ORIGINAL

DA 21-0153

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 30N

IN RE THE MARRIAGE OF:

CHRISTOPHER J. WEIGAND,

Petitioner and Appellee,

and

BRYTANY ANNE CATTANEO,

Respondent and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DR-18-60
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Caitlin Pabst, Kristofer Baughman, Element Law Group, PLLC, Bozeman, Montana

For Appellee:

Anna M. Williams, Anna Williams Law, PLLC, Bozeman, Montana

Submitted on Briefs: December 15, 2021

Decided: February 8, 2022

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 In 2018, Brytany Anne Cattaneo (Bryt) and Christopher J. Weigand (Chris) divorced and entered a parenting plan (2018 Parenting Plan) for their children that included L.C.M., Bryt's daughter from a prior marriage. Bryt later decided that L.C.M. should not have been included in the 2018 Parenting Plan because of a 2012 parenting plan between Bryt and Antonio Monochie (Antonio), L.C.M.'s biological father. She appeals the Montana Sixth Judicial District Court's March 2021 Findings of Fact, Conclusions of Law, and Order granting Chris's motion for contempt and sanctions and denying Bryt's motion to strike L.C.M.'s inclusion in the Parenting Plan. Restated, the dispositive issue is whether the District Court abused its discretion when it concluded that Chris has a parental interest in L.C.M. We affirm the District Court's order on the basis of its findings from the 2021 hearing.

¶3 In 2012, Bryt and Antonio divorced and established a parenting plan in Fergus County for their two-year-old daughter, L.C.M. After the divorce, L.C.M. lived with Bryt in Belgrade, and Antonio lived in Bozeman. Though he had some limited contact with L.C.M. in 2012 and 2013, Antonio rarely paid child support or exercised his visitation

rights, and in 2014 he moved to North Dakota. After that, he saw L.C.M. once in 2015 and did not have any contact with her until 2021. L.C.M. is nearly twelve years old.

¶4 Bryt and Chris began dating and living together in 2012. In addition to raising L.C.M., they have three sons together. L.C.M. began calling Chris "dad." In 2018, Bryt and Chris divorced and stipulated to a parenting plan in Park County for their three sons and L.C.M. Chris's petition for dissolution stated that "there is no Parenting Plan between [Bryt] and [Antonio]," and Bryt agreed to this fact in her response to Chris's petition.

¶5 The 2018 Parenting Plan provides for a week-on, week-off residential schedule for all four children. Bryt and Chris adhered to this schedule until September 2020, when Bryt decided that Chris no longer should be involved in the parenting of L.C.M. because of her concerns that L.C.M. was exposed to violent video games and profane music in Chris's care and was assuming too many responsibilities at Chris's house. Bryt did not permit Chris to see or to communicate with L.C.M. after September 2020. She sent Chris an e-mail in October 2020, which stated that including L.C.M. in their parenting plan "was not correct and is not legal or enforceable." Bryt told Chris the parenting plan would have to be amended. In December 2020, Chris filed a motion for contempt against Bryt for violating the 2018 Parenting Plan, and Bryt moved to strike L.C.M. from the 2018 Parenting Plan.

¶6 The District Court heard the parties' motions on February 18, 2021. Christy Mortimer, L.C.M.'s mental health counselor, testified that she never recommended discontinuing L.C.M.'s visitations with Chris and that L.C.M. is capable of having

relationships with both Chris and Antonio. She opined that Chris "has played a role as [L.C.M.'s] parent" and that all of L.C.M.'s needs are met at Chris's house. Two of L.C.M.'s nannies also testified to their perceptions of Chris's and L.C.M.'s relationship. Tanya Boehm, L.C.M.'s nanny in 2012, testified that Antonio was not involved in L.C.M.'s life, that Chris often would transport L.C.M. to and from her house, and that L.C.M. referred to Chris as "dad." Kaylee Clemmons, Chris's former girlfriend who nannied L.C.M. in 2020, testified that Chris and L.C.M. have a wonderful relationship and are "two peas in a pod." Clemmons said Chris treats L.C.M. the same as his other children and, although L.C.M. knows that Antonio is her biological father, she considers Chris her dad.

