DA 17-0523

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 101N

EDGAR A. FARMER, II,

Petitioner and Appellant,

v.

MARTA CASSADY,

Respondent and Appellee.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Sanders, Cause No. DR-10-59
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David C. Humphrey, Humphrey Law Office, Polson, Montana

For Appellee:

Emily A. Lucas, Brandi R. Ries, Ries Law Group, P.C.,
Missoula, Montana

Submitted on Briefs: March 28, 2018

Decided: April 24, 2018

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The Twentieth Judicial District Court, Sanders County, dissolved the parties' marriage in 2012. Here, Edgar A. Farmer, II (Buddy), appeals the District Court's 2017 order amending the parenting plan included in that decree. We affirm.

¶3 Buddy raises two issues on appeal: whether the court erred in adopting Marta Cassady's proposed revised findings of fact and conclusions of law, and whether the court erred when it designated Marta as the primary residential parent of their minor son.

¶4 The parenting plan entered in the parties' 2012 dissolution of marriage designated Buddy as the primary residential parent for their three children—Marta was awarded parenting time, but without a set schedule. Two of the parties' children have since reached the age of majority. In November 2016, Marta filed a motion to amend the parenting plan. She alleged that Buddy had been refusing to allow her to exercise parenting time with their youngest son, who had expressed his desire to reside primarily with her.

¶5 A court may amend a parenting plan if it finds, based on facts that have arisen since the prior plan was entered or facts unknown to the court at the time the prior plan was entered, that a change has occurred in the circumstances of the child and the

amendment is necessary to serve the child's best interests. Section 40-4-219(1), MCA. Here, the District Court held two days of hearings on Marta's motion to amend, after which it entered findings and conclusions and adopted Marta's proposed amended parenting plan. The court ordered that Marta will be the residential parent and that Buddy's parenting time will be supervised until he demonstrates six months of sobriety.

¶6 On appeal, Buddy first argues that the District Court adopted Marta's proposed findings and conclusions verbatim, and by so doing committed error. This Court has discouraged the verbatim adoption of proposed findings of fact and conclusions of law; we nonetheless uphold such findings and conclusions where they are comprehensive, pertinent, and supported by substantial evidence. *See, e.g., In re Marriage of Allison*, 269 Mont. 250, 265, 887 P.2d 1217, 1226 (1994).

¶7 Our review of the record in this case reveals that the District Court partially revised the findings proposed by Marta. The court found that the parties' minor son is bonded with both Marta and Buddy. It found that Buddy, however, has willfully and consistently refused to allow their son to have contact with Marta, and has attempted to frustrate or deny contact, which the court found was contrary to the child's best interest. The court further found that Buddy has a history of physical abuse toward Marta and had physically abused their son on at least one occasion, and that Buddy has abused prescription medication and mixed his medication with consumption of alcohol. The court found that when Buddy drinks, he is angry, unstable, and unsafe.

¶8 To the extent the testimony in the record is conflicting, we have long recognized that a trial court sits in the best position to observe and judge witness credibility, and we

will not second-guess a trial court's determinations regarding the strength and weight of conflicting testimony. *See, e.g., Kulstad v. Maniaci*, 2009 MT 326, ¶ 90, 352 Mont. 513, 220 P.3d 595. The District Court's findings and conclusions are sufficiently comprehensive and pertinent to provide a basis for the court's decision, and they are supported by substantial evidence in the record. The court made no legal error when it concluded that the child's circumstances had changed since the 2012 decree, and it did not abuse its discretion in amending the parenting plan.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶10 Affirmed.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE