STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1292

In re Rachel Colleen Andersen-Emeziem,
Respondent,

Hennepin County,
Respondent,

vs.

Brandford Earl Wilberforce Giddings,
Appellant.

Filed February 9, 2010
Affirmed
Lansing, Judge

Hennepin County District Court
File No. PA-FA-08-120

Michael L. Perlman, Perlman Law Office, Minnetonka, Minnesota (for respondent Rachel Colleen Andersen-Emeziem)

Michael O. Freeman, Hennepin County Attorney, Theresa Farrell-Strauss, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Brandford E. W. Giddings, North Las Vegas, Nevada (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

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

LANSING, Judge

In a proceeding to establish parentage of eleven-year-old NRA, the district court issued an order incorporating Brandford Giddings's acknowledgment of paternity and his mediated agreement with NRA's mother, Rachel Andersen-Emeziem, on child support and physical custody. On joint motions addressing reserved and disputed issues, the district court denied Giddings's motion for joint legal custody, partially rejected his parenting-time proposals, and denied his request for the dependent tax exemption and attorneys' fees. Giddings appeals each of these rulings. Because the district court addressed the relevant factors in its denial of joint legal custody and did not abuse its discretion in the challenged rulings, we affirm.

F A C T S

Brandford Giddings and Rachel Andersen-Emeziem are the parents of NRA, who was born in December 1997. Giddings and Andersen-Emeziem lived in the Twin Cities at the time NRA was conceived, but Andersen-Emeziem relocated to San Francisco in the fall of 1997, before NRA was born. The parents' romantic relationship had ended, and Andersen-Emeziem, against Giddings's wishes, went to San Francisco to stay with friends for NRA's birth.

Following NRA's birth Andersen-Emeziem returned to the Twin Cities, but the parents had no contact with each other for about three years. In 2001 Giddings began spending time with NRA on a regular basis, and NRA traveled to Ohio with Giddings for the Easter holiday in 2002. In August 2002 Andersen-Emeziem and NRA relocated to

Spain where Andersen-Emeziem attended school. During that time Giddings lived in Andersen-Emeziem's Minneapolis co-op and visited Andersen-Emeziem and NRA in Spain in December 2002.

In the fall of 2003, after Andersen-Emeziem and NRA returned from Spain, problems developed in the parents' relationship. Another three years passed in which Giddings did not have contact with NRA and did not provide any material support. He moved to Las Vegas in 2005. NRA expressed interest in contacting Giddings in late 2006, and a meeting was arranged in the spring of 2007. Later that year he provided Andersen-Emeziem with money for Internet service to facilitate regular contact with NRA. The extent to which they used this medium or other methods of communication is unclear.

In January 2008 Andersen-Emeziem and Hennepin County initiated a parentage action. Giddings did not contest paternity and entered into discussions on child support and parenting time. Through the Early Neutral Evaluation process, Giddings and Andersen-Emeziem agreed that Andersen-Emeziem would have sole physical custody. They also established provisions for basic child support, health-care expenses and coverage, and collection of past child support. The district court issued an order on the petition, incorporating Giddings's acknowledgment of paternity, his arrangements for child support, and the parents' agreement that Andersen-Emeziem would have sole physical custody of NRA. An amended order clarified that "custody is unchanged," restated the district court's reluctance to decide legal custody without a formal motion, and stated that Giddings's request for joint legal custody was denied.

Giddings filed a motion formally seeking joint legal custody. The motion included a proposed parenting-time schedule, a related request for an adjustment to child support, and a request for the dependent tax exemption and attorneys' fees. In a counter motion, Andersen-Emeziem opposed Giddings's motion and requested adjustments relating primarily to parenting time and child support. In a supporting affidavit, Andersen-Emeziem described her continuous custody of NRA since NRA's birth, Giddings's absences from NRA's life, and Giddings's lack of participation in decisions relating to NRA's education and medical care. The affidavit also described a history of disagreements between Giddings and Andersen-Emeziem and divergent parenting styles. Andersen-Emeziem requested that the district court order Giddings to attend parenting and anger-management classes. Following a motion hearing, Giddings submitted a responsive affidavit that acknowledged differences in parenting style and disagreements with Andersen-Emeziem but contended that Andersen-Emeziem was lying in her accounts of his problems with parenting and with anger management.

The district court's decision addressed the parents' capacity for co-parenting, concluded that Giddings "failed to meet his burden" on joint legal custody, and granted sole legal custody to Andersen-Emeziem. The order adopted Giddings's parenting-time holiday schedule but provided for four weeks of summer parenting time instead of the eight weeks that Giddings had requested. In addition to these rulings, the district court denied Giddings's request for shared transportation costs, reduction in child support based on requested parenting time, exclusive use of the dependent tax exemption, and attorneys' fees. In a pro se brief, Giddings appeals the district court's order.

