STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2241

In re the Marriage of:
Daniel Berhanu Mengistu, petitioner,
Appellant,

vs.

Elfinesh Damtew Teshome,
Respondent.

Filed November 21, 2011
Affirmed
Harten, Judge[*]

Ramsey County District Court
File No. 62-FA-08-2889

Daniel Berhanu Mengistu, St. Paul, Minnesota (pro se appellant)

Rebecca L. Rossow, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Harten, Judge.

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

HARTEN, Judge

Appellant challenges the district court's award of sole legal and physical custody of the parties' child to respondent and the determination of his parenting time. Because

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

we see no abuse of discretion in either the custody award or the parenting-time determination, we affirm.

FACTS

In March 2005, appellant Daniel Mengistu and respondent Elfinesh Teshome were married in Ethiopia. In April 2007, they moved to Minnesota with their ten-month-old daughter, M. Until July 2007, they lived with appellant's sister; respondent and M. then moved to a homeless shelter, while appellant remained at his sister's home and visited them about once a week.

In August 2007, a woman who was in the process of adopting an Ethopian child, took M. and the parties into her home after appellant told her he had no money and needed help. When the woman discovered that appellant had over $40,000 in the bank, she asked him to leave, but respondent and M. remained in her home. Respondent had not known that appellant had money in the bank. In November 2007, the parties reconciled, and respondent and M. moved into appellant's apartment.

In February 2008, an altercation occurred in which appellant slapped respondent in the face while she was holding M. on her lap and eating. Respondent fell on the hot stove and M.'s hand was burned. The police department incident report stated that (1) a 911 operator heard a female voice screaming and a male voice in the background; (2) the male "was very uncooperative and did not answer any of "[the operator's] questions"; (3) when police arrived, appellant told them "everything was ok" and tried to shut the door; (4) to enter, police had to push on the door with appellant's weight behind it; (5) respondent told police she had been sitting with M. on her lap, eating, when M.

knocked the plate away from her; she stood up with M. and moved near the stove; appellant slapped her across the face; she fell over onto the stove, and M.'s hand hit a burner; (6) appellant told the police respondent had been punching him, would not calm down, and would not clarify what happened; and (7) appellant was arrested for fifth-degree domestic assault.

In July 2008, the parties separated. Respondent and M. remained in the apartment, and appellant returned to his sister's home. Appellant had no formal parenting time; he saw M. only if they met at the park, the library, or church.

Appellant served and filed a petition for dissolution seeking sole legal and physical custody of M. In her answer, respondent also sought sole legal and physical custody. Following a custody and parenting-time evaluation, Ramsey County Domestic Relations (RCDR) recommended that respondent be awarded sole legal and sole physical custody and that appellant have scheduled parenting time. He began exercising his parenting time for two hours on Saturdays.

The parties agreed on many issues, including child support, maintenance, medical insurance for M., personal property, division of debts, the right to claim M. for tax purposes, holiday parenting time, and the right to take M. to Ethiopia. After a trial on legal custody, physical custody, and parenting time, respondent was awarded sole legal and physical custody, and appellant was awarded parenting time on Wednesday afternoons and weekends.

Appellant argues that the district court abused its discretion both in awarding custody and in determining parenting time.[1]

D E C I S I O N

A district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

1. Child Custody

The district court balanced twelve of the thirteen best-interest factors set out in Minn. Stat. § 518.17, subd. 1(a) (2010).[2] It found that three factors were neutral: on factor 1 (the parents' wishes), both parties had requested sole legal and physical custody; on factor 2 (the child's preference), M. is too young to express a preference, and on factor

[1]Appellant also argues that the district court erred by not appointing a guardian ad litem for M. Because this issue was never raised to the district court, it is not properly before the panel. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

[2] Because the district court found that domestic abuse had occurred between the parties, it did not consider the thirteenth factor, "the disposition of each parent to encourage and permit frequent and continuing contact with the other parent." Minn. Stat. § 518.17, subd. 1(a)(13) (2010) provides that this factor is not to be considered in cases in which a finding of domestic abuse has been made. The finding of domestic abuse also defeats the rebuttable presumption that joint legal custody would be in M.'s best interests. *See id.*, subd. 2.

11 (cultural background), both parties can encourage M. to identify with her cultural background.

The other nine factors were found in favor of respondent. In two instances, this was because of M.'s negative experiences with appellant. On factor 4 (the intimacy of each parent's relationship), the district court found that "the emotional bond between [appellant] and [M.] has been negatively impacted by [appellant's] moderate absence in [M.'s] relatively short life," and on factor 12 (the effect of domestic abuse), the court found that the domestic abuse that occurred between the parties and M. negatively impacted M.

