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Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A14-0978**

In re the Marriage (now dissolved) of:  
Adam Scott Kuehl,  
petitioner,  
Appellant,

vs.

Heather Marie Kuehl,  
Respondent

**Filed March 9, 2015  
Affirmed  
Worke, Judge**

Martin County District Court  
File Nos. 46-FA-12-272, 46-FA-11-567, 46-FA-12-137

Michael P. Kircher, Sunde, Olson, Kircher & Zender, St. James, Minnesota (for  
appellant)

Heather Marie Kuehl, Fairmont, Minnesota (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and  
Connolly, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

Appellant challenges the district court's denial of his motion to expand his  
parenting time. We affirm.

## FACTS

As part of their marital dissolution, appellant Adam Scott Kuehl (father) and respondent Heather Marie Kuehl (mother) established a parenting-time agreement with regard to their son, D.K. The division of time was approximately 56%-44% in favor of mother. The agreement, which was adopted by the district court, contained the following provision:

[T]he parenting time arrangement set forth herein shall be reviewed after one (1) year. The parties' expectation is that [father]'s parenting shall be expanded so that each party has the minor child with them fifty (50%) percent of the time. Any determination regarding the parenting time arrangement for this one (1) year review or anytime thereafter shall be based upon the best interests of the child standard.

At the one-year review, father moved to expand his parenting time to 50%; mother argued that the parenting time should remain unchanged or that her parenting time be increased. The district court conducted a best-interests-of-the-child analysis and ordered that the parenting-time arrangement remain unchanged. The district court acknowledged the expectation of 50% parenting time articulated in the stipulated dissolution judgment, but stated that, because father had serious criminal charges pending against him, it was in the best interests of the child that the arrangement remain unchanged. The charges against father were criminal vehicular homicide and driving while intoxicated, assault with a dangerous weapon, and reckless driving. The district court expressed concern that if father were incarcerated or obligated to undergo treatment as a result of the charges, it could affect the stability of D.K.'s environment.

Father appealed the district court's order.

## DECISION

A district court's determination regarding parenting-time based on the best interests of the child will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). "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).

Father argues that the provision in the stipulated dissolution judgment concerning 50-50 parenting time "should be enforced." But father makes no assertion that the stipulated provision created a binding or enforceable legal obligation.

Father contends that the language of the judgment is "clear and unambiguous." We agree, but it does not support father's argument. The judgment is explicit that parenting time shall be "reviewed" after one year, and that the review shall be based upon the best-interests-of-the-child standard. "Review" means "[c]onsideration, inspection, or reexamination of a subject or thing." *Black's Law Dictionary* 1434 (9th ed. 2009). "Review" contemplates discretion on the part of the district court. Father notes that it was the "expectation" of the parties that parenting time would be changed to 50% each. One with an "expectation" "look[s] forward to the probable occurrence or appearance of." *The American Heritage Dictionary of the English Language* 623 (5th ed. 2011) (defining "expect"). Probability is not certainty. The parties agreed that the parenting arrangement would be reviewed, and, absent a good reason to do otherwise, expected that it would be changed to 50% each. But the district court concluded that good reason

existed to maintain the present arrangement because of the criminal charges against father.

The district court concluded that the charges created uncertainty with regard to the stability of D.K.'s environment. This was reasonable due to the severity of the charges. The district court did not make any assumptions regarding father's guilt or innocence; rather, it stated that the charges had a "limited" effect on the best-interests factors due to the possibility that father's schedule might be unavoidably altered, which in turn could negatively affect D.K.

Father also argues that an analysis of the best-interest factors compels the conclusion that his parenting time must be expanded to 50%. Father disagrees with the district court's conclusion on seven factors. *See* Minn. Stat. § 518.17, subd. 1(a)(1)-(13) (2014) (listing the best-interest factors).

*Wishes of the parents*

This is simply a restatement of father's first argument regarding the expectation for 50% parenting time. It is no more persuasive here.

*Interaction of the child with others*

Father disagrees with the district court's conclusion that this factor was, for the most part, neutral. Father argues that this factor favors him because it is only during his parenting time that mother's extended family are permitted to see D.K., because mother has cut ties with some of her family. Father also points to allegations of harm to D.K. caused by mother's boyfriend.

Mother has cut ties with members of her extended family due to their substance-abuse problems. She asserts that both law enforcement and human services have looked into allegations of harm to D.K. stemming from her boyfriend, but nothing has been found. This comports with the district court's comment that "there have been no findings of abuse by [mother's boyfriend]."

*The length of time the child has lived in a stable, satisfactory environment*

The district court concluded that this factor favored maintaining the current parenting schedule. Father argues that this factor is neutral.

The district court expressed its concerns regarding uncertainty created by father's pending criminal charges. As discussed above, the district court's conclusions were reasonable, and father offers no response to the concern that his schedule might be disrupted, which could negatively affect D.K.

*The mental and physical health of all involved*

The district court found this factor neutral; father argues that it favors him. But father simply highlights facts supportive of his position while failing to mention that these facts are disputed.

Father states that a persistent rash afflicting D.K. gets worse when D.K. is in mother's care, but the district court noted that "[m]other disputes these allegations." Father states that mother does not always attend mental-exercise sessions for D.K., but again "[m]other disputes these allegations." Father's argument presumes that the district court had found the disputed facts in his favor.

*The capacity and disposition of the parties to provide love, affection, guidance, and education*

The district court found this factor neutral, but father alleges that mother inappropriately provided D.K. information regarding father's criminal charges. This conclusory statement, even taking its veracity for granted, is unsupported by any information as to how D.K. or D.K.'s relationship with father was negatively affected by the disclosure.

Father also asserts that mother failed to inform him about play therapy sessions D.K. began while in mother's care. But the district court noted that the play therapy began before mother and father entered into their original agreement which resulted in the stipulated provision in the judgment and when mother had custody of D.K. This seems to be an indication that mother was under no obligation to inform father of the therapy at that time. Even so, father learned about the sessions and both parents now regularly attend, which supports the district court's conclusion that this factor is neutral.

*Domestic abuse factors*

The district court found this factor neutral, noting that allegations of abuse have been made against father and against mother's boyfriend, but no actual findings of abuse have been made against either following investigations.

Father argues that this factor favors him because D.K. "has clearly identified [mother's boyfriend] as harming him." These concerns were investigated. The district court was aware of the allegations made against both father and mother's boyfriend. The district court noted that "[b]oth parties allege that the abuse occurred while [D.K.] was in

the care of the other.” Father simply presumes that the district court had taken D.K.’s allegations against mother’s boyfriend as fact.

*Disposition of each parent to encourage and permit continuing contact with the other parent*

Father argues that mother’s prior acceptance of the original parenting-time provision in the judgment combined with the fact that she is now seeking the same or increased parenting time implies that she does not wish to permit continuing contact between father and D.K.

Mother was under no obligation to not oppose father’s motion. Father has offered no evidence that mother has ever been disruptive of father’s time with D.K. or father’s attempts to continue his relationship with D.K. In fact, the district court stated that father and mother “have been able to cooperate thus far.”

Father’s arguments are insufficient to warrant reversal under an abuse-of-discretion standard.

**Affirmed.**