

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0208**

In re the Marriage of:

Valentin Arkadievich Povarchuk, petitioner,
Appellant,

vs.

Rebecca Joyce Povarchuk,
Respondent.

**Filed October 2, 2023
Affirmed
Smith, Tracy M., Judge**

Dakota County District Court
File No. 19AV-FA-16-382

Valentin Povarchuk, Eagan, Minnesota (pro se appellant)

John DeWalt, Melissa Chawla, DeWalt, Chawla + Saksena, LLC, Minneapolis, Minnesota
(for respondent)

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this parenting dispute, appellant father challenges the district court's order granting respondent mother's motion to order the children's continued participation in extracurricular activities and denying his motion to modify the portion of the parties'

already modified parenting plan addressing parenting time. We conclude that the district court (1) did not abuse its discretion by granting mother’s motion because the district court had the authority to enforce a previous stipulated order directing the children’s participation in camps and activities based on the parties’ agreement and (2) did not err by concluding that father’s motion was improper because the motion was brought within two years of the disposition of father’s prior motion to modify the parenting-time provision of a parenting plan. We affirm.

FACTS

Appellant Valentin Arkadievich Povarchuk and respondent Rebecca Joyce Povarchuk¹ were married in 2001. Their marriage was dissolved in 2016. The parties have two joint children. Child 1 was born in 2009, and child 2 was born in 2013. The following facts are derived from the district court’s order and augmented by information from the record as necessary to contextualize the issues on appeal.

The parties agreed to share joint legal and joint physical custody of the children and established a parenting plan. *See* Minn. Stat. § 518.1705, subd. 3 (2022) (defining and providing requirements for parenting plans).² Following a request to modify the parenting-

¹ Because the parties share a last name, we refer to them by their first names.

² “Parenting plan” is a term of art referring to a mechanism for addressing the care of a child. To be a “parenting plan,” the mechanism must fit the profile set out in Minnesota Statutes section 518.1705 (2022). While all “parenting plans” are plans addressing the care of a child, a plan for the care of a child is *not* a “parenting plan” unless it satisfies section 518.1705. *See, e.g., Rutz v. Rutz*, 644 N.W.2d 489, 492 (Minn. App. 2002) (discussing “parenting plans” and Minn. Stat. § 518.1705 (2012)); *In re Welfare of B.K.P.*, 662 N.W.2d 913, 916 (Minn. App. 2003) (noting that “parenting time” is a concept distinct from a “parenting plan”). Thus, prudence counsels avoiding use of the term “parenting

time provision of the parenting plan, the district court ordered a parenting-time evaluation. The parties later agreed to the parenting-time evaluator's recommendations and to use a parenting consultant (PC) for a three-year term. During this three-year term, parties requested, and the PC made, approximately 19 determinations related to, among other things, parenting time, camps and activities for the children, technology, therapy, and vacations.

In July 2021, Valentin appealed some of the PC's determinations to the district court. The parties engaged in negotiations, and, on June 17, 2022, the district court filed a stipulated order adopting the agreement reached by the parties. The June 2022 order, in relevant part, modified the portion of the parenting plan addressing the parenting-time schedule and provided that the children would continue to participate in their activities and that the parties would equally split the costs.

On November 22, 2022, Rebecca filed a motion asking the district court to, in relevant part, order Valentin to allow the children to participate in the specific school and extracurricular activities she listed. On December 5, 2022, Valentin filed a motion requesting modification of the parenting-time schedule in the recently modified parenting plan by adding Thursdays during the school year to his parenting time and requesting that the district court order Rebecca to reimburse him half of the costs of the PC evaluations.

plan” when referring to a plan for the care of a child that does not satisfy section 518.1705. Prudence also counsels making clear whether there is, in fact, a parenting plan. Here, as the parties appropriately recognize, they have a parenting plan under section 518.1705.

In a December 21, 2022 order, the district court granted Rebecca's motion to order that the children continue participating in activities and that the parties share the costs. The district court denied Valentin's motion to modify the portion of the parties' parenting plan addressing parenting time as time-barred and denied all other motions.

Valentin appeals.

DECISION

Valentin argues that the district court lacked jurisdiction to order specific camps and activities for the children when granting Rebecca's motion and that the district court erred by denying his motion to modify parenting time as statutorily time-barred. We address each argument in turn.

I. The district court did not err by granting Rebecca's motion regarding the children's camps and activities.

Valentin challenges the district court's order directing specific camps and activities for the children. As Rebecca correctly acknowledges, Valentin does not argue that participating in the camps and activities is not in the children's best interests. Rather, as Valentin explains, he challenges the district court's authority to order specific camps and activities. First, Valentin argues that *res judicata* barred the district court from addressing the children's camps and activities. Second, Valentin argues that the district court lacked subject-matter jurisdiction to select camps and activities for the children. We address each argument in turn.

