STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1675

In re the Marriage of: Christine Lynn Sypnieski,
f/k/a Christine Lynn Holtz, petitioner,
Appellant,

vs.

Kevin Douglas Holtz,
Respondent.

Filed April 14, 2014
Affirmed in part, reversed in part, and remanded
Hudson, Judge

Crow Wing County District Court
File No. 18-FA-11-913

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

Brook R. Mallak, Thomas C. Pearson, Gammello, Qualley, Pearson & Mallak, PLLC, Baxter, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Stauber, Judge.

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

HUDSON, Judge

Appellant challenges the district court's denial of her motions to end supervised parenting time, end supervision requirements pertaining to her parents (the children's maternal grandparents), endow the parenting-time supervisor with additional reporting

powers, and grant compensatory parenting time. We affirm in part, reverse in part, and remand.

FACTS

This case arises from the marriage dissolution of appellant Christine Sypnieski and respondent Kevin Holtz, the parents of two minor children: D.H. and R.H. In November 2012, the district court held a trial on the issues of custody and parenting time. In the district court's March 11, 2013 judgment and decree, the district court awarded sole legal and physical custody to respondent. Because appellant had mental-health issues and had attempted to manipulate the children to dislike respondent, the district court required appellant's parenting time to be supervised until April 13, 2013. The district court specifically recognized that appellant "must be given an opportunity to resume unsupervised parenting time," but cautioned that she needed to "change her belief system," end her "problem-causing behaviors," and refrain from "put[ting] the children in the middle of the divorce or . . . alienating either child from [respondent]."

On April 17, 2013, the district court issued an amended judgment that required appellant's supervised parenting time to continue indefinitely. The district court noted that it "simply made the wrong decision to allow the graduated return to unsupervised parenting time" because its hope that appellant "would be able to curtail her negative behaviors . . . was simply not realistic." The district court made additional findings that appellant "continued to engage in conflict-creating behaviors" and "made no progress" in assessing her own faults. The district court concluded that it would be "contrary to the children's best interests to allow [appellant] to be afforded any amount of unsupervised

parenting time" until she could show "that she has made progress in therapy" and that "during unsupervised parenting time she will not engage in any problem-causing or conflict-generating behavior."

In June 2013, appellant moved the district court to (1) end the supervision requirement for her parenting time, (2) end a supervision requirement pertaining to contact between the children and appellant's parents (the children's grandparents), (3) empower the parenting-time supervisor to report on respondent's alleged violations of the judgment, and (4) grant compensatory parenting time. In its July 2, 2013 order, the district court denied these requests. In an accompanying memorandum, the district court stated that appellant "has not yet taken adequate steps to address the well-chronicled issues that [required] supervised parenting time." The district court explained that appellant's motion fell short of what the district court required in its April 17 Amended Judgment and Decree: "a good measure of assurance that [appellant] is no longer on a mission to convince others that [respondent] is ill-suited to be a parent" and for appellant to "gain[] full (or at least significant) insight as to her own shortcomings that led to the [district court's] imposition of parenting time." This appeal follows.

D E C I S I O N

I

District courts have broad discretion to decide parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of that discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). In the context of parenting time, a district court abuses its discretion "by making findings unsupported by the evidence or

improperly applying the law." *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010) (citation omitted). A district court may "modify the decision-making provisions of . . . an order granting or denying parenting time" if the "modification would serve the best interests of the child" and "would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5 (2012). A district court may restrict parenting time only if it finds that "parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development" or that "the parent has chronically and unreasonably failed to comply with court-ordered parenting time." *Id.*

Appellant argues that the district court's denial of appellant's motion to end supervised parenting time was an abuse of discretion. We disagree. The district court made factual findings supporting both statutory criteria for restricting parenting time. From the outset, the underlying reason for the supervision requirement was the district court's finding that appellant created conflicts and attempted to alienate the children from respondent. And the district court's modification of its parenting-time order was a response to appellant's failure to comply with the district court's conditions for granting unsupervised parenting time; specifically, appellant did not make sufficient progress in therapy and continued to display problematic, negative behavior. The district court comported with the statute because it based its restriction on the factual finding that unsupervised parenting time would endanger the children's emotional health and development and on the finding that appellant failed to comply with the April 17, 2013 parenting-time order. *See id.*

Appellant argues that these findings are not supported by the evidence because appellant "submitted credible expert evidence from a psychiatrist and counselor indicating that there were no psychiatric issues that would limit her ability to parent her children." Appellant further argues that this evidence indicates that she satisfied the district court's April 17 requirements to end supervised parenting, which mandated that she make progress in therapy and demonstrate that she would not cause further conflict-generating behavior.

