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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2061**

In re the Marriage of:
Kristin Mary McGrath, petitioner,
Respondent,

vs.

John Silvertson McGrath,
Appellant.

**Filed June 15, 2010
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-FA-000292209

Mark Gray, Minneapolis, Minnesota (for respondent)

Shelley M. Meyer, Clausen & Hassan, LLC, St. Paul, Minnesota (for appellant)

Kay M. Kraus, Minneapolis, Minnesota (for guardian ad litem)

Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-father challenges the district court order granting full legal and physical custody of the two children to respondent-mother. Because we conclude that the district

court made all the required statutory findings and that the findings are not clearly erroneous, we affirm.

FACTS

Appellant-father John McGrath and respondent-mother Kristin McGrath were married in May 1993. They have two children: a son, W.M., born March 9, 1994, and a daughter, L.M., born December 10, 1996. The marriage was dissolved pursuant to a marital termination agreement in April 2005.

The parties initially shared physical and legal custody of the children, exchanging custody every Friday afternoon for a one-week period. Over time, tension grew between the parties. In April 2006, mother moved the court to grant her sole physical and legal custody. She cited a degeneration of the parties' ability to communicate and father's growing anger at her as the reasons for modification. The parties resolved the issue by agreeing to work with a parenting consultant to facilitate communication.

The parenting consultant was appointed at the end of May 2006, and resigned in early December. At that time, the consultant indicated that she was unable to do her job effectively because father was unwilling to cooperate and acted in a threatening manner toward her.

In March 2007, father moved for sole physical and legal custody of the children. The district court found that the parties' conflict was endangering their children. The district court appointed a guardian ad litem (GAL) and ordered psychological assessments of the parties.

Seth Williams, Psy.D., LP, conducted the assessments. Although the tests he administered did not allow him to make comprehensive diagnoses, he reported that mother may have a personality disorder and exhibited features of narcissism, histrionic personality disorder, and paranoia. Dr. Williams reported that father may have an adjustment or anxiety-related disorder and that he displayed indicia of obsessive-compulsive disorder. But Dr. Williams did not diagnose either parent with a mental illness. At father's request, mother underwent a second psychological evaluation with Lois Cochrane Schlutter, Ph.D., LP. Dr. Schlutter's observations were similar to those of Dr. Williams, but Dr. Schlutter stated that there was no indication that the children were in any immediate harm when they were with their mother. Dr. Schlutter also reported that mother "is functioning quite well with some mild difficulties," given the current stress of the divorce and child-custody proceedings.

Hennepin County initiated a custody evaluation. The evaluator concluded that "the present custody arrangement is emotionally endangering the children" because of the parties' inability to co-parent. But the evaluator was "unable to say that the benefit of a change in custody would outweigh the intrinsic harm of the change itself." The evaluation report recommends that the parties alternate custody on a two-week basis to minimize the opportunity for conflict.

The GAL spent 150 hours working with the family. This was six times as much as the GAL normally spends on a case, primarily because of the level of conflict in the family and the demands placed on her by father and his attorney. The GAL reported the high level of conflict between the parents to the district court on May 9, 2008, stating that

the parties may never be able to effectively co-parent. Based on W.M.'s expressed concerns regarding father, the GAL recommended that W.M. spend every other weekend with his father. The GAL recommended that L.M. continue with the week-on, week-off shared parenting schedule. Although she advocated continued shared legal custody, the GAL indicated that if the parties could not reach agreement as to their children's needs, then mother should have final decision-making power with respect to W.M. and father should have final decision-making power regarding L.M.

A primary area of disagreement was the assessment and treatment of W.M.'s ADHD. Father resisted medication for the condition for months after it was recommended by a physician at the University of Minnesota and after receiving a second opinion that father requested. In her December 2008 report, the GAL indicated that the parties continued to have difficulty working together on W.M.'s treatment. The GAL expressed concern that the parents' continued inability to work together was hurting W.M. and suggested that the court consider granting one party temporary sole physical and legal custody to ensure that W.M. will have consistent treatment.

