STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1139

In re the Marriage of:
Samara Irene Dressendorfer,
n/k/a Samara Ingwerson, petitioner,
Respondent,

vs.

David Derek Dressendorfer,
Appellant.

Filed February 18, 2014
Affirmed in part and remanded
Ross, Judge

Crow Wing County District Court
File No. 18-FA-08-887

Shari L. Frey, Frey Law office, Ltd., Brainerd, Minnesota (for respondent)

Edward R. Shaw, Brainerd, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

ROSS, Judge

Formerly married parties David Dressendorfer and Samara Ingwerson divorced in 2006 and have been disputing the custody arrangement for their son since 2008. Dressendorfer challenges the district court's decision to grant Ingwerson sole legal

custody and its decision to restrict his parenting time. He contends that the district court abused its discretion by not granting him a continuance to conduct an independent evaluation of his son's allegations of sexual abuse, by not allowing a second deposition of the guardian ad litem during a break in the custody proceeding, by not removing the guardian ad litem, by modifying the custody order to grant sole legal custody to Ingwerson, and by restricting his parenting time. Because the district court did not exceed its discretion by denying Dressendorfer's motions or by modifying the custody order, we affirm in part. But we remand because the district court did not specify its restrictions on parenting time, preventing us from assessing whether it abused its discretion in setting the restrictions.

FACTS

Samara Ingwerson and David Dressendorfer married in 2000 and had one child, D.E.D., in 2002. They separated in 2004 and divorced in 2006 in Washington state. A Washington district court ordered a stipulated parenting arrangement under a decree that gave Ingwerson primary physical custody and the parties joint legal custody. It allowed Dressendorfer weekly phone calls with D.E.D. and parenting time every summer and spring break and every other winter break.

Ingwerson and Dressendorfer both left Washington. Ingwerson moved to Minnesota with D.E.D., and Dressendorfer moved to Florida. The parties performed under the parenting agreement without issue until 2008. That's when Dressendorfer moved to modify custody. The district court denied his motion.

Ingwerson claims that in December 2009 D.E.D., then seven years old, entered her bedroom and said, "One time in Florida my dad made me touch his pee-pee." She says he answered her questions about the incident, including telling her that he thought he was five years old when it happened. She also says that D.E.D. described his father as having an erection and that the contact lasted "several minutes." Three days after the alleged disclosure, Ingwerson met with Crow Wing County Social Services to report what she asserted were D.E.D.'s statements. A social worker interviewed D.E.D. a week later and D.E.D. repeated the account reported by Ingwerson.

Ingwerson moved the district court ex parte to suspend parenting time and appoint a guardian ad litem. The district court suspended Dressendorfer's out-of-state parenting time, requiring supervised parenting time in Minnesota. It also appointed Teresa Trujillo as D.E.D.'s guardian ad litem. It later authorized Trujillo to modify the telephone-contact schedule as she saw fit. Dressendorfer moved to reinstate his parenting time in May 2010, but the district court denied the motion without an evidentiary hearing.

Crow Wing County authorities informed Florida police of the report in January 2010, prompting an investigation. Police investigated for six months and passed the case to the attorney general, who declined to prosecute. Crow Wing County Social Services also investigated, and it found that Dressendorfer had engaged in abuse. Dressendorfer appealed that administrative decision. The appeal went unresolved until February 2012, when an administrative law judge reversed the county's determination on procedural grounds, determining that the county lacked jurisdiction to hear the case because the alleged incident occurred in Florida.

While Dressendorfer's social services appeal was ongoing, Ingwerson moved the district court in August 2010 for sole legal custody and requested that it limit Dressendorfer to only supervised parenting time in Minnesota. Dressendorfer countered, asking the district court to deny Ingwerson's petition, resume the original parenting arrangement, grant compensatory parenting time, and require disclosure of multiple documents. The district court's initial order allowed Dressendorfer only supervised telephone contact and supervised parenting time in Minnesota, and it scheduled an evidentiary hearing. It also granted Dressendorfer's discovery request. The parties stipulated that the evidentiary hearing would be continued until the extant maltreatment appeal was resolved.

Other events occurred between Ingwerson's August 2010 motion and the February 2012 administrative-appeal result. Dressendorfer again moved for physical custody in November 2010. The district court denied the motion without an evidentiary hearing. Trujillo recommended that Dressendorfer's telephone visits with D.E.D. cease until further notice from D.E.D.'s therapist. The district court agreed and suspended Dressendorfer's phone contact with D.E.D. Dressendorfer stopped speaking directly with Trujillo in March 2011.

