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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1396**

In re the Marriage of:
Kimberly Kay Seidel, petitioner,
Appellant,

vs.

Trevor Carlton Seidel,
Respondent.

**Filed April 22, 2019
Affirmed
Jesson, Judge**

Anoka County District Court
File No. 02-FA-15-2022

Bradley John Haddy, Minnesota Esquire, LLC, Mendota Heights, Minnesota (for
appellant)

Trevor Carlton Seidel, Andover, Minnesota (pro se respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Smith,
John, Judge.*

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

UNPUBLISHED OPINION

JESSON, Judge

Appellant-mother Kimberly Kay Seidel challenges the district court's award of unsupervised parenting time and conduct-based attorney fees to respondent-father Trevor Carlton Seidel. Mother argues that the district court abused its discretion when it ignored alleged evidence that father sexually abused their minor child. Further, mother contends that both parties caused the delay in their marriage dissolution and thus conduct-based attorney fees are inappropriate. Because the record supports the district court's findings, we affirm.

FACTS

Appellant-mother Kimberly Kay Seidel and respondent-father Trevor Carlton Seidel were married in August 2008. Mother and father are the parents of the minor child, born in 2012. Around the age of 9-12 months, while the parents were residing together, the child stopped normal developmental progress. Because of this, mother took the child to a number of doctors in an effort to determine the cause of the developmental issues. In addition, the child began participating in play therapy with Dr. Kathleen Chara. After two sessions, Dr. Chara reached the conclusion that the child had experienced sexual abuse. Upon Dr. Chara's suggestion, mother had the home computer evaluated for the existence of child pornography. A computer forensics expert determined that there was fragmentary evidence of child pornography on the computer, but could not determine when it was downloaded or accessed, or by whom.

The parties separated in March 2014 and mother filed a petition to dissolve the marriage in March 2015. In December 2015, mother filed an ex parte emergency motion seeking temporary sole legal and physical custody of the child and denying any parenting time to father. The basis for the motion was mother's allegations of sexual abuse of the child by father based, in part, on father's alleged viewing of child pornography. The district court granted mother's motion. Two months later, the parties appeared for a temporary motion hearing addressing child custody and parenting time. The district court granted mother's request for temporary sole physical custody, but denied mother's request for sole legal custody. The court awarded father temporary supervised parenting time of a minimum of one hour per week. Finally, because father became estranged from the child amidst the allegations of sexual abuse, the district court appointed Traverse Counseling to conduct reunification therapy and supervise parenting time between father and the minor child. And the district court appointed three neutral experts to evaluate the issues of child custody and parenting time: psychological evaluator Dr. Samuel Albert, a forensic sexual abuse evaluator, and a custody evaluator.

But eight months later, no supervised parenting time visits had occurred. The parties returned to court in October 2016. The district court then issued an order, directing the parties to:

Prioritize the scheduling of appointments for [re]unification therapy with Traverse Counseling over any other therapeutic appointments. Prioritizing the scheduling of appointments for [re]unification therapy with Traverse Counseling [means] taking the first available appointment.

[Re]unification therapy with [father] and [the child] shall occur as soon as possible. The therapy shall occur even if both parents do not embrace the process. Both parties shall cooperate with the process.

But parenting time with father remained a problem. In February 2017, after a second temporary motion, wherein it was disclosed that father had not yet received any opportunity for parenting time despite the court's previous two orders, the court ordered a graduated parenting time schedule in which father would have unsupervised parenting time by March 18, 2017. In this order, the district court also granted father's motion to compel mother to disclose any and all mental health records and reserved father's motions regarding conduct-based attorney fees.¹

The first of the six days of trial began in November 2017.² The issues submitted to the court were child custody, parenting time, child support, and attorney fees. Throughout the course of the trial, the court received numerous exhibits and heard testimony from mother, father, the computer forensic analyst, the forensic sexual abuse evaluator, the custody evaluator, Dr. Chara, and two police detectives.³ The forensic sexual abuse evaluator testified that the child's traumatic memories were re-stimulated by seeing her father, and that father should receive supervised parenting time. But she also testified that the information she had was "fairly stale" because it was over six months old. The custody

¹ Dr. Albert, the psychological evaluator, needed mother's mental health records in order to successfully complete his psychological evaluation pertaining to mother.

² The six-day trial took place on November 3 and 29, 2017, December 1, 2017, and January 23, 25, and 26, 2018.

³ Although Dr. Albert did not testify at trial, the parties stipulated to the admission of his psychological evaluation reports regarding mother and father.

evaluator testified regarding her recommendations, which included supervised parenting time with father. And Dr. Chara testified that in her opinion the child was violated by an angry male in her home. But Dr. Chara also testified that she did not make a note in her records that she concluded that father sexually abused the child. One of the police detectives testified that prior to his short interview with the child, there was information that “indicat[ed] that she had been talked to by people prior to [the] interview with her about her Mean Daddy.”⁴

The district court issued a 39-page judgment and decree awarding mother sole physical custody, both parties joint legal custody, and included a parenting time schedule dividing parenting time equally between the parties, with father having unsupervised parenting time. The district court found that the six-year-old child had been primarily taken care of by her mother, that mother and child had a strong and loving bond, and that there was no reason to diminish or interfere with their relationship. And the district court found that the recent parenting time with father appeared to have a beneficial impact upon the child.

In the judgment and decree, the district court discussed the 12 best-interests factors regarding child custody and parenting time. The district court also discussed the neutral evaluators’ reports, and its issues with the timing, scope, and absence of up-to-date

⁴ In May 2017, Dr. Chara reported to the police that the child indicated that her “mean daddy does more things to [her]” and that the child suggested that “mean daddy possibly touched her genital area.” The child disclosed to a police officer that there was some touching by her father, but when he asked her who she had spoken with about the incident, the child indicated that she was told this happened to her by mother and Dr. Chara.

information in the reports, which was a particular concern given the delay in starting father's supervised parenting time. But while the district court noted that it based its findings in part on those of the custody evaluator and her report, it also stated that "the totality of the evidence yields a different conclusion as to [the child's] best interests." That conclusion permitted father unsupervised parenting time.

Finally, in its order, the district court awarded father conduct-based attorney fees, reasoning that while both parties contributed to the "over-litigated and unnecessarily lengthy" case, mother prolonged the proceedings by failing to provide Dr. Albert with her mental health history and medical records. The release of the complete medical records led to two addendums to Dr. Albert's report where he raised questions regarding mother's credibility, and stated that mother "presented with less than average honesty and openness, much less than average accuracy, and continuing average insight." Over five months passed between when mother was ordered to release her mental health records and when Dr. Albert released his final addendum to mother's report after receiving a complete set of records. Regarding the delay, the district court stated that mother's failure to disclose her mental health history to Dr. Albert "prolonged his evaluation and those of the other neutrals who were waiting for Dr. Albert's report to complete their own." The district court awarded father \$5,000 in conduct-based attorney fees.

Mother appeals.⁵

⁵ Father did not file a responsive brief and this court ordered the appeal to proceed under Minnesota Rule of Civil Appellate Procedure 142.03.

DECISION

Mother argues that the district court abused its discretion by granting father unsupervised parenting time and by awarding him \$5,000 in conduct-based attorney fees.⁶ We address each argument in turn.

I. The district court did not abuse its discretion by granting father unsupervised parenting time.

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.

When addressing parenting time, the district court shall “grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.” Minn. Stat. § 518.175, subd. 1(a) (2018). “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.” *Id.*, subd. 1(g) (2018). If “parenting time with a parent is likely to endanger the child’s physical or emotional health or impair the child’s emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances

⁶ On appeal, mother argues only that father’s parenting time should be supervised. She does not argue that the amount of parenting time awarded was an abuse of discretion.

warrant.” *Id.*, subd. 1(b) (2018). The “paramount issue” for the district court in making parenting-time determinations must be the “welfare and best interests of the child.” *Petersen v. Petersen*, 206 N.W.2d 658, 659 (Minn. 1973); *see also Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009) (noting that the fundamental focus is on the child’s best interests).

To ascertain whether supervised parenting time by father is in the best interests of the child, the district court was required to consider and evaluate 12 relevant factors. Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2018); *Hansen*, 908 N.W.2d at 596. Parenting-time determinations must be supported by “detailed findings” on each of the statutory factors related to the best interests of the child. Minn. Stat. § 518.17, subd. 1(b)(1) (2018). Here, the district court included a clear statement of the law regarding the best-interests factors, analyzed the 12 best-interests factors and made detailed findings for each. The district court found that “[father] has demonstrated a willingness and ability to exercise his parenting time consistently, as well as the ability to support [the child’s] ongoing developmental and emotional needs.” Further, the court stated that “[p]arenting time with [father] appears to have a beneficial impact upon [the child].” And that “[t]he loss of this reestablished relationship, either through abandonment or alienation would undoubtedly be traumatic.” Finally, the district court found that there was no evidence in the record that allowed it to make a finding that father sexually abused the child.

