STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0812

In re the Marriage of:
Catrina M. Rued, petitioner,
Respondent,

vs.

Joseph D. Rued,
Appellant.

Filed January 17, 2023
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-FA-16-6630

Beth Wiberg Barbosa, Gilbert Alden Barbosa PLLC, Edina, Minnesota (for respondent)

James J. Vedder, Moss & Barnett, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this parenting-time dispute, appellant argues that the district court's restriction of his parenting time based on endangerment was an abuse of discretion. Because the record amply supports the district court's findings that father's conduct is endangering the child, we affirm.

FACTS

This is the latest of numerous appeals brought by appellant Joseph Rued (father) over the custody and parenting time of the joint child (the child) with respondent Catrina Rued (mother).[1] The parties were also in contentious district court proceedings from January 2016 through October 2021. Mother previously had an order for protection (OFP) against father, and there were criminal proceedings against father resulting from his alleged domestic abuse of mother. Father's parents, Leah and Scott Rued (grandmother and grandfather, respectively; grandparents collectively), have attempted, with father's support, to obtain third-party custody of the child, and there has been a child in need of protection or services (CHIPS) proceeding in juvenile court concerning father's repeated allegations of abuse by mother and her extended family against the child.

We previously consolidated and addressed two appeals by father regarding various orders from the prior custody and parenting-time proceedings. *Rued v. Rued*, No. A21-0798, No. A21-1064 2022 WL 2298992 (Minn. App. June 27, 2022), *rev. denied* (Minn. Sept. 28, 2022) (*Rued I*). In *Rued I*, we affirmed the district court's grant of sole physical and sole legal custody of the child to mother. *Id.* at *12-14. We concluded that the district court did not clearly err by finding that the child had not been sexually abused

[1] Father has filed five separate appeals against mother arising from issues related to custody of the child and many of those appeals also generally raised the issue of mother's alleged abuse of the child.

by mother or by mother's nonjoint son and daughter, and that the parties' child was not allergic to foods containing dairy or wheat.[2] *Id.* at *10-11.

In October 2021, while the consolidated appeals were pending before this court, father petitioned the district court for an OFP. Father alleged mother was abusing the child by knowingly feeding him allergens (dairy and wheat), and that mother, nonjoint son, and mother's ex-husband were physically and sexually abusing the child. The OFP court granted an *ex parte* OFP but, after an evidentiary hearing held over the course of three days, the OFP court dismissed father's petition and vacated the *ex parte* OFP. In its dismissal order, the district court found that abuse had not occurred, the child was "generally suggestible," and "some of what [the child] believes is not actually true and instead is the product of what the adults in his life (most notably [father]) are telling him is true." The district court also found that "it was quite clear" that father had "influenced" the notes the child wrote regarding the alleged abuse.[3]

As a result of the district court's findings following the OFP hearing, mother moved in this matter for an *ex parte* order to suspend father's parenting time until supervised parenting time could be arranged. Mother alleged that the district court's findings in the OFP proceeding demonstrated that father and his parents continued to interrogate and direct the child to make false allegations against mother and/or her extended family, and that father and grandparents' persistent beliefs of abuse, were endangering the child. The

[2] The record and parties interchangeably refer to the child's alleged "wheat allergy" as a "gluten allergy."

[3] Father is also currently appealing the OFP matter. *Rued v. Rued*, No. A22-0593 (Minn. App. filed Apr. 29, 2022).

district court issued an *ex parte* order suspending father's parenting and scheduled an accelerated hearing. During the evidentiary hearing on mother's motion, the district court received testimony from mother's expert, Gay Rosenthal; an investigator at Scott County Child Protection Services, Lesley Karnes; the parties' parenting time supervisor, Chris Davis; father's expert, Dr. Michael Shea; mother; father; and grandparents. The district court also took judicial notice of the district court's findings from the dismissal order in the OFP.

The district court issued an order concluding that, "based upon the evidence presented and the extensive history of this case," father's actions toward the child "endanger [the child's] emotional health and development." The district court found father's actions "have resulted in a campaign to alienate or eliminate Petitioner's role as the child's mother" and that father's "efforts to support a narrative of abuse committed by [mother] leave the child in an untenable position, struggling emotionally with choices and loyalties that no child his age is capable of managing."

The district court also stated "[t]he evidence shows such actions on the part of [father] and his parents have already created harm to the child in the form of his source monitoring difficulties." "Source monitoring" is defined as "the inability for a child to distinguish between true memories and manufactured memories due to the child being repeatedly questioned, interviewed, forensically examined and spoken to about allegations." The district court determined that "to preserve the possibility of [father] building a relationship with the child in a healthy, nonmanipulative, and appropriate manner, the only hope is to put stringent temporary conditions on his interactions with the

child and prescribe therapy for [father] to address his own beliefs and issues regarding [mother]."

