

DA 22-0012

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 114N

IN RE THE MARRIAGE OF:

JUSTIN KEEGAN,

Petitioner and Appellee,

and

SHAUNA KEEGAN,

Respondent and Appellant.

APPEAL FROM: District Court of the Third Judicial District,
In and For the County of Powell, Cause No. DR-19-27
Honorable Ray Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian J. Miller, Morrison, Sherwood, Wilson, and Deola PLLP, Helena,
Montana

For Appellee:

Michael D. McLean, Wall, McLean & Gallagher, Helena, Montana

Submitted on Briefs: April 27, 2022

Decided: June 7, 2022

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 Shauna Keegan (Shauna) appeals the November 17, 2021, Findings of Fact, Conclusions of Law, and Decree of Dissolution entered by the Third Judicial District Court, Powell County.¹ We affirm.

¶3 Shauna and Justin Keegan (Justin) were married in 2014 and have two children together. Justin filed to dissolve the marriage on September 4, 2019. Justin filed, and the District Court adopted, an Interim Parenting Plan on September 6. The Interim Parenting Plan provided that the children would continue to primarily reside with Justin. Every Friday, Shauna would pick the children up in Deer Lodge and care for them through

¹ Preliminarily, we must address some procedural irregularities in this case. Shauna filed a Notice of Appeal on January 10, 2022, appealing the District Court's November 17, 2021, Findings of Fact, Conclusions of Law, and Decree of Dissolution (Decree). While Shauna timely appeals the District Court's Decree, her appeal focuses entirely on the District Court's March 31, 2021, Parenting Order (Order), which denied her December 8, 2020, Motion to Amend the Parenting Plan. In her appeal, Shauna also refers to her "[M. R. Civ. P.] 52/59 Motion for Opening the Judgment, Receipt of Additional Testimony, and Amendment of Judgment" (Rule 52/59 Motion) filed on April 7, 2021, and deemed denied on June 7, 2021. As the timeliness of this appeal has not been raised, we will address the substance of Shauna's contentions regarding the District Court's parenting decisions, which are primarily set forth in the March 31, 2021 Parenting Order.

Monday. The parties filed a stipulated parenting plan on March 3, 2020, which the District Court adopted.

¶4 On December 10, 2020, Shauna filed a “Notice of Intent to Move” along with a motion to amend the stipulated parenting plan to allow the children to relocate with her to Pennsylvania. Justin objected and filed his own motion to amend the parenting plan to allow the children to primarily reside with him in Montana. While the motions were pending, Shauna moved to Pennsylvania in January 2021.

¶5 Following an evidentiary hearing on the motions, Shauna moved to submit evidence under seal regarding Justin’s medical records and toxicology reports. The records related to an ATV accident in July 2020 involving Justin and one of the children. Shauna argued the evidence indicated Justin had an alcohol abuse problem that required consideration under § 40-4-212(1)(g), MCA. The District Court granted Shauna’s motion. On March 31, 2021, the District Court issued its Findings of Fact, Conclusions of Law, and Order (Order). The Order denied Shauna’s motion and adopted Justin’s proposed amended parenting plan.

¶6 Shauna filed her Rule 52/59 Motion on April 7, asking the District Court to find that Justin committed perjury and that Justin’s ATV accident endangered the welfare of their child. Shauna contended that Justin was intoxicated at the time of the accident and subsequently lied about his alcohol consumption during the court’s hearing. The Rule 52/59 Motion was deemed denied on June 7. Notwithstanding, the District Court issued an order denying the motion on June 25. The District Court noted the evidence of Justin’s intoxication was previously considered and given weight in its Order.

¶7 The District Court issued its Decree formally dissolving the parties' marriage and adopting their property settlement agreement on November 17, 2021. The Decree noted that a parenting order had been issued previously. Shauna appeals.

