DA 20-0610

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 265N

IN RE THE MARRIAGE OF:

LYNDSEY M. LALICKER,

Petitioner and Appellee,

v.

CHAD J. HARTKOPF,

Respondent and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DR 05-96
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Marybeth M. Sampsel, Measure Law, P.C., Kalispell, Montana

For Appellee:

Kevin S. Brown, Paoli & Brown, P.C., Livingston, Montana

Submitted on Briefs: September 1, 2021

Decided: October 12, 2021

Filed:

Clerk

Justice Laurie McKinnon 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 Appellant Chad Hartkopf (Chad) appeals an order and judgment issued on March 19, 2020, by the Sixth Judicial District Court, Park County, which denied Chad's motion to conduct an in-chambers interview of his fifteen-year-old son, C.L.H., and amended a prior parenting plan agreement between Chad and C.L.H.'s mother, Appellee Lyndsey Lalicker (Lyndsey). The District Court's amendments to the parties' parenting plan awarded Lyndsey complete physical custody of C.L.H. and temporarily suspended Chad's ability to contact C.L.H. for no less than ninety days and until he attended mental health treatment sessions at his own expense with a provider that was pre-approved by Lyndsey. We affirm.

¶3 None of the 74 findings of fact in the District Court's March 2020 order are contested by either party on appeal. We summarize them below.

¶4 Lyndsey and Chad Hartkopf have one son, C.L.H. Lyndsey resides in Ennis, Montana and Chad resides in Bozeman, Montana. The parties separated in 2005, while Lyndsey was still pregnant with C.L.H. On November 24, 2008, the parties both agreed to parent C.L.H. under a Stipulated Final Parenting Plan. This parenting plan provided

for a 50/50 split of physical custody, with week-on week-off parenting for Chad and Lyndsey. This parenting plan plan remained in place for about a decade.

¶5 On April 12, 2018, Chad filed a Sworn Petition for Temporary Order of Protection, which sought to prevent Lyndsey from having any contact with Chad or C.L.H. In the petition, Chad alleged that Lyndsey had been physically aggressive and abusive toward C.L.H. The court entered a temporary order which prevented Lyndsey from having contact with C.L.H. and set the matter for hearing on April 24, 2018. At the hearing, Chad requested that the court interview the then twelve-year-old C.L.H. in chambers. On May 3, 2018, the District Court issued an order which denied Chad's request to conduct an interview and held Chad's petition for a protection order in abeyance. In the interim, the order maintained the 50/50 parenting schedule from the parties' initial parenting plan and appointed a psychologist—Dr. Dee Woolston (Dr. Woolston)—to investigate Chad's allegations of physical abuse by Lyndsey. Dr. Woolston would also later be appointed to investigate Lyndsey's allegations of parental alienation by Chad.

¶6 On August 14, 2018, Lyndsey filed a Motion for Modification of the parties' parenting plan. Lyndsey's motion to modify the parenting plan was based on escalating "parental alienation" behaviors by Chad,[1] which she asserted were having a negative effect on C.L.H. In her motion, Lyndsey also informed the court that she had hired a

[1] Black's Law Dictionary defines "parental alienation syndrome" as a psychological condition "resulting from a parent's actions that are designed to poison a child's relationship with the other parent"—in other words, the term refers to a "situation in which one parent has manipulated a child to fear or hate the other parent." *Parent-Alienation Syndrome, Black's Law Dictionary* (11th ed. 2019).

parental alienation expert, Linda Gottlieb (Gottlieb), a Licensed Marriage and Family Therapist (LMFT) and Licensed Clinical Social Worker (LCSW), to evaluate the dynamics of her and Chad's respective relationships with C.L.H. Attached with Lyndsey's motion was an extensive record of text and e-mail communications between her and Chad, her and C.L.H., and Chad and C.L.H. Also attached was an August 1, 2018, report from Gottlieb, in which Gottlieb stated her professional opinion that Chad had engaged, and was continuing to engage, in a number of "parental alienation behaviors" intended to irreparably damage Lyndsey and C.L.H.'s parent-child relationship. These behaviors included Chad encouraging C.L.H. to make false reports about Lyndsey to his therapist, to social services, and to law enforcement. Gottlieb determined that these parental alienation behaviors constituted a "profound form of psychological child abuse." Relying upon the parenting plan recommendations made by Gottlieb in her report, Lyndsey's motion requested that the Court allow C.L.H. to reside exclusively with Lyndsey for a minimum of 90 days and/or until Chad received mental health therapy and demonstrated a genuine willingness to support Lyndsey and C.L.H.'s parent-child relationship.