Regarding father's parenting time, the district court concluded that, based on its "findings and the history of evidence in the record," that "it [was] appropriate and in the child's best interests that [father]'s parenting time fall below the 25% threshold."[4] The district court awarded father supervised parenting time with the child on a temporary basis, twice per week for up to four hours at a time and no less than two hours at a time. The district court allowed grandparents to accompany father during one of his supervised visits for a maximum of two hours once per month.

Father appeals.[5]

DECISION

The district court properly restricted father's parenting time based on endangerment.

Father argues the district court's endangerment determination was an error because (1) it did not find "actual" endangerment of the minor child, (2) it made an erroneous finding of fact that the child is not allergic to gluten and dairy, and (3) it made the allergy determination though it excluded one of father's experts who would testify regarding the allergies. We consider each argument in turn.

[4] "In the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child." Minn. Stat. § 518.175, subd. 1(g) (2022).

[5] Father does not appeal the district court's finding that mother is not sexually abusing the child.

Endangerment

A district court may not restrict parenting time unless it finds that "parenting time is *likely* to endanger the child's physical or emotional health or impair the child's emotional development." Minn. Stat. § 518.175, subd. 5(c)(1) (2022) (emphasis added).[6] Endangerment requires "a showing of a significant degree of danger," *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991), "but the danger may be purely to emotional development," *Geibe v. Geibe*, 751 N.W.2d 774, 778 (Minn. App. 1997).

The existence of endangerment is a factual determination that we review for clear error. *See Sharp v. Bilbro*, 614 N.W.2d 260, 263-64 (Minn. App. 2000) ("The existence of endangerment must be determined on the particular facts of each case." (quoting *Lilleboe v. Lilleboe*, 453 N.W.2d 721, 724 (Minn. App. 1990)), *rev. denied* (Minn. Sept. 26, 2000). We give "deference to the district court's opportunity to evaluate witness credibility and reverse[] only if we are left with the definite and firm conviction that a mistake has been made." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotation omitted). The clear-error standard does not permit appellate courts to reweigh the evidence, engage in fact-finding anew, or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (applying *Kenney* in a family-law matter). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary."

[6] The parties do not dispute that Minn. Stat. § 518.175, subd. 5(c)(1), governs mother's motion to restrict father's parenting time.

Id. at 223 (quotation omitted). "[F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* at 221 (quotation omitted).

Father argues the district court clearly erred because there was no evidence of "actual adverse effects" of father's parenting time. We disagree.[7] The record amply supports the district court's finding that father's "action[s] toward the child endanger [the child's] emotional health and development," and that "[father's and grandparents'] efforts to support a narrative of abuse committed by [mother] leave the child in an untenable position" and "struggling emotionally." The court found that, as part of Karnes's 2021 child protection services investigation in response to father's abuse allegation, the Midwest Children's Resource Center (MCRC) "determined that the issue of source monitoring was central and concerning in its review" and that "multiple qualified professionals and the Court have expressed concern over source monitoring." The district court took judicial notice of factual findings from its October 2020 custody order (first custody order) that father and grandparents have created a source monitoring problem for the child "due to the

[7] Father asserts *Dabill v. Dabill*, 514 N.W.2d 590, 596 (Minn. App. 1994), stands for the proposition that a finding of endangerment requires "actual adverse effects to the child as a result of the parenting time." But *Dabill* applied a different endangerment standard discussed in Minn. Stat. § 518.18(d)(iii) (1992), which states, in relevant part, that custody is not to be modified unless "[t]he child's present environment *endangers* the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." 514 N.W.2d at 594-95 (emphasis added). As we already note, the parties agree Minn. Stat. § 518.175, subd. 5(c)(1) applies to mother's motion. Thus, the stricter standard father argues for does not apply and *Dabill* is inapposite.

child being repeatedly questioned, interviewed, forensically examined and spoken to about allegations."

And mother's expert, Rosenthal, opined that if a child—like this child—receives false information from a parent, it could have adverse effects on the child's mental health and self-esteem. The district court found that two different child-abuse resource centers, Cornerhouse and MCRC, declined to interview the child as part of Karnes's 2021 child protection services investigation, in part, because of concerns regarding source monitoring and the effect of repeated interviews on a child's psychological wellbeing. Karnes also testified that child protection services believes that supervising father's parenting would mitigate its concerns about mental injury to the child, and if the court did not sufficiently address this concern, a CHIPS petition would likely have been filed against father.

The district court also took notice that, following the child's *in camera* testimony during the OFP proceeding, the judge made factual findings that the child was having difficulty distinguishing reality from fabrication. Though father and grandparents asserted during the evidentiary hearing that they do not see the child having difficulty distinguishing fact from fiction, the district court cited several previous orders that found father was not credible, and it found that grandparents' roles have "exceeded healthy and typical grandparent roles" which "detract from the credibility of both [father] and his parents." We defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The district court also found father's continued allegations of abuse were endangering the child's emotional health. In making this finding, the district court took

judicial notice of several factual findings from the first custody order, including findings that "the false allegations of sexual and physical abuse have endangered [the child] as they can alienate the relationship he enjoys with his mother and siblings" and that the neutral custody evaluator was concerned father's continued sexual abuse inquiries "will have a negative emotional impact on [the child]."

This record of emotional harm reasonably supports the district court's finding of endangerment. *See Lemcke v. Lemcke*, 623 N.W.2d 916, 919 (Minn. App. 2001) ("A majority of courts, including Minnesota courts, agree[] that a sustained course of conduct by one parent designed to diminish a child's relationship with the other parent is unacceptable and may be grounds for denying or modifying custody."), *rev. denied* (Minn. June 19, 2001); *see also Chafin v. Rude*, 391 N.W.2d 882, 886-87 (Minn. App. 1986) (affirming modification of custody based on expert's opinion that mother's inability or unwillingness to support a healthy relationship between her son and his father posed "a real and serious danger" to son's healthy development); *cf. Amarreh v. Amarreh*, 918 N.W.2d 228, 232 (Minn. App. 2018) (addressing "[i]nterference with a parent-child relationship, or parental alienation").

In sum, the district court's finding of endangerment is amply supported by the record and was not "manifestly contrary to the weight of the evidence," and thus the district court acted within its discretion by restricting father's parenting time. *Kenney*, 963 N.W.2d at 221 (quotation omitted).

Food Allergies

Father argues the district court's determination of endangerment relied on clearly erroneous findings when it found that the child does not have allergies to wheat and dairy. But father misstates the district court's order. The district court took judicial notice of its prior factual findings that the child does not have allergies to wheat or dairy and stated that "the Court will not now further analyze the merit of the child's allergy diagnoses." The prior findings are contained in the district court's April 2021 order, and our court's previous opinion concluded that the record supported the district court's factual finding that the child is not allergic to wheat or dairy. *Rued I*, 2022 WL 2298992, at *11. And father relies on exactly the same medical history that was before the district court in April 2021 and before us on appeal in *Rued I*. *See id.* at *3-4, 11. Thus, father is functionally asking us to revisit our prior affirmance of the district court's findings on this matter. "No petition for rehearing[, however,] shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01. Therefore, we do not consider these arguments.

Furthermore, the *factual* question of whether the child has wheat and dairy allergies was not the issue before the district court. Rather, at issue was mother's allegation that father's behavior and continued *belief* in the allergies and abuse was endangering the child. The district court found father's "unwavering dedicati[on] to furthering his allegations" of the allergies—despite previous factual findings to the contrary—supported mother's allegation of endangerment. "In applying the clear-error standard, we view the evidence in a light favorable to the findings," and we reverse only when the findings are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a

whole." *Kenney*, 963 N.W.2d at 221 (quotation omitted). We do not "reconcile conflicting evidence." *Id.* at 222. "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted). As we have previously determined, the record reasonably supports the district court's finding that the child is not allergic to wheat or dairy, and we do not attempt to reconcile father's assertion of conflicting evidence. Accordingly, the district court's finding was not clearly erroneous.

Exclusion of Father's Expert

Generally, procedural and evidentiary rulings are within the district court's discretion, and we review for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *rev. denied* (Minn. Oct. 24, 2001). All relevant evidence is generally admissible. Minn. R. Evid. 402. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. "[A]ny evidence is relevant which logically tends to prove or disprove a material fact in issue." *Shea v. Esensten*, 622 N.W.2d 130, 134 (Minn. App. 2001) (quotation omitted). "To constitute reversible error, an evidentiary ruling must be prejudicial." *Id.*

The district court excluded as not relevant testimony from Dr. Norman Klein, one of father's experts, who had reviewed the child's medical records only after father petitioned for an OFP and recommended new tests for allergies. The district court concluded Dr. Klein "is here to provide whether or not the belief about the allergens based

upon the reading of other reports and directives is legitimate, and that's not relevant for our purposes."

Father argues the district court's evidentiary ruling was an abuse of discretion because Dr. Klein's expert testimony was relevant as "evidenced by the fact that the district court referenced the child's dietary issues in at least eight separate findings in the Order." As we explained, whether the child has allergies was not before the district court. Instead, mother's allegation of endangerment was based upon father's persistent claim that the child has wheat and dairy allergies, despite evidence and factual findings to the contrary. Therefore, the district court acted within its discretion to exclude the witness.

Lastly, we observe that the district court has repeatedly stated its concern for the child's wellbeing as a result of father's continued beliefs. And given our review of this record and father's incessant litigation, we echo that concern. We also appreciate these words of the OFP court, which had the same concern: "the Court respectfully asked father to reconsider whether his litigation approach for the last several years has truly been in his child[']s best interest and good faith litigation conduct period."

Affirmed.