After the maltreatment appeal was finally resolved in February 2012, the district court set May 8, 2012, for the evidentiary hearing on Ingwerson's August 2010 motion asking for sole legal custody and restricting Dressendorfer's parenting time. Dressendorfer sought to continue the case on April 18, but the district court refused. A week later, Dressendorfer moved the district court to continue the hearing, to allow an

independent evaluation of D.E.D., to resume the original parenting arrangement, and to remove Trujillo as the guardian ad litem. The court denied the first three requests and made no immediate decision about removing Trujillo.

The 2012 evidentiary hearing took five days—two in May and three in July. It was punctuated by Trujillo's allegation that Dressendorfer threatened her at the courthouse. Between May and July, Dressendorfer asked the district court for permission to depose Trujillo and to have D.E.D. undergo an independent evaluation. It is not clear how the court responded to Dressendorfer's request for an independent evaluation (although it is clear that one did not occur), and the district court prohibited him from deposing Trujillo.

In November 2012 the district court awarded sole legal custody to Ingwerson and restricted Dressendorfer's parenting time. It believed D.E.D.'s allegations of sex abuse and did not credit Dressendorfer's testimony. The district court removed Trujillo as guardian ad litem. Dressendorfer unsuccessfully moved the district court to amend the findings, and he appeals.

D E C I S I O N

Dressendorfer challenges the district court's order on five grounds. He contends that the district court abused its discretion by not granting him a continuance for an independent evaluation, by not allowing him to depose Trujillo a second time, by not removing the guardian ad litem, by modifying the custody order to grant sole legal custody to Ingwerson, and by allowing him only very limited supervised parenting time.

I

Dressendorfer contends that the district court inappropriately refused to allow him a continuance to secure an independent evaluation of D.E.D. related to his claims of sexual abuse. District courts should liberally grant continuances to allow for sufficient discovery. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). But the district court nevertheless has great discretion to set its calendar, and we will not reverse its decision to deny a continuance request unless we decide that it clearly abused its discretion. *Id*.; *see also Chahla v. City of St. Paul*, 507 N.W.2d 29, 31 (Minn. App. 1993), *review denied* (Minn. Jan. 20, 1994).

The district court must consider two factors when deciding whether to grant a continuance for additional discovery. *Dunham v. Roer*, 708 N.W.2d 552, 573 (Minn. App. 2006). It first considers whether the party requesting the continuance has been diligent in discovery. *Id.* It then considers whether the party has a good faith reason for further discovery or whether he is instead on a "fishing expedition." *Id.* The overall question is whether denying the continuance will prejudice the outcome. *Chahla*, 507 N.W.2d at 32.

The district court denied Dressendorfer's request in part because it was untimely and Dressendorfer gave no sufficient reason for his delay. This conclusion is supported by the record. Dressendorfer argues that he could not have made his request sooner because he was awaiting the results of the social services appeal. The argument is undercut by the fact that, more than a year and a half before his April 2012 motion, he had moved the court to allow the child to be evaluated by an independent counselor. His

attorney's affidavit filed with that motion opines that an independent evaluation might not be necessary in light of other discovery, and it makes no mention of awaiting the outcome of the social services proceedings. He instead asked the district court to reserve its ruling on the evaluation pending further discovery. Dressendorfer renewed his request for an evaluation only once after that 2010 motion, two weeks before the evidentiary hearing that had already been repeatedly continued.

Under these circumstances, the district court acted within its discretion by denying Dressendorfer's late request for a continuance. We similarly deem the district court's denial of Dressendorfer's request for an independent evaluation in the months between the first part of the hearing (in May) and the second part (in July) to be within its discretion. Although the record does not indicate exactly how the district court responded to this request, no evaluation occurred. Even if the district court had no additional reasons to deny the request beyond the concerns it raised at the May evidentiary hearing (specifically, that Dressendorfer's request was untimely and without an adequate excuse for the delay), we see no abuse of discretion.

II

Dressendorfer challenges the district court's decision to deny him the opportunity to depose Trujillo a second time. The district court has broad discretion to deny discovery requests. *Erickson v. MacArthur*, 414 N.W.2d 406, 407 (Minn. 1987). It acts beyond that discretion only when it makes findings unsupported by the evidence or when it misapplies the law. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007).