A. Res Judicata

Valentin argues that res judicata barred the district court from identifying specific camps and activities for the children in its December 2022 order because the district court had previously filed a stipulated order in June 2022, based on the parties' agreement, that addressed camps and activities. Rebecca argues that res judicata does not apply.

Res judicata has four elements: “(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). All four elements must be met for res judicata to apply. *Id.* The availability and application of res judicata in family-law matters is limited, but “the underlying principle that an adjudication on the merits of an issue is conclusive, and should not be relitigated, clearly applies.” *Loo v. Loo*, 520 N.W.2d 740, 744 (Minn. 1994).

First, we conclude that Valentin has failed to satisfy his burden as the appellant. Because error is not presumed on appeal, an appellant has the burden of showing error. *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999). In his briefing to this court, however, Valentin does not analyze the elements of res judicata to demonstrate that they are met. Thus, even if res judicata *could* apply here, Valentin has not shown why it *should* apply and relief is not proper on this point.

Second, even if we construe Valentin's argument to challenge the differences between the June 2022 and the December 2022 orders, we are not persuaded that the district court abused its discretion. The June 2022 order states that the parties would share equally

the costs of (1) summer camps with expenses up to \$2,000 per parent for each child per year, (2) violin lessons for both children during the school year, and (3) religious school for both children. The December 2022 order that Valentin challenges specifies that the children will engage in (1) “violin lessons with the Northern Lights School for Strings;” (2) “at least one sport or exercise activity per season;” (3) “summer camps, specifically including but not limited to, [an overnight Jewish summer camp] and violin camp;” (4) “Mount Zion Religious School;” and (5) “membership at the St. Paul [Jewish Community Center].” Valentin does not explain how these specific camps and activities differ from the general categories of camps and activities identified in the June 2022 order.³ He therefore fails to demonstrate that the district court’s December 2022 order regarding camps and activities was barred by res judicata.

B. Subject-Matter Jurisdiction

Valentin next argues that the district court lacked subject-matter jurisdiction to determine the children’s participation in specific camps and activities. Though Valentin frames this argument as one of subject-matter jurisdiction, his challenge is actually to the district court’s authority. *See Moore v. Moore*, 734 N.W.2d 285, 287 n.1 (Minn. App. 2007) (explaining that “parties often use concepts and language associated with ‘jurisdiction’ improperly to refer to, among other things, nonjurisdictional . . . limits on a court’s

³ Valentin identifies two specific objections to the camps and activities addressed in the December 2022 order. He states that, “in light of the current circumstances,” he believes that the children’s violin-education program “may no longer be a good fit” and he is concerned that a summer camp for one of the children will take up too much of Valentin’s summer parenting time. But Valentin does not articulate how either objection relates to his assertion of res judicata.

authority to address a question”), *rev. denied* (Minn. Sept. 18, 2007). He asserts that neither statutory law nor caselaw “authorizes a Court to order specific camps and activities absent the parties’ agreement on the matter” and that the December 2022 order was therefore erroneous. The argument is unavailing for three reasons.

First, as Rebecca argues, determining what activities a child participates in is a matter of legal custody. *See* Minn. Stat. § 518.003, subd. 3(a) (2022) (defining “legal custody” as “the right to determine the child’s upbringing, including education, health care, and religious training”); *Gottesleben v. Gottesleben*, No. A08-1830, 2009 WL 2595944, at *4 (Minn. App. 2009) (stating that “[d]etermining what activities a child will participate in” is a “legal-custody right[.]”).⁴ And district courts have broad discretion in deciding issues of child custody. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). Thus, the district court had the authority to resolve the dispute between the parties, who shared joint legal custody, regarding the children’s participation in camps and activities. *See Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989) (noting that district court should resolve disagreements between joint legal custodians consistent with the best interests of the child), *rev. denied* (Minn. Dec. 1, 1989); *Wolf v. Oestreich*, 956 N.W.2d 248, 254 (Minn. App. 2021) (citing this aspect of *Novak*), *rev. denied* (Minn. May 18, 2021). Second, contrary to Valentin’s implication that the district court independently selected camps and activities for the children, the specific camps and activities listed by the district court were raised to

⁴ We cite this nonprecedential case as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

the district court in Rebecca’s motion to enforce the portion of the June 2022 agreement related to activities and camps. Third, and, most importantly, the children participated in summer camps and violin lessons and camps in the past.⁵

Valentin argues that, even if it was within the district court’s discretion to order specific camps and activities, the district court abused its discretion when doing so because it did not conduct a best-interests analysis. But, because the district court was granting Rebecca’s motion to enforce the June 2022 stipulated order, not modifying it, the district court properly declined to conduct a best-interests analysis.

