STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0175

Jessica Marie Williams, petitioner,
Respondent,
County of Benton, petitioner,
Respondent,

vs.

Orry A. Wiechman,
Appellant.

Filed August 18, 2009
Reversed and remanded
Stoneburner, Judge

Benton County District Court
File No. 05FA08582

Robert J. Raupp, Benton County Attorney, Robert B. Anderson, Assistant County Attorney, Box 189, Foley, MN 56329 (for respondent Benton County)

John E. Mack, 26 Main Street, New London, MN 56273 (for appellant)

Considered and decided by Minge, Presiding Judge; Stoneburner, Judge; and

Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

STONEBURNER, Judge

Appellant father challenges the award of sole physical custody of the parties' child to respondent mother, arguing that the district court failed to appropriately consider the statutory best-interest factors. Appellant also challenges the determination of child support as based on an inappropriate custody determination. Because the district court failed to make adequate findings regarding custody, we reverse and remand the custody and child-support determinations with instructions to adequately address the statutory factors regarding custody and to determine child support consistent with any changes in custody that affect the child-support calculation.

FACTS

Respondent Benton County (county) initiated a paternity action in which appellant Orry Weichman (father) was adjudicated the father of C.W., born August 23, 2007, to respondent Jessica Williams (mother). Father and mother agreed on a number of issues concerning the parenting of C.W., including joint legal custody, parenting time, and splitting costs associated with C.W.'s birth, but submitted to the district court the issues of physical custody, child support, and additional issues not relevant to this appeal. Father sought joint physical custody with mother providing C.W.'s primary residence. Mother sought sole physical custody.[1]

[1] Father also sought a downward departure from the presumptively appropriate child-support amount suggested by the income-shares child-support calculation. The basis for father's requested departure was the expense associated with his employment and student loans. Father does not challenge denial of the downward departure on appeal.

The district court found that "[b]ecause [mother] has been the primary caretaker of the minor child, has a regular schedule for the child, and will exercise majority parenting time throughout the year [pursuant to the parties' agreement], it is in the best interest of the minor child that [mother] be awarded sole physical custody subject to [father's] reasonable parenting time with the minor child." The district court denied father's request for a downward departure from the presumptively appropriate child-support amount. This appeal followed.[2]

D E C I S I O N

I. Custody

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). Our review of custody decisions is limited to determining "whether the [district court] abused its discretion by making findings unsupported by the evidence or improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). "Even though the trial court is given broad discretion in determining custody matters, it is important that the basis for the court's decision be set forth with a high degree of particularity." *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989) (quotation omitted).

Father argues that the district court's findings are insufficient to support an award of sole physical custody to mother. Specifically, father challenges the district court's reliance on the primary-caretaker factor as a presumption in determining C.W.'s best

[2] Only county has responded to father's appeal. County takes no position on father's custody arguments and argues only that if the custody issue is not remanded, the child-support order should be affirmed.

interests and failure to make detailed findings on additional statutorily mandated best-interest factors contained in Minn. Stat. § 518.17, subd. 1 (2008). Father also argues that when one party seeks joint custody, the court is required to make detailed findings on the joint-custody factors enumerated in Minn. Stat. § 518.17, subd. 2.[3]

If, as here, a custody proceeding is consolidated with a paternity action and it is the original determination of custody, the district court must apply the standards set out in Minn. Stat. § 518.17 (2008). *Psyck v. Wojtysiak*, 400 N.W.2d 409, 411 (Minn. App. 1987) (citing *Morey v. Peppin*, 375 N.W.2d 19, 23 (Minn. 1985)), *review denied* (Minn. Apr. 17, 1987). Section 518.17 contains thirteen factors that a court is to consider in evaluating the best interests of the child and making its custody determination. Minn. Stat. § 518.17, subd. 1. "When considering the best interests of the child, the district court must make detailed written findings that reflect the court[']s consideration of the factors defined by statute." *Custody of Child of Williams v. Carlson*, 701 N.W.2d 274, 278 (Minn. App. 2005).

Here, the district court made only the findings cited above, all related to mother's status as primary caretaker, to support its conclusion that awarding sole custody to mother is in the child's best interests. The legislature has forbidden the elevation of one best-interests factor to the exclusion of others, *Vangsness v. Vangsness*, 607 N.W.2d 468,

[3] Father erroneously argues that the district court erred by failing to apply a presumption in favor of joint physical custody. There is no merit in this argument: there is a presumption in favor of joint *legal* but not joint *physical* custody. *See* Minn. Stat. § 518.17, subd. 2 (2008) (requiring a rebuttable presumption in favor of joint legal custody); *In re Custody of J.J.S.*, 707 N.W.2d 706, 711 (Minn. App. 2006) (declining to create a presumption in favor of joint physical custody).

476 (Minn. App. 2000), and has declared that "[t]he primary caretaker factor may not be used as a presumption in determining the best interests of the child." Minn. Stat. § 518.17, subd. 1; *Vangsness*, 607 N.W.2d at 476. Because the court improperly relied on the primary-caretaker factor and failed to adequately address the remaining best-interests factors, we are compelled to remand for an adequate consideration of and findings on all of the best-interests factors. In its discretion, the district court may require further testimony from the parties so that it has sufficient evidence to make proper findings. *Smith v. Smith*, 425 N.W.2d 854, 857 (Minn. App. 1988).

Additionally, when one party seeks joint custody, the statute contains four additional factors that "the court *shall* consider": the parties' ability to cooperate, their methods of resolving disputes, whether it would be detrimental to the child for one parent to have sole authority over the child's upbringing, and whether domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 2 (emphasis added); *Zander v. Zander*, 720 N.W.2d 360, 366 (Minn. App. 2006) (stating that when a party seeks joint physical custody, the district court is required to consider the four additional factors set out in section 518.17, subd. 2), *review denied* (Minn. Nov. 14, 2006). Because father sought joint physical custody, the district court erred by failing to make the required findings, requiring reversal and remand. *See Weatherly v. Weatherly*, 330 N.W.2d 890, 892–93 (Minn. 1983) (stating that the district court's failure to apply relevant statutory criteria is grounds for reversal).

II. Child support

Father argues, and county concedes, that the child-support determination should be revisited in the event that reexamination of custody affects the child-support calculation. Therefore, we also reverse and remand the child-support determination.

Reversed and remanded.