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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0550**

In re the Custody of:
R. T. R., C. T. R., and S. C. T. R.,
Robby Romero, petitioner,
Appellant,

vs.

Stacey Ann Thunder,
Respondent.

**Filed March 9, 2020
Affirmed
Cleary, Chief Judge**

Anoka County District Court
File No. 02-FA-16-1073

Robert A. Manson, Roseville, Minnesota (for appellant)

Heidi A. Drobnick, Swanson, Drobnick & Tousey P.C., Woodbury, Minnesota (for
respondent)

Considered and decided by Cleary, Chief Judge; Larkin, Judge; and Florey, Judge.

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

CLEARY, Chief Judge

Appellant father challenges the district court's award of custody of the parties' children to respondent mother. Father also challenges the district court's parenting-time decision. We affirm.

FACTS

Appellant Robby Romero (father) and respondent Stacey Ann Thunder (mother) have three children together, R.T.R., C.T.R., and S.C.T.R. Mother has another non-joint child, S.T. Mother and father were never married. The parties lived together in Minnesota from 2004 until father moved to New Mexico in 2009.

When father moved, the children resided initially with mother. However, during mother's pregnancy with S.C.T.R., she developed back problems and needed help with the older children, so R.T.R., C.T.R., and S.T. lived with father in New Mexico from January 2011 to approximately June 2012. During that time, mother visited the children frequently and continued to provide for the children financially. R.T.R. and C.T.R. attended school in New Mexico when they lived with father.

During a visit to Minnesota in the summer of 2012, mother declined to send R.T.R. and C.T.R. back to New Mexico. They have resided exclusively with her since then. The children also live with S.T. and mother's brother, who helps care for the children. Since 2012, father has had sporadic phone contact and infrequent visitation with the children.

In 2016, father filed a petition to establish custody of R.T.R., C.T.R., and S.C.T.R. He initially sought joint legal custody, sole physical custody to mother, and asked the district court to grant him parenting time. He subsequently filed an amended petition seeking sole physical custody and joint legal custody. The district court granted father's request for supervised parenting time in September 2016. Father visited the children twice but then declined to exercise parenting time because he did not believe it should be

supervised. The district court denied several of father's motions for unsupervised visits. Father resumed parenting time in 2018.

The district court held a five-day trial in 2017 and 2018. Charlene Larson, a social worker, testified on behalf of the children regarding a parenting-time report that she prepared for this case. Larson interviewed the children and several collateral contacts in creating her report. She recommended that father be granted supervised parenting time.

In August 2018, the district court issued its findings of fact, conclusions of law, and order for judgment granting sole legal custody and sole physical custody to mother, and awarding father supervised parenting time. Father subsequently filed a motion for amended findings or a new trial. The district court denied the motion for a new trial, but granted in part the motion for amended findings. The district court amended five of its findings of fact and omitted one conclusion of law from its August 2018 order. After entry of judgment, father appeals.

D E C I S I O N

I. The district court's custody determination was not an abuse of discretion.

A district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Our review on appeal is limited to whether the district court abused its discretion by making findings unsupported by the record or by improperly applying the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We will sustain a district court's findings of fact unless they are clearly erroneous. *Id.* We defer to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The best interests of the child are central to custody determinations. Minn. Stat. § 518.17, subd. 1(a) (2018). The statute articulates twelve factors to consider in evaluating the best interests of the child, 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; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;

(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 . . . 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.

Id., subd. 1(a)(1)-(12).

The district court must make “detailed” factual findings on each factor and explain how each factor led to the district court’s conclusions, and to the ultimate determination of custody and parenting time. *Id.*, subd. 1(b)(1) (2018). The statute prohibits the district court from using “one factor to the exclusion of all others.” *Id.* The statute also requires the district court to use a rebuttable presumption that, upon the request of either or both parties, joint legal custody is in the best interests of the child. *Id.*, subd. 1(b)(9) (2018). 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).

Here, the district court carefully considered each of the best-interests factors and concluded that it was in the children’s best interests to award sole physical custody and sole legal custody to mother. Each factor is addressed in turn.

The children’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the children’s needs and development.

The district court concluded that mother’s home provided a more stable environment for the children and that mother has provided the primary monetary support, and health and dental insurance for the children. The district court found that, in contrast, father lives in a former theater with one bedroom and that his income is not stable. The district court credited testimony that father is supported financially by other people and

that he could be removed from his home at any time. The district court found that mother has supported and encouraged the children to learn about their Native American culture.

