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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1281**

In re the Marriage of:

Crystol Kevan Caudullo, petitioner,
Appellant,

vs.

Michael Anthony Caudullo,
Respondent.

**Filed May 8, 2017
Affirmed
Rodenberg, Judge**

St. Louis County District Court
File No. 69HI-FA-14-7

Rachel C. Sullivan, Richard E. Prebich, Prebich & Sullivan, P.C., Hibbing, Minnesota (for appellant)

Michael A. Caudullo, Hibbing, Minnesota (pro se respondent)

Considered and decided by Rodenberg, Presiding Judge; Stauber, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RODENBERG, Judge

This is the second appeal in this marriage-dissolution case. Appellant Crystal Caudullo (mother) challenges the district court's parenting-time order after our earlier remand. We affirm.

FACTS

In 2014, mother sought to dissolve the parties' marriage. She requested sole physical custody of the parties' four minor children, alleging that respondent Michael Caudullo (father) had emotionally and physically abused her and the children on multiple occasions. Father initially requested sole legal and physical custody of the children. At trial, he admitted two incidents in which he abused mother, but he denied that he ever abused the children.

After a trial, and as discussed in more detail in our opinion in the earlier appeal, *Caudullo v. Caudullo*, No. A15-0314, 2016 WL 687350, at *3 (Minn. App. Feb. 22, 2016), the district court awarded the parties joint legal and physical custody of the children, and established a parenting-time schedule. The district court partially granted mother's post-trial motion to amend, but it denied mother's requests that she be awarded sole physical custody of the children or, alternatively, that there be a new trial.

Mother appealed. We affirmed in part, reversed in part, and remanded to the district court. *Id.* at *5. We held that the district court incorrectly analyzed the four joint-custody factors enumerated in Minn. Stat. § 518.17, subd. 2 (2014). Specifically, we held that the district court's finding of domestic abuse "triggered the statutory presumption that joint

physical custody is not in the best interests of the children,” and that father had not rebutted the presumption. *Id.* We concluded that “Father’s domestic abuse of mother undermines the ability of the parties to cooperate in sharing joint physical custody.” *Id.* We therefore reversed the district’s court’s award of joint physical custody, determined that mother should be awarded sole physical custody of the children, and remanded the case “to the district court to order parenting time consistent with [our] opinion.” *Id.* at *7.

On remand, the district court declined to hold an additional evidentiary hearing on the issue of parenting time, and issued amended findings of fact and order based on the record as then constituted. In its memorandum of law, the district court stated that it was “uncertain what, specifically, the appellate court is asking be done,” and that it was “perplexed by the appellate court’s conclusion that mother and father are incapable of co-parenting.” Still, the district court amended its findings by adding and deleting findings of fact, and it added a finding that the parties are disposed to have frequent and continuing contact with each other. The district court granted mother sole physical custody of the children, and ordered parenting time on a schedule that was similar to that ordered before the first appeal. But it ordered a “week on/week off” parenting-time schedule during summer months. Mother again moved for amended findings, arguing that the district court did not properly recognize the significance of father’s abuse toward her. She therefore asked the district court to reduce father’s parenting time. The district court denied mother’s motion, stating that father’s domestic abuse “though serious and inexcusable, was situational—not the abuse of on-going power and control,” and finding that the parenting time ordered was in the best interests of the children.

This appeal followed.

DECISION

Mother raises two issues. First, she argues that the district court's findings of fact and award of parenting time are inconsistent with our instructions on remand after the earlier appeal. Second, mother argues that the district court's best-interests findings are unsupported by the record.

I. The district court's findings of fact and its award of parenting time are not inconsistent with our remand instructions.

Mother contends first that the district court failed to follow our remand instructions. A district court's compliance with remand instructions is reviewed for abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). District courts have broad discretion on remand, and they may "act in any way not inconsistent with the remand instructions provided." *Id.*; *Duffey v. Duffey*, 432 N.W.2d 473, 476 (Minn. App. 1988).

Mother identifies four ways in which she claims the district court's order on remand was inconsistent with our remand instructions. First, she argues that the district court's decision to award father a "near equal" share of parenting time is inconsistent with our earlier determination that mother should be awarded sole physical custody. Our earlier opinion remanded to the district court "to reconsider its best-interests findings," noting the oft-quoted holding in *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000), that the best-interests determination is uniquely for resolution by the district court. *Caudullo*, 2016 WL 687350, at *7. We ordered the district court to "review and modify,

where appropriate, its findings on the best-interests factors,” and did not otherwise restrict, limit, or direct the district court in its exercise of discretion. *Id.* at *7. Nothing in our earlier opinion directed the district court to make any particular parenting-time allocation. Our remand directions related only to joint physical custody. The district court was to “review and modify” its best-interests findings concerning parenting time. *Id.* It did so.

