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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-778

Heidi Gerstenkorn Welsch, co-petitioner,
Respondent,

vs.

Robert James Welsch, co-petitioner,
Appellant.

Filed March 23, 2010
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-FA-06-967

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota (for respondent)

David D. Himlie, St. Louis Park, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the district court's denial of his motion for amended findings or a new trial in this child custody case. Because the district court did not abuse its discretion in establishing the extent and conditions of appellant's parenting time, we affirm.

FACTS

Appellant-father Robert James Welsch and respondent-mother Heidi Gerstenkorn Welsch were married in June 1990. They have two children, a daughter and a son. In April 2006, the marriage was dissolved through a partial stipulated judgment and decree. The parties agreed to a parenting plan under Minn. Stat. § 518.1705 (2006) that imposed a number of conditions on father, including abstaining from the use of alcohol and other mood-altering substances before and during parenting time, random alcohol testing, and ensuring that the children are not exposed to pornography or sex addicts while in father's care. These conditions were designed to protect the children from risk associated with father's history of substance abuse and sexual addiction.

A number of issues arose under the parenting plan. Chief among them are claims that (1) father touched daughter inappropriately during a trip in the summer of 2006; (2) daughter was exposed to nude photographs of father and his girlfriend; (3) father had resumed drinking alcohol; and (4) father permitted sex addicts to be in his home when the children were present. Following these allegations, father voluntarily suspended his parenting time with daughter.

In early 2007, father told the parenting consultant that he would not submit to random drug and alcohol testing. In July 2007, mother moved the district court to temporarily grant her sole physical and legal custody and to suspend father's parenting time. The district court ordered Family Court Services to conduct a custody and parenting-time evaluation. In response, the parenting consultant conditioned father's

parenting time with his son on father's agreement to stop using alcohol. Father refused to abstain and forfeited his parenting time.

On father's motion, the district court restored father's parenting time in October 2007, pending completion of the evaluation, on the ground that it was in the son's best interests. In March 2008, Family Court Services submitted its report to the district court. The report notes father's chemical dependency and history of sexual addiction. It recommends that father be allowed parenting time with son, conditioned on his submission to drug and alcohol monitoring before and after parenting time for a period of six months.

The district court conducted an evidentiary hearing on June 24 and 25, 2008. The parties agreed to share legal custody of the children and that mother would have sole physical custody. Father also agreed that he would not use alcohol or mood-altering chemicals during the eight hours preceding or during his parenting time and that he would submit to monitoring at those times. The only disputed issues were the extent of father's parenting time with his son and the duration of the monitoring period.

Both parties testified, along with the parenting consultant and other custody evaluators. The parties also submitted extensive documentary evidence to the district court. On July 29, 2008, the district court issued its findings of facts, conclusions of law, and order. The district court analyzed the evidence under the best-interests-of-the-children standard set out in Minn. Stat. § 518.17, subd. 1(a) (2006), and made numerous findings concerning father's alcohol and sexual addictions and his conduct throughout the proceedings. The district court granted father parenting time with his son every other

weekend, alternating Monday evenings from 3:30 p.m. to 7:30 p.m. on weeks where father does not have weekend parenting time, and Wednesday evenings from 3:30 p.m. to 7:30 p.m. In addition, the district court ordered father to undergo drug and alcohol testing eight hours before and during his parenting time for a period of six months.

Father moved the district court for amended findings or, in the alternative, a new trial. Father requested parenting time with his son every other week from Wednesday at 3:30 p.m. until Sunday evening at 7:30 p.m., or, in the alternative, overnight every Wednesday. He also asked the district court to reduce the duration of the drug and alcohol monitoring from six months to three months.

The district court denied father's motion, but amended its findings to explicitly state that father's behaviors are likely to endanger the children's emotional or physical health or impair their emotional development as set forth in Minn. Stat. § 518.175, subd. 5(1) (2006). Judgment was entered incorporating the prior orders as well as other terms stipulated to by the parties. This appeal follows.

D E C I S I O N

Father challenges the district court's denial of his motion for amended findings or a new trial. The district court has the discretion to grant a new trial, and we will not disturb the district court's decision absent a clear abuse of discretion. *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004); *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). "Appellate [courts] set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility. Findings of fact are clearly erroneous where

an appellate court is left with the definite and firm conviction that a mistake has been made." *In re Marriage of Goldman*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted). The district court has "extensive" discretion in deciding issues relating to parenting time, and this court will not reverse absent an abuse of that discretion. *Manthei v. Manthei*, 268 N.W.2d 45, 45 (Minn. 1978); *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

I. The district court did not abuse its discretion in denying father's motion for amended findings or a new trial as to his parenting time.

Parenting time between a child and a non-custodial parent is regarded as "a parental right essential to the continuance and maintenance of a child-to-parent relationship." *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978); *see also* Minn. Stat. § 518.175 (2008). But the paramount concern in establishing parenting time is the best interests of the child. *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

Father contends that the district court's factual findings are insufficient, and that he and mother agreed to expand his parenting time. We disagree. The district court's factual findings are extensive, and there is no record evidence of any agreement between the parties to allow father more parenting time. Even if there were such an agreement, the district court would not be bound to follow it.

The district court's findings are extensive and reveal a strong evidentiary basis for denying father overnight parenting time during the school week. For instance, the district court found that "[father] testified that he repeatedly missed meetings and sporting events

involving the children, and he admits to making little effort to calendar his children's activities and appointments." And the district court found that "[father] is unreliable and shows interest in the children's daily routines sporadically. . . . If a child's activity does not fit [father's] schedule or hold his interest, his participation ceases."

Viewing the facts in a light favorable to the district court's judgment, we conclude that the district court did not abuse its discretion in establishing father's parenting time with his son and denying father a new trial on this issue. The district court's findings are thorough, grounded in the evidence, and more than adequately support the court's conclusions. *See Goldman*, 748 N.W.2d at 284 (stating that district court's findings will not be overturned unless clearly erroneous). On this record, we conclude that the district court did not abuse its discretion in denying father's motion.

II. The district court did not abuse its discretion in denying father's motion for amended findings or a new trial as to the drug and alcohol-monitoring condition of his parenting time.

Father argues that the district court abused its discretion by ordering six months of drug and alcohol monitoring rather than the three months he advocated. He contends that the district court committed legal error by applying the best-interests-of-the-children standard rather than the endangerment standard. *See* Minn. Stat. § 518.175, subd. 5(1) (endangerment standard for modifying custody). This argument is unavailing.

The district court applied both legal standards, and the findings as amended enumerate the facts that support both the conclusion that drug and alcohol monitoring is in the children's best interests and that it is necessary to protect the children from danger. The district court noted the custody evaluator's testimony that father "is going to drink,"

that six months of monitoring is warranted, and that three months of monitoring would be insufficient. The district court found that father lacks impulse control, has "little ability to edit himself or to control his reactions to unpleasant information," and that if allowed to drink, that decision could have a "cascade effect" that could harm the health and emotional welfare of the children. The record evidence supports these findings, including the professional opinions of several therapists and evaluators that father's history of substance abuse and erratic behavior more than justify six months of drug and alcohol monitoring.

Father does not present a credible argument that the district court's imposition of six months of drug and alcohol monitoring, rather than three months, constitutes an abuse of discretion. Because the district court's legal conclusions, under both the best interests and endangerment standards, are amply supported by the evidence, we conclude that the district court's findings are not clearly erroneous and that the district court did not abuse its discretion in denying father's motion.

Affirmed.