The district court found that father's methods of discipline are "inconsistent, abusive, and irrational," and that he has anger-management issues. The district court found that mother's disciplinary methods are better for the emotional health of the children and that father's anger and yelling causes distress to the children.

The record supports the district court's findings on this factor. Mother testified that she owns a five-bedroom home, and her brother lives with her to help care for the children. Mother testified that the children are connected to their Ojibwe culture. They are enrolled with the Lac Courte Oreilles Ojibwe nation, they learn about their culture through oral tradition, and attend tribal events such as pow wows.

Regarding discipline of the children, mother explained that the children are expected to listen to her, clean up after themselves, and contribute by doing chores. As punishment, mother will take away an electronic device from the children, or in S.C.T.R.'s case, give a time out lasting no longer than five minutes. She applies discipline consistently to all of the children.

In contrast, mother testified that father's disciplinary methods consist of yelling and berating the children for about 15 to 20 minutes at a time. He name calls, repeats himself over and over, and says mean things. He would also place the children in time outs in the bathroom with the lights off for up to an hour at a time. Mother described father's anger as "stressful and scary." She testified that father favors R.T.R over the other children. Father's sister also testified regarding her observations of father's parenting abilities,

stating that father yelled “all the time,” and described his yelling as “verbal abuse” and screaming. Larson also expressed concerns in her report that father “yells a lot, makes you feel worthless, has high expectations, and is narcissistic and manipulative.”

The record indicates that father’s anger is harmful to the children’s safety. Mother testified that, on one occasion, father shoved C.T.R., causing her to fall. On another occasion, he got angry and threw S.C.T.R., and mother had to catch him. Mother’s brother testified that, on one occasion, father got angry at R.T.R. and threw him violently across the couch, hurting R.T.R.’s arm and causing him to cry. Further, S.T., mother’s non-joint daughter, stated that she has seen father grab C.T.R., pull her hair, and drag her to the bathroom. Mother testified that once, S.C.T.R. broke an instrument, and father became so angry that mother feared he was going to hurt S.C.T.R. The record supports the district court’s findings under this factor.

Any special medical, mental health, or educational needs that the children may have that may require special parenting arrangements or access to recommended services

The district court found that no evidence was provided as to any special needs of the children. Father does not appear to challenge this factor.

The reasonable preferences of the children, if the court deems the children to be of sufficient ability, age, and maturity to express an independent, reliable preference

The district court found that R.T.R. prefers to continue living with mother and that C.T.R. has not stated a preference. It further found that S.C.T.R. is too young to state a preference. Larson testified consistently with the district court’s findings under this factor. Father attacks the credibility of Larson’s report and the collateral contacts she spoke with, arguing that Larson was “clearly not neutral.” But we defer to the district court’s credibility

determinations. *Sefkow*, 427 N.W.2d at 210. The district court's findings under this factor are not clearly erroneous.

Whether domestic abuse has occurred in the parents' relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the children's safety, well-being, and developmental needs

The district court found that there has been domestic abuse of mother by father and that the children have witnessed the domestic abuse. It found that this domestic abuse has affected father's parenting and has created fear of father in the children. Mother testified that father grabbed her neck on one occasion when he was angry. She also testified that on another occasion, he got angry and slammed a cupboard on her knee. She testified that the children witnessed his anger and outbursts. The record supports the district court's findings under this factor.

Any physical, mental, or chemical health issue of a parent that affects the children's safety or developmental needs

Under this factor, the district court found that, other than father's anger and abuse, there is no evidence that either party has physical or chemical health issues that affect the children's safety or developmental needs. For reasons stated above, the district court's findings regarding father's anger and abuse are supported by the record.

The history and nature of each parent's participation in providing care for the children

The district court found that the children have lived exclusively with mother since 2012 and that mother has primarily cared for the children throughout their lives. It found that mother takes care of the children's daily needs and that her brother lives with her and helps to provide care. Mother travels occasionally for work, but she has family that cares

for the children when she is gone. Father travels extensively for work and spends several weeks per month away from New Mexico.

The record supports these findings. Mother testified that when the parties lived together, she was the primary caretaker of the children. And when father moved to New Mexico, mother provided for the children financially, they visited with mother frequently, and spoke to her on the phone daily. Mother also maintained their regular medical and dental appointments while they were living in New Mexico during their visits to Minnesota. Mother also testified that when father took the children to public places, he failed to supervise them.

