STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1158

In re the Marriage of:
Barbara Ellen Berg Windels,
Respondent,

vs.

Gary James Windels,
Appellant.

Filed April 24, 2023
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-FA-11-1061

M. Sue Wilson, Jack W. Hicks, Jessica M. Heuer, M. Sue Wilson Law Offices, P.A., Minneapolis, Minnesota (for respondent)

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

In this parenting-time appeal, appellant-father challenges six factual findings for clear error. Father also argues that the district court misapplied the law by basing its decision to restrict his parenting time on a finding that he had emotionally endangered the children. We affirm.

FACTS

Appellant-father Gary James Windels and respondent-mother Barbara Ellen Berg Windels are the parents of two adolescent children, J.W. and E.W. J.W. was born in 2006 and E.W. was born in 2008. The district court dissolved the parties' marriage in 2012 and set a stipulated parenting-time schedule. In 2019, a parenting consultant appointed by the parties granted father an additional overnight of parenting time with both children, giving father six full days of parenting time, including six overnights, every two weeks.

The parties appointed a parenting-time evaluator in March 2020. The parenting-time evaluator completed a written evaluation with recommendations in October 2020. She based the evaluation on interviews with, observations of, and various psychological tests of the parties and both children, as well as collateral information from the medical records and therapists of the parties and children. The parenting-time evaluator recommended reducing father's parenting time with J.W. to three full days and two partial days with four overnights every two weeks. The evaluator recommended reducing father's parenting time with E.W. to four partial days with no overnights every two weeks.

Mother moved to permanently modify parenting time consistent with the evaluator's recommendations. Father moved the district court to permanently adopt the parenting-time schedule decided in 2019 by the parenting consultant. The district court held an evidentiary hearing where four witnesses testified—the parenting-time evaluator, mother, a forensic psychologist who critiqued the parenting-time evaluation, and father. In evidence was the written parenting-time evaluation and the forensic psychologist's written report critiquing the evaluation.

The district court filed an order adopting the recommendations of the parenting-time evaluator and finding that father "ha[d] endangered the children's emotional health and development." This appeal followed.

DECISION

Father challenges six factual findings underlying the district court's finding that he emotionally endangered the children. He also argues that the district court misapplied Minn. Stat. § 518.175, subd. 5(c)(1) (2022), by basing its decision to restrict his parenting time on a finding that he "ha[d]" emotionally endangered the children. District courts have "broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotation omitted). "Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record." *Id.* (quotation omitted). We first address the district court's factual findings and then its application of the law.

Alleged clear errors

Factual findings "underlying a parenting-time decision will be upheld unless they are clearly erroneous." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009); Minn. R. Civ. P. 52.01. Factual findings are not clearly erroneous if evidence reasonably supports them. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). Under clear-error review, appellate courts view the evidence in the light most favorable to the findings and do not reweigh the evidence, reconcile conflicting evidence, judge witness credibility, or find facts. *Kenney*, 963 N.W.2d at 221-22; *Vangsness*, 607 N.W.2d at 474-75. And clear-error

review does not require "an extended discussion of the evidence" to prove the district court's findings correct. *Kenney*, 963 N.W.2d at 222 (quotation omitted). Our "duty is fully performed after . . . fairly consider[ing] all the evidence and . . . determin[ing] that . . . [it] reasonably supports the decision." *See id.* (quotations omitted).

First, father contests the district court's finding that his relationship with E.W. "exacerbates" E.W.'s "mental health condition." E.W.'s mental health condition includes diagnoses of ADHD, anxiety, and depression, along with "low self-esteem" and general "emotional control issues." The parenting-time evaluator found E.W. emotionally "vulnerable to conflict with her father," emphasizing E.W.'s sadness, anger, and anxiety surrounding her "relationship with her father." The parenting-time evaluator explained how father's inflexible parenting style caused "ongoing conflict between him and" E.W., with father having "difficulty with emotional regulation" should E.W. "become[] oppositional." After reviewing the evidence underlying the parenting-time evaluator's opinion, we conclude that the evidence reasonably supports a finding that father's relationship with E.W. exacerbates E.W.'s mental health.

Second, father disputes the district court's finding that he "often engages in" humiliating, demeaning, and inappropriate "punishments, such as forcing [E.W.] to do pushups or planking in public." We are satisfied that this finding is not clearly erroneous. The record includes substantial history of father's inappropriate discipline and his failure to appropriately adjust his disciplinary philosophy after being professionally instructed to do so.