¶7 On June 29, 2018, Dr. Woolston filed his report, in which he made no determination on whether Lyndsey had ever abused C.L.H. However, Dr. Woolston remarked that the extent to which C.L.H. had "allied with his father" over his mother was "exceedingly uncommon" among children of C.L.H.'s age and stated his professional opinion that Chad likely "encouraged" C.L.H.'s negative feelings towards Lyndsey.

Dr. Woolston characterized Chad's communications with C.L.H. about Lyndsey as "misleading and manipulative."

¶8 On May 3, 2019, Chad filed his own Motion for Modification of the parties' parenting plan. In this motion, Chad once again asserted that C.L.H. was in danger. In support of this contention, Chad cited Lyndsey's pending Gallatin County custody dispute with the father of her daughter (and C.L.H.'s half-sister), L.G.L.[2] Chad's motion reiterated his request that the court enter an order of protection against Lyndsey on behalf of C.L.H. and asked that the Court order Lyndsey to pay Chad's attorney's fees. Chad's motion also asked that the court amend the parties' parenting schedule to provide Lyndsey with one weekend of supervised parenting time per month and renewed his previous request for the Court to conduct an interview with C.L.H. Although C.L.H. was never interviewed, the child's stated preference to live with his father was noted by the District Court.

¶9 On December 3 and 4, 2019, the District Court held hearings on the parties' parenting plan and other outstanding motions. The evidence revealed a pattern of frequent verbal abuse by Chad towards Lyndsey. From the time C.L.H. was six months old and up through the present day, Chad would repeatedly call Lyndsey names in front of their son, including "psycho," "crazy," "Satan," and "the Evil One." During Chad's

[2] In 2018, L.G.L.'s father, Luke Oyler—who has also separated from Lyndsey and has since become friends with Chad—filed a Petition for an Order of Protection against Lyndsey in Gallatin County, Montana, on behalf of himself and L.G.L. Luke's petition occurred very close in time to Chad's filing of his April 2018 petition, in which Chad also requested an Order of Protection against Lyndsey. Although Luke's petition alleged that Lyndsey had physically abused L.G.L., this protection order is no longer in place.

testimony, he admitted to sending Lyndsey texts and e-mails in which he called her vile names; however, he justified his behavior by stating that C.L.H. was not party to these communications.

¶10 The record reflects that C.L.H. has begun to mirror his father's verbiage towards Lyndsey. When he was as young as eight years old, C.L.H. began parroting his father's language and calling Lyndsey a "psycho." The District Court found that the verbal abuse C.L.H. inflicts upon his mother "was not a reaction to any mistreatment or abuse . . . by his mother" and was actively encouraged by Chad. C.L.H. has previously written Lyndsey apologies, saying he is sorry for being mean to her and that he will stand up for Lyndsey when Chad bad-mouths her. However, Lyndsey testified that, after resuming contact with Chad, C.L.H.'s behavior regresses once more. Specifically, Lyndsey testified that when she picks C.L.H. up for the start of her parenting time, his frame of mind "is violent and mean." Lyndsey also noted that she generally observes a gradual improvement in C.L.H.'s behavior and attitude over the course of her parenting week, unless he has contact with his father, in which case C.L.H.'s behavior goes "right back to when [Lyndsey] picked him up." Similarly, Lyndsey testified that she has noticed an increase in disrespectful and aggressive behavior from C.L.H. after he speaks with Chad on the phone. The District Court found that this behavior from C.L.H. was "particularly troublesome, given the frequency with which Chad calls C.L.H." Lyndsey's testimony noted that, during her parenting time, Chad and C.L.H. "speak on the phone daily, sometimes for hours at a time." Lyndsey testified that she loves her son, but also stated she believes Chad is coaching him to hate her. The District Court agreed with

Lyndsey's assessment and found that "Chad encourages C.L.H. to feel hatred toward and behave disrespectfully to his mother."