¶8 First, Shauna contends the District Court clearly erred by not finding that Justin perjured himself regarding his alcohol consumption on July 3, 2020.² We review a district court's findings of fact supporting a parenting plan to determine whether they are clearly erroneous. *In re M.C.*, 2015 MT 57, ¶ 10, 378 Mont. 305, 343 P.3d 569. A finding of fact is clearly erroneous if it is not supported by substantial evidence, the district court misapprehended the effect of the evidence, or our review of the record convinces us the district court made a mistake. *In re Marriage of Woerner*, 2014 MT 134, ¶ 11, 375 Mont. 153, 325 P.3d 1244. A district court's conclusions of law are reviewed for correctness. *In re M.C.*, ¶ 10. Trial courts have broad discretion when considering the parenting of a child and this Court will not disturb the court's decision absent a clear abuse of discretion. *Woerner*, ¶ 12. "A court abuses its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason, resulting in substantial injustice." *In re M.C.*, ¶ 10.

¶9 The District Court's Findings of Fact are not clearly erroneous. The District Court's Order relied on the evidence submitted by Shauna to find that Justin's blood alcohol

² Shauna does not directly argue the District Court's Findings of Fact were clearly erroneous. Rather, Shauna contends the District Court abused its discretion by ignoring "clear and convincing evidence of perjury" in its Findings of Fact. However, because Shauna's argument takes issue with the District Court's Findings of Fact, we nonetheless review those findings for clear error.

concentration on July 3, 2020, “was .06 which is below the legal limit for presuming impairment or intoxication but does demonstrate that he had consumed some alcohol.” The District Court’s Findings of Fact further noted testimony by Shauna and her witnesses concerning Justin’s alcohol abuse, as well as conflicting testimony from Justin and his witnesses that he did not drink on July 3, 2020. Justin presented evidence of the law enforcement report concerning the ATV accident, which did not result in any criminal citations. The District Court considered this evidence in its assessment of the factors enumerated in § 40-4-212, MCA. Concerning the mental and physical health of Shauna and Justin, the District Court concluded that Justin was not criminally charged and that, while the toxicology report contradicted Justin’s testimony that he had not consumed alcohol on July 3, 2020, the report also indicated that Justin was not intoxicated within the legal definition, thus discrediting Shauna’s testimony as well. The District Court ultimately concluded both parties were “less than credible” and, faced with conflicting testimony and credibility concerns, noted the discrepancies, and concluded that the factor at issue did not weigh in favor of either party. Our review of the record convinces us the District Court’s decision was supported by substantial evidence and the District Court did not misapprehend the effect of the evidence or clearly err. To the extent Shauna argues the District Court abused its discretion by placing their children in Justin’s primary care in light of this evidence, we conclude the District Court did not act arbitrarily, without employment of conscientious judgment, or exceed the bounds of reason.

¶10 Second, Shauna contends the District Court abused its discretion by adopting Justin's proposed parenting plan and awarding him primary custody. However, Shauna does not argue the District Court erred in applying the factors in § 40-4-212, MCA. Rather, Shauna primarily attacks Justin's credibility. Shauna argues that the District Court abused its discretion by criticizing her and by not finding that Justin's ATV accident and subsequent testimony regarding his alcohol use on July 3, 2020, constituted criminal behavior that Shauna contends should have weighed heavily against Justin.

¶11 Trial courts possess broad discretion when considering the parenting of a child, and we must presume the court carefully considered the evidence and made the correct decision. *In re Marriage of Crowley*, 2014 MT 42, ¶ 44, 374 Mont. 48, 318 P.3d 1031. Absent clearly erroneous findings, we will not disturb the district court's decision regarding parenting unless there is a clear abuse of discretion. *Woerner*, ¶ 12.

¶12 The District Court did not clearly abuse its discretion. The District Court made specific fact-based conclusions based on evidence presented and analyzed the required statutory factors to determine whether an amendment to the parenting plan was necessary. The District Court concluded that both parties, at times, lacked credibility and noted the impact of the parties' credibility on its conclusions. Judgments regarding the credibility of witnesses and the weight to be given their testimony remain within the province of the district court and we decline to substitute our judgment for its determinations. *In re Marriage of Tummarello*, 2012 MT 18, ¶ 34, 363 Mont. 387, 270 P.3d 28. The District

Court assessed the credibility of both parties and exercised its judgment over disputed factual matters. We decline to substitute our judgment for the District Court's.

¶13 The District Court's Findings of Fact are not clearly erroneous, and the District Court did not abuse its discretion in adopting Justin's amended parenting plan. The District Court's Decree is affirmed.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

/S/ LAURIE McKINNON

We concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR