STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1444

In re the Marriage of:

Dawn Angela Swenson, f/k/a Dawn Angela Pedri, petitioner,
Respondent,

vs.

Shawn Anthony Pedri,
Appellant,

and

County of Dakota,
Intervenor.

Filed September 18, 2017
Affirmed
Jesson, Judge

Dakota County District Court
File No. 19AV-FA-10-644

Dawn Angela Swenson, Mendota Heights, Minnesota (pro se respondent)

Paul P. Sarratori, Mesenbourg & Sarratori Law Office, P.A., Coon Rapids, Minnesota (for appellant)

James C. Backstrom, Dakota County Attorney, James W. Donehower, Assistant County Attorney, Hastings, Minnesota (for intervenor)

John M. Jerabek, Tuft, Lach, Jerabek & O'Connell, PLLC, Maplewood, Minnesota (for guardian ad litem)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant-father Shawn Anthony Pedri asks us to reverse two district court orders amending a parenting-time schedule, denying his motion to hold respondent-mother Dawn Angela Swenson in contempt of court, and ordering mother to pay certain extracurricular expenses. We affirm.

FACTS

The parties married and had two sons together before divorcing in 2011. The district court issued two orders arising out of that divorce, dated June 30, 2016, and July 13, 2016, both of which father now challenges.

Order modifying parenting-time schedule

The district court appointed a guardian ad litem to prepare a report and make recommendations regarding the parties' parenting-time schedule. The guardian ad litem met with the parties, their children, educators from the children's schools, parenting-time evaluators who had worked with the parties, and personal references. The guardian ad litem also reviewed the court file, reports from former parenting-time evaluators, a custody evaluation prepared for the court, and the children's school records and medical records.

After this investigation, the guardian ad litem submitted a report which included findings on how the parties and children interact, as well as a recommendation for an amended parenting-time schedule. The parties have had an acrimonious relationship since

their separation, the guardian ad litem found, and have been unable to cooperate effectively because of their "extremely different communication strategies." She also reported that while nothing could "change the parties' disdain for one another," if no action was taken, it would "only be a matter of time before this [disdain] affects the children." Because of this, the guardian ad litem recommended that the district court amend the parenting-time schedule to decrease contact between the parents. To do this, the guardian ad litem recommended the district court give one additional evening every two weeks to mother. The district court accepted this recommendation and amended the parenting-time schedule accordingly.

Father moved to strike the guardian ad litem's report from the record. After a hearing where the guardian ad litem testified and was subjected to cross-examination, the district court denied father's motion and adopted the guardian ad litem's report and recommendations.

Order regarding extracurricular expense reimbursement requests

The original judgment and decree ordered the parties to split certain childcare costs. Specifically, it ordered that

> Both parties shall share in the cost of all extracurricular activities . . . . The division of the costs shall be pursuant to the Pics (percentages) utilized for child support. The children may not be enrolled in any new extracurricular activity without the written consent of the other party. New extracurricular activity means any activity the children have not previously been involved in. It does not mean a new or changing season of an activity or sport they have previously participated in.

Father moved to hold mother in contempt for failing to reimburse him for her portion of certain expenses and order her to pay 58 unpaid reimbursement requests father had already sent. The district court declined to hold mother in contempt of court. It also analyzed each of the 58 reimbursement requests and ordered mother to pay some, but not all, of them.

In this appeal, father argues the district court abused its discretion in issuing both orders.

D E C I S I O N

Father argues that the district court abused its discretion by (1) failing to strike the guardian ad litem's report, (2) adopting the guardian ad litem's recommendation to modify the parenting-time plan, (3) denying his motion to hold mother in contempt of court, and (4) ordering mother to pay only some of his 58 reimbursement requests. We address each issue in turn.

I. The district court did not abuse its discretion by denying father's motion to strike the guardian ad litem's report.

Father argues that the district court abused its discretion in 11 ways when it appointed the guardian ad litem and then denied his motion to strike the guardian ad litem's report from the record. Most of these arguments fall into three broad categories: the district court should have appointed a different person to be the guardian ad litem; the guardian ad litem was biased against father; and the guardian ad litem's report was not based on a thorough investigation. Father's remaining arguments regarding the district court's decision to not strike the guardian ad litem's report are based on mere assertion and not

supported by argument or authority, and are therefore forfeited. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).

Appointment of a specific person to act as guardian ad litem

Father argues that the district court abused its discretion by not appointing a specific psychologist who had previously worked with both parties to serve as the guardian ad litem.

Generally, we will not reverse a district court's decision to appoint a guardian ad litem absent an abuse of discretion. *Reed v. Albaaj*, 723 N.W.2d 50, 59 (Minn. App. 2006). More fundamentally, a district court may abuse its discretion by appointing a guardian ad litem selected by one of the litigating parties, because that person could not be considered a disinterested party. *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 409 (Minn. 1982). The district court acted properly by declining to appoint the psychologist selected by father.

Bias against father

Father argues that the district court abused its discretion by not striking the guardian ad litem's report after father reported she was biased against him. To support his accusation of bias, father points to his personal interactions with the guardian ad litem as well as the guardian ad litem's history as an attorney. Specifically, father notes that during the guardian ad litem's visit to his home, she declined his invitation to hang up her coat, asked repeated questions about whether he abused mother, and declined to review homework logs created by father. He also argues that the guardian ad litem's history of representing women while she was an attorney at Legal Services in Minnesota shows that she was biased against him.

A district court has discretion to accept evidence, including a guardian ad litem report, into the record. *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Guardian ad litem reports "made for the purposes of a court-ordered evaluation are admissible as business records under Minn. R. Evid. 803(6)." *Id*. A district court does not abuse its discretion by admitting a court-ordered guardian ad litem report if the parties are given an opportunity to cross-examine the author of the report. *Id*. Father was given an opportunity to cross-examine the guardian ad litem, so the district court did not abuse its discretion by declining to strike the report from the record. Even if we reviewed the evidence produced by father without deference to the district court and found it credible, it is insufficient to show bias on the part of the guardian ad litem. The actions he describes do not rise to the level of bias.

Thoroughness of guardian ad litem's investigation

Father argues that the district court abused its discretion by not striking the guardian ad litem's report because it was not based on a thorough investigation. Specifically, father claims that the guardian ad litem's report does not accurately represent the statements made by his personal reference. Father also contends that the guardian ad litem failed to ask the children about their custody preferences, the report was based on false statements by mother, and the guardian ad litem admitted her visit to mother's house was not a typical evening.

Father's first three claims are not supported by the record. A comparison of the affidavit submitted by father's personal reference and the guardian ad litem's report shows that the report accurately reported the personal reference's statements. Also, the record

shows that the guardian ad litem spoke with the children about living with mother and father, and found that the children were content at both homes. Finally, the guardian ad litem accurately reported the parties' dispute over whether mother's statement that she accompanies the children to their bus stop every day is false. While the guardian ad litem's report was not always favorable to father, father has not shown any reason why the district court should not have accepted the report into the record.

Father's final claim—that the guardian ad litem admitted she did not visit mother on a typical evening—is not a criticism of the guardian ad litem's report, but rather is proof of the report's thoroughness. The guardian ad litem reported that she did not believe her visit with mother was representative of a typical night, providing context to her investigation. This type of analysis provides helpful context to the report. Because father has not shown any error, we will not reverse the district court's decision on these grounds. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975).

The district court did not abuse its discretion by accepting this report into the record. *Id*.

II. The district court did not abuse its discretion by modifying the parenting-time schedule.

District courts have broad discretion to make parenting-time decisions. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). Substantial modifications to a parenting-time schedule must be based on the best interests of the children factors set out in Minn. Stat. § 518.17 (2016). Minn. Stat. § 518.175, subd. 5 (2016); *Chapman v. Chapman*, 352

N.W.2d 437, 441 (Minn. App. 1984) (noting substantial modifications to parenting-time schedules must be based on the children's best interests).

