STATE OF MINNESOTA
IN COURT OF APPEALS
A07-691

In re the Marriage of:
Susan Ann Yager, f/k/a
Susan Ann Fox, petitioner,

Appellant,

vs.

John Patrick Fox,

Respondent.

Filed June 3, 2008
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-FA-000299651

Robert J. Hajek, Donald L. Beauclaire, Hajek, Meyer & Beauclaire, P.L.L.C., 3433 Broadway St. N.E., Suite 110, Minneapolis, MN 55413 (for appellant);

Nancy Zalusky Berg, Melissa J. Chawla, Walling, Berg & Debele, P.A., 121 South Eighth St., Suite 1100, Minneapolis, MN 55402 (for respondent)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

WORKE, Judge

In this parenting-time dispute, appellant challenges several aspects of the district court's appointment and grant of authority to a parenting consultant. Because we conclude that the appointment of the parenting consultant and the authority granted to the consultant are consistent with the stipulated parenting-consultant provisions of the parties' dissolution judgment and lawful, we affirm.

FACTS

The stipulated portion of the judgment dissolving the marriage of appellant Susan Yager and respondent John Patrick Fox includes a parenting plan under Minn. Stat. § 518.1705 (2006). That parenting plan includes provisions appointing a parenting consultant to address, in the first instance, parenting-time disputes. The consultant made decisions disfavored by appellant, and appellant moved to reopen the judgment. Appellant sought to remove the provision appointing the consultant, and demanded a hearing on questions of custody and parenting time, asserting that the parenting plan and the parenting-consultant provisions were unsupported by sufficient best-interests findings and that the consultant had been given powers exceeding those of a district court. The district court denied the motion, and this appeal follows.

D E C I S I O N

Appellant argues that the parenting-plan provision appointing the parenting consultant is void as contrary to statute and public policy because it gives the consultant unregulated authority exceeding that of a district court. "Parenting consultants" are not

mentioned in the Minnesota Statutes and are distinct from the "parenting-time expeditors" discussed in Minn. Stat. § 518.1751 (2006). *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007). The parenting-time-expeditor statute, however, states that it "does not preclude the parties from voluntarily agreeing to submit their parenting time dispute to a neutral third party or from otherwise resolving parenting time disputes on a voluntary basis." Minn. Stat. § 518.1751, subd. 4. Thus, extra-judicial, non-parenting-time-expeditor mechanisms for resolving parenting-time disputes as contemplated by statute are valid.

Appellant also alleges that the parenting consultant has excessive and unregulated authority. We note that parties may stipulate to something that a district court cannot otherwise order. *LaBelle v. LaBelle*, 302 Minn. 98, 116, 223 N.W.2d 400, 410 (1974); *see also Gatfield v. Gatfield*, 682 N.W.2d 632, 637 (Minn. App. 2004) ("[I]t is well settled that in a stipulation, parties are free to bind themselves to obligations that a court could not impose.") *review denied* (Minn. Sept. 29, 2004); *Plath v. Plath*, 393 N.W.2d 401, 403 (Minn. App. 1986) ("[U]nquestionably, parties to a marriage dissolution may bind themselves to a level of performance higher than that which the courts could require of them."). Also, caselaw addressing other types of stipulated family-court orders allows the use of existing law to address questions that a stipulated order does not address. *See, e.g., Bender v. Bender*, 671 N.W.2d 602, 607-08 (Minn. App. 2003) (applying existing law to identify the custody arrangement for child-support purposes when the parties' parenting plan did not identify the custody arrangement). This use of existing law to address gaps in stipulated orders has been applied to stipulated parenting-consultant

orders. *Szarzynski*, 732 N.W.2d at 293-94 (applying general contract law in addressing the ability to remove a parenting consultant for a legitimate reason not contemplated by a stipulated parenting-consultant provision). Thus, not only are extra-judicial, non-parenting-time-expeditor mechanisms for resolving parenting-time disputes explicitly contemplated by Minn. Stat. § 518.1751, subd. 4, but caselaw provides that matters not adequately addressed by the relevant portion of a judgment or order can be addressed by existing law.[1] Because the parenting consultant's abilities to address disputes are either something to which the parties stipulated or something governed by existing law, we reject appellant's argument that the consultant has excessive and unregulated powers.

Appellant also argues that the parenting-consultant provision is defective because it makes the parenting consultant a "de facto judicial officer" which absolves the district court of its function of addressing the parties' disputes. But the parenting-consultant provision states that "[t]he party in disagreement with a Parenting Consultant decision shall abide by that decision until securing a court order affecting that decision." Because a party disagreeing with the parenting consultant's decision may seek district court review of that decision, the district court is not absolved of its judicial responsibility to decide questions properly presented to it for a decision.

[1] The only requirement under Minn. Stat. § 518.1751, subd. 4 for resolving parenting-time disputes is that the decision maker be "a neutral third party." This fact disposes of appellant's argument that a non-court decision maker must have "express powers, limits and/or training, rather than free reign to do what the appointed parenting consultant, whatever their training may be, is free to do under this Judgment and Decree or others like it."

In a parenting-time dispute presented to a district court, if the court "finds, after a hearing," that parenting time is likely to endanger the child, the district court "shall" restrict parenting time. Minn. Stat. § 518.175, subd. 1(a) (2006). Similarly, "[i]f modification [of parenting time] would serve the best interests of the child, the district court shall modify" parenting time, but it "may not restrict parenting time unless it finds" that parenting time is likely to endanger the child or the parent has chronically and unreasonably failed to comply with court-ordered parenting time. *Id.*, subd. 5 (2006). Appellant argues that the parenting-consultant provision improperly gives the parenting consultant powers exceeding those of a district court because the consultant can address parenting-time issues without holding hearings or making findings of fact. We reject this argument.

