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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1345**

In re the Marriage of:

Andrew Jeffery Helmin, petitioner,
Appellant,

vs.

Yuemin Xu,
Respondent.

**Filed August 26, 2024
Affirmed
Kirk, Judge***

Dakota County District Court
File No. 19HA-FA-18-587

Andrew J. Helmin, Eagan, Minnesota (pro se appellant)

Debra J. Hilstrom, Debra J. Hilstrom Attorney at Law, PLLC, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Reyes, Judge; and Kirk, Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

In this custody dispute, appellant argues that (1) the record does not support the district court's selection of a school for the parties' child and (2) the district court should not have allowed respondent to take the child to China. We affirm.

FACTS

In this post-dissolution proceeding, appellant-father Andrew Jeffrey Helmin contests the district court's order that his child attend school in Eden Prairie and be issued a passport so the child can travel to China with respondent-mother Yuemin Xu.

Father and mother married in 2017 and had a child who was born that same year. The parties began dissolution proceedings in 2018. The parties reached a settlement agreement on many issues, but proceeded to trial on childcare placement, international travel and vacation parenting time, and the distribution of funds given to the parties by mother's parents.

For childcare placement, mother wished for the child to remain in the child's current placement, but father wanted the child to attend childcare at a more centrally located placement between mother and father. The district court found that it was in the child's best interests to remain in the current childcare placement in Eden Prairie. For international travel and vacation parenting time, the parties disputed whether the child should be allowed to travel internationally. Mother is from China and wished to travel there with the child so the child could have contact with extended family. Father argued that, because China is not part of the Hague Convention on Child Abduction, he would have no method to secure the

child's return if mother refused to return the child to the United States. The district court found that it was in the best interests of the child that the child be permitted to travel internationally at the age of five.

The district court entered a final judgment on the marriage dissolution in April 2020 and ordered that mother and father share joint legal and joint physical custody of the child.

In 2023, after the child turned five years old, mother filed a motion in district court seeking an order that the child attend school in the Eden Prairie School District and that father execute the documents necessary for the child to travel to China, including applying for a passport. In response, father requested that the district court deny mother's motion. Father also moved for an order from the district court that the child attend school in the Eagan School District and that the child be prohibited from traveling internationally until the child is 16 years old.

Both mother and father filed affidavits supporting their motions. Following a hearing at which the district court heard arguments but did not receive evidence or hear testimony, the district court granted mother's motion and denied father's motion. Father now appeals.

DECISION

Father argues that the district court abused its discretion by concluding that it was in the best interests of the child to (1) attend school in the Eden Prairie School District and (2) be permitted to travel internationally to China. We disagree.

When parents share joint legal custody, they have "equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing,

including education.” Minn. Stat. § 518.003, subd. 3(b) (2022). When joint legal custodians cannot agree on where their child should attend school, the district court must resolve the dispute based on the child’s best interests. *See Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989) (“The law makes no distinction between general determinations of custody and resolution of specific issues of custodial care.”), *rev. denied* (Minn. Dec. 1, 1989). A child’s “best interests” are defined as “all relevant factors,” including the twelve factors listed in Minn. Stat. § 518.17, subd. 1(a) (2022).

Appellate courts review the district court’s decision on an issue of legal custody for an abuse of discretion. *See Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). “A district court abuses its discretion by making findings unsupported by the evidence or improperly applying 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) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). Appellate courts review factual findings under a clearly erroneous standard and defer to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, (4) do not reconcile conflicting evidence, and (5) “need not go into an extended discussion of the evidence to provide or demonstrate the correctness of the findings of the [district] court. . . . [A]n appellate court’s duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations and

citation omitted); *see Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family-law appeal), *rev. denied* (Minn. Feb. 28, 2024).

I. The district court did not abuse its discretion by determining that it was in the child’s best interests to attend school in the Eden Prairie School District.

The district court determined that five of the best-interests factors favored the child attending school in Eden Prairie, four factors were neutral, and three factors did not apply. *See* Minn. Stat. § 518.17, subd. 1(a) (outlining the best-interests factors). Father argues that the district court’s determinations on five factors were clearly erroneous. We do not agree.

A. Factor One

Father challenges the district court’s determination on factor one—the “child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child’s needs and development.” Minn. Stat. § 518.17, subd. 1(a)(1).

For this factor, the district court wrote:

The Court finds that it is important for the child to learn both her Chinese and Ojibwe heritage. The Court finds that it will be easier for the child to do that if [the child] ultimately attends middle school in Eden Prairie. The Court does not find that the selection of school makes it easier or harder for the child to explore [the child’s] Ojibwe heritage but the selection of the school[] system in Eden Prairie would make it easier to explore [the child’s] Chinese heritage. This factor supports school in Eden Prairie.

Father argues that the district court ignored his argument that the “Eagan school district . . . does offer the Chinese language.”

