STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1908

Linda Corrine Hedberg Dallaire, petitioner,
Respondent,

vs.

Curtis Allen Dallaire,
Appellant.

Filed June 10, 2008
Affirmed
Shumaker, Judge

Anoka County District Court
File No. 02-F4-05-005589

Jeffrey A. Berg, Henningson & Snoxell, Ltd., 6900 Wedgewood Road, Suite 200, Maple Grove, MN 55311 (for respondent)

Ronald Resnik, 6300 Shingle Creek Parkway, Suite 165, Brooklyn Center, MN 55430 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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

SHUMAKER, Judge

Appellant challenges the district court's judgment in this marital-dissolution proceeding, arguing that the district court (1) abused its discretion in denying his request for a trial continuance; (2) abused its discretion by awarding respondent sole legal

custody; (3) abused its discretion by ordering appellant to pay spousal maintenance; and (4) erred when it adopted portions of respondent's proposed findings of facts, conclusions of law, order for judgment, and judgment and decree. Because the district court did not abuse its discretion, we affirm.

FACTS

Appellant Curtis Allen Dallaire and respondent Linda Corrine Hedberg Dallaire commenced marital-dissolution proceedings in February 2005. The parties have one minor child, N.J.D. After a hearing, the district court issued a temporary order on November 16, 2005, awarding respondent temporary sole physical custody with appellant retaining parenting time, and the parties sharing joint legal custody.

Appellant's attorney withdrew before trial, and appellant requested a continuance of the pretrial conference, which the district court granted, to find new counsel. The court reset the pretrial conference to July 17, 2006, and ordered the parties to participate in a custody and parenting-time evaluation. The July pretrial was continued until August 28, 2006, which was in turn continued until October 23 so that the custody and parenting-time evaluation could be completed. The October date was rescheduled to December. In early December, appellant hired his second attorney, and on December 12, appellant's counsel brought a motion to extend pretrial discovery so he could prepare. The district court granted this request, scheduled a pretrial conference on January 18, 2007, and extended discovery until February 22.

At the January pretrial, appellant requested that he be allowed to conduct an independent custody evaluation; the district court agreed. Appellant's second attorney,

however, withdrew on February 12. Appellant moved on March 2 to continue the trial. The district court denied this request, stating on the record that "the fact of the matter is we need to put an end to this matter. I can't continue this again."

At trial, appellant appeared pro se. The main issue was custody of N.J.D.; the parties stipulated to most of the property division and to the admission of the custody evaluations prepared by Anoka County's family court evaluator, Susan St. Clair, and the appellant's independent examiner, James Gilbertson. The district court issued detailed findings of fact, conclusions of law, order for judgment, and judgment and decree, which adopted the recommendations of St. Clair, and awarded respondent sole legal and physical custody of N.J.D., with appellant receiving specified parenting time. The district court also ordered appellant to pay child support of $688.47 each month, ordered him to pay respondent's health-insurance premium of $352.19 each month as spousal maintenance, and reserved appellant's spousal-maintenance obligation. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion when it denied his request for a trial continuance on March 2, 2007, which was to begin on March 21, because his counsel had withdrawn on February 12. District court judges have the authority to schedule proceedings and grant continuances. Minn. R. Civ. P. 40. "The granting of a continuance is a matter within the discretion of the trial court and its ruling will not be reversed absent a showing of clear abuse of discretion." *Dunshee v. Douglas*,

255 N.W.2d 42, 45 (Minn. 1977). "The test is whether a denial prejudices the outcome of the trial." *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), *review denied* (Minn. Jan. 20, 1994). The rules of family court procedure state that the court shall not grant a continuance "unless good cause is shown." Minn. R. Gen. Pract. 302.02. "Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing." Minn. R. Gen. Pract. 105.

Appellant argues that because he had to proceed to trial without the assistance of independent counsel, the court abused its discretion and thus denied him his right to due process. But Minnesota courts have never recognized a constitutional or statutory right to counsel in a marital-dissolution action. *Reed v. Albaaj*, 723 N.W.2d 50, 56 (Minn. App. 2006). Further, the district court's actions did not deny him representation by counsel. The record conclusively shows the district court granted appellant's requests for continuances twice for reasons having to do with retention of counsel, which were in addition to numerous continuances because of various scheduling and discovery issues. Appellant's second attorney withdrew on February 12, approximately six weeks prior to trial. Simply because appellant did not retain new counsel in that time period does not support the conclusion that the court, as he suggests, "forced [him] to proceed without independent counsel." There was no violation of his rights, constitutional or otherwise.

