STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1411

In re Elaine McDonnell Anderson, petitioner,
Respondent,

vs.

Jack Richard Anderson,
Appellant.

Filed April 30, 2012
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-FA-279957

Barbara R. Kueppers, Minneapolis, Minnesota (for respondent)

Jack R. Anderson, Excelsior, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.*

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The district court restricted Jack Anderson's parenting time with his two children because it found that his interaction emotionally endangered them. He appeals, arguing

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

that the district court abused its discretion by restricting his parenting time and by refusing to modify it until he satisfied three conditions bearing on his psychological and parental fitness. He also asserts that the district court judge acted on bias against him. Because the record reflects neither an abuse of discretion nor bias, we affirm.

FACTS

Jack Anderson and Elaine McDonnell (formerly Elaine McDonnell Anderson) ended their three-year marriage by dissolution on October 24, 2002. They had two children, R.A., born September 2000, and O.A., born May 2002, who are the subject of the parties' present custody contest.

The custody proceedings leading to this appeal are many. In September 2008, McDonnell moved the district court for temporary sole legal and physical custody. In December 2008, the parties entered into a stipulated custody agreement in which they would share legal custody and McDonnell gained sole physical custody. Anderson had parenting time after school twice weekly for up to four hours and six hours every weekend. In October 2009, the parties each moved the district court for sole legal custody. The district court found that McDonnell had demonstrated that Anderson's behavior endangered the children, and it granted her sole legal custody. Anderson appealed and this court affirmed. *Anderson v. Anderson*, No. A09-2367, 2011 WL 205312 (Minn. App. Jan. 25, 2011), *review denied* (Minn. Mar. 15, 2011).

The district court conducted an emergency hearing in February 2010 after the guardian ad litem expressed concerns for the children's well-being. The district court found that Anderson's behavior was emotionally harmful to them. It ordered that his

parenting time be supervised, including monitored telephone calls on Tuesdays and Thursdays.

Anderson moved the district court in March and April 2010 to modify his parenting time and to remove the guardian ad litem for bias. The district court denied both motions. On July 27, 2010, the district court responded to another motion from Anderson to modify his parenting time. It made numerous factual findings, including that Anderson's behavior was not in the best interests of the children. It found that his involvement endangered the children emotionally and declared that it had "grave concerns" for their safety and for McDonnell's. The district court restricted Anderson's parenting time to supervised visits every other Saturday for a three-hour period and limited his monitored phone contact to every Tuesday evening from 7:30 to 8:30. It also ordered Anderson to complete a psychological evaluation with Dr. Carole Manheim of Hennepin County Family Court Services. It held that Anderson could petition to modify his parenting time after he completed the evaluation and followed its recommendations, demonstrated nine months of consistent visitation without disparaging McDonnell or making unfulfilled promises to the children, and showed that he could appropriately parent.

In March 2011, Anderson moved to modify his parenting time. But his motion did not verify or even assert that he had satisfied the conditions of the July 2010 order. So the district court denied the motion without a hearing. On June 27, 2011, Anderson again moved to modify his parenting time, this time adding a psychological evaluation drafted by Dr. Howard Dickman. The district court again denied the motion without a hearing

because Anderson again failed to allege facts that would indicate that he had satisfied the conditions of the July 2010 order.

Anderson appealed to this court in August 2011, seeking review of both the July 2010 and June 2011 orders. McDonnell filed a motion to dismiss the appeal on the ground that Anderson failed to timely appeal the July 2010 order. This court denied her motion because the notice of filing that she sent Anderson in August 2010 incorrectly stated that the court's order was filed on July 29, 2010, instead of July 27, 2010. We do not revisit that decision, and this opinion therefore addresses Anderson's appeal of both the July 2010 and June 2011 orders.

D E C I S I O N

I

Anderson contends that the district court abused its discretion by restricting his parenting time in its