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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2291**

In re the Marriage of:
Theodore A. Pavlovich, petitioner,
Appellant,

vs.

Dawn E. Pavlovich,
Respondent.

**Filed August 5, 2008
Affirmed
Hudson, Judge**

St. Louis County District Court
File No. 69-F5-98-601089

Rachel C. Delich-Sullivan, 1932 Second Avenue East, Suite 2, Hibbing, Minnesota 55746 (for appellant)

Dawn E. Pavlovich, 3728 North Ridge Road, Duluth, Minnesota 55804 (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Toussaint, Chief Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal in this parenting-time dispute, appellant father argues that the July 2004 parenting-time schedule should be enforced because (a) there has been no finding of endangerment; and (b) the child's wishes not to have parenting time with his father are

the result of systematic parental alienation by respondent-mother. Because the district court did not abuse its discretion in denying appellant's motion to enforce the parenting-time schedule, we affirm.

FACTS

Appellant Theodore A. Pavlovich and respondent Dawn E. Pavlovich were married on July 18, 1981. The parties have three children: M.P., born April 18, 1982; E.P., born January 19, 1985; and J.P., born April 9, 1991. In 1999, the marriage was dissolved. Under a stipulated portion of the dissolution decree, the parties were awarded joint legal custody of the minor children, with sole physical custody of M.P. awarded to appellant and sole physical custody of E.P. and J.P. awarded to respondent. The decree also stated that “[parenting time] between [appellant] and [J.P.] shall be reasonable, and implemented as soon as recommended by Dr. Gary Davis. That both parties shall cooperate in bringing [J.P.] to meet with Dr. Davis and [appellant] in order to implement the intention of this provision.”¹

On January 3, 2000, Dr. Davis submitted a letter to the district court summarizing the supervised parenting time between appellant and J.P. Dr. Davis stated that during the parenting-time sessions, J.P. “assumed an angry stance and participated minimally.” According to Dr. Davis, J.P. “stated that he hated his father and wanted nothing to do with him.” Dr. Davis further noted that appellant and respondent harbor “extreme anger

¹ The decree also provided that parenting time between appellant and E.P. shall be arranged between appellant and E.P., and parenting time between respondent and M.P. shall be arranged between respondent and M.P. At the time of this appeal, both M.P. and E.P. have reached the age of emancipation, and parenting time with these children is not an issue in this appeal.

toward one another [that] interferes with them being able to assist their children with the necessary adjustment to the divorce.” Thus, Dr. Davis recommended that the “supervised [parenting time] of [J.P.] with his father be discontinued at the present time. . . . Any attempt to force [J.P.] . . . to have [parenting time] with [his] father is not likely to be successful until the parents’ adjustment improves.”

In December 2000, appellant moved to schedule parenting time. The parties subsequently resolved the motion by stipulating to an order that required psychological counseling for both parents, a diagnostic assessment of J.P. by a licensed psychologist, and that the parents would follow the parenting-time recommendation by their son’s psychologist. Following an assessment, the psychologist strongly recommended that appellant not have contact with J.P.

In August 2001, appellant again moved to establish parenting time with his son. The district court denied appellant’s motion, noting that it would be counterproductive to order parenting time over the child’s objection. Appellant appealed that decision, and this court affirmed in *Pavlovich v. Pavlovich*, No. C3-01-1948 (Minn. App. July 9, 2002).

In March 2004, appellant filed another motion to establish parenting time with J.P. In its July 2004 order, the district court awarded parenting time but stated that “[parenting time] shall not be forced upon said child against his wishes.” According to appellant, J.P. continued to refuse to see his father. Approximately three years later, appellant moved to enforce the parenting-time schedule set forth in the July 2004 order and to remove the language of the order permitting the child to refuse parenting time. Appellant claimed that J.P.’s refusal to have parenting time with his father is the result of systematic

parental alienation by respondent and that it was in J.P.'s best interests to have parenting time with his father. The district court denied appellant's motion, concluding that J.P. "clearly does not want to have contact with [appellant]. . . . [J.P.] will have to resolve his own father-son issues in his own way and on his own time schedule. Now is clearly not the time." This appeal follows.

