the record in the light most favorable to the district court's findings of fact and will sustain the district court's findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). A finding is clearly erroneous if this court has "the definite and firm conviction that a mistake has been made." *Vangsness*, 607 N.W.2d at 472 (quotation omitted). "That the record might support findings other than those made by the [district] court does not show that the [district] court's findings are defective." *Id.* at 474. When there is conflicting evidence, this court defers to the district court's determinations of credibility. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

District courts make custody determinations based on the best interests of the child, which includes consideration of the 13 factors enumerated in Minn. Stat. § 518.17, subd. 1 (2010). The district court must make detailed written findings on these factors. Minn. Stat. § 518.17, subd. 1. And the law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness*, 607 N.W.2d at 477.

When a parent seeks joint physical custody, the district court is also required to consider the parents' ability to cooperate, their methods of resolving disputes, whether it would be detrimental to the child for one parent to have sole authority over the child's upbringing, and whether domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 2 (2010). If a parent objects to joint physical custody, the district court "shall make detailed findings on each of the factors in this subdivision and explain how

the factors led to its determination that joint custody would be in the best interests of the child." *Id.*

Appellant emphasizes the fact that the custody evaluator did not recommend joint physical custody. But a district court has discretion to decline to follow all or part of a custody evaluator's recommendations so long as it explains its reasons or provides detailed findings on the same factors raised in the study. *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994); *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991). Here, the district court made detailed findings on the same statutory best-interests factors considered in the study.

Appellant also challenges the district court's findings as "summary" and argues that several findings are not supported by the record. District court findings should assure that the relevant statutory factors have been addressed, satisfy the litigants that their case was fairly resolved, and permit reasoned appellate review. *Rosenfeld v. Rosenfeld*, 311 Minn. 76, 82, 249 N.W.2d 168, 171 (1976).

The district court discussed the 13 best-interests factors and the additional joint-custody factors, and its findings adequately convey the district court's reasons for ordering joint custody. In its findings, the district court stated that both parties have the capacity and interest to care for K.M.M. on a daily basis; have had significant parenting time; have strong relationships with K.M.M.; and "are mature, educated, professional individuals who will be able to provide [K.M.M.] with appropriate guidance throughout his life."

The district court also referenced appellant's history of limiting respondent's time with K.M.M. and respondent's more stable living arrangement and more spacious home. These findings show that the district court considered the competency and dedication of both parents and that the factors concerning stability and the continued involvement of both parents favored respondent. The record supports the district court's findings that appellant's living arrangement is less stable and that she limited respondent's parenting time after he filed the petition.

In challenging the factual support for the district court's joint-custody findings, appellant continues to allege that domestic violence occurred when she lived with respondent, and argues that the record demonstrates the contentious nature of the parties' relationship. If domestic abuse has occurred between the parents, a rebuttable presumption exists that joint physical custody is not in the child's best interests. Minn. Stat. § 518.17, subd. 2. But here, the district court found the domestic-violence claims not credible based on the record as a whole. It cited appellant's subsequent attempts throughout 2007 and 2008 to conceive a child with respondent, the absence of a police report or request for an order for protection, the custody evaluator's skepticism of these claims based on when appellant reported them, and the limited value of the undated and poor-quality photographs that appellant submitted. Based on the record and our deference to the district court's credibility determinations, it was not error to conclude that no domestic violence, as defined in Minn. Stat. § 518B.01 (2010), occurred.

The district court found that the parties are able to cooperate in rearing K.M.M. and that they are willing to use mediation to resolve disputes. The record shows that the parties took significant steps to conceive a child together after appellant moved out and that they planned to co-parent. The parties spent an extended period of time together during and immediately after K.M.M.'s birth. They established and adhered to a co-parenting plan, which included long periods of time and regular overnight visits with respondent before respondent petitioned for custody. And they spent social time together and talked on the phone in support of their co-parenting roles. The custody evaluator also concluded that both parents "are generally on the same page" regarding co-parenting issues and were likely to "find general agreement on [K.M.M.'s] education, medical, and religious needs."

Based on the record, appellant's parenting-related conflicts with respondent appear to have started after respondent filed the petition for custody. *See Veit v. Veit*, 413 N.W.2d 601, 605 (Minn. App. 1987) (affirming order for joint custody and stating that the record showed "the parties' inability to cooperate was of relatively recent origin"). And the record does not demonstrate a level of conflict that would require reversing the district court's determination. *See id.*; *Berthiaume v. Berthiaume*, 368 N.W.2d 328, 332-33 (Minn. App. 1985) (affirming joint custody despite some evidence of difficulty cooperating).