Moreover, for the five years prior to trial, the children lived exclusively with mother. She has been the sole parent to arrange the children's involvement in extracurricular activities, school activities, and has taken care of their daily needs. Mother has provided the children with stability and a predictable environment. Father testified that he has not provided any financial support to his children over the last four years. Additionally, mother testified that father's phone contact with the children was sporadic and inconsistent. The record supports the district court's findings on this factor.

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

The district court found that, while both parties are willing and able to care for the children, mother has better provided for the children's ongoing developmental, emotional, spiritual, and cultural needs, and she has demonstrated the commitment and means to continue doing so. The district court found that mother's housing and income can provide

better stability for the children, compared to that of father's. In contrast, father has exercised minimal parenting time with the children even after his request for supervised parenting time was granted.

The record supports these findings. Mother testified that she provides ongoing day-to-day care for the children. Mother testified that she is able to care for the children if they are sick, and that she has family members who are able to care for the children if she needs backup.

Father testified that he travels extensively. For example, in the nine months leading up to trial, he spent several weeks per month outside of New Mexico. Father testified that he does not have a rental agreement for his house, and the record indicates that the building in which father resides was for sale at the time of trial. Mother testified that father's living situation is not appropriate for her children. The record supports the district court's findings that mother is better able to provide ongoing care and to provide for the children's needs.

The effect on the children's well-being and development of changes to home, school, and community

The district court found that the children are well adjusted to school, family life, and their community in Minnesota. They have a lot of friends and are happy in their current environment. It found that the school that the children attended in New Mexico was substandard.

The record supports these findings. Mother explained that the children like their teachers and have a lot of friends at school and in their neighborhood in Minnesota. The

children also have relatives who live nearby, including an aunt, uncles, and their grandfather. They spend holidays with extended family. Further, mother testified that the children are happy in her care and that they regressed when they were in father's care. Mother also testified that the children are in activities in school and in the community. Mother testified that when the children returned to Minnesota after attending school in New Mexico, they were behind other children their age academically. She stated that she has hired tutors to help the children in areas in which they are struggling at school.

Moreover, Larson testified that she would have concerns about the children traveling out of state for long periods of time based on the limited contact they have had with father over the last five years. She testified that it would not be in the children's best interests for them to move to New Mexico. The record supports the district court's findings under this factor.

The effect of the proposed arrangements on the ongoing relationships between the children and each parent, siblings, and other significant persons in the children's life

The district court found that the children have significant relationships with mother's family members in Minnesota and that there is no evidence that the children have significant relationships with anyone in New Mexico other than father. The court found that granting physical custody to mother would allow the children to have contact with their extended family and would allow father to visit the children in Minnesota.

The record supports these findings. Mother testified that she has a close and loving relationship with all of the children. The children live with their half-sister, with whom they have lived their entire lives. They also live with their uncle and have a loving

relationship with him. Mother testified that the children do not have any relatives in New Mexico other than father.

The benefit to the children in maximizing parenting time with both parents and the detriment to the children in limiting parenting time with either parent

The district court found that mother has accommodated father's requests for parenting time when he is in Minnesota. The district court found that the children have more significant relationships with family in Minnesota, and the detriment of limiting father's parenting time is reasonable under the facts of this case.

The record supports these findings. As stated above, the children have significant relationships in Minnesota. Further, mother testified that the children are happy in her care and that they regressed when they were in father's care. The record indicates that limiting parenting time with mother would be detrimental to the children.

Except in cases where domestic abuse has occurred, the disposition of each parent to support the children's relationship with the other parent and to encourage and permit frequent and continuing contact between the children and the other parent

The district court found that mother has not prevented father from seeing the children but that father has refused mother and the court's reasonable limitations on his parenting time. It found that mother will not let the children go and visit father in New Mexico without a court order regarding parenting time. The district court found that this was a reasonable position given the circumstances of this case.

The record supports these findings. The children informed Larson that mother does not prevent them from speaking to father. Moreover, when father was in Minnesota,

mother accommodated his requests to see the children. The record indicates that mother is willing to cooperate so that father can exercise parenting time.

The willingness and ability of the parents to cooperate in the rearing of their children; to maximize sharing information and minimize exposure of the children to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the children

The district court found that the parties are unable to cooperate and share information with each other regarding the children.