As noted above, Minn. Stat. § 518.1751, subd. 4 contemplates extra-judicial mechanisms for resolving parenting-time disputes, and parties can stipulate to things that a district court cannot require. Here, while the parenting-consultant provision requires a written decision and allows the consultant, "if she feels [it] appropriate, [to] engage in a mediative process with the parties[,]" but it does not require findings of fact to support the consultant's decision, nor does it require a hearing. Thus, the parties stipulated to a process that lacks what appellant asserts is missing. If appellant had wanted requirements for a hearing or findings of fact, she need not have stipulated to a parenting-consultant provision without them.[2]

[2] We note that appellant's argument also apparently misunderstands "restrictions" of parenting time to refer to any reduction of parenting time. A reduction of parenting time

Noting that the burden of proof is generally on the party seeking relief from the court, appellant argues that if respondent convinces the parenting consultant to reduce her parenting time and she moves the district court for relief, the burden of proof is improperly on her, despite the fact that it was respondent who sought relief from the consultant. But the parties stipulated to referring their parenting-time disputes to the consultant, and to resulting rulings being effective until altered by the district court.

Appellant also argues that the district court's "review" of the parenting consultant's decision is "[f]urther complicat[ed]" by the fact that the parenting consultant is not required to make findings of fact and that the absence of findings may put appellant at a disadvantage in understanding the rationale for the decision, thereby making it unnecessarily difficult for her to obtain relief from that decision. While the requirement of written findings of fact to support a parenting-time decision is self-evident and beyond question, the parties' stipulated parenting-consultant provision does not require them. Further, the parenting-consultant provision does not address or require that the district

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is not necessarily a restriction. *Compare Danielson v. Danielson*, 393 N.W.2d 405, 407 (Minn. App. 1986) (holding that a reduction in parenting time following a child's removal to another state was not a restriction) *with Clark v. Clark*, 346 N.W.2d 383, 385-86 (Minn. App. 1984) (holding that a reduction of parenting time during the summer months was a "restriction"), *review denied* (Minn. June 12, 1984). Whether a restriction occurs requires consideration of the reasons for the change and the amount of the reduction of parenting time. *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993). A restriction occurs if there is "[a] substantial [reduction] of visitation rights" or, regardless of the extent of a reduction of parenting time, if the reduction is imposed because parenting time endangers the child. *Id.*; *see* Minn. Stat. § 518.175, subd. 5(1) (prohibiting restriction of parenting time unless the court finds that parenting time "is likely to endanger" or "impair" the child's health or development). Here, the extent of a reduction is not disputed and there is no allegation that appellant's parenting time endangers the child.

court give any particular degree of deference to the parenting consultant's decision. And it is undisputed that the standard for addressing the modification of parenting time is the best interests of the children, and that those best interests are viewed through the prism of the facts of any given case. *E.g.*, *Gibson v. Gibson*, 471 N.W.2d 384, 386 (Minn. App. 1991) (stating "[i]n determining the child's best interests, the [district] court weighs statutory criteria in light of findings on underlying facts, and the court's conclusions will reflect decisions on mixed questions of law and fact, 'ultimate' facts, and matters of law") (citing *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990)). Thus, the existence and extent of any disadvantage to appellant arising from the stipulated procedure is unclear.

Noting that the parenting-consultant provision is part of the parties' parenting plan and that parenting plans must be based on the best-interests factors, appellant asserts that the judgment's cursory attention to the children's best interests voids the court's adoption of the parenting plan. "A void judgment is one rendered in the absence of jurisdiction over the subject matter or the parties." *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981). Here, appellant petitioned the district court to dissolve the parties' marriage. The district court judgment is not void.

To the extent that appellant is arguing that the district court made inadequate best-interests findings to support its adoption of the parties' parenting plan, we reject that argument because it is not clear that full best-interests findings are required—Minn. Stat. § 518.1705, subd. 5 (2006) does not state that the district court must make best-interests findings, it only states that any parenting plan be "based on the [children's] best

interests." Generally, detailed findings on undisputed matters are not required. *See, e.g.*, *Marden v. Marden*, 546 N.W.2d 25, 27, 29 (Minn. App. 1996) (stating, in the context of modifying child support to account for a support obligor's discharge of debt in bankruptcy which made the support recipient liable for the debt, that "[u]nder these circumstances, substantially undisputed by [the obligor], separate findings of the children's needs appear to be unnecessary" to support the support modification); *Abbott v. Abbott*, 481 N.W.2d 864, 867-68 (Minn. App. 1992) (stating, in the context of reversing the denial, without an evidentiary hearing, of a motion to modify custody, that "[t]he appellate court does not need findings on undisputed facts"). Here, the parties stipulated that the parenting plan was in the children's best interests and the district court agreed without making detailed findings. Moreover, because multiple statements from the bench by the district court show that a remand would not produce a different result, caselaw does not require a remand. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand when review of the file showed that "on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); *Tarlan v. Sorensen*, 702 N.W.2d 915, 920 n.1 (Minn. App. 2005) (applying *Grein*); *cf.* Minn. R. Civ. P. 61 (stating harmless error is to be ignored). For these reasons, we decline to invalidate the parenting-consultant provision of the parenting plan. We also decline to require the district court to make additional findings.

Affirmed.