STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0956

In re the Matter of:

Thomas R. Kratz,
Appellant,

vs.

Kara Blum,
f/k/a Kara M. Day,
Respondent.

Filed May 6, 2008
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. F2-00-50365

Thomas R. Kratz, 35 Third Avenue South, Hammond, MN 55991 (pro se appellant)

Kara M. Blum, 8441 Edgeview Drive, West Chester, OH 45068 (pro se respondent)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant-father Thomas R. Kratz argues that several of the district court's determinations regarding the parties' parenting-time modification requests constituted an abuse of the court's discretion. Specifically, appellant challenges (1) his monthly

parenting-time award; (2) the decision to allow respondent-mother Kara Blum (f/k/a Kara M. Day) to take the child to Boy Scout activities during appellant's parenting time; (3) the calculation of summer-break parenting time; (4) the division of transportation costs; (5) Christmas-break parenting time and the inclusion of "travel days" within appellant's allotted parenting time; (6) the decision that the child will fly into the Minneapolis-St. Paul airport rather than Rochester; and (7) the decision to require a seven-day break between appellant's regular, monthly parenting time and any of appellant's holiday or summer-break parenting time. Appellant also requests that a new district court judge be assigned for any future proceedings, claiming that the district court judge is biased against him. We affirm.

D E C I S I O N

"[T]he ultimate question in all disputes over [parenting time] is what is in the best interest of the child." *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984). The district court has broad discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of its discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). A district court's findings of fact, on which a parenting-time decision is based, will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978). Clearly erroneous means "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 597 (Minn. App. 1995) (quotation omitted).

I.

Appellant argues that, based on the 2001 parental-access schedule, he is entitled to eight days of parenting-time per month rather than the six days awarded by the district court. We disagree. The record indicates that the access schedule was modified in 2003, awarding appellant five days of parenting time per month. Thus, the district court here increased appellant's parenting time. In addition, even if the 2001 schedule is considered, appellant misconstrues its intent. The 2001 order contained two alternative parenting-time schedules depending on whether appellant continued to live in Minnesota or moved to Ohio, where respondent and the child live. Appellant is correct that, pursuant to the 2001 schedule, if he had moved to Ohio he would have been entitled to approximately eight parenting days a month. But those eight days were spread throughout the month. Here, although appellant travels to Ohio for his monthly parenting time, the days are spent consecutively with the child in a hotel room. The district court properly expressed concern about the child spending eight days in a row in a hotel every month. We conclude that the district court was within its discretion in awarding appellant six days of parenting time.

II.

Appellant argues that the district court abused its discretion by allowing respondent to take the child to Boy Scout activities that occur during appellant's six days of parenting time, with appellant entitled to additional time to reach his allotted number of days. Appellant also argues, for the first time on appeal, that it is "unfair and unjust"

that this additional time might result in him paying for another day at the Ohio hotel. We disagree.

We note that this arrangement has been ongoing since the 2003 parental access schedule and that respondent requested that this practice be continued. Appellant argued that this practice should stop because (1) he disagreed that the child enjoyed scouting; (2) he felt that respondent used scouting to disrupt his parenting time; and (3) he should be allowed to take the child to his activities during his parenting time. We conclude that the district court's determination that the child enjoyed scouting was not clearly erroneous because there was evidence to support its conclusion. And it was within the district court's discretion to determine that the scouting arrangement was in the child's best interest and to allow this practice to continue.

Finally, even if the make-up parenting time requires appellant to incur additional expenses, appellant did not present this issue to the district court. Thus, we will not consider it here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that generally this court declines to consider new issues on appeal).

III.

Appellant argues that the district court abused its discretion by determining that each party's summer parenting time would be calculated from the Monday after the last day of school until the Friday before the first day of the next school year. We disagree.

Respondent requested that the summer parenting time be calculated by splitting the period between the Monday after the last day of school and the Friday before the first day of school. Respondent alleged that appellant had never returned the child on time

and this has caused the child to miss school. And she explained that "[d]ue to [these] problems in the past" she was requesting this new summer schedule. We conclude that ordering this modification was within the district court's discretion.

In addition, respondent, in her pro se letter brief, agrees that the summer break should be shared equally. The district court ordered that the parties select a "parenting[-] time facilitator" by March 10, 2007, to "resolve future issues of visitation, or issues revolving around visitation." Thus, the district court has provided a means for adjusting visitation schedules where the parties agree that changes are appropriate.

IV.

Appellant argues that the district court abused its discretion by ruling that each party shall be responsible for all transportation costs for one extended break per year, arguing that every other year appellant has the child for three breaks. Because appellant has improperly characterized the district court's order, we disagree.

Appellant claims that "[e]very other year [he] has the minor child for Thanksgiving break, Christmas break, and Spring break." But, in even-numbered years appellant has parenting time during Thanksgiving and Christmas break from December 27-January 1. In odd-numbered years appellant has parenting time during Spring break and Christmas break from December 23-27. Thus, appellant is incorrect in stating that every other year he has parenting time for both Spring break and Thanksgiving. Because every year appellant has parenting time for *either* Spring break *or* Thanksgiving *and* part of Christmas vacation, there is no third "extra break" that is not

included in the district court's order that each party pay the costs of one extended break per year.

And, although each year the parties share the summer vacation equally, constituting a "third break," the court ordered that respondent was responsible for the cost of the child's summer break airplane ticket.

Appellant also argues that the court should have ordered respondent to pay all transportation costs related to extended breaks. He claims that because he bears the costs related to the monthly visitations, it is unfair for him to pay for any of the extended breaks. The district court was aware that appellant was responsible for the costs related to the monthly parenting-time visits and ordered that respondent be responsible for the summer break expenses, in addition to this extra break.

We conclude that the district court's determinations regarding transportation-cost sharing were within its discretion.

V.

Appellant argues that the district court abused its discretion by not modifying the division of Christmas-break parenting time. Appellant also argues that travel days should be excluded from the days allotted for his break time. We disagree.

Appellant argues that he is sharing less than half of the break because the child's break is longer than December 23-January 1. But the record does not specify the break's time period and respondent, in her pro se letter brief, agrees that the break should be shared equally. Moreover, it was within the district court's discretion not to alter this preexisting Christmas break division. And it was within the court's discretion to include

"travel days" in appellant's parenting time because to do otherwise would effectively grant appellant additional parenting time, which the district court determined was not in the child's best interest.

VI.

Appellant argues that the district court abused its discretion by ordering that the minor child fly direct from Cincinnati to the Minneapolis St. Paul airport (MSP) because appellant lives near Rochester and had requested the child fly into the Rochester airport. We disagree.

Respondent requested that the child fly into MSP because it is a "two-hour direct airline flight." Appellant requested that the child fly into Rochester because he moved close to Rochester since the last court order. The district court's determination that the child would continue to fly into MSP was within its discretion because appellant did not demonstrate that it was in the child's best interest to fly into Rochester. Rather, appellant's submissions to the court focused solely on appellant's convenience. *See Clark*, 346 N.W.2d at 385 (stating that the ultimate inquiry in all parenting-time disputes is "what is in the best interest of the child.").

VII.

Appellant argues that the district court abused its discretion in requiring that there be at least a seven-day period between his regular monthly parenting time and any of his summer or holiday break parenting times. Because appellant believes that it would be "much more cost effective for both parties," he argues that if a break falls within a regular monthly parenting-time period that the two periods should run consecutively.

Again, as discussed in section I, the district court was concerned with the child spending more than six consecutive days of parenting time in a hotel. The court also stated that "to put [parenting times] together . . . doesn't make a lot of sense." Appellant did not articulate to the court why his proposal was in the child's best interest. Because the district court concluded that it was not in the child's best interest to consolidate parenting times, this decision was within its discretion. *See Clark*, 346 N.W.2d at 385.

VIII.

Appellant argues that he should be assigned a new district court judge, claiming that the current judge is biased. We disagree.

Appellant raises the issue of bias for the first time on appeal. Generally, a party who fails to remove a judge before the start of the proceedings has waived the opportunity to do so unless there is prejudice or "implied or actual bias." *Uselman v. Uselman*, 464 N.W.2d 130, 139 (Minn. 1990). Because appellant waived the issue of recusal by failing to raise it directly in the district court, he is precluded from raising the issue for the first time on appeal unless actual bias is shown. And adverse rulings, standing alone, are insufficient to prove bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

Appellant's claim of bias fails here. Appellant vaguely refers to "the bias I have already been shown" and claims that this will be worsened because he has appealed. In his brief appellant argues that the judge was biased because he did not read appellant's responsive motion prior to the hearing. And, partially because of this, appellant claims that the district court made "arbitrary rulings" in favor of respondent. Appellant's

arguments, which go to the credibility of evidence, do no more than express disagreement with the district court's decision. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to the district court's credibility determinations).

The record indicates that the district court judge stated at the outset of the hearing that he had not read appellant's motion or affidavit. But the record also shows that appellant's counsel had the opportunity to fully present appellant's case at the hearing. Moreover, the judge's ruling was not uniformly in favor of respondent. Appellant gained an additional day of parenting time each month, even though respondent argued it should not be increased, and respondent was ordered to pay the entire cost of the child's summer-visit plane ticket, even though respondent argued the cost should be shared equally. We conclude that appellant has failed to show that the judge was biased.

Affirmed.