STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0731

In re the Marriage of:
Christine Marie Salvosa, petitioner,
Appellant,

vs.

Alan Douglas Salvosa,
Respondent.

Filed April 3, 2023
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-FA-19-7242

Scott M. Rodman, Alyssha K. Duncan, Arnold & Rodman, P.A., Bloomington, Minnesota (for appellant)

Johanna P. Clyborne, Brekke, Clyborne & Ribich, L.L.C., Shakopee, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In this dissolution action, Christine Marie Salvosa and Alan Douglas Salvosa stipulated to the resolution of all issues except child custody and parenting time. In lieu of a trial on those two issues, they agreed to submit them to a parenting consultant, who would

have authority to conduct an evaluation and then make a recommendation to the district court concerning custody and a binding decision concerning parenting time, subject to either party's right to seek review by the district court. Neither party asked the district court to review the parenting consultant's decisions. Nonetheless, the parties disagreed about the language of a stipulated decree incorporating the parenting consultant's decisions. The parties submitted separate proposed documents. The district court signed and filed Alan's proposed document. We conclude that the district court did not err by adopting Alan's proposed document instead of Christine's proposed document. Therefore, we affirm.

FACTS

Christine and Alan were married in 2004. They have one joint child, who was born in 2014. Christine petitioned for dissolution of the marriage in October 2019.

In February 2020, the parties attended a mediation session at which they agreed to a form of alternative dispute resolution involving a parenting consultant (PC). In a three-page stipulation, the parties agreed that, for a two-year period, Michael Goldfarb, a licensed social worker, would resolve child-related disputes that the parties presented to him. The parties also agreed that permanent custody determinations would be resolved after Goldfarb set a parenting-time schedule and made custody recommendations. The parties also signed an 11-page stipulation stating that Goldfarb would have authority to make a recommendation to the district court concerning custody and authority to make a binding decision concerning parenting time, subject to either party's right to seek review of his

decisions by the district court. Both stipulations were approved and ordered by the district court.

The district court initially scheduled trial for a date in June 2020, which was continued to a date in September 2020. One day before the rescheduled trial date, the parties jointly informed the district court that they had agreed to voluntarily resolve "the financial issues" and to submit a partial stipulated decree on those issues. The parties further informed the district court that Goldfarb needed additional time to complete his evaluation and report concerning custody and parenting time. The parties jointly requested that the trial be continued again, and the district court agreed.

In November 2020, the district court approved and filed the jointly submitted partial stipulated decree, which resolved all issues except custody and parenting time. The partial stipulated decree reiterates that Goldfarb would "perform a custody evaluation and upon the conclusion of this custody evaluation . . . render a decision on the issues of physical custody, legal custody, and parenting time." The partial stipulated decree provides that Goldfarb's decision "shall become permanent" unless either party serves and files, within 30 days, a motion for review by the district court. The partial stipulated decree further provides that, if neither party seeks such review, the district court "shall adopt the [PC's] decision as the order of the court." The partial stipulated decree specifies detailed procedures by which the parties will facilitate the district court's adoption of Goldfarb's decisions into a final stipulated decree.

Goldfarb issued a 66-page report in February 2021. With respect to parenting time, Goldfarb determined a weekly schedule and steps to implement the schedule. With respect

to custody, Goldfarb acknowledged the statutory presumption of sole custody in cases of domestic abuse but recommended that "the parties share joint legal custody contingent on their continued commitment to a parenting consultant" and further recommended that "Christine be granted sole physical custody." In the penultimate paragraph of the report, Goldfarb wrote, "While not specifically part of the order, I further recommend" four things, including a "long-term parenting consultant." In the final paragraph of the report, Goldfarb stated that he would withdraw as PC but was willing to remain in that role until a new PC was appointed. Neither party filed a motion for review of Goldfarb's decision by the district court.

In April 2021, the parties agreed that Jennifer A. Jameson would serve as PC for a two-year period. On April 6, 2021, the district court signed and filed a stipulated order of appointment, effective immediately and expiring April 5, 2023.

In subsequent months, counsel for the parties discussed the preparation of an amended stipulated decree to reflect Goldfarb's decision, but they were unable to agree on its terms. Their disagreement concerned the duration of the time period in which the parties are required to use a PC. Christine interpreted Goldfarb's report to require a "long-term" commitment to a PC until the parties' minor child reaches the age of majority; Alan interpreted Goldfarb's report to not require the use of a PC for a period longer than the period to which the parties had agreed.

