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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1858**

In re the Marriage of:
Danielle M. Kerr, n/k/a Danielle M. Dubois, petitioner,
Respondent,

vs.

Jonathan R. Kerr,
Appellant,

County of Dakota,
Intervenor.

**Filed July 16, 2018
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19-F8-07-010912

Christine J. Cassellius, Ryan J. Bies, Dougherty, Molenda, Solfest, Hills & Bauer P.A.,
Apple Valley, Minnesota (for respondent)

Jonathan R. Kerr, Eagan, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

On appeal from the district court's denial of his motion to modify parenting time,
appellant argues that the district court abused its discretion by failing to analyze all of the

statutory best-interests-of-the-child factors and that the district court's findings are clearly erroneous. We affirm.

FACTS

Appellant Jonathan Kerr and respondent Danielle Kerr, n/k/a Danielle Dubois married in 2002. They divorced in 2008 and share joint legal and joint physical custody of their two minor children, son (age 12) and daughter (age 11). Kerr pays child support to Dubois. Kerr and Dubois each have a nonjoint child.

Before their 2008 dissolution trial, Kerr and Dubois agreed to a 5-4-3-2 parenting-time schedule. Over a two-week period, Dubois has the children for a total of eight nights, including Sunday nights; Kerr has the children for six nights. This parenting-time schedule remains in effect to date.

This is Kerr's fourth appeal to this court since entry of the dissolution judgment. *Kerr v. Kerr*, No. A12-1663, 2013 WL 1859116 (Minn. App. May 6, 2013), *review denied* (Minn. July 16, 2013); *Kerr v. Kerr*, No. A11-1128, 2012 WL 612315 (Minn. App. Feb. 27, 2012); *Kerr v. Kerr*, 770 N.W.2d 567 (Minn. App. 2009). The full extent of Kerr's motions and appeals are summarized in our 2012 and 2013 unpublished opinions. *Kerr*, 2013 WL 1859116, at *1; *Kerr*, 2012 WL 612315, at *6. Since the dissolution, Kerr has brought at least six motions in district court requesting modification of parenting time and child support, all of which were denied. In some of those motions, Kerr argued that the current parenting-time schedule should be modified to provide him with Sunday overnights.

In August 2017, Kerr moved again to modify the parenting-time schedule to a week on/week off arrangement in order to reduce the number of transitions between houses. The district court denied the motion, determining that modification of the parenting-time schedule is not in the best interests of the children and that the current schedule provides emotional stability for the children and allows Dubois to prepare them for the school week on Sunday nights. This appeal follows.

D E C I S I O N

Kerr argues that the district court did not consider all the relevant best-interests factors, that the district court's factual findings are not supported by the record, and that the district court misapplied the law. A district court has broad discretion when deciding parenting-time matters. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). Our review "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Id.* (quotation omitted). We review the district court's factual findings for clear error. *Id.* at 599.

Under Minn. Stat. § 518.175, subd. 5(b) (2016):

If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Consideration of a child's best interest includes a child's changing developmental needs.

District courts are not required to make detailed findings on each best-interests factor under Minn. Stat. § 518.17, subd. 1(a) (2016), when deciding parenting-time modification

motions; instead, district courts must consider only the relevant best-interests factors.
See id.

In evaluating the best interests of the child for purposes of determining issues of parenting time, the district court must consider and evaluate all relevant factors, including:

(1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;

(2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

(4) whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship . . . ;

(5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;

(6) the history and nature of each parent's participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child's well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to

utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a).

In its decision on Kerr's parenting-time modification motion, the district court considered the following relevant best-interests factors: (1) the children's physical, emotional, and other needs; (2) any special medical, mental health, or educational needs; (3) the reasonable preferences of the children; (4) the history and nature of each parent's participation to provide ongoing care; (5) the effect on the children's well-being and development of changes to home, school, and community; (6) the effect of the proposed arrangements on the ongoing relationships between the children and each parent; (7) the benefit to the children on maximizing parenting time with both parents and the detriment to the children in limiting parenting time with either parent; and (8) the willingness and ability of the parents to cooperate in the rearing of the children. Minn. Stat. § 518.17, subd. 1(a).

