

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0235**

In re the Matter of: Brian Eugene Wolf, petitioner,
Appellant,

vs.

Mandy Marie Oestreich,
Respondent.

**Filed February 22, 2021
Affirmed
Reyes, Judge**

Scott County District Court
File No. 70-FA-11-3896

Daniel M. Fiskum, Minnetonka Family Law, P.A., Minnetonka, Minnesota (for appellant)

Maury D. Beaulier, St. Louis Park, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

SYLLABUS

“Joint legal custody” under Minn. Stat. § 518.003, subd. 3(b) (2018), “means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care, and religious training.” A joint legal custodian’s status as the provider of a child’s “primary residence” does not modify the rights and responsibilities of either joint legal custodian unless the district court orders otherwise.

OPINION

REYES, Judge

In this custody dispute involving an award of joint legal custody, appellant-father argues that the district court erred by (1) determining that his status as the provider of a child's primary residence does not give him the right to unilaterally decide where the parties' child attends school and (2) declaring as moot his argument that he is still held in contempt. He alternatively argues that the district court cannot order him to return child to his prior school absent a finding of contempt. Respondent-mother challenges the district court's denial of her request for sanctions and attorney fees under Minn. R. Civ. P. 11. We affirm.

FACTS

Appellant Brian Eugene Wolf (father) and respondent Mandy Marie Oestreich (mother) are the parents of a child who was born in January 2010. The parties never married and ended their relationship in 2011. Shortly thereafter, the district court filed a stipulated order awarding the parties joint legal custody and joint physical custody of child. Father later moved to modify custody in February 2016. The district court incorporated the parties' agreement to keep joint legal custody and joint physical custody of child, have equal parenting time, and designate father's home as child's primary residence into another stipulated order.

When child reached school age, the parties enrolled him in the Belle Plaine Public School District, where he attended school for first through third grades. In summer 2019, before child began fourth grade, father moved to Eden Prairie. Although father discussed

changing child's school with mother, he unilaterally enrolled child in the Eden Prairie Public School District without mother's consent.

Mother, acting pro se, then sought an order for protection (OFP) in the Sibley County district court. That court later dismissed mother's petition, stating that the parties' dispute should be resolved in family court. Mother also filed a motion in Scott County district court (district court) to find father in contempt of court and have father return child to the Belle Plaine school. Father requested that the district court deny mother's motion, issue a temporary order allowing child to attend the Eden Prairie school, and hold a hearing on the issue of school choice. In his supporting affidavit, father stated that he relied on his attorney's advice that, because his home was child's primary residence, he could unilaterally decide where child attends school.

In its October 3, 2019 order following a motion hearing at which both parties were represented, the district court made "a prima facie finding of contempt" against father and ordered him to return child to the Belle Plaine school (October 3 order). In response, mother withdrew her request for an evidentiary hearing on father's alleged contempt of court for enrolling child in the Eden Prairie school. On October 22, 2019, the district court granted mother's request for conduct-based attorney fees under Minn. Stat. § 518.14 (2018).

Later, the district court set a motion hearing on the issue of school choice for January 7, 2020, but required the parties to first mediate the issue. In December 2019, father moved

for “summary judgment” on mother’s still-pending contempt motion,¹ and moved to vacate the district court’s October 3 and October 22 orders. In response, mother moved the district court to deny father’s motions and to find father in contempt for his failure to pay the attorney fees awarded in the October 22 order. The parties attempted mediation, without success. Father then moved the district court to amend the findings in the October 3 order, vacate the October 22 order, and, in the alternative, grant an evidentiary hearing on mother’s first contempt motion. Mother moved for rule 11 sanctions and attorney fees.

After the January 7 hearing, at which the district court addressed the pending motions rather than school choice, the district court denied as moot father’s motion for “summary judgment.” The district court amended the October 3 order in part to vacate its preliminary findings on contempt. It also amended its October 22 order to note that mother withdrew her first motion for contempt and ordered that judgment be entered against father for the attorney fees ordered on October 22. The district court denied all other relief, including father’s request for an evidentiary hearing on mother’s first contempt motion and mother’s motion for rule 11 sanctions and attorney fees. Father appeals, and mother filed a notice of related appeal.

ISSUES

I. Did the district court err by determining that, because the parties have joint legal custody of child, father’s status as provider of child’s primary residence does not allow him to unilaterally resolve the parties’ school-choice dispute?

