

*This opinion is nonprecedential except as provided by  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  
A24-0515**

In re the Marriage of:

Melissa Sydney Reed Lesch, petitioner,  
Respondent,

vs.

John Patrick Lesch,  
Appellant.

**Filed April 7, 2025  
Affirmed as modified  
Ross, Judge**

Ramsey County District Court  
File No. 62-FA-20-1890

Sam Khorroosi, Jessica Sampson, Khorroosi Law Office, P.A., St. Louis Park, Minnesota  
(for respondent)

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

**NONPRECEDENTIAL OPINION**

**ROSS, Judge**

In this child-custody dispute, father appeals from the district court's marital-dissolution judgment granting mother sole legal custody and a greater share of parenting time and denying his new-trial request. He challenges the district court's evidentiary

rulings and its fact findings addressing the parties' conflict about religious upbringing and alternative caregivers and contends that the district court's judgment violates his First Amendment rights. We hold that the district court's rulings and reasoning were legally and factually supported and do not violate father's constitutional rights, and we see no abuse of discretion except in the division of holiday time. We therefore modify but affirm the judgment.

### **FACTS**

John Lesch (father) and Melissa Reed Lesch (mother) wed in 2012 and have two young daughters. We will refer to the older girl, who was born in 2016, as "Erica" a name we have randomly chosen in the interest of protecting her privacy. Divorce proceedings began in December 2020 as mother moved herself and the girls from the parties' home and served father with dissolution pleadings.

For the next six months she did not allow father consistent unsupervised parenting time. The district court then granted father's motion for temporary equal parenting time. The parties continued under the temporary order for two years, until the district court determined custody and parenting time in the presently challenged judgment, which grants the parties joint physical custody and grants mother sole legal custody and parenting time 9 out of every 14 overnights. The district court's order followed a five-day trial on social issues involved in the dissolution, which the district court separated from the financial issues.

The district court issued its custody-and-parenting-time order after receiving a custody evaluator's report and the parties' competing evidence about the relevant

circumstances. The parties were employed in political positions with demanding schedules—father, a lawyer and former state legislator, and mother, a lobbyist. They had employed a nanny for the girls before the separation and continued to individually employ nannies for childcare after the separation. But the district court suggested that father relied on a nanny to care for the girls during his parenting time more than mother relied on a nanny during her parenting time, including during nonwork hours. The district court also found that father, who is Catholic, and mother, who is Jewish, had agreed during the marriage to raise the children Jewish, and testimony indicated that the children attended Catholic services with father on some major Christian holidays. The custody evaluator's report had recommended that the district court grant the parties joint physical custody but grant mother sole legal custody unless the parties could agree on an alternative-dispute-resolution process.

The district court credited mother's accusation that father was teaching Erica Christian prayers inconsistent with their agreement to raise the children Jewish, and it discredited father's testimony that he, rather than his nanny, had provided most of the care for the girls during his parenting time. The district court allocated mother 9 out of every 14 overnights in parenting time. And it assigned major Jewish holidays to mother every year. It also assigned the major Christian holidays to father but granted Easter to the parties on an alternating annual basis. Father unsuccessfully moved the district court to order a new trial, and he now appeals.

## DECISION

Father challenges the district court's dissolution judgment on four grounds. He first argues that the district court based some of its findings on inadmissible hearsay evidence. He argues second that the district court abused its discretion by granting mother sole legal custody of the children. He argues third that the district court's findings related to the children's Jewish faith were erroneous and violate his First Amendment rights. And he argues fourth that the district court erroneously denied his new-trial motion. We address each argument in turn.

### I

Father unconvincingly contests the district court's reliance on alleged inadmissible hearsay in its parenting-time and religious-upbringing determinations. The district court's findings rested in part on the custody evaluator's and mother's relaying of statements that Erica purportedly made. The district court has broad discretion in making evidentiary rulings, which we will not reverse absent an abuse of discretion. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Because the district court did not abuse its discretion by admitting the statements in the custody evaluator's report or mother's statements, we reject father's evidentiary argument.

