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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0764**

In re the Marriage of:
Catherine Elizabeth Welch, petitioner,
Appellant,

vs.

William Warrick Welch, III,
Respondent.

**Filed April 1, 2019
Reversed and remanded
Jesson, Judge
Concurring in part, dissenting in part, Ross, Judge**

Dakota County District Court
File No. 19AV-FA-12-955

R. Glenn Nord, R. Glenn Nord, P.A., Lakeville, Minnesota (for appellant)

William Warrick Welch, III, Prior Lake, Minnesota (pro se respondent)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.¹

¹ Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JESSON, Judge

This case centers on the inability of appellant mother Catherine Welch and respondent father William Welch to agree on the appropriate school district for their children. The parties' stipulated judgment and decree included a parenting plan which provided that a change in school district required the "mutual consent of both parents." But the judgment and decree also included a provision requiring the use of a parenting consultant to resolve disputes. When father withheld his consent to a school change, mother sought to utilize the parenting consultant. And after father refused, mother sought to have him held in contempt of court. The district court, which deemed the mutual consent requirement binding on the parties and the court, denied mother's motion and granted father's motion for attorney fees. Because we conclude that the judgment and decree requires the parties to use their agreed-upon dispute resolution method to resolve their disagreement before going to court, and because district courts retain oversight of custody-related matters, we reverse and remand.

FACTS

Appellant mother Catherine Welch and respondent father William Welch married in July 2000. During their marriage they had two children, a son in July 2003 and a daughter in June 2006. The Welches separated in March of 2012 and dissolved their marriage by a stipulated judgment and decree one year later.

The judgment and decree established that the parties would have joint legal custody, with mother's home as the children's primary residence. Rather than a designation of

physical custody, the parties agreed upon a parenting plan which addressed decision-making about the children's education, medical care, extra-curricular activities, and well-being, and included a detailed parenting time schedule. One provision of the parenting plan regarding education stated that "a change to the minor children's school district will not be made without the mutual consent of both parents."² Also incorporated into the parenting plan was a dispute resolution provision which stated:

DISPUTE RESOLUTION-PARENTING CONSULTANT

We agree to work toward respectful resolution of any disputes regarding our parenting plan. We agree to use a Parenting Consultant to help us resolve any disputes prior to going to [c]ourt.

The parenting plan was incorporated into the judgment and decree which also provided for the appointment of a parenting consultant, with detailed terms and conditions.

Those relevant here include the following:

- The parenting consultant "shall have the authority to decide any and all issues involving said children should the parties be unable to mutually agree" except that the consultant "may not determine modification of legal and/or physical custody." Issues the parenting consultant may decide include, but are not limited to, temporary modification of the parenting time schedules, extracurricular activities, and holiday and vacation schedules.

² We note that the parties' parenting plan addressed not only their decision-making abilities regarding the matters of the children's education but also their medical care. And the parties included these matters in their parenting plan despite the fact that the parties had also stipulated to "joint legal custody." Joint legal custody "means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's . . . *education* [and] *health care*." Minn. Stat. § 518.003, subd. 3(b) (2018) (emphasis added). Additionally, the parties entered their parenting plan in lieu of an award of physical rather than legal custody.

- “Any decision by the [parenting consultant] shall be based on the best interests of the children.”
- The parties agreed to “cooperate and operate in good faith to resolve the issues in dispute with the assistance of the [parenting consultant].”
- The parenting consultant’s decisions “shall be the law of the case unless or until either party appeals the decision” and the decision is reviewed by the district court according to the judgment and decree.

Until October 2017, the parties were able to mutually resolve disputes related to their marriage dissolution and parenting of their children, without the need for court intervention and only requiring assistance from the parenting consultant once. But in August 2017 mother purchased a home in Orono. In October 2017, mother wrote a letter to father informing him of her intention to move, which would entail a change to the children’s school district from Lakeville to Mound Westonka.³ Father rejected this proposed change in school district. While at first he suggested that the parties meet with the parenting consultant to resolve the issue, he then refused to use the consultant to help resolve the school district dispute.

