STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0861

In re the Marriage of:

Gretchen Ann Plombon, petitioner,
Respondent,

vs.

Brandon John Plombon,
Appellant.

Filed March 13, 2023
Affirmed
Cochran, Judge

Blue Earth County District Court
File No. 07-FA-21-3758

Gretchen Ann Plombon, Mankato, Minnesota (pro se respondent)

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larson, Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-father challenges the district court's decision to deny his motion to modify parenting time. He argues that the district court (1) misapplied a provision of the parties' stipulated dissolution judgment relating to changes in parenting time and (2) failed to make sufficient written findings to support its decision to deny the motion. We affirm.

FACTS

Appellant Brandon Plombon (father) and respondent Gretchen Plombon (mother) married in 2017.[1] The parties have two children.

In December 2020, father and mother stipulated to a marital-termination agreement and a proposed judgment and decree to dissolve their marriage. Relevant to this appeal, the agreement provided that, "[u]nless otherwise agreed upon by the parties," father would have parenting time on alternating weekends and designated holidays. He would also have "such additional parenting time with the children as may be agreed to between the parties, with the goal being a total of 91 overnights each year, or 25% of parenting time." The agreement also included a provision stating that, if one or both parties moved closer to or farther away from each other, "the parties agree to meet and review the parenting time set forth above and attempt to determine what new parenting time schedule might then be in the best interests of the children."

[1] Mother is self-represented and has not filed a response in this appeal. This matter therefore proceeds pursuant to Minn. R. Civ. App. P. 142.03, which provides that, if a respondent does not file a brief, "the case shall be determined on the merits."

In January 2021, the district court entered a dissolution judgment and decree adopting the parties' marital-termination agreement. By August 2021, both parties had independently moved to Mankato. Father thereafter asked mother if she would agree to give father additional parenting time because father was now living in the same city as the children. Mother did not agree to father's request.

Father subsequently filed a motion to modify parenting time, seeking equal parenting time and a vacation schedule. In an accompanying affidavit, father noted that "perhaps [he] made a poor decision agreeing to a minimum of [parenting time] every other weekend without a plan for the future." He further explained that, when the parties entered into the agreement, he had "wanted to have a minimum time with the [children]" because he "was getting [his] affairs back in order after the divorce." But, according to father, since moving to Mankato, he has put his affairs in order and now "would like . . . more than the bare minimum of time with [his] children." Father's affidavit also detailed his view of how equal parenting time would support the best interests of the children.

Mother opposed father's motion. In a supporting affidavit, mother asserted that increasing father's parenting time was not in the children's best interests. She also disputed father's characterization of the reason for the original division of parenting time, invoking father's "abusive behaviors, anger, suicidal threats and historical lack of parental involvement" as the basis for limiting father's parenting time under the parties' stipulated agreement. Mother asked the district court to deny father's motion or, in the alternative, to hold an evidentiary hearing and appoint an expert to conduct a parenting-time assessment report. She also asked the district court to establish a vacation schedule.

On April 20, 2022, following a hearing, the district court filed an order denying father's motion to modify parenting time. In the order, the district court noted that the parties had agreed in January 2021 that the best interests of the children were served by granting father alternating weekends and holiday time, with additional parenting time as agreed upon by the parties, up to 25%. The district court further found that "the circumstances relating to the best interests of the children are substantially identical to the facts as they were when the Judgment and Decree was entered . . . except that Father and Mother now live nearby." And the district court determined that "[t]his change does not impact the conclusion that the current parenting schedule is in the best interests of the children." The district court concluded that, "upon having reviewed the entire record and with the best interest[s] factors in mind," modification of the current parenting-time schedule was not in the children's best interests, except for the addition of a vacation schedule.

Father appeals.

