STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0773

In re the Marriage of:
Samuel J. Doyle, petitioner,
Appellant,

vs.

Barbara R. Gianlorenzi,
Respondent.

Filed March 3, 2014
Affirmed in part, reversed in part, and remanded
Hudson, Judge

Hennepin County District Court
File No. 27-FA-08-3191

Thomas R. Lehmann, Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP, Stillwater, Minnesota (for appellant)

Barbara R. Gianlorenzi, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Hooten, Presiding Judge; Hudson, Judge; and Minge, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

HUDSON, Judge

Appellant argues that the district court abused its discretion by resolving parenting-time disputes that, under the parties' dissolution judgment, should have been submitted to an agreed-upon parenting consultant and by failing to make the modification of appellant's child-support obligation retroactive. We affirm on the parenting-time issue and reverse and remand for findings on the retroactivity issue.

FACTS

Appellant Samuel Doyle and respondent Barbara Gianlorenzi, whose marriage was dissolved in 2009, have two children together: a son (age 9) and a daughter (age 20). The parties presented their disputes about parenting time and appellant's child support to the district court.

Parenting-time expeditor/parenting consultant

In the 2009 judgment and decree dissolving their marriage, appellant and respondent agreed that any "[c]onflicts regarding custody and parenting schedule [are] to be submitted to a mutually agreed upon parenting consultant," and that "[t]he parties have agreed to resolve these issues without the intervention of the [district court]."

In September 2011, appellant moved the district court to, among other things, replace the existing parenting consultant, Peggy Cottrell. Although appellant's motion referred to Cottrell as a "parenting time expeditor," the terms of the dissolution judgment mandate a "parenting consultant," and the order appointing Cottrell states that she was

"appointed parenting consultant for the parties." Therefore, the district court treated appellant's motion as one to appoint a new parenting consultant.

At the motion hearing, appellant clarified that he had exercised his unilateral right under the dissolution judgment and decree to remove Cottrell, and the district court provided a list of potential replacements. Following the hearing, the district court recognized the parties' selection of Susan Olson as the new parenting consultant. The district court also denied appellant's motion to appoint a parenting-time expeditor.

Appellant, seeking clarification that Olson was appointed as a parenting consultant and not as a parenting-time expeditor, asked the district court to reconsider. Because respondent refused to meet with Olson, appellant further requested that the district court allow Olson "the authority to make decisions even if one parent refuses[1] to cooperate with the process." The district court granted reconsideration. At the motion hearing, the following exchange occurred:

> The Court: I have a question and then I'm going to give you a chance to respond. If [respondent] says I'm not or I can't pay Ms. Olson, is it your client's position that I should then rule and give him what he wants in terms of the parenting time?
>
> [Appellant's counsel]: I think what it is—what we're asking is that you give Ms. Olson the authority to do that.
>
> The Court: I understand that. But if what I hear from her is I just can't afford it, then your position is then you, Judge, do exactly what we want?

[1] While appellant primarily characterizes respondent's behavior as a *refusal* to meet with Olson, respondent testified that she could not *afford* to meet with Olson. The district court appeared to credit respondent's explanation.

> [Appellant's counsel]: Yeah, because that's basically what we're left with. We have no other option.

The district court declined to empower Olson to make decisions without respondent's cooperation. Instead, the district court itself ruled on three disputed issues: parenting time on Sunday nights, respondent's disparaging comments toward appellant, and the parties' vacation schedule.

Child-support obligation

In his September 2011 motion, appellant also asked the district court to reduce his child-support obligation for his daughter, who was no longer a minor and was living in a local facility undergoing mental-health treatment. Specifically, appellant requested that the district court modify his child-support obligation "retroactive to date of [her] emancipation."

In February 2012, the district court ruled that appellant was not insulated from making child-support payments for a disabled child simply because that child was an adult and required him to continue making support payments for his daughter. Appellant requested reconsideration because the district court had indicated earlier that it would discontinue appellant's support obligation for his daughter if he could show that respondent paid nothing to support her. Appellant claimed that respondent had "not provided one shred of evidence" demonstrating expenses for his daughter. Because the February 2012 order, which denied appellant's motion to modify his support obligation, was silent on the issue of retroactivity, appellant's request for reconsideration asked that

the district court specifically address whether he was entitled to a retroactive application of any support modification. The district court granted reconsideration.