Despite Minnesota's generally broad allowance for discovery, the district court may limit the frequency and extent of depositions. Minn. R. Civ. P. 26.02, subd. (b)(1). It may also limit discovery tactics when additional discovery is cumulative or duplicative; when "more convenient, less burdensome, or less expensive" alternatives exist; or when there was already ample prior opportunity to obtain the information sought. *Id.*, subd. (b)(3). Dressendorfer apparently first deposed Trujillo on April 8, 2011. The district court found that the requested second deposition would be a burden on the parties and on Trujillo, that Dressendorfer had the opportunity to review Trujillo's file and obtain information in other ways, and that he had the ability to cross-examine her at the evidentiary hearing and re-call her as a witness when the evidentiary hearing resumed. These conclusions are reasonable in light of the record. The district court did not abuse its discretion by denying Dressendorfer's request.

III

Dressendorfer argues that the district court erred by not removing Trujillo as the guardian ad litem. The argument is unclear. He moved to remove Trujillo on April 25, 2012, only two weeks before the evidentiary hearing, and the motion contemplated oral arguments on the motion immediately before the evidentiary hearing would commence. Trujillo herself filed a report with the district court, and in it she recommended that she be removed as the guardian. The district court indeed granted Dressendorfer's motion and dismissed Trujillo after the evidentiary hearing was completed.

Dressendorfer seems to imply that the court should have removed Trujillo, *sua sponte*, at some point sooner based on his contention that she lacked adequate training to

evaluate sexual abuse claims. But if this is his contention, he provides no legal support for it other than to declare a standard of review, and he offers no supportive substantive argument in either of his briefs to this court. We do not decide issues not adequately briefed. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). We therefore have no ground on which to find any abuse of discretion. We add that even if the district court somehow erred by failing to remove Trujillo sooner, we cannot imagine any unfair prejudice resulting from the error in the absence of any briefing suggesting the nature of the prejudice; Trujillo presumably would have testified just as she did even if another guardian had been appointed sooner, and we have no reason to suppose that replacing the guardian would have led to any new or different evidence.

IV

Dressendorfer next challenges the district court's decision to modify the stipulated custody arrangement. We will not overturn a custody modification decision unless we hold that the district court improperly applied the law or made findings unsupported by the evidence. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). "[W]e view the record in the light most favorable to the district court's findings." *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). And the district court's factual findings are entitled to great deference; we rely on them unless they are clearly erroneous. *Pikula*, 374 N.W.2d at 710.

A district court may modify an existing custody order if it finds that circumstances have changed for the child, a modification would serve the best interests of the child, the child's present environment presents a danger to his physical or mental health or

emotional development, and the harm caused by a change in custody is outweighed by the advantage presented by the change. Minn. Stat. § 518.18(d)(iv) (2012). It is undisputed that the district court made findings on these factors, but Dressendorfer asserts that there was insufficient evidence for it to do so. He also contends that the district court misapplied the law.

Changed Circumstances

The district court concluded that circumstances have significantly changed for D.E.D. since the original custody and parenting-time order. It focused on the allegations of sexual abuse and the parties' new inability to cooperate.

Dressendorfer contests the district court's finding that sexual abuse occurred. He makes a persuasive argument that a different factfinder might have reasonably made a different finding. But the district court expressly based its finding on witness credibility, and as an appellate court we are in no position to reevaluate a factfinder's credibility determinations. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). The district court specifically believed the reports of sex abuse, finding them credible. And it expressly disbelieved Dressendorfer's denial, implicitly finding him incredible. Given the great deference we afford a factfinder's credibility determinations, we cannot conclude that the consequent finding of sex abuse is clear error.

On top of our deference on questions of credibility, we add that we have carefully considered Dressendorfer's bases for his credibility challenge, and they leave us with no firm impression that the district court made a mistake. Dressendorfer relies mostly on the testimony of experienced child-abuse investigator Mindy Mitnick in his challenge to the

district court's abuse finding. But this testimony does not render implausible the district court's decision to credit the claim of abuse. Mitnick cited flaws in Crow Wing County Protective Services's interview of D.E.D. And she opined that false abuse reports are common during custody battles and that she doubted the reliability of D.E.D.'s allegations. But the district court, fully informed by Mitnick's stated credibility concerns and capable of rendering its own credibility determination, was not persuaded. It made its decision reasonably, knowing that Mitnick had never met with Ingwerson, Dressendorfer, or D.E.D., and that Mitnick had not witnessed the entire proceeding or even reviewed the entire case file.