Third, father contests the finding that E.W. "put a plastic bag over her head to get attention from [f]ather, who ignored her as this took place." This finding is consistent with the parenting-time evaluator's description of the plastic-bag incident in her written evaluation. Father does not argue that the finding about the plastic-bag incident is based "entirely on unreliable evidence." *See id.* He points only to his own testimony that E.W. "put [the bag] over her face . . . for one or two seconds and then removed it because she couldn't breathe," and that E.W. "had [father's] attention." Father seemingly asks us not to view the evidence in the light most favorable to the district court's finding, to reconcile conflicting evidence, and to assess witness credibility. But we may not perform any of these tasks. *See id.* at 221-22. As such, we conclude that the district court's finding about the plastic-bag incident is not clearly erroneous.

Fourth, father contests the finding that the forensic psychologist "critiqued the procedures" that the parenting-time evaluator "followed but did not disagree with her ultimate conclusions in the" written evaluation. But this finding accurately characterizes the forensic psychologist's report and testimony. The forensic psychologist criticized the parenting-time evaluator's report because: (a) the evaluator's curriculum vitae listed her association with a defunct and disreputable organization; (b) the evaluator did not sufficiently describe her collateral sources; (c) the evaluator did not explicitly "consider multiple hypotheses" in her report; (d) the evaluator selected potentially inappropriate psychological tests, scored one of them using a computerized program, and might have over-relied on the test data in making conclusions about E.W. and father; and (e) the evaluator showed "some possible indications of biased reason[ing]."

Moreover, the forensic psychologist admitted in his testimony that "[f]or the most part," the parenting-time evaluator's conclusions "followed logically from the information" in her written evaluation. The forensic psychologist also found that the parenting-time evaluator considered information of "a broad enough scope." And the forensic psychologist admitted that, if the parenting-time evaluator had testified about the alternative hypotheses she considered, as she so testified, "that would be a good practice." Further, the forensic psychologist found no "indications of strong bias." He was only "a little bit concern[ed]" about the parenting-time evaluator's overemphasis of a dated incident of father's prior behavior and deemphasis of father's positive responses to therapy. Viewing the forensic psychologist's opinion in context, the district court did not clearly err by finding that he did not disagree with the parenting-time evaluator.

Fifth, father appears to assert clear error in the district court's finding that "he does not comprehend how his behavior . . . has negatively impacted the children, especially" E.W. The district court based this finding in part on father's "demeanor" during his testimony, a judgment to which we must defer. *See Vangsness*, 607 N.W.2d at 472. The district court also highlighted how father kept E.W. from seeing her cat unless she was at father's house. And the district court emphasized how father defended calling J.W. as a witness after the district court precluded father from doing so and found that testifying would traumatize J.W. After reviewing father's testimony, the parenting-time evaluator's opinion about father's unawareness of his negative impact on the children, and other evidence, we are satisfied that the district court did not clearly err.

Sixth, father seems to argue that the district court clearly erred by finding that testifying would have caused "trauma" to J.W.[1] But the parenting-time evaluator testified that she would be "[v]ery" concerned if father called J.W. as a witness. The evaluator explained that testifying "would be . . . very traumatic" for J.W., underscoring J.W.'s "anxious" and "sensitive" temperament, and his conflicting "aware[ness] of" both "father's needs and . . . vulnerabilities" and "the way . . . father treats" E.W. Thus, the record reasonably supports a finding that testifying would have traumatized J.W. None of the factual findings that father challenges are clearly erroneous.

Application of likely endangerment standard

We turn to father's claim that the district court misapplied section 518.175, subdivision 5(c)(1). Under Minn. Stat. § 518.175, subd. 5(b) (2022), the district court "shall modify" a parenting-time order if the modification serves the child's best interests and does not change their primary residence. But the district court "may not restrict parenting time unless," among other exceptions, it finds that "parenting time is likely to endanger" the child's "physical or emotional health or impair" their "emotional development." Minn. Stat. § 518.175, subd. 5(c)(1).

"A change in parenting time that reduces the amount of time a parent has with a child is not necessarily a restriction of parenting time." *Dahl*, 765 N.W.2d at 123. We assume, and the parties do not dispute, that the district court restricted father's parenting time with both children despite repeatedly characterizing the reduction in parenting time

[1] We assume, and mother does not dispute, that father did not forfeit review of this finding.

with J.W. as "a slight reduction." Whether the district court "correctly applied" the likely endangerment standard is a question of law. *See In re Welfare of the Child. of M.A.H.*, 839 N.W.2d 730, 746 (Minn. App. 2013).

Father contends that the district court failed to make the requisite finding "that . . . future parenting time" is likely to endanger the children and found only that father's conduct "ha[d] endangered the children's emotional health and development." Even if that finding was insufficient, in the district court's best-interests findings, the court expressly found that father's behavior "endangers the emotional health and development of the children." This finding is sufficient to restrict parenting time under the correct legal standard. Therefore, the district court did not abuse its discretion by restricting father's parenting time.

Affirmed.