D E C I S I O N

The authority of a district court to award and enforce parenting-time rights involves questions of law. *Simmons v. Simmons*, 486 N.W.2d 788, 790 (Minn. App. 1992). This court is not bound by the district court's legal conclusions. *Id.* But the district court has broad discretion to determine what is in the best interests of a child regarding parenting time, and its determination will not be overturned absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). In reviewing a district court's order for an abuse of discretion, this court's inquiry is limited to whether the court made findings unsupported by the evidence or erred by improperly applying the law. *Kulla v. McNulty*, 472 N.W.2d 175, 183 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991).

Minnesota law provides that:

In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such parenting time on behalf of the 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.

If the court finds, after a hearing, that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the parent prior to the commencement of the proceeding.

Minn. Stat. § 518.175, subd. 1(a) (2006).

Appellant argues that the July 2004 parenting-time order should be enforced because parenting time is mandated under Minn. Stat. § 518.175, subd. 1, when, as here, there has been no finding of endangerment. We disagree. The appropriate standard to be applied in awarding parenting time is the best-interests-of-the-child standard. *Id.*; see *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984) (stating that “[i]t is well established that the ultimate question in all disputes over [parenting time] is what is in the best interest of the child”), *review denied* (Minn. June 12, 1984). Thus, even in the absence of a finding of endangerment, parenting time with a non-custodial parent is not mandatory because the ultimate consideration is the best interests of the child.

Here, appellant is correct in that there was no explicit finding of endangerment. But based on the recommendations of J.P.'s psychologists, the district court initially determined that parenting time with appellant was not in J.P.'s best interests. Although the district court eventually awarded appellant parenting time with J.P. in 2004, the decision was ultimately left to J.P., who continued to refuse to see his father. The record reflects that J.P. has undergone numerous psychological evaluations since the marriage was dissolved and now, at 17 years of age, continues to exhibit strong feelings of anger

toward appellant. As the district court recognized in the order denying appellant's motion, J.P. "clearly does not want to have contact with [appellant]." Appellant has failed to offer any evidence to contradict the finding that it is not in J.P.'s best interests to have parenting time with his father.

Appellant argues that J.P.'s refusal to see him is due to systematic parental alienation by respondent. Thus, appellant argues that the district court abused its discretion in refusing to modify the language in the order that parenting time shall not be forced upon J.P. against his wishes. Although the facts here are tragic, we cannot say the district court abused its considerable discretion.

First, we observe that in *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991), this court stated that the preference of an "older teenage child is an overwhelming consideration in determining the child's custody." A similar deference is proper in making parenting-time determinations. See *Barrett v. Barrett*, 394 N.W.2d 274, 279 (Minn. App. 1986) ("Given the children's ages, their choices and preferences must be seriously considered in determining [parenting time].").

Second, we acknowledge that there is evidence in the record supporting appellant's position that J.P.'s refusal to see his father is due, in part, to the systematic alienation by respondent. But at this point in the proceedings, there is little this court can do to address that problem. The record reflects that this has been a very contentious divorce, and the record is replete with affidavits demonstrating the hostility between not only appellant and respondent, but also between the parties' children and their non-custodial parents. The circumstances here are unfortunate, but J.P. is now 17 years old

and will soon be emancipated. The record is clear that J.P. wants nothing to do with his father and, as the lower courts in this matter have repeatedly recognized, forcing J.P. to have parenting time with his father would be counterproductive. *See Ross*, 477 N.W.2d at 757 (stating “[t]here is [a] serious question when dealing with [an older teenager] whether trial courts can practically contradict the child’s choice even if it was shown to be misguided”). The district court considered these factors in denying appellant’s motion. Accordingly, on this record, the district court did not abuse its discretion in denying appellant’s motion to enforce the 2004 parenting-time order by deleting the language in the order permitting J.P. to refuse parenting time.

Affirmed.