STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0580

In the Marriage of: Jody LaRae Theisen,
n/k/a Jody LaRae Wellman, petitioner,
Appellant,

vs.

Harvey Lee Theisen,
Respondent.

Filed January 11, 2021
Affirmed
Slieter, Judge

Stearns County District Court
File No. 73-FA-15-5954

Jody LaRae Wellman, Albany, Minnesota (*pro se* appellant)

Gregory S. Walz, Walz Law Office, St. Cloud, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from an order of the district court confirming the decision of a parenting counselor (PC) temporarily suspending appellant's parenting time with the

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

parties' joint children, appellant argues that the district court abused its discretion by not reversing the PC's decision. Because the parties stipulation specifically granted the PC authority to make decisions regarding parenting time, the district court did not abuse its discretion by confirming the PC and we, therefore, affirm.

FACTS

Appellant and respondent are the divorced parents of two children. On May 6, 2019, upon stipulation of the parties, the district court issued an order appointing a PC to assist them in disputes about several issues involving the children, including parenting time. Consistent with the terms of the parties' agreement, the appointing order states that "[t]he PC shall have the duty and responsibility to assist the parties in resolving all child-related issues submitted for resolution . . . ." This includes "[d]ecid[ing] revisions to previously decided parenting issues as needed to meet changing circumstances" as well as "mak[ing] recommendations, memorializ[ing] agreements and mak[ing] decisions, including the authority to impose consequences for non-compliance."

On October 19, 2019, in response to a request sent by respondent the previous day, the PC issued a decision temporarily suspending appellant's parenting time. In his written communication to the parties, the PC explained that he had taken this measure in response to respondent's concerns that appellant repeatedly involved the children in parental conflict and repeatedly accused respondent of physical and sexual abuse of the children despite a lack of evidence.

On October 31, 2019, appellant moved for the district court to "overrule the Parenting Consultant's decision" and "[r]evert back to the original Court Order." Appellant also requested that the district court remove the PC and appoint a replacement. Appellant argued that the PC had abused his discretion in suspending her parenting time.[1] The district court disagreed and found that no such abuse by the PC occurred. The district court also declined to remove the PC. This appeal follows.

DECISION

"The term 'parenting consultant' is not used in the Minnesota statutes. In practice, the term refers to 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 stipulation incorporated into the order appointing the PC is a contract, *id.*, the interpretation of which is a question of law we review *de novo*. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). However, district courts have extensive discretion to decide questions relating to visitation. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). Such decisions will not be overturned absent an abuse of discretion. *Id.*

The issue presented on appeal is whether the district court abused its discretion in confirming the PC's suspension of appellant's parenting time and declining to remove the PC. For the reasons below, we conclude that it did not, and affirm.

[1] Pursuant to the parties' stipulation, the district court reviewed the decision of the PC pursuant to an abuse of discretion standard of review.

I. The district court properly confirmed the PC's parenting time decision.

Appellant argues that the district court should have found the PC abused his discretion by (1) relying only on information provided by respondent and other unfounded speculation, (2) failing to meet with appellant prior to making his decision regarding parenting time, (3) exceeding his authority by "restricting" her parenting time, and (4) failing to address the statutory best-interests factors. Appellant argues that these abuses required the district court to reverse the PC, and that its failure to do so was an abuse of discretion. We disagree.

A. The PC possessed an adequate factual basis to suspend appellant's parenting time.

Appellant argues that the district court erred in confirming the PC's suspension of parenting time because the PC's decision was not factually justified and depended on unsupported assertions from respondent. However, it is clear from the record that the PC's decision was made in the context of both parties' history of disconcerting parenting behavior.

Indeed, the record reflects that, rather than solely relying upon the allegations from respondent, the PC looked at the history of the parties' behavior and compared it to the new allegations which had surfaced: that appellant was continuing to put the children in "impossible situations" by discussing legal matters and the potential of foster-care placement with the children and by raising additional concerns of child abuse by respondent. The PC described "copious child protection reports" and "many, many police reports." He described a history of conflict between the parties which had led to Stearns

County child protection workers convening a decision-making conference mere weeks before the PC issued his contested decision. The PC also described the ongoing concerns and involvement of child protection, due in large part to the aforementioned child protection reports. According to the PC, appellant made "allegation after allegation" of parental abuse against respondent, none of which resulted in any evidence of mistreatment. All of these facts are consistent with the PC's narrative of parental conflict and the need to separate the parties, and support the PC's decision to temporarily suspend appellant's parenting time.

The PC noted that not all the allegations of parental conflict were proven to be true, but that they were nonetheless highly concerning given the parties' history of inappropriate and confrontational conduct. As the PC indicated, the decision to suspend appellant's parenting time was not made to punish appellant. Rather, it was made to protect the children. On this record, the district court did not abuse its discretion in confirming the PC's suspension of parenting time.

B. The PC's failure to meet with both parties before suspending appellant's parenting time was harmless.

Appellant argues that the PC erred by failing to initiate a conversation with both parties prior to making his decision regarding parenting time and that this failure required the district court to reverse. We conclude this error was harmless.

The order appointing the PC requires that "[u]pon notification by a party that there is an issue in controversy, the PC will meet with the parties by telephone, in person, or by

other means as determined appropriate by the PC, to discuss the issue in controversy." The PC did not meet with appellant before making his decision regarding parenting time.

However, despite failing to meet with appellant, the PC did have an email conversation with appellant several days after issuing his decision. During that exchange, appellant offered little more than denials of the allegations made against her and her disagreement with the decision. The PC had the discretion to reverse his prior parenting time suspension decision and restore appellant's parenting time at any point after talking to appellant had she presented evidence to sufficiently rebut respondent's claims. Appellant did not do so. Thus, the PC's failure to notify appellant prior to his decision was harmless. Harmless errors do not warrant reversal. Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). Thus, the district court did not abuse its discretion by not reversing the PC's decision on this basis.

C. The PC properly suspended parenting time without reference to the "endangerment" or "best interests" requirements of Minn. Stat. § 518.175 (2018).

Appellant also argues that the district court abused its discretion in confirming the PC's suspension of parenting time because (1) the PC lacked the authority to completely suspend parenting time, (2) the PC failed to make a finding of endangerment, and (3) the PC failed to address the statutory best-interests factors. These arguments are not persuasive.

The order appointing the PC grants the PC authority to "decide alterations in the access schedule" and "[d]ecide revisions to previously decided parenting issues as needed

to meet changing circumstances." Furthermore, this order sets forth specific areas in which the PC *cannot* make decisions, including "addressing child support and permanently modifying custody labels." There is nothing in the order appointing the PC that limits his broad authority to temporarily suspend parenting time.

Additionally, appellant's arguments regarding the applicability of Minn. Stat. § 518.175 to the PC's decisions are unpersuasive. This statute requires a court find that "endangerment" exists before enacting a restriction of parenting time and consider the "best interests of the child," evaluated pursuant to the factors set forth in Minn. Stat. § 518.17, subd. 1 (2018). Minn. Stat. § 518.175, subd. 1(a), (b). However, the parties contractually agreed, and the district court did so order, to vest the PC with the authority described above without reference to a governing statutory standard. As a result, the requirements of Minn. Stat. § 518.175 are irrelevant to the PC's decision. The district court did not abuse its discretion in declining to reverse the PC's decision on these grounds.

In sum, the district court did not abuse its discretion in confirming the PC's suspension of parenting time.

II. The district court did not err in declining to remove the PC.

Appellant also challenges the district court's failure to remove the PC. However, the order appointing the PC is clear: the PC can be removed only before the expiration of his two-year term (1) if the PC becomes unavailable, (2) if the PC does not agree to serve, or (3) "by written agreement of the parties." Appellant cites no other authority allowing for removal of the PC.

Affirmed.