A three-day trial was held on December 3 and 4, 2008, and April 14, 2009. The district court heard testimony from the parties. Most of the expert evidence, including the opinions of the custody evaluator and psychologists, was submitted through reports. Father called Douglas Darnall, an expert on high-conflict divorces, who testified in general terms about parental alienation, but did not have enough familiarity with the parties' circumstances to offer specific opinions or recommendations. Father also called

his neighbor, who testified that the children seemed happy when they were at father's house.

Mother called the former parenting consultant, who testified to her observations of the family and the reasons for her resignation. Mother also called her sister and a friend, who testified to mother's capability as a parent and to father's methods for expressing his disapproval of mother.

The GAL was the final witness. In a letter written just before the last day of trial, the GAL stated that W.M. had become angry with father and was refusing to see him and that L.M. misses her brother when she is at father's house. The GAL also noted, "I believe [father] continues to denigrate [mother] in front of the children and that it is very difficult for the children to listen to." She recommended domestic-abuse counseling for the entire family. She also recommended that mother have sole legal custody of the children unless a parenting consultant is hired, and that the parties share joint physical custody.

At the conclusion of the trial, the GAL testified that she had changed her recommendation based on the evidence presented during trial and her personal experiences with father during the course of the proceeding. She testified that "[i]n the hallway during—nearly every break today, [father] has approached and been very—what is the word?—threatening to me. And extremely angry, and could not contain himself, despite his attorney getting involved at one point." The GAL feared that the children were endangered by father's "level of anger" and recommended that mother immediately be given sole physical and legal custody of the children. She further recommended that

the entire family work with therapist David J. Matthews, Psy.D., LICSW, of the Domestic Abuse Project because “this family really does have a lot of those dynamics [of abuse] involved.”

On June 3, 2009, the district court issued a temporary order awarding sole legal and physical custody to mother. The order granted father parenting time on alternate weekends, contingent on his compliance with the court’s order to participate in therapy with Dr. Matthews.

Before the district court issued its final order, the GAL submitted two letters to the court. The first, dated August 13, 2009, describes a banner father hung on his house expressing his disagreement with the temporary order. The GAL reported that L.M. was afraid her friends would not like her because of the banner and that L.M. asked father to take it down. The GAL recommended that father have no contact with his children. The second letter, dated September 14, 2009, describes father’s continued phone, e-mail, and texting contact with L.M. and his behavior at one of W.M.’s baseball games. The GAL reported that father had not complied with the court-ordered therapy and strongly recommended that father have no contact of any kind with his children because he “has extreme difficulty in keeping his opinions to himself and he does not always express his strong opinions appropriately.”

The district court issued its final custody order on September 17, 2009, finding that

[t]he joint legal and joint physical custody arrangement has endangered the children. There is no ability to make joint legal custody decisions and as a result the meeting of the

children's health and educational needs is impaired and the children's physical and emotional health and development are endangered. Joint physical custody is endangering the children because of the harm [father] causes the children when in his care and through his inappropriate interactions with [mother].

The district court considered each of the statutory best-interests factors and awarded sole legal and physical custody to mother. The district court suspended father's parenting time, directing father to bring a motion to reinstitute parenting time once he begins working with Dr. Matthews or another court-approved therapist who specializes in domestic abuse. This appeal follows.

DECISION

I. The district court did not abuse its discretion by granting sole physical and legal custody of the children to mother.

A district court has broad discretion in awarding child custody and parenting time. *Crosby v. Crosby*, 587 N.W.2d 292, 295 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Our review of custody determinations is limited to whether the district court abused that discretion by making findings unsupported by the evidence or by improperly applying the law. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008).

We review the district court's factual findings for clear error, giving due regard to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01; *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). A finding is clearly erroneous when this court has "the definite and firm conviction that a mistake has been made." *Id.* We view the record in the light most favorable to the district court's findings. *Id.* The presence of conflicting evidence

in the record, which might lead a different trier of fact to decide the case differently, does not render the district court's findings clearly erroneous. *Crosby*, 587 N.W.2d at 296.

