STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0669

In re the marriage of:

George Michael McFadden, petitioner,
Appellant,

vs.

Jessica Marie Basch FKA McFadden,
Respondent.

Filed May 12, 2025
Affirmed
Slieter, Judge

Carlton County District Court
File No. 09-FA-22-1620

Bill L. Thompson, Duluth, Minnesota (for appellant)

Matthew J. Gilbert, Patrick A. McDonald, Gilbert Alden Barbosa PLLC, Burnsville, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this appeal from a custody-modification order granting respondent sole physical and sole legal custody of the parties' child, appellant argues that the district court abused its discretion by (1) determining that granting respondent sole custody is in the child's best

interests and (2) awarding respondent conduct-based attorney fees. Because the district court's decision is well supported by the record, it acted within its discretion, we affirm.

FACTS

Appellant George Michael McFadden (father) and respondent Jessica Marie Basch (mother) married in November 2014 and are the parents of a son who was born in July 2013. The parties dissolved their marriage in 2017, and pursuant to a stipulated order for judgment, the Sherburne County District Court granted the parties joint physical and joint legal custody of their son. The parties resided in Sherburne County and initially shared equal parenting time.

In December 2018, without prior notice to or consultation with mother and while exercising parenting time, father relocated with son to the City of Carlton, in Carlton County. Mother learned of the relocation from son's daycare provider. Soon after moving, father enrolled son in a preschool program in the Carlton School District and arranged for local childcare, again without prior notice to or consultation with mother. The record suggests that, at least initially following father's move, mother received parenting time every other weekend and extended time during the summer. As time progressed, however, father did not cooperate with mother's parenting time, which began to decrease as a result.

In April 2022, mother filed a custody-modification motion in Sherburne County District Court seeking sole physical and sole legal custody of son based upon endangerment. In May 2022, father also filed a custody-modification motion seeking sole physical and sole legal custody of son based upon integration of son into his home. The district court scheduled an evidentiary hearing on mother's motion and denied father's

motion without a hearing. An evidentiary hearing on mother's modification motion was initially scheduled for September 2022.

Prior to the scheduled evidentiary hearing, father moved to transfer venue to Carlton County. The Sherburne County District Court granted the venue change. In the same order, the district court directed that son primarily live with mother on a temporary basis and attend Island Lake Elementary School, which is located near mother's residence. On the first day that son attended school at Island Lake, father removed him from the school, brought him to Carlton, and enrolled him at South Terrace Elementary School located in Carlton.

The Carlton County District Court scheduled the evidentiary hearing for April 2023. Ultimately, the evidentiary hearing lasted four days but, for reasons the record does not reveal, spanned seven months: one day in April, one day in July, and two days in November. The district court's February 2024 custody-modification order granted mother sole physical and sole legal custody of son and ordered father to pay conduct-based attorney fees to mother in the amount of $6,000.

Father appeals.

DECISION

Appellate courts review a district court's child-custody determinations for an abuse of discretion. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985); *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). The district court has broad discretion in making or modifying child custody. *Matson*, 638 N.W.2d at 465. Ultimately, custody determinations are very discretionary decisions and there is "scant if any room" for us to

question the district court's best-interests balancing analysis in an abuse-of-discretion review. *Vangsness v. Vangsness*, 607 N.W.2d 468, 476-77 (Minn. App. 2000).

A district court abuses its discretion if its findings of fact are unsupported by the record, if it improperly applies the law, or if it resolves the question in a manner that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). Appellate courts will review a district court's findings of fact for clear error and "will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations omitted). The clear-error standard "is a review of the record to confirm that evidence exists to support the decision." *Id.* at 222.

A parent seeking modification of custody due to endangerment must demonstrate that "(1) the circumstances of the children or custodian have changed; (2) modification would serve the children's best interests; (3) the children's present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the change outweigh its detriments with respect to the children." *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018). Father contests only the district court's best-interests determination.

The best interests of the child are the district court's "guiding principle" and "paramount commitment" when making child-custody decisions. *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019) (quotations omitted). "In considering the child's best interests, a district court must consider and evaluate all relevant factors, including 12

factors set forth by statute." *Id.* (quotation omitted); Minn. Stat. § 518.17, subd. 1(a) (2024).

Father contends that the district court's determination to grant mother sole legal and sole physical custody "is not in the child's best interest" and "amounts to an abuse of discretion." The crux of father's argument is that most of the factors should have either favored father or been considered neutral. Father does not claim that the district court's factual findings are clearly erroneous. Instead, he claims the district court ignored competing facts. For instance, in his discussion of the best-interest factor 6—the history and nature of each parent's participation in providing care for son—father states that the district court provided "zero discussion of the three years" that son lived primarily with father and that "this factor should have favored [father] or at least been neutral, and thus an abuse of discretion occurred." When discussing best-interest factor 8—the effect of the child's well-being and development change to home, school, and community—father disputes that this factor favors mother and states that there "is a certain level of irony and hypocrisy . . . because the court did not give any weight to the impact this same change would have on the child" as a result of its September 2022 temporary order that granted primary residence of son to mother.

As noted, father does not argue that the district court's findings are unsupported by the evidence. More importantly, father offers no applicable law to support his claim that the district court abused its discretion in its best-interests analysis and conclusion.

"[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who

relies upon it." *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). And "[a]n 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).

Upon mere inspection, we detect no prejudicial error in the district court's custody-modification determination. In addition to making general findings in support of the child's best interests, the district court carefully analyzed all the relevant best-interests factors set forth in Minn. Stat. § 518.17, subd. 1(a), as part of its determination that granting mother sole physical and sole legal custody is in the child's best interests.

The district court found that, despite a temporary order that son shall primarily reside with mother and attend nearby Island Lake Elementary, father removed son from that school and enrolled him in South Terrace Elementary in Carlton. The district court also found that father "engaged in a campaign of parental alienation to severely limit the child's time with [mother]." The district court found that father's "parental alienation continues to this day" and determined that father was not willing to cooperate as a co-parent with mother. The district court found that father's decision to move to Carlton caused mother's "parenting time [to be] significantly restricted" and that father was "withholding parenting time" and this negatively impacted son's well-being. The district court credited the testimony of the custody evaluator whom, the court stated, it has "known and experienced [the evaluator's] abilities and her conduct in numerous family law matters." The evaluator testified that "she had never seen this level and complexity of parental

alienation" in her experience as an attorney, parenting-time expediter and consultant, mediator, and custody evaluator. And finally, as to its grant of sole legal custody to mother, the district court found that father's behavior of "bullying, intimidating," and general unresponsiveness to mother's requests suggests that joint legal custody is not feasible. These findings are supported by the record.

We are not persuaded otherwise by father's general claims that many of the best-interests factors should have either favored him or be considered neutral. First, we do not reweigh the evidence. *See Kenney*, 963 N.W.2d at 221 ("We have repeatedly stated that clear-error review does not permit an appellate court to weigh the evidence as if trying the matter *de novo*."). Second, the remainder of the district court's findings of fact are sufficient to support its custody-modification conclusion because no single factor is dispositive. *See Lemcke v. Lemcke*, 623 N.W.2d 916, 920 (Minn. App. 2001) ("The legislature has expressly stated that no single factor is determinative."). Thus, even if we agreed that the district court misapplied the factors about which father complains, any such error would be harmless. The rules require courts to ignore harmless error. Minn. R. Civ. P. 61.

In sum, the district court acted within its discretion when it granted sole physical custody and sole legal custody to mother. We next consider father's claim that the district court abused its discretion in awarding mother conduct-based attorney fees for conduct father committed while the matter was venued in Sherburne County as well as after it was transferred to Carlton County.

A district court may award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1a (2024)[1]; *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). Whether to award conduct-based attorney fees generally depends on "the impact a party's behavior has had on the costs of the litigation." *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). A district court must "make findings revealing its rationale on the attorney fees issue." *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992). An award of conduct-based attorney fees is reviewed for an abuse of discretion. *Sharp v. Bilbro*, 614 N.W.2d 260, 264 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000). The district court found five instances in which father unreasonably increased the length and cost of litigation.

First, the district court found that father filed an *ex parte* emergency motion in Sherburne County District Court requesting temporary physical custody of son along with other relief just 11 days after the district court had ordered the identical relief to mother, and father did not allege any change in circumstances to support his motion.

Second, the district court found that, despite the Sherburne County District Court already ruling that mother was entitled to an evidentiary hearing on her custody-modification motion, father filed a subsequent motion again asking the district

[1] Minn. Stat. § 518.14 was amended with a restructure in 2024. Language regarding conduct-based attorney fees, which was previously located in subdivision 1 along with language regarding needs-based fees, is now located in subdivision 1a. This change does not affect the case before us.

court to dismiss mother's motion. The district court determined that father "was attempting to relitigate an issue that had previously been decided."

Third, the district court found that father filed a motion *in limine* to preclude receipt of the custody evaluator's report at the evidentiary hearing, claiming it was not based upon the correct legal standard because "neither endangerment [n]or best interests of the child were contained in her report." The district court concluded that this was a baseless motion because, in fact, both standards were discussed in the evaluator's report.

Fourth, the district court found that, despite its order denying father's motion for an evidentiary hearing on his custody motion, father "continues to address his motion for modification of custody as if it was being decided by the Court through the evidentiary hearing" scheduled solely on mother's custody-modification motion.

Finally, the district court found that, contrary to language in the parties' 2017 stipulated judgment decree and despite its clear order denying such relief, father continues to claim that he was granted primary residence of son and that he has the sole right to make legal decisions for the child.

The district court carefully considered mother's request for conduct-based attorney fees and provided a detailed explanation for its decision. Mother asked for $11,377 in conduct-based attorney fees and the district court ordered only $6,000. The district court carefully considered and weighed the competing evidence presented at trial, as well as the parties' positions, and we defer to the district court's credibility determinations. *Eisenchenk v. Eisenchenk*, 668 N.W.2d 235, 241 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003).

The district court acted within its discretion by awarding mother conduct-based attorney fees.

Affirmed.