STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1830

In re the Marriage of:
Jon D. Gottesleben, petitioner,
Appellant,

vs.

Kimberly A. Edwards Gottesleben,
Respondent.

Filed August 25, 2009
Affirmed
Peterson, Judge

Dakota County District Court
File No. 19-F1-03-015246

Maury D. Beaulier, Attorney at Law, 5775 Wayzata Boulevard, Suite 700, St. Louis Park, MN 55416 (for appellant)

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Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Johnson, Judge.

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

PETERSON, Judge

In this child-custody and parenting-time dispute, appellant father argues that the district court should have reversed the decision of the parenting coach because the

parenting coach's decision improperly modified the custody awarded in the dissolution judgment. We affirm.

FACTS

The parties' marriage was dissolved in January 2004. The judgment and decree, which was based on the parties' marital-termination agreement, granted the parties joint legal custody of their two children and granted respondent-mother Kimberly A. Edwards Gottesleben sole physical custody of both children, subject to the reasonable and liberal parenting time of appellant-father Jon D. Gottesleben. The judgment also includes a parenting-time provision that states, in part, "[t]he parties shall discuss and agree upon all religious and extracurricular activities for the children. Both parties shall have the right to be present at all such activities of the children."

After experiencing significant controversies regarding custody and parenting-time issues, the parties agreed to appoint a parenting coach (PC) to assist them in dispute resolution, and their agreement was articulated in a district court order appointing a PC.[1] The relevant provisions of that order state:

> 1. . . . The PC shall have the authority to issue binding decisions on any matters relating to legal custody issues or the parenting time schedule of the minor children. . . .
> 2. The PC shall not be allowed to modify legal or physical custody or consider any financial disputes between the parties. . . .
> 3. The PC shall first attempt to mediate the dispute in question with the parties before issuing a binding decision. . . . In the event mediation is not successful, the PC shall then issue a binding decision on the issue in dispute.

[1] The order was filed on November 29, 2007.

> This decision shall be issued to each party and his or her attorney in writing.
> . . . .
> 5. In the event a party disagrees with the PC's decision, he or she may challenge the decision by requesting a hearing before [the district court] and informing opposing party of that hearing. . . . The PC's decision is binding unless and until it is overturned by the District Court.

The PC began working with the parties, and in a February 19, 2008, letter to the parties, the PC explained her decision regarding two issues that were presented to her. The relevant portion of the letter states:

> Since you have substantial difficulty implementing agreements, I am deciding that a different way of making decisions is necessary. It is my hope that this will lead to more expeditious resolution of legal custody issues.
>
> In regards to the issue of therapy for both [children], [mother] should inform [father] of her choice of therapists by way of Family Wizard. Included in this transmittal should be who the therapists are, where they are located, and when the appointments are scheduled. If [father] opposes [mother]'s choices, he may call me with his concerns and I will decide if the children should continue with [mother]'s choice or if a different therapist should be seen. I expect that [father] will provide me with the name of an alternative therapist if he opposes [mother]'s choice.
>
> . . . .
>
> As far as activities go, including religious education, you can each sign up for activities during your own parenting time, providing that you inform the other party about the details, including what the activity is, and where and when it will be held. Contact information is also helpful if available. If the other parent objects, he/she can contact me and I will decide if the activity is appropriate for the child involved.

In an April 14, 2008, letter to the parties, the PC addressed additional issues. The relevant portion of the letter states:

> In regards to notice about [son], I have already decided that each of you can sign [him] up for activities during your own parenting time. Notice should be given at the same time as he is signed up. [Son]'s activities are not his parent's activities and therefore the other parent does not have the right to be there. However, if he has an event that includes parent attendance (e.g. soccer game, band concert), I would expect each of you to notify the other parent via Family Wizard as soon as you are aware of the details and both of you should be able to attend.
>
> . . . .
>
> As far as appointments, etc., [mother] should notify [father] of appointments she has made as soon as she has done so. If [father] would like to take [son], he should notify [mother] within 10 days of receiving notice of the appointment, and he will be able to take [son] to *every other* regularly scheduled appointment.