Furthermore, in order to prevail on this claim, appellant must show that the district court's denial of a continuance was an abuse of discretion which prejudiced his case. *Chahla*, 507 N.W.2d at 31-32. His sole allegation of prejudice is that numerous objections by respondent's attorney were sustained during the trial. He fails to show how

the court's rulings on objections prejudiced him or that any particular prejudice resulted because he did not have counsel. In light of appellant's failure to show actual prejudice, the length of the pendency of this case, and the numerous prior continuances, the district court did not abuse its discretion in denying appellant's motion for a continuance after his second attorney withdrew. *See* Minn. R. Gen. Pract. 105 (stating that withdrawal of counsel does not create right to continuance).

II.

Appellant next contends the district court abused its discretion in its disposition of child custody when it ordered that sole legal custody remain with respondent, with appellant retaining parenting time. A district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "'[A]ppellate review of custody determinations is limited to whether the trial court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.'" *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996) (quoting *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985)). A district court's findings will not be set aside unless clearly erroneous, and "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01.

Appellant contends first that the court abused its discretion when it adopted the recommendation of St. Clair and did not adopt the report of Gilbertson, his expert. A district court is not bound by an independent evaluation's custody recommendations. *Pikula*, 374 N.W.2d at 710, 712. And it is not error for the district court to discredit

significant portions of an expert's testimony after making credibility determinations. *See Engebretson v. Comm'r of Pub. Safety*, 395 N.W.2d 98, 100 (Minn. App. 1986) (refusing to reject trial court's findings, even though findings disregarded testimony of three witnesses). Appellant suggests that the district court unfairly discredited the report of his retained expert. He also seems to suggest that the court did not take Gilbertson's report into consideration; however, appellant does not point to any evidence showing that the district court ignored his report. And in its order, the court noted that it had received both reports into evidence. The district court did not ignore appellant's expert. Rather, the court's adoption of St. Clair's recommendations was a credibility determination well within the court's discretion.

Appellant also argues that the district court did not act in the best interests of N.J.D. when it awarded sole legal custody to respondent. District courts make custody determinations based on the best interests of the child, and the child's best interests are determined by balancing the relevant factors, which can include 13 factors enumerated by statute. Minn. Stat. § 518.17, subd. 1 (2006). The court must make detailed findings regarding its consideration of the best-interests factors. *Id.* The "law leaves scant if any room for an appellate court to question the trial court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

In addition to the 13 best-interests factors, courts consider four other relevant factors when contemplating whether to award joint legal or joint physical custody: the parents' ability to cooperate in rearing the child, the available methods for resolving disputes over any major decision concerning the life of the child and the parents'

willingness to use such methods, whether it would be detrimental to the child if one parent had sole authority over the child's upbringing, and whether domestic abuse occurred between the parents. Minn. Stat. § 518.17, subd. 2 (2006). If, despite a party's objection, the court awards joint legal or physical custody, the court must then make detailed findings on each of these factors and explain how they led to its determination that joint custody was in the child's best interest. *Id.*

Appellant claims that the district court did not act in the best interests of N.J.D., which is the overarching consideration in weighing the 13 enumerated factors, but he does not point to any specific factor that the district court erred in analyzing. Appellant asserts that there is no compelling evidence that the parties could not communicate and thus the district court abused its discretion in awarding sole legal custody to respondent. We surmise that he is taking issue with the first of the additional four factors a court considers if joint custody is sought, which is whether the parties can cooperate. *See* Minn. Stat. § 518.17, subd. 2(a) (listing parents' ability to cooperate). The district court made substantial, in-depth findings on that factor, as well as on the additional factors to weigh when considering joint custody under Minn. Stat. § 518.17, subd. 2.

Specifically, the court noted that it was disturbed by appellant's inability to cooperate in making important decisions regarding N.J.D.'s well-being, his refusal to agree to let N.J.D. see a therapist even though the child was in need of professional psychological help, and his constant need to engage in power struggles with respondent. Appellant relies on *Wolter v. Wolter*, where we concluded there was not enough evidence of the parents' inability to cooperate presented at trial to conclude the district court

abused its discretion. 367 N.W.2d 96, 99 (Minn. App. 1985). But appellant's reliance on *Wolter* is misplaced; the record shows there was ample evidence presented at trial regarding the inability of the parties to cooperate. The district court's findings reflect the evidence and are not clearly erroneous. Therefore, its refusal to award the parties joint legal custody is not an abuse of its discretion.