¶7 Chris and Bryt also testified at the hearing. Chris testified that he contributes to L.C.M.'s health care costs, school supplies, and other expenses and has made joint decisions with Bryt regarding L.C.M.'s health care. He stated that he has never prevented Antonio from parenting L.C.M. and that he had seen Antonio only two or three times before Antonio moved to North Dakota in 2014. Bryt testified that L.C.M. refers to Chris's parents as "grandma" and "grandpa." Although Bryt agreed that Chris contributes to some of L.C.M.'s health care expenses, she testified that she primarily pays for L.C.M.'s clothing, food, and medicine when L.C.M. is in her custody. She testified that she viewed Chris as L.C.M.'s step-father at the time when she and Chris were married but that she does not consider him a parental figure anymore, and she expressed regret about including L.C.M. in the 2018 Parenting Plan. Antonio also testified. He confirmed that he did not

see L.C.M. after 2015 and that he first initiated contact with L.C.M.—at Bryt's prodding—in 2021. Antonio testified that he did not have concrete plans to move back to the Bozeman area.

¶8 In March 2021, the District Court issued its Findings of Fact, Conclusions of Law, and Order. It found Bryt's alleged concerns about Chris's parenting unsubstantiated. The court found that Bryt instigated L.C.M.'s reconnection with Antonio to influence the court proceedings and that her attorney misrepresented the facts and law to L.C.M.'s counselors in an attempt to undermine the 2018 Parenting Plan and diminish Chris's parental rights. The court considered the parental interest of third parties under § 40-4-228, MCA, and relied on the factors set out in § 40-4-211, MCA, to determine whether a child-parent relationship had been established. The court concluded that "Chris clearly has a 'parental interest' as to L.C.M., as a matter of law, given the parties' Stipulated Parenting Plan[.] . . . Moreover, the parties acted consistently with their recognition of Chris's 'parental interest.'" The court determined that Chris provided for L.C.M.'s physical needs by "supplying food, shelter, and clothing and the necessary care of L.C.M."; that Chris had daily interaction with L.C.M. prior to September 2020; that Chris provided financial support for L.C.M. and a home with her own bedroom; that Chris provided "stability in residence, schooling, and activities outside of the home"; and that Chris and L.C.M. enjoy spending time together. The court concluded that Chris developed a parental bond with L.C.M. and that Bryt's actions were not in the "best interest" of L.C.M. under the factors set forth in § 40-4-212, MCA. The court granted Chris's motion to hold Bryt in contempt

for violating the 2018 Parenting Plan and his motion for attorney fees and denied Bryt's motion to strike L.C.M. from the 2018 Parenting Plan.

¶9 We review "a district court's interpretation and application of statutes for correctness and [its] findings of fact [for clear error]." *In re Parenting of S.J.H.*, 2014 MT 40, ¶ 8, 374 Mont. 31, 318 P.3d 1021 (citations omitted); *see also Kulstad v. Maniaci*, 2009 MT 326, ¶ 50, 352 Mont. 513, 220 P.3d 595 (citation omitted). We reviewed an award of nonparent visitation rights for abuse of discretion in *In re Parenting of N.M.V.*, noting that "the language of § 40-4-228(2), MCA, is permissive[.]" 2016 MT 322, ¶ 5, 385 Mont. 479, 385 P.3d 564. The statute applies to an award of parental interest as well. Section 40-4-228(2), MCA ("A court may award a parental interest to a person other than a natural parent . . . ."). We therefore review for abuse of discretion the District Court's decision to award a parental interest.

¶10 Bryt first argues that the court lacked subject matter jurisdiction because L.C.M. never resided in Park County. Article VII, Section 4, of the Montana Constitution confers original jurisdiction on district courts in "all civil matters and cases at law and in equity." A state court "competent to decide parenting matters has jurisdiction to make a parenting determination" if the state "is the home state of the child at the time of commencement of the proceedings[.]" Section 40-4-211(1)(a)(i), MCA. The District Court had continuing jurisdiction over the proceedings because it issued the 2018 Parenting Plan. *See Billings v. Billings*, 189 Mont. 520, 521-22, 616 P.2d 1104, 1105 (1980). As the proper county is a question of venue, Bryt should have raised it in the District Court when the

petition for dissolution was filed. *See Unified Indus., Inc. v. Easley*, 1998 MT 145, ¶ 15, 289 Mont. 255, 961 P.2d 100 ("[T]his Court will not address either an issue raised for the first time on appeal or a party's change in legal theory." (citation omitted)).