I.

Kerr argues that the district court misapplied the best-interests factors, reasoning that the district court relied on non-child-related conduct and did not consider all relevant best-interests factors.

A. Non-child-related conduct.

Kerr contends that the district court erred by relying on non-child-related conduct in determining that modification of the current parenting-time schedule is not in the best interests of the children. In analyzing the best-interests factors, the district court shall not

consider “conduct of a party that does not affect the party’s relationship with the child[ren].” Minn. Stat. § 518.17, subd. 1(b)(4) (2016).

In its order denying Kerr’s motion, the district court provided the procedural history of the case. In the procedural history, the district court noted that Kerr has initiated nine court proceedings in district court, appealed to this court three times, and moved to modify parenting time so that he could reduce his child-support obligation. Kerr maintains that these facts constitute non-child-related conduct and that the district court erroneously relied on them. We disagree. The district court did not include these facts in its best-interests analysis. Rather, the district court discussed these facts as part of the procedural history of the case. Therefore, the district court did not erroneously rely on non-child-related conduct in analyzing the best-interests factors.

B. The children’s changing developmental needs.

Kerr contends that the district court did not consider the children’s changing developmental needs. One of the best-interests factors includes the “willingness and ability of each parent to provide ongoing care for the child; to meet the child’s ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time.” Minn. Stat. § 518.17, subd. 1(a)(7).

Despite Kerr’s contention, the district court did consider the effect of Kerr’s proposed schedule on the children’s changing developmental needs. The district court determined that adopting the proposed week on/week off schedule, thereby increasing Kerr’s parenting time, would adversely affect the parties’ daughter because it would lead to Kerr spending more time coaching their son’s hockey team. The district court stated

that, during the winter months, Kerr “spends most of his time with [son] related to his hockey activities.” The district court found that if Kerr’s parenting time were increased, their daughter “would be forced to spend more time watching [father] and [son] pursue their hockey interests,” especially this year because Kerr “will coach [his son’s] hockey team.”

The record supports the district court’s findings on the children’s changing needs. A 2015 email from Dubois to Kerr indicates that their daughter was upset because Kerr made her watch their son’s hockey practice and tag along to the store when Kerr bought him new hockey skates. A 2016 email exchange establishes that Kerr planned on spending time watching their son’s hockey practice on their daughter’s birthday. In another 2016 email, Dubois stresses that their daughter is “struggling with the attention [son] gets with his sports and not getting to spend as much one on one time with [father] as [son] does.” A 2017 email summarizes a meeting between a school counselor and daughter during which they came up with a list of self-care practices that she could use “to cope with her feelings of boredom and sadness when at her father’s.” In April 2017, their daughter met with a licensed professional clinical counselor for a mental-health evaluation; during the evaluation, she identified “sadness related to not having a closer relationship with her father.”

The district court’s findings on the children’s changing developmental needs are supported by the record. Therefore, the findings are not clearly erroneous. And even if there is evidence in the record that could support other findings, the fact “[t]hat the record might support findings other than those made by the trial court does not show that the

court's findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000); see *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998) (stating that although appellant's recitation of facts “might prompt another trier of fact to different findings, because there is sufficient contradictory evidence to reasonably support the trial court's findings,” appellant's evidence “does not render the trial court's findings clearly erroneous”), *review denied* (Minn. Feb. 18, 1999).

C. The proposed week on/week off schedule.

Kerr contends that the district court did not consider the proposed week on/week off schedule because there are “no findings which indicate any consideration was made by the court regarding the proposed week/on off schedule which reduces transitions between homes from 110 to 63 per year.” We disagree.