In August 2008, father filed a motion in district court challenging the PC's April 14, 2008, decision. The district court denied the motion in its entirety, and in a memorandum that accompanied its order, the court stated that the PC was "acting within the authority this Court granted her in its November 29, 2007 Order." This appeal followed.

D E C I S I O N

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) (quotation omitted) (alteration in original). 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. But an appellate court reviews de novo the district court's construction and application of a statute. *Braend v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006).

Father argues that because the PC's decisions are outside the PC's authority, the district court abused its discretion by upholding the decisions. Father contends that the PC's decisions are outside the PC's authority because the decisions (1) are inconsistent with the dissolution judgment and (2) in effect, modified the joint legal custody granted to the parties. We disagree.

Inconsistent with dissolution judgment

The dissolution judgment required the parties to "discuss and agree upon all religious and extracurricular activities for the children" and gave both parties "the right to be present at all such activities of the children." Father contends that the PC's decision is inconsistent with these provisions in the judgment because, instead of requiring the parties to agree upon all religious and extracurricular activities, the PC's decision gives the PC authority to make decisions about these activities. But in making this argument, father fails to recognize that requiring the parties to discuss and agree does not mean that a discussion will inevitably lead to an agreement. The parties experienced significant controversies regarding custody and parenting-time and agreed to appoint the PC to assist them in dispute resolution. Although the PC's February 19 letter states that if the parties

disagree about an activity for a child, the PC "will decide if the activity is appropriate for the child involved," the PC's decision does not give the PC authority to make a final decision about a child's activity because the order that appointed the PC provides:

> In the event a party disagrees with the PC's decision, he or she may challenge the decision by requesting a hearing before [the district court] and informing opposing party of that hearing. . . . The PC's decision is binding unless and until it is overturned by the District Court.

The PC's decision does no more than create a dispute-resolution mechanism that requires the parties to either reach an agreement about an issue or run the risk that the other party will present the issue to the PC, who will then make a decision that the parties will either need to accept or challenge in the district court. This mechanism is not inconsistent with the judgment and simply recognizes that, when the parties do not agree about an activity, the party that objects to the activity cannot end the dispute by just refusing to agree.

PC's decision modified joint legal custody

Under the dissolution statute, "'[j]oint legal custody' means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training." Minn. Stat. § 518.003, subd. 3(b) (2008). Permitting either party to end a dispute about a child's participation in an activity by just refusing to agree to the activity would deprive the other party of the right to participate in the decision about the activity. Contrary to father's contention that the PC's decision strikes "at the very heart of joint

legal custody," the PC's decision preserves the right of each party to participate in decisions about the children's activities.[2]

Father also argues that the PC, in effect, modified the parties' joint legal custody by allowing neither party to attend or participate in the children's activities and by allowing only one parent to attend the children's medical and dental appointments and requiring the parties to alternate taking their son to regularly scheduled appointments. This argument fails to recognize the difference between legal custody and physical custody.

"'Legal custody' means the right to determine the child's upbringing, including education, health care, and religious training." *Id.*, subd. 3(a) (2008). "'Physical custody and residence' means the routine daily care and control and the residence of the child." *Id.*, subd. 3(c) (2008). Determining what activities a child will participate in and what medical care a child will receive are legal-custody rights, but taking a child to a medical appointment or participating in an activity are routine daily matters within the meaning of physical custody. Furthermore, the PC did not decide that neither party could attend or participate in the children's activities. The PC drew a distinction between routine activities, such as soccer practice or band practice, which the party who does not bring

[2] This case illustrates why the dissolution statute requires that, when contemplating an award of joint legal custody, the district court shall consider "the ability of parents to cooperate in the rearing of their children" and "methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods." Minn. Stat. § 518.17, subd. 2(a)-(b) (2008). Because parents with joint legal custody have equal rights to participate in major decisions concerning their child, joint legal custody is not practical for parents who cannot find methods for resolving disputes regarding major decisions.

the child to the activity may not attend, and special activities, such as a soccer game or a band concert, which both parties may attend. The PC's decision did not modify the parties' joint legal custody.

Affirmed.