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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1729**

In re the Marriage of:
Julie Anne Meyer, petitioner,
Respondent,

vs.

Mark Kevin Thalacker,
Appellant

**Filed August 18, 2009
Affirmed
Ross, Judge**

Freeborn County District Court
File No. 24-FA-07-372

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

In this appeal after a marriage dissolution, father Mark Thalacker challenges the
district court's order granting sole physical and legal custody of the parties' now four-

year-old daughter to mother Julie Meyer with alternate-weekend parenting time to Thalacker. Thalacker argues that the district court's decision reflects a pro-mother bias and lacks factual support. Because the record supports the district court's decision and does not reflect bias, we affirm.

FACTS

Julie Meyer and Mark Thalacker married in November 2006. They have one child together, G.T., who was born in June 2005. Meyer has custody of three older daughters not fathered by Thalacker. The parties lived in Albert Lea during most of their marriage. Meyer filed for dissolution in February 2007 after returning to Eau Claire, Wisconsin, where she had lived before her relationship with Thalacker. Both parties sought physical and legal custody of G.T. The district court appointed a guardian ad litem, who recommended that Thalacker receive sole physical custody and that the parties share legal custody.

A contentious custody hearing led to a different result. Each party presented multiple witnesses and exhibits supporting their arguments for custody. The district court requested a supplemental report from the guardian ad litem. The guardian's supplemental report maintained his initial recommendations.

The district court issued findings on the statutory best-interest factors, made legal conclusions, and determined that G.T.'s best interests favored granting Meyer sole physical and legal custody. The district court set a parenting time schedule, ordering that G.T. would primarily reside with Meyer and that G.T. would spend every other weekend, as well as two weeks during the summer, with Thalacker.

Thalacker moved for amended findings on the custody determination to reflect the witness testimony and the guardian's recommendation. The district court denied his motion because it found that the balance of evidence at the hearing countered the guardian's recommendation and there was no reason to amend the findings. Thalacker's appeal challenges the district court's determinations on physical and legal custody and the division of parenting time.

D E C I S I O N

I

Thalacker contests the district court's decision to award Meyer sole physical and legal custody. The district court has broad discretion in resolving child-custody disputes. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989). Appellate review of the district court's custody decision is limited to determining whether the district court abused its discretion by improperly applying the law or making findings unsupported by the evidence. *Id.* We conduct this review by examining the record in the light most favorable to the district court's findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Thalacker contends that the record does not support the district court's findings and that the district court failed to consider all required factors. The district court must apply the statutory factors listed in Minnesota Statutes section 518.17, subdivision 1(a) (2008) when determining custody. The district court cannot "use one factor to the exclusion of all others" and "must make detailed findings on each of the factors." *Id.* If joint legal or physical custody is "contemplated or sought", then the district court must

consider four additional statutory factors. *Id.*, subd. 2 (2008). A rebuttable presumption arises that joint legal or physical custody is not in the child's best interests if domestic abuse has occurred between the parents. *Id.*

Most of the findings that Thalacker disputes relate to the district court's credibility determinations and resolution of conflicting evidence. If we looked only to the evidence that Thalacker presented, his argument would be compelling. But we defer to the district court's credibility determinations. *Vangness*, 607 N.W.2d at 472. After considering Thalacker's challenges in light of that deference, we hold that the district court did not abuse its discretion in making its custody determination.

One statutory factor that the district court must consider is which parent is the primary caretaker. Minn. Stat. § 518.17, subd. 1(3). Another factor is the bond between parent and child. Minn. Stat. § 518.17, subd. 1(4). Thalacker contests the finding that Meyer was G.T.'s primary caretaker. The record supports the district court's finding. Meyer testified that she cooked for G.T. and the family, arranged and took G.T. to daycare, took G.T. to her medical appointments, and took G.T. to Sunday school. Although Thalacker contends that the district court based its decision solely on their respective work schedules and ignored his close bond with G.T., Thalacker conceded at oral argument that there is a basis in the record to support the findings that Meyer was the primary caretaker and that she had a close bond with G.T. Given our standard of review, this concession resolves Thalacker's challenge to the district court's findings on these factors.

Thalacker next challenges the finding about G.T.'s interrelationship with other key people. The statute requires the district court to examine the child's interaction and interrelationship with one or both parents, any siblings, and other people who may have a significant impact on the child's best interests. Minn. Stat. § 518.17, subd. 1(5). The district court found that G.T. had a close bond with her sisters who reside with Meyer, that Meyer's parents visit regularly, and that relationships with Thalacker's relatives could be maintained with parenting time. The record supports this finding. G.T. has lived with her sisters since birth. Most of Thalacker's family lives in South Carolina. His mother lives in Wisconsin and does not visit frequently. Thalacker argues that the district court ignores any role that his family has in G.T.'s life, but he directs us to no evidence or basis to establish that G.T.'s relationship with his family cannot be maintained to the same extent as usual during his parenting time.

