

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1385**

In re the Marriage of: Marcus Shuntae Pope, petitioner,
Appellant,

vs.

Angela Kelly Pope,
Respondent.

**Filed April 8, 2019
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-FA-16-319

Anne E. Tressler, David T. Johnson, Tressler Law, LLC, Minneapolis, Minnesota (for appellant)

Carla C. Kjellberg, Kjellberg Law Office, PLC, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the award of joint legal custody, joint physical custody, and equal parenting time of the parties' child, arguing that the district court abused its discretion

in denying appellant's motion for amended findings. Because we see no abuse of discretion, we affirm.

FACTS

Appellant Marcus Pope and respondent Angela Pope were married in September 2012; their daughter, A., was born in December 2013. A. is now five; she was two when the parties separated in March 2016.

Each party sought sole legal and physical custody of A. A court-appointed neutral custody evaluator, S., recommended sole legal and physical custody with appellant and the statutory presumptive minimum parenting time for respondent.¹ Respondent sought and agreed to pay for another evaluation, and the district court appointed another evaluator, M. M. also recommended sole legal custody with appellant and the statutory presumptive minimum parenting time with respondent.²

As a result of the custody evaluators' recommendations, respondent began participating in parenting coaching and individual therapy; testimony from her parenting coach indicated that she had significantly improved her parenting skills and was committed to continuing that improvement. Prior to the trial on legal and physical custody, parenting time, and other unresolved issues, respondent requested joint legal and joint physical custody and equal parenting time.

¹ See Minn. Stat. § 518.175, subd. 1(g) (2018) (providing that parents are "entitled to receive a minimum of 25 percent of the parenting time for the child").

² M. did not use the term "physical custody."

The district court issued thorough and comprehensive findings of fact and awarded the parties joint legal and joint physical custody and equal parenting time. To minimize contact between the parties, the parenting-time schedule provided that whenever possible, exchanges would occur by having one party drop the child off at daycare and the other party pick her up. Appellant's motion for amended findings was denied. He challenges the denial, arguing that the awards of joint legal and physical custody and equal parenting time were an abuse of discretion.

D E C I S I O N

The standard of review for custody determinations is abuse of discretion, and 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). The district court's findings will be sustained unless they are clearly erroneous, i.e., they leave the reviewing court "with the definite and firm conviction that a mistake has been made." *Id.* at 472. When the evidence is conflicting, the appellate court defers to the district court's credibility determination. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). "The court shall use a rebuttable presumption that, upon request of either or both parties, joint legal custody is in the best interests of the child." Minn. Stat. § 518.17, subd. 1(a)(9) (2018). Similarly, the district court has discretion in deciding parenting-time questions based on the best interests of the child and will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995).

The district court awarded joint legal and physical custody after a detailed consideration of the statutory best-interest factors, noting:

By the time [the second Parenting] Evaluation was complete, [appellant's] residence had become the child's primary residence as [appellant] frequently refused to respond to [respondent's] request for parenting time as noted in the text messages submitted into evidence.

....

Even after the two parenting evaluations were completed, the parties [were] still unable to agree on a schedule. This often left [respondent] texting [appellant] asking for parenting time as he felt the recommendations of the custody evaluation[s] should be followed, even though [they were] not a court order. [Respondent] credibly testified as to two specific instances when [appellant] interfered with her parenting time with [A.]

....

The court's greatest concern based upon the testimony it heard is that if either parent were to be granted sole legal or physical custody of the child, it would ultimately lead to the alienation and/or rejection of the other parent by the child.

....

Based upon the analysis of each of the best interest factors as outlined above, the court finds that it is in the child's best interest that the parties share joint legal custody. The court has significant concerns that if [appellant] were to have sole legal custody that he would continue to make unilateral decisions for the child and inhibit [respondent's] relationship with the child. Based upon the analysis of each of the best interest factors as outlined above, the court finds that it is in the child's best interest that the parties share joint physical custody. The court has significant concerns that if either party were to have sole physical custody they would further inhibit the relationship of the child and the other parent. As noted previously, this child has been in the middle of the conflict of the parents, and the parents need to put their differences aside to support the child's development in the care of both parents.

Appellant argues that "the district court's focus on alienation was not proper" in making custody determinations because "whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing" was removed as "a stand-alone" factor from the statutory best interest factors in 2015. But an analysis of this

removal must be made in the context of the other 2015 statutory changes. The legislature removed alienation as a stand-alone factor with three others to be considered when joint custody was being sought, replacing the emphasis on the “primary parent” having custody with an emphasis on both parents sharing custody. An analysis of the revised best-interest factors statute reflects that emphasis. *Compare* Minn. Stat. § 518.17 (2018) *with* Minn. Stat. § 518.17 (2014).

The cases appellant cites in support of his position all predate the 2015 statutory changes. For example, appellant argues that “the [d]istrict [c]ourt erred in conflating the issue of potential alienation—which [] related to parenting time—with legal custody” and cites *Crosby v. Crosby*, 587 N.W.2d 292 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999) in support. But *Crosby* does not concern the current statute; nor does it support appellant’s position. *Crosby* affirmed the district court’s award of almost equal parenting time to a couple whose inability to cooperate precluded joint legal custody, noting both that “problems in communicating with each other would not impair the ability of appellant and respondent to share joint physical custody of the children if the custody arrangement were structured” and that “the history of disputes between the parties should not contradict the court’s determination that they could successfully comply with a schedule of times for exchange of physical custody in the same community.” *Crosby*, 587 N.W.2d at 295-96.

The district court here applied the same reasoning:

The majority of the conflict between [the] parties has arisen post-separation and revolves around the parenting time schedule. If the parties had a set parenting time schedule with limited interactions between the parents [as will result from a schedule where the parents drop off and pick up the child at

daycare], it is likely that the tensions between the parties will be lessened and they will be able to focus on making other decisions regarding their child.

....

The court hopes that by setting a specific parenting time schedule, the conflict between the parties will diminish so that they can focus on making important decisions for their child.

Appellant also argues that the district court erred in not following the recommendation of S. and M., both of whom recommended that appellant have sole legal and sole physical custody and that respondent have only the statutory minimum parenting time. The district court noted that it “does not make a decision contrary to the recommendations of two custody evaluations lightly” but that, while not following [“an evaluator’s recommendation] may not be common, it is not without precedent.” The district court cited *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991) (noting that the district court had not followed or even referred to the custody-study recommendation and affirming its award of custody to the parent not recommended because its “findings demonstrate that the [district] court conscientiously and thoroughly considered the best interests of the children consistent with all factors set forth in Minn. Stat. § 518.17”)³ and *Roehrdanz v. Roehrdanz*, 410 N.W.2d 359, 361-62 (Minn. App. 1987) (noting that the district court explained its reasons for not following the custody study and affirming the district court’s award of custody to the party who had been the primary parent during the marriage, although the recommendation had been for custody with the other parent), *review denied* (Minn. Oct. 28, 1987).

³ *Rutanen* thus refutes appellant’s argument that the district court erred by not explaining in greater detail why it did not follow the evaluators’ recommendations.

The district court explained first that appellant had provided little or no testimony to support his request for sole legal and physical custody, other than saying the two evaluators recommended it: appellant “provided no insight as to why he thought this [i.e., sole custody with him] was in the child’s best interests” and, “[w]hile the custody evaluations were favorable to [appellant], the Court would have preferred to receive input directly from [him] as well, including testimony about his relationship with the minor child.”⁴ The district court also explained that it was concerned about the evaluators’ conflicting testimony, in which M. said she told S. not to rely on the psychological testing done by a particular psychologist because it was not properly scored, and S. said that conversation never occurred. The district court found S.’s testimony to be “conflicting” and stated that it did not rely on her evaluation.

The district court noted that respondent, after reading M.’s report stating that appellant’s parenting skills were superior to respondent’s, had begun participating in parenting coaching and individual therapy and that she had improved her parenting skills. Respondent’s parenting coach testified that respondent’s openness to critique was “very, very good,” and that respondent was “committed to [improving her parenting skills], absolutely”; the district court relied on the parenting coach’s testimony that respondent was “receptive and engaged in making the necessary changes in her parenting style.”

⁴ Appellant continues to argue on appeal that the district court erred in not following the evaluators’ recommendations without explaining why sole custody with him would be desirable for the child.

In its analysis of the 12 statutory best-interest factors (a)-(1), the district court found that five factors, namely (a) the child’s physical, emotional, cultural, spiritual, and other needs; (b) any special medical, mental health, or educational needs; (c) the reasonable preference of the child, if old enough to have a reasonable preference; (d) domestic abuse in the parents’ or either parent’s relationship or household;⁵ and (e) either parent’s relevant physical, mental, or chemical health issues, were neutral; that two factors, namely (f) the history and nature of each parent’s participating in caring for the child; and (l) the willingness and ability of the parents to cooperate in the rearing of their child, favor joint custody; that two factors, (g) the willingness and ability of each parent to provide ongoing care and to maintain consistency and follow-through with parenting time; and (h) the effect on the child of changes to home, school, and community, favor a consistent parenting time schedule; that two factors, namely (i) the effect of the proposed arrangements on the relationship between the child and each parent; and (j) 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, favor joint physical custody; and that one factor, namely (k) absent domestic abuse, the disposition of each parent to support the child’s relationship and frequent contact with the other parent, favors joint legal custody. Thus, five of the factors were found to be neutral, while the other seven favored joint custody or a consistent parenting time schedule or joint physical custody or joint legal custody.

⁵ The district court noted that, while respondent had mentioned domestic violence earlier, the custody evaluator did not find that it was relevant to her parenting and she did not raise the issue at trial. The district court concluded that, “[f]or the purpose of evaluating custody and parenting time, . . . the issue of domestic abuse is not applicable.”

Appellant argues that the district court erred by not making separate findings on the best-interest factors for legal custody, physical custody, and parenting time, relying on Minn. Stat. § 518.17, subd. 1(b)(1) (“The court must make detailed findings on each of the factors in paragraph (a) based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time.”) But the district court provided a thorough and lengthy discussion of the best-interest factors in its decision, and appellant does not explain why the reasons that a factor supports joint legal custody would differ significantly from the reasons that factor supports physical custody or equal parenting time. As in *Rutanen*, the “findings demonstrate that the [district] court conscientiously and thoroughly considered the best interests of the children consistent with all factors set forth in Minn. Stat. § 518.17.” See 475 N.W.2d at 104.

The district court did not abuse its discretion in awarding the parties joint legal and physical custody and equal parenting time.

Affirmed.