In October 2021, Alan requested a hearing to determine a means of resolving the parties' disagreement. After a status conference in early November 2021, the district court ordered the parties to submit a single, agreed-upon amended stipulated decree or, if they

were unable to agree, to submit their respective proposed amended decrees along with letter briefs. The parties did not agree on an amended stipulated decree. In December 2021, approximately one year after Goldfarb's decision, each party submitted a proposed amended stipulated decree and a letter brief. Christine's proposed document included a provision that "if either party refuses to continue working with a [PC] in the future . . . , either party may bring a motion in district court to establish an award of legal custody, which shall be determined de novo by the Court . . . according to an analysis of Minn. Stat. § 518.17." Alan objected to that part of Christine's proposal.

In January 2022, the district court signed and filed an amended stipulated decree in the form proposed by Alan. On the same date, the district court filed a three-page order in which it explained its reasons for selecting Alan's proposed document. The district court reasoned that the use of a PC is a contractual matter and that the parties should not be required to use a PC after the agreed-upon period and, furthermore, that no party should be forced to enter into an agreement for a longer period. Because the parties had agreed in April 2021 to a two-year appointment of Jameson, the district court approved of Alan's proposed document, which limited the authority of the PC to that two-year period, without any provisions allowing a custody motion if the parties ceased using a PC after April 2023.

In February 2022, Christine moved alternatively for amended findings, a new trial, or a reopening of the judgment. In March 2022, the district court denied each of the motions. Christine appeals.

DECISION

I.

Christine's first and primary argument is that the district court erred by approving and filing Alan's proposed amended stipulated decree instead of her own, thereby deciding that the parties are not required to use a PC after the expiration of Jameson's two-year appointment.

The statutes governing dissolution and child custody do not expressly provide for a "parenting consultant." *See* Minn. Stat. §§ 518.002-.68 (2022); *see also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007). But parties are not precluded "from voluntarily agreeing to submit their parenting time dispute to a neutral third party or . . . otherwise resolving parenting time disputes on a voluntary basis." Minn. Stat. § 518.1751, subd. 4. The rules governing family court refer to "parenting consulting" as one of several forms of alternative dispute resolution and describe the concept as follows: "Parenting Consulting is a process defined by the agreement of the parties in which the Parenting Consultant (PC) incorporates neutral facilitation, coaching, and decision making. Terms of the process are defined by the agreement of the parties and incorporated into a court order." Minn. R. Gen. Prac. 310.03(c)(2). This court's caselaw describes the use of a PC as "a creature of contract." *Szarzynski*, 732 N.W.2d at 293.

In this case, Christine and Alan agreed—and the district court ordered—that custody and parenting time would not be tried to the district court but, rather, would be decided by the PC. Christine and Alan also agreed that the PC's decisions would be binding if neither party sought review by the district court. Goldfarb recommended that the parties share

joint legal custody "contingent on their continued commitment to a parenting consultant." Neither party sought review of Goldfarb's custody recommendation. Accordingly, the district court signed and filed Alan's proposed amended stipulated decree, which incorporates Goldfarb's recommendation of joint legal custody and notes that the parties had appointed a new PC, Jameson, for a two-year period and that she remained active, thereby demonstrating the parties' continued commitment to a PC. The amended stipulated decree expressly orders joint legal custody.

Christine contends that the district court erred by not incorporating Goldfarb's recommendation that the parties retain a "long-term parenting consultant." Alan contends in response that Goldfarb's report does not require the parties to use a PC for a "long-term" period of time. Alan is correct. Goldfarb's statement concerning a "long-term parenting consultant" was not included in either paragraph of his report in which he made his court-authorized recommendations concerning custody. Goldfarb emphasized the court-authorized nature of his custody recommendations by using bold type, capital letters, and underlining. For example, he wrote, "I . . . **RECOMMEND** that the parties share joint legal custody contingent on their continued commitment to a parenting consultant." In the following paragraph, he used a similar style by writing, "I **RECOMMEND** that Christine be granted sole physical custody." In contrast, Goldfarb's reference to a "long-term parenting consultant" was contained in a subsequent paragraph, which does not use bold type, capital letters, and underlining and begins with a conspicuous disclaimer: "While not specifically part of the order, I further recommend . . . [a] long-term parenting consultant."

The structure and language of these paragraphs indicate that Goldfarb's "recommendation" of a "long-term parenting consultant" was not made pursuant to the authority conferred on him by the court's stipulated order of appointment but, rather, was a suggestion that the parties are not bound to accept. If Goldfarb had intended that the parties should be required to use a PC for the long term, he would have inserted the word "long-term" into the express contingency of his recommendation of joint legal custody, which is "contingent on their continued commitment to a parenting consultant." But he did not do so.

