

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-0621



In Re the Custody of X. W. F.,

Anthony Dexter Wayne Francis, petitioner,

Respondent,

vs.

Denise Tonche,

Appellant.

ORDER OPINION

Steele County District Court
File No. 74-FA-14-1515

Considered and decided by Frisch, Presiding Judge; Connolly, Judge; and Cochran, Judge.

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

1. Appellant-mother Denise Tonche challenges the district court's award of sole physical and legal custody of X.W.F. to respondent-father Anthony Dexter Wayne Francis, arguing that the district court abused its discretion by precluding her from presenting evidence at an evidentiary hearing and by granting sole legal and physical custody to Francis. Because the district court abused its discretion in precluding Tonche from presenting evidence, we reverse and remand.

2. Tonche and Francis are the parents of X.W.F. In 2014, the district court established joint legal and physical custody of X.W.F. Shortly after, the parties separated. The parties have thereafter been involved in significant litigation regarding parenting time.

3. In November 2021, Francis moved to modify parenting time and for sole physical custody of X.W.F. After a motion hearing and without receiving testimony, the district court awarded Francis sole physical custody subject to Tonche’s reasonable parenting time. Tonche appealed to this court, arguing that the district court erred in modifying custody without conducting an evidentiary hearing. We reversed and remanded, concluding that the district court erred in granting Francis’s motion without conducting an evidentiary hearing. *Francis v. Tonche*, No. A22-0976, 2023 WL 2637088, at *1-2 (Minn. App. Mar. 27, 2023), *rev. denied* (Minn. May 31, 2023).

4. The record does not contain a scheduling order related to the evidentiary hearing following remand. But in May 2023, Francis served discovery requests on Tonche related to the custody motion. On July 20, Tonche requested a continuance of the evidentiary hearing because of a change in counsel. On July 28, Francis served his witness list, exhibit list, and exhibits on Tonche. The district court granted the continuance and rescheduled the evidentiary hearing to October 30.

5. On October 30, the district court held the evidentiary hearing. At the hearing, Francis requested that the district court preclude Tonche from offering any exhibits and witnesses other than Tonche because Francis had “not received a witness list or exhibit list from the opposing party.” The district court granted Francis’s motion on the record and precluded Tonche from calling witnesses other than herself, in addition to precluding Tonche from offering exhibits “due to [her] failure to comply with the rules of civil procedure for discovery and admission of evidence.” Following the evidentiary hearing,

the district court granted Francis's motion to modify custody and awarded him sole physical and legal custody of X.W.F. Tonche appeals.

6. Tonche argues that the district court abused its discretion by precluding her from offering witnesses other than herself at the evidentiary hearing. A district court's "discovery-related orders will not be disturbed absent an abuse of discretion." *Frontier Ins. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). A district court abuses its discretion if it makes findings of fact that lack evidentiary support, misapplies the law, or resolves a discretionary matter in a manner contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

7. The district court's ruling during the hearing and subsequent order do not specify with particularity the discovery rule or rules upon which the district court relied. The district court mentioned Minn. R. Civ. P. 26.01(a)-(c), which provides for initial, expert, and pretrial disclosures and Minn. R. Civ. P. 37.01-.03, which sets forth the procedure for a motion to compel disclosures and discovery and sanctions for noncompliance. But neither of these rules authorize the district court to impose the sanction based on the record in this case. Thus, we conclude that the district court abused its discretion by misapplying the law.

8. First, Minn. R. Civ. P. 26.01 does not authorize the district court's sanction because the family-law matter at issue in this action is exempt from disclosures under this rule "unless otherwise ordered by the court." Minn. R. Civ. P. 26.01(a)(2)(H); *see also* Minn. R. Gen. Prac. 301.01(a) (stating that the rules of civil procedure apply to family-law

matters “where applicable”). The record contains no indication that such disclosures were “otherwise ordered” by the district court. The district court therefore abused its discretion to the extent it sanctioned Tonche for failing to comply with the disclosure requirements set forth in Minn. R. Civ. P. 26.01(a).

9. Second, the district court abused its discretion to the extent it sanctioned Tonche pursuant to Minn. R. Civ. P. 37.02(b), which authorizes a district court to sanction a party where it “fails to obey an order to provide or permit discovery.” *See* Minn. R. Civ. P. 37.01(b) (providing for motions by a party seeking to compel disclosures or discovery requests). The district court did not issue a scheduling order or any discovery orders and Francis did not seek an order to compel before the day of the evidentiary hearing.¹ Although rule 37.03(a) provides that “[i]f a party fails to provide information or identify witnesses as required by Rule 26.01 . . . the party is not allowed to use that information or witness to supply evidence,” Tonche was not obligated to make any rule 26 disclosures. Thus, the district court abused its discretion to the extent that it sanctioned Tonche under Minn. R. Civ. P. 37.

10. We cannot conclude that this error was harmless. *See* Minn. R. Civ. P. 61 (requiring that harmless error be ignored). Tonche’s ability to present a full defense concerning her constitutionally protected interest was frustrated by the district court

¹ Francis’s motion during the evidentiary hearing also did not comply with motion-practice requirements in a family court action. *See* Minn. R. Gen. Prac. 303.01(a) (requiring a moving party to notice all parties in the action); 303.02 (providing for written motions); 303.03(a) (requiring that motions be served on all parties “at least 21 days before the hearing”).

precluding her from presenting evidence. *See Halverson v. Taflin*, 617 N.W.2d 448, 451 (Minn. App. 2000) (“The failure to grant a parent an opportunity to be heard on custody issues is a denial of equal protection and due process.”). The evidence that Tonche was precluded from presenting may have bolstered Tonche’s credibility and undermined Francis’s credibility, and the lack of that evidence hindered the district court’s ability to fulfill its duty to act in X.W.F.’s best interests. *See Wallin v. Wallin*, 187 N.W.2d 627, 630 (Minn. 1971) (stating that the “controlling principle” in custody proceedings “is the child’s welfare”).

11. Although we acknowledge the challenging circumstances associated with the parties’ continued litigation, we must conclude that the district court abused its discretion in denying Tonche her opportunity to be fully heard in response to Francis’s motion. For these reasons, we reverse and remand for the district court to consider Tonche’s evidence.

12. Because we reverse and remand on the above grounds, we express no opinion on Tonche’s argument that the district court erred in granting sole legal and physical custody to Francis.

IT IS HEREBY ORDERED:

1. The district court’s order is reversed and remanded.
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: 10/14/24

BY THE COURT



Judge Jennifer L. Frisch