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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1155**

Randal Scott Thompson,
Appellant,

vs.

Dana A. Lowery,
Respondent.

**Filed July 1, 2008
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-PA-FA-000048961

Craig E. Shriver, 4526 Highway 61 North, White Bear Lake, MN 55110 (for appellant)

Douglas R. Boettge, Leonard, Street and Deinard, P.A., 150 South 5th Street, Suite 2300,
Minneapolis, MN 55402 (for respondent)

Considered and decided by Willis, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to restrict respondent's parenting time. Because the district court acted within its discretion, we affirm.

FACTS

Appellant Randal Thompson and respondent Dana Lowery are the parents of C.T., who was born on October 24, 2001. The parties, who were never married, participated in a custody evaluation and stipulated to joint legal custody of C.T. and to a parenting plan under Minn. Stat. § 518.1705 (2006) that gave each party roughly equal parenting time. The parties also agreed to use a parenting consultant to resolve disputes regarding C.T. The agreement was approved by the district court in a June 17, 2005 judgment and decree.

On November 4, 2006, Thompson denied Lowery her time with C.T., based on his allegation that Lowery had pinched C.T. After C.T. told a CornerHouse worker that Lowery had pinched him, the parenting consultant reduced Lowery's parenting time to two supervised two-hour visits per week.

Lowery subsequently moved the district court to resume the original parenting-time schedule and for compensatory parenting time. The district court ordered continued supervised visits between Lowery and C.T. and appointed a guardian ad litem (GAL). After assessing the situation, the GAL recommended that Lowery have unsupervised parenting time one night during the week and one day every weekend.

On December 21, 2006, the district court ordered the parties to return to a schedule with equal parenting time and ordered unsupervised time for Lowery. The district court also ordered Hennepin County Family Court Services (HCFCS) to perform a parenting-time evaluation. Rob Mechels of HCFCS concluded that “[d]espite no . . . finding of maltreatment, it would be prudent to have Ms. Lowery complete a domestic violence evaluation and scale back her parenting time until this [allegation] can be further investigated.” Mechels recommended reduced, but unsupervised, visitation for Lowery.

The district court ordered an evidentiary hearing under Minn. Stat. § 518.175 (2006) to determine if Lowery’s parenting time endangered C.T.’s physical or emotional health. Thompson called Mechels and the CornerHouse employee who interviewed C.T. as witnesses. Mechels testified that he did not believe that Lowery endangered C.T. but recommended no overnight stays for C.T. with Lowery, stating that overnight routines “can be added stress.” The CornerHouse interviewer reiterated her determination that C.T. had suffered minor physical abuse. But she also agreed that her opinion might be changed upon learning that Thompson had previously videotaped C.T. and questioned him about Lowery’s alleged pinching.

Lowery called four witnesses who testified about her strong relationship with C.T., her skills as a mother, and the negative effects that reducing or removing Lowery’s parenting time would have on C.T. No witness called by either party opined that C.T. was endangered by being in Lowery’s care. The district court concluded that C.T. is not endangered while in Lowery’s care and denied Thompson’s motion to restrict Lowery’s parenting time. This appeal follows.

DECISION

A district court has broad discretion when setting parenting time and will not be reversed unless it abuses this discretion. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). Minn. Stat. § 518.175, subd. 5 (2006), provides, in part:

If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provided in section 631.52, the court may not restrict parenting time unless it finds that:

(1) parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or

....

If a parent makes specific allegations that parenting time by the other parent places the parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time. Consistent with subdivision 1a, the court may require a third party, including the local social services agency, to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the other parent or child from harm.

Thompson sought to restrict Lowery's parenting time to Wednesday nights from 5:00 p.m. to 7:00 p.m. and alternating Saturdays and Sundays from 9:00 a.m. to 7:00 p.m. In support of his motion, Thompson contended that Lowery physically abused C.T. and that he was therefore endangered in her care. Thompson had reported allegations of Lowery's abuse to Hennepin County Child Protection (HCCP) on four occasions—in November 2003, April 2005, March 2006, and November 2006. On the first occasion, soon after the parties separated in November 2003, HCCP made a finding of

maltreatment, but it was subsequently overruled by the Department of Human Services (DHS). HCCP evaluated each of Thompson's reports, ultimately concluding that child-protective services were not required.

In April 2005, Thompson sought an order for protection, alleging Lowery's physical abuse of C.T. Relying on the opinions of the HCCP worker and the GAL that there was no maltreatment, the district court determined that Thompson failed to sustain his burden of proof that Lowery had ever harmed C.T. and specifically noted that Thompson was less than candid with the district court in failing to acknowledge that the November 2003 maltreatment finding had been overturned on appeal at DHS.

At the evidentiary hearing in February 2007, Lowery called a licensed social worker, her pastor, a family-assessment specialist, and C.T.'s day-care provider of three years. Each testified at some length about their direct observations of Lowery with C.T., and each opined that C.T. is not endangered with Lowery. The social worker, who had observed Lowery parent C.T. for 13 hours, testified that Lowery and C.T. have a strong, connected, and comfortable relationship and that the two share healthy rituals and routines. Lowery's pastor, who has a background in juvenile work and child-custody mediations, testified that C.T. is well cared for. C.T.'s day-care provider testified that C.T. and Lowery love each other and that she had never observed an evidence of abuse. The district court noted in its order that it found all four of Lowery's witnesses to be credible.

No witness, including those called by Thompson, testified that C.T. is endangered with Lowery. Even Mechels, who conducted the parenting-time evaluation, agreed that

C.T. is not endangered with Lowery. The district court also noted that it rejected Mechels's bases for his opinion that Lowery's parenting time should be reduced because Mechels had never observed Lowery with C.T., had never spoken to the other professionals who had observed them together, and made what appeared to be an unsupported assumption that Lowery had been abused as a child and thus was more likely to abuse her own child.

The district court also considered the CornerHouse employee's conclusion, based on her November 13, 2006 interview with C.T., that the pinch marks, while minor, appeared to indicate physical abuse. The district court directed the GAL to follow up with the child-protection worker, Mike Sherman. Sherman indicated that CornerHouse and child protection have different standards in determining abuse and that, in his opinion, the case did not warrant C.T.'s removal from Lowery or even supervised parenting time, particularly since Lowery had agreed to work with African American Family Services. The GAL also noted that C.T. had been questioned about pinching over a period of years, which might have the effect that C.T. responds now in a way that he thinks will please the questioner.

The district court made a specific finding of Lowery's credibility. In contrast, the district court noted that it was

troubled by what it finds is a pattern of deliberate misrepresentations and omissions by [Thompson] when making allegations of abuse against [Lowery]. [Thompson's] misrepresentations and omissions appear part of an attempt by [Thompson] to persuade other persons to believe his allegations of abuse or to otherwise garner a certain outcome.

Having reviewed the record in support of the district court's extensive findings, we conclude that the district court acted within its discretion in denying Thompson's motion to restrict Lowery's parenting time with C.T.

Affirmed.