¶11 Next, Bryt argues that the District Court failed to apply §§ 40-4-211 and -228, MCA, correctly as a matter of law. Section 40-4-211(4)(b), MCA, permits "a person other than a parent" to commence a parenting plan proceeding by "filing a petition for parenting in the county in which the child resides or is found." "[N]otice of a parenting proceeding" must be given to "the child's parent[.]" Section 40-4-211(5), MCA. Section 40-4-228, MCA, governs the conditions under which a nonparent may seek "a parental interest in a child . . . or visitation with a child[.]" Section 40-4-228(1), MCA.

¶12 Bryt argues that Chris did not follow the procedures of § 40-4-211(4)-(5), MCA, because Chris failed to file a "petition for parenting" and to notify Antonio of the 2018 dissolution and parenting plan proceedings. Chris filed a petition for dissolution and a proposed parenting plan in 2018, which satisfies the "filing" requirement of § 40-4-211(4)(b), MCA. *See Kulstad*, ¶¶ 22-23 (where Kulstad satisfied the requirements of § 40-4-211(4)(b), MCA, by filing a petition for dissolution and a petition for parenting). Antonio did not have notice of the 2018 dissolution proceeding. But he did have notice, was present, and testified at the court's 2021 hearing regarding Chris's parental interest. The court did not declare that Chris had a parental interest until after the 2021 hearing, which Antonio attended.

¶13 Bryt contends that, even if Chris did file a proper petition, he could not have a parental interest in L.C.M. because of the 2012 parenting plan between Bryt and Antonio. Citing no authority, Bryt asserts that a third party may not infringe upon her or Antonio's fundamental right to parent. The law is clear, however, that "[i]t is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section." Section 40-4-228(5), MCA. *See also Kulstad*, ¶ 86 ("Nothing in § 40-4-228(4), MCA, makes any mention of the requirement that the person acting in loco parentis does so to the exclusion of the natural parent."). The existence of a 2012 parenting plan between L.C.M.'s natural parents did not foreclose the possibility of Chris's parental interest in L.C.M.

¶14 Bryt argues next that the District Court erred when it held that the 2018 Parenting Plan "granted" Chris a parental interest. She maintains that an individual's right to parent cannot be merely "contracted away." We may affirm a trial court on any ground supported by the record, regardless of its reasoning. *See Johnson Farms, Inc. v. Halland*, 2012 MT 215, ¶ 11, 366 Mont. 299, 291 P.3d 1096; *Rooney v. City of Cut Bank*, 2012 MT 149, ¶ 25, 365 Mont. 375, 286 P.3d 241. A review of the record reveals that the District Court heard evidence from both parties at the February 2021 hearing on the issue of Chris's parental interest. Both of L.C.M.'s natural parents were present and gave testimony. The court conducted a thorough analysis of §§ 40-4-228, -211, and -212, MCA, and made findings related to each of the elements and factors in these sections.

¶15 First, the court concluded that Antonio acted "contrary to L.C.M.'s interests" by "voluntarily permitt[ing] L.C.M. to remain continuously in the care of [Bryt] and Chris for most of L.C.M.'s life." *See* § 40-4-228(4), MCA ("For purposes of this section, voluntarily permitting a child to remain continuously in the care of others for a significant period of time so that the others stand in loco parentis to the child is conduct that is contrary to the parent-child relationship.") The testimonies of Antonio, Chris, Bryt, and Boehm supported this conclusion.

¶16 Second, the court concluded from the evidence that Chris has established a child-parent relationship with L.C.M., as defined in § 40-4-211(6), MCA. It found that Chris and Bryt had agreed to grant Chris week-on, week-off parenting of all of the children, including L.C.M., and that "Chris developed a parental bond with L.C.M., both during the marriage and thereafter in exercising his parenting time under the [2018 Parenting Plan]." The court then discussed the elements of a child-parent relationship as it is defined in § 40-4-211(6), MCA. Applying those elements to its findings of fact, the court reached the following conclusion of law:

> The [District] Court concludes that Chris has provided for the physical needs of L.C.M. by supplying food, shelter, and clothing and the necessary care of L.C.M. Chris has had a day-to-day interaction and companionship with L.C.M. that fulfills L.C.M.'s psychological needs for a parent as well as her physical needs. Chris has provided financial support for L.C.M. and since the divorce he has always provided her with a home wherein she has her own bedroom. Chris also has met L.C.M.'s need for continuity of care by providing stability in residence, schooling, and activities outside of the home. Chris has been the only consistent father figure in L.C.M.'s life. Chris and L.C.M. enjoy many activities together, such as hunting, fishing, and visiting the grandparents in Helena, Montana.

