

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-0612**

In re the Matter of:

Josie Marie Martin, petitioner,  
Respondent,

vs.

Justin Michael Martin,  
Appellant.

**Filed February 7, 2022  
Reversed and remanded  
Smith, Tracy M., Judge**

Mille Lacs County District Court  
File No. 48-FA-21-430

April A. Lindstrom, Lindstrom Family Law, Milaca, Minnesota (for respondent)

Brian K. Lewis, Francis White Law, PLLC, Woodbury, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and  
Gaïtas, Judge.

**NONPRECEDENTIAL OPINION**

**SMITH, TRACY M., Judge**

Appellant Justin Michael Martin challenges an order for protection (OFP) issued against him that prohibits contact with his wife and children, denies parenting time, grants temporary legal and physical custody of the children to his wife, and establishes temporary

child support.<sup>1</sup> At the time of the OFP petition and hearing, Justin was the subject of civil-commitment proceedings. Justin argues that (1) the district court erred by issuing the OFP because he lacked competency to agree to any part of the order and (2) the district court erred by ordering him to pay temporary child support without adequate record support.

We conclude that, given the particular circumstances of this case suggesting that Justin was facing significant mental-health challenges at the time of the hearing, the district court was obligated to conduct an inquiry into Justin’s competency to enter into a stipulated order before issuing an order that depended on his agreement. Because three elements of the district court’s order—specifically, the no-contact provision, the temporary-custody provision, and the no-parenting-time provision—are premised on Justin’s agreement, and because temporary child support depends on custody and parenting-time determinations, we reverse and remand for further proceedings.

## **FACTS**

On March 2, 2021, respondent Josie Marie Martin petitioned for an OFP against Justin for herself and their two children. At the time, Josie and Justin were in the midst of a separate dissolution-of-marriage case. In her petition, Josie alleged a history of serious physical and emotional abuse by Justin. She also alleged that Justin had been recently diagnosed with schizophrenia, had told her that he had “a whole body movement with God and God wants to help us (my family) through him,” and was not taking his schizophrenia medication. In addition to no-contact provisions, Josie requested that the OFP provide for

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<sup>1</sup> This opinion will use the parties’ first names because they have the same last name.

insurance coverage, temporary child support, and temporary use and possession of the marital home, and that it award temporary custody of the children to Josie. Josie alleged that her monthly income was \$1,400, that she did not know Justin's income, and that she had child-care costs of \$400 per month.

The district court granted Josie an emergency ex parte OFP and scheduled a hearing for two weeks later. The hearing was held by videoconference. Josie was represented by counsel, and Justin was not. The district court recognized that Justin was attending the hearing "from a facility." Josie's counsel noted that there was a civil-commitment action pending against Justin in another county<sup>2</sup> and that Justin had been unable to "to demonstrate his stability." Justin stated that he had been in treatment for about seven to eight days and had seven to eight days to go, that he believed he would be "out within the next week or so," that he was on medication for his mental health, and that he had restrictions on phone calls at the treatment facility. The district court asked Justin if he was making progress on his mental health and encouraged him to pursue his treatment to gain stability.

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<sup>2</sup> In his brief to this court, Justin cited extensively to the civil-commitment case; Justin was, apparently, subject to multiple involuntary holds and civilly committed from April 2, 2021, to October 2, 2021. However, the civil-commitment case is not the case on appeal here and is not part of the record. Thus, we consider only the information that the district court had about the civil-commitment case and the information it had about Justin's mental health at the time of the hearing in this case. *See* Minn. R. Civ. App. P. 110.01 (providing that the record on appeal shall constitute the documents filed in the district court, the exhibits, and the transcript of the proceedings); *Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005) ("Appellate courts may not consider matters outside the record on appeal and will strike references to such matters from the parties' briefs."), *rev. denied* (Minn. July 19, 2005).

At the outset of the hearing, the district court suggested that it issue an OFP without factual findings and asked Justin if he would be agreeable to that resolution. In response, Justin said that he did not want “what was written” to be “used against [him] in this court order because a lot of information has been falsified and isn’t true.” The district court explained that an order without findings would mean that the court is not considering the allegations but is just recognizing that the parties agree. The district court asked, “Make sense?” Justin responded, “Yes, sir. So, I would be willing to do that but I would like some parenting time with my kids.” The district court stated, “Okay. Well, so let’s say an order for protection is appropriate by agreement of the parties. That’s fine.” The district court then turned to the remaining matters at issue.