On appeal from a bench trial, we afford the district court's factual findings great deference and will not set them aside unless they are clearly erroneous. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002), *review denied* (Minn. June 26, 2002). Because district courts "stand in a superior position to appellate courts in assessing the credibility of witnesses," *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374–75 (Minn. 1990), we give particular deference to a district court's treatment of witness testimony. *See* Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.").

The district court did not credit the evidence of the psychiatrist or of the counselor who submitted documentation on appellant's behalf, nor did it recognize supposed progress documented in a letter from another counselor. In addressing appellant's motion, the district court concluded that it was still concerned that appellant "would engage in behaviors that would introduce high conflict into the children's lives and have the effect of undermining [r]espondent's relationship with them" if she were allowed unsupervised parenting time. Because the district court stands in a superior position to

assess the credibility of this testimony, we defer to the district court's assessment. *See M.D.O.*, 462 N.W.2d at 374–75. Even though appellant technically complied with the April 17 order by obtaining a psychiatric evaluation, the district court was not convinced that she had in fact addressed her behavior issues, which were the gravamen of its concerns.[1] On this record, we are satisfied that the district court's findings were supported by the evidence and that the district court properly applied the law. The district court's denial of appellant's motion to end supervised parenting time was therefore not an abuse of discretion. *See Hagen*, 783 N.W.2d at 215.

II

Appellant challenges the district court's denial of her motion to allow unsupervised contact between the children and their maternal grandparents. Both parties have proceeded as though Minn. Stat. § 518.175 provides the correct statutory framework for grandparent visitation. But a motion for grandparent visitation is properly raised under Minn. Stat. § 257C.08, subd. 2 (2012), which provides that, during family court proceedings, a district court may grant visitation rights "upon the request of the parent . . . of a party [to the proceeding, i.e. appellant]." Put simply, the grandparents themselves must request grandparent visitation. This follows from the basic legal principle that "[e]very action shall be prosecuted in the name of the real party in interest." Minn. R.

[1] Although the district court did not make further factual findings in its June order, that order came just a few weeks after the court's extensive findings in its April 17 order, which contained documentation of appellant's problematic behavior and expressly laid out the conditions for appellant to return to unsupervised parenting time. We are thus convinced that the district court's denial of appellant's June motion was supported by the evidence.

Civ. P. 17.01. Because appellant is not a proper party to enforce her parents' visitation rights, the district court did not abuse its discretion by denying her motion relating to those rights.

III

Contingent on supervised parenting time continuing, appellant also moved the district court to allow the parenting-time supervisor to report either party's violations to the court and the attorneys. The current reporting requirement empowers the supervisor to report on appellant's violations of the district court's March 11, 2013 order, but is silent on whether the supervisor must report a violation by respondent. Appellant's motion was based on her belief that respondent had violated the March 2013 order in the presence of the supervisor by impermissibly exiting his vehicle during parenting-time exchanges. The district court denied the motion.

Because the district court made a finding that appellant was a danger to her children, appellant appears to argue that empowering the parenting-time supervisor to make fuller reports would allow the district court to collect crucial information about the interactions of both parents with the children. Furthermore, appellant argues that fuller supervisor reports would allow the district court to have all necessary information to ensure that both parties follow the order. But appellant cites no legal standard of review or authority for the proposition that the district court erred. We have found no authority suggesting that the district court abused its discretion by determining that the additional reporting requirement was not necessary.

IV

Appellant argues, and respondent concedes, that the district court abused its discretion by failing to make findings pursuant to appellant's motion for compensatory parenting time. Appellant made the motion because she claimed that respondent did not send one of the children for scheduled visits on five occasions. Respondent admitted that he had not made the child available for the parenting time scheduled in the judgment because the child did not want to go.

"If the [district] court finds that a person has been deprived of court-ordered parenting time, the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied." Minn. Stat. § 518.175, subd. 6(b) (2012). Because the district court did not make the statutorily required findings supporting its denial of appellant's motion for compensatory parenting time, we remand this issue for findings under Minn. Stat. § 518.175, subd. 6(b).

Affirmed in part, reversed in part, and remanded.