In January 2018, mother filed a motion in district court to hold father in contempt for refusing to submit their dispute to the parenting consultant, and, in the alternative, to have the district court determine which school district the children would attend. Father opposed the motion arguing that the parenting plan gave him an unreviewable right not to consent to a school district change. He further sought attorney fees. In March 2018, the

³ Until their separation, the Welches and their children resided in Lakeville, and the children remained in Lakeville schools following the marriage dissolution.

district court issued an order denying mother’s motions, reasoning that the provision in the parenting plan regarding school districts was binding on the parties and “shall not be invalidated by the [c]ourt.” As a result, the district court concluded father was not in contempt for failing to agree to take the issue to the parenting consultant and denied mother’s motion to change the children’s school district. Additionally, the district court denied mother’s motion for attorney fees but granted father’s motion for conduct-based attorney fees, ultimately awarding him \$4,628.50.⁴

This appeal follows.

DECISION

The central issue before us is whether the parties’ agreement in a parenting plan—to only change the children’s school district upon mutual consent—insulates that decision from the parties’ agreed-upon dispute-resolution process and, ultimately, district court scrutiny. We conclude it does not. We reach this decision first by interpreting the stipulated judgment and decree as a whole. But this document is not simply a contract. It is a judgment and decree from the district court which addresses custody-related issues. As a result, we further examine the judgment and decree in light of the statutory framework involving parenting plans and the district court’s mandate to consider the children’s best interests in custody-related disputes. We review both the contract and statutory interpretation issues de novo, with no deference to the district court’s analysis. *Lee v. Lee*,

⁴ After the district court granted father’s motion for conduct-based attorney fees, father submitted an affidavit seeking \$9,257 in fees and costs. Mother filed a letter objecting to that amount, and the district court found that father’s requested amount was excessive. Accordingly, the district court awarded father \$4,628.50, half of the amount he requested.

775 N.W.2d 631, 637 (Minn. 2009); *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004); *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 671 N.W.2d 213, 221 (Minn. App. 2003), *review denied* (Minn. Jan. 20, 2004).

We first address the question as a matter of contract interpretation. This court applies the rules of contract construction to a stipulated dissolution judgment. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). One such rule is that a contract should be read as a whole so its provisions may be harmonized and interpreted “in such a way as to give meaning to all of its provisions.” *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998); *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990). With this in mind, we turn to the provisions of the judgment and decree in question.

Three provisions address the dispute-resolution process which we conclude the Welches are required to attempt. The first, contained within the judgment and decree, states that a parenting consultant will serve as the parties’ alternative dispute resolution method, with “the authority to decide any and all issues involving [the] children should the parties be unable to mutually agree.” While the parenting consultant’s decision is only binding on issues of a temporary nature, its role as a mediator is far broader, as a second provision of the judgment and decree makes clear. That provision plainly states that “[t]he parties have agreed to use a [p]arenting [c]onsultant to resolve disputes regarding parenting time issues.” Third, the parenting plan—which is incorporated into the judgment and decree—also states that the Welches “agree to use a [p]arenting [c]onsultant to help us resolve *any* disputes prior to going to [c]ourt.” Read as a whole, we discern that the

Welches are required to use the parenting consultant to help resolve disputes. This is a dispute.

Here, the district court based its interpretation of the Welches' judgment and decree entirely on a single provision within the parenting plan, which states that "a change to the minor children's school district will not be made without the mutual consent of both parents." But we do not read a single provision of a stipulated decree in isolation. See *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012) (noting that terms of a contract are reviewed within the context of the entire contract). Rather, like a contract, we seek to harmonize each portion and reconcile any conflicting provisions such that each and every provision can be given effect. *Oster v. Medtronic, Inc.*, 428 N.W.2d 116, 119 (Minn. App. 1988). To read the single provision regarding the children's school district in isolation would render the Welches' multiple dispute-resolution provisions meaningless when addressing school choice. Accordingly, we conclude that the district court erred by failing to interpret the judgment and decree in a manner which gave credence to every section, including the dispute resolution provisions.