In four instances, appellant's failure to provide information resulted in the factor favoring respondent. On factor 6 (the child's adjustment to home, school, and community), the evidence showed that M. was well adjusted into respondent's home, M.'s daycare, and their community, but appellant's failure to provide information as to how he would support M.'s needs, what daycare she would attend, or how he could accommodate her Head Start schedule and care for her while he is working "evidence[d his] lack of understanding of [M.'s] needs." On factor 7 (the length of time the child has lived in a stable, satisfactory environment), respondent and M. have lived in an apartment that "is clean and suitable for a child." Appellant "provided no information about his current home other than its location." On factor 8 (permanence of the custodial home), respondent indicated her plans to stay in her home but appellant provided no information on his plans. Finally, on factor 10 (each party's capacity to give the child love, affection, and guidance), appellant's "lack of investigation into daycare, housing and other

activities necessary for extended parenting time demonstrate[d] his lack of insight into [M.'s] best interests."

The other three factors favoring respondent were factor 3 (the child's primary caretaker), because respondent has been the primary caretaker; factor 5 (the child's interaction with siblings), because, although M. has no siblings, she has "a loving relationship" with respondent's uncle and his teenage daughter; and factor 9 (the parties' mental health), because appellant had an anxiety problem in Ethiopia and now suffers from depression.

The district court also considered the four factors relevant to a determination of joint custody set out in Minn. Stat. § 518.17, subd. 2, and found that, as to factor (a), "the parents have not demonstrated a history of cooperating together in rearing the child"; as to factor (b), the parties do not have any means for resolving disputes; as to factor (c), it would not be detrimental to M. if respondent were to have sole authority over her upbringing, and as to factor (d) domestic abuse has occurred between the parties.

Thus, the district court's detailed findings support its decision that it is in M.'s best interests for respondent to have sole legal and physical custody, and those findings are well supported by the evidence.

Appellant objects to the findings about his care of and relationship with M. But his objections resemble those of the noncustodial parent in *Vangsness*:

> [they] mistakenly rest on [his] citation of evidence that may contradict the trial court's findings . . . .
>
> That the record might support findings other than those made by the trial court does not show that the court's findings are defective. To challenge the trial court's findings of fact

> successfully, the party challenging the findings must show that despite viewing that evidence in the light most favorable to the trial court's findings (and accounting for an appellate court's deference to a trial court's credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made. Only if these conditions are met, that is, only if the findings are "clearly erroneous," does it become relevant that the record might support findings other than those that the trial court made.

Vangsness, 607 N.W.2d at 474 (citations omitted). Because the district court's findings are not clearly erroneous, evidence that might support other findings is irrelevant.

Appellant also challenges the finding of domestic abuse, arguing that "[r]espondent's allegations [of domestic abuse] were without merit" and that "the lack of evidence supporting her claims of domestic violence indicate that the [district] court should not have used this as a factor." But the police report provides evidence supporting respondent's claims of domestic violence; the district court's finding that it occurred is not clearly erroneous.

The award of sole legal and physical custody to respondent was not an abuse of discretion.

2. Parenting Time

The district court has broad discretion in deciding parenting-time questions 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).

Appellant asserts that the district court's deviation from the custody evaluator's recommendation was "capricious and arbitrary." But the deviation was minimal. The

custody evaluator recommended, and the district court awarded, weekday parenting time from 4:00 to 7:00 p.m. on Wednesday and weekend parenting time on an increasing schedule. But the custody evaluator recommended four phases, increasing from three hours every other Saturday and every Sunday to fifty hours, from 4:00 p.m. Friday to 6:00 p.m. Sunday, on alternate weekends. The district court awarded weekend parenting time in two phases, first for eight hours on alternate Saturdays and alternate Sundays, then for 32 hours, from 6:00 a.m. Saturday until 2:00 p.m. Sunday, on alternate weekends.

Appellant does not specify why the custody evaluator's schedule rather than the district court's schedule, would be in M.'s best interests. Moreover, as here, if a district court makes detailed findings addressing a child's best interests or explains why it is disregarding a custody evaluator's recommendation, it is not obligated to follow that recommendation. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991).

Neither the district court's parenting-time schedule nor the award of sole legal and physical custody to respondent was an abuse of discretion.

Affirmed.

Dated: _____ _____

James C. Harten, Judge