Father agrees that the statutory grounds for modifying a custody order exist here. *See* Minn. Stat. § 518.18 (2008) (listing requirements for modification). He also acknowledges that the district court considered the requisite best-interests factors. *See* Minn. Stat. § 518.17, subd. 1 (2008) (listing best-interests factors). But father argues that the district court abused its discretion because the court “failed to make findings on relevant evidence and made findings unsupported by the evidence.”

A. Modification

A court may only modify an existing child-custody order if

it finds, upon the basis of facts . . . that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child.

Minn. Stat. § 518.18(d) (2008). One such circumstance is that “the child’s present environment endangers the child’s physical or emotional health or impairs the child’s emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.” Minn. Stat. § 518.18(d)(iv).

The district court found that “[m]odification of the current custody order is required to meet the best interests of these children. . . . [Potential] disruption and negative impact is outweighed by the harm that would happen to either or both of these children if modification were not awarded here.” Father does not contest this finding.

B. Best Interests

The best interests of the children is the focus of a custody determination. Minn. Stat. § 518.175, subd. 1(a) (2008). In determining best interests, courts must consider the following factors:

- (1) the wishes of the child's parent or parents . . . ;
- (2) the reasonable preference of the child, [if of sufficient age];
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each parent and the child;
- (5) the interaction and interrelationship of the child [with other family members];
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved . . . ;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance . . . ;
- (11) the child's cultural background;
- (12) the effect on the child of the actions of an abuser, if related to domestic abuse . . . ;
- (13) [except in cases of domestic abuse], the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

Minn. Stat. § 518.17, subd. 1(1)-(13).

The district court made findings on all of these factors, and father challenges the factual basis of each finding. At oral argument before this court, father focused on two of the district court's findings: (1) that father is "incapable of co-parenting at this time" and (2) that "[mother's] health is good." Our function as an appellate court "does not require

us to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings" and our "duty is performed when we consider all the evidence, as we have done here, and determine that it reasonably supports the findings." *Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951); *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (applying *Wilson* in a family-law appeal). Therefore, instead of reciting the record evidence that supports each of the findings that father challenges in his brief, we focus our analysis on the two findings that father discussed during oral argument.

First, father argues that the extensive record of his attempts to communicate with mother demonstrates not only that he is able to co-parent but also that mother is the person responsible for the breakdown in communication. The district court considered this evidence, including dozens of pages of father's e-mails and letters to mother, finding that father uses written forms of communication to abuse and demean mother. The district court further found that "[father's] contempt for [mother] and her family has interfered with his ability to parent."

The district court's determination that father's anger with mother interferes with his ability to parent is amply supported by the record evidence, including the testimony of the parenting consultant, mother, and mother's friends, and father's e-mail correspondence. The fact that another court might have weighed the evidence differently does not mean that the district court's findings of fact are clearly erroneous or reveal abuse of the district court's discretion. *Crosby*, 587 N.W.2d at 296. This court does not

second guess the district court's credibility determinations. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Second, father argues that the district court erred in determining that mother is healthy, pointing to certain comments contained in the evaluating psychologists' reports. But the written findings demonstrate that the district court reviewed and considered the reports of both Dr. Williams and Dr. Schlutter. Neither psychologist diagnosed mother with a mental illness. The district court also considered the opinions of social service professionals who worked with mother, including the GAL and the parenting consultant, and the court made its own observations concerning mother's mental health. Because the district court's findings are supported by record evidence, they are not clearly erroneous.

