STATE OF MINNESOTA
IN COURT OF APPEALS
A11-367

In re the Marriage of:
Paul James Kruchten, petitioner,
Respondent,

vs.

Maureen Baymler Kruchten,
Appellant.

Filed October 17, 2011
Affirmed
Ross, Judge

Douglas County District Court
File No. 21-FA-10-178

Michael J. Dolan, Thornton, Reif, Dolan, Bowen & Klecker, P.A., Alexandria, Minnesota (for respondent)

Sarah K. Moore, Sonja R. Torgerson, Legal Services of Northwest Minnesota, Alexandria, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Minge, Judge; and Ross, Judge.

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

ROSS, Judge

This is a custody and parenting-time dispute between parents following a marriage dissolution. Maureen Kruchten appeals from the judgment and decree that orders joint legal custody and parenting time commensurate with joint physical custody of the parties' only child. She argues that the district court erred by not adequately considering the best-interests and joint-custody factors. Although the district court erroneously addressed a prohibited best-interests factor, we hold that the district court thoroughly considered the best interests of the child and did not abuse its discretion. We therefore affirm.

FACTS

Maureen Kruchten and Paul Kruchten were married in 2007. Their only child, R.K., was born in June 2009. In December 2009, Maureen Kruchten petitioned for and the district court soon granted an order for protection against Paul Kruchten after a verbal altercation. The parties agreed to the order, and the court made no finding of domestic abuse. The next month, Paul Kruchten petitioned for dissolution. He sought sole physical custody of R.K. with reasonable parenting time to Maureen Kruchten. Maureen Kruchten also sought sole physical custody. The court appointed a guardian ad litem (GAL), who testified about custody.

Numerous family members and friends testified at the dissolution trial. Overwhelming evidence demonstrated that both parents love and can care for R.K. The GAL testified that both parties are good parents, that R.K. needs to form a solid bond with both of them, and that both homes are "very good" for R.K. Maureen Kruchten

testified that Paul Kruchten was controlling, jealous, angry, and sometimes physically abusive. Paul Kruchten admitted that he had a history of abuse and had obtained treatment. The GAL opined that a 50-50 parenting-time arrangement under joint physical custody would be best, but she qualified that the domestic-violence history suggested that sole physical custody to Maureen Kruchten with generous parenting time for Paul Kruchten may be preferable.

The district court discussed and weighed each statutory best-interests factor. It determined that joint legal custody was in R.K.'s best interest. It ordered sole physical custody to Maureen Kruchten, and ordered a parenting-time schedule that gave each parent seven nights with R.K. out of every fourteen-day period.

Soon after the district court issued its order, the parties learned that the supervised exchange center where the parties completed drop-offs was not open when the exchanges were to occur. The district court modified the parenting-time schedule to accommodate the new information by giving Maureen Kruchten one additional overnight.

Maureen Kruchten appeals.

D E C I S I O N

I

Maureen Kruchten challenges the district court's award of joint legal custody. A district court has broad discretion to determine custody. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). We limit our review of custody determinations to whether the district court abused its discretion by making findings unsupported by the evidence or by applying the law improperly. *Id.*

We first address Maureen Kruchten's argument that the district court's conclusion that joint legal custody is in the best interests of R.K. is not supported by the evidence. A district court makes custody determinations based on the best interests of the child, and it must consider specific statutory factors enumerated in Minnesota Statutes section 518.17, subdivision 1(a) (2010). It must make detailed written findings on these factors. *Id.* The district court must also consider additional joint-custody factors when joint custody is contemplated. *Id*., subd. 2. If domestic abuse has occurred between the parents, there is a rebuttable presumption that joint custody is not in the child's best interests. *Id*. The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Maureen Kruchten asserts that the district court ignored the evidence of Paul Kruchten's history of domestic violence. This is not so. The district court addressed "the effect on the child of the actions of an abuser" where domestic abuse has occurred between the parents. *See* Minn. Stat. § 518.17, subd. 1(a)(12). It expressly commented on Paul Kruchten's history of domestic abuse and expressed concern over the possibility that the history of abuse could impact the child. But it held that the presumption against joint custody had been overcome. No evidence suggested that any domestic violence affected R.K. or any party's parent-child relationship. At oral argument, Maureen Kruchten's counsel could identify no situation in which any domestic abuse between the parties impacted R.K. and could not explain why the district court's decision for the joint-legal-custody arrangement would be contrary to R.K.'s best interests. Given the context of the

abuse and its apparent irrelevance to the best interests of R.K., we hold that the district court's joint-legal-custody decision is supported by the evidence. *See McCabe v. McCabe*, 430 N.W.2d 870, 873 (Minn. App. 1988) (holding that this court may not substitute its judgment for that of the district court when reviewing custody determinations), *review denied* (Minn. Dec. 30, 1988).