The parties discussed insurance, custody, parenting time, and temporary child support. As to custody and parenting time, Justin expressed that he would like to have parenting time with the children, stating that he had “done bad things around [the children] but it wasn’t the intention to put them into danger.” Josie opposed any parenting time for Justin given the allegations in the petition and Justin’s civil-commitment action. Justin also said that he would “fight for full custody” if he were not allowed to see his children. Ultimately, after the parties discussed the appointment of a guardian ad litem, Justin said, “I’d be willing to go that route. I’d be willing to wait a couple months just for the safety of everyone since it seems so uncertain,” and later said that he “respect[ed]” the approach of having no contact with the children until the guardian ad litem issued a report. As to temporary child support, the parties did not come to an agreement and the district court instead took testimony on the parties’ current financial situations.

On March 17, the district court granted a purportedly stipulated OFP on behalf of Josie and the children. The order states that “[Justin] does not object to an order for protection and understands that the order will be enforced as if there was an admission or finding of domestic abuse.” The order grants temporary custody of the children to Josie, denies Justin any parenting time until the court reviews the guardian-ad-litem report, and orders Justin not to contact Josie or the children and to stay away from several locations. Additionally, the district court ordered Justin to pay \$928 per month for temporary child support and \$155 per month for child-care costs, starting on May 1; ordered Justin to continue existing health-insurance coverage; and awarded temporary use and possession of the marital home to Josie.

Following the issuance of the OFP, Justin obtained counsel. Justin’s counsel requested a hearing date to bring a motion for a new trial under Minn. R. Civ. P. 59, arguing that Justin “lacked the capacity to enter into” the stipulation for the OFP and contending that there was “no other mechanism available under which [the district court] can withdraw the ineffective consent given by [Justin] to the order for protection.” The district court denied the request for a hearing date to bring a new trial motion under rule 59. Justin appeals. Josie has not submitted a brief in this appeal, and this court ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03, which directs us to resolve the appeal on its merits.

## DECISION

Justin contends that the district court erred by entering a stipulated OFP when he was in a mental-health facility at the time of the hearing, was facing civil-commitment proceedings, and was not competent to enter into an agreement.

“[Appellate courts] review the decision to grant an OFP for an abuse of discretion. A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and facts in the record.” *Thompson v. Schrimsher*, 906 N.W.3d 495, 500 (Minn. 2018) (quotation and citation omitted).

**A. We are required to consider Justin’s competency-based challenge in the interests of justice.**

As an initial matter, we observe that the district court did not make any factual findings about Justin’s competency to enter an agreement. Justin, however, did not raise this issue to the district court until his motion for a new trial. This is problematic for two reasons. First, domestic-abuse proceedings under Minn. Stat. § 518B.01 (2020) are special proceedings in which a motion for a new trial is not authorized. *Steeves v. Campbell*, 508 N.W.2d 817, 818 (Minn. App. 1993). Second, even ignoring the impropriety of Justin’s motion for a new trial, an issue raised for the first time in a motion for a new trial is raised “too late.” *Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971); *see also Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (applying this principle from *Antonson* in a marital-dissolution action), *rev. denied* (Minn. Oct. 15, 2002). Thus, because neither Justin’s motion for a new trial nor his competency-based challenge was properly before the

district court, the district court denied his motion for a new trial and did not address his competency.

Generally, appellate courts address only “those issues that the record shows were presented to and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); *see Aljubailah v. James*, 903 N.W. 2d 638, 643 (Minn. App. 2017) (applying this aspect of *Thiele* in an OFP appeal). Nonetheless, appellate courts can consider issues not raised in the district court “as the interest of justice may require.” Minn. R. Civ. App. P. 103.04. For three reasons, we conclude that the peculiar facts of this case require us, in the interests of justice, to consider Justin’s competency-based challenge to the OFP despite the fact that the question is not otherwise properly before us.

