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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0807**

In Re the Matter of:
Gabriel Appiah Tandoh, petitioner,
Respondent,

vs.

Angela Marie Nelson,
Appellant.

**Filed February 4, 2019
Affirmed
Halbrooks, Judge**

Big Stone County District Court
File Nos. 06-FA-08-315, 06-FA-17-51

Robert A. Manson, Robert A. Manson, P.A., White Bear Lake, Minnesota; and

Danielle L. Baumhofer Fremont, Fremont Law Office, St. Paul, Minnesota (for respondent)

Ronald R. Frauenshuh, Jr., Ortonville, Minnesota (for appellant)

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

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

HALBROOKS, Judge

Appellant challenges an order granting respondent parenting time, arguing that the district court erred in interpreting Minn. Stat. § 518.175, subd. 2 (2018), and that the district court considered impermissible evidence in making its determination. We affirm.

FACTS

Appellant Angela Marie Nelson and respondent Gabriel Appiah Tandoh are the parents of I.T., born December 2005, and R.T., born March 2009. On March 22, 2017, Nelson moved for an order for protection (OFP) against Tandoh. Following a hearing, the district court ordered an OFP. The district court determined that Tandoh had, at times, “take[n] his strictness too far physically with [I.T.], and [R.T.] has witnessed this.” The order limited Tandoh’s parenting time to telephone and video calls and stated that in-person visits could resume when a mental-health counselor determined it would be appropriate. The district court indicated that it “in no way expects [Tandoh’s] contact with the children to be restricted for a lengthy period.”

On November 27, 2017, the district court received a report from I.T.’s mental-health counselor that recommended that the family begin reunification therapy. On December 22, Tandoh requested that the district court order that he resume parenting time with R.T. and begin reunification therapy with I.T. The district court granted the motion but ordered that Tandoh first complete four telephone calls with R.T. Tandoh completed the calls and was scheduled to resume parenting time on the weekend of January 26-28, 2018. When he arrived to pick up R.T., she was not dressed appropriately for the winter weather, did not have a bag packed, and ultimately refused to go with Tandoh. He arranged to take R.T. out for breakfast the next day; but when he arrived the following morning, she again refused to go with him. As a result, Tandoh was unable to exercise his parenting time.

Following the incident on January 26, the parties submitted various motions to the district court. Tandoh requested that he be awarded compensatory parenting time, that the

district court hold Nelson in contempt because she failed to facilitate his parenting time with R.T., and that the district court require Nelson to post a cost bond and pay his attorney fees pursuant to Minn. Stat. § 518.175, subd. 6(d) (2018). Nelson moved the district court to order Tandoh to reimburse her for various costs, hold Tandoh in contempt for failing to pay child support, and order that Tandoh's reunification therapy with I.T. be conducted by a particular provider and that she be awarded attorney fees.

On February 12, the district court held a hearing on the motions. The district court issued an interim order awarding Tandoh parenting time with R.T. for the weekend of February 16. On May 14, the district court issued an order awarding Tandoh compensatory parenting time based on its determination that R.T.'s refusal to participate in parenting time with Tandoh was based on Nelson's interference. The district court also ordered a civil penalty, cost bond, and attorney fees based on this determination. Finally, the district court denied Nelson's requests to hold Tandoh in contempt and award her attorney fees and reimbursements, and ordered that reunification therapy be conducted by the provider requested by Tandoh. This appeal follows.

D E C I S I O N

Minn. Stat. § 518.175 (2018) governs parenting-time determinations. The statute requires that "[t]he parent with whom the child resides shall present the child for parenting time with the other parent, at such times as the court directs." Minn. Stat. § 518.175, subd. 2. If the noncustodial parent is denied court-ordered parenting time, the district court may order remedies as established in Minn. Stat. § 518.175, subd. 6. The statute provides:

(a) The court may provide compensatory parenting time when a substantial amount of court-ordered parenting time has been made unavailable to one parent unless providing the compensatory parenting time is not consistent with the child's best interests.

(b) The court shall provide for one of the remedies as provided under this subdivision for (1) a repeated and intentional denial of or interference with court-ordered parenting time, or (2) a repeated and intentional failure to comply with a binding agreement or decision under section 518.1751.

(c) If the court finds that a person has been deprived of court-ordered parenting time under paragraph (b), the court shall order the parent who has interfered to allow compensatory parenting time to the other parent. . . .

Minn. Stat. § 518.175, subd. 6(a)-(c). In addition, if the district court determines that a party has “repeatedly and intentionally denied or interfered with court-ordered parenting time” the district court may impose a civil penalty, require the party to post a bond to ensure compliance, award attorney fees, and require the party who violated the parenting-time order to reimburse the other party for costs associated with the violation. Minn. Stat. § 518.175, subd. 6(d). We review parenting-time decisions for an abuse of discretion. *Gregory v. Gregory*, 408 N.W.2d 695, 697 (Minn. App. 1987).

Nelson argues that the district court erred in interpreting Minn. Stat. § 518.175, subd. 2. She argues that the district court erroneously determined that she had a duty to “physically place the child in the car” when the statute requires only that she “shall present” the child for parenting time. She asserts that, because she presented R.T. for parenting time, the district court erred in awarding Tandoh compensatory parenting time and requiring her to post a cost bond and pay a civil penalty and attorney fees. Nelson’s

argument misinterprets the district court's order. The district court did not determine that Nelson had a duty to physically place R.T. in Tandoh's vehicle or that she failed to present R.T. for parenting time. Rather, the district court's order was based on its determination that Nelson "intentionally denied or interfered with court-ordered parenting time."

The district court first addressed Nelson's interference with Tandoh's parenting time on the weekend of January 26-28. The district court noted that when Tandoh arrived to pick up R.T., Nelson "did not have [R.T.] ready to go, she did not have a bag packed and in fact did not even have a coat on the child." The district court also determined that Nelson made no effort to encourage R.T. to go with Tandoh and that her hostile attitude discouraged R.T. from going with him. The record supports these findings.

The parties submitted the transcript¹ of the interaction between Tandoh, Nelson, and R.T. on January 26. When Tandoh arrived to pick up R.T., Nelson informed him that she had packed some toys but then stated, "I'm not packing clothes" because she did not "have to." The transcript indicates that R.T. was cold and was not initially wearing a coat, but was eventually brought one by Nelson's significant other. Nelson did not encourage R.T. to go with Tandoh and stated that she would not tell R.T. what to do. Moses submitted an affidavit that similarly supports the district court's findings. Moses's affidavit indicates that when she and Tandoh arrived, R.T. "was not dressed in proper winter attire." She observed that Nelson and her significant other kept bringing R.T. inside and that each time

¹ Jessica Moses, a friend of Tandoh's who was with him when he tried to pick up R.T., recorded the interaction. Tandoh had a transcript of the recording prepared by a court-reporting service and filed it with the court.

R.T. returned to talk with Tandoh “her mood and body language changed and she was resisting her dad again.” Moses described Nelson’s demeanor as “upset and agitated” and indicated that she “raised her voice frequently.” Nelson asserts that the district court erroneously considered this affidavit because it lacks foundation. But the affidavit clearly states that Moses was present on January 26 and that the information is based on her personal observation of the incident.

The district court also observed that Nelson had been uncooperative throughout the entire proceeding. The district court determined that Nelson had interfered with Tandoh’s ability to exercise his parenting time because she “ma[de] it nearly impossible for father to follow the Court’s orders and be a parent to his children.” The court noted that Nelson’s actions demonstrated “a hostility toward father’s rights” and that she had “said time and time again [R.T.] should be afraid of father.” The district court concluded that “any fear [R.T.] may have of her father likely stems from mother’s actions and attitudes rather than anything father has done.” The district court also determined that Nelson had impeded Tandoh’s attempts to begin reunification therapy. Tandoh identified a provider that conformed with the district court’s order regarding reunification therapy, accepted insurance, and was available to start seeing the family immediately. Tandoh paid the retainer and asked Nelson to call and complete an intake questionnaire over the phone. Nelson refused to do so and ultimately recommended two providers that do not offer appropriate treatment. As a result, the family was unable to even start the court-ordered reunification therapy, which in turn prevented Tandoh from resuming parenting time with I.T.

On this record, the district court did not abuse its discretion in determining that Nelson intentionally interfered with court-ordered parenting time. The record amply supports the district court's determination that Nelson's hostile attitude and actions interfered with Tandoh's ability to exercise his parenting time. The district court therefore did not abuse its discretion in awarding Tandoh compensatory parenting time and requiring Nelson to post a cost bond and pay a civil fine and penalty. *See* Minn. Stat. § 518.175, subd. 6 (stating such remedies are appropriate when a parent intentionally interferes with court-ordered parenting time).

Affirmed.