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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0007**

In re the Marriage of:

Kidane Tsadik Berhane, petitioner,
Appellant,

vs.

Elleni Berhane,
Respondent.

**Filed August 5, 2013
Affirmed
Hudson, Judge**

Ramsey County District Court
File No. 62-FA-11-1028

Kidane Tsadik Berhane, Apple Valley, Minnesota (pro se appellant)

Lou Her, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota; and

Thomas B. Hatch, Natalie I. DeBoer, Robins, Kaplan, Miller & Ciresi L.L.P.,
Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant-father argues that the district court abused its discretion by inaccurately determining the best interests of the children in awarding sole physical and legal custody to respondent-mother and by awarding spousal maintenance to respondent when the record shows that she is capable of self-support. We affirm.

FACTS

Appellant Kidane Tsadik Berhane and respondent Elleni Berhane were married July 7, 2009. Respondent had been gainfully employed and supporting herself in Ethiopia but moved to the United States after appellant asked her to marry him in May 2009. Appellant has a bachelor's degree and works for the United States Postal Service, earning a gross annual salary of \$60,421.

The parties have two minor children who were born in February 2010 and August 2011. The parties separated in February 2011 when appellant learned that respondent was pregnant with their second child. Though both parents were heavily involved in child care prior to the couple's separation, respondent has been the primary caretaker of both children since the couple separated. After the couple separated, appellant moved into the home of friends, while respondent moved into a women's shelter. Respondent moved in with a friend after a year in the shelter, but was forced to return to the shelter when the friend was murdered by her friend's husband. The murder did not occur in the children's presence.

By court order, the Ramsey County Community Corrections Department conducted a custody and parenting-time evaluation. The parties were each interviewed twice, and the department conducted a home observation of each party. The report stated that both parents exhibited effective parenting skills during the home observations. The report concluded by recommending that respondent be awarded sole legal and physical custody of the children and that appellant be allowed parenting time as his work schedule allowed.

A two-day trial took place in May 2012. Debra Crossett of Ramsey County, who performed the custody evaluation, testified that, consistent with her report, it was in the best interests of the children for sole custody to be awarded to respondent. Multiple character witnesses testified on appellant's behalf, and both appellant and respondent testified.

In its order, the district court considered best-interests factors including the children's adjustment to home, the children's primary caretaker, the continuity of the caretaking situation, the capacity of each party to love the children, and the disposition of each parent to encourage frequent contact with the other parent. Though there had been accusations of verbal and physical abuse, the district court concluded that there was insufficient evidence that domestic abuse occurred. The district court concluded that, because respondent had been the children's primary caretaker since February 2011 and the children had adjusted well, and because the parties were unable to cooperate in the rearing of their children, it was in the best interests of the children to grant sole legal and physical custody to respondent.

The district court next considered child support and awarded respondent \$1,022 monthly of child support, as well as \$18,673 for reimbursement of past support owed for March 2011 through October 2012. The district court found that respondent did not have sufficient income or property to support herself and awarded respondent \$700 per month in spousal maintenance for two years, beginning November 2012. This appeal follows.

D E C I S I O N

I

Appellant argues that the district court erred in awarding sole physical and legal custody of the children to respondent because it did not accurately weigh the relevant factors in determining the best interests of the children. The district court has broad discretion in marital dissolution proceedings. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). We review custody determinations to determine whether the district court “abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002).

The controlling principle in a child-custody determination is that the decision should reflect the best interests of the children. *Schallinger v. Schallinger*, 699 N.W.2d 15, 19 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). In making its determination, the district court must consider all relevant factors, including thirteen statutorily enumerated factors. Minn. Stat. § 518.17, subd. 1(a) (2012).

Appellant challenges the district court’s analysis of several of the statutory best-interest factors. First, appellant argues that the district court failed to consider that respondent admitted to making false statements when she requested an order for

protection. Appellant argues that these false statements led to restrictions on his parenting time after the parties' separation, which ultimately determined the custody dispute, as evidenced by the district court's conclusion that mother was the primary caretaker and continuity of the children's care favored awarding respondent physical custody.

In an affidavit in support of her petition for an order for protection, prepared with the assistance of an interpreter, respondent stated that appellant physically abused her on a daily basis. During the custody evaluation, respondent told Crossett that she had been physically abused often. This contradicted her testimony at trial that appellant had only hit her on one occasion.

Appellant overstates the extent and relevance of this contradiction. Respondent did not admit to making a false statement during her testimony; she explained that she referred only to the incident in which she was kicked because the injury was verified when she went to a clinic three days later. And the district court was aware of the possibility that appellant's prior statements were false and determined that there was insufficient evidence of abuse, so that this contradiction did not influence the custody decision. The contradiction is otherwise insignificant. Respondent had full custody of the children when the parties separated until the time of the dissolution proceedings. Thus, even if the order for protection had not been granted, respondent still would have been the primary caretaker, and the interest in maintaining continuity in the children's living situation still would have favored awarding custody to respondent. The district court, therefore, did not abuse its discretion by failing to assign greater weight to the

contradiction between respondent's testimony and her affidavit regarding appellant's alleged physical abuse.

