STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0814

In re the Marriage of:
Helena Koivu, petitioner,
Respondent,

vs.

Mikko Sakari Koivu,
Appellant.

Filed March 8, 2021
Affirmed in part, reversed in part, and remanded;
motion denied
Worke, Judge

Hennepin County District Court
File No. 27-FA-20-872

M. Sue Wilson, James R. Todd, M. Sue Wilson Law Offices, P.A. Minneapolis, Minnesota (for respondent)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

John M. Jerabek, Alexandra Michelson Connell, Tuft, Lach, Jerabek & O'Connell, PLLC, Maplewood, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-husband argues that the district court erred by (1) concluding that service of process was proper, (2) concluding that Minnesota is a more appropriate forum than Finland under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), (3) determining that Minnesota is not an inconvenient forum to litigate the parties' property issues, and (4) ordering husband to dismiss his dissolution case in Finland. We affirm in part, reverse in part, and remand. Husband also moved to strike the documents in respondent-wife's addendum. We deny husband's motion.

FACTS

Appellant-husband Mikko Sakari Koivu and respondent-wife Helena Koivu were married in Finland in 2014. Husband is Finnish and wife is Estonian. The day before their marriage, the parties signed a prenuptial agreement, agreeing that "Finnish law will be applicable to our matrimonial property rights, regardless of where our habitual residence or domicile at the time is." The parties moved to Hennepin County, Minnesota, where they have been living for the last eight years. They have three young children together. Wife is a stay-at-home mother, and husband is a professional hockey player.

Wife filed her petition for the dissolution of the parties' marriage in Hennepin County on February 7, 2020. Wife later moved the district court to determine whether it had jurisdiction over the dissolution. In wife's affidavit, she stated that her attorney sent husband's attorney the summons and petition on January 29, 2020, but husband did not sign the admission of service. Wife's attorney then arranged for personal service on

husband in Minnesota on February 12, 2020, the sufficiency of which is now in dispute. Husband filed his Finnish dissolution action on February 4, 2020, and served wife with his documents in that case on February 10, 2020.

The district court granted wife's motion and recognized jurisdiction and venue in Hennepin County. Husband appealed and later moved to strike the documents in wife's addendum.

DECISION

Motion to strike

Husband moved this court to strike the documents in wife's addendum because they were not part of the district court record.

"The documents filed in the [district] court, the exhibits, and the transcript of the proceeding, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. Generally, appellate courts will strike any documents that are not part of the record. *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993). But "when the evidence is documentary evidence of a conclusive nature (uncontroverted) which supports the result obtained in the lower court," appellate courts may take judicial notice of the documents and consider them when deciding the issue on appeal. *In re Livingood*, 594 N.W.2d 889, 895-96 (Minn. 1999) (quotation omitted).

Because we do not rely on the documents wife included in her addendum, we deny husband's motion to strike as unnecessary.

Service of process

Husband argues that the district court erred by rejecting his motion to dismiss for insufficient service of process.

Whether service of process was proper is a question of law that appellate courts review de novo. *Ayala v. Ayala*, 749 N.W.2d 817, 820 (Minn. App. 2008). Service is proper against an individual "by delivering a copy to the individual personally." Minn. R. Civ. P. 4.03(a). Service is generally made when "the process server and the defendant are within speaking distance of each other, and such action is taken as to convince a reasonable person that personal service is being attempted, service cannot be avoided by physically refusing to accept the summons." *Nielsen v. Braland*, 119 N.W.2d 737, 739 (Minn. 1963).

The process server described the incident at issue in this case in his affidavit:

> [I made service on husband a]t the Xcel Energy Center by saying his name, making eye contact with him and holding the documents out towards him. [Husband] tried to avoid service by putting his head down and continuing to walk. The documents were dropped in front of [husband] and he was told "you have been served."

Husband acknowledged in his affidavit that wife's attorney requested that he sign an admission of service. He described his version of the purported service of process as occurring during a National Hockey League game as follows:

> As I was exiting the ice and going into the tunnel that was packed with loud fans surrounding it, I heard someone yell, "You've been served," and I saw papers fall from the top of the tunnel onto the floor in the area where I was walking. I did not make eye contact with the person that yelled; the top of the tunnel is high enough that I cannot sign jerseys for fans that are up there, and there were so many people that I did not know who yelled or dropped the papers. The security guard rushed

> over to pick up the papers since people are not allowed to throw things at players. I stopped and asked the security guard what they were, and I saw that they were divorce papers. The security guard brought the papers to a team staff member to hold for security purposes until the game concluded.