DECISION

Father challenges the district court's decision denying his motion to modify parenting time. District courts have broad discretion in deciding parenting-time issues. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). We therefore review a district court's decision on whether to modify parenting time for an abuse of discretion. *Id.* "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Father first argues that the district court abused its discretion when it denied his motion to modify parenting time because the parties' stipulated dissolution judgment required modification of the parties' parenting plan under the circumstances. Father next argues that the district court failed to make sufficient written findings to support its decision. We consider each issue in turn.

I. The district court's decision does not contravene the stipulated judgment.

Father argues that the district court abused its discretion by denying his motion to modify parenting time because the district court's decision contravenes the terms of the parties' stipulated judgment. Assuming for purposes of this appeal that this issue is properly before us, we disagree. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts generally decline to address issues raised for the first time on appeal); *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (citing *Thiele* but explaining that appellate courts may consider an issue raised for the first time on appeal in the interest of justice); *see also* Minn. R. Civ. App. P. 103.04 (noting that appellate courts may review any matter "as the interest of justice may require").

We treat a stipulated dissolution judgment as a contract for purposes of construction. *Nelson v. Nelson*, 806 N.W.2d 870, 872 (Minn. App. 2011). In construing a contract, we first consider de novo whether the contract language is clear or ambiguous. *Id.* "Contract language is ambiguous if it is reasonably susceptible to more than one interpretation." *Id.* (quotation omitted). We interpret contract language consistent with its "plain and ordinary meaning." *Id.* (quotation omitted). When contract language is unambiguous, we apply its plain meaning without reference to extrinsic evidence. *Id.* If there is ambiguity, we review

the district court's resolution of that ambiguity for clear error. *See Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014) ("A district court's determination of the meaning of an ambiguous judgment and decree provision is a fact question, which appellate courts review for clear error.").

The stipulated judgment includes the following provision regarding parenting time:

> Should one or both of the parties move, such that they reside closer to, or farther away from, each other, *the parties agree to meet and review* the parenting time set forth above and *attempt to determine* what new parenting time schedule might then be in the best interests of the children.

(Emphasis added.)

Father argues that, in denying his motion to modify parenting time, the district court did not properly interpret and apply the provision. He asserts that the plain meaning of the provision *requires* a modification of parenting time if either party moves to a new location. And he argues that the district court therefore abused its discretion by denying father's motion to modify parenting time given that the parties have moved closer to each other since the dissolution judgment and decree was entered. This argument is unavailing.

Father's proposed interpretation of the stipulated judgment is contrary to its plain language. The provision at issue unambiguously requires only that the parties "meet and review" the existing parenting-time schedule and "*attempt* to determine what new parenting time schedule might then be in the best interests of the children." (Emphasis added.) It does not *require* a change to parenting time when one or both parties move. And the record shows that the requirement to "meet and review" the existing parenting schedule was met. According to father's affidavit, father asked mother for additional

parenting time after they moved closer to each other. The parties also participated in mediation to try to resolve the parenting-time issue. And father acknowledges in his brief that he did not file his motion for modification until "[a]fter attempting to agree to a new schedule."

In sum, the stipulated judgment only required the parties to meet and confer about whether changing the parenting-time schedule might be in the best interests of the children. It did not require the district court to change the parenting-time schedule simply because father has moved closer to the children. We therefore conclude that the district court did not err in interpreting or applying the stipulated judgment.

II. The district court adequately considered the best interests of the children in denying father's motion.

Father also seeks reversal and remand of the district court's decision on the ground that the district court failed to make sufficient written findings regarding the "best interests" factors in its order denying the motion. We are not persuaded.