Alan also contends that it would have been improper for the district court to require the parties to use a PC beyond the April 5, 2023 expiration of Jameson's appointment. Again, Alan is correct. The use of a PC is a matter of contract. *See* Minn. R. Gen. Prac. 310.03(c)(2); *Szarzynski*, 732 N.W.2d at 293. The parties agreed that Goldfarb would make decisions concerning child custody and parenting time; they did *not* agree that Goldfarb would make decisions concerning the length of time in which the parties would be required to use a PC. A district court does not have any authority by statute or rule to order parties to use a PC for a longer period than that to which they have agreed. *See Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) (noting that district court may not "impose conditions on the parties to which they did not stipulate"); *see also McGraw v. McGraw*, No. A13-0825, 2014 WL 1875788, at *3 (Minn. App. May 12, 2014) (concluding that district court erred by interpreting stipulated decree as requiring parties to renew PC contract until child is emancipated).

Thus, the district court did not err by signing and filing Alan's proposed amended stipulated decree, which incorporates the PC's recommendation concerning custody by requiring the parties to have a continued commitment to a PC but not a "long-term" commitment.

II.

Christine next argues that the district court erred by approving and filing Alan's proposed amended stipulated decree without giving her an opportunity to be heard.

To the extent that Christine argues that the district court did not give her an opportunity to be heard on the question of which proposed amended stipulated decree should be approved and filed, her argument is contrary to the partial stipulated decree. That document specified in detail the procedures that would be followed if the parties were unable to agree on an amended stipulated decree. The district court and the parties followed those procedures. Christine's attorney submitted a proposed amended stipulated decree along with a three-page letter brief. That letter brief was an opportunity for Christine to be heard; it was an opportunity to persuade the district court that her proposed document was a better reflection of the PC's court-authorized custody recommendation than Alan's proposed document. Christine did not ask the district court for any additional opportunity to be heard. Indeed, the district court had just held a hearing, to discuss the parties' disagreement concerning how to implement Goldfarb's custody recommendation.

To the extent that Christine argues that she did not have "an opportunity to be heard on the merits of the underlying issue" of legal custody, her argument again is contrary to the partial stipulated decree. That document reflects that the parties bargained for and

agreed on a form of alternative dispute resolution that was designed to avoid a trial on the merits of the custody issue and to rely on a PC's evaluation and recommendation. Goldfarb completed the tasks that were contemplated, and the district court adopted his decisions, as intended. Christine was not denied an opportunity to be heard on the merits of the custody issue because she agreed that she would not have such an opportunity.

Thus, the district court did not err by denying Christine an opportunity to be heard when approving and filing Alan's proposed amended stipulated decree.

III.

Christine last argues that the district court erred by denying her alternative motions for amended findings, a new trial, or a reopening of the judgment.

A. Motion for Amended Findings

Christine first argues that the district court erred by denying her motion for amended findings of fact. *See* Minn. R. Civ. P. 52.02.

Christine urged the district court to amend the amended stipulated dissolution decree by, in essence, adopting the language that she previously had proposed. The district court rejected her argument on the ground that she was "making the same arguments" that she previously had made, "that her version of the proposed findings is the one the Court should adopt." The district court is correct. Christine re-asserted the arguments she previously had made without "identify[ing] the alleged defect in the challenged findings and explain[ing] why the challenged findings are defective." *See State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 178 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004).

The district court also rejected her argument on the ground that she was relying on "facts not in evidence, namely, purported conversations she had with the custody evaluator and the respondent about what the terms of the agreement were." When filing her post-judgment motions, Christine submitted an affidavit in which she stated that she had spoken with the PC and, based on that conversation, understood the word "long-term" to mean that she and Alan "would share joint legal custody through [the child's] age of majority with the help of a long-term" PC and that, but for the PC, she "would have received an award of sole legal custody." "A motion to amend findings must be based on the files, exhibits, and minutes of the court, not on evidence that is not a part of the record." *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *rev. denied* (Minn. Nov. 14, 2006). Because Christine's affidavit was not part of the record before the district court filed the amended stipulated dissolution decree, the district court appropriately declined to consider it.

Thus, the district court did not err by denying Christine's motion for amended findings.

B. Motion for New Trial

Christine next argues that the district court erred by denying her alternative motion for a new trial. *See* Minn. R. Civ. P. 59.01. The district court denied the motion for a new trial on the ground that there was no trial before the filing of the amended stipulated dissolution decree. The district court's reasoning is consistent with this court's caselaw. *See Parson v. Argue*, 344 N.W.2d 431, 431 (Minn. App. 1984) (stating that if "there never was a trial . . . , a motion for a new trial is an anomaly" (quotation omitted)). Thus, the district court did not err by denying Christine's motion for a new trial.

C. Motion to Reopen

Christine last argues that the district court erred by denying her alternative motion to reopen the judgment.