In sum, the district court did not err by enforcing the parties’ earlier agreement about the children’s camps and activities.

II. The district court did not abuse its discretion by denying father’s modification motion.

Valentin contends that the district court erred by denying his motion to modify the portion of the parties’ parenting plan addressing parenting time to add Thursdays during the school year to his time because the motion was time-barred. We disagree.

The district court has broad discretion to decide parenting-time questions. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). Thus, we review a district court’s

⁵ Valentin further argues that “setting aside the parties’ agreement is contrary to public interest in [the] efficient administration of justice.” Because Valentin does not provide any legal authority in support of this argument and because prejudicial error is not otherwise obvious, the argument is forfeited. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (assignment of error in a brief based on “mere assertion” and not supported by argument or authority “is [forfeited] and will not be considered on appeal unless prejudicial error is obvious on mere inspection”); *Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001).

decision on whether to modify parenting time for an abuse of that discretion. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). “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).

The district court denied Valentin’s motion to modify the parenting-time provision of the modified parenting plan on the ground that it was time-barred under Minnesota Statutes section 518.18 (2022). That section generally prohibits a party from filing a motion to modify a custody order or parenting plan within two years of the disposition of a prior modification motion. Minn. Stat. § 518.18(b). Because Valentin’s motion to modify was filed less than two years after the June 2022 order resolving a previous motion to modify the parenting-time provision of the parties’ parenting plan, the district court concluded that Valentin’s motion was time-barred.

Valentin contends that the district court erred by applying the time limits of section 518.18 to his motion to modify and instead should have considered the motion under the best-interests standard established in Minnesota Statutes section 518.175, subdivision 5 (2022), for modification of a parenting plan or a parenting order. Rebecca does not defend the district court’s application of the time limits of section 518.18 but instead argues that Valentin failed to demonstrate that modification was in the children’s best interests. Although Rebecca does not argue that section 518.18 applies, it is our responsibility “to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990); see *Greenbush State Bank v. Stephens*, 463 N.W.2d 303, 306 n.1 (Minn.

App. 1990) (applying *Hannuksela* in a civil case), *rev. denied* (Minn. Feb. 4, 1991). Here, the district court’s ruling is sustained by a statutory provision cited by neither party—namely, Minnesota Statutes section 518.1705, subdivision 9(a).

Section 518.1705 addresses parenting plans, and subdivision 9 of that section addresses modification of parenting plans. Subdivision 9 states, in relevant part:

(a) Parents may modify the schedule of the time each parent spends with the child or the decision-making provisions of a parenting plan by agreement. To be enforceable, modifications must be confirmed by court order. *A motion to modify decision-making provisions or the time each parent spends with the child may be made only within the time limits provided by section 518.18.*

(Emphasis added.) Here, the parties had a parenting plan. Valentin sought to modify the parenting-time provision of the parenting plan, and, based on the parties’ agreement, the district court entered a stipulated order in June 2022 confirming the modified parenting-time provision of the parenting plan. Some six months later, in December 2022, Valentin moved to modify the modified parenting-time provision of the parenting plan. As a result, under the last sentence of section 518.1705, subdivision 9(a), the time limits in section 518.18 applied. Because section 518.18 imposed a two-year restriction on Valentin’s motion, the district court did not abuse its discretion in denying the motion as time-barred.

To persuade us otherwise, Valentin relies on *B.K.P.* In that case, we held that the time limits of section 518.18 did not apply to the appellant’s motion to modify parenting time, which was brought less than three months after entry of an amended judgment addressing parenting time. *B.K.P.*, 662 N.W.2d at 916. But that case is distinguishable. Importantly, the parties in *B.K.P.* did not have a parenting plan, *id.*, and the time restrictions

of section 518.18 apply to motions to modify parenting plans, *see* Minn. Stat. § 518.18(a)-(c). In addition, *B.K.P.* did not address section 518.1705, which, as just explained, explicitly provides that a motion to modify the parenting-time provisions of a parenting plan may be made only within the time limits of section 518.18. *See* Minn. Stat. § 518.0705(a); *see also Skelly Oil Co. v. Comm’r of Tax’n*, 131 N.W.2d 632, 645 (Minn. 1964) (noting that opinions must be read in light of the issue presented for decision).

Because the time restrictions of section 518.18 applied to Valentin’s motion, the district court did not err by determining that it was time-barred.

Affirmed.