

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1179



In re the Matter of:

Bret William Smith,

Appellant,

vs.

Robyn L. Johnson,

Respondent Below,

Terry Allen Johnson,

Respondent.

ORDER OPINION

Hennepin County District Court
File No. 27-FA-15-2363

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Gaïtas, Judge.

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

1. Appellant Bret William Smith (father) and Robyn L. Johnson (mother), who was a respondent below but is not a party to this appeal, are the parents of a joint minor child who was born in 2011. Respondent Terry Allen Johnson (grandfather) is the child's maternal grandfather.

2. In a stipulation and order issued in August 2017, the district court granted father sole legal and sole physical custody of the child and granted grandfather visitation with the child "every weekend, from Friday afternoon through Sunday morning."

3. In 2019 and 2021, grandfather moved the district court to hold father in contempt for failing to follow the visitation order. Both times, the district court found that father had violated the visitation order. The district court tried several interventions to gain father's compliance with the visitation order, including appointing a guardian ad litem and ordering mediation.

4. The district court dismissed grandfather's 2021 contempt motion on May 4, 2023, after grandfather failed to appear for a hearing.

5. In June 2023, grandfather filed another motion to hold father in contempt.

6. On August 4, 2023, the district court filed an order denying grandfather's contempt motion. The district court's order states:

At this point, despite Father's actions, the Court will not proceed with this Motion for Contempt. The parties just underwent lengthy contempt proceedings, none of which altered Father's behavior or achieved the desired result for the parties. Based upon the history of this case, it is reasonable to conclude that contempt proceedings will likely do more harm than good for the Minor Child and further contempt proceedings would be duplicative and fruitless.

7. The district court's order further states that "Grandfather and Father *must* follow the current visitation schedule, where Grandfather has visitation with the Minor child **every weekend, from Friday at 5:00 p.m. through Sunday at 11:00 a.m.**" It notes that "[l]aw enforcement may intervene if Father fails to comply with the visitation schedule[.]"

8. Father has appealed the district court's order.

9. Because the district court denied grandfather's contempt motion, father does not challenge that ruling in his appeal, and we do not address it.

10. Father's brief to this court challenges the district court's 2017 order for grandparent visitation and the district court's direction in the August 4, 2023 order for the parties to follow the existing visitation order. However, these challenges are not properly before us. To terminate or modify the existing visitation award, father must first bring a motion in the district court. *See Foster ex rel. J.B. v. Brooks*, 546 N.W.2d 52, 53-55 (Minn. App. 1996) (recognizing the district court's authority to modify existing grandparent visitation); *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 779 (Minn. 1989) (“[A]n appellate court’s limited scope of review circumscribes additional fact finding by it. . . .”). He cannot raise these challenges in an appeal from the denial of grandfather's contempt motion.

11. Father's brief to this court also seems to challenge several admonitions to the parties that the district court included in its August 4, 2023 order, including: “[t]he parties must not disparage, criticize, or speak ill of the other party, nor allow anyone in the presence of the Minor Child to disparage, criticize, or speak ill of the other party”; “[t]he parties must not discuss these Court proceedings with the Minor Child”; and “[n]either party is entitled to use the Minor Child as a spy, a messenger, or a source of information about the other party.” However, father does not provide legal support or reasoning for his challenges to the district court's instructions. “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere

inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see State Dep’t of Lab. & Indus. by the Special Comp. Fund v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach inadequately briefed issues); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal). We discern no obvious prejudicial error in the district court’s admonitions to the parties. Additionally, we observe that the district court has wide latitude in crafting visitation orders. *See Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995) (noting the district court’s wide discretion in the context of a grandparent-visitation dispute). Here, the district court’s directives, which are tailored to address specific concerns in this contentious case, were within the district court’s discretion.

12. In reviewing the district court’s order, we do note a de minimis typographical error. In the findings of fact, the order states that grandfather has visitation with the child “every weekend, from Friday at 5:00 p.m. through Sunday at 11:00 a.m.,” which is consistent with the 2017 order. However, the order later states that grandfather “shall immediately resume his visitation with the [child] every weekend from Friday at 5:00 p.m. to *Saturday* at 11:00 a.m.,” which is inconsistent with the 2017 order. (Emphasis added.) On this record, we can reasonably infer, particularly given the order’s use of “resume,” that the district court meant to say that grandfather “shall immediately resume his visitation with the [child] every weekend from Friday at 5:00 p.m. to *Sunday* at 11:00 a.m.” Therefore, we modify the order accordingly. *See Rauenhorst v. Rauenhorst*, 724 N.W.2d 541, 545 (Minn. App. 2006) (affirming as modified by correcting findings of fact that were internally inconsistent when what the district court meant could “reasonably be inferred”);

Svenningsen v. Svenningsen, 641 N.W.2d 614, 617 (Minn. App. 2002) (affirming as modified by correcting a minor mistake in a child support obligation). The district court’s order, as modified, states:

2. Grandfather shall **immediately resume** his visitation with the Minor Child **every weekend from Friday at 5:00 p.m. through Sunday at 11 a.m.**

13. We also address two additional matters raised while this case was on appeal to this court. First, we deny grandfather’s motion to supplement the record with a letter from 2016. The record on appeal consists of the documents and exhibits filed in the district court and any transcripts of the proceedings. Minn. R. Civ. App. P. 110.01. If the record submitted is inaccurate or incomplete, a party may seek to correct or modify the record under Minn. R. Civ. App. P. 110.05. But “[r]ule 110.05 is limited to correction of the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it.” *W. World Ins. Co. v. Another, Inc.*, 391 N.W.2d 70, 72 (Minn. App. 1986). The document that grandfather seeks to introduce into the appellate record was not “omitted from the record by error or accident.” Thus, it is appropriate to deny grandfather’s motion to supplement the record.

14. Second, we construe father’s post briefing submission to this court—which he claims “further support[s] dismissal of this case”—as an untimely filed reply brief, and we accordingly reject it. Under the appellate rules, briefing by an appellant is limited to a principal brief and reply brief. *See* Minn. R. Civ. App. P. 128.02, subd. 4 (“No further briefs may be filed except with leave of the appellate court.”). A reply brief must be served and filed within 14 days after service of the respondent’s brief. Minn. R. Civ. App. P.

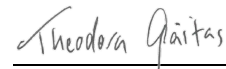
131.01, subd. 3(a). Grandfather served the respondent's brief in November 2023, and father filed his additional document in February 2024, well beyond the deadline for a reply brief. Because father's submission was filed outside of the deadline for a reply brief, we reject it.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed as modified.
2. Grandfather's motion to supplement the record is denied.
3. We do not consider the arguments raised in father's untimely reply brief.
4. 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: 4/11/2024

BY THE COURT



Judge Theodora Gaïtas