¹ We express no opinion on whether a summary-judgment motion is proper in this context. See Minn. R. Civ. P. 56.01.

II. Did the district court err by declaring as moot father's arguments that (1) he is still held in contempt, and alternatively that (2) the district court may not order him to return the child to the Belle Plaine school absent a finding of contempt?

III. Did the district court abuse its discretion by denying mother's motion for rule 11 sanctions and attorney fees against father and his attorney?

ANALYSIS

I. Primary residence does not modify the rights and responsibilities of joint legal custodians unless the district court orders otherwise.

Father argues that his status as provider of the child's "primary residence . . . overrides joint legal custody in the area of school choice" and entitles him to unilaterally decide where child attends school. Father is incorrect.

This issue requires us to examine the interplay between the concepts of "joint legal custody" and "primary residence," which Minnesota caselaw has not squarely addressed, and how those concepts apply to the parties' custody agreement in the stipulated order. We treat a stipulated order as a contract for purposes of construction. *Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011) (stating this principle as applied to stipulated dissolution judgment). We first review de novo whether a stipulated order is ambiguous, meaning it is susceptible to more than one reasonable interpretation based on its language alone. *Id.* If it is unambiguous, we apply its plain meaning. *Id.*

Here, because the stipulated order does not define or modify any of the terms relevant to the parties' dispute, we focus on their meaning based on applicable law. See *Bender v. Bender*, 671 N.W.2d 602, 607-08 (Minn. App. 2003); see also *Rios v. Jennie-O*

Turkey Store, Inc., 793 N.W.2d 309, 316 (Minn. App. 2011) (noting, in context of construing contract, parties to contract are presumed to enter into it with reference to applicable law unless contract evidences contrary intent). In doing so, we review the interpretation of statutes and caselaw de novo. *In re Dakota County*, 866 N.W.2d 905, 909 (Minn. 2015) (statutes); *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011) (caselaw). We first determine whether the statute’s language is ambiguous by being subject to multiple reasonable interpretations. *Dakota County*, 866 N.W.2d 909. If the statute is unambiguous, we apply its plain meaning. *Id.*

A. Joint legal custody

“‘Legal custody’ means the right to determine the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(a) (2018). “*Joint legal custody*” means that the parties “have *equal rights* and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(b) (emphasis added). Neither party claims that these terms are ambiguous, and we agree. The plain meaning of these terms shows that joint legal custodians have equal rights and responsibilities regarding educational decisions, including school choice. *See Novak v. Novak*, 446 N.W.2d 422, 423-24 (Minn. App. 1989) (explaining that joint legal custody award gave parties equal rights to decide type of schooling joint child would receive), *review denied* (Minn. Dec. 1, 1989).

B. Interplay between “joint legal custody” and “primary residence”

For at least three reasons, we reject father’s argument that a joint legal custodian of a child who also provides the child’s primary residence can decide where that child will attend school over the objections of the other joint legal custodian.

First, “primary residence,” which is not defined by statute, relates to the principal location where the child resides. *Suleski v. Rupe*, 855 N.W.2d 330, 335 (Minn. App. 2014). The principal location where a child resides relates to physical custody, which involves the “routine daily care and control” of that child. Minn. Stat. § 518.003, subd. 3(c) (2018). Decisions regarding school choice are educational decisions within the ambit of legal custody, and beyond the ambit of the “routine, daily care and control” of the child. Nothing in the definitions of any of these terms confers on a joint legal custodian who provides a child’s primary residence the authority to resolve questions of joint legal custody over the objections of the other legal custodian.

Second, father’s proposed construction of “primary residence” rewrites the definition of “joint legal custody” to include a provision stating that joint legal custodians have equal rights and responsibilities regarding matters of legal custody “unless the joint legal custodians disagree, in which case the relevant decision shall be made by the provider of the child’s primary residence.” This interpretation runs afoul of our limited role to not “add words or meaning to a statute that were intentionally or inadvertently omitted.” *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012). It also directly contradicts *Novak*, in which we stated that neither party having joint legal custody has a preferred right to determine a child’s upbringing, including education. 446 N.W.2d at 424.

Third, father's proposed construction of "primary residence" renders joint legal custody illusory when the joint legal custodians disagree because it reserves decisions to the joint legal custodian who provides the child's primary residence. Doing so precludes the joint legal custodian who does not provide the child's primary residence from exercising his or her statutorily conferred right to participate in decisions either by negotiating with the provider of the child's primary residence or by litigating the question to the district court per *Novak*. 446 N.W.2d at 424 (noting that district court should resolve disagreements between joint legal custodians consistent with best interests of child).

