STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0862

Anita M. Froderman, n/k/a Sydorowicz, petitioner,
Respondent,

vs.

Jeffrey T. Lais,
Appellant.

Filed May 8, 2023
Affirmed
Cochran, Judge

Nobles County District Court
File No. 53-FA-13-838

Sara J. Runchey, Runchey, Louwagie & Wellman, P.L.L.P., Marshall, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-father challenges an order of the district court that established a parenting-time schedule for the summer of 2022 and that addressed enrollment of the parties' minor child in 4-H. Appellant seeks reversal and remand, arguing that the district court's decision regarding the parenting-time schedule is not supported by sufficient factual

findings and that the district court exhibited bias in its decision regarding the child's 4-H enrollment. We affirm.

FACTS

Appellant-father Jeffrey T. Lais and respondent-mother Anita M. Froderman, now known as Anita M. Sydorowicz, are the parents of a child born in 2013. In January 2014, father and mother stipulated to an agreement to resolve custody, parenting time, and child support. The agreement granted father and mother joint legal custody and granted mother physical custody of the child, subject to father's parenting time. The agreement included an annual parenting-time schedule. The district court incorporated the terms of the agreement in an order filed in January 2014. Since then, the parties have had ongoing legal disputes regarding parenting time, custody, and other matters. A summary of the relevant proceedings follows.

In May 2014, the parties stipulated to amend the January 2014 order. The stipulation vacated the prior parenting-time schedule and set a new schedule. The new schedule increased father's parenting time. The district court again incorporated the terms of the agreement in a written order.

In August 2018, just before the child started kindergarten, both parties filed motions regarding parenting time and school choice. The district court denied both motions, maintained the existing parenting-time schedule, and ordered the parties to attend mediation. At that time, father had 43% of parenting time and mother had 57% of parenting time.

After mediation, the parties stipulated to the appointment of a parenting-time consultant. The stipulation provided:

> The Parenting Time Consultant shall work with the parties to establish an acceptable parenting time schedule and if the parties are unable to reach [an] agreement, establish a schedule of parenting time for Father, and . . . Father shall receive three (3) weekends a month during the school calendar year, including any adjacent days off from school and greater than one-half of the summer non-school months.

The parties worked with the parenting-time consultant but were unable to agree upon a schedule for the upcoming school year. As a result, the parenting-time consultant developed a schedule in which father received three weekends a month during the 2019-2020 school year and alternating weeks in the summer of 2020, along with "expanded periods of time each [summer] month to ensure more than six (6) weeks of summer parenting time [for father]." The district court issued an order in January 2020 affirming the parenting-time consultant's schedule. The district court also ordered the parties to meet with the parenting-time consultant prior to mid-August 2020 to establish a parenting-time schedule for the 2020-2021 school year and the summer of 2021. The parties failed to do so.

Instead, in September 2020, father filed a motion to modify custody, modify the parenting-time schedule, and appoint a parenting-time consultant.[1] Shortly thereafter, the district court issued a temporary order that required the parties to continue following the

[1] Father's motion does not specify why he was requesting the appointment of a new parenting-time consultant. As discussed below, the parties later agreed to retain the same parenting-time consultant that was appointed after mediation.

parenting-time schedule adopted in the prior order while the district court considered father's pending motion.

In December 2020, father filed another motion seeking to modify custody, appoint a parenting-time consultant, and modify the parenting-time schedule. Following a hearing on the outstanding motions, the parties agreed to have the parenting-time consultant already in place address the parenting-time issues. The parties met with the parenting-time consultant in May 2021 and agreed to a summer 2021 parenting-time schedule that was similar to the prior summer schedule. In August, the parenting-time consultant set a proposed schedule for the 2021-2022 school year. The new schedule did not address the summer of 2022 or any time thereafter.

In November 2021, the district court issued an order approving the parenting-time consultant's 2021-2022 school-year schedule and denying father's motion to modify custody. And to help the parties address their ongoing conflicts, the district court ordered both parents to participate in a parenting class focused on conflict. Finally, the district court set a review hearing for March 14, 2022. Prior to the review hearing, the parenting-time consultant resigned.

At the review hearing, the district court noted that the parenting-time schedule for the summer of 2022 remained an outstanding issue. The district court asked the parties whether they wished to have a new parenting-time consultant appointed or have the district court set the schedule. The parties agreed to have the district court set the summer parenting-time schedule and to submit proposed calendars for the court's consideration. Counsel for father noted that father's proposed schedule would not be a set "5-2-2-5"

schedule because he would be proposing a few extra days to "rebalance" the overall calendar. Counsel then stated that father would file his proposed calendar and that the district court could "do as [it] wish[ed]."