In assessing the best-interests factors, the district court analyzed reports from the different professionals who treated and evaluated the child. While the reports of the professionals recommended supervised parenting time, the district court ultimately

determined that father should receive unsupervised parenting time. The district court explicitly noted issues of concern regarding the professionals' reports, as summarized below.

Regarding the custody evaluation, the district court noted that the evaluator had spent only two hours observing the child with father which occurred within one month of father's first parenting-time visit, following three years of separation between father and the child. The district court also noted that although nine months had passed between the custody evaluator's observations and when she finalized her report, "[a]t no later point did [she] attempt to re-examine the extent of [father's] emotional relationship with [the child], or to assess how [the child] progressively perceived her relationship to and with [father]." The district court noted that the custody evaluator's conclusion that "there is little likelihood that a significant bond between [father and the child] has developed" was made at the inception of father's parenting time and that "it is difficult to surmise that [the child] and [father] have not formed a significant bond at this time." And the district court found credible father's testimony regarding his positive, emotionally-secure relationship with the child.

In addition, the district court noted several concerns with the testimony of the forensic sexual abuse evaluator and Dr. Chara, both of whom recommended supervised parenting time for father. Specifically, the district court found that the forensic sexual abuse evaluator met with the child for two 30-minute sessions in the summer of 2016, and her speech and occupational records for the child end in 2016—but she failed to update her records prior to completing her forensic investigation report in August of 2017. Further,

the forensic sexual abuse evaluator adopted Dr. Chara's observations as her own, and allowed those observations to form the basis of her forensic evaluation. With regard to Dr. Chara, the district court did not find credible her conclusion that the child was sexually abused by her father. It noted that "Dr. Chara became overly involved in such a manner that seemed to prevent her from providing neutral appropriate care to the child."

Finally, the district court stated that Dr. Albert ultimately concluded that [mother] "has less than average honesty and openness, much less than average accuracy." And the court relied upon the second addendum to mother's psychological evaluation where Dr. Albert stated:

The extent of [mother's] recurrent history of medically unexplained symptoms through at least 2008 and her continuing belief that they have had a medical origin suggest that *additional caution be used when assessing the accuracy of her observational reports of troubling behavior by [the child]*. Asking about [the child's] concrete, specific behaviors as well as determining whether there are confirmatory observations of the same behaviors by others is recommended before giving them full credence.

(Emphasis added.)

Throughout its analysis, the district court discussed mother's request for father to not receive any parenting time because of her belief that father sexually abused the child. But the district court found that the testimony and evidence presented during trial did not support a finding that father abused the child. It expressed concern that mother will not voluntarily facilitate father's parenting time, and would alienate the child from father.⁷

⁷ The district court also noted that "[f]urther litigation, police reports, and therapeutic activity is highly likely." But the district court also noted that the parents have "shown the

In sum, the district court carefully considered both parties' arguments and balanced them accordingly to reach the conclusion that the best-interests factors favored an award of unsupervised parenting time to father.

The record supports the district court's findings. Father submitted to a psychophysiological sexual interest assessment, which revealed that father has "no significant objectively measured response" to pre-pubescent children. And though fragmentary evidence of child pornography was found on the old family computer, there is no evidence as to how it got on the computer, who accessed it, and to what extent it was accessed. Throughout the entirety of the court proceedings, father denied having sexually abused the child.

Regarding the child, though Dr. Chara concluded that the child regressed after beginning parenting time with father, the custody evaluation indicated that the child continued to make progress and meet goals. And when father brought the minor child to one of the speech-therapy appointments, the speech therapist reported that "[father] encouraged [the minor child], asked questions, and showed interest in the therapy." Further, the record demonstrates mother's unwillingness to allow father parenting time, which only commenced after the *second* time the court ordered mother to cooperate.

But mother challenges the district court's decision regarding unsupervised parenting time on two grounds.⁸ She first argues that the district court failed to consider the testimony

ability to agree on some things regarding parenting-time schedule changes and education so there is reason to believe a level of understanding can exist."