First, the district court did consider the proposed schedule. The district court explained that if the schedule were changed, the children would not be prepared for the school week because Kerr has often failed to address the children's homework and educational needs, and Dubois does the better job of preparing the children for school on Sunday nights. Second, district courts are not required “to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors.” *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

D. Legislative intent of Minn. Stat. § 518A.36 (2016).

Kerr also argues that the district court erred “in not recognizing how significantly [Minn. Stat. § 518A.36] relates to this case and the legislative intent behind making child-

focused decisions.”¹ The statute on which Kerr relies, Minn. Stat. § 518A.36, governs parenting-expense adjustments for purposes of calculating child support. Essentially, Kerr contends that the district court erred because it did not consider a child-support statute in determining Kerr’s motion to modify parenting time. We disagree. There is no language in the best-interests statute or the parenting-time-modification statute requiring a district court to consider the legislative intent behind Minn. Stat. § 518A.36. See Minn. Stat. §§ 518.17, subd. 1, .175, subd. 5 (2016). Because Kerr moved to modify parenting time, not child support, the district court did not err by not analyzing Minn. Stat. § 518A.36.

II.

Kerr contends that the district court’s factual findings on the children’s educational needs and emotional stability are clearly erroneous, reasoning that the record does not support a finding that Kerr “does not address the children’s educational needs as much as [Dubois]” and that “the current schedule provides emotional stability for the children.”

With respect to the children’s educational needs, the district court found that Dubois is better at ensuring the children complete their homework assignments and that Kerr has, “[t]oo often,” failed to address “the children’s homework needs before the children return to [Dubois’s] home on Sundays.” The district court also found that Kerr was unsupportive of son attending remedial reading classes during Kerr’s parenting time, which, the district court reasoned, “could have adversely affected [the child’s] progress at his grade school

¹ Kerr, in his brief, cites the statute as “Minn. Stat. § 518A.36 (2017).” In 2016, the legislature amended Minn. Stat. § 518A.36. 2016 Minn. Laws ch. 189, art. 15, § 20, at 235-37. That amendment, however, does not take effect until August 1, 2018. *Id.* Therefore, the statute in effect to date is Minn. Stat. § 518A.36 (2016).

level.” With respect to the children’s emotional stability, the district court found that Kerr’s commitment to their son’s hockey has had a negative effect on their daughter’s well-being and that Kerr’s hands-off approach on homework assignments has negatively affected both children’s well-being. On this record, we conclude that those findings have support in the record and are not clearly erroneous. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that an appellate court need not “discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court’s findings,” and that its “duty is performed when [it] consider[s] all the evidence . . . and determine[s] that it reasonably supports the findings”); *Peterka*, 675 N.W.2d at 360 (concluding summarily that the record on appeal supported the district court’s factual findings on spousal income).

Kerr also argues that Dubois submitted false and misleading affidavits to the district court that have, in turn, caused the district court to find facts that are wholly unsupported by the record. Even if there is evidence in the record that supports Kerr’s arguments on appeal, it does not mean that the district court’s factual findings are clearly erroneous. *Vangsness*, 607 N.W.2d at 474. As we have stated above, the district court’s findings are adequately supported by the record. Therefore, the findings are not clearly erroneous.

III.

Kerr maintains that the district court erred by analyzing “the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent.” Minn. Stat. § 518.17, subd. 1(a)(10). He avers that the district court misapplied this factor “because it . . . failed to consider that it is in the best

interests of the child to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents.”

But the district court did consider the benefit in maximizing parenting time with both parents. The district court explained that increasing Kerr's parenting time would adversely affect their daughter because Kerr already spends so much time with their son at hockey practice. The district court also explained that it would adversely affect the children's educational needs. The district court, therefore, did not misapply the law.

Kerr also argues that it is a misapplication of the law “to conclude that a half-sibling relationship is more important than a parent-child relationship.” In reasoning that the proposed schedule is not in the best interests of the children, the district court stated that the children would have less contact with their half-siblings. But the district court did not conclude that a half-sibling relationship is more important than a parent-child relationship. One of the best-interests factors is “the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and *other significant persons in the child's life.*” Minn. Stat. § 518.17, subd. 1(a)(9) (emphasis added). The district court did not misapply the law.

Affirmed.