¶11 Lyndsey also testified that C.L.H. is struggling in school, both academically and socially. Specifically, Lyndsey stated her concern that Chad's hatred of her is distorting C.L.H.'s view of women, stating that C.L.H.'s hatred is "starting to grow from hatred just towards me to other females." The record revealed that a girl at C.L.H.'s school has a no-contact order issued against C.L.H. for harassing her. Furthermore, according to Lyndsey's testimony, C.L.H. allegedly has difficulty respecting the authority of female teachers. On the other hand, during Chad's testimony, he testified that C.L.H. is doing well in school and is "not in trouble." However, Chad also admitted that C.L.H. is earning mostly "B's and C's," and that he sometimes earns failing grades. During his testimony, Chad minimized the no-contact incident as "teenaged misbehavior" and "just eighth grade teenaged boys [being boys]."

¶12 The record also revealed that Chad frequently seeks to involve C.L.H. in the parties' custody dispute. According to the evidence introduced at the parties' April 2018 hearing, when C.L.H. was in third or fourth grade, Chad texted Lyndsey, "I can't wait until C.L.H. can testify against you." Moreover, when he was in fifth grade, Chad texted, "No wonder C.L.H. is starting to hate you, and it's only going to get worse[.]" According to the District Court's findings of fact, "these instances were not the first time Chad has made statements to this effect; to the contrary, Chad has consistently threatened to have C.L.H. testify against Lyndsey in this parenting action, since C.L.H. was little." Additionally, at the April 2018 hearing, Chad testified he told Lyndsey he showed C.L.H.

court documents from their ongoing parenting case, but then claimed that this statement was a "bluff" and that he had not really done so; the District Court did "not find Chad to be credible in this regard."

¶13 The evidence introduced at the December 2019 hearings also indicated that Chad has a pattern of lying about Lyndsey to C.L.H. and to others. For example, Lyndsey's testimony noted that Chad falsely told C.L.H. that Lyndsey—who previously worked for the Forest Service as a wildland firefighter—only obtained her smokejumper position by performing sexual favors for a supervisor. Chad has also filed numerous false reports to the police department and to Child Protective Services (CPS) regarding Lyndsey. At the 2019 hearing, Lyndsey introduced several CPS reports that Chad made against Lyndsey. She also introduced numerous police reports: three police reports from 2006, one from 2008, one from 2011, one from 2014, three from 2015, and one from 2017. Lyndsey also testified that Chad had maliciously called law enforcement on her on several other occasions from 2017 up until the time of the December 2019 hearings. Generally, in these reports, Chad alleges that Lyndsey is abusing C.L.H. and that C.L.H. is in danger in Lyndsey's care. However, according to the District Court's findings of fact, "none of the[se] CPS or police reports have ever been substantiated, and neither CPS nor law enforcement have determined that Lyndsey is abusing C.L.H. or taken any action against Lyndsey for her alleged abuse of C.L.H." Moreover, the record reflects that C.L.H. has undergone interviews with CPS and law enforcement on numerous occasions as a result of Chad's uncorroborated reports.

¶14 After Chad's and Lyndsey's testimonies, the District Court heard testimony from Lyndsey's expert witness—Gottlieb—on the topic of "parental alienation." The District Court previously ordered Gottlieb could testify as an expert and did not provide any limiting instructions on the permissible content of Gottlieb's testimony. During her testimony, Gottlieb said she was retained by Lyndsey in order to "rule in or out a parental alienation dynamic between Lyndsey, Chad, and C.L.H." Gottlieb also noted she had authored a book on the subject of "parental alienation," testified as an expert witness in "[m]ore than a hundred" family law cases, and worked with "650 children who [had] experienced some degree of parental alienation." In her testimony, Gottlieb stated her professional opinion that the behaviors exhibited by C.L.H. were wholly consistent with "parental alienation syndrome," and explained parental alienation can be highly detrimental to a child's mental health and social development. Gottlieb testified parental alienation teaches antisocial behavior and creates dysfunction that follows children into adulthood. She also stated that alienated children are at an increased risk for anxiety, depression, and substance abuse.

¶15 Gottlieb also testified about the contents of the August 2018 report that she had prepared for Lyndsey, which found that Chad's behavior towards C.L.H. and Lyndsey constituted a classic case of "parental alienation." Gottlieb noted that she had not interviewed Chad or C.L.H. at any point during these proceedings. Nevertheless, she stated that, in compiling her August 2018 report, she had: interviewed Lyndsey; reviewed "hundreds of texts and e-mails" between Chad, Lyndsey, and C.L.H.; watched "numerous videos of [C.L.H., Chad, and Lyndsey] interacting"; and read Dr. Woolston's

June 2018 psychological evaluation of C.L.H. Gottlieb also testified that her report contained several recommended amendments to the parties' parenting plan, which Gottlieb crafted in an effort to remedy C.L.H.'s parental alienation syndrome. Nearly all of these recommendations were adopted in Lyndsey's August 2018 motion to amend the parties' parenting plan.