First, the record presented to the district court included many indicators that, at the time of the hearing, Justin was experiencing a severe mental-health crisis. Those indicators included the facts that Josie’s petition for the OFP alleged both that Justin had been recently diagnosed with schizophrenia and that he was not taking his schizophrenia medication at the time of the petition. Additionally, no later than the hearing, the district court became aware that Justin was subject to civil-commitment proceedings, was in a mental-health facility, and had started taking medications.

Second, a lack of competence to enter a stipulation can, “under the peculiar facts of [a] case,” amount to a fraud on the court, which could justify reopening the stipulated ruling. *Lindsey v. Lindsey*, 388 N.W.2d 713, 716 (Minn. 1986); *see also Blattner v.*

*Blattner*, 411 N.W.2d 24, 26 (Minn. App. 1987) (citing to this provision of *Lindsey*), *rev. denied* (Minn. Oct. 30, 1987).

Third, generally, stipulations in family matters<sup>3</sup> are treated as contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521-22 (Minn. 1997). This OFP, however, significantly impacts the parties' children, and the interests of children are "nonbargainable" and "less subject to restraint by stipulation" than other interests of parties involved in a family matter. *Kaiser v. Kaiser*, 186 N.W.2d 678, 683 (Minn. 1971) (making this statement in the context of a child-support dispute).

Against this background, we will address the competency question.

**B. The district court had an obligation to conduct an inquiry into Justin's competence to enter into a stipulated OFP.**

As noted by Justin, different degrees of competency are required for different legal activities. In his appellate brief, Justin does not cite, and we have not found, any law specifying the degree of competency required to stipulate to the issuance of an OFP. Nevertheless, generally, competency to contract requires that a person "can understand the nature and effect of [their] actions when executing the contract." *Nelson v. Holland*, 776 N.W.2d 446, 450-51 (Minn. App. 2009); *see Blattner*, 411 N.W.2d at 26 (Minn. App. 1987) (identifying the standard for competency as "whether or not [a] person can fairly and

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<sup>3</sup> We acknowledge that this appeal involves the district court's grant of an OFP and that the focus of domestic-abuse proceedings is on the safety of the concerned persons, while the focus of family proceedings is the equitable disposition of the issues surrounding the dissolution of the parties' relationship. Justin and Josie were married and had children, and the bulk of the OFP at issue in this appeal addresses how they would, at least temporarily, deal with their children. Thus, there is a significant family component to this appeal.

reasonably understand the matter he is considering” in a dissolution-of-marriage case) (citing *Krueger v. Zoch*, 173 N.W.2d 18, 20 (Minn. 1969)). For purposes of this appeal, we assume, without deciding, that this is the level of competency required to enter into a stipulated OFP.

Generally, one is presumed competent to contract. *Fisher v. Schefers*, 656 N.W.2d 592, 595 (Minn. App. 2003); *Jasperson v. Jacobson*, 27 N.W.2d 788, 792 (Minn. 1947) (stating that whether a person is incompetent in a guardianship proceeding is tried against “the presumption, obtaining universally, that the one proceeded against is competent in fact”). When, however, the competency of a potential witness is at issue, the district court typically “conducts a preliminary examination to determine whether the witness understands the obligation of the oath and can correctly narrate the facts to which her testimony relates.” *Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 409 (Minn. 1998).

Here, the same concerns mentioned above that weigh in favor of our addressing the competency question should have alerted the district court that Justin may not have been competent to enter into an agreement.

In addition to those concerns, the awkward progression of the hearing should also have suggested to the district court that at least a preliminary inquiry into Justin’s competence was in order. Specifically, there was much back and forth at the hearing between Justin and the district court regarding exactly what it was to which Justin was agreeing, and the district court, while undoubtedly with good intentions, seemed to guide Justin along a path to agreement, making it unclear if Justin truly consented to the stipulated