Father's challenges to the district court's findings on the other best-interests factors follow a similar pattern and are likewise unavailing. In each instance, father cites evidence that the district court expressly addressed in its findings, and asks this court to make a different determination. We cannot grant father the relief he seeks. Appellate courts may not reweigh evidence or make factual findings. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Rutz v. Rutz*, 644 N.W.2d 489, 493 (Minn. App. 2002) (stating that we "do not engage in a redetermination of facts but defer to the district court's credibility determinations and to findings that are supported by the record"), *review denied* (Minn. July 16, 2002). We have thoroughly reviewed the record. Because all of the district court's best-interests findings are supported by record evidence and because father does not cite any factual or legal errors, we conclude that the district court's findings are not clearly erroneous.

Finally, father argues that the district court abused its discretion by failing to make certain findings favorable to him. We disagree. The district court is not required to make findings with respect to all evidence presented during trial. The district court is simply obligated to make the statutory findings. *See, e.g., Rogge v. Rogge*, 509 N.W.2d 163, 165 (Minn. App. 1993) (stating that a district court must consider “all relevant factors” when making best-interests determination), *review denied* (Minn. Jan. 28, 1994). The court did so here. And the omitted finding father advocates, that L.M. plays happily at his home, is redundant because the district court acknowledged that L.M. expressed a preference to spend equal time with her father.¹

Because the district court made findings on all the statutory factors and because the findings are supported by record evidence, the district court did not abuse its discretion in concluding that granting mother sole legal and physical custody serves the children’s best interests.

II. The district court did not abuse its discretion by eliminating father’s parenting time.

Father argues in the alternative that even if it is appropriate to modify his parenting time, the complete elimination of his parenting time is contrary to law. He relies on Minn. Stat. § 518.175, subd. 5 (2008), which prohibits a court from restricting parenting time unless it makes additional findings that either (1) “parenting time is likely to endanger the child’s physical or emotional health or impair the child’s emotional

¹ Father cites as error the finding that L.M. was not permitted to go to camp with a friend’s daughter. A review of the record demonstrates that L.M. was not permitted to go to the camp with the friend’s daughter but that L.M. attended the same camp during a different week that did not conflict with Father’s Day.

development” or (2) “the parent has chronically and unreasonably failed to comply with court-ordered parenting time.” Once the court makes an endangerment finding, it is required to restrict parenting time, and has the discretion to eliminate parenting time entirely. Minn. Stat. § 518.175, subd. 1 (2008).

As an initial matter, we consider whether the district court restricted, as opposed to modified, father’s parenting time. We first identify the last permanent and final order that establishes parenting time; this sets the baseline. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). “A restriction occurs when the change to parenting time is substantial.” *Id.* A modification is a less substantial change in parenting time. *Id.* at 124. The baseline order here is the dissolution order, which granted father parenting time every other week. We agree with father that the reduction of his parenting time from one-half time to no time is substantial.

We next consider whether the district court made the required endangerment finding. The district court expressly found that “[j]oint physical custody is endangering the children because of the harm [father] causes the children when in his care and through his inappropriate interactions with [mother]” and that “living with [father at] his home offers neither stability nor a satisfactory environment.” And the court also noted its concern “about [father’s] anger and rage which the children have witnessed.” These findings comply with the statutory requirement. *See* Minn. Stat. § 518.175, subd. 5(1).

Father challenges the factual basis for this endangerment finding, arguing that it is based solely on the GAL’s testimony that turned on alleged confrontations between father and the GAL that occurred outside the courtroom during the trial. Father argues that,

because the children did not witness and were not directly involved in these incidents, they cannot be used as a basis for finding that the children are endangered. We disagree. The record is replete with evidence of father's inability to control his anger and with examples of how he expresses that anger inappropriately. Father's encounters with the GAL during the trial merely confirmed the reports the GAL had received from mother, the children, and other witnesses. The district court itself witnessed similar behavior through father's outbursts at trial and concluded that father's inability to control his anger harmed the children.

Because the district court made the requisite modification, best-interests, and parenting-time-restriction findings and because the findings are supported by record evidence, the district court did not abuse its discretion in granting sole custody of the children to mother and eliminating father's parenting time until such time as he participates in court-ordered therapy.

Affirmed.