The record supports this finding. Mother provided ample testimony that, based on her experience with father, if she disagreed with him, conflict arose. She explained that father was manipulative and controlling over her. For example, when the children were in New Mexico, mother had arranged for the children to come visit her in Minnesota, but father threatened not to bring the children unless mother deposited money into his business bank account. Mother testified that it would be very difficult to co-parent with father because if she does not agree to what he wants, then he views her as not being cooperative; it is “his way or no way.” She explained that the only way the issue will resolve is if she agrees to father’s demands. The record supports the district court’s findings under this factor.

The district court balanced the factors and concluded that it was in the children’s best interests to award sole physical custody and sole legal custody to mother. In light of the district court’s detailed factual findings under the statutory factors, which are supported by the record, we affirm the district court’s custody determinations.

II. The district court’s parenting time award was not an abuse of discretion.

Father argues that he is entitled to an award of at least 25 percent parenting time under Minn. Stat. § 518.175, subd. 1(g) (2018), which provides that there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for their child.¹ Father also challenges the district court’s order that his parenting time must be supervised and that he must participate in reunification therapy before he can exercise parenting time.

Rights to parenting time “are not absolute and are to be exercised only when in the best interest of the child.” *Manthei v. Manthei*, 268 N.W.2d 45, 45 (Minn. 1978). A district court has broad discretion to decide parenting-time questions and will not be reversed absent an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). We will uphold the findings of fact underlying the district court’s parenting-time decision unless they are clearly erroneous. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009).

The parenting-time statute requires that the district court grant parenting time “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). The statute allows for restrictions on parenting time if the district court finds “that parenting time with a parent

¹ Mother argues that caselaw indicates that this presumption only applies to actions to modify custody, rather than actions establishing custody. See *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018) (concluding that Minn. Stat. § 518.17 applies to initial custody and parenting-time determinations, while section 518.175 applies to parenting time *modifications*). Mother contends that, because this is an initial custody determination, the presumption does not apply here. For purposes of this opinion, we assume without deciding that the 25-percent presumption is relevant here.

is likely to endanger the child's physical or emotional health or impair the child's emotional development." *Id.*, subd. 1(b) (2018). Such restrictions can relate to time, place, duration, or supervision as the circumstances warrant. *Id.* The ultimate question in parenting-time matters is the best interests of the child. *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984).

The district court concluded that supervised parenting time with father was in the children's best interests. It concluded that father would be allowed to visit the children one weekend per month for up to two hours. The district court also concluded that reunification therapy was in the children's best interests.

We have held that the district court generally must demonstrate some awareness of the 25 percent parenting-time presumption in its findings if properly raised by a party. *Dahl*, 765 N.W.2d at 124. But even if a district court fails to do so, the error could be harmless if the district court supports its decision in other ways. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *see also Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand the case to the district court when the district court would undoubtedly make findings satisfying the statutory language to reach the same result). Parenting-time allocations less than 25 percent can be justified by reasons related to the children's best interests. *Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010).

Here, the district court carefully analyzed the 12 best-interests factors, made detailed findings under each factor, and considered parenting time in its best-interests analysis. The district court acknowledged that the distance between the parties made it difficult for father

to maximize parenting time, but also found that under the circumstances of this case, mother's refusal to let the children visit father in New Mexico was reasonable. This is especially true in light of the district court's finding that father has caused physical harm to the children and that, on one occasion, father refused to bring the children back to mother until she deposited money into his account. Moreover, father has declined to cooperate with the district court's limitations on parenting time. The record provides ample support for the district court's findings. Therefore, while the district court did not explicitly state that mother overcame the presumption that father be awarded at least 25 percent parenting time, reversal is unwarranted.

Father did not brief his argument that he should be entitled to unsupervised parenting time and that he should not have to participate in reunification therapy. He raised this argument for the first time at oral argument, and it is therefore not properly before us. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issues not briefed are not properly before this court). Nonetheless, the district court's decision was not an abuse of its "extensive" discretion to decide parenting-time questions. *See Manthei*, 268 N.W.2d at 45. Again, the district court analyzed the 12 best-interest factors in its decision. The district court made findings that father's disciplinary methods, including his anger and yelling, have caused distress to the children as well as physical harm. *See* Minn. Stat. § 518.175, subd. 1(b) (providing for limitations on parenting time if there is a likelihood of endangerment to the children's physical or emotional health or harm to the children's emotional development). These findings are supported by the record. The district court

did not abuse its discretion in requiring that parenting-time be supervised, at least initially, and by requiring that father participate in reunification therapy.

Affirmed.