At the review hearing, the parties also discussed the child's 4-H[2] enrollment. Father, who is a farmer, had signed the child up for 4-H in Nobles County. He did so without consulting mother. Father wanted the child to participate in the Nobles County 4-H program so that the child could show cattle at the Nobles County Fair. Mother told the district court that the child wanted to show horses in addition to cattle and stated that Nobles County did not have any opportunities for the child to show both cattle and horses at the county fair. For that reason, she requested that the child be enrolled in a 4-H program in a different county. After learning that the child wanted to show both animals, the district court inquired of mother: "From your position, where would it make most sense, considering where Dad lives and having equal participation, for [the child] to participate [in 4-H]?" Mother responded, "Cottonwood County." The district court concluded the hearing by taking the outstanding issues—4-H enrollment and summer parenting-time—under advisement.

Following the hearing, the parties both filed proposed summer parenting-time schedules and information regarding 4-H enrollment options. Father proposed a variation of a "5-2-2-5" schedule with one extra weekend per month of parenting time allocated to father. Father also detailed information about the child's options for showing cattle

[2] 4-H is a national youth-development program that provides opportunities for children to learn various hands-on skills.

through the Nobles County 4-H program. Mother proposed her variation of a "5-2-2-5" schedule that mostly mirrored father's schedule but without the extra weekend per month for father. Mother also asserted in her filing that the child's 4-H enrollment should not be in Nobles County because enrolment in a different county would best maximize the child's ability to show both cattle and horses.

On April 8, 2022, the district court issued an order adopting mother's proposed summer parenting-time schedule. The district court also ordered that the child's 4-H enrollment be changed to Cottonwood County. Father requested reconsideration. In an order on reconsideration, the district court updated the parenting-time schedule to allow additional parenting time with father for a scheduled trip but did not otherwise modify the April 8 order. Father appeals.

DECISION

Father challenges both the summer 2022 parenting-time schedule established by the district court and the district court's decision to change the child's 4-H enrollment to Cottonwood County. We address father's arguments regarding each issue in turn.

I. The district court did not abuse its discretion in setting the 2022 summer parenting-time schedule.

District courts have broad discretion in deciding parenting-time issues. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). We will not reverse a parenting-time decision unless the 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).

As an initial matter, father challenges the district court's authority to create the 2022 summer schedule, arguing that the district court acted sua sponte in changing the parties' parenting time. We disagree. Father filed a motion to modify parenting time in December 2020. The district court order that followed adopted the 2021-2022 school-year schedule proposed by the parenting-time consultant and set a March 2022 review hearing. At the review hearing, both parties expressly agreed to have the district court set the summer 2022 parenting-time schedule. Thus, the district court did not act sua sponte when it set the summer 2022 schedule.

Father next argues that the district court abused its discretion by reducing his parenting time for summer 2022 compared to prior summers without making factual findings to support the reduction in father's parenting time.[3] He further contends that, in setting the summer parenting-time schedule for 2022, the district court effectively restricted rather than modified his parenting time. He maintains that the district court should have set the 2022 summer schedule according to the terms of the 2019 district court order adopting the parties' stipulation governing the parenting-time consultant, which

[3] During oral arguments before this court, we asked the parties to address whether this issue is moot because summer 2022 has passed. *See In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999) ("The doctrine of mootness requires that we decide only actual controversies and avoid advisory opinions."). The parties assert, and we agree, that this issue is not moot because judgment in this case can yield collateral consequences. *See id.* (stating that collateral consequences form an exception to the mootness doctrine).

provided that father would receive "greater than one-half of the summer non-school months."

To address father's argument, we must first determine whether the district court's order "modified or restricted" father's parenting time. A district court may modify an order granting parenting time "[i]f modification would serve the best interests of the child." Minn. Stat. § 518.175, subd. 5(b) (2022). With an exception not relevant here, a district court may not "restrict" parenting time unless it finds either that "parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development" or that "the parent has chronically and unreasonably failed to comply with court-ordered parenting time." *Id.*, subd. 5(c)(1), (2) (2022). "To determine whether a reduction in parenting time constitutes a restriction or modification, the court should consider the reasons for the change as well as the amount of the reduction." *Dahl v. Dahl*, 765 N.W.2d 118, 124 (Minn. App. 2009).

We begin our analysis here by "identify[ing] the order that establishes the baseline parenting-time schedule and then determine[ing] whether the district court's parenting-time change from the baseline parenting-time schedule is significant enough to constitute a restriction." *Id.* at 123. The baseline parenting-time schedule is generally found in "the *last permanent and final order* setting parenting time." *Id.* (emphasis added). A parenting-time schedule includes "a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations." Minn. Stat. § 518.175, subd. 1(e) (2022).

Father suggests that the district court order adopting the parties' 2019 stipulation should be considered the baseline parenting-time schedule. We disagree. The 2019 order provided general parameters for the parenting-time consultant to follow in establishing a schedule, but it did not set a parenting-time schedule. Therefore, the 2019 district court order adopting the parties' stipulation with regard to the parenting-time consultant does not constitute the baseline parenting-time schedule. And, since 2019, the district court has not issued a permanent and final order governing parenting time. It has only issued temporary orders. To find the last permanent and final parenting-time schedule, one has to go back to the district court's May 2014 order. And, while the May 2014 order sets an annual parenting-time schedule, the order was established before the child entered school and thus did not set a specific school-year or summer schedule. Consequently, it is unclear which district court order establishes the parties' baseline parenting-time schedule for the issue before us.

