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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1173**

In re the Marriage of:
Linde Anne Sayen, petitioner,
Respondent,

vs.

Michael Stephen Sayen,
Appellant.

**Filed April 2, 2018
Affirmed
Kirk, Judge**

Washington County District Court
File No. 82-FA-15-4776

Erin K. Turner, Samantha J. Graf, Johnson/Turner Legal, Forest Lake, Minnesota (for respondent)

Michael Stephen Sayen, White Bear Lake, Minnesota (pro se appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this child-custody and parenting-time dispute, appellant-father challenges the district court's award of sole legal and sole physical custody to respondent-mother, with supervised parenting time for appellant-father, arguing that the district court erred in finding no domestic abuse and by making several findings that are unsupported by the

evidence. Father also argues that the district court erred in appointing a parenting-time expeditor (PTE), and that the court abused its discretion in denying his motion to hold mother in civil contempt of court. Because the district court did not err or abuse its discretion, we affirm.

FACTS

Appellant-father Michael Stephen Sayen and respondent-mother Linde Anne Sayen married on May 29, 2012. They are the parents of one minor child, born later in 2012.

On October 8, 2015, mother filed a petition for legal separation, which she amended to a petition for dissolution of marriage. Mother sought sole legal and sole physical custody of child. Mother alleged that, during their marriage, father controlled her activities, who she talked to, and believed that she should not work. Mother claimed that he defined her role in the marriage according to his interpretation of the Bible, he expected her to obey him and submit to his authority, and expected her to attend to all of child's needs and all of the household duties. Father partially denied mother's allegations and requested joint legal and joint physical custody of child and unsupervised parenting time for both parties.

In February 2016, mother and father stipulated to a temporary order granting father parenting time with child three days per week and every other Sunday, pending a permanent resolution of legal and physical custody of child. The parties agreed that mother could be present during father's parenting time. The district court ordered a neutral custody evaluation, which was conducted by two evaluators.

The custody evaluators interviewed father and mother, conducted parenting visits at both homes, spoke to references for both, and reviewed medical records and other

documentation provided by both parties, including psychological evaluations conducted on father. Father was diagnosed with ADHD and a learning disorder, and professionally supervised parenting time was recommended for father until he completed a structured parenting class. The custody evaluators analyzed the best-interest factors and recommended that mother receive sole legal and sole physical custody of child. They further recommended that father receive weekly supervised parenting time in a therapeutic setting with monitoring and coaching from a developmental clinical psychologist, and that any unsupervised parenting time for father be contingent on the recommendation of the psychologist and other therapists.

Father filed a motion for contempt of court against mother in March 2017, alleging that mother violated the February 2016 temporary order by failing to provide father his scheduled parenting time with child on two occasions in February 2017 and on twelve occasions in March 2017. The district court did not address father's motion before trial, which was held on April 18, 19, and 20, 2017.

Mother, father, child's maternal grandmother, mother's stepfather, and both custody evaluators testified at the three-day bench trial. The district court awarded sole physical and sole legal custody to mother, concluding that the award was in the best interests of child. The court ordered supervised parenting time for father, granting him one visit per week at an early childhood family education class, one visit per week in a therapeutic setting in the presence of a developmental clinical psychologist of father's choice, and one two-hour visit per week monitored by a parenting-time supervisor. The district court appointed a PTE pursuant to Minn. Stat. § 518.1751 (2016) to resolve parenting-time

disputes. Finally, the district court did not find that mother was in contempt of the temporary order.

Father appeals.

DECISION

I. The district court did not abuse its discretion by awarding sole legal and sole physical custody to mother.

“The district court has broad discretion in making child custody . . . determinations.” *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). “Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We defer to the district court’s findings of fact unless they are clearly erroneous, and we defer to the district court’s credibility assessments. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). A finding of fact is clearly erroneous if we are “left with the definite and firm conviction that a mistake has been made.” *Medvedovski v. Medvedovski*, 903 N.W.2d 646, 649 (Minn. App. 2017) (quoting *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008)).

In Minnesota, custody and parenting-time determinations are made based on the best interests of the child. Minn. Stat. § 518.17, subd. 1(a) (2016). In assessing the child’s best interests, “the [district] court must consider and evaluate all relevant factors,” as enumerated in the statute. *Id.* The “law leaves scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). “[T]he party challenging the findings must show that despite viewing [the] evidence in the light most favorable to the

[district] court’s findings . . . , the record still requires the definite and firm conviction that a mistake was made.” *Id.* at 474. “That the record might support findings other than those made by the [district] court does not show that the court’s findings are defective.” *Id.*

A. Domestic-abuse best-interest factor, Minn. Stat. § 518.17, subd. 1(a)(4)

The district court must consider “whether domestic abuse, as defined in section 518B.01, has occurred in the parents’ or either parent’s household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(4). Minn. Stat. § 518B.01, subd. 2(a) (2016), defines domestic abuse as “(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . criminal sexual conduct . . . or interference with an emergency call” if “committed against a family or household member by a family or household member.”