At the motion hearing, when the district court asked respondent why appellant should continue to pay child support for his daughter, respondent replied, "I am not having an issue with whatever happens with that." The district court stated that appellant's daughter was "an emancipated child" and, by order filed August 15, 2012, reduced appellant's support obligation accordingly, effective "[b]eginning August 2, 2012 and continuing each month thereafter." The district court did not reference retroactivity or make factual findings to support its setting of the effective date.

D E C I S I O N

Despite respondent not filing a brief, we consider this appeal on the merits pursuant to Minn. R. Civ. App. P. 142.03.

I

The parties' judgment and decree requires the parties to present their parenting disputes to a parenting consultant, who is to apportion between the parties the costs of resolving their parenting disputes. But, here, rather than submitting their disputes to a parenting consultant, the district court decided the parties' parenting disputes. On appeal, appellant argues that the district court should have enforced the stipulated provisions of the judgment and decree requiring those disputes to be decided by the parenting consultant first. The supreme court has stated:

> The use of stipulations in divorce proceedings has been approved by this court. Courts favor stipulations in dissolution cases as a means of simplifying and expediting

> litigation, and to bring resolution to what frequently has become an acrimonious relationship between the parties. Stipulations are therefore accorded the sanctity of binding contracts. They cannot be repudiated or withdrawn from one party without the consent of the other, except by leave of the court for cause shown, but if a stipulation was improvidently made and in equity and good conscience ought not to stand, it may be vacated. However, *upon entry of a judgment and decree based on a stipulation, different circumstances arise, as the dissolution is now complete and the need for finality becomes of central importance.*

Shirk v. Shirk, 561 N.W.2d 519, 521–22 (Minn. 1997) (internal citations and quotations omitted; emphasis added). Under *Shirk*, the result of these concerns is that once a judgment is entered on a stipulation, "the stipulation is merged into the judgment" and "[t]he sole relief" from that judgment "lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." 561 N.W.2d at 522.

A. Relief requested from district court by respondent

Under Minn. Stat. § 518.145, subd. 2(5) (2012), "[o]n motion and upon terms as are just, the court may relieve a party from a judgment" if "it is no longer equitable that the [relevant judgment provision] should have prospective application." We first turn to whether respondent moved the district court for relief in a manner that "meet[s] the requirements of Minn. Stat. § 518.145, subd. 2." *Shirk*, 561 N.W.2d at 522. Here, respondent did not formally move the district court, under Minn. Stat. § 518.145, subd. 2, to be relieved of any aspect of the judgment and decree. But respondent made clear that the crux of the dispute was what she characterized as her inability to pay the parenting consultant as contemplated in the judgment and decree, and what appellant characterized as respondent's refusal to participate in the process. At the hearing addressing

reconsideration, respondent, addressing the parties' parenting disputes, detailed her grim financial circumstances, and stated, "what I would ask the court is that whatever you need to do to make this end, I don't want to be back here. I really cannot take it anymore."

A district court has a duty to ensure fairness to pro se litigants, such as respondent, by allowing reasonable accommodations so long as there is no prejudice to the adverse party. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). But even a pro se litigant has a burden to adequately communicate to the court the relief being sought. *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). On this record, respondent's request that the district court do "whatever you need to do to make this end" adequately conveyed to the district court that, because of her poor financial condition, she wanted to be relieved of the provisions in the judgment and decree requiring that parenting disputes be presented to the parenting consultant in the first instance. And the record shows no prejudice to appellant arising from respondent's informal manner of seeking this relief. Indeed, when the district court asked appellant's attorney about whether the district court should address the parenting disputes, appellant's attorney told the district court that it was "[his] client's position that [the district court] should . . . rule" on the parenting issues.

Caselaw suggests that Minn. Stat. § 518.145, subd. 2(5), may be satisfied by an informal motion. In *Harding v. Harding*, this court concluded that a motion to reopen a dissolution judgment that did not reference Minn. Stat. § 518.145, subd. 2(5), was nonetheless valid because the moving party adequately "raised the question" of whether the judgment had been rendered "so inequitable that it should have no further

application." 620 N.W.2d 920, 921, 922 n.2 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001). Here, respondent's communication with the court adequately raised the issue of the inequity of continued enforcement of the judgment provisions requiring a parenting-time consultant in light of her dire financial situation. We are satisfied that respondent's conduct, though informal, was a proper request for relief under Minn. Stat. § 518.145, subd. 2(5).