Finally, we conclude that it was not an abuse of discretion to order joint physical custody of K.M.M. to promote respondent's integral and increased role in caring for K.M.M. The record supports the district court's finding that appellant "improperly

limited [respondent's] parenting time occasionally." In light of respondent's desire and capacity to care for K.M.M., it was within the district court's discretion to determine that K.M.M.'s best interests are served by having significant contact with respondent and to order joint custody in facilitating that relationship.

II.

The district court has broad discretion in deciding parenting time based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). Minnesota law requires district courts to "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) (2010).

The district court scheduled respondent's parenting time to include regular midweek and weekend parenting time, including two- and three-night stays with respondent. The district court concluded that K.M.M. "will benefit from having significant time periods with both parents in their respective homes" and noted that the parenting-time schedule respected appellant's request to maintain a "home base" at her residence. The district court also granted a right of first refusal to both parents if the parent is unable to care for K.M.M. for more than six hours during his or her parenting time. This provision allows each parent the option of caring for K.M.M. before third-party care is arranged.

Appellant argues that "such an expansive parenting-time plan" does not take into account K.M.M.'s young age and will have a negative impact on him by displacing him

from his primary caregiver for extended periods. But the district court found that "[b]oth parents are well-equipped for caretaking and comfortable in that role," that both parents are "affectionate and loving towards [K.M.M.] and provide him with appropriate care," and that respondent "wants to be more involved with caretaking, but [appellant] has prevented him from becoming more involved." Additionally, the district court's order considered the fact that "[K.M.M.] has had significant parenting time with [respondent] in [respondent]'s home."

The record supports the district court's findings. Respondent testified that he remodeled his residence so that he could work from home while caring for K.M.M. and that before K.M.M.'s birth the parties agreed that the child would spend an equal amount of time in each of their homes. Before the custody petition was filed, respondent cared for K.M.M. in his home at least three times per week for approximately eight hours each occasion. Appellant then limited this time to three days per week for three hours each. The custody evaluator reported that respondent "changed [K.M.M.'s] diapers with ease and appeared completely comfortable caring for his son." The evaluator also noted that respondent "appears committed to building and maintaining a strong presence in his son's life." During the period of the custody evaluation, K.M.M. was well-adjusted to the parenting-time schedule in which he was with respondent three days per week, including an overnight stay every other week. We conclude that the district court did not abuse its discretion in setting the parenting-time schedule.

Appellant also argues that the district court's grant of a right of first refusal to both parents was an abuse of discretion because it would exacerbate the parties' contentious

relationship. But appellant testified that she was comfortable if respondent exercised parenting time while she worked. Because the record supports the district court's findings that the parties can cooperate and that it is in K.M.M.'s best interests to spend significant time with both parents, the district court did not abuse its discretion in giving both parents an opportunity to spend as much time as possible with K.M.M.

III.

We review a child-support order for an abuse of discretion and consider whether the district court resolved the matter in a manner that is against logic and the facts on the record. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008). A determination of the amount of an obligor's income for purposes of child support is a finding of fact and will not be altered on appeal unless clearly erroneous. *See Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002).

Appellant argues that the district court should have based its child-support determination on respondent's estimated 2009 gross income, rather than on his 2007 and 2008 tax returns. At the trial in December 2009, neither party presented 2009 tax documents. The record includes documentation of respondent's company's check register and his company's most recent bank statement, but not a consolidated financial report. Respondent testified that his 2009 monthly gross income was $5,000. But appellant questioned respondent on the benefit he received from using his company credit card for personal expenses and whether this benefit was in addition to his weekly draw. Respondent's testimony made clear that he receives a weekly draw but that he also lends

the business his personal money, and that all expenses are reconciled by the office manager for tax purposes.

In its order denying in part and granting in part appellant's motion for amended findings, the district court explained that it based its child-support determination on the average of the parties' 2007 and 2008 tax returns because the record did not include this information for 2009 and respondent earned "substantially more gross income per month" in 2007 than in 2008. The district court was making an implicit credibility determination when it chose to rely on gross-income amounts verified in tax documents. *See Cnty. of Nicollet v. Haakenson*, 497 N.W.2d 611, 615 (Minn. App. 1993) (concluding that administrative-law judge did not err by "apparently determin[ing] that the 1991 income tax return was more credible than appellant's testimony on his 1992 income"). Also, the district court "is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987).

Respondent's tax returns show a significant difference between his 2007 and 2008 gross incomes. The district court may base a child-support determination on an obligor's average income if this income regularly fluctuates. *Veit*, 413 N.W.2d at 606 (concluding that an average may provide a more accurate measure of income when the obligor's income regularly fluctuates). The district court did not err in relying on these documents, rather than uncorroborated testimony, or in averaging the two amounts when establishing child-support payments.

Affirmed.