"Once a stipulation is merged into a judgment, the 'sole relief' lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *rev. denied (*Minn. Feb. 21, 2001); *see also Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). Under section 518.145, subdivision 2, a district court may reopen a dissolution decree only if the moving party establishes one of the predicates identified in the statute, such as mistake, inadvertence, newly discovered evidence, or fraud. *See, e.g.*, Minn. Stat. § 518.145, subd. 2(1)-(3). "The moving party bears the burden of establishing a basis to reopen the judgment and decree." *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). This court applies an abuse-of-discretion standard of review to a district court's decision not to reopen a judgment and decree. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996).

The district court denied Christine's alternative motion to reopen for the following reasons:

> The Court finds there is no basis to reopen the matter. The parties agreed to the decision of the PC. Neither brought a motion per their agreed upon process. The PC states he recommends that the parties share joint legal custody contingent upon their continued commitment to a PC. There is nothing in the PC decision that states that he believes a PC has to be in place until emancipation of the children. As noted in the Court's December 5, 2022, order, the parties entered into a contract with the PC for two years demonstrating a commitment to continued use of a PC.

Christine contends that the amended stipulated decree should have been reopened due to mistake, surprise, inadvertence, or excusable neglect. She contends that the district court "mistakenly concluded that the [PC's] recommendations were not based on an agreement between the parties to utilize the services of a [PC] long-term." We have already concluded that the district court did not err by adopting and filing Alan's proposed amended stipulated decree. *See supra* part I.

Christine also contends that she was mistaken in believing that the PC's recommendation of joint legal custody was contingent on the parties' long-term commitment to a PC. A unilateral misunderstanding is insufficient to justify reopening a judgment; instead, Christine must show that there was mutual mistake when entering into the judgment and decree. *See Kubiszewski v. St. John*, 518 N.W.2d 4, 7 (Minn. 1994) (applying Minn. R. Civ. P. 60.02); *see also Shirk*, 561 N.W.2d at 522 n.3 (noting that section 518.145 mimics rule 60.02). Consequently, the district court did not abuse its discretion by ruling that Christine's misinterpretation does not justify reopening the judgment. *See Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (stating that vacatur of judgment and decree "is not an appropriate remedy to deal with unanticipated consequences of a settlement or inexcusable mistake").

Christine also contends that the judgment should be reopened because it is no longer equitable. "[T]o reopen a judgment and decree because prospective application is no longer equitable, the inequity must result from the development of circumstances substantially altering the information known when the dissolution judgment and decree was entered." *Thompson*, 739 N.W.2d at 430 (quotation omitted). "The moving party

must present more than merely a new set of circumstances or an unforeseen change of a known circumstance to reopen a judgment and decree." *Id.* at 430-31.

Christine asserts that the judgment no longer is equitable because it "fundamentally altered the terms to which appellant had agreed." The parties agreed to a process by which the PC would make a recommendation concerning custody, which could be reviewed by the district court at either party's request. Christine simply disagrees with the district court's interpretation of the PC's recommendation. That is not a basis for reopening a judgment on the ground that it is inequitable.

Christine further asserts that the judgment no longer is equitable because the district court "failed to determine whether joint legal custody was in the minor child's best interests." Again, the parties agreed to a process by which the PC would make a recommendation concerning custody. The PC engaged in a thorough analysis of the best-interest factors. Christine could have requested that the district court review the merits of the PC's analysis of the best-interest factors, but she did not do so. Hence, the district court did not fail to consider the child's best interests.[1]

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[1]In general, a district court is required to make detailed best-interests findings. Minn. Stat. § 518.17, subd. 1(a)-(b); *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019). In this case, the district court did not make such findings. Rather, the stipulated decree states that the PC recommended joint legal custody and, accordingly, orders joint legal custody. The district court did not err because the parties stipulated that the PC would conduct a custody evaluation and make a custody recommendation, and neither party asked the district court to review that recommendation. Nonetheless, it may be a good practice, in the circumstances of this case, for a district court to either make best-interests findings or adopt the PC's best-interests findings. Doing so might be helpful in the event of a later motion to modify custody, which would raise the question of whether facts "have arisen since the prior order or that were unknown to the court at the time of the prior order" to indicate that "a change has occurred in the circumstances of the child or the parties." *See*

Thus, the district court did not err by denying Christine's motion to reopen the judgment.

Affirmed.

Minn. Stat. § 518.18(d) (2022). Regardless of the asserted reason for a modification, *see id.*, § 518.18(d)(i)-(v), best-interests findings might assist the district court in determining whether the requisite change has occurred. *See, e.g.*, *Woolsey v. Woolsey*, 975 N.W.2d 502, 506-10 (Minn. 2022); *Gunderson v. Preuss*, 336 N.W.2d 546, 547-48 (Minn. 1983); *Spanier v. Spanier*, 852 N.W.2d 284, 287-90 (Minn. App. 2014).