Father argues that the district court's interpretation of "primary residence" renders it meaningless. But father ignores the fact that parties can use a primary-residence designation to structure their physical-custody arrangement and that a primary-residence designation impacts the standard that applies to requests to modify a parenting plan, without regard to the legal-custody arrangement. Minn. Stat. §§ 518.175, subd. 5(b) (2018), 518.18(d)(iv) (2018). As a result, "primary residence" is meaningful in other contexts, even if not determinative on school choice. Father's argument fails.

Father also argues that *Christensen v. Healy* supports his argument that primary residence determines school choice. 899 N.W.2d 573, 577 (Minn. App. 2017) (*Christensen I*), *rev'd on other grounds*, 913 N.W.2d 437 (Minn. 2018). In *Christensen I*, we stated that courts look to "where the child attends school, participates in extracurricular activities, socializes with peers, or worships," among other factors, to determine a child's primary residence. *Id.* Father extracts from this multi-factor test the following proposition: because school choice determines primary residence, primary residence determines school

choice. This argument misreads *Christensen I*. Under *Christensen I*, school choice, alone, does *not* determine a child's primary residence. Instead, when no court order specifies a child's primary residence, several factors, including school choice, inform the identification of a child's primary residence. *Id.* That a number of factors determine primary residence does not mean that the identification of a child's primary residence in turn determines any of those factors.²

Father also cites the Minnesota Supreme Court's opinion in *Christensen v. Healy* for support. 913 N.W.2d 437, 442 (Minn. 2018) (*Christensen II*). There, the supreme court held that district courts should look to the totality of the circumstances to determine whether a proposed modification of parenting time is so substantial as to constitute a de facto modification of physical custody, in which case the endangerment standard rather than the best-interests-of-the-child standard applies. *Id.* While *Christensen II* notes that "physical custody," "parenting time," and "primary residence" are "distinct yet overlapping concepts," it addresses neither legal custody nor the interplay between legal custody and "primary residence." *See id.* at 440. In sum, neither *Christensen I* nor *Christensen II* hold, or even suggest, that the joint legal custodian who provides a child's primary residence may decide the question of school choice over the objections of the other joint legal custodian.

Father also argues that he has a right to rely on three statements by the Sibley County district court during the OFP hearing that primary residence determines school choice. But

² Moreover, if school attendance *is* dispositive of a child's primary residence, identifying the primary residence of a child who does not attend school becomes problematic.

father enrolled child at the Eden Prairie school *before* the OFP hearing. He therefore could not have relied on the Sibley County district court’s statements at the time he enrolled child. We therefore reject father’s argument on this point.

Finally, we note that parties may, and often do, ask the district court to modify the meaning of terms defined by statute or caselaw, such as joint legal custody and primary residence.³ See, e.g., *Goldman v. Greenwood*, 748 N.W.2d 279, 280-81 (Minn. 2008) (reviewing grant of sole legal custody with added restriction against moving child out-of-state); *Ayers v. Ayers*, 508 N.W.2d 515, 520 (Minn. 1993) (stating that “we must accept the label of joint legal . . . custody given the arrangement by [the parties]” and that “this holding will require careful drafting by the parties in the first instance”). Here, the parties did not seek modification of the definition of either “joint legal custody” or “primary residence.” Absent a district court order changing the meaning of the relevant terms,⁴ the generally applicable definitions of those terms, and the rights and responsibilities conferred by them, control. See *Ayers*, 508 N.W.2d at 520; *Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (2000); *Novak*, 446 N.W.2d at 424. We therefore hold that a joint legal custodian’s status as the provider of a child’s primary residence does not modify the rights and responsibilities of either joint legal custodian established under an award of joint legal

³ For example, in *Ahlers v. Ahlers*, we affirmed the district court’s modification of the parties’ joint legal custody award when it granted *respondent sole responsibility for religious and educational decisions*. No. C1-01-1480, 2002 WL 857724 at *1 (Minn. App. May 7, 2002). *Ahlers* is nonprecedential but is cited for its persuasive value, given the striking similarity between the custody arrangement and dispute there and the custody arrangement and dispute here. Minn. R. Civ. App. P. 136.01, subd. 1(c).