Dressendorfer's emphasis on Florida's decision not to prosecute him is particularly insignificant. Florida authorities decided not to prosecute Dressendorfer; they did not decide that the abuse never occurred. Many factors wholly unrelated to actual innocence go into a prosecutor's decision not to charge, and the decision does not undermine the district court's finding.

The district court also found a change in that the parents could no longer cooperate in parenting decisions. The finding is unassailable. The parties did not communicate at the time of the hearing. Dressendorfer admitted that he has a low opinion of Ingwerson. And he criticized Ingwerson's qualities as a parent. Examples of the parties' lack of cooperation after 2009 abound.

The supported findings of both the sex abuse and the new lack of parental cooperation justify the district court's determination that circumstances have changed.

Best Interests of the Child

When determining whether the parents should have joint legal custody, the district court must make detailed findings on the statutory factors bearing on the decision and explain how the factors support its determination of the best interests of the child. Minn. Stat. § 518.17, subd. 1(a) (2012). The district court received evidence that D.E.D. had a strong relationship with Ingwerson. It also received evidence that D.E.D. had a strained relationship with Dressendorfer. It implicitly credited this evidence. This evidence, added to the finding of sex abuse and the parties' inability to cooperate in parenting decisions, supports the district court's finding that modifying the arrangement to grant Ingwerson sole legal custody and to restrict Dressendorfer's parenting time is in D.E.D.'s best interests.

Endangerment of the Child

To modify custody, the district court must determine that the child is currently endangered in some way, physically, emotionally, or developmentally. Minn. Stat. § 518.18(d)(iv). The district court found that, due to the lack of cooperation and communication between the parties, they have had problems obtaining routine information. Ingwerson testified that D.E.D. would be harmed if the parties maintained joint legal custody because she is unable to make timely decisions on behalf of D.E.D. For example, at the hearing, Ingwerson testified that she was unable to provide dental care in a timely manner because Dressendorfer refused to cooperate. She also cited problems cooperating with respect to D.E.D.'s schooling. Many times, the parents' disagreements had to be settled through litigation.

The lack of cooperation led to delays in satisfying D.E.D.'s developmental and physical needs. Dressendorfer contests the district court's findings that D.E.D.'s sexual abuse allegations were credible and that the parents were unable to cooperate. The contention is unpersuasive. The district court's conclusion on endangerment has support in the record and is not error. The district court therefore had sufficient ground on which to weigh this factor in favor of modifying the custody order.

Balancing the Harm

The final factor a district court must consider is the balance between the harm caused by changing custody and the benefits derived from the new arrangement. Minn. Stat. § 518.18(d)(iv). Dressendorfer emphasizes that he has been involved in his child's education and his influence has had a positive impact on D.E.D.'s wellbeing. But the district court had to weigh the harm of continuing the joint-custody arrangement between two combative, noncommunicating parties against the benefit of assigning one of them unilateral authority over the sometimes weighty and time-sensitive decisions that must be made for the child. The district court did not overstep the considerable breadth afforded to it in weighing these competing factors.

V

Dressendorfer challenges the district court's decision to restrict his parenting time. As with custody, a district court's decision regarding parenting time will be reversed only if it acted beyond its discretion. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). Absent evidence to the contrary, a parent is entitled to at least 25 percent of parenting time. Minn. Stat. § 518.175, subd. 1(e) (2012). This presumption is rebutted if the

presumptive parenting time endangers the child's physical or emotional health or development. *Id.*, subd. 5(1). A court must address the presumption if a party raises it. *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010).

Dressendorfer did not raise the statutory presumption, and the district court's failure to address it is therefore not error. *See Hagen*, 783 N.W.2d at 217. Given the district court's crediting of the abuse allegation, we see no abuse of discretion in its stated emotional and physical endangerment concerns or in its restrictions on the supervised nature of Dressendorfer's interaction with D.E.D.

But the district court also limited Dressendorfer's visits to only once per year, a temporal restriction that we cannot fully review. It is not clear from the language or context of the once-per-year restriction what it means. The parties expressed uncertainty during oral argument. One or both implied that once per year contemplates an extended, multiple-day period during a single, lengthy supervised span. But the language might also be read to indicate that "once" means only a single day. We choose not to decide whether either is reasonable in light of our inability to ascertain the extent of the restriction and the lack of a specific explanation as to why so substantial a restriction is justified on top of the requirement for supervision. We therefore remand for the district court to clarify the precise terms of the restriction and indicate why the child's best interests justify so substantial a temporal restriction.

Affirmed in part and remanded.