¶17 We affirmed a district court's finding of a child-parent relationship in *Kulstad*, ¶¶ 80, 87, 91. Kulstad sought to dissolve her common-law marriage and to establish a parenting plan for her partner's two adopted children. Though the children were formally adopted by the respondent, not by Kulstad, the court determined that a child-parent relationship existed between Kulstad and the children, pursuant to § 40-4-211(6), MCA, because the respondent "consented to and fostered the parent-like relationship between Ms. Kulstad and the children." *Kulstad*, ¶ 80 (quotations omitted). The trial court found that Kulstad lived with the children in the same household, participated without restriction in the children's daily lives, "assumed significant financial obligations of parenthood without expectation of financial compensation," and served in a "parental role for a sufficient length of time to have established with the children a bonded, dependent relationship parental in nature." *Kulstad*, ¶ 80 (quotations omitted). We rejected Maniaci's argument that a child-parent relationship between the child and a third party may be found only to the exclusion of the natural parent. *Kulstad*, ¶ 86.

¶18 Viewing the record in the light most favorable to Chris, the District Court's findings of fact were supported by clear and convincing credible evidence, and the court did not abuse its discretion in finding that Chris had a child-parent relationship with L.C.M. Until Bryt cut off their relationship, Chris had continuous, daily interaction with L.C.M. for nearly a decade of her formative years. He provided stability in housing, education, and activities and provided for her physical needs. He treated L.C.M. the same way he treats his biological children, and he contributed financially to her upbringing. The

District Court's determination finds support in *Kulstad*, where the court made similar findings of fact. *See Kulstad*, ¶¶ 80, 91.

¶19 The District Court also addressed the "best interest of the child" standard, observing that Bryt's actions to terminate contact between L.C.M. and Chris were not in L.C.M.'s best interest and concluding "that it is in the best interests of L.C.M. to be included in the [Parenting Plan] and to be parented equally by both Chris and [Bryt]." The record shows substantial evidence that Chris and L.C.M. both wished to have a child-parent relationship, that the relationship was a healthy one, that L.C.M. had stability at Chris's house, and that Chris supported L.C.M. financially. There was evidence that L.C.M. was confused by the abrupt termination of her contact with Chris and that L.C.M.'s counselor, Mortimer, did not recommend discontinuing the relationship. The District Court also found that L.C.M. enjoyed helping with her younger siblings at Chris's house and that her half-brothers were confused by her absence. "Specific findings on each of the [best interest factors] need not be made, where there is substantial evidence to support the findings adopted." *Meyer v. Meyer*, 204 Mont. 177, 180-81, 663 P.2d 328, 330 (1983) (citation omitted). We find no error in the court's determination that continuing the child-parent relationship was in the best interest of L.C.M.

¶20 Bryt does not dispute that there was clear and convincing evidence of Chris's child-parent relationship with L.C.M. She maintains nonetheless that the District Court did not follow the procedure in § 40-4-211(6), MCA, because it declared that Chris has a parental interest pursuant to the 2018 Parenting Plan. Disregarding those findings and

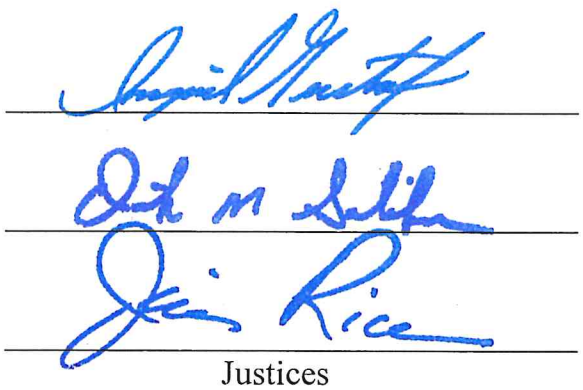
conclusions, however, the record nonetheless confirms that the District Court properly followed the procedures in §§ 40-4-211 and -228, MCA, to declare Chris's parental interest in 2021. Having determined that Antonio engaged in conduct contrary to a child-parent relationship with L.C.M., that Chris established a child-parent relationship with L.C.M., and that continuing the relationship was in L.C.M.'s best interest, the District Court correctly applied the law to the facts and did not abuse its discretion in concluding that Chris has a parental interest.

¶21 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 a question controlled by settled law or by the clear application of applicable standards of review. We affirm the District Court's March 30, 2021 Findings of Fact, Conclusions of Law, and Order. We decline Chris's request that he be awarded attorney fees on appeal under M. R. App. P. 19(5).

Justice

We Concur:

Chief Justice



Justices