STATE OF MINNESOTA
IN COURT OF APPEALS
A11-495

In re the Marriage of:
David Allan Kotz, petitioner,
Respondent,

vs.

Edna Vassilovski,
Appellant.

Filed December 12, 2011
Affirmed
Worke, Judge

Carver County District Court
File No. 10-FA-09-217

David Allen Kotz, Chanhassen, Minnesota (pro se respondent)

Andrew J. Dawkins, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

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

WORKE, Judge

In this marital-dissolution case, appellant argues that the district court abused its discretion in: (1) awarding respondent parenting time with the parties' minor children; (2) refusing to reopen the record during posttrial motions; (3) failing to order retroactive

child support; and (4) dividing marital property. Respondent challenges several related aspects of the district court's dissolution judgment in a pro se brief. We affirm.

D E C I S I O N

Parenting Time

Appellant Edna Vassilovski first challenges the district court's award of parenting time with the parties' minor children to respondent David Allan Kotz. District courts have broad discretion in determining parenting time, and a reviewing court will reverse the district court's determinations only when that discretion is abused. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). A district court abuses 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). Findings of fact are reviewed for clear error. *Id.* In order to successfully challenge a district court's findings of fact, "the party challenging the findings must show that despite viewing [the] evidence in the light most favorable to the [district] court's findings . . . , the record still [shows a] definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). In determining parenting time, the district court is not required to make specific findings on the 13 best-interest factors set forth in Minn. Stat. § 518.17, subd. 1(a) (2010). *See* Minn. Stat. § 518.175, subd. 1(a) (2010). Instead, the district court is required to "grant such parenting time on behalf of a 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." *Id.*

Appellant essentially argues that the evidence presented at trial does not support the amount of parenting time awarded by the district court to respondent. Appellant contends that the parenting-time schedule adopted by the district court differs from the schedule recommended by the neutral custody-and-parenting-time evaluator in two respects: the district court awarded respondent an additional overnight with the children, and the district court allowed respondent to pick the children up from school for his parenting time rather than picking them up from appellant's house. Appellant asserts that the neutral evaluator recommended a more restrictive parenting schedule based on her independent assessment of respondent's parenting skills and the needs of the children. Appellant claims that the evidence presented at trial supports the more-restrictive parenting schedule recommended by the neutral evaluator: respondent has a history of uncleanliness, struggles with an undiagnosed mental illness, and is incapable of keeping the children on a regular schedule. Accordingly, appellant argues that respondent is unfit for the amount of parenting time the district court awarded, and that the district court abused its discretion by failing to adopt the more-restrictive schedule recommended by the neutral evaluator.

Appellant's arguments are unconvincing. Under Minn. Stat. § 518.175, subd. 1(e) (2010), "[i]n the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child." The parenting time recommended by the neutral evaluator equated to approximately 23 percent of parenting time, which is below the rebuttable presumption of 25 percent. The district court thoroughly considered the neutral evaluator's report, as well as testimony

from both parties in this case, and concluded that parenting time consistent with the rebuttable presumption was appropriate. Moreover, the district court found that many of the concerns appellant currently raises, including respondent's mental deficiencies and irresponsibility, were overblown in light of a decade of parenting prior to the divorce during which time appellant voiced no issue with respondent's parenting skills.

"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." *Vangsness*, 607 N.W.2d at 474. Here, the district court presided over numerous pretrial motions prior to a five-day court trial. Considering the district court's intimate knowledge of the case gained by virtue of the litigiousness of the parties, the district court did not abuse its discretion by awarding respondent parenting time consistent with the statutory presumption. *See McCabe v. McCabe*, 430 N.W.2d 870, 873 (Minn. App. 1988) (holding that this court may not substitute its judgment for that of the district court when reviewing custody determinations), *review denied* (Minn. Dec. 30, 1988); *see also* Minn. Stat. § 518.003, subd. 3(f) (2010) (defining "custody determinations" as "including "parenting time" awards).

Reopening of the Record

Appellant also challenges the district court's denial of her posttrial request to reopen the record to allow new evidence of respondent's poor parenting. Generally, events occurring after the trial are not considered "newly discovered" evidence warranting a reopening of the record. *Swanson v. Williams*, 303 Minn. 433, 436, 228 N.W.2d 860, 862-63 (1975). A district court's decision not to reopen a judgment and

decree will not be disturbed absent an abuse of discretion. *Maranda v. Maranda*, 449 N.W.2d 158, 164 (Minn. 1989).

Appellant submitted 36 pages of affidavit testimony and 18 exhibits to the district court with her posttrial motions. The affidavits and exhibits detailed events occurring after trial, and appellant claimed that the events depicted the harm incurred by the children as a result of respondent's liberal parenting time. The allegations included: failing to ensure that the children completed their homework; sending the children to school in the same clothes they wore the day before; sending one child to school without a lunch; and exposing one child to an extended-family-member's cat, despite awareness of the child's cat allergy. Appellant argues that this evidence should have been considered by the district court during posttrial motions, and that the district court abused its discretion by failing to consider the evidence because it demonstrated that the best interests of the children were adversely affected by the parenting schedule adopted by the district court. *See Crystal Beach Bay Ass'n v. County of Koochiching*, 309 Minn. 52, 56-57, 243 N.W.2d 40, 43 (1976).

