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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0721**

In re the Marriage of:
Benjamin Thomas Miller, petitioner,
Respondent,

vs.

Tanya Lynn Wright-Miller, NKA, Tanya Lynn Wright,
Appellant.

**Filed April 11, 2022
Affirmed in part and reversed in part
Ross, Judge**

Douglas County District Court
File No. 21-FA-13-24

Michael Gaarder, PCG Law, St. Cloud, Minnesota (for respondent)

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Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Ross,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The district court denied a father's motion to modify child custody but granted his motion to modify the parenting-time schedule, eliminating the mother's summer midweek parenting time and her weekend telephone call with the child. The district court also ordered a custody and parenting-time evaluation. Addressing this appeal by mother, we

affirm in part because the district court acted within its discretion when it modified the parenting-time schedule, and we reverse in part because the district court lacked authority to order the evaluation.

FACTS

Tanya Wright and Benjamin Miller divorced in 2014 having one child together, who was nine years old at the time of the district court's later custody decision now on review. The 2014 judgment and decree dissolving the marriage assigned legal custody jointly and physical custody solely to Wright. It also included a parenting-time schedule.

Parenting time has been a source of contention. The parties live in different cities—Wright in Minneapolis and Miller in Alexandria. Miller's parenting time occurs mostly in the summer and Wright's mostly during the school year. The parties have moved to modify the original 2014 parenting-time schedule 14 times.

Miller most recently moved the district court to modify the latest custody order, asking the district court to assign the parties joint physical custody and him sole legal custody. He also moved the district court to establish a parenting-time schedule for summer 2021 consistent with guidance provided in the parenting consultant's evaluation and to eliminate a weekend telephone call between Wright and the child during Miller's parenting time. The district court denied Miller's motion to modify custody but granted his requested changes to the parenting-time schedule by eliminating Wright's weekend telephone contact, ordering a custody evaluation, and changing the summertime schedule. Responding to Wright's objection to a custody evaluation, the district court amended its order to refer to it instead as a "parenting time evaluation" and instructed the evaluator to

“compose a report that makes recommendations regarding parenting time” rather than a report “addressing custody and parenting time.”

Wright appealed. Miller filed a letter with this court in which he asserted that he would not be “seeking to enforce the District Court’s order directing the parties to participate in the custody evaluation,” conceded that the district court lacked authority to order the evaluation, and maintained that this concession “renders that issue moot.”

DECISION

Wright challenges the district court’s parenting-time order, including its ordering the parenting-time evaluation. We review a district court’s parenting-time decision for an abuse of discretion. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). The district court abuses its discretion when it misapplies the law or relies on findings of fact that are not supported by the record. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). Wright contests the district court’s order in two ways. She argues first that the district court lacked authority to order the evaluation. And she argues second that the district court improperly modified parenting time. For the following reasons, we are persuaded only by the first argument, but we first resolve Miller’s mootness assertion.

We reject Miller’s suggestion that, because he has now represented that he does not intend to “seek[] to enforce the . . . order directing the parties to participate in the custody evaluation,” Wright’s challenge to that part of the order is moot. It is true that an issue is moot if circumstances change so that it no longer constitutes a justiciable controversy. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005). But Miller has no capacity to nullify the effect of the district court’s order and thereby eliminate the controversy by withholding

his implied power to enforce it, because he has no such power. The district court enforces its own orders. The district court's evaluation order is self-effectuating and requires compliance with no additional action by either party. Miller's representation about his intention not to enforce the order is therefore legally inconsequential and does not implicate mootness. We turn to the merits.

Wright correctly argues that the district court lacked authority to order the evaluation. The district court is authorized to "order an investigation and report concerning custodial arrangements for the child" in "custody proceedings." Minn. Stat. § 518.167, subd. 1 (2020). But the district court here resolved any custody-proceeding issues that might have called for this sort of investigation and report. A custody proceeding "includes proceedings in which a custody determination is one of several issues." Minn. Stat. § 518.003, subd. 3(g) (2020). And custody determination "means a court decision and court orders and instructions providing for the custody of a child, including parenting time." Minn. Stat. § 518.003, subd. 3(f) (2020). Although the parties' motions raised custody and parenting-time issues requiring a decision, the district court's finding that Miller failed to make a *prima facie* case to modify custody resolved his modification motion, and its decision resolving the parties' dispute about the multiple parenting-time issues resolved their competing parenting-time motions. Because the custody proceeding resolved all custody and parenting issues, the district court no longer had any statutory authority to order a custody or parenting-time evaluation.

The district court recognized its lack of statutory authority to order the evaluation after it resolved the substantive issues presented in the custody proceeding, but it ordered

the evaluation anyway, asserting, “the statute, however, does not preclude a party from requesting the court order such an evaluation otherwise.” We hold that the district court abused its discretion by assuming an inherent power that it lacks. A district court’s inherent judicial authority empowers it to take actions that are: “(1) necessary (2) to achieve a unique judicial function (3) without infringing on equally important legislative or executive functions.” *State v. Chauvin*, 723 N.W.2d 20, 24 (Minn. 2006). We need not address whether the evaluation met some unique judicial function because the district court recognized that ordering the evaluation was unnecessary to resolve any existing legal issue. It reasoned only that “a neutral survey of the current parenting time arrangement by a professional *may* aid in providing a fuller picture of what is working and what is not working between the parties.” And it opined that “the evaluator’s voice could aid all parties in determining what is in the best interest of the child.” An evaluation that might help the parties avoid engaging in some dispute that might develop later is not necessary to a judicial function. The district court lacked the inherent authority to order the parties to participate in it.

Wright also argues that the district court improperly modified the parenting-time schedule by removing her summer midweek parenting time and by removing Miller’s duty to facilitate weekend telephone contact between Wright and the child during Miller’s parenting time. We believe that both decisions fall within the district court’s discretion.

We are not persuaded by Wright’s contention that we must reverse because the district court made these decisions without having first explained why its previous orders were factually or legally erroneous. The district court’s discretion to modify a previous

parenting-time order does not impose any duty to first explain why the existing order is flawed. The district court is bound to modify an extant parenting-time order when it finds that “modification would serve the best interests of the child.” Minn. Stat. § 518.175, subd. 5(b) (2020). The district court must make findings only on the best-interest factors when determining whether to modify. *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018). The district court here did make specific findings on the relevant best-interest factors bearing on the two disputed decisions.

Wright does not dispute the district court’s best-interest analysis. The district court removed Wright’s summer midweek parenting time because it found that it would disrupt the child’s activities, burden Miller’s interaction with the child, reduce the number of contentious interactions between the parties, and provide a better balance of time between summer and the school year. And it eliminated Wright’s mandated weekend telephone contact with the child in Miller’s care because the contact interfered with Miller’s parenting time, aggravated friction between the parties, and was unnecessary in light of the child’s ability to voluntarily initiate a call with Wright at any time. We need not discuss these findings further because the record supports them and Wright does not challenge them.

Affirmed in part and reversed in part.