D E C I S I O N

District courts have broad discretion to resolve child-custody issues. *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989). On appeal we determine whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Findings of fact are reviewed for clear error. *Id.* We defer to the district court's credibility determinations and do not reassess those determinations on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

I

We first address Giddings's challenge to the district court's determination on legal custody. The controlling principle in a child-custody determination is the child's best interests. *Pikula*, 374 N.W.2d at 711; *see also* Minn. Stat. § 518.17, subd. 1(a) (2008) (enumerating thirteen best-interests-of-the-child factors). If a parent proposes joint custody, the court is obligated to consider the relevant best-interests-of-the-child factors and also address (1) the parents' ability to cooperate, (2) the parents' methods for resolving disputes, (3) whether it would be detrimental to the child if sole custody is granted, and (4) whether domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 2 (2008). Either parent's request for joint legal custody triggers a rebuttable presumption that joint legal custody is in the best interests of the child. *Id.*

Giddings contends that the district court incorrectly applied the rebuttable-presumption standard when it determined that he had "failed to meet his burden." We agree that Giddings's motion triggered a rebuttable presumption of joint legal custody.

But this presumption does not mean that Giddings has no burden on the joint-legal-custody issue. Under Minnesota's rules of evidence, "a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption." Minn. R. Evid. 301. "[T]he burden of proof[,] in the sense of the risk of nonpersuasion, remains . . . upon the party on whom it was originally cast." *Id.* The comment to this rule explains that "If sufficient evidence is introduced that would justify a finding of fact contrary to the assumed fact[,] the presumption is rebutted and has no further function." *Id.* cmt.

In response to Giddings's joint-legal-custody motion, Andersen-Emeziem provided evidence to rebut the presumption. On the first factor—the parents' ability to cooperate—Andersen-Emeziem attested to her difficulty in trusting Giddings because of his dishonesty in specific business dealings, his deception in obtaining NRA's medical records, and his violation of a promise not to take NRA to his home during the time that it was uninhabitable because of construction work. On the second factor, relating to methods of dispute resolution, Andersen-Emeziem pointed to differences in parenting styles and her rejection of Giddings's use of physical force or corporal punishment. The affidavit described specific examples of Giddings's unwillingness to use methods for resolving disputes. When she and Giddings argued about Andersen-Emeziem's decision to move to San Francisco at the time of NRA's birth, Andersen-Emeziem "had to demand to be let out of [Giddings'] moving car because he erupted in anger and was screaming viciously and made [Andersen-Emeziem] concerned for [her] safety." Andersen-Emeziem described another angry outburst that occurred after NRA started school. The

outburst prompted her to restrict Giddings's ability to take NRA off the school campus. A third example arose from their inability to agree on the resolution of unpaid charges for Giddings's use of her co-op when she and NRA were in Spain. The dispute was resolved only after Andersen-Emeziem threatened legal action. In addressing the third factor of whether it would be detrimental to NRA for Andersen-Emeziem to have sole legal custody, she pointed to her satisfactory care and decision-making that had been beneficial to NRA up to the present time.

Andersen-Emeziem's evidence on the statutory joint-custody factors was sufficient for the district court to determine that the presumption of joint legal custody was rebutted. Because Giddings filed the motion for joint custody, he had the ultimate burden to persuade the court that the factors weighed in his favor, despite Andersen-Emeziem's evidence. The district court's statement that Giddings "failed to meet his burden" therefore does not reflect error. The district court specifically referred to the burden of persuasion: "[Giddings] has presented no credible evidence that [joint legal custody] would be in the child's best interest, and neither has he persuaded the [c]ourt that [Andersen-Emeziem] . . . has made poor choices regarding legal custody issues." The district court did not misapply the applicable law in reaching its decision.

Giddings also argues that "the [district] court failed to make detailed findings on each of the custodial factors and [to specify] how the factors led to its determination" on sole legal custody. Under the statute, the district court is not required to make "detailed findings" when it orders sole custody over a party's objection. *See* Minn. Stat. § 518.17, subd. 2 (requiring detailed findings when joint custody is *granted* despite the objection of

a party). The district court's findings are sufficient to reflect consideration of the required joint-custody factors. The findings state that discord between the parents "has affected their ability to co-parent" and that they have "exhibited an inability to identify methods for resolving disputes." Addressing the third factor, the district court stated that Andersen-Emeziem "has been the de facto legal custodian" and that Giddings failed to show that she had made poor choices during the eleven years of NRA's life. This finding indicates that sole custody has not been detrimental to NRA. The fourth factor, domestic abuse, was not at issue. The court's findings on the joint-custody factors are sufficient.

