STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0803

In re the Marriage of:

Kevin Eric Alstrin, petitioner,
Appellant,

vs.

Allison Lynn Alstrin,
Respondent,

Carver County,
Respondent.

Filed January 21, 2025

Affirmed
Connolly, Judge

Carver County District Court
File No. 10-FA-11-580

Kevin Alstrin, Excelsior, Minnesota (pro se appellant)

Amanda A. Bloomgren, Katie C. Hanson, Bloomgren Hanson Legal, PLLC, Hopkins, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

In this child-support dispute, pro se appellant-father argues that he should not have to reimburse respondent-mother for extracurricular fees and expenses spent on behalf of the parties' minor children and that the district court erroneously modified the decision by the parenting consultant (PC). We affirm.

FACTS

The marriage between appellant Kevin Eric Alstrin (father) and respondent Allison Lynn Alstrin (mother) was dissolved by stipulated judgment and decree in December 2012. The parties were awarded joint legal custody of their three minor children, and mother was awarded sole physical custody, subject to father's parenting time. Pursuant to the judgment and decree, father was ordered to pay child support and maintain medical and dental insurance for the children. The decree also provided that "[t]he costs of agreed to sports, after school activities shall be divided between the parties in accordance with the PICS[1] Percentages in place at the time."

In February 2019, the district court filed an order clarifying that:

> Pursuant to the Judgment and Decree, the parties shall share the costs of children's uninsured medical and dental expenses and agreed upon sports and after-school activities pursuant to their current PICS percentages, now 64% for [father] and 36% for [mother]. To the extent either party has not been appropriately reimbursed for such expenses, the parties shall comply with the procedures set forth in Minn. Stat. § 518A.41, subd. 17 for reimbursement and enforcement.

[1] "PICS" means parental income for determining child support. Minn. Stat. § 518A.26, subd. 15 (2022).

In October 2020, the district court filed a stipulated order appointing a PC. Under the parties' agreement, the PC had authority to "[d]ecide child care, activity, vacation and summer camp issues, including dates and times for the same, to the extent the specific vacation dates have not been determined by a court order, prior decision of a PC or [parenting-time expediter], or are no longer workable due to a change in circumstances."

The PC issued report #3 in February 2021, stating: **Extra-Curricular Activities:** The parties have agreed that it is reasonable for the children to participate in one sport/activity per season (Fall, Winter, Spring, and Summer). The report also states:

> **Activity Proposals.** Either parent may propose an extra-curricular sport/activity. Proposals must be submitted in single topic OFW[2] message thread at least 72 hours prior to any registration deadline and must include the following: name of the hosting organization, program dates, general time commitment, and cost. If the parent receiving the proposal needs additional information, he/she is responsible for sourcing the information directly from the organization. A non-response after 72 [hours] will be considered approval/implied consent.

In July 2021, the PC issued report #4, which reiterated that decisions by the PC "are effective immediately and are legally binding unless and until changed by the court." And the report reminded the parties that "[a]ctivities that impact both parents' parenting time require mutual agreement and you previously agreed each child could reasonably be allowed to participate in one sport/activity per season. Prior to enrollment, you are required to make a proposal (refer to PC report #3)."

[2] OFW refers to "Our Family Wizard," which is a cell phone application that assists parents in managing child-custody schedules and co-parenting issues.

In September 2022, mother filed a notice with respondent Carver County under Minn. Stat. § 518A.41, subd. 17 (2022), of intent to enforce unreimbursed medical and dental expenses for the parties' children for the time period of November 15, 2020, through September 18, 2022. Father subsequently moved to contest the enforcement and collection of these expenses, claiming that the "majority of expenses [mother] is seeking . . . are not health/dental expenses," but "are for discretionary, recreational activities."

In March 2023, the district court referred to the child-support magistrate (CSM) the parties pending "dispute regarding reimbursement of child activity payments." Following a hearing, the CSM determined that she "lack[ed] subject matter jurisdiction to determine and enforce the division of extracurricular expenses between the parties." Nonetheless, "[i]n an attempt to save the parties some time in re-litigating these issues in their entirety," the CSM made "some findings of fact based upon the testimony given and evidence provided at the hearing," and noted that father's "failure to contribute to fees and expenses appears to be against the court orders, PC report (agreement), historical practice and agreement of the parties and has been financially detrimental to [mother] and the children."