⁸ In mother's argument regarding the district court's abuse of discretion in allowing father unsupervised parenting time, she appears to argue against the district court's credibility

from the professionals who testified. Then mother asserts that the district court impermissibly relied upon the language in father's proposed findings of fact, conclusions of law, and judgment and decree, rather than conduct an independent analysis. We address each argument in turn.⁹

Mother contends that the district court erred by ignoring the testimony from the professionals who testified, and focusing instead on the testimony given by two police detectives who conducted a wellness-check interview with the child. But the district court's findings of fact rely upon information received from various professionals, including the custody evaluator, the school speech therapist, the private speech therapist, the Theraplay¹⁰ therapist, the occupational therapist, and Dr. Albert. The only mention of law enforcement in the entirety of the 39-page judgment and decree is one line stating "[l]aw Enforcement concluded the child had obviously been coached by [mother] and Dr. Chara." Because the district court referred to the various professionals' reports and findings throughout its almost nine-page best-interests factors discussion, it did not abuse its discretion when weighing the testimony of the professionals and law enforcement.

determinations and findings of fact throughout this section of her brief and urges this court to make credibility determinations and findings of fact supporting her. But caselaw is clear that this is not the role of this court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (we defer to the district court's credibility determinations); *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966) (it is not the appellate court's role to find facts).

⁹ Mother also characterizes the failure to award supervised visitation as the result of judicial bias, but points to nothing in the record or the law to support her argument.

¹⁰ Theraplay is "an attachment-based therapy intervention designed to replicate a healthy parent-child relationship."

Mother then contends that pertinent information was ignored or intentionally left out of the district court's final analysis because the district court instead relied upon the language in father's proposed findings of fact, conclusions of law, and judgment and decree. But when comparing father's proposed order with the district court's final judgment and decree, it is clear that the district court did not rely entirely upon father's proposed language. Rather, the judgment and decree included independent descriptions and findings, as well as significant deletions of father's proposed findings.

Underlying mother's arguments that father should receive supervised parenting time is her intractable belief that father sexually abused the minor child. But the district court concluded, after a six-day trial, that "[t]here is no evidence that would allow the [c]ourt to make a finding that in fact [father] did abuse this child." That conclusion is supported by this record. While we may have reached a different conclusion regarding the exact parameters of father's parenting time, the district court's findings of fact are well-supported. And current caselaw "leaves scant if any room" for us to question the district court's balancing of the best-interests factors. *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). As such, the district court did not abuse its discretion by ordering unsupervised parenting time for father.

II. The district court did not abuse its discretion by granting father conduct-based attorney fees.

Mother argues that the district court abused its discretion by awarding conduct-based attorney fees to father because “both parties participated equally in creating a long and adversarial dissolution.”¹¹

This court reviews an award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007). Under Minnesota Statutes section 518.14, subdivision 1 (2018), a district court may award “additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding.” Conduct-based attorney fees are discretionary. *Sharp v. Bilbro*, 614 N.W.2d 260, 264 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). But they may only be awarded for conduct occurring during the litigation process, and the district court must identify the offending conduct. *Geske v. Marcolina*, 624 N.W.2d 813, 816, 819 (Minn. App. 2001).

Here, the district court acknowledged that the case was “over-litigated and unnecessarily lengthy” which was attributable to both parties. But the district court awarded conduct-based attorney fees to father because “[mother] increased the time and expense of this proceeding by intentionally failing to disclose her mental health history, despite numerous opportunities to do so and a formal discovery request[.]”

¹¹ Additionally, mother asserts that the matter of conduct-based attorney fees should have been litigated, but presents no authority supporting her position.

The record supports the district court's decision. Father first requested records of mother's mental health history on July 1, 2016, and mother responded on August 8, 2016, failing to disclose any information. Five months later, father formally noted the deficiencies. In February 2017, mother stated in a more detailed response that she had made a "full disclosure of [her] medical and mental health issues to Dr. Samuel Albert, the psychologist in this matter." But she had not.¹² Due to mother's failure to disclose the requested discovery, the district court granted father's motion to compel.

After two months, Dr. Albert issued mother's psychological evaluation. But Dr. Albert was required to issue an addendum only two days later, because he received an additional 70 pages of mother's medical records, prompting Dr. Albert to make several changes to his evaluation. Then, three months later, Dr. Albert received numerous other medical and mental health records from mother, requiring a second addendum to her evaluation. The late issuance of the addendums demonstrates the delay by mother in disclosing her medical and mental health records. Over six months passed between when the district court ordered her to produce her mental health records and when Dr. Albert was able to issue the final addendum. Further, other evaluators needed to review Dr. Albert's report in order to complete their own evaluations.

¹² In several emails, which were exhibits at trial, mother indicated that she prayed the district court would not require her to disclose her records and "would love it if God would supernaturally erase [her] mental health records from Allina's system."

Because the district court’s decision is not “against logic and the facts on record,” the district court did not abuse its discretion in ordering conduct-based attorney fees. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation omitted).

Affirmed.