STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2367

In re Elaine McDonnell Anderson, petitioner,
Respondent,

vs.

Jack Richard Anderson,
Appellant.

Filed January 25, 2011
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-279957

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

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

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

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

HALBROOKS, Judge

In this pro se appeal, appellant challenges the district court's decision to modify legal custody of his two children. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

The marriage of appellant Jack Richard Anderson and respondent Elaine McDonnell Anderson was dissolved in October 2002, and they were awarded joint legal and physical[1] custody of their two minor children, R.A. and O.A. In September 2008, respondent moved ex parte for an order seeking sole temporary physical custody of the two children. But before an evidentiary hearing was held, the parties reached a stipulated custody agreement. Respondent was awarded sole physical custody of the children, and the parties agreed to continue joint legal custody. Appellant was granted "the right of reasonable parenting time with the children after school 2 days per week for up to four hours and for 6 hours during weekends, subject to agreement between him and [respondent]." But appellant was prohibited from overnight visits until he had a chemical evaluation or other test to rule out alcohol abuse.

In May 2009, respondent moved for an order finding appellant in contempt of court for violating the agreement with respect to his parenting time. Respondent also requested that appellant be ordered to undergo chemical-dependency treatment and that she be granted sole legal custody until appellant completed treatment.

Appellant filed a responsive motion in June 2009, requesting joint physical custody[2] of the children and joint legal custody. According to his affidavit, respondent

[1] The custody order is ambiguous with regard to physical custody. The order states that respondent was "awarded the joint physical custody and care of the minor children," and that appellant was "awarded the right of reasonable parenting time."

[2] Appellant's original motion requested sole physical custody, but at the hearing in September he clarified that he was seeking joint physical custody.

was endangering the welfare of the children and neglecting her parenting responsibilities. An evidentiary hearing was scheduled for September 2, 2009.

A guardian ad litem (GAL) submitted a report on August 31, 2009. The GAL observed that the parties had difficulty communicating and cooperating with each other on legal custody matters. The GAL described the parenting situation as chaotic. The GAL also reported that appellant often refused to abide by the terms of the court orders. The report concluded that it was unlikely that the parties would be able to reach agreements if legal custody continued to be shared and recommended that respondent be granted sole legal custody and appellant's parenting time be modified.

At the evidentiary hearing, respondent testified that appellant inaccurately filled out respondent's contact information at the children's schools on two occasions and that she believed it was intentional. Additionally, respondent stated that she had to attend a truancy hearing for R.A. because he had missed an excessive number of school days while in appellant's care and that appellant disregarded the parenting-time order on many occasions. In particular, respondent testified that appellant refused for an entire week to bring the children back to her home and that he took them on a trip to Wisconsin Dells without first obtaining her consent. During these extended periods, the children would tell respondent that appellant was drinking and that he was "sleepy" or difficult to wake. On one occasion when appellant was taking care of the children, respondent called the police, and appellant was taken to detox with an alcohol concentration of .282.

Respondent also testified that appellant had called police, expressing concern about the welfare of the children while they were in her care. But after appellant was

unable to identify a threat to the children other than that "he was not able to make contact with the children at his leisure and have phone conversations with them as he desired at his discretion," the police informed appellant that these concerns did not constitute a specific threat. Respondent told the district court that appellant had also made false reports to police that she was using drugs. According to respondent, the constant disputes between her and appellant had "devastated [the children] emotionally [and] psychologically." Respondent asked the district court to grant her sole legal custody of the children and adopt the parenting-time recommendations of the GAL.

Appellant testified that he had respondent's permission to have the children for overnights and to take them on the trip to Wisconsin Dells. Appellant further stated that respondent refused him parenting time. But when questioned by the district court, appellant admitted that the parenting time he was seeking was not the arrangement that had been approved by the district court order. Appellant also testified that he did not have a problem with alcohol use and that the incident involving detox was an isolated occurrence. According to appellant, he wanted joint physical custody because "after [respondent] got full physical custody I don't feel power to protect myself."

According to the GAL, the children are very cautious and "afraid of saying anything." She observed that appellant is a good father when sober but that he has no understanding of how his alcohol use affects his children. She testified that it was her recommendation that respondent have sole legal custody in order to alleviate the difficulties surrounding parenting time.