¶16 Furthermore, Gottlieb's testimony reiterated her professional opinion that the parenting plan amendments from her August 2018 report were necessary to serve C.L.H.'s best interests. She specifically noted the alienating parent typically requires mental health therapy in order to change, and she generally recommends a no-contact period of 90 days for the alienating parent. She explained that contact between the child and the alienating parent tends to undo any progress made in reunification therapy. In its findings of fact, the District Court stated that it found "Gottlieb's testimony credible, and shares [her] concerns vis-à-vis C.L.H.'s development should he continue to be exposed to this [alienating] behavior."

¶17 On March 19, 2020, the District Court issued its Findings of Fact, Conclusions of Law, and Order on Chad and Lyndsey's competing motions. Based on Gottlieb's testimony, the District Court concluded that Chad's series of strategic behaviors and bad faith actions to turn C.L.H. against Lyndsey constituted "parental alienation." Given this, the court found that, under these circumstances, "contact with Chad [was] detrimental to C.L.H. and pose[d] a risk to C.L.H.'s mental and behavioral health." As a result, the order denied Chad's motion to amend the parenting plan and granted Lyndsey's. Citing

its authority to amend a parenting plan under § 40-4-419(1), MCA, the District Court ordered that: (I) C.L.H. should reside with Lyndsey on a full-time basis and that Chad must cease all contact—including telephone/electronic contact—with C.L.H. for a minimum of 90 days; (II) Chad must undergo a full psychological evaluation—and any recommended follow up treatment—with a provider who is pre-approved by Lyndsey and specializes in treating personality disorders; (III) Chad must immediately enroll in and begin attending treatment sessions with a therapist who is pre-approved by Lyndsey and specializes in treating parental alienators; (IV) Chad may only request the ability to contact C.L.H. again after 90 days have elapsed and after Chad has undergone his psychological evaluation and started individual therapy. The court also ordered Chad to pay costs associated with his court-ordered therapy.

¶18 The District Court's March 2020 order also denied Chad's motion for an order of protection against Lyndsey, noting that "[t]he Court has heard no credible evidence" demonstrating that either Chad or C.L.H. "is in danger of harm from Lyndsey."

¶19 On December 22, 2020, Chad filed a Petition for Out-of-Time Appeal before this Court, seeking to appeal the District Court's March 2020 order. Chad's petition explained his appeal was late because he had mistakenly relied upon his previous counsel's incorrect advice that the District Court's March 2020 order was not appealable. On December 29, 2020, this Court granted Chad's petition, allowing his appeal to proceed.[3]

[3] Because we have already issued an order allowing an out-of-time appeal in this case, we will not address or comment on whether this particular appeal constitutes an appeal of an

¶20 This Court reviews parenting plan determinations and modifications for an abuse of discretion. *In re C.J.*, 2016 MT 93, ¶ 13, 383 Mont. 197, 369 P.3d 1028. *See also In re Marriage of Bessette*, 2019 MT 35, ¶ 13, 394 Mont 262, 434 P.3d 894 ("District courts have broad discretion to make and modify parenting plan determinations under the applicable standards of [the Montana Code]."). This Court also reviews a district court's ruling on the admissibility of expert testimony for an abuse of discretion. *State v. St. Germain*, 2007 MT 28, ¶ 14, 336 Mont. 17, 153 P.3d 591 (citations omitted).

¶21 An abuse of discretion occurs if a district court exercises its discretion based on a clearly erroneous finding of fact, an erroneous conclusion or application of law, or otherwise "acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice." *In re D.E.*, 2018 MT 196, ¶ 21, 392 Mont. 297, 423 P.3d 586 (citations omitted). A finding of fact is clearly erroneous if it is not supported by substantial evidence, the court misapprehended the effect of the evidence, or, based on our review of the record, we have a definite and firm conviction that the lower court was mistaken. *D.E.*, ¶ 21 (citations omitted). We review conclusions of law de novo for correctness. *D.E.*, ¶ 21 (citations omitted).