The district court, however, did not find that the Eagan School District did not offer instruction in Chinese, but just that the child attending school in the Eden Prairie School

District “would make it *easier* to explore [the child’s] Chinese heritage.” (Emphasis added). This is supported by the record because mother provided specific details about the Chinese program in the Eden Prairie schools, such as that it begins in middle school, versus father’s general claim that the Eagan School District offers a Chinese language program.

B. Factor Four

Father challenges the district court’s determination on factor four, which is “whether domestic abuse, as defined in section 518B.01, has occurred in the parents’ or either parent’s household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(4). For factor four, the district court wrote, “[Mother] argues that she had an Order for Protection against [father] in 2018 because [father] allegedly threatened her. The OFP has since expired. [Father] argues that this event is too remote in time to guide the analysis of this motion and the Court agrees. This factor is neutral.” Father argues that the district court did not consider evidence that father submitted that mother had committed domestic abuse against the child.

Appellate courts, however, do not reconcile conflicting evidence. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the fact[-]finder”). And the record supports the district court’s finding that the OFP had no bearing on the proceedings because the OFP was issued in 2018 and expired in 2020, three years before mother’s motion.

C. Factor Six

Father challenges the district court's determination on factor six, which is "the history and nature of each parent's participation in providing care for the child." Minn. Stat. § 518.17, subd. 1(a)(6). For this factor, the district court wrote, "The Court finds that both parents have been involved with the care of the child, but [mother] slightly more so. This factor favors Eden Prairie, but only slightly." Father argues that because he participates in providing care for the child, the factor should be neutral.

Again, we do not reconcile conflicting evidence. *Gada*, 684 N.W.2d at 514. And, moreover, the district court's finding is supported by the record because both mother and father stated in their affidavits that they took the child for medical care.

D. Factor Seven

Father challenges the district court's determination on factor seven, which is "the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time." Minn. Stat. § 518.17, subd. 1(a)(7). For this factor, the district court wrote,

The Court finds that both parents are able and willing to care for the child and meet the child's needs. The Court finds that the child will have both parents slightly closer if [the child] attends school in Eden Prairie because [mother] will be working from home in Eden Prairie and [father] will be working in nearby Bloomington. Both parents collectively will be further away if the child is in school in Eagan. In addition, since [mother] works from home, the Court finds that [mother] is probably better able to get the child and bring the child home if the child is sick at school. This factor favors school in Eden Prairie.

Father argues that the district court abused its discretion in its analysis of this factor because mother and father have joint legal custody and each receive 50% of parenting time.

Although father challenges the factual findings that the district court made, appellate courts do not reweigh conflicting evidence. *Gada*, 684 N.W.2d at 514. The record supports the district court's determination based on mother and father's respective locations during the school day.

E. Factor Eight

Father challenges the district court's determination on factor eight, which is "the effect on the child's well-being and development of changes to home, school, and community." Minn. Stat. § 518.17, subd. 1(a)(8). For this factor, the district court wrote,

The Court does not find an appreciable difference between Eden Prairie schools and Eagan schools, both are excellent. Court finds that [father]'s housing, while a rental, is also stable housing. The Court finds, however, that since the child already attends Montessori school in Eden Prairie, the child already has some friends in the district, which would provide some continuity. The Court finds that this factor favors Eden Prairie.

Father argues that the district court did not consider the evidence he had presented to make this determination.

Appellate courts, however, do not reweigh conflicting evidence. *Gada*, 684 N.W.2d at 514. The district court's finding is supported by the record based on mother's affidavit, which states that the child has friends in the Eden Prairie School District as she has been attending school in the area.

Overall, the record supports the factual findings the district court made in its best-interests analysis. Although father argues that the district court failed to make adequate

factual findings to support its order, we note that the district court made extensive factual findings and carefully weighed each best-interest factor in arriving at its determination. We therefore conclude that the district court did not abuse its discretion by determining that it was in the child's best interests to attend school in the Eden Prairie School District.

II. The district court did not abuse its discretion by determining that it was in the best interests of the child for the child to travel internationally.

The district court determined that four of the factors favored the child traveling to China, four factors were neutral, and four factors did not apply. Father argues that the district court's findings on six of the factors were clearly erroneous. We do not agree.

A. Factor One

Father challenges the district court's determination on factor one, which includes the child's emotional and cultural needs. Minn. Stat. § 518.17, subd. 1(a)(1). For this factor, the district court wrote,

the Court finds that it is important for the child to learn [the child's] Chinese heritage and meet [the child's] Chinese relatives. The Court finds that [mother] intends to return to the United States after traveling abroad with the child. The Court does not find that China's status as a "Level 3" State Department country presents endangerment concerns. The Court notes that the advisory relates to arbitrary enforcement of the law and inability to provide consular services. The Court finds that since [mother] is a Chinese citizen and will be visiting other Chinese citizens, they do not face the same risk of arbitrary enforcement of the law or need for consular services as might an American tourist.

Father argues that the level three travel warning presents endangerment concerns because the child would be traveling as a U.S. citizen.

Just because “the record might support findings other than those made by the trial court does not show that the court’s findings are defective.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). Although there is no evidence in the record regarding the child’s citizenship, the district court’s determination that traveling to China meets the child’s emotional and cultural needs is supported by record as is its finding that it is important for the child to learn about her heritage and meet relatives.

B. Factor Four

Father challenges the district court’s determination on factor four, which is whether domestic abuse has occurred. Minn. Stat. § 518.17, subd. 1(a)(4). The district court determined that “this factor does not guide the analysis.” Father argues that he presented evidence of child abuse that the district court did not consider.

Appellate courts, however, do not reweigh conflicting evidence. *Gada*, 684 N.W.2d at 514. Even though father may have presented conflicting evidence, we conclude that the record supports the district court’s determination because the OFP had expired and was several years old.

C. Factors Six, Eight, and Nine

Father challenges the district court’s determinations on factors six, eight, and nine, which are, respectively, the history and nature of each parent’s participation in providing care for the child; the effect of changes on the child’s well-being; and the effect of the changes on the relationships between the child and significant persons in the child’s life. Minn. Stat. § 518.17, subd. 1(a)(6), (8), (9). The district court determined that travel to China would further the child’s introduction to Chinese culture and meeting the child’s

extended family would allow the child to develop a relationship with the child's extended family. Father argues that the child may already have contact with extended family and the Chinese culture through video conferencing.

First, we note that there is no evidence in the record about whether the child has contact with extended family through video conferencing. In addition, the district court's original decision to allow the child to travel internationally at the age of five is supported by the record as is its finding that travelling to China would introduce the child to Chinese culture and allow her to connect with extended family. We therefore conclude that the district court did not clearly err in its findings on these factors.

D. Factor Ten

Father challenges the district court's determinations on factor ten, which is "the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent." Minn. Stat. § 518.17, subd. 1(a)(10). The district court determined that "it is in the child's best interest to have vacation time with each parent, including with [mother] and in [mother]'s country of origin." Father argues that because mother and father agreed on vacation time in the divorce proceedings, this factor is neutral.

The district court's determination, however, is supported by the record because mother wished to exercise her vacation time with the child, so for the purposes of international travel, this factor favors the child being able to travel with mother.

Overall, the record supports the district court's determination that it is in the best interests of the child to travel to China with mother. Although father argues that the district

court failed to make adequate factual findings to support its order, the district court made extensive factual findings and carefully weighed each best-interest factor in arriving at its determination. We therefore conclude that the district court did not abuse its discretion by determining that it was in the child’s best interests to travel to China with mother.¹

Affirmed.

¹ Father makes two additional arguments. First, father argues that the district court’s decision violates the fourteenth amendment to the U.S. Constitution. Father cites no legal authority that mother’s potential travel to China with the child would violate the fourteenth amendment, so we do not consider this argument. *See In re Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (“Minnesota appellate courts decline to reach an issue in the absence of adequate briefing.”), *rev. denied* (Minn. June 20, 2017). Second, in his reply brief, father asks this court to remove mother’s attorney as her counsel. Assuming this court will grant that request, father’s reply brief also asks this court to strike mother’s brief. A reply brief “must be confined to new matter raised” in respondent’s brief. Minn. R. Civ. App. P. 128.02, subd. 3. Father’s requests to remove mother’s attorney and to strike mother’s brief do not involve “new matter” raised in mother’s brief. Therefore, these requests are not properly includable in father’s reply brief. *See Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (stating that “[i]f an argument is raised in a reply brief [that, among other things,] exceeds the scope of the respondent’s brief, [the argument] is not properly before [the court of appeals] and may be stricken from the reply brief”), *rev. denied* (Minn. Feb. 26, 2003). More specifically, a brief—reply or otherwise—is not a proper vehicle for asking this court to remove an attorney. Nor is a brief a proper vehicle for asking this court to strike a brief. A brief is a vehicle for addressing appellate review of the rulings of a district court. *See* Minn. R. Civ. App. P. 128.02, subds. 1-3. Neither removing mother’s attorney nor striking mother’s brief involves review of a ruling of the district court. Further, Minn. R. Civ. App. P. 127 is clear: “Unless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief.” Another form of relief is prescribed for neither removing counsel nor striking a brief. Thus, for father’s requests for relief on these matters to be properly before this court, father needed to make those requests by a motion separate from his brief. Because he did not do so, those requests are not properly before this court. We note, however, that even if father properly presented his requests for relief on these matters by a separate motion, we would have denied those requests.