STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1386

In re the Marriage of:
Alan Lee Wilson, petitioner,
Respondent,

vs.

Laura Elizabeth Wilson,
Appellant.

Filed June 15, 2010
Affirmed as modified
Toussaint, Chief Judge

Hennepin County District Court
File No. 27-FA-07-8241

Alan Lee Wilson, Elmhurst, Illinois (pro se respondent)

Kelly M. McSweeney, Jensen, Mullen & McSweeney, P.L.L.P., Bloomington, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Toussaint, Chief 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

TOUSSAINT, Chief Judge

Appellant Laura Elizabeth Wilson argues that the district court abused its discretion by adopting a parenting-time schedule that automatically increases respondent Alan Lee Wilson's parenting time with the parties' minor child. Because the record does not support the automatic increases in respondent's parenting time, but the parenting-time schedule is otherwise permissible, we affirm as modified.

FACTS

Appellant and respondent were married in May 2006 and gave birth to their only child on August 22, 2006. The parties' marriage was dissolved by court trial on October 23, 2008, and parenting time was contested. The district court issued a judgment and decree dated January 23, 2009, awarding sole physical custody of the child to appellant and granting respondent parenting time that increased in three tiers as the child grew older. Prior to the child entering kindergarten, respondent's parenting time consists of two weeknight visits per week and alternating weekends. When the child enters kindergarten, respondent's parenting time increases to one midweek overnight each week instead of the two weeknight visits. After the child finishes kindergarten, respondent's parenting time expands again to include a second weekly midweek overnight.

The parenting-time schedule was initially proposed by a court-appointed evaluator. At trial, the evaluator explained that his rationale in recommending the automatic increases in respondent's parenting time was based partly on the "[child's] age. I think she can handle being away for a more extended period of time, and also,

[respondent] is capable of providing what she needs." The evaluator also testified that another reason for recommending automatic increases was that he did not believe the parties would be able to agree on a parenting schedule when the child was old enough to go to school.

In adopting this proposed schedule, the district court summarized the evaluator's testimony. The district court found that the evaluator "sought to minimize the potential for conflict between the parties regarding parenting time between the minor child and [respondent]" in creating the schedule. The district court reiterated the evaluator's testimony that, "while other solutions were reasonable, such as future mediation or further motion before the Court, [the evaluator] was comfortable with his recommendation for a different parenting time schedule when the minor child began kindergarten and elementary school." The court concluded that the evaluator's "recommendations are in the best interests of the minor child." Appellant's motion for posttrial relief was denied.

D E C I S I O N

"Appellate 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." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). The district court has broad discretion in determining parenting-time issues. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). But the basis for any custody determination must be articulated "with a high degree of particularity." *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989).

Under Minn. Stat. § 518.175, subd. 1(a) (2008), a district court shall "grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." In determining the best interests of a child, the district court must make detailed findings of statutory factors and explain how the factors contributed to the best-interests determination. *Rogge v. Rogge*, 509 N.W.2d 163, 165 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994).

The district court made findings on the 13 best-interest factors provided by Minn. Stat. § 518.17, subd. 1 (2008). But noticeably absent from these findings is any particularized analysis of why the automatic increases triggered by kindergarten attendance are in the child's best interests. The only finding that could be construed as explaining how the increases are in the best interests of the child is where the court "adopt[ed] the [e]valuator's analysis underlying the recommendation for an expanding parenting time schedule."

But the evaluator never advanced detailed, specific reasons explaining why the future increases are in the best interests of the child either in his report or during testimony. The evaluator explained that the increases were based on his beliefs that the child could "handle being away for a more extended period of time," and that the parents "would have a real difficult time . . . figuring out a schedule that would be appropriate" when the child was in school. On this record, these assertions are entirely speculative. Moreover, the evaluator failed to sufficiently explain how attempting to remedy these concerns through automatic increases in the parenting-time schedule is in the best interest

of the child.

Ultimately, there are no findings of fact or other evidence in this record that sufficiently support the conclusion that automatically increasing respondent's parenting time is in the best interests of the child. Without any particularized findings as to why the automatic future increases in parenting time would be within the child's best interests, we cannot affirm this portion of the parenting-time schedule. But we conclude that the remainder of the parenting-time schedule is appropriate. Because, on this record, the district court abused its discretion in implementing the automatic increases in parenting time, and there is no evidence in the record to support such a schedule, we affirm the district court's decision as modified, excluding the automatic future increases in parenting time.

Affirmed as modified.