Father argues that the district court abused its discretion by modifying the parenting-time schedule without making findings. But the district court did make findings which clearly show that the modifications were made in the best interests of the children. The district court found that the parties were "plagued" by tension between them and an inability to communicate effectively with each other regarding their children. As a result, the district court determined "[i]t is in the best interests of these children for the [district court] to reduce conflict by modifying the schedule . . . ." The district court clarified that it was "not punishing [father] or rewarding [mother]" with the modification, only that "[t]he conflict needs to stop." These findings show that the district court skillfully used its discretion to make a modification that serves the best interests of the children.

III. The district court did not abuse its discretion by denying appellant's motion to hold mother in contempt of court.

A district court has discretion to use its contempt powers to "secure compliance with an order presumed to be reasonable," but is also free to compel compliance by methods other than contempt. *Hopp v. Hopp*, 279 Minn. 170, 173-74, 156 N.W.2d 212, 216 (1968). We review a district court's decision regarding use of its contempt powers for abuse of discretion. *In re Marriage of Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). The discretion granted to district courts in civil cases is "far in excess of that which exists in criminal cases." *Hopp*, 279 Minn. at 174, 156 N.W.2d at 216.

Father argues the district court abused its discretion by denying his motion to hold mother in contempt of court after she failed to comply with existing court orders or attend arbitration to resolve outstanding reimbursement requests. We defer to the district court's determination that holding mother in contempt would not have helped secure her compliance with these orders.

The district court found that mother had legitimate reasons to refuse father's requests for reimbursement and that the parties "share equally in causing the failure to communicate and resolve child-related expenses." The record clearly shows that mother's failure to follow court orders is based on the parties' crippling inability to communicate or cooperate. The district court astutely concluded that holding mother in contempt would not remedy the parties' communication problems which are at the root of mother's noncompliance.

IV. The district court did not abuse its discretion by ordering mother to pay only some of the extracurricular reimbursement requests submitted by father.

A district court has broad discretion in determining child support and we will reverse for abuse of discretion only if it resolves the question in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Father argues that the district court abused its discretion when denying a portion of the 58 requests for reimbursement he submitted to mother related to extracurricular and medical expenses. We disagree. The district court's determinations on each of father's 58 reimbursement requests were soundly reasoned and supported by the record.

The original judgment and decree ordered the parties to "share in the cost of all extracurricular activities as of [Nov. 23, 2011]." The judgment and decree defined "new extracurricular activit[ies]" as "any activity the children have not previously been involved in. It does not mean a new or changing season of an activity or sport they have previously participated in." The judgment and decree ordered that the children could not be enrolled in additional activities without the written consent of the other party. The parties were also ordered to contribute to unreimbursed medical expenses.

Father submitted 58 requests for mother to reimburse him for expenses he incurred while enrolling the children in multiple hockey leagues, as well as optional medical treatments. The district court determined that some of the hockey expenses, including purchasing new gear for the children and enrolling them in multiple leagues over mother's objection, were unreasonable and mother was not required to contribute to those expenses.[1] This is a reasonable decision. Even though the judgment and decree requires mother to pay part of the expenses related to the children's hockey activities, the judgment must be construed in a reasonable fashion and it is unreasonable to interpret the judgment and decree as allowing father to unilaterally incur ever-increasing expenses for multiple extracurricular activities and then hold mother responsible for a portion of those costs.

[1] For example, the district court determined that mother was not required to reimburse father for the costs of enrolling the children in MN Made Hockey. While the district court found that the children were enrolled in hockey prior to the divorce, it determined that "[e]nrolling the children in both association and MN Made Hockey programs is excessive" and that father enrolled the children in these programs over mother's objections.

Similarly, while the judgment and decree requires the parties to share the costs of the children's unreimbursed medical expenses, the district court reasonably found that father could not seek reimbursement for a specific optional medical treatment he sought against mother's objections.

In its careful order, the district court acted within its discretion in denying some of father's reimbursement requests.

Affirmed.