III.

Appellant contends that the district court also abused its discretion when it ordered him to pay respondent's monthly COBRA insurance premium of $352.19. Appellate courts review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). To determine the amount of such an award, the district court must consider certain statutory factors, which contemplate the financial resources and needs of both parties. Minn. Stat. § 518.552, subd. 2 (2006). Although the statute lists eight factors, the crucial consideration in determining a maintenance award "is the financial need of the spouse receiving maintenance, and the ability to meet that need, balanced against the financial condition of the spouse providing the maintenance." *Novick v. Novick*, 366 N.W.2d 330, 334 (Minn. App. 1985). To be sufficient, the district court's findings must reflect that the district court adequately considered all the relevant factors. *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

Appellant contends that the district court abused its discretion in awarding maintenance because he did not submit financial documents to the court. The district court found that appellant was only responsible for paying respondent's monthly COBRA insurance premium, but reserved the issue of spousal maintenance. The court stated, "as spousal maintenance [appellant] shall maintain COBRA health insurance coverage through his employer for the benefit of [respondent] and he is ordered to pay [respondent] the amount of the COBRA insurance premium in the anticipated monthly amount of $352.19."

The district court appropriately made findings regarding the parties' monthly income level, and found appellant's sudden decrease in income to be very suspicious, stating, "Through the date of the parties' separation [appellant's] five year income average was $108,683.00, thereafter it dropped significantly. The sudden reduction . . . is suspect." Further, it found that respondent worked part time and suffered from lupus, a long-term illness which, her physician testified, limited her work hours per week. She had been either a stay-at-home mother or employed part time throughout most of the marriage. The court analyzed the parties' standard of living during the marriage, and found it was comfortable.

However, it found that "[s]ince the separation, [respondent] has funded her frugal life style with minimal income from her new business, loans and gifts from friends, draws on her inheritance, credit cards, limited child support and by simply doing without." Despite her shifts in lifestyle, the court found that she could not meet her monthly living expenses and that appellant's income was much higher than respondent's.

The court noted appellant's failure to offer detailed financial information and found that he "failed to offer any indication of his necessary monthly living expenses although he should have been aware that [respondent] requests spousal maintenance in the petition for dissolution." It continued by finding appellant "responsible for providing this information to the Court, but [having] failed to do so, he cannot complain that the Court is left with no other option than to conclude that considering his net income he has the ability to assist" respondent with her COBRA insurance.

Appellant cannot complain about a lack of findings when he failed to provide the evidence necessary to make those findings. *See Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (applying this rule in a maintenance context); *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that "[o]n appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with" necessary evidence), *review denied* (Minn. Nov. 25, 2003). Thus, the evidence supports the district court's spousal-maintenance award.

IV.

Appellant suggests that the district court erred when it adopted, for the most part, respondent's proposed findings of fact, conclusions of law, order for judgment and judgment and decree. "[V]erbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). Nevertheless, even though this is an acceptable practice, it "raises the question of whether the trial court independently

evaluated each party's testimony and evidence." *Id.* Thus, it is imperative that the trial court "scrupulously assure that [its] findings and conclusions—whether they be the court's alone, one or the other party's, or a combination—are always detailed, specific and sufficient enough to enable meaningful review by this court." *Id.*

Here, the district court did not adopt the respondent's proposed findings verbatim. For example, respondent proposed findings regarding the 13 statutorily prescribed best-interests factors, and the district court did not exactly accept those proposals, but made its own findings. The extensive findings by the district court show careful review and analysis, done independently of either party's recommendations. Respondent also proposed specific findings under Minn. Stat. § 518.17, subd. 2, to support her argument for sole custody, including instances of appellant's refusal to cooperate during N.J.D.'s spring breaks; but the district court did not include any of those findings in its final order. Further, the court included more detailed findings of domestic abuse than respondent suggested, which shows independent evaluation by the district court. As to parenting time, the district court made its own determination that if appellant dropped off N.J.D. to school late on a Monday more than three times, his parenting time on Sunday night would be cancelled. As to monthly expenses, the district court made independent numerical findings that differed from respondent's proposed figures, and the district court excluded the extensive proposed findings regarding the property settlement. We do note, however, a slight inconsistency in the district court's findings regarding respondent's work history outside the house, as to whether she worked part time or was always

unemployed, but the inconsistency was not material and does not bear on our disposition of this case. *Cf.* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

Affirmed.