STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1975

In re the Custody of: D. M. D.

Ray Julius Garner, Jr., petitioner,
Appellant,

vs.

Stacy Marie Davis,
Respondent.

Filed December 9, 2013
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19AV-FA-08-4052

Stefanie P. Wagner, The Wolfgram Law Firm, Ltd., Minneapolis, Minnesota (for appellant)

Stacy M. Davis, North Branch, Minnesota (pro se respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant-father challenges the district court's decisions to decrease appellant's parenting time and not to hold an evidentiary hearing. Because we see no abuse of

discretion in the modification of parenting time and no error in failing to hold an evidentiary hearing, we affirm.

FACTS

In 2000, D.M.D. was born to appellant Ray Garner and respondent Stacy Marie Davis.[1] The parties have never been married. In 2010, when both were living in the metro area, they stipulated to an award of joint legal custody and joint physical custody of D.M.D. and to parenting time of alternate weeks. The parties did not stipulate to remaining in the metro area. In 2012, after notifying appellant, respondent relocated with D.M.D. to a town 70 miles away and enrolled D.M.D. in school at that location.

Appellant moved for a change in parenting time during the school year because of respondent's relocation. At the hearing, respondent, appearing pro se, testified that she relocated because she could not find affordable housing for herself, D.M.D., and their dog in the metro area. Appellant, appearing with counsel, testified that he was being deprived of his court-ordered parenting time because respondent would not share the transportation and he could not afford to repeatedly drive 70 miles to visit D.M.D.

The district court found that respondent had relocated outside the metro area to a town where D.M.D. was enrolled in school and awarded appellant parenting time of the first three weekends of every month during the school year and alternate weeks during the summer. Appellant challenges that award, arguing that the district court erred by not

[1] Respondent filed no brief in this appeal, which, pursuant to an order of this court, proceeded under Minn. R. Civ. App. P. 142.03 (when respondent does not file a brief, appeal will be decided on the merits).

holding an evidentiary hearing and abused its discretion by significantly reducing his parenting time.

D E C I S I O N

I. Evidentiary Hearing

> Substantial modifications of visitation rights require an evidentiary hearing when, by affidavit, the moving party makes a prima facie showing that visitation is likely to endanger the child's physical or emotional well being. Insubstantial modifications or adjustments of visitation, on the other hand, do not require an evidentiary hearing and are appropriate if they serve the child's best interests.

Braith v. Fischer, 632 N.W.2d 716, 721 (Minn. App. 2001) (citations omitted), *review denied* (Minn. Oct. 24, 2001). While the modification of appellant's school-year parenting time from alternate weeks to three weekends per month is arguably a substantial modification, appellant has not shown that it endangers D.M.D.'s physical or emotional well-being to stay with respondent during the school week and attend school in that community. Appellant did not show or suggest that any actual harm has occurred to D.M.D., who has difficulty dealing with stress; he testified only that "[D.M.D.] will be starting in a new school district, will have to meet new friends, all of that. And her diagnosis says that stressors [such as a move] can be very problematic [to D.M.D]" and "[the move] is very burdensome on the child, as well, especially given her mental state."[2]

[2] We note that D.M.D. has now lived in the new town and attended school there for 14 months; requiring her to move back to the metro area and change schools again would no doubt be a source of additional stress.

Appellant relies on *Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002). ("Whether a modification is substantial depends on whether parenting time was restricted . . . ."). But *Matson* is distinguishable: in that case, an amended decree granted the father sole physical custody but provided the parents with roughly equal parenting time as long as the mother continued to reside in the metro area; if she moved, her parenting time would be changed to supervised parenting time within the metro area. *Id.* at 464. When the mother moved from the metro area, the district court reduced her parenting time and required her to pay child support of $380, based on imputed income. *Id.* at 465.

Here, there was no stipulation that the parties remain in the metro area; the court increased appellant's weekend parenting time during the school year to three weekends per month, decreased his weekday parenting time because of the school schedule, and left him with equal parenting time during the summer. The reason for the change is obvious: as the district court found, D.M.D. cannot live with appellant, 70 miles away from her school, during the week.[3] The change in parenting time was clearly to accommodate D.M.D.'s school schedule, not to prevent her from seeing appellant. *See id.* at 468 ("[W]hether parenting time was restricted . . . requires looking at both the reasons for the change and the amount of reduction of the parenting-time rights."). Appellant's parenting time may have been decreased, but it was not restricted.

The district court did not err in not ordering an evidentiary hearing.

[3] The record does not reflect a change in child support as a result of the change in parenting time.

II. Modification of 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. *Id.* at 465. "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), *review denied* (Minn. June 12, 1984).

The district court's findings that respondent relocated to another community and enrolled D.M.D. in school there are undisputed, and appellant has not shown that the modification in his parenting time necessitated by D.M.D.'s school schedule is not in D.M.D.'s best interests. He argues only that the district court failed to make findings that the modification is in D.M.D.'s best interests. However, parenting-time considerations require less explicit best-interests findings than custody determinations. *See Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995) (affirming district court's decision that visitation between child and grandparent was in child's best interests although the record did not contain detailed findings on best interests). Because the findings that respondent has relocated to another community where D.M.D. is now going to school and that this community is too far away for D.M.D. to stay with appellant during the school week provide an adequate explanation for the change in parenting time, there was no abuse of discretion and there is no basis for reversal.

Affirmed.