OFP. First, when the district court proposed a stipulated OFP without findings, it asked Justin, “Make sense?” and Justin replied, “Yes, sir. So, I would be willing to do that but I would like some parenting time with my kids.” It is unclear if Justin’s “Yes” indicated his intent to enter into the stipulated OFP or if it merely indicated that he understood the district court’s proposal. And Justin’s response that he “would be willing to do that” included the condition that he be granted parenting time, which, at least pending the guardian ad litem’s report, he was not awarded. *Cf. Clark v. Clark*, 642 N.W.2d 459, 465 (Minn. App. 2002) (noting that while a district court may accept all or part of a proposed stipulation, “generally, [a district court] cannot, by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their ‘day in court’” (quoting *Toughill v. Toughill*, 609 N.W.2d 634, 638-39 n.1 (Minn. App. 2000))). Second, Justin initially demanded parenting time and said that he would fight for full custody. Then, following a discussion and suggestion by the district court that Justin take “a pause to let medication . . . go into place” and wait for the guardian ad litem’s report, Justin said, “Yeah,” when asked if he was “agreeable” to “no contact.” Absent more, it is unclear what precisely—if anything—Justin agreed to with regarding custody, parenting time, and no contact. Importantly, Justin was unrepresented by counsel at the hearing, and Jodie had counsel, a fact that heightened the duty of the district court to ensure that Justin, who was evidently facing a severe mental-health crisis, had the competency to consent, understood

what it was to which he was (purportedly) consenting, and actually did consent to the terms of the OFP.<sup>4</sup>

In these narrow circumstances, the district court had an obligation to conduct an inquiry into Justin's competence to enter into a stipulated OFP. By not conducting this inquiry before ordering the OFP, the district court abused its discretion. *See Thompson*, 906 N.W.3d at 500. Because the no-contact, custody, and parenting-time provisions of the OFP provisions depended on Justin's agreement and because it is unclear that he was competent to agree to those conditions, we reverse these provisions of the OFP and remand for further proceedings on those matters.

**C. Because temporary child support depends on the stipulated OFP, the district court abused its discretion by ordering Justin to pay child support.**

Justin also argues that the district court abused its discretion when it ordered him to pay temporary child support because it failed to make specific findings, did not require the parties to submit documentation, and improperly relied on Justin's testimony at the hearing given his mental illness and incapacity.

We review a district court's order regarding temporary child support for abuse of discretion. *See Trebelhorn v. Uecker*, 362 N.W.2d 342, 345-46 (Minn. App. 1985)

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<sup>4</sup> The court of appeals, in an OFP case involving a mutual restraining order, concluded that "the district court should have been very careful to make sure that [the appellant] was agreeing to a mutual restraining order" because the appellant was pro se, had expressed confusion about the concept of a mutual restraining order, and had twice indicated that she did not want a mutual restraining order. *Mechtel v. Mechtel*, 528 N.W.2d 916, 919-20 (Minn. App. 1995). Similarly, it is uncertain on this record whether Justin clearly agreed to the stipulated OFP.

(applying abuse-of-discretion standard of review to a question of temporary child support). Generally, a district court abuses its discretion if it makes findings unsupported by the evidence, improperly applies the law, or resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021).

We initially observe that, unlike the issues addressed in the previous section, the issue of temporary child support was not stipulated to by the parties but rather was litigated at the hearing and determined by the district court.<sup>5</sup> However, child support is tied to custody and parenting time. *See* Minn. Stat. §§ 518A.36 (addressing adjustment of child support based on parenting time), 518B.01, subd. 6(a)(5) (allowing district courts to award temporary child support through an OFP “on the same basis as provided in chapter . . . 518A,” which deals with child support) (2020); *Shearer v. Shearer*, 891 N.W.2d 72, 77-79 (Minn. App. 2017) (applying Minn. Stat. § 518A.36). Thus, the district court’s award of temporary child support was dependent on the stipulated custody and parenting-time provisions of the OFP. Because we have reversed and remanded on those provisions, the district court’s award of temporary child support is premature. Therefore, we also reverse the temporary child-support award and remand for further proceedings on the award.

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<sup>5</sup> Justin argues in his brief that there was no agreement between the parties as to temporary child support and thus the child-support award should be reversed. However, the district court did not purport to base its award on an agreement between the parties.

On remand whether to reopen the record shall be discretionary with the district court.<sup>6</sup>

**Reversed and remanded.**

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<sup>6</sup> We note that this opinion does not affect any decisions made in the related commitment and dissolution cases, and only applies with respect to this OFP appeal. If, on remand, a record is developed showing that the related commitment and dissolution cases have evolved since Justin took this appeal, the district court may consider the developments in either or both of those cases to the extent it is equitable to do so.