We also consider whether the evidence supports the inference that the parties can cooperate. The district court was aware that the parties had trouble getting along. But it also found that they had at least some ability to communicate about the rearing of their child. The record does not demonstrate a level of conflict that would require reversing the district court's determination. *See Berthiaume v. Berthiaume*, 368 N.W.2d 328, 332–33 (Minn. App. 1985) (affirming joint custody despite some evidence of difficulty cooperating).

Maureen Kruchten next argues that the district court misapplied the law by considering "the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child." Minn. Stat. § 518.17, subd. 1(a)(13). This factor should not be addressed "in cases in which a finding of domestic abuse as defined in section 518B.01 has been made." *Id*. Paul Kruchten argues that because the district court issued its order for protection without making any finding of domestic abuse, it was acceptable for the district court to consider this factor. But the district court in this proceeding did make a "finding of domestic abuse." We hold that the district court therefore erred by analyzing this factor when the statute expressly excludes it.

We conclude nevertheless that the district court's decision to analyze this factor was harmless error. "It is sufficient if the findings *as a whole* reflect that the [district] court has taken the relevant statutory factors into consideration in reaching its decision." *Berthiaume*, 368 N.W.2d at 332 (emphasis added). The district court's analysis of this factor did not impact the outcome of the custody proceeding. In fact, the court was *required* to consider "whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing," Minn. Stat. § 518.17, subd. 2(c), and its findings on this factor mirror the prohibited-factor findings. The erroneous consideration of one factor did not render its joint-legal-custody decision an abuse of discretion.

Maureen Kruchten also asserts that the district court considered the prohibited factor to the exclusion of all others because it was the only factor that favored Paul Kruchten. The assertion is misleading. Although the district court concluded that five factors favored Maureen Kruchten and one favored Paul Kruchten, it deemed most factors to be "neutral," favoring neither party's claim to sole custody. And those factors that favored Maureen Kruchten were not necessarily unfavorable to Paul Kruchten. Ordering joint legal custody despite a five-to-one scoreboard of factors favoring one parent does not imply that the district court did not consider the factors as a whole. Because the district court's joint-legal-custody decision is supported by the evidence, we cannot conclude that it reflects an abuse of discretion.

II

Maureen Kruchten also challenges the amount of parenting time the district court awarded. When requested by a parent, the district court must grant parenting time to

"enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2010). The supreme court has observed in a similar circumstance concerning grandparents that granting grandparenting time is "a less critical decision than the judicial determination as to custody." *Olson v. Olson*, 534 N.W.2d 547, 550 n.5 (Minn. 1995). The district court need not consider the best-interests or joint-custody factors in this setting. *See* Minn. Stat. § 518.17, subds. 1, 2. The district court has broad discretion in deciding parenting time and this court will not reverse the decision absent an abuse of that discretion. *Olson*, 534 N.W.2d at 550.

Maureen Kruchten argues that because the parenting-time award here is equivalent to joint physical custody, the district court should have either ordered less time for Paul Kruchten or considered the joint-custody factors, including the parents' 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. The district court did not address those factors with respect to joint physical custody expressly because Paul Kruchten was requesting only parenting time. Because the district court granted sole physical custody to Maureen Kruchten, it was not required to consider the joint-custody factors in the context of physical custody, even when liberally dividing the parenting time.

And we add that the district court did review the joint-custody factors in making its joint-*legal*-custody decision. So it did not ignore the underlying joint-custody

concerns. It was aware of the nature of the Kruchtens' relationship and concluded that significant parenting time for both parents is in the best interests of R.K. It did not abuse its discretion in its analysis or its conclusion.

Affirmed.