Our reading of the judgment and decree is further bolstered by the provisions of the statutory framework governing parenting plans and custody-related disputes.⁵ Two are critical here. First, parenting plans are statutorily required to include dispute-resolution

⁵ The choice of which schools children attend is a custody-related issue. *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). Here, we note that father argued to the district court that a change of school district would modify the amount of parenting time he has with the children and that mother "is effectively requesting a custody modification."

provisions. Minn. Stat. § 518.1705, subd. 2(a)(3) (2018). This requirement is not a mere technicality. As we noted in *Rutz v. Rutz*, “the inclusion of a dispute-resolution mechanism is central to the purpose and function of parenting plans that are designed to provide comprehensive methods of resolving custody, visitation and access issues.” 644 N.W.2d 489, 492 (Minn. App. 2002), *review denied* (Minn. July 16, 2002). The mandate of this statutory requirement is clear: dispute resolution mechanisms should be used to resolve disputes.⁶

Second, our statutory framework provides for court oversight of custody-related matters, which was unrecognized in the district court’s order. The district court cited to the statutory provision stating that a parenting plan may be modified by agreement of *the parties* as support for its conclusion that the school district provision was binding on the parties and the court, but neglected to reference Minnesota Statutes section 518.175, subdivision 5(b) (2018), which provides for potential *court* modification of provisions of a parenting plan, based upon the best interests of the child. This grant of authority to courts to modify parenting time plans is bolstered by a separate portion of Minnesota law which provides that generally “no motion to modify a custody order *or parenting plan* may be made earlier than one year” after adoption. Minn. Stat. § 518.18(a) (2018) (emphasis

⁶ We note that requiring the parties to use the parenting consultant to attempt to resolve their dispute does not bestow final decision-making authority on the parenting consultant. As explained above, the consultant’s decision-making authority in custody-related matters is limited and subject to review by the district court. But the parenting consultant’s authority as a mediator—or in a similar role—is far broader. See Minn. R. Gen. Prac. 114.02(a)(4), (5), (6), (7) (noting that alternative dispute resolution components include early neutral evaluation, a non-binding advisory opinion, neutral fact-finding, and mediation).

added). This potential for court intervention further counters father's contention, adopted by the district court, that a provision of the stipulated parenting plan is insulated from both the dispute resolution process and court oversight.⁷

In summary, while a court gives "considerable weight" to intelligently entered stipulations, "in determining questions of custody the paramount issue remains the welfare and best interests of the children." *Petersen v. Petersen*, 206 N.W.2d 658, 659 (Minn. 1973). As father acknowledges, the choice of school district is a custody-related matter. And in custody-related issues, "[t]he court must in every case exercise an independent judgment and is not bound by the stipulation." *Id.* As a result, based on the judgment and decree read as a whole, and in context of Minnesota statutes governing custody-related matters, we determine that the district court erred in interpreting the judgment and decree in a manner that rendered meaningless the alternative-dispute-resolution provision and court oversight. Because we conclude that the district court erred in its interpretation of the judgment and decree, we reverse the award of conduct-based attorney fees which was predicated upon that determination. We remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

⁷ We also note that the judgment and decree itself provides for potential court involvement when it provides for review of the parenting consultant's recommendations and decisions.

ROSS, Judge (concurring in part, dissenting in part)

I respectfully dissent in part. I agree with that portion of the majority's opinion that reverses the district court's failure to address mother's motion as it concerns the merits of her effort to change the children's school district. The record shows that her contempt-of-court motion included an alternative request for the district court to address her change-of-school plans on the merits and that the parties each offered evidence for a best-interests determination. Particularly discussing whether a best-interests analysis applied to a parental dispute over a child's education, we explained that "[t]he law makes no distinction between general determinations of custody and resolution of specific issues of custodial care." *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989). And neither the district court nor father cited any authority for the proposition that stipulating parents can divest the district court of authority to make a best-interests determination to resolve this sort of custody-related dispute.

But I do not agree with the majority's interpretation of the stipulated decree as it regards the authority of the parenting-time consultant. Nor do I agree with its conclusion that the custody statute implicitly prevents parties from excluding a consultant from deciding their disputes.

The parties expended considerable effort and were aided by counsel when they agreed upon their children's school district, prohibited either parent from unilaterally moving the children to a different school district, withheld from the dispute-resolution parenting consultant any authority to decide the children's school district, and received the district court's endorsement of that approach as a component of the judgment and decree.