B. District court's reopening of the judgment and decree

Whether to grant relief under Minn. Stat. § 518.145, subd. 2, is discretionary with the district court. *Peterson v. Eishen*, 512 N.W.2d 338, 341 (Minn. 1994). Here, by deciding the parties' parenting issues, the district court accepted, albeit implicitly, respondent's assertion that she lacked the funds to pay for using the parenting consultant. Appellant has not shown this finding to be clearly erroneous. *See Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. App. 1985) (applying a clearly erroneous standard to an implicit finding of fact); *cf. Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (deferring to a district court's implicit credibility determination). Thus, the district court was presented with a situation where what had been equitable when the judgment and decree was entered—mandatory use of the parenting consultant and apportionment between the parties of the costs of doing so—could, if still required, result in appellant being the only party able to present an argument to the parenting consultant. Alternatively stated, the district court was presented with a situation where what had been equitable at the time the judgment and decree was entered was no longer equitable. On this record, we cannot say that the district court abused its discretion by

granting respondent relief from the relevant judgment provisions and deciding the parties' parenting disputes.

C. District court's resolution of the parenting disputes

A district court's resolution of parenting-time disputes must "be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2012). District courts have broad discretion in deciding parenting-time questions. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). Here, our review of the record reveals that the district court questioned both parties at length and allowed them full input regarding their parenting-time disputes. In addition, the record is replete with statements from the district court expressing the need for an end to the parties' ongoing conflicts. The district court clearly had the best interests of the child in mind, not only when it decided to resolve the parties' parenting-time disputes, but also in its actual resolution of those disputes.

II

Appellant argues that the district court erred by failing to state explicitly that it considered retroactive application of the child-support modification before setting the effective date of the support order and by failing to make findings supporting the effective date it chose. "A modification of support or maintenance . . . may be made retroactive" to the "date of service of notice of the motion [for modification] on the responding party." Minn. Stat. § 518A.39, subd. 2(e) (2012). A district court "has broad discretion to set the effective date of a modified child support obligation." *Borcherding v. Borcherding*, 566 N.W.2d 90, 93 (Minn. App. 1997) (citation omitted). The discretion to set an effective date "must be exercised based on the facts as found by the district

court." *Lee v. Lee*, 775 N.W.2d 631, 643 (Minn. 2009). We review a district court's setting of the effective date of a support order for an abuse of discretion. *Borcherding*, 566 N.W.2d at 93.

Here, the district court set an effective date when it ordered that appellant's support modification would be modified "[b]eginning August 2, 2012 and continuing each month thereafter." But, the district court's determination of a date without factual findings does not constitute an adequate explanation of its exercise of discretion. *Lee*, 775 N.W.2d at 643; *see also Bormann v. Bormann*, 644 N.W.2d 478, 482–83 (Minn. App. 2002) (holding that support modifications are generally retroactive to the date of the motion unless the district court "exercised its discretion" to set a different effective date); *see generally Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (stating, in the spousal-maintenance context, that "[e]ffective appellate review of the exercise of [the district court's] discretion is possible only when the [district] court has issued sufficiently detailed findings of fact to demonstrate its consideration of all [relevant] factors"); *Wallin v. Wallin*, 290 Minn. 261, 267, 187 N.W.2d 627, 631 (1971) (stating that, given the district court's broad discretion in family cases, it is especially important that the basis for its decision be set forth with a high degree of particularity).

Because the district court (1) initially stated that it recognized appellant should not be responsible for support unless respondent was contributing toward the daughter's expenses, and (2) did not explain why it selected August 2, 2012—a date substantially after the date of service of notice of the motion—as the effective date of the modification of appellant's support obligation, we reverse and remand for the district court to make

findings on the effective date of the child-support modification. *See Lee*, 775 N.W.2d at 643 (remanding for factual findings when a district court did not provide a factual basis for choosing the effective date of a maintenance modification).

Affirmed in part, reversed in part, and remanded.