II

Giddings raises three challenges to the district court's order on parenting time. First, he argues that he should have been given eight weeks of summer parenting time instead of four. Andersen-Emeziem stated that NRA is extensively involved in a variety of summer classes and activities in Minnesota. The district court found that NRA's adjustment to her community in Minnesota included these summer activities and concluded that more than four weeks away from Minnesota would be disruptive. This finding is supported by the record and well within the district court's discretion.

Second, Giddings argues that his summer parenting time should be scheduled in a single block of time rather than in separate, two-week blocks. Giddings's argument is based on the cost of an additional round-trip flight to Las Vegas, and he similarly argues that the cost of transportation for NRA's summer visits should be shared with Andersen-Emeziem. The record shows that it was Giddings's decision to move to Las Vegas, and the record also includes a statement by Andersen-Emeziem that Giddings earns three

times as much income as she does. These facts support the district court's conclusion that Giddings should have the responsibility to pay for two round-trip visits. The order was within the district court's discretion.

Giddings also argues that ordering eight weeks of summer parenting time would require a reduction of his child-support obligation. Having affirmed the district court's order for four weeks of parenting time, we do not address Giddings's contingent argument on child-support reduction.

III

As part of his motion for joint-legal custody, Giddings also moved for exclusive entitlement to the federal income-tax exemption for a dependent child. He states that "under federal law, the parent that provides the most support for the child is entitled to the exemption."

Giddings does not address the provisions of federal law, which establish that Andersen-Emeziem is the default beneficiary of the exemption. The relevant provisions are as follows. A taxpayer may deduct from taxable income the established exemption amount for a "qualifying child" or "qualifying relative." 26 U.S.C. §§ 151(c); 152(a) (2008). As relevant in this appeal, the child of a taxpayer is a "qualifying child" if the child "has the same principal place of abode as the taxpayer for more than one-half of [the] taxable year." 26 U.S.C. § 152(c)(1)(B) (2008). The child of a taxpayer might also be a "qualifying relative," if the taxpayer "provides over one-half of the individual's support for the calendar year in which such taxable year begins." 26 U.S.C. § 152(d)(1)(C) (2008). But a taxpayer cannot claim the child as a "qualifying relative" if

the other parent can claim the child as a "qualifying child." 26 U.S.C. § 152(d)(1)(D) (2008). When a child is supported by both parents and the parents live apart, the exemption may be taken by the parent the child lives with for *less* than half the year, if the other parent makes a declaration to that effect. 26 U.S.C. § 152(e) (2008).

It is undisputed that NRA shares her principal abode for more than half the year with Andersen-Emeziem, and not with Giddings. She therefore is not his "qualifying child," but she is a "qualifying child" for Andersen-Emeziem. Giddings cannot claim NRA as a "qualifying relative"—even if he does provide more than half of her support—because NRA cannot provide an exemption for both Andersen-Emeziem and for Giddings. Because the parents live apart and provide all of NRA's support, Andersen-Emeziem could, by declaration, allow Giddings to take the exemption in any given year. Thus, if Andersen-Emeziem were to make the declaration—or if the court ordered her to do so—Giddings could be "entitled to the exemption." But federal law does not *require* that he be granted the exemption. The district court therefore did not err in applying the law. NRA's principal abode is with Andersen-Emeziem, and the district court's decision that Andersen-Emeziem is entitled to take the tax exemption was not an abuse of discretion.

IV

The final issue is Giddings's challenge to the denial of his request for attorneys' fees. As with other decisions related to custody, a determination on attorneys' fees falls well within the district court's discretion and will not be reversed absent an abuse of discretion. *Katz v. Katz*, 408 N.W.2d 835, 840 (Minn. 1987). The district court may

order attorneys' fees against a parent who unreasonably contributes to the length or expense of custody proceedings. Minn. Stat. 518.14, subd. 1 (2008).

In his affidavit, Giddings argues that Andersen-Emeziem was responsible for the failure to reach agreement when they participated in the Early Neutral Evaluation process and that she did so to interfere with Giddings's relationship with NRA. In her affidavit, Andersen-Emeziem denied responsibility and stated that she treated Giddings fairly. The parties therefore presented different accounts of the reasons for the prolonged litigation. If the district court had credited Giddings's statements, the statements could provide a basis for attorneys' fees. But the district court had an ample opportunity to observe the parties' conduct, and its findings suggest that it did not credit Giddings's assessment of their failure to agree. The district court was in the best position to assess the credibility of the parties. *Sefkow*, 427 N.W.2d at 210. The district court did not abuse its discretion by denying Giddings's request for attorneys' fees.

Affirmed.