The district court adopted the findings of fact and conclusions of law in the CSM's order and determined that father owes mother "$17,308.51 for PICS adjusted extracurricular fees and expenses incurred by [mother] for the benefit of the joint minor children." The district court also stated that the "children may continue to participate in one sport per season," and that the "[p]arties continue to be responsible for their percentage of the expenses for these activities even if the expenses for the seasons come due at different times than when the sport is in season." Father appeals.

DECISION

I.

Father challenges the district court's decision ordering him to reimburse mother for extracurricular-activity fees and expenses she spent on behalf of the parties' children. Payment for a child's extracurricular activities is in the nature of child support. *See* Minn. Stat. § 518A.26, subd. 4 (2022) (defining "basic support" to include expenses related to the child's care); *cf. McNulty v. McNulty*, 495 N.W.2d 471, 473 (Minn. App. 1993) (affirming the district court's decision that significant expenses for a child's extracurricular activities can support an upward deviation from the presumptively-appropriate guideline support obligation), *rev. denied* (Minn. Apr. 12, 1993). We review a district court's child-support decision for an abuse of discretion. *Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008). A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

PCs are "a creature of contract or of an agreement of the parties which is generally incorporated into (or at least referred to in) a district court's custody ruling." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007). The rules of general practice state that "Parenting Consulting is a process defined by the agreement of the parties in which the [PC] incorporates neutral facilitation, coaching and decision making." Minn. R. Gen. Prac. 310.03(c)(2). The PC's authority comes from the parties' agreement. *See id.*

Father argues that the district court abused its discretion in ordering him to reimburse mother for his allotted percentage of the fees related to the children's

extracurricular activities because those "expenses were incurred unilaterally by mother inconsistent with the communication guidelines outlined in the [PC's] decisions." Specifically, he contends that the PC's decision requires the children's participation in extracurricular activities to be mutually agreed upon by the parties, and because he never consented to the children's participation in their respective activities, he should not be required to reimburse mother for these expenses.

We are not persuaded. Generally, stipulated rulings in dissolution matters are treated as contracts for purposes of construction. *See Pooley v. Pooley*, 979 N.W.2d 867, 873 (Minn. 2022) (making this observation in the context of a stipulated dissolution judgment, but also noting certain "unique features" of rulings in dissolution matters). "Ignoring a provision in a contract will constitute waiver if the party whom the provision favors continues to exercise his contract rights knowing that the condition is not met." *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 727-28 (Minn. App. 2011) (quotation omitted), *rev. granted* (Minn. June 14, 2011) *and appeal dismissed* (Minn. Aug. 12, 2011). Similarly,

> where the course of conduct of a party entitled to performance of certain terms or conditions of a contract has led the other party to believe that such performance will not be required until it has become too late to perform, the person who has so conducted himself is barred from asserting the right he had.

Id. at 728 (quoting *Wolff v. McCrossan*, 210 N.W.2d 41, 44 (Minn. 1973)).

The reasoning set forth in *BOB Acres*, is applicable here. The parties' stipulated judgment requires the parties to share the costs of the children's "agreed to sports [and] after school activities . . . in accordance with PICS Percentages in place at the time." The

parties later agreed to appoint a PC, who had the authority to decide issues related to the children's activities. Pursuant to the parties' agreement, the PC decided that the children are allowed to participate in one sport/activity per season, but that such activities must be mutually agreed upon by the parties. This provision favors father because he is responsible for paying a higher percentage of the fees related to the children's activities, and the record reflects that mother has facilitated the children's participation in their various activities. Although the record indicates that mother failed to follow the agreement by registering the children for various activities prior to obtaining father's approval, the record also reflects that father neglected to exercise his rights under the agreement by failing to object to the children's participation in their activities despite having notice that mother registered the children for the activities. Because father failed to exercise his rights under the agreement, the record supports the district court's determination that he has waived the "mutual-agreement" aspect of the agreement by ignoring the fact that this provision of the agreement was not satisfied. *See id.* ("Ignoring a provision of a contract will constitute waiver if the party whom the provision favors continues to exercise his contract rights knowing that the condition is not met.").