#### **Evaluator's Report as Hearsay Generally**

The hearsay that father challenges chiefly concerns two findings—the finding that he depended on a nanny to provide childcare during his parenting time while mother implicitly did not, and the finding that father had begun teaching Erica to recite Christian prayers. The district court relied on the former to support its decision to afford mother

substantially more parenting time than it afforded father, and it relied on the latter to conclude that mother should be granted sole legal custody based on father's failure to adhere to the agreement about Jewish upbringing. Father had objected to the district court's admitting the evaluator's report because it contained the hearsay statements. The district court overruled the objection, treating the evaluation as a "702 expert report."

We observe that the district court appears to have intended to admit the evidence under Minnesota Rule of Evidence 703, not 702. Rule 702 deals with expert testimony, and the parties had been arguing over admissibility instead under rule 703, which deals with the admissibility of expert data:

(a) The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

(b) Underlying expert data must be independently admissible in order to be received upon direct examination; provided that when good cause is shown in civil cases and the underlying data is particularly trustworthy, the court may admit the data under this rule for the limited purpose of showing the basis for the expert's opinion. Nothing in this rule restricts admissibility of underlying expert data when inquired into on cross-examination.

Minn. R. Evid. 703. And the Minnesota statute that specifically governs the treatment of a custody evaluator's report authorizes "the court [to] order an investigation and report concerning custodial arrangements for the child," permits the evaluator to "consult any person who may have information about the child and the potential custodial arrangements," requires the report to "state the investigator's recommendation and the

reason for the recommendation,” and establishes that the evaluator’s “report may be received in evidence at the [custody] hearing.” Minn. Stat. § 518.167, subds. 1, 2, 4 (2024). The district court also elaborated that the “purpose of a custody and parenting time evaluation is of someone who is trained to speak to children, speaks to the child,” reflecting its consideration of the custody evaluator’s expertise in admitting the report. The rule and statute together permitted the district court to receive Erica’s hearsay statements into evidence through the evaluator’s report over the hearsay objection. The district court therefore did not abuse its discretion by admitting and relying on the report, including its hearsay statements.

#### **Evaluator’s Statements about Father’s Use of Nanny**

Father’s challenge to the district court’s parenting-time award rests in part on the district court’s reliance on statements about father’s use of a nanny during his parenting time. By the time of the trial, father had become romantically involved with the girls’ nanny and he suggests that the district court failed to take his relationship into proper account. Although father strongly disputes the district court’s findings, we do not reverse district court findings unless they are clearly erroneous. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). The record supports the district court’s findings. It based its findings in part on the evaluator’s report, which reflected the evaluator’s understanding of the nanny arrangement partially based on Erica’s statements to the evaluator. We defer to the district court’s credibility determinations and do not reweigh evidence on appeal. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021). We therefore leave the finding intact, particularly because the district court correspondingly also discredited

father's contrary testimony. Two other pieces of evidence in the evaluator's report further support the district court's findings. The first is that the evaluator relied on father's own statements that the nanny sometimes helps with dinner, bathes the children, brushes their teeth, and assists with the morning routine. And the second is that the custody evaluator testified that his concerns about father's overuse of nanny childcare during his parenting time would be "valid" even if the nanny had, as the nanny reported, been present for only 25% of father's parenting time. And although father argues that mother's testimony about father's use of the nanny rested on speculation, the custody evaluator's report afforded the district court an adequate basis for its findings. In sum, the record supports the district court's findings related to father's use of the nanny.

We observe in the interest of thoroughness that the district court's parenting-time decision did not rest solely on the difference in the amount of time the parties spent providing childcare during their respective parenting times. The district court found that mother was more involved in parenting tasks than father before the dissolution, crediting her testimony and discrediting his. And the district court accepted the evaluator's assessment that mother's relationship with the children is warmer and that they would benefit from a parenting-time arrangement that favored her rather than father. It additionally adopted the evaluator's assessment, referencing the psychological reports about the parties' parenting skills, which suggested that father "has challenges that . . . are risk factors for the children moving forward" but that care with mother posed no "significant risk factors for [the] children."

