DA 23-0271

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 1N

IN RE THE MARRIAGE OF:

CLAUDIA DEL TORAL,

Petitioner and Appellee,

and

DAVID FLINT RICHARD,

Respondent and Appellant.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DR-18-94
Honorable Deborah Kim Christopher, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Loren T. Fitzpatrick, Fitzpatrick Law, PLLC, Polson, Montana

For Appellee:

Molly Stammer, SAFE Harbor Legal Program, Polson, Montana

Submitted on Briefs: December 6, 2023

Decided: January 2, 2024

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, we decide this case by memorandum opinion. It 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 David Flint Richard appeals the Twentieth Judicial District Court's order denying without a hearing his motion to modify his parenting plan with Claudia Del Toral for their two children. Claudia and David married in 2013 in Cascade County, Montana. Their two children, M.R. and J.R., were four years old and three years old, respectively, on the date of the order at issue in this appeal. At times relevant to this appeal, Claudia and David resided in Ronan, Montana.

¶3 On September 13, 2018, Claudia petitioned the District Court for dissolution of the marriage. Claudia sought an equitable apportionment of the parties' assets and liabilities, support payments for an appropriate time, child support, and that David continue to provide M.R. and J.R. with health insurance coverage. Claudia also submitted a proposed parenting plan. In the proposed plan, Claudia indicated that she intended to relocate to Orange County, California, where she is from. As the children's primary caregiver, Claudia proposed she take M.R. and J.R. with her to California. The proposed plan granted David visitation and parenting of M.R. and J.R. for three hours each day for several days

surrounding Thanksgiving and Christmas. Visitation, according to the proposed plan, would occur in Orange County, California.

¶4 David did not respond to Claudia's petition and request for a final parenting plan. On December 13, 2018, Claudia sought default judgment against David. On March 7, 2019, the District Court held a hearing on the matter. Claudia appeared with counsel; David did not appear. The District Court issued its findings of fact, conclusions of law, and decree of dissolution the same day. In it, the court dissolved the marriage and adopted Claudia's proposed parenting plan as final. The District Court awarded Claudia $188,650.00—Claudia's portion of the sale of two properties owned by the couple—and a $7,243.13 tax refund. The court also awarded Claudia $500 per month in support payments for forty-eight months and $350 per month in child support payments until the children reached the age of 18 or graduated from high school, whichever occurs later. Claudia's attorney served David with Notice of Entry of Judgment, and David did not appeal.

¶5 David did not pay the awards to Claudia, nor did he pay the support payments the decree required. On July 8, 2019, Claudia moved the District Court to hold David in contempt and to issue writs of execution on David's property in Lake and Cascade counties. Shortly after Claudia's contempt motion, David's attorney filed a notice of appearance. On September 12, 2019, the court held David in contempt and issued writs of execution for Lake and Cascade counties. David continued nonpayment, however, and on October 28, 2019, Claudia requested a hearing on the court's contempt order. The District Court set a

hearing, which was continued multiple times. On December 31, 2019, David filed his first motions to modify the final parenting plan and to set aside his contempt order.

¶6 In his motion to revise the final parenting plan, David requested that the District Court require Claudia to show cause why she should not be held in contempt for violating the parenting plan, to amend the final parenting plan, and to award David attorney fees. David asserted that because the final parenting plan provided for visitation only in Orange County, California, he had been denied access to M.R. and J.R., as Claudia was still residing in Montana. In his request to set aside the contempt order, David argued that the court had violated his due process rights by holding him in contempt without providing him the opportunity to testify and call witnesses. The District Court denied both motions, concluding that there were no changes in the circumstances of the parties to warrant a modification of the final parenting plan and that David had exceeded the time allowed to alter or amend the contempt judgment.

¶7 David appealed the District Court's denial of both motions. The parties thereafter participated in mediation. As a result, they agreed that David would voluntarily dismiss his appeal, that the order of contempt would be vacated, and that the District Court's award of $195,893.13 would be reduced to $75,000. The appeal was dismissed with prejudice. *In re Marriage of Del Toral and Richard*, DA 20-0263, Order (Mont. Aug. 17, 2020). On August 26, 2020, the District Court approved the parties' mediated settlement.

¶8 Nearly one year later, on June 29, 2021, David renewed his motion to modify the final parenting plan, to require Claudia to show cause, and for attorney fees. In his renewed

motion, David again alleged that Claudia was not complying with the parenting plan. On July 23, 2022, Claudia moved the District Court to require that David show cause why he should not again be held in contempt for failing to make payments required by the mediated settlement agreement. Claudia alleged that David had not paid any of the $75,000 award and had stopped making payments on his support obligations in early 2020.

¶9 The District Court ordered a show cause hearing. After several continuances, on November 8, 2021, David filed for chapter 13 bankruptcy—immediately halting any debt-collection proceedings against him. A week later, David requested a hearing on the status of his still-pending renewed motion to amend the final parenting plan and to hold Claudia in contempt. On April 12, 2023, the District Court denied David's request for a show-cause hearing and his motion to amend the final parenting plan. David appeals.