Thalacker also contests the district court's finding regarding G.T.'s adjustment to home, school, and community, and that G.T. has lived in a stable environment. The statute directs findings on these factors also. Minn. Stat. § 518.17, subd. 1(6), (7). The district court found that G.T. is adjusted to Meyer's home and it was in her best interests to maintain continuity by remaining primarily with Meyer. The record supports this finding. The guardian noted that G.T. was adjusted to both homes. G.T. is enrolled with one daycare provider with Meyer, and she lives at Meyer's home with her sisters. Thalacker contends that the district court made no findings regarding G.T.'s adjustment to his home, failed to consider that if he had custody G.T. would spend less time in daycare, and ignored the factor of living in a stable environment. But Thalacker points to

nothing in the record to establish that G.T. lives in an unstable environment. And he fails to refute the district court's findings that G.T. is well adjusted to Meyer's home and that remaining in Meyer's home allows for continuity, especially since he testified that he had considered relocating to Montana. Thalacker's arguments depend on us reweighing the evidence, which we cannot do. The record supports district court's findings.

Thalacker also challenges the district court's finding on the permanence of the custodial home. This finding regards the statutory factor of the permanence of the family unit in the proposed or existing custodial home. Minn. Stat. § 518.17, subd. 1(8). The district court found that Meyer's home appeared to be permanent. The record also supports the finding. Meyer bought a home in Eau Claire where she lived before her relationship with Thalacker. Her children attend the same school that they previously attended before moving to Albert Lea. Meyer testified that she planned to stay in Eau Claire, and her ex-husband testified that Meyer was looking for a job in Eau Claire. Thalacker argues that Meyer has moved and changed jobs several times while he has remained in Albert Lea, which shows that his home is more permanent. We acknowledge that the record might support findings other than those made by the district court, but this alone does not establish that the findings are infirm. The record supports the district court's findings, and despite the merit to Thalacker's contention that a different result is also supported, we will not reweigh the underlying evidence.

Thalacker contests the district court's finding that neither party has significant mental or physical health issues. Minn. Stat. § 518.17, subd. 1(9). The record supports the district court's finding. The guardian opined that neither party had a mental or

physical health issue. Thalacker contends that Meyer has threatened suicide and implies that Meyer attempted suicide. Again, there is some basis in the record supporting the district court's finding, and Thalacker is asking us to reweigh the evidence to reach a different result. We decline to do so.

Thalacker also challenges the district court's finding regarding Meyer continuing to educate and raise the child in her culture and religion. Minn. Stat. § 518.17, subd. 1(10), (11). The district court found that Meyer was better able to educate G.T. in religion and culture. The record also supports this finding. Meyer testified that her family belonged to the Sault Sainte Marie tribe of the Chippewa Indians, that G.T. was in the process of being placed on the tribal rolls, and that her other daughters were involved in a Title VII educational program. Meyer has been involved with churches in Eau Claire and Albert Lea, and G.T. attends Sunday school when she is with Meyer. Thalacker argues that he is involved in G.T.'s religious education and that Meyer's Native American culture did not arise until the hearing. But the value and sincerity to be assigned to Meyer's efforts is a function of factfinding. The record supports the district court's findings and we will not reweigh the evidence.

Thalacker contests the district court's finding that he committed domestic abuse. The statute highlights this factor and establishes its importance. *See* Minn. Stat. § 518.17, subd. 1(12) (requiring district court to consider "the effects on the child of the actions of an abuser, if related to domestic abuse . . . that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the

parent”). The record supports the finding. A deputy testified about an incident in which he and another officer responded to a disturbance at the parties’ Albert Lea home, heard both parties’ stories, and arrested Thalacker for fifth-degree assault. Thalacker’s probation officer believed that he committed domestic abuse. One of Thalacker’s ex-girlfriends testified that he abused her. Meyer also presented photographs of her bruises from the alleged assault. Thalacker argues that Meyer actually abused *him*, that his *other* ex-girlfriends testified that he was not abusive, and that Meyer’s children could not see which of them committed the abuse. But his argument indicates only that the record might support a different finding; it does not render the finding erroneous. Despite support for a different finding, the record supports the district court’s finding that Thalacker committed domestic abuse.

Thalacker next challenges that the district court’s finding that Meyer was better suited to encourage contact with the other parent. Minn. Stat. § 518.17, subd. 1(13). Meyer has a good working relationship with her first ex-husband regarding custody of her other daughters. Meyer also testified that Thalacker prevented her from saying goodbye to G.T., that he demanded and received extra time because Mother’s Day occurred during his weekend but he denied the same concession when Father’s Day occurred during Meyer’s weekend, and that he was rigid and unaccommodating with parenting time. Because the district court’s finding has support in the record, we will not disturb it.

Thalacker’s main contention with the district court’s best-interests findings revolves around his claim that the district court awarded Meyer custody based on its bias

in favor of the mother. Thalacker bases his claim on two things: (1) the district court's comments regarding whether the hearing should be a change in custody rather than an initial-custody determination and (2) the district court's reaction to Thalacker and the guardian's familiar interaction outside of court. The district court applied the appropriate, best-interests standard. Thalacker conceded this point through counsel at oral argument, stating, "We do not contest that the court used the correct best interests standard. The court did not follow through on its statements and analyze this as a change of custody case." Thalacker's mere assertion of bias is unpersuasive. *See Braith v. Fischer*, 632 N.W.2d 716, 724–25 (Minn. App. 2001) (rejecting bias allegation when appellant based allegation on dissatisfaction with the outcome, noting that her "argument appears to be essentially dissatisfaction with the district court's rulings and a repackaging of her earlier arguments"), *review denied* (Minn. Oct. 24, 2001).

Thalacker next challenges the district court's award to Meyer of sole legal custody and contends that the district court made no findings on the additional statutory factors. *See* Minn. Stat. § 518.17, subd. 2 (listing additional statutory factors to be considered when joint physical or legal custody is an option). The district court determined that Thalacker committed domestic abuse. This determination raises the rebuttable presumption that joint legal or physical custody is not in G.T.'s best interests. *Id.* Thalacker failed to rebut this presumption. Additionally, the district court found that neither party could cooperate in making decisions. *See Wopata v. Wopata*, 498 N.W.2d 478, 482 (Minn. App. 1993) (noting that joint legal custody is inappropriate if evidence shows that "parties lack the ability to cooperate and communicate"). The record supports

this finding. Visitation exchanges occurred at a police station, and the guardian recommended a daycare center for future exchanges to avoid parental interaction.

Thalacker finally challenges the district court's decision to reject the guardian's recommendations on custody. A district court is not bound to an expert's recommendation and may choose to reject it. *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991). In choosing to reject the recommendation, the district court must provide explicit reasons for the rejection of the recommendation or make detailed findings that examine the factors considered by the expert. *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994). We review these decisions for an abuse of discretion. *Rutanen*, 475 N.W.2d at 104.

In this case, the district court provided explicit reasons for rejecting the guardian's recommendation and stated that the court's observations, the submitted evidence, and the witnesses' credibility and demeanor outweighed the recommendation. *See Mowers v. Mowers*, 406 N.W.2d 60, 64 (Minn. App. 1987) (concluding that district court's finding that evidence outweighed evaluator's recommendation was not an abuse of discretion). Additionally, the guardian examined the best-interests factors of Minnesota Statutes section 518.17, subdivision 1(a) and recommended that the district court grant Thalacker sole physical custody and grant both parties legal custody. The district court also addressed the best-interests factors, made findings, and reached a different conclusion because it disagreed with the guardian on whether Thalacker had committed abuse. *See Rutanen*, 475 N.W.2d at 104 (finding no error when district court rejected custody recommendation but provided detailed findings that reflected a complete analysis of the

same factors concerning the children's best interests as the custody recommendation). The district court did not abuse its discretion by rejecting the guardian's recommendation. The district court's findings were not clearly erroneous, and it did not abuse its discretion by awarding Meyer physical and legal custody.

II

Thalacker next challenges the district court's decision allocating parenting time. Upon a parent's request, the district court must grant parenting time to "enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2008). The district court has broad discretion regarding parenting time, and absent an abuse of discretion, we will not reverse the district court's decision. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). Thalacker argues that the district court abused its discretion by awarding parenting time that reduced the temporary order's parenting time allocation.

Thalacker's primary support is that the temporary order's schedule had no ill effects on G.T. Consistent with its duty to establish parenting time according to the best interests of the child, the district court thoroughly analyzed G.T.'s interests when determining custody, and the same considerations apply to parenting time. Thalacker lives in Albert Lea while Meyer lives in Eau Claire, which makes midweek visits impractical. G.T.'s age led the district court to find that "extended visits [were] not in the best interests of the child" due to the need for a primary night-time caregiver. G.T.'s relationships with her siblings in Eau Claire also played a role in the district court's allocation of parenting time.

Thalacker also argues that the final order should be modified because the temporary order provided him with more parenting time. But the temporary order is not controlling. The temporary order lasts only until the district court reaches a determination on the issues and if the district court reaches a different result in its final order, that difference does not mean that an abuse of discretion occurred. Minn. Stat. § 518.131, subds. 5, 9(a) (2008).

We are not unsympathetic to Thalacker's quest for a schedule that gives him more time with his daughter, and we acknowledge that a different structure and parenting-time schedule toward a more equal balance might have resulted from the facts. But the district court's discretion is significant regarding the allocation of parenting time that most favors the child's best interests, and the limits imposed by our standard of review prevent us from invading that discretion by replacing the district court's judgment with our own. The district court considered G.T.'s best interests and did not abuse its discretion by reducing Thalacker's parenting time in its dissolution order.

Affirmed.