¶22 Chad's first argument on appeal contends that the District Court erred by "suspending" Chad's "parental rights" without a proper statutory basis. Chad cites the statutory provisions in the Montana Code which allow for the "suspension" or "termination" of a parent's "parental rights" in a limited number of contexts—including

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interlocutory order. As the order has issued, we conclude the best approach going forward in this case is to address the merits of the appeal.

Title 41, chapter 3, MCA (termination or suspension by the State in a child abuse and neglect proceeding) and § 40-4-219(8)(a)-(b), MCA (suspension of parental rights in the event that one parent has committed one of the eleven specific crimes listed in subsection (b)). Chad argues that none of these statutes apply to his case. Thus, Chad contends that the District Court erred because it failed to properly cite and/or adhere to the procedures provided by these statutes in issuing its order—an order which Chad's appeal characterizes as "at the very least, suspend[ing] . . . but potentially terminat[ing]" Chad's "parental rights."

¶23 However, Chad's appeal mischaracterizes the District Court's order. The District Court's order stated nothing about "terminating" nor "suspending" Chad's "parental rights," and it did not do so. Rather, by its own terms, the District Court's order constituted an amendment to the parties' parenting plan under § 40-4-219(1), MCA, which temporarily suspended Chad's right to contact C.L.H. for a minimum of 90 days and until Chad underwent court-ordered therapy.[4] In *In re Custody of Arneson-Nelson*, this Court held that a district court—under § 40-4-219(1), MCA—has the ability to amend a parenting plan by temporarily suspending a parent's right to contact a child if it finds that doing so would be in the "best interests of the child." 2001 MT 242, ¶¶ 17-31, 307 Mont. 60, 36 P.3d 874. *See also* § 40-4-219(1), MCA (stating that a court "may in its discretion amend a prior parenting plan if it finds . . . the amendment is necessary to

[4] Specifically, the District Court's order stated that "[b]eginning immediately, C.L.H. shall reside with Lyndsey on a full-time basis. Chad's contact with C.L.H. (including telephonic/electronic contact) shall be suspended for a minimum of 90 days" and until he completes his court-ordered mental health treatment.

serve the best interest[s] of the child."). This is precisely what the District Court's order has done in the case at hand.

¶24 In *Arneson-Nelson*, we affirmed a district court's amendment of a parenting plan that called for a temporary suspension of a father's physical contact and visitation rights with his child until the father received mental health therapy. *Arneson-Nelson*, ¶¶ 17-31, ¶ 38. The *Arneson-Nelson* Court's decision affirming the modification of the parties' parenting plan through a temporary no-contact order was partially based on the father's hostile and verbally abusive behavior towards the child's mother—behavior which the district court determined had a detrimental impact on the best interests of the parties' child. *Arneson-Nelson*, ¶ 8, ¶¶ 17-31. Here, the District Court made a similar amendment to C.L.H.'s parenting plan based on its uncontested factual finding that Chad was hostile and verbally abusive towards Lyndsey and that this behavior was detrimental to C.L.H.'s best interests.

¶25 Furthermore, the District Court's order provided an additional statutory basis for amending Chad and Lyndsey's parenting plan that was not present in *Arneson-Nelson*: § 40-4-219(1)(d)(i)-(ii), MCA (2020), which was renumbered as § 40-4-219(1)(a)(iv)(A)-(B), MCA, as of October 1, 2021. Under this subsection, a District Court may consider amending a parenting plan when one parent "willfully and consistently . . . refuse[s] to allow the child to have contact with the other parent[] or attempt[s] to frustrate or deny contact with the child by the other parent." Section 40-4-219(1)(a)(iv)(A)-(B), MCA (formerly § 40-4-219(1)(d)(i)-(ii), MCA). In its order modifying the parties' parenting plan, the District Court expressly cited this

subsection and stated "Chad has willfully and consistently frustrated or attempted to frustrate contact between Lyndsey and C.L.H., as well as attempted to sever the relationship between mother and son." The District Court found "Chad's behavior [was] not in C.L.H.'s best interests."[5] Indeed, intentional behaviors by one parent to promote parental alienation syndrome are clearly not within a child's "best interests" under Title 40, chapter 4, MCA, and Chad has not pointed to any evidence which would cast doubt on this conclusion. Thus, the District Court's order amending Lyndsey and Chad's parenting plan was proper under § 40-4-219(1), MCA, and is consistent with prior Montana case law.