Appellant next argues that the district court did not consider testimony from a witness, Eid al-Mowallad, who was critical of respondent's parenting. But the district court received al-Mowallad's written statement, directly interrogated Crossett as to whether she had considered it in reaching her conclusions, and heard al-Mowallad's testimony regarding appellant and respondent's parenting abilities. And judging the credibility of witnesses and the weight to give each witness's testimony rests within the province of the fact-finder. *Fontaine v. Hoffman*, 359 N.W.2d 692, 694 (Minn. App. 1984). As fact-finder, the district court acted well within its discretion in giving little weight to al-Mowallad's testimony as compared to the county's custody evaluation.

Appellant raises several additional arguments that are based largely on a mischaracterization of the district court's findings of fact. First, appellant argues that the district court erred by relying on respondent's allegations of domestic abuse. But the district court did not rely upon respondent's domestic-abuse allegations, stating that "[a]lthough there has clearly been significant emotional and verbal conflict between the parties before and after their separation, there is insufficient evidence upon which to find that domestic abuse has occurred." Second, appellant argues that the district court failed to consider the positive assessment of his parenting skills. But the district court took this into account and noted that the county found that both parents exhibited effective parenting skills. Third, appellant argues that the district court incorrectly stated that respondent complied with the parenting-time orders. But this was not the district court's

finding—the district court acknowledged appellant’s argument, but found that he failed to provide enough examples to substantiate his claim that respondent was regularly interfering with appellant’s scheduled parenting time.

The district court duly considered the statutory best-interests factors, and the record contains evidence to support the district court’s findings on those factors. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court “does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court’s findings,” and an appellate court’s “duty is performed when [it] consider[s] all the evidence, as we have done here, and determine[s] that it reasonably supports the findings”); *Peterka v. Peterka*, 675 N.W.2d 353, 357–58 (Minn. App. 2004) (applying *Wilson* in a family-law appeal). Those findings, in turn, support the district court’s parenting-time decision, and appellant’s dissatisfaction with the decision is not a basis for reversal.

As this court stated in *Vangness v. Vangness*, “current law leaves scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations.” 607 N.W.2d 468, 477 (Minn. App. 2000). Because the district court’s custody order is supported by sufficient findings of fact addressing each of the statutory best-interests factors, we affirm the district court’s award of sole physical and legal custody to respondent. *See Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991) (deferring to district court’s custody determination because district court thoroughly considered all best-interests factors consistent with statutory requirement).

II

Appellant argues that the district court abused its discretion by awarding respondent \$700 per month in spousal maintenance for two years. The district court has broad discretion when determining spousal maintenance. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). “A district court abuses its discretion regarding maintenance if its findings of fact are clearly erroneous.” *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). “Findings of fact are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quotation omitted).

Spousal maintenance may be awarded if the district court finds that the spouse seeking maintenance lacks the property to provide for the party’s own reasonable needs or is unable to obtain adequate support through employment. Minn. Stat. § 518.552, subd. 1 (2012). If maintenance is granted, the court must consider all relevant factors including the financial resources of the parties, the likelihood of the party seeking maintenance becoming self-supporting, the standard of living during the marriage, the duration of the marriage, the length of absence from employment, opportunities lost by the party seeking maintenance, the age as well as the physical and emotional condition of that party, and the contribution of each party to the marital property. *Id.*, subd. 2 (2012). The district court weighs these factors on a case-by-case basis to determine whether spousal maintenance is needed, and if so, the amount and duration of the award. *Kampf*, 732 N.W.2d at 633–34.

The district court found that respondent did not have sufficient income and property to meet her reasonable needs. This determination was supported by several findings of fact: respondent is not employed; respondent spent over a year living in a women's shelter and has had to resume living there; respondent has had to cease her education and refuse an offer of employment because of her child-care responsibilities; and respondent lacks the job skills and English proficiency to obtain a job that would help pay for her own support and child-care expenses.

Appellant argues that the district court failed to take into account respondent's ability to find work given that she possesses a green card, received education in Ethiopia, and has taken several English classes. This argument is unpersuasive. The district court's findings demonstrate that it considered the relevant statutory factors including respondent's resources, her lack of employment, the likelihood of her becoming self-supporting, the length of her absence from employment, respondent's contributions as a homemaker, and the opportunities for education and employment that respondent lost as a result of the marriage and her caring for the couple's children. *See* Minn. Stat. § 518.552, subd. 2. These findings are supported by the record and are therefore not clearly erroneous.

Appellant argues that the district court abused its discretion by failing to take into account his ability to pay spousal maintenance while meeting his needs. But the district court made a specific factual finding regarding appellant's income to justify its award, and appellant cites no evidence in the record demonstrating that this finding was clearly erroneous. In fact appellant testified at trial that his current salary exceeds \$60,000 per

year, which appears sufficient to make monthly spousal maintenance payments of \$700 for two years.

The district court's findings of fact support its legal conclusion that respondent lacked the property and income to provide for her own support. The district court's findings also support its conclusion that an award of spousal maintenance for two years was appropriate and that appellant could afford the payment. These findings demonstrate that the district court considered the relevant statutory factors, and the findings are reasonably supported by the evidence as a whole. The district court therefore did not abuse its discretion by awarding spousal maintenance to respondent. *See Quick v. Quick*, 381 N.W.2d 5, 8 (Minn. App. 1986) (concluding that there was no abuse of discretion when the district court considered the relevant statutory factors in awarding maintenance).

Affirmed.