The district court denied appellant's request for joint physical custody and took the issues of legal custody and parenting time under advisement. In its subsequent order, the district court found that appellant did not make a prima facie case of endangerment that is required for an evidentiary hearing on a motion to modify custody and denied his motion. The district court granted respondent's request for sole legal custody, finding that it would be in the best interests of the children. The district court found respondent's testimony regarding appellant's behavior to be credible and also credited the GAL's testimony that appellant's "chemical use causes a significant change in his behavior and that unless he makes a commitment to addressing his chemical issues, [appellant]'s actions endanger the children."

The district court thus concluded that "by the overwhelming evidence, [respondent] has demonstrated endangerment and that modification of legal custody is necessary to serve the best interests of the children." The district court reasoned that granting respondent full legal custody would "allow the children to escape some of their parents' conflict" and that any harm caused by the change would be outweighed by the benefits. The district court modified the previous parenting-time agreement, allowing appellant parenting time every other weekend without overnights, in accordance with the GAL's recommendations. An amended order was filed on November 2, 2009, clarifying that the GAL was to remain assigned to the case for an additional six months. This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court's decision to modify legal custody is not supported by the record. A district court has broad discretion in awarding child custody and parenting time. *Crosby v. Crosby*, 587 N.W.2d 292, 295 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Our review of custody determinations is limited to whether the district court abused that discretion by making findings unsupported by the evidence or by improperly applying the law. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008).

A district court may only modify an existing child-custody order if

> it finds, upon the basis of facts . . . that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child.

Minn. Stat. § 518.18(d) (2010). One such circumstance is when "the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." Minn. Stat. § 518.18(d)(iv).

Appellant challenges the findings of the district court on the ground that they do not support the custody modification. The district court found that appellant provided the children's school with false contact information for respondent; took the children on a trip without respondent's consent; engaged in inappropriate conversations with the

children and involved them in the dispute with respondent; and registered the children for a school in the Twin Cities without respondent's consent and in contravention of a district court order. The district court also made specific findings regarding appellant's alcohol use, crediting the GAL's testimony that appellant's behavior endangers his children. The district court concluded that respondent had demonstrated the requisite endangerment standard necessary to support a modification and stated that the change "will allow the children to escape some of their parents' conflict and this change would far outweigh any harm caused by a modification of legal custody."

These findings support the district court's conclusion that the children are endangered by the current legal custody arrangement. Additionally, appellant's behavior in refusing to cooperate with respondent on decisions regarding the children's schooling and deliberately providing the schools with incorrect contact information for respondent supports the district court's conclusion that any harm to the children in allowing respondent to be the sole legal custodian would be outweighed by the benefit to the children in having more certainty and stability in their lives.[3]

The crux of appellant's argument is that the evidence he presented to the district court should have been accepted and the evidence presented by respondent and the GAL should have been rejected. But this court does not reweigh evidence or make factual

[3] The district court did not make specific findings with regard to the best-interests factors as required by section 518.18(d). But we have held that it is not an abuse of discretion to fail to specifically address statutory factors when they are implicit in the findings. *See Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001) ("We may treat statutory factors as addressed when they are implicit in the findings . . . ."). Further, appellant does not take issue with the lack of specific findings on the best-interests factors, and therefore any such argument is waived. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

findings. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Rutz v. Rutz*, 644 N.W.2d 489, 493 (Minn. App. 2002) (stating that we "do not engage in a redetermination of facts but defer to the district court's credibility determinations and to findings that are supported by the record"), *review denied* (Minn. July 16, 2002). The district court specifically credited the testimony of respondent regarding the custody disputes between the two parties and the fact that appellant violated his obligations as a joint legal custodian. The district court also credited the testimony of the GAL regarding the effect of appellant's chemical use on his ability to parent. We will not second guess the district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210.

The district court examined the evidence presented by appellant and determined that it conclusively demonstrated the necessity of modification. Because its findings are supported by the testimony and evidence in the record, we conclude that the district court did not abuse its discretion by modifying the legal custody arrangement.

II.

Appellant argues that the district court was prejudiced against him during the proceedings. An appellate court reviews the totality of circumstances regarding the claim of judicial bias and presumes that the judge discharged all judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

> [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of . . . current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

State v. Burrell, 743 N.W.2d 596, 603 (Minn. 2008) (quotation omitted). Adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

There is nothing in this record to suggest that the district court was prejudiced against appellant. But in addition to the complete lack of evidence to support appellant's claim of bias, appellant did not raise this issue to the district court at a relevant time. He has therefore waived this argument on appeal. *Thiele*, 425 N.W.2d at 582.

Affirmed.