¶26 The second argument Chad raises is that the District Court "erred by failing to take into consideration Chad's financial status when suspending his parental rights." Specifically, Chad asserts that the District Court should not have ordered him to pay for his mandatory psychological evaluation and mental health appointments. Chad notes that "there is no indication anywhere in the transcript or [District Court's] order that suggests the District Court made an inquiry into Chad's financial ability to afford the tremendous financial roadblocks it placed squarely in front of his parental rights." Chad cites *In re A.S.*, 2011 MT 69, ¶33, 360 Mont. 55, 253 P.3d 799, which notes that this Court requires "fundamentally fair procedures at all stages of the proceedings for the

[5] In its order amending the parties' parenting plan, the District Court also cited a list of prior cases in which this Court has upheld parenting plan determinations against the wishes of a particular parent based on that parent's refusal or inability to respectfully coparent with the other party—i.e., situations similar to "parental alienation." *See, e.g.*, *Davis v. Davis*, 2016 MT 52, ¶ 9, 382 Mont. 378, 367 P.3d 400. We agree with the District Court's determination that Chad's behavior is consistent with these other cases and hold this as further proof that the District Court had a sound legal basis for amending the parties' parenting plan under § 40-4-219, MCA.

termination of parental rights." Chad then claims that "[i]n order for proceedings to be 'fundamentally fair,' there must be a determination regarding whether a parent involved in a private termination or suspension of parental rights case is indigent," although no authoritative support for this claim is provided. Regardless, the crux of Chad's argument rests upon the same false assumption as his first argument; namely, that the District Court's order was an order to "suspend or terminate" Chad's parental rights. Chad expressly states that his argument about fundamental fairness attaches only to proceedings to "terminate" or "suspend" a parent's parental rights. However, as we have already stated, the District Court's order neither terminated nor suspended Chad's parental rights to C.L.H.; instead, the order was a parenting plan amendment which temporarily prevented contact between parent and child until both received the therapy needed to maintain a healthy familial relationship.

¶27 However, Chad's contentions that the District Court should not have required him to select from a list of therapists provided by Lyndsey deserves closer attention. Chad maintains he was prevented from using Kathleen Rock, his choice of therapist for the reunification counseling. The appropriateness of a particular reunification counselor is best committed to the District Court's discretion—not Lyndsey's. This is particularly true given the level of animosity between the parents here. Indeed, Chad noted that the therapists suggested by Lyndsey were all "out of state" and that he "cannot afford to fly or drive to any of [the] locations." Chad also contends he cannot afford a full psychological evaluation. We are likewise sympathetic to Chad's financial concerns and believe that resources may be available, such as evaluations performed on a sliding fee

scale, to which Chad could be directed. We are convinced, however, that in a case such as here, which involves extreme parental alienation, the decision of whether a psychological evaluation is necessary is best left to the discretion of the lower court. We observe that Chad has not objected to the evaluation itself—only to the financial burden that obtaining the evaluation will entail. We are convinced that because these proceedings will likely be ongoing, the District Court will be in a position to address the aforesaid concerns.

¶28 Chad's third argument asserts the District Court abused its discretion by allowing Gottlieb to testify as an expert witness. Here, Chad's appeal makes two contentions. First, Chad contends Gottlieb was not qualified to offer expert testimony under Admin. R. M. 24.189.810(6). Second, Chad contends that Gottlieb's recommendations about the parties' parenting plan exceeded the permissible scope of her testimony. Both arguments fail.

¶29 First, instead of the deferential standard for admitting expert testimony articulated in M. R. Evid. 702 ("Testimony by expert witnesses"), Chad argues that Gottlieb's testimony was subject to the heightened competency requirement for "[p]sychologists performing parenting plan evaluations" under Admin. R. M. 24.189.810. This specific administrative rule asserts that "[p]sychologists shall not . . . form an expert opinion about any party not personally evaluated and may not make parenting plan recommendations when both parents and children have not been personally evaluated by the psychologist." Admin. R. M. 24.189.810(6). It is undisputed that Gottlieb did not personally interview either Chad or C.L.H. Thus, Chad argues that, under

Admin. R. M. 24.189.810(6), she was unqualified to make recommendations about C.L.H.'s parenting plan and to testify about his relationship with C.L.H. However, Chad's argument fails, as the record plainly indicates Gottlieb was a LCSW and a LMFT; she was not a psychologist. Thus, the administrative rule cited in Chad's appeal—which governs "psychologists" only—does not apply.