Minnesota law provides that a district court shall grant a motion to modify parenting time if modification would serve the "best interests" of the children and would not change the children's primary residence. Minn. Stat. § 518.175, subd. 5(b) (2022). In evaluating a child's best interests for purposes of determining parenting time, a district court "must consider and evaluate *all relevant factors*," including the 12 best-interests factors listed in Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2022) (emphasis added). In addition, the district court is required to "make detailed findings on each of the [enumerated] factors . . . based

on the evidence presented and explain how each factor led to its conclusions and to the determination of . . . parenting time." Minn. Stat. § 518.17, subd. 1(b)(1) (2022).[2]

Father argues that the district court failed to make sufficiently detailed findings to demonstrate its consideration of the statutory best-interests factors. To support this argument, father emphasizes that the district court expressly "decline[d]" to make detailed findings in its order "on each and every factor commonly referred to as the 'best interest[s] factors.'" Father also cites *Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989), for the proposition that "[e]ffective appellate review . . . is possible only when the [district] court has issued sufficiently detailed findings of fact to demonstrate its consideration of all . . . relevant [statutory factors]." Father argues that the district court "must make at least a determination as to the key best interest factors *which are relevant* to this situation post decree." (Emphasis added.) And he argues that, because it failed to do so, the matter must be remanded. We are not persuaded for the following reasons.

First, the district court expressly articulated and considered the proper legal standard for modification of parenting time. The district court specifically stated that Minn. Stat. § 518.175, subd. 5(b), requires modification of parenting time "[i]f modification would serve the best interests of the child[ren]."

Second, while the district court did not expressly address each of the statutory best-interests factors listed in Minn. Stat. § 518.17, subd. 1(a), the district court did make

[2] In *Hansen*, which concerned a request to modify an existing "parenting plan" under Minn. Stat. § 518.175, subd. 8 (2022), the supreme court concluded "that the district court was required to consider only the *relevant* best-interest[s] factors" and to make findings sufficient for appellate review. 908 N.W.2d at 597-98, 597 n.2.

a number of findings to support its decision to deny father's motion to modify parenting time. In its order, the district court specifically found the following facts relevant to the children's best interests: (1) the parties had agreed in January 2021, when the dissolution judgment and decree was filed, that the children's best interests were served by granting father alternating weekends and some holiday time with additional time as agreed between the parties up to 25%; (2) father's discussion of the best-interests factors in his affidavit was "based upon information that would have been readily available to him at the time he entered into the parties' stipulation" and therefore did not support finding any change in the best interests of the children; (3) father's implication that the original parenting-time split was based only on his need for time to "get his affairs in order" is not supported by the record, which shows that the parties "encountered substantial conflicts and challenges" during their marriage including "[f]ather's history of suicidal threats," father "disseminating nude photos of [m]other online," and "[f]ather's lack of parenting involvement"; and (4) father had demonstrated only one change in circumstances since the entry of the dissolution judgment and decree—the parties residing closer to each other.

These factual findings relate to the following best-interests factors listed in Minn. Stat. § 518.17, subd. 1(a): the children's physical, emotional, and other needs and development; "the history and nature of each parent's participation in providing care for the child[ren]"; and "the willingness and ability of each parent to provide ongoing care for the child[ren]." Minn. Stat. § 518.17, subd. 1(a)(1), (6)-(7). In addition to relying on these findings, the district court specifically stated that it made its decision "with the best interest[s] factors in mind" and after "having reviewed the entire record."

We conclude that the district court adequately explained its parenting-time decision. We further conclude that any error by the district court in failing to specifically address each of the enumerated "best-interests" factors was harmless. As noted above, the district court expressly stated that its decision was based on the "best-interests factors." Therefore, remanding to the district court for additional factual findings on those factors would not change the district court's decision. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand in a child-custody case when "from reading the files, the record, and the [district] court's findings, on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); *Tarlan v. Sorensen*, 702 N.W.2d 915, 920 n.1 (Minn. App. 2005) (declining to remand in a custody dispute when doing so "would be futile at this juncture" (citing *Grein*)). In sum, given the district court's "broad discretion" in deciding parenting-time questions, *Hansen*, 908 N.W.2d at 596, we conclude that the district court did not abuse its discretion by denying father's motion to modify parenting time.

Affirmed.