Moreover, the record also supports the district court's finding that father's course of conduct led mother to believe that father's mutual agreement prior to registering the children for all activities was not required. As the CSM found, mother enrolled "the children in their usual[] extracurricular and summer activities and added those activities and fees to a . . . spreadsheet [father] designed and the parties had been using since about 2017." The CSM also found that mother "would send emails to [father] with information

on the activities and receipts." And the CSM found that father attended tryouts and games, as well as doing volunteer hours. These findings are supported by the record and are not challenged on appeal. The CSM's findings demonstrate that father had notice that the children were participating in their various activities. But, despite having notice that the children were participating in their respective activities, father never objected or informed mother that he did not agree that the children should participate in these activities. Under these circumstances, father's course of conduct led mother to believe that mutual agreement by the parties was not required prior to enrolling the children in their activities. As such, father is barred from asserting this right. *See id.*

Finally, the parties' agreement states that "[a] non-response after 72 [hours of the children being enrolled in an activity] will be considered approval/implied consent." As addressed above, father had notice that the children were enrolled in their usual activities, and father never voiced any objection. Thus, father implicitly consented to the children's participation in their usual activities. Father does not dispute the amount he is required to pay; rather, he simply asserts that he is not required to reimburse mother for the children's sports and activities. Thus, the district court did not abuse its discretion in requiring father to reimburse mother for the fees related to the children's participation in their activities.

II.

Father argues that the district court improperly reformed the parties' agreement related to the children's participation in extra-curricular activities. Stipulations in dissolution proceedings are favored by courts "as a means of simplifying and expediting litigation" and "are therefore accorded the sanctity of binding contracts." *Shirk v. Shirk*,

561 N.W.2d 519, 521 (Minn. 1997). The rules of contract construction apply when construing such stipulations. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *rev. denied* (Minn. Mar. 13, 2001). But children's interests are "nonbargainable" and "less subject to restraint by stipulation." *Kaiser v. Kaiser*, 186 N.W.2d 678, 683 (Minn. 1971) (making this observation in context of child-support requirements). We review de novo the district court's legal conclusion relating to the enforceability and interpretation of a dissolution-related stipulation. *See Kielley v. Kielley*, 674 N.W.2d 770, 777 (Minn. App. 2004) ("Whether a stipulation is supported by consideration is a legal question, which we review de novo.").

As stated previously, the PC's report #3 states that the "parties have agreed that it is reasonable for the children to participate in one sport/activity per season (Fall, Winter, Spring, and Summer)." The district court expounded on this agreement, by clarifying that the "children may continue to participate in one sport per season as follows: Swimming (fall to spring) and summer camp for [child 1]; Lacrosse (winter, spring, summer) for [child 2]; and Lacrosse (winter and spring) and Football (fall) for [child 3]."

Father argues that the district court's reformation of the parties' agreement related to the children's participation in certain activities[3] was improper because the court lacked "the authority to do so without the parties having an opportunity to stipulate to what it might look like." But father fails to cite any legal authority supporting his position. The

[3] Father also claims that the district court modified the parties' agreement with respect to the parties' continued (1) use of OFW, and (2) responsibility for the costs of activities in accordance with PICS percentages in place at the time the expense occurred. But these requirements did not change any prior agreements of the parties.

failure to cite legal authority supporting an argument constitutes forfeiture of the argument. *In re Welfare of Child of J.H.*, 968 N.W.2d 593, 602 n.7 (Minn. App. 2021), *rev. denied* (Minn. Dec. 6, 2021). And "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Thus, father's argument is not properly before us.

Moreover, the PC's report #3 states that the PC's decisions "are legally binding unless and *until changed by the court*." (Emphasis added.) And the PC's report #4 contains a similar provision. As such, unreviewable decision-making authority is not bestowed upon the PC. Further, this court in *Szarzynski*, indicated that judicial review of a PC's decision is not prohibited. *See* 732 N.W.2d at 290-91 (observing that, notwithstanding the PC's decision, the appellant could move the district court to modify the parenting plan the parties reached under Minn. Stat. § 518.1705 to grant a request for unsupervised parenting time). Rather, the district court retains authority over parenting issues, irrespective of the appointment of a PC. *See id.* at 293.

Finally, the district court's modification was consistent with the parties' previous agreement as set forth in the PC's reports, as well as the parties' course of conduct. The parties previously "agreed that it is reasonable for the children to participate in one sport/activity per season (Fall, Winter, Spring, and Summer)" and, consistent with this agreement, mother continued to enroll the children in their usual activities. Father was on notice that mother enrolled the children in these activities and never voiced any objection.

Father's failure to object indicates an implicit acquiescence to the children's participation in their usual activities. Under these circumstances, the district court's modification did not change the parties' implicit agreement related to the children's activities. Accordingly, the district court did not err in reforming the PC's decision regarding the children's participation in extracurricular activities.

Affirmed.