¶30 Instead, in its decision to admit Gottlieb's testimony as an expert on "parental alienation," the District Court was subject only to the deferential standard for admitting expert testimony articulated in M. R. Evid. 702 ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."). *See also Arneson-Nelson*, ¶ 27 ("The role of determining the qualification and competency of an expert witness rests largely with the trial judge, and we will not disturb that determination without a showing of abuse of discretion."). The District Court did not abuse its discretion in allowing Gottlieb to testify as an expert on "parental alienation" under M. R. Evid. 702. The record indicates that Gottlieb had previously testified as a qualified expert in "[m]ore than a hundred" family law cases and had worked with "650 children who [had] experienced some degree of parental alienation." Moreover, despite failing to interview Chad or C.L.H. in person, Gottlieb obtained extensive knowledge of C.L.H.'s specific circumstances based on her review of the following items: "hundreds of texts and e-mails" between Chad, Lyndsey, and C.L.H.;

"numerous videos of [C.L.H., Chad, and Lyndsey] interacting"; and Dr. Woolston's psychological evaluation of C.L.H.

¶31 Additionally, Chad contends that the District Court abused its discretion by allowing Gottlieb to testify about her proposed amendments to the parties' parenting plan, alleging that her discussion of these proposals exceeded the permissible scope of her testimony. Chad attempts to articulate the permissible scope of Gottlieb's testimony by quoting the District Court's January 2020 order, which stated that Gottlieb "was hired to rule in or rule out a parental alienation dynamic between Lyndsey, Chad, and C.L.H." However, the record demonstrates the District Court's statement was not referring to any limiting instructions; this is evident by the court's subsequent receipt and reliance on Gottlieb's testimony. Instead, this statement merely paraphrases Gottlieb's own December 2019 testimony, wherein she discussed why she was initially hired by Lyndsey. The District Court is entitled to deference in its determinations about permissible expert testimony under M. R. Evid. 702. *See Arneson-Nelson*, ¶ 27. As this Court has previously stated, district courts should "construe liberally the rules of evidence so as to admit all relevant expert testimony." *McClue v. Safeco Ins. Co. of Illinois*, 2015 MT 222, ¶ 23, 380 Mont. 204, 354 P.3d 604 (citations omitted).

¶32 Chad's fourth argument raises multiple issues. First, Chad contends that the District Court erred by issuing an order that failed to comply with C.L.H.'s own wishes—specifically, C.L.H.'s stated desire to live with his father. Second, Chad argues that the District Court abused its discretion when it denied his motion that C.L.H. be interviewed. Once again, both arguments fail.

¶33 First, at the time the District Court's order went into effect, the language of Title 40, chapter 4, MCA, expressly stated that, in deciding whether to amend an existing parenting plan, a "court may . . . consider" the desires of a "child [who] is 14 years of age or older." Section 40-4-219(1)(c), MCA (as of March 19, 2020).[6] This language is *permissive*, and we have held on numerous occasions that a district court's deviation from a child's wishes does not, by itself, constitute reversible error. *See, e.g., In re R.J.N.*, ¶ 11, 2017 MT 249, 389 Mont. 68, 403 P.3D 675. Thus, the fact that the District Court's thorough and well-reasoned order to amend the parties' parenting plan did not adhere to C.L.H.'s stated preference to live with his father does not constitute an error by the District Court.

¶34 Second, the District Court did not abuse its discretion by refusing to interview C.L.H. The District Court reasoned that "every effort should be made by both parents to distance C.L.H. from their legal disputes and the Court declines to involve him further by an in-chambers interview." Considering the factual record—which reflects Chad's regular, undisputed efforts to alienate C.L.H. from Lyndsey by placing C.L.H. at the center of their legal dispute—the District Court was justifiably concerned about the psychological effects of involving C.L.H. in these proceedings any further. As a result, the District Court did not abuse its discretion when it denied Chad's motion on these grounds.

[6] On October 1, 2021, this section of the Montana Code was amended and renumbered as § 40-4-219(1)(a)(iii), MCA. The amended statute now states that a court "*shall* consider" the desires of a "child [ ] 14 years of age or older[.]" Section 40-4-219(1)(a)(iii), MCA (as of October 1, 2021) (emphasis added).

¶35 The District Court's order amending the parties' parenting plan under § 40-4-219, MCA, is affirmed.

¶36 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.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ INGRID GUSTAFSON