

STATE OF MINNESOTA
IN COURT OF APPEALS

A23-0781



In re the Marriage of:

Shawn Allison Anderson, n/k/a Shawn
Allison Trebnick, petitioner,

Respondent,

vs.

Kenneth Charles Anderson,

Appellant.

ORDER OPINION

Washington County District Court
File No. 82-FA-16-2190

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Kenneth Anderson and Shawn Anderson (now Shawn Trebnick) divorced in July 2016 under a judgment and decree that gave them joint legal custody of their two children and that gave Trebnick sole physical custody.

2. The district court granted Trebnick's motion to move her and the children's residence from Woodbury to Hayward, Wisconsin in June 2019, while Anderson remained in Woodbury. The parties' parenting-time schedule afforded Anderson about 85 overnights per year and Trebnick 280 overnights. Trebnick soon moved herself and the children to Hudson, Wisconsin, which is much closer to Anderson's home in Woodbury. A court-

appointed parenting consultant modified the parties' parenting-time schedule, affording Anderson about 130 overnights annually and Trebnick 235 overnights.

3. Trebnick moved back to Hayward in August 2022. Anderson filed a motion opposing her move because of its potential impact on the parenting-time arrangement. Trebnick filed a responsive motion and asked the district court, among other things, to approve her relocation to Hayward. At a motion hearing, Trebnick asked the district court to modify the parenting-time schedule.

4. Without holding an evidentiary hearing, the district court granted Trebnick's relocation and parenting-time modification requests. Under the amended school-year and summer schedule, the district court reduced Anderson's parenting time about 32 days a year, from about 130 days to about 98 days, after mistakenly finding that the order would result in only a "minimal," four-day annual reduction from 98 days to 94 days.

5. Anderson argues on appeal that the district court abused its discretion by incorrectly calculating the change in overnights and by restricting his parenting time without holding an evidentiary hearing. We afford the district court broad discretion when deciding matters of parenting time. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). A district court abuses its discretion by making findings unsupported by the record or by misapplying the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

6. We hold that the district court abused its discretion by modifying the parenting-time order based on its clearly erroneous factual finding that the change resulted in only a four-day annual reduction in Anderson's parenting time when in fact the children would lose a full month of time with Anderson. We infer from this error that the district

court's substantial reduction of Anderson's parenting time was unintended. And the order gives us no reason to suppose that the district court would have denied Anderson a hearing had it accurately calculated the reduction and recognized the significant effect of its order.

7. In light of our holding and the consequent reversal and remand, we need not address the parties' dispute over whether the reduction constitutes a "restriction" of Anderson's parenting time.

8. Anderson suggested at oral argument in this appeal that the district court's order authorizing Trebnick's move back to Hudson is also an issue for our review. But issues not argued in the briefs are not properly before us for review. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Anderson's brief nowhere challenges the relocation-to-Hayward component of the district court's order, and he has not presented the issue properly for our review. The only matter before this court, and now the only matter on remand to the district court, is the parties' parenting time.

IT IS HEREBY ORDERED:

1. The district court's parenting-time decision is reversed, and the case is remanded to the district court for further proceedings to address the parties' dispute over Trebnick's parenting-time motion.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, *res judicata*, or collateral estoppel.

Dated: March 8, 2024

BY THE COURT



Judge Kevin G. Foss