¶10 We review for clear error the underlying findings in support of a district court's decision on a motion to modify a parenting plan. *Guffin v. Plaisted-Harman*, 2010 MT 100, ¶ 20, 356 Mont. 218, 232 P.3d 888. We review its conclusions of law for correctness. *Guffin*, ¶ 20. "A district court has 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 G.M.N.*, 2019 MT 18, ¶ 11, 394 Mont. 112, 433 P.3d 715. "Accordingly, absent clearly erroneous findings, we will not disturb a district court's decision regarding parenting plans unless there is a clear abuse of discretion." *Reed v. Martin (In re L.R.)*, 2023 MT 235, ¶ 7, 414 Mont. 191, ___ P.3d ___ (citations omitted).

¶11 Under § 40-4-219, MCA:

> [t]he court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child.

A party seeking to amend a parenting plan "must satisfy an initial statutory threshold of changed circumstances." *In re R.J.N.*, 2017 MT 249, ¶ 9, 389 Mont. 68, 403 P.3d 675 (quoting *In re Marriage of Whyte*, 2012 MT 45, ¶ 23, 364 Mont. 219, 272 P.3d 102). "The party seeking modification of a parenting plan carries a heavy burden of proof." *In re R.J.N.*, ¶ 9 (citations and internal quotations omitted). Section 40-4-220(1), MCA, directs a district court to "deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, based on the best interest of the child[.]" "The exacting procedural and substantive requirements of [these] statutes 'promote[] stability' for children and discourage 'unnecessary litigation over parenting plans.'" *Bessette v. Bessette*, 2019 MT 35, ¶ 19, 394 Mont. 262, 434 P.3d 894 (quoting *In re R.J.N.*, ¶ 12).

¶12 The District Court, explaining its denial of David's motions, observed that he "still carries a significant child support and maintenance arrearage" and had not met the terms of his mediated settlement to pay Claudia the compromised sum of $75,000 for her share of the marital estate. The court noted further that Claudia submitted documentation "showing that David opposed her attempts to receive a portion of David's VA benefits for the children that she cares for full-time." The District Court reasoned that David's continued failures to meet his financial obligations under the decree had deprived Claudia of the financial means necessary to relocate to California as anticipated by the decree.

Finally, the court observed that "David completed visitation under the Final Parenting Plan in December 2020." It concluded that David failed to establish the statutory threshold necessary to have a hearing on his motion to amend the parenting plan.

¶13 David argues that the District Court erred by summarily denying his motion to amend the parenting plan when there was no dispute that the final parenting plan did not provide him any parenting time in Montana. Because Claudia has now remained in Montana for over four years, David posits, the court clearly erred by failing to find a substantial change in circumstances. Relatedly, he argues that the court improperly premised its order on a finding that he remained in contempt of court, when there was no motion for contempt before the court and David's pending bankruptcy foreclosed such a finding. Claudia responds that David failed to demonstrate a change in the children's circumstances when the only change was his failure to comply with the District Court's orders, leaving Claudia unable to afford her planned move to California.

¶14 Upon review, we conclude that the District Court did not err as a matter of law in concluding that David was not entitled to a hearing. David cannot use his longstanding violation of stipulated and court-ordered financial obligations to Claudia to demonstrate a change in circumstances of the children on the basis of facts unknown to the court at the time of the decree. It was within the contemplation of the court and the parties that Claudia's ability to support herself and finance her relocation would depend on securing her court-ordered share of the marital estate. David has not demonstrated clear error in the District Court's factual finding that Claudia remains in Montana only because David has

failed to pay her the sums to which he agreed under the settlement and which the court ordered. We are not persuaded by David's argument that the court improperly grounded its decision in a finding of "continued contempt." Neither David's pending bankruptcy nor Claudia's request to vacate the show-cause hearing changes the factual basis for the District Court's ruling. As the court explained, "Claudia has remained trapped in Montana with barely the means to support herself and the children, let alone the means to move the children to Orange County as is allowed by the Final Parenting Plan."

¶15 What is more, the final parenting plan expressly allows David parenting with the children at specified times, providing him three hours with the children each day during a five-day period over Thanksgiving in odd-numbered years and a five-day period over Christmas in even-numbered years. David does not challenge the court's finding that he exercised his parenting time over Christmas in 2020. That the children are not in California as contemplated does not mean he forfeits the parenting time the plan provides. But it is not ground for modification where David has shown no change in the children's circumstances beyond Claudia's inability to move, for which the court found him responsible. "A person may not take advantage of the person's own wrong." Section 1-3-208, MCA.

¶16 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. David has not demonstrated that the District Court made

clearly erroneous findings, and the court did not abuse its discretion in denying his motion to amend the parenting plan when it concluded he had not met the threshold requirements for a hearing. The court's order is affirmed.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR
/S/ JIM RICE