STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0342

Elaine Maurine McDonnell (Anderson), petitioner,
Respondent,

vs.

Jack Richard Anderson,
Appellant.

Filed July 22, 2013
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27FA000279957

Barbara R. Kueppers, Minneapolis, Minnesota (for respondent)

Jack Richard Anderson, Edina, Minnesota (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from the district court's denial of his request to modify his parenting time, appellant-father argues that the district court abused its discretion by denying his motion because he satisfied the conditions necessary to remove his parenting-time restrictions, set forth in a prior order. We affirm.

FACTS

The marriage between appellant Jack Anderson and respondent Elaine McDonnell Anderson, now known as Elaine McDonnell, was dissolved in October 2002. At the time of the dissolution, the parties were awarded joint legal and physical custody of their two minor children. Several years later, the parties entered into a stipulated custody agreement under which McDonnell gained sole physical custody of the children, subject to Anderson's reasonable parenting-time. Thereafter, McDonnell moved for sole legal custody of the children. The district court granted the motion, finding that Anderson's behavior endangered the children. Anderson appealed the custody modification and this court affirmed. *Anderson v. Anderson*, No. A09-2367 (Minn. App. Jan. 25, 2011) (*Anderson I*), *review denied* (Minn. Mar. 15, 2011).

While the first appeal was pending, Anderson moved the district court to modify his parenting time. Following a hearing, the district court issued an order on July 27 2010, restricting Anderson's parenting time. The district court held that Anderson could petition to modify his parenting time only after he satisfied certain conditions, including that he: (1) complete a psychological evaluation and follow its recommendations; (2) demonstrate nine months of consistent visitation without disparaging McDonnell or making unfulfilled promises to the children; and (3) showed that he could appropriately parent the children. Thereafter, Anderson twice moved the district court to modify his parenting time. In June 2011, the district court denied the more recent motion without a hearing on the basis that the motion did not assert or demonstrate that Anderson had satisfied the conditions of the July 27, 2010 order. Anderson appealed the July 2010, and

June 2011 orders alleging judicial bias and that the district court abused its discretion by restricting his parenting time and by refusing to modify it until he satisfied conditions bearing on his psychological and parental fitness. *Anderson v. Anderson*, No. A11-1411, 2012 WL 1470230 (Minn. App. Apr. 30, 2012) (*Anderson II*). Concluding that the record reflected neither an abuse of discretion or bias, this court affirmed. *Id.* at *2-3.

On June 9, 2012, Anderson brought a motion to terminate all parenting-time restrictions. Following an evidentiary hearing, the district court found that Anderson consistently misses visitation dates and phone calls with his children, "continues to make unfulfilled promises to the minor children," and "has failed to show the Court that he is able to maintain sobriety." Thus, the district court denied the motion because Anderson "has been unable to follow the recommendations and demonstrate nine months of consistent visitation with the minor children." Anderson appealed, and this court subsequently granted Anderson's motion which sought review of the district court's amended order, issued after the guardian ad litem's report was filed.

D E C I S I O N

The district court has broad discretion in deciding parenting-time issues based on the best interests of the children and will not be reversed absent an abuse of discretion. *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 improperly applying the law." *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010). A district court's findings of fact, on which a parenting-time decision is based, will be upheld unless they are clearly erroneous. *Id.*

A modification of parenting time requires a change of circumstances. Minn. Stat. § 518.175, subd. 5 (2012); *Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002). "If modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5. A district court may condition the modification of parenting time on the successful completion of stated obligations. *See Moravick v. Moravick*, 461 N.W.2d 408, 409 (Minn. App. 1990) (noting broad district court discretion in deciding parenting-time issues and discussing the modification of father's parenting-time rights contingent on counseling).

Anderson argues that he satisfied the conditions of the July 27, 2010 order and that the district court's findings to the contrary are not supported by the record. Thus, Anderson claims, the district court abused its discretion by denying his request to modify his parenting time and to remove all restrictions.

We disagree. The district court denied Anderson's request for unsupervised parenting time because he has been unable to demonstrate nine months of consistent visitation with the children. This finding is supported by the record. Evidence was presented that Anderson consistently missed his weekly telephone contact with his children, and failed to show up for his supervised visitation on October 18, 2012. Anderson admitted that despite knowing that he was scheduled to have weekly telephone contact with his children between 7:30 and 8:30 on Tuesday evenings, he frequently failed to answer his phone when his children called at the scheduled time. Moreover, Anderson admitted missing his scheduled visitation with his children on October 18,

2012, because he took a car to Chicago with the apparent intent to travel to Russia. The record reflects that Anderson was reported missing while traveling to Chicago, and that the incident resulted in the termination of his employment. The record further reflects that Anderson continues to have issues with alcohol and continues to make promises to his children, which he knows, or should know, that he cannot realistically fulfill. Although the record reflects that Anderson did complete the psychological evaluation in conformity with the July 2010 order, and that the evaluation did not provide any recommendations, the evaluation stated that Anderson has a "passion, if not compulsion, for challenging and resisting authority," which indicates that he "is not likely to benefit from any intervention aimed at those deficits." The evidence in the record demonstrates that Anderson continues to exhibit erratic behavior and has not satisfied the conditions of the July 27, 2010 order. Accordingly, the district court did not abuse its discretion by denying Anderson's motion to modify his parenting time.

Affirmed.