Second, mother argues the district court’s finding that “there is no history of domestic abuse in this case” and its characterization of father’s abuse as “situational—not the abuse of on-going power and control” is inconsistent with our conclusion in the earlier appeal that father’s conduct amounted to domestic abuse under Minn. Stat. § 518B.01, subd. 2(a)(3) (2012). *See id.* at *5. The district court’s continuing reluctance to unequivocally denounce father’s admitted actions for what they were—domestic abuse—remains concerning. But the district court did recognize the existence of domestic abuse. Read in context, its finding that “there is no history of domestic violence” seems to refer to the absence of domestic abuse before January 1, 2014. This does not amount to a failure to follow remand instructions.

Third, mother argues that the district court “ignore[d] completely the court of appeals’ reasoning on the [parents’] ability to cooperate.” Mother strongly disagrees with the district court, but does not identify any specific finding on remand that conflicts with our remand instructions, stating only that the order is “contrary to law and public policy.” On careful examination, we see no failure of the district court to follow “law and public policy” on remand.

Finally, mother argues that the district court's order after remand is inconsistent with our previous opinion because it requires her to "constantly navigate disputes with her abuser without an appropriate dispute resolution mechanism in place." However, mother does not specifically identify how the district court's order is inconsistent with our remand instructions.

The district court's order on remand is not inconsistent with our remand instructions.

II. The district court's findings of fact and parenting-time order are supported by the record.

Mother next argues that the district court's findings of fact are unsupported by the evidence and its award of parenting time is not in the best interests of the children.

District courts have broad discretion to decide parenting-time questions, and we will only reverse an award of parenting time if the district court misapplies the law or makes findings of fact not supported by the record. *Newstrand v. Arend*, 869 N.W.2d 681, 691 (Minn. App. 2015), *review denied* (Minn. Dec. 15, 2015). "A district court's findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). "A finding is clearly erroneous if we are left with the definite and firm conviction that the [district] court made a mistake." *SooHoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007). When deciding if a district court's findings of fact are erroneous, we view the record in the light most favorable to the district court's findings. *Vangsness*, 607 N.W.2d at 472. We are not required to discuss the evidence in detail, and only need to consider all the evidence and determine whether it reasonably supports the findings. *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App.

2004). As we noted in our earlier opinion in this case, there is “scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations.” *Caudullo*, 2016 WL 687350, at *7 (quoting *Vangsness*, 607 N.W.2d at 477).

When deciding parenting-time issues, district courts must “grant such parenting time on behalf of the child and a parent as will 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) (2014).

A. We decline to take judicial notice on appeal of an order for protection issued after the district court’s order.

Mother asks that we take judicial notice of an order for protection involving these same parties and issued in January 2017 as part of our review of the district court’s findings on remand regarding the best interests of the children. We generally confine our analysis to the record before the district court when it made its determination, and do not base our decisions on matters outside the record on appeal. *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977); *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 86-87 (Minn. App. 2012).

Here, the order for protection to which mother points was issued *after* the district court order from which mother appeals. The district court could not have considered the order for protection when it decided the parenting time issue. The later order cannot logically establish clear error in the findings that predate it.¹

¹ While we do not consider the order for protection on appeal, the district court retains discretion to modify or defer its grant of parenting time to father to protect the ongoing interests of the children in this case while the appeal to this court is pending, *Perry v. Perry*,

B. The record supports the district court’s finding of fact and its parenting-time order.

Mother argues that eight of the district court’s factual findings are unsupported by the record. However, mother’s arguments all revolve around her disagreement with the district court’s decision to give more weight to father’s testimony and the guardian ad litem’s (GAL’s) report than it gave to her own testimony. Many of mother’s arguments derive from her claim that the district court incorrectly relied on the GAL’s second report—which we discredited in the previous appeal—to find that father has a good relationship with the children and that his abuse of mother did not affect the well-being of the children. However, the challenged findings are all supported by the GAL’s first report, which found that the children are well-adjusted, that the children desired to spend time with father, and that father is a capable parent. These findings are also supported by father’s testimony. While we do not minimize the dangers of domestic abuse, or the impact of the abuse that father admitted to committing, it is one of many best-interests factors relating to parenting time. We view the evidence on appeal in the light most favorable to the district court’s findings of fact. *Vangsness*, 607 N.W.2d at 472. In that light, the record supports the district court’s findings of fact. The district court is best positioned to resolve credibility and best-interests issues, and we defer to it.

749 N.W.2d 399, 403 (Minn. App. 2008), and may in the future, on an appropriate motion, consider the order for protection together with all other relevant evidence.

Because the district court's findings of fact are supported by the record, and because these findings support the district court's conclusions and its parenting-time order, the district court acted within its discretion.

Affirmed.