The district court concluded that wife properly served husband because husband "acknowledge[d] being in speaking distance of the server because he heard someone yell 'you've been served,' and he was advised by the security guard who picked up the papers that they were 'divorce papers.'" The district court also noted that the evidence suggested that husband "was aware that his wife was seeking to initiate a divorce case," and "a reasonable person would have understood that service was being attempted." We agree with the district court's reasoning. The facts listed in husband's affidavit are enough "to convince a reasonable person that personal service is being attempted." *See id.* Husband has not shown that the service of process was ineffectual.[1]

[1] While we affirm the district court's denial of the motion to dismiss in this case for lack of proper service, we limit our ruling to the facts presented by the record. We do not condone the method of service employed here. Throwing objects at players leaving the ice is forbidden by the rules of the arena where the service occurred, and doing so could be dangerous. Further, serving legal documents in this manner allows the inference that the method of service was selected in an extraordinarily unprofessional attempt to sensationalize the proceedings, as well as to humiliate or embarrass a professional athlete in the presence of teammates and fans. While this record does not describe all of the circumstances leading to the type of service described here, we strongly encourage all associated with the litigation of legal disputes, and especially those involved with the litigation of family and custody matters, which can be uniquely delicate, to conduct themselves with dignity and a commitment to fair dealing. *Cf. Am. Standard Ins. Co. v. Le*, 551 N.W.2d 923, 925 n.3 (Minn. 1996) (expressing displeasure with lack of professional courtesy).

More appropriate forum

Husband argues that the district court erred in concluding that Minnesota was a more appropriate forum than Finland based on the UCCJEA.

We review a district court's decision whether to decline jurisdiction as an inconvenient forum for an abuse of discretion. *Levinson v. Levinson*, 389 N.W.2d 761, 762 (Minn. App. 1986). "A district court abuses its discretion by misapplying the law." *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014). The UCCJEA provides eight factors to weigh in determining the appropriate forum when dual jurisdiction exists:

> (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
> (2) the length of time the child has resided outside this state;
> (3) the distance between the court in this state and the court in the state that would assume jurisdiction;
> (4) the relative financial circumstances of the parties;
> (5) any agreement of the parties as to which state should assume jurisdiction;
> (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
> (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
> (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

Minn. Stat. § 518D.207 (b) (2020).

The district court determined that Minnesota is the appropriate forum after finding that the first, fifth, sixth, and eighth factors are neutral; the fourth and seventh factors are neutral or slightly favor Minnesota; and the second and third factors favor Minnesota.

Husband argues that the district court abused its discretion in not finding that the second, fifth, sixth, seventh, and eighth factors favor Finland.

Second factor

Husband first argues that the district court abused its discretion in weighing the second factor in favor of Minnesota. The district court made this determination because "[t]he parties agree that the children have primarily lived in Minnesota," traveling to Finland over summer breaks and holidays. Husband argues that (1) Minnesota is only a temporary home because of his career, (2) the parties have a house in Finland, (3) the children are in Finland between husband's seasons, and (4) wife indicated she plans to "fly to Finland [with the children] and move on with [their] own lives." We can fairly summarize husband's argument as being based, mainly, on future possibilities. The statute, however, requires consideration of "the length of time the child *has* resided outside this state." *See id.* (b)(2) (emphasis added).

The only portion of husband's argument that relates to where his children have resided is that they travel to Finland on summer break and holidays. But the district court properly weighed this in stating that the children "have spent at least 75 percent of their lives in Minnesota." Husband has not shown that the district court abused its discretion in concluding that this factor favors Minnesota being the appropriate forum to litigate custody.

Fifth factor

The fifth factor is "any agreement of the parties as to which state should assume jurisdiction." *Id.* (b)(5). The parties signed a prenuptial agreement that states, "We agree

that the Finnish law will be applicable to our matrimonial property rights, regardless of where our habitual residence or domicile at the time is. We agree to enter into agreement of this kind in any place of our habitual residence or domicile." The district court noted that the agreement determined only the governing law, not venue. The district court added that the language in the agreement "seem[s] to assume that venue may be located outside of Finland."

Husband argues that the district court abused its discretion in determining that this factor is neutral because the prenuptial agreement assumed Finland would be the forum for any marriage dissolution because it designated Finnish law as the governing law, was written in Finnish, and was written by Finnish attorneys. But the prenuptial agreement has no forum-selection clause, and the district court correctly noted that the governing-law clause assumes that venue may be located outside of Finland. Similarly, the language of the agreement and the nationality of the drafting attorneys have no effect in narrowing appropriate forums. Husband has not shown that the district court abused its discretion in finding this factor neutral.