### **Mother's Hearsay Statements of Erica's Alleged Reciting Christian Prayers**

Father finally challenges the district court's custody award on the ground that the district court improperly relied on Erica's hearsay statements to find that father had been teaching her Christian prayers. This finding led the court to conclude that he had not supported the children's spiritual (Jewish) development as agreed to by the parties. Mother testified that she heard Erica beginning to say Christian prayers after returning from parenting time with father. Mother's statements characterizing what she heard Erica pray are not hearsay because mother was not attempting to convey the substance of the prayers for the truth of the matter asserted. *See* Minn. R. Evid. 801(c) (defining hearsay as an out-of-court statement by someone other than the declarant to prove the truth of the matter asserted). And for the reasons we have already explained, the district court could receive the evaluator's report into evidence despite its containing hearsay. This includes the statement in the report, based on the parties' former nanny's statements, that father was engaging in prayer with the children. Father urges that his praying with the children had been consistent with his practice during the marriage, which he implies mother consented to. But mother also testified directly and without objection that Erica had begun clasping her hands in a Christian prayer, making the sign of the cross in prayer, and reciting the Lord's Prayer. While father challenges mother's characterization of what she saw and heard, the district court, and not this court, is exclusively tasked with the fact-finding role. The district court's finding that father did not support the children's spiritual development as Jewish is sufficiently supported by the record.



## II

Father challenges the district court's granting mother sole legal custody. We review custody decisions for an abuse of discretion, limiting our inquiry to determine whether the district court made findings supported by the evidence and applied the law properly. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We review findings of fact for clear error, giving deference to the district court's witness-credibility assessments and overturning the findings only if we are left "with the definite and firm conviction that a mistake has been made." *Thornton*, 933 N.W.2d at 790 (quotation omitted). Father's arguments do not compel us to overturn the district court's decision ordering sole legal custody.

Father maintains that the district court failed to address the statutory presumption favoring joint legal custody. It is true that the district court here must begin with "a rebuttable presumption that . . . joint legal custody is in the best interests of the child." Minn. Stat. § 518.17, subd. 1(b)(9) (2024). But the presumption is only the starting point, and it is "merely a procedural device [that] dictates a decision only where there is an entire lack of competent evidence to the contrary." *Thornton*, 933 N.W.2d at 792 (emphasis and quotation omitted). And notwithstanding father's opposing assertion, the district court expressly stated that it was "analyz[ing] the issue of legal custody based on the statutory presumption." We turn to consider whether the record supports the district court's determination.

The record contains competent evidence that the district court relied on to rebut the presumption favoring joint legal custody. We do not attempt to list all of it, and the findings that we have already identified as supporting the district court's parenting-time schedule

also support its legal-custody decision. The district court also found that “both parties feel victimized by the other and this leaves them with rigidity and intensity toward the other that has led to their continued inability to reach real consensus when they are deadlocked.” It found too that father’s mental-health issues are likely to harm the children, relying on a psychologist’s diagnosis. It found that mother can best support the children’s relationship with father because of her capacity “to forgive and forget and move on” but that father’s anger toward mother diminishes his ability to support her relationship with the children. And it implicitly found that the parties were not amenable to co-parenting, citing “far more disagreements than agreements” between them and highlighting their reliance on attorneys to reach even simple agreements. Underscoring this finding is father’s testimony that he believed mother could not engage in a co-parenting arrangement unless mother was ordered to work with him. The district court had an ample basis to conclude that the presumption was rebutted.

Father generally argues that the district court failed to consider evidence that favored him and improperly made credibility assessments disfavoring him. But we do not reweigh evidence or reconcile conflicting facts and we generally defer to the district court’s credibility determinations. *See Kenney*, 963 N.W.2d at 221–22. Father accurately observes that the district court did not expressly address all the evidence presented or expressly identify which best-interests factors weighted in favor of either party, but its analysis of the evidence is measured, independent, and careful. It addressed some of father’s contentions about mother’s mental health and alleged substance abuse, found that the parties had been cooperating on a limited number of parenting issues during the parties’

temporary equal-parenting-time schedule, discussed mother's personality traits that hindered dispute resolution, and acknowledged that father had a loving relationship with the children. And although father reminds us that we have at times affirmed district court orders that grant the parties joint legal custody despite conflict between the parents, child-custody cases present "unique family circumstance[s]" that allow the district court "great leeway in making" determinations. *Thornton*, 933 N.W.2d at 790. Given this great leeway, we have not infrequently affirmed the district court's custody decisions even if "we might have reached a different decision." *Rohricht v. O'Hare*, 586 N.W.2d 587, 590 (Minn. App. 1998), *rev. denied* (Minn. Feb. 24, 1999). We are satisfied that the district court acted within its discretion in assessing the evidence and resolving the disputed evidence.

We are also not persuaded by father's argument that the district court rejected the custody evaluator's legal-custody recommendation without adequately explaining why. The district court was not bound to follow the evaluator's report. *Pikula*, 374 N.W.2d at 712; *see* Minn. Stat. § 518.167, subd. 2(b)(4) (characterizing the evaluator's report as a "recommendation"). And in any event, the evaluator made his recommendation "[t]hat the parties share Joint Legal Custody" specifically "contingent [on the parties'] engagement of [a] Consensual Special Magistrate (CSM) through the children's minority." He added, "If the parties do not agree to the appointment of a CSM or someone in a similar role, . . . then the recommendation is for Sole Legal Custody to [mother]." This recommendation necessarily implies that the evaluator did not believe that the parties could co-parent without the intervention of a professional to settle their anticipated impasses. And the previously discussed district court findings that justify rebutting the presumption favoring

joint legal custody likewise adequately explain why the court rejected a portion of the custody evaluator's recommendation. These justifications are sufficient for our meaningful appellate review. The district court's grant of sole legal custody incorporated rather than ignored the evaluator's recommendation.

Father finally contends that the district court abused its discretion by relying on theoretical risk assessments and speculative parenting challenges found in stale expert reports. The district court found "that Father's mental health *is likely to* negatively affect the children's safety or developmental needs." (Emphasis added.) But a best-interests assessment is necessarily prospective, requiring the district court to anticipate how current circumstances, including a parent's mental-health issues, "affect[] the child's safety or developmental needs." Minn. Stat. § 518.17, subd. 1(a)(5) (2024). The operative statute directs a district court to consider "all relevant factors," *id.*, subd. 1(a), and a parent's projected behavior can be relevant to assessing the best interests of his children. And although father contends that the psychological and custody evaluations were stale by the time of trial, the evaluations' completion dates affect their evidentiary weight, which, again, we will not reweigh. We reiterate that, ultimately, custody determinations are very discretionary decisions and that there is little if any room for us to question the district court's best-interests balancing analysis in an abuse-of-discretion review. *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019). We see no basis to reverse here.

### III

Father challenges the district court's decisions about the children's religious upbringing on three grounds. He argues first that the district court improperly discredited his testimony that the parties had never previously agreed to raise the children Jewish and improperly found that he was not supportive of their religious upbringing. He argues also that the district court's penalizing him for not supporting the children's Jewish upbringing violates his First Amendment rights. And he argues that the district court abused its discretion by not granting him every Easter holiday with the children.

We are not persuaded by father's argument contesting the district court's finding that the parties had agreed to raise the children Jewish. We review fact findings only for clear error, *Thornton*, 933 N.W.2d at 790, and the record supports the finding based on the district court's credibility assessment. Mother testified that raising the children Jewish had been essential to her decision to marry father and that the parties had together participated in Erica's Jewish naming ceremony. The custody evaluator reported that father had told a psychological evaluator that his children were being raised Jewish. Neither child had been baptized Catholic. Although father complains that the district court's amended findings improperly include extra-record evidence about the significance of the Catholic baptism within Catholicism, the uncontested trial testimony indicated that baptism is a Catholic ritual that, unlike the Jewish naming ritual, neither child participated in. Because the district court received sufficient evidence to find that the parties had agreed to raise the children Jewish, we hold that the finding was not clearly erroneous.

Father maintains that the district court's judgment encroached on his First Amendment rights of free speech and to freely exercise his Catholic faith. *See* U.S. Const. amend. I. We review constitutional challenges *de novo*. *Star Trib. Co. v. Univ. of Minn. Bd. of Regents*, 683 N.W.2d 274, 283 (Minn. 2004). Father cites *Wisconsin v. Yoder*, which provides “that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.” 406 U.S. 205, 215 (1972). But we have held that the best interests of a child can provide an interest sufficient to override a parent's constitutional rights to free speech and to freely exercise his religion. *See Geske v. Marcolina*, 642 N.W.2d 62, 70 (Minn. App. 2002); *Sina v. Sina*, 402 N.W.2d 573, 576 (Minn. App. 1987). And the district court did not penalize father for practicing his own faith; it instead made a custody decision based in part on father's supplanting the children's Jewish upbringing and implicitly in part on mother's better position to instruct them according to the parties' agreement. Father's First Amendment argument is unavailing.

Father convincingly argues, however, that the district court abused its discretion in distributing parenting time over religious holidays. We analyze parenting-time decisions for an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). In its holiday-parenting-time allocation, the district court granted mother parenting time on major Jewish holidays and father on most major Catholic holidays. It ordered mother and father to annually alternate parenting time on Easter. But mother did not clearly argue to the district court and does not argue on appeal that granting father the Easter holiday would contradict the parties' agreement to raise the children Jewish. And mother testified that the

children attended Easter Mass with father in the past. Mother also told the custody evaluator that she encouraged father's taking the girls to Easter Mass. The district court did not explain why, despite the undisputed testimony about the children's attendance of Easter Mass, it withheld Easter from father's parenting time while distributing the other religious holidays. We agree with father that the alternating assignment of Easter was, for these parties, an abuse of discretion. We modify the district court's judgment to allow father parenting time every Easter within the time parameters already established by the district court; this includes the variance the district court included to resolve conflicts between mother's Passover parenting time and father's Easter parenting time whenever those conflicts arise. Given the timing of this opinion in relation to the 2025 spring-holiday season, we direct the district court to amend its parenting-time schedule so that this modification first applies Easter 2026. The district court retains authority to resolve any unanticipated future conflicts between Passover and Easter parenting time.

#### IV

Father unconvincingly suggests that the district court improperly denied his new-trial request. The district court rejected the request after observing, "[Father] has failed to state any compelling grounds for a new trial . . . . It is clear [he] does not agree with the Court's decision, but that disagreement does not rise to the level required under the rule for a new trial." Reviewing this denial for an abuse of discretion, *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018), we see no abuse here.

Father presents several grounds to reverse, but he offers only one argument distinct from those we have already addressed: that newly discovered evidence requires a new trial

under Minnesota Rule of Civil Procedure 59.01(d). The evidence he identifies is that mother was discharged from her employment and that she failed to disclose it until a later proceeding. This evidence, father posits, “could have impacted the court’s decision on her ability to cooperate” with him. To justify a new trial, the newly discovered evidence cannot “be merely collateral, impeaching, or cumulative, but rather, must be such as to have a probable effect upon the result of a new trial.” *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012). Father fails to persuade us that news of the discharge would have a probable effect on a new trial. The district court’s decision that mother is better suited to cooperate did not rest on the parties’ employment but on father’s distrust of mother, his self-described status as a “contrarian,” and his tendency to be controlling and inflexible. The district court did not abuse its discretion by refusing to grant a new trial in light of evidence of mother’s alleged discharge from employment.

Father implies additional theories to reverse, but they are mostly undeveloped and require no analysis. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464–65 (Minn. 1944) (“[O]n appeal error is never presumed. . . . [T]he burden of showing error rests upon the one who relies upon it.”). We emphasize that our affirmance today stands on the significant discretion afforded to the district court in custody and parenting-time decisions. Our decision also stands in part on the district court’s findings about father’s level of cooperation and support of the children’s agreed-upon spiritual upbringing and time spent parenting—circumstances that are not immutable.

**Affirmed as modified.**