The record shows that father alleged incidents of violence by mother, which were reviewed as part of the neutral custody evaluation. Father alleged that mother punched him in the eye, kicked him at a restaurant, punched him several times at a gas station, pounded his chest, ended his 911 phone call, and pulled back his finger to pry child out of his hands. Father testified that he attempted to tell the custody evaluators that mother was abusive and violent toward him during their relationship, but that they did not take his allegations seriously.

At trial, mother denied pounding father’s chest and testified that she did not recall hitting or punching him. With regard to kicking father, mother testified “I think we kicked

each other, I think is what happened.” The custody evaluators testified that father provided a picture showing a bruise on mother’s leg, which father claimed showed that mother kicked him. Father did not testify at trial about any specific instances of mother hitting, punching, or kicking him, but he did repeat the allegation that mother ended a 911 call that he made concerning child. Father also acknowledged that he may have used the Bible too harshly and more than he should have in his treatment of mother, and that he acted inappropriately by “Bible bash[ing] her.”

The district court found that “[t]here has been no verified domestic abuse as defined by Minn. Stat. § 518B.01.” The district court also found that mother’s testimony was credible, that father “created an emotionally and verbally abusive environment [for mother],” and that father “is likely to provide the same kind of environment for his daughter . . . due in large part to his [religious] belief that he is required to do so.” The district court also discredited father’s allegations that mother “struck him in the eye” and “kicked him under the table in a restaurant” and found that the incidents did “not rise to the level of domestic abuse.” The district court concluded that the domestic-abuse best-interest factor favored neither mother nor father.

Father disputes the district court’s findings and argues that the district court erred in determining that no domestic abuse occurred between the parties. Father also claims that he was “religiously discriminated” against throughout the proceedings.

Here, the record shows that father provided minimal testimony about the domestic-abuse allegations he previously made against mother, and did not present evidence that mother harmed or injured him. We defer to the district court’s credibility determination

that mother testified credibly about the alleged violence and abuse between the parties during their marriage, and on this record, it was not clearly erroneous for the district court to conclude that mother did not commit domestic abuse against father, and that domestic abuse did not exist between the parties as statutorily defined. The record also supports the court's finding that father created an emotionally and verbally abusive environment, and father's claim that the district court discriminated against him because of his religion has no merit. Father admitted to treating mother inappropriately on the basis of his religious beliefs. Father's argument conflates the conclusions of his psychological diagnostic assessment with those of the district court. Given this record, the district court did not err in concluding that the domestic-abuse factor favored neither party.

B. Alienation of custodial rights

Father argues, without legal analysis, that the district court erred in its custody determination because mother "alienated many [of father's] legal rights and custody rights" during the divorce proceedings. Father also contends that the district court erroneously found that his actions were "unreasonable or dangerous," even though his actions were based on his justifiable frustration with his lack of parenting time. Father does not cite to a specific best-interests factor in challenging the district court's findings.

Father does not support his argument with legal analysis and merely cites to caselaw with no further explanation. Issues not adequately briefed on appeal are not properly before this court. See *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971) ("An assignment of error based on mere assertion and not

supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."").

Even if we elected to consider the issue, the record shows no prejudicial error on mere inspection. The district court made no finding that father was "dangerous." The district court found, and mother's and father's testimony at trial supports, that father, at times, made "stringent and unreasonable" requests to follow the temporary parenting-time order, even though the parties had agreed to follow a different schedule. Mother and father testified that they had an oral agreement to deviate from the temporary order and they followed the different parenting-time schedule for several months, but that later they could not agree on continuing the new schedule, establishing a different schedule, or reverting back to the schedule in the temporary order. The district court addressed the ongoing dispute and significant conflict between the parties, and noted that father was "understandably frustrated" by fluctuations in parenting time. The court also found that because mother and father were frequently at an impasse over parenting time, mother "felt she had to resort to subterfuge to accommodate [child's] schedule changes while putting off father." The district court's findings are supported in the record and are not clearly erroneous.

Because father has not met his burden to show that the findings he challenges in the district court's custody order are clearly erroneous or unsupported by the record, we conclude that the court did not abuse its discretion in awarding mother sole legal and sole physical custody.

II. The district court did not abuse its discretion in making its parenting-time award.

“The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion.” *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). Findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978).

“In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child.” Minn. Stat. § 518.175, subd. 1(g) (2016). In determining a parenting-time award, the district court evaluates the child’s best interests, including “any physical, mental, or chemical health issue of a parent that affects the child’s safety or developmental needs,” and “the willingness and ability of each parent to provide ongoing care for the child.” Minn. Stat. § 518.17, subd. 1(a)(5), (7). The district court concluded that both best-interest factors favored mother.

In evaluating father’s mental health with respect to child’s needs and father’s ability to provide care to child, the district court found that “[father] suffers from challenged executive functioning . . . and will need ongoing help in identifying and practicing effective strategies to improve the way he behaves with [child]” The district court also found that “[father’s] untreated mental health issues—ADHD, learning disability, and impaired executive functioning—present a significant obstacle to providing ongoing care and learning the skills which will meet [child’s] special needs.”

