

*This opinion is nonprecedential except as provided by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
A24-0290**

In re the Marriage of:

Jessica Suzanne Cross, petitioner,
Respondent,

vs.

Joseph Drew Cross,
Appellant.

**Filed September 23, 2024
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-FA-17-535

Jessica Suzanne Cross, Hudson, Wisconsin (pro se respondent)

Joseph Drew Cross, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Ede, Presiding Judge; Ross, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant-father Joseph Drew Cross challenges the district court's order modifying custody and parenting time to award respondent-mother Jessica Suzanne Cross sole legal and sole physical custody of their three children, and to award father parenting time with two of the three children. We affirm.

FACTS

Mother and father are biological parents of three minor children—A.C., S.C., and E.C.¹ The parties dissolved their marriage via a stipulated judgment and decree in April 2019. The decree awarded the parties joint legal and joint physical custody, set a parenting-time schedule, and mandated the use of a parenting consultant for any disputes.

Beginning in 2021 and extending into 2023, the parties and their children were involved in several proceedings: (1) a request from mother for an order for protection on behalf of the children against father, which was denied; (2) a petition for a child in need of protection or services and a petition for termination of parental rights (TPR) against father concerning sexual abuse allegations, which were both dismissed; and (3) a criminal-sexual-conduct charge against father involving one of the children, which ended in an acquittal.

In January 2023, mother and father both filed motions. Mother requested: (1) approval of the move mother made to Hudson, Wisconsin during the pendency of the TPR proceeding; (2) an award to mother of sole legal and physical custody of all three children; (3) modifications to the parenting-time schedule; and (4) an order directing father to complete a parenting evaluation, a psychological evaluation, and to participate in parent/child reunification therapy. Father requested that the district court: (1) order that Wisconsin law enforcement accompany him to retrieve E.C. and S.C. from Wisconsin; (2) hold mother in constructive civil contempt of court for denying father's custodial rights and interfering with his parenting time; (3) award father sole legal

¹ Because respondent did not file a brief, the case will be determined on the merits. Minn. R. Civ. App. P. 142.03.

and physical custody of all three children; (4) modify the parenting-time schedule; (5) award father compensatory parenting time; (6) restrain mother from having contact with A.C.; and (7) award father conduct-based attorney fees.

After the district court determined that both parties had met their burden to present a prima facie case for modification of legal custody, physical custody, and parenting time, it set the matter for a trial. After the first day of trial, the district court awarded father unsupervised parenting time with S.C. and E.C., pending its final order. After trial, the court later modified custody and parenting time, awarded sole legal and physical custody of the children to mother, and granted father parenting time with S.C. and E.C., but not with A.C. The court also granted mother's request to relocate.

This appeal follows.

DECISION

Father challenges the district court's order largely granting mother's motion and denying father relief. Our "review of custody determinations is limited to whether the trial court abused its discretion[.]" *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). "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 and citation omitted). "[W]e review the [district court's] findings [of fact] for clear error, giving deference to the district court's opportunity to evaluate witness credibility and reversing only if we are left with the definite and firm conviction that a mistake has been made." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotations omitted).

A finding of fact is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). When applying the clear-error standard of review, this court views the evidence in the light most favorable to the district court’s findings; does not reweigh the evidence; does not engage in fact-finding; does not reconcile conflicting evidence; and “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.” *Id.* at 222 (quotations omitted); *see also 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).

Father argues the district court: (1) abused its discretion by awarding sole physical and sole legal custody to mother; (2) violated his procedural due-process rights; (3) erred in finding he had engaged in domestic abuse; and (4) abused its discretion by determining that relocating the children was in their best interests. We address each argument in turn.

I. The custody modification was within the district court’s discretion.

Father argues that the district court constructively terminated his parental rights to A.C. by granting sole physical and legal custody of A.C. to mother. We disagree.

TPRs and custody modification are distinct legal processes. *Compare* Minn. Stat. § 260C.317, subd. 1 (2022) (TPR), *with* Minn. Stat. § 518.003, subd. 3 (2022) (custody). A TPR permanently ends the legal parent-child relationship. Minn. Stat. § 260C.317, subd. 1. In contrast, a custody modification adjusts the terms and limitations that govern a parent’s ability to interact with and make decisions about the child. Minn. Stat. § 518.003, subd. 3(a), (c); Minn. Stat. § 518.18 (2022) (addressing custody modification).

Regarding A.C., the district court modified parenting time and custody. But father's parental rights remain intact. Contrary to father's argument, the district court did not determine that father will never have parenting time with A.C. Instead, the court noted that father will have no parenting time "for now." The court scheduled a review hearing in six months "to see the progress that has been made in family therapy and [A.C.'s] individual therapy and determine whether it is appropriate to start awarding parenting time at that time." Thus, the court did not terminate father's parental rights.

Father also argues that the district court clearly erred by granting modifying custody because the court failed to identify the specific actions that endangered the children. The existence of endangerment is a question of fact that we review for clear error. *Sharp v. Bilbro*, 614 N.W.2d 260, 263-64 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000).

In its order, the district court found that the children "experienced a significant degree of emotional danger from father's actions, and that this harm is ongoing." The district court also extensively outlined father's actions and described, in great detail, how that conduct led to various petitions and criminal proceedings, all of which—the court found—adversely affected the children. The district court's findings are supported by the record and are not, therefore, clearly erroneous.²

² Father also contends that the best-interests factors, as defined in Minn. Stat. § 518.17 (2022), are facially unconstitutional. However, father forfeited this constitutional argument because he did not raise it before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

II. The district court did not violate father's procedural due-process rights.

Father argues that the district court violated his procedural due-process rights by preventing him from presenting evidence to refute mother's claims. "Procedural due process analyzes whether fair procedures were used in depriving an individual of life, liberty, or property." *In re Welfare of Child of F.F.N.M.*, 999 N.W.2d 525, 537 n.4 (Minn. App. 2023), *rev. denied* (Minn. Jan. 5, 2024). "Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record." *In re Welfare of Child of D.F.*, 752 N.W.2d 88, 97 (Minn. 2008). Whether a parent's due-process rights have been violated is a question of law, which we review *de novo*. *Id.*

At the end of trial, father requested to present rebuttal testimony regarding his parenting time. The district court raised concerns about the repetitive nature of the testimony but allowed father to testify for fifteen minutes. Father now argues the limitation on his testimony violated his procedural due-process rights. We are not persuaded.

Father was able to provide rebuttal testimony, over mother's objection. Despite the concerns about the nature of the testimony, the district court allowed father the opportunity to be heard. Father neither objected to the court's limitation on his testimony, nor made an offer of proof of what, if any, testimony he was unable to present. Thus, father failed to demonstrate that the district court deprived him of his procedural due-process rights.

III. The court did not clearly err in finding father engaged in domestic abuse.

Father argues the district court clearly erred by finding he committed domestic abuse. We review a district court's factual findings for clear error. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). A finding is clearly erroneous when there is no reasonable evidence to support the finding or when a reviewing court is left with the definite and firm conviction that the district court made a mistake. *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014). We defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Father argues the district court made clearly erroneous factual findings about father committing domestic abuse and related to how many instances of abuse took place.³ This argument is unavailing. In making its factual findings, the district court relied on mother's testimony in which she testified to several instances of domestic abuse. The district court also found mother's testimony to be credible, and we must defer to that credibility determination. *See Sefkow*, 427 N.W.2d at 210. The district court neither clearly erred in making findings of domestic abuse that are based on evidence in the record, nor abused its discretion in using those findings to decide the custody modification motion.

³ Father also argues that the district court violated the principles of res judicata and collateral estoppel when it considered the past incidents of abuse. But father forfeited that argument because he failed to raise it to the district court. *See Thiele*, 425 N.W.2d at 582.

IV. The district court acted well within its discretion in determining that mother’s relocation of the children was in their best interests.

Father argues the district court abused its discretion by granting mother’s motion to relocate the children. In considering a parent’s motion to relocate children, a district court “shall apply a best interests standard[.]” Minn. Stat. § 518.175, subd. 3(b)(1)-(8) (2022). We review a court’s determination that relocation is in the best interests of a child for an abuse of discretion. *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010).

Father argues the district court abused its discretion by granting mother’s motion because mother relocated with the children without first informing the court or father. But our review of the record reveals that mother took the proper steps to relocate with the children. As the district court explained, the juvenile court had “original and exclusive jurisdiction” over the parties and the children at the time mother moved to Wisconsin. *See* Minn. Stat. § 260C.101, subd. 1 (2022). The juvenile court transferred custody of the children to mother’s care, which granted mother the right to make decisions related to the “routine daily care and control and the residence of the child[ren].” Minn. Stat. § 518.003, subd. 3(c). In addition, the district court determined that both the juvenile court and the county were aware of mother’s plans at the time she moved to Wisconsin. Accordingly, mother was not required to alert the family court of her plans to relocate.

Father also challenges five factual findings, arguing the district court clearly erred by relying on mother’s testimony and ignoring father’s testimony. However, the court found mother’s testimony credible and found parts of father’s testimony to not be credible. We defer to the district court’s credibility determinations. *Sefkow*, 427 N.W.2d at 210.

Insofar as father requests that we reweigh the evidence and find in his favor, we may not do so. *See Ewald*, 999 N.W.2d at 551. Thus, the district court did not abuse its discretion by granting the motion to relocate and determining that relocating with mother was in the children's best interests.

Affirmed.