Appellant's argument fails. Although the district court broadly denied the request to reopen the record with marginal explanation in its posttrial order, it is clear from the judgment and decree that the district court was perturbed throughout the proceeding with the constant attempts of both parties to over-exaggerate the other's shortcomings: "The parties' inability to co-parent would appear to be unequivocal"; "Simple matters like school clothing, backpacks, homework exchanges, hockey games, pizza parties, and the like have been turned into matters of national concern in this case"; "these parties have

no ability to communicate and cooperate with [each] other when it comes to much of anything—including the rearing of their children"; "There have been numerous allegations of wrong-doing and 'dirty-pool' by both sides, [including] motions that most people would consider inconsequential by both sides"; "the Court cannot help but reflect that a less litigious and antagonistic approach may have been far more beneficial for all concerned, particularly and most importantly, the children." Appellant's motion to reopen the record to consider more menial events represents the same conduct condemned by the district court throughout the judgment and decree. The district court did not abuse its discretion by refusing to reopen the record.

Retroactive Child Support

Appellant also argues that the district court abused its discretion by failing to apply respondent's child-support obligation retroactive to the date of the temporary motion. *See* Minn. Stat. § 518A.39, subd. 2(e) (2010) ("A modification of support . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion[.]"). The district court has broad discretion to determine the retroactivity of child support. *Guyer v. Guyer*, 587 N.W.2d 856, 859 (Minn. App. 1999); *see also* Minn. Stat. § 518A.38, subd. 1 (2010) (requiring court to order child support that is "just and proper" for the maintenance of any minor children).

Appellant claims that the district court decided against a retroactive child-support award because "there was no showing that the children have been harmed as a result of the Court reserving the issue of temporary support." Appellant contends that this

rationale impermissibly placed the burden on her as the obligee to demonstrate harm to the children, which is inconsistent with Minnesota caselaw. *See Winter v. Winter*, 375 N.W.2d 76, 80 (Minn. App. 1985) (stating that a child is entitled to benefit from the income of both parents); *Derence v. Derence*, 363 N.W.2d 86, 89 (Minn. App. 1985) (stating that an award of child support should be made irrespective of whether the needs of the child are met without support).

But the district court did not deny a retroactive support award based solely on the financially sound position of appellant, as appellant contends. Instead, the district court also considered the couples' tax- and property-refund checks worth more than $12,000, which appellant cashed without sharing with respondent. Additionally, the district court theorized that requiring respondent to make back-payments of support when appellant did not necessarily need the money might jeopardize respondent's ability to meet his obligations in the future. Based on the specific record before us, the district court's denial of retroactive support was soundly reasoned and did not constitute an abuse of discretion.

Property Division

Last, appellant challenges the district court's division of marital property. In dividing marital property, the district court "shall make a just and equitable division" and "base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party." Minn. Stat. § 518.58, subd. 1

(2010). "A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for [an] abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion in dividing property if it resolves the matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We will "affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though this court may have taken a different approach." *Servin v. Servin*, 345 N.W.2d 754, 758 (Minn. 1984).

Appellant argues that the district court failed to equitably divide the marital property between the parties. Appellant asserts that respondent failed to make any financial contribution to the family during the 15-month pendency of the divorce. Appellant also claims that respondent took out a $65,000 home-equity line of credit to pay his attorney's fees. Meanwhile, appellant contends that she was spending an overabundance of her income supporting the children, including a sum of $32,194 which the district court found was spent by appellant on herself. Altogether, appellant seems to argue that the district court skewed the property division in favor of respondent to constitute a de facto award of otherwise ungranted spousal maintenance.

Appellant's argument is unconvincing. The district court was presented with a voluminous amount of financial information; the marital estate exceeded $1.2 million. After dividing the marital assets, the district court ordered appellant to make an equalization payment of $24,054 to respondent. The equalization payment was based on the difference of $64,054 between the total marital assets awarded to each party, minus

the $65,000 home-equity line impermissibly borrowed by respondent during the pendency of the proceedings, plus the district court's award of $25,000 to respondent for the purchase of a new vehicle. The district court effectively balanced and divided the assets in a fair and equitable manner. And while appellant complains about the $25,000 amount awarded to respondent to purchase a new vehicle, the district court is not required to evenly divide the assets. *See Sirek v. Sirek*, 693 N.W.2d 896, 900 (Minn. App. 2005). Moreover, the district court reasoned that the $25,000 award would help trim respondent's vehicle expenses which, in turn, would assist him in meeting his child-support obligations in the future. The district court did not abuse its discretion in dividing the marital property.

Respondent's Pro Se Arguments

Respondent raises related issues in his pro se brief. But respondent fails to cite to any legal authority supporting his arguments. We decline to address allegations unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Accordingly, respondent's arguments are waived.

Affirmed.