Father argues that the district court erred in giving too much credence to unsupported findings made about his mental health and diagnoses, including his “impaired executive functioning.” Father further asserts that the evidence did not overcome the presumption that he should receive a minimum of 25% parenting time under Minn. Stat. § 518.175, subd. 1(g).¹

The record indicates that the district court relied on the testimony and reports of the custody evaluators and the results of father’s psychological evaluations in weighing father’s ability to meet child’s needs based on his mental health. Father’s neuropsychological examination found that father exhibited reduced executive functioning which resulted in day-to-day difficulties with attention and mental organization, and father’s psychological diagnostic assessment concluded that he was “unable to be primarily responsible for child’s care and well-being” without supervision until he developed sufficient parenting skills. The custody evaluators concluded that father’s mental health affected his ability to parent child in a “developmentally appropriate way” and that he needed assistance to implement effective parenting strategies. This record supports the district court’s finding that father’s mental health impacted his ability to take care of child without coaching and assistance.

Here, the district court concluded that the evidence in the record, and the child’s best interests, supported an award of limited, supervised parenting time for father. Given

¹ Father also argues, without supporting legal analysis, that the district court violated his parental rights under the constitution. Because issues not adequately briefed on appeal are not properly before this court, we decline to address it. *See Schoepke*, 290 Minn. at 519-20, 187 N.W.2d at 135.

the court's broad discretion in determining parenting time, father has not shown that the court's findings under the best-interests factors are clearly erroneous or unsupported by the record, and we are not left with the definite and firm conviction that a mistake has been made. We conclude that the district court did not abuse its discretion in awarding father three supervised parenting-time visits per week, with the option to incorporate unsupervised parenting time as recommended by a developmental clinical psychologist in consultation with the parties' therapists.

III. Father's challenge to the appointment of a PTE is not properly before this court.

On the request of either party, "the [district] court may appoint a parenting time expeditor to resolve parenting time disputes" Minn. Stat. § 518.1751, subd. 1 (2016). Under subdivision 1a, "[a] party may not be required to refer a parenting time dispute to a parenting time expeditor under this section if: (1) one of the parties claims to be the victim of domestic abuse by the other party" *Id.*, subd. 1a (2016). We review the district court's decision on whether to appoint a PTE under an abuse-of-discretion standard. *Nolte v. Mehrens*, 648 N.W.2d 727, 731 (Minn. App. 2002).

Father argues that the district court erred in appointing a PTE because he claimed to be a victim of domestic abuse by mother. Father cites to Minn. Stat. § 518.1751, subds. 1 and 1a, to suggest that the exception for domestic abuse under subdivision 1a limits the court's ability to appoint a PTE under subdivision 1. Father's argument appears to equate the circumstances in which a party may not be required to refer a parenting-time dispute to a PTE under Minn. Stat. § 518.1751, subd. 1a, with a limit on the district court's appointment authority under Minn. Stat. § 518.1751, subd. 1. This interpretation is not

necessitated by the statute's plain language, and father offers no further legal analysis for it.

Further, our review of the record indicates that father never presented this issue to the district court. Because father raises this issue for the first time on appeal, the question is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts generally consider only those issues presented and considered by the district court); *Thompson v. Thompson*, 739 N.W.2d 424, 431 (Minn. App. 2007) (applying *Thiele* in declining to reach issue raised for first time on appeal of the denial of a motion to reopen judgment in dissolution of marriage). For these reasons, we deny father's request to reverse the district court's ruling.

IV. The district court did not abuse its discretion in denying father's motion to hold mother in civil contempt of court.

A district court is afforded broad discretion in deciding whether to find a party in civil contempt. *Tatro v. Tatro*, 390 N.W.2d 461, 464 (Minn. App. 1986). A district court reviews (1) whether the party "fail[ed] to comply with a court order, and (2) if so, whether conditional confinement is reasonably likely to produce compliance fully or in part." *Id.*

Following trial, the district court found that mother had not withheld child from father with the intention of denying him parenting time, and that mother acted in child's best interests given the circumstances. The court found that mother was not in civil contempt of the temporary order. Father argues, without citing any legal authority, that the district court made erroneous findings in denying his motion to hold mother in civil contempt of court.

Here, the district court found mother's testimony credible that, during father's parenting time, she suffered from influenza for over a week, as corroborated by a doctor's note and testimony by her mother, and that child also became ill for several days following mother's illness. Further, the evidence supports that the custody evaluators recommend that father's parenting time be supervised, and that mother was allowed to be present during father's parenting time. The district court found on this record that mother acted reasonably, and in child's best interests, by determining that it was not safe for father to have unsupervised parenting time with child without mother present. Because the district court's findings are supported by the record, we conclude that the court did not abuse its broad discretion in denying father's motion to hold mother in civil contempt.

Affirmed.