Sixth factor

Husband also argues that the district court abused its discretion in finding that the sixth factor was neutral. The sixth factor analyzes "the nature and location of the evidence required to resolve the pending litigation, including testimony of the child." *Id.* (b)(6). The district court reasoned that most of the financial information is in Finland, but the "[e]vidence regarding social issues such as child custody and parenting time is primarily located in Minnesota because that is where the children live and their schools and

caretakers are located." Husband argues that the district court "ignored that it is uncertain how long the parties will be able to remain in Minnesota" and "that nearly all of the parties' family, including the children's grandparents, aunts, uncles, cousins, and other extended family are located in or around Finland." Husband concludes that "many potential witnesses are in Finland." But this does not negate the fact that, because Minnesota is where the children currently live, there are several witnesses in Minnesota. Testimony from the children's current teachers and caretakers will likely be relevant to trial, not to mention possible input from the children themselves. Husband has not shown that the district court abused its discretion in finding this factor neutral by simply leaving out extended family that live in or near Finland.

Seventh factor

Husband next argues that the district court abused its discretion in finding the seventh factor "neutral or shaded slightly to Minnesota." The seventh factor considers "the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence." *Id.* (b)(7). The district court noted that "it appears that the courts in Finland may take longer to resolve dissolutions because of a mandatory 'cooling off' period." The district court's order supports this statement by citing one of husband's attorney's affidavits that states, "The spouses shall have the right to a divorce after a reconsideration period, and the reconsideration period begins when the petition of one spouse is served on the other spouse." It is not clear what this reconsideration period is, how long it will last, or whether it is still going on.

Husband argues that "[t]here is no evidence in the record and the [district] court cites no Finnish law suggesting that the reconsideration period affects the Finnish court's ability to determine child custody issues." We agree that the district court abused its discretion by relying on a sentence in an affidavit to interpret Finnish law and slightly favoring Minnesota for this element.

Husband also argues that this factor should favor Finland because most of the written evidence is in Finnish, and "[i]n addition to the time and expense of translating, there is an inherent risk that translations will not fully convey the nuance of the original language." But Minnesota courts provide translators, and, as husband points out, "The parties have already had to obtain translations of several documents." Minnesota courts have the necessary procedures to handle the documents originally in Finnish, just like Finland likely has the procedures to handle the evidence originally in English. Because the district court did not support its conclusion that this factor slightly favored Minnesota, the district court abused its discretion, and we consider this factor neutral.

Eighth factor

Finally, husband argues that the district court abused its discretion in determining that the eighth factor was neutral. The eighth factor considers "the familiarity of the court of each state with the facts and issues in the pending litigation." *Id.* (b)(8). The district court reasoned, "Neither court is familiar with the facts and issues in this matter yet."

We agree with the district court. Because the statute includes both "facts and issues," and because husband has failed to show that any of the facts and issues surrounding this matter have been investigated and developed, we find this factor to be neutral.

Changing the seventh factor to neutral does not change the outcome of weighing the factors. Husband has not met his burden in showing that the district court abused its discretion in determining that Minnesota is a more convenient forum to determine the child-custody issues.

Inconvenient forum

Husband next argues that the district court abused its discretion in determining that Minnesota is not an inconvenient forum to litigate the parties' property issues. Husband's main argument is that the district court accepted jurisdiction over the property dispute after determining that Minnesota is a more convenient forum to determine the child-custody issues rather than conduct an inconvenient-forum analysis.

Appellate courts rarely consider matters or theories not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). However, this court may address issues not properly before it in the interest of justice. Minn. R. Civ. App. P. 103.04.

Husband responded to wife's motion by asking the district court to "defer to the Finnish court to determine whether Finland should retain jurisdiction." Husband also makes arguments that relate to an inconvenient-forum analysis—such as Finnish finances, property, and family—but husband did not move for a forum non conveniens or use its analysis in his responsive memorandum. The district court concluded, "Based on an analysis and weighing of the statutory factors above, as well as a consideration of judicial and litigation economy, it is clear that Minnesota is not an inconvenient forum in which to try all aspects of this matter."

Because husband did not argue for an inconvenient forum, and because the district court did not consider the issue, it is not properly before us for review.

International antisuit injunction

Finally, husband argues that the district court erred by sua sponte ordering husband to "take appropriate actions to dismiss the dissolution matter in Finland." Husband claims that this amounts to an international antisuit injunction.

"No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party." Minn. R. Civ. P. 65.02(a). Wife concedes that the district court erred by ordering husband to dismiss the case in Finland, stating, "After careful review of the case law cited by [husband] in his Brief on appeal, [wife] must agree with [husband] that the district court erred by issuing what is effectively an international antisuit injunction without providing proper notice to [husband] pursuant to Minn. R. Civ. P. 65.02." We agree and remand the issue to the district court to vacate this portion of the order.[2]

Affirmed in part, reversed in part, and remanded; motion denied.

[2] The court recognizes and appreciates the candor of wife and her attorney on this point.