⁴ We express no opinion as to under what circumstances, and to what extent, a district court may alter the generally applicable definitions of terms defined by statute or caselaw.

custody unless the district court orders otherwise. That did not happen here. Therefore, we conclude that the district court did not err by determining that father may not unilaterally determine school choice.

II. The district court did not err by declaring father’s contempt arguments moot.

Father argues that the district court erred by declaring as moot his arguments that (1) he is improperly being held in contempt and alternatively, (2) if the district court did not find him in contempt, it could not order him to return the child to the Belle Plaine school. We are not persuaded.

A district court’s determination on justiciability, including mootness, is an issue of law that we review de novo. *Cf. Dean v. City of Winona*, 868 N.w.2d 1, 4 (Minn. 2015) (applying this standard of review to justiciability of an appeal). A case is moot if there is no justiciable controversy. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 97 (Minn. App. 2009) (citing *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005)). To determine whether a justiciable controversy exists, we compare the relief requested and the circumstances of the case at the time of the district court’s decision. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 291 (Minn. App. 2007) (citing *In re Application of Minnegasco, Inc.*, 565 N.W.2d 706, 710 (Minn. 1997)). “If . . . an event occurs that renders a decision on the merits unnecessary or an award of effective relief impossible,” we must dismiss the appeal as moot. *Weigel v. Miller*, 574 N.W.2d 759, 760 (Minn. App. 1998).

Here, the district court made a “prima facie finding of contempt”⁵ but it did not make a conditional or final contempt finding. The district court never held father in contempt, nor could it without an evidentiary hearing. Minn. R. Gen. Prac. 309.02; *Wenzel v. Mathies*, 542 N.W.2d 634, 644 (Minn. 1996). Instead, it simply ordered father to comply with his preexisting responsibilities under the stipulated order awarding joint legal custody. Mother subsequently withdrew her motion for contempt, and the district court correctly held that father’s motion for “summary judgment” became moot. Moreover, even if father were held in contempt, he returned the child to the Belle Plaine school and thereby purged any alleged basis for contempt. There is no relief for us to grant, and we therefore affirm the district court’s conclusion that father’s contempt argument is moot.

III. The district court did not abuse its discretion by denying mother’s motion for rule 11 sanctions and attorney fees.

Mother argues that the district court abused its discretion by refusing to impose sanctions on father or his attorney pursuant to Minn. R. Civ. P. 11 for filings that mother alleges were frivolous, repetitive, and unsupported by the record. We disagree.

We review a district court’s refusal to impose sanctions under Minn. R. Civ. P. 11 for an abuse of discretion. *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *review denied* (Minn. Mar. 15, 2011). Under rule 11, an attorney must certify that submissions to the district court are “not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of

⁵ We interpret the district court’s statement as a finding that *mother* made a prima facie showing of contempt.

litigation,” that existing law or a nonfrivolous argument for a change in the law supports the claims made, and that evidence supports the factual allegations. Minn. R. Civ. P. 11.02. The district court may impose sanctions on parties or their attorneys for conduct that violates any of these criteria. *Id.* The purpose of sanctions is deterrence rather than punishment or cost-shifting. *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990); *see also* Minn. R. Civ. P. 11 advisory comm. cmt. (2000) (noting even though supreme court decided *Uselman* under prior version of rule 11, courts may still look to it for guidance and should reserve sanctions for “substantial departures from acceptable litigation conduct”). We therefore construe rule 11 narrowly. *Id.*

Here, the district court denied mother’s motion for sanctions because this was the first time father’s attorney appeared before it and made these arguments. Mother argues that father clearly violated the stipulated award of joint legal custody. We agree, but also note that neither caselaw nor statutes clearly addressed the interplay between legal custody and “primary residence” as we do in this case.⁶ We discern no abuse of the district court’s broad discretion in its reasoning here.

DECISION

Identification of who provides a child’s “primary residence” does not alter the rights conferred on either joint legal custodian unless the district court orders otherwise. Because the parties here have joint legal custody, and because the district court neither adopted an

⁶ We discourage attorneys and parties from acting in ways that are inconsistent with lawful court orders, especially when those actions are based on untested arguments that have not been presented to or accepted by a court of competent jurisdiction.

agreement between the parties nor filed its own order modifying the rights and responsibilities established by the award of joint legal custody, the district court did not err by determining that father may not unilaterally decide where child attends school.

Affirmed.