Today the majority renders that part of the judgment and decree void based on what I believe are two errors.

The majority's first error is its failure to apply the correct contract-interpretation tool. The parties' agreement included the following distinct provisions:

We agree that neither parent will move the children out of the Twin Cities Metropolitan Area without the consent of the other parent or further order of the Court. Further, we agree that a change to the minor children's school district will not be made without the mutual consent of both parents.

By including the language about the court's involvement in disputes about moves from the area and excluding that language as to disputes about changes to the school district, the parties evidenced their intent to reserve at least one issue to themselves without including either a parenting consultant or the court. Although I have assumed that the majority correctly holds that the parties could not by stipulation remove the court's authority, I do not reach the same conclusion about the consultant's authority.

The majority invalidates the parties' implicit withholding of a parenting consultant's authority, as that withholding can be derived from the following stipulated provision of the judgment and decree: "[A] change to the minor children's school district will not be made without the mutual consent of both parents." The majority does so on the contract-interpretation principle of harmonization of all provisions within an agreement and on its suggestion that "the dispute-resolution provisions" in the agreement here prevent the district court from effectuating the school-district provision. I believe that, to the contrary, the only way to read both the school-district provision and the dispute-resolution provisions together is by enforcing both, not by ignoring one.

Numerous Minnesota cases teach that, when interpreting an agreement, “the definite prevails over the indefinite.” *Egner v. States Realty Co.*, 26 N.W.2d 464, 470 (Minn. 1947). It is now settled as “a general principle of contract interpretation that a specific provision dealing with a particular subject will control over a different provision dealing only generally with that same subject.” *Dunn v. Nat’l Beverage Corp.*, 729 N.W.2d 637, 646 (Minn. App. 2007) (quotation omitted), *aff’d*, 745 N.W.2d 549 (Minn. 2008). The parties chose broadly and generally to give the dispute-resolution parenting consultant “authority to decide any and all issues involving [their] children,” but they also expressly and plainly carved from that authority a specific category—the decision over the children’s school district—about which the decision had already been made by the parents cooperating together and that could be changed only by the parents. By referencing the agreement’s general dispute-resolution provisions to disregard the specific exception to those provisions, the majority is not following the specific-over-general interpretive method of construing supposed (but not actual) conflicting contract language. I disagree that applying the exception “would render the Welches’ multiple dispute-resolution provisions meaningless.” Rather, applying the exception allows for the application of all the dispute-resolution provisions in every situation except the one the parties chose to treat differently.

The majority’s second error is its application of a statute. The majority reasons that the parties’ agreement (and the district court’s decree) requiring the consent of both parents before moving the children to a different school district is unenforceable based on the statutory requirement to include dispute-resolution provisions in a parenting plan, citing Minnesota Statutes section 518.1705, subdivision 2(a)(3) (2018). I see nothing in that

statute mandating that a parenting plan must involve a parenting consultant to resolve any particular dispute. The majority cites a part of the statute authorizing courts to modify parenting plans, subdivision 5(b) (2018), but neither party here sought to modify the parenting plan. The majority also refers to the statutory “potential for court intervention” in disputes about a parenting plan and seems to suggest that this “potential” judicial involvement assumes that the parties were prohibited from excluding the parenting consultant from a dispute about school districts. While the statute assumes judicial involvement in the dispute, it does not assume a consultant’s. I do not see how it supports the majority’s holding to essentially invalidate a component of the parties’ agreement.

The parties had the foresight to decide on a school district before their dissolution, to prohibit either parent from unilaterally undermining that decision, and to except disputes over school districts from those disputes otherwise within the authority of a consultant. The district court then validated that foresight by incorporating it into the judgment and decree and by later enforcing it in the present litigation after one of the parties violated it. I do not believe the district court errantly interpreted the decree’s language or abused its discretion by applying it.

I would affirm the district court’s decision not to hold father in contempt for not involving a parenting consultant as well as its decision to deny mother’s motion for attorney fees. I would remand with instructions to consider the merits of the school-district dispute and to reconsider father’s motion for conduct-based fees.