Even assuming without deciding that the 2019 district court order was a permanent and final order setting the baseline from which the parenting-time change should be measured, the district court's 2022 summer parenting-time schedule did not amount to a restriction of father's parenting time. *See Dahl*, 765 N.W.2d at 123. As noted above, the 2019 district court order adopted the parties' stipulation. That stipulation provided that the parenting-time consultant would work with the parties to set a schedule "consistent with the agreement that Father shall receive three (3) weekends a month during the school calendar year . . . and greater than one-half of the summer non-school months." For the summer of 2020, the parenting-time consultant developed (and the district court

subsequently adopted) a schedule that gave father a total of approximately 56 overnights for June, July, August, and a portion of September. The next year, the parties again agreed to work with the parenting-time consultant to set the summer 2021 schedule. The summer 2021 schedule gave father approximately the same number of overnights as the summer prior. Then, in 2022, the district court set the summer schedule giving father approximately 48 overnights for June, July, August, and a portion of September.

While the district court's order setting the summer 2022 parenting time schedule resulted in father receiving fewer days in the summer of 2022 compared to the summers of 2020 and 2021, this change in father's summer parenting time was not substantial given that the reduction was only approximately eight overnights and the district court properly laid out its reasons for the change in schedule for summer 2022. The district court adopted a variation of the rotating "5-2-2-5" schedule for the 2022 summer to promote the child's best interests by providing an "opportunity for the child to bond and spend time with both parents as well as no longer have long periods of time away from either parent." Based on the reasons for the change and the amount of the reduction, we cannot conclude that the decrease constitutes a restriction in father's parenting time.

Father also seems to argue that, even if the change in summer parenting time amounts to a modification rather than a restriction, the district court failed to make adequate findings to support the modification. We are not persuaded. A district court shall grant a motion to modify parenting time "[i]f modification would serve the best interests of the child" and "would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b). Here, as noted above, the district court determined that the summer

parenting-time schedule served "the best interests of this child" because it "provide[d] opportunity for the child to bond and spend time with both parents." The district court reasoned that the child had a strong bond with his mother and half-siblings and that the variation of the "5-2-2-5" schedule allowed the child to build that bond without long periods of time away from either parent or family. The district court also reasoned that the schedule would allow for the child to maintain a daily routine with each parent. And the district court considered "the child's age and his overall general happy and adjusted personality" when determining the schedule. Therefore, keeping in mind the district court's broad discretion in parenting-time decisions, we conclude that the district court did not abuse its discretion by setting a parenting-time schedule for summer 2022 that slightly reduced father's parenting time from the prior summers.

II. The district court did not improperly rely on extra judicial knowledge or exhibit bias in its order.

Father also argues that this court should reverse the district court's decision to change the child's 4-H enrollment because the district court improperly relied on extrajudicial knowledge when it made its decision regarding the child's 4-H participation. He further argues that the district court's decision exhibited bias against him. We are not persuaded.

The supreme court has cautioned district court judges that "the extraordinary prestige" of a district court judge creates "an extraordinary obligation to refrain from any act" that suggests "a predisposition on the part of the court toward one side or the other in connection with the legal controversy." *Hansen v. St. Paul City Ry. Co.*, 43 N.W.2d 260,

265 (Minn. 1950). An impartial judge has no actual bias against a party "or interest in the outcome of his particular case." *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998) (quotation omitted). "In order for bias or prejudice to be disqualifying[,] it must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from [their] participation in the case." *Pedro v. Pedro*, 489 N.W.2d 798, 804 (Minn. App. 1992) (quotation omitted), *rev. denied* (Minn. Oct. 20, 1992).

While the district court in this matter noted that it is familiar with 4-H programs, nothing in the order suggests that the district court was biased toward either party or toward a particular county's program. Instead, the record reflects that the district court based its decision on the child's best interests. In explaining its decision, the district court reasoned that enrollment in a 4-H program in a county other than Nobles County is more appropriate because other counties offer more opportunities for the child. The district court based its decision on mother's testimony that the child is interested in showing both cattle and horses but would not be able to do so in Nobles County. The district court ultimately ordered the child to be enrolled in 4-H in Cottonwood County, based on information from mother that Cottonwood County would allow the child to show both horses and cattle but still allow father to have "equal participation." In reaching this decision, the district court explained that "[a]rranging for the child, in the first year of his participation in 4-H, to be able to long-term participate in a singular county program will give him the opportunity to develop long-term connections and support for full participation in all ways if he chooses to continue his participation." The district court's reasoning shows that it considered the child's preferences and best interests based on the record when it ordered the child's 4-H

enrollment to be moved to a different county. We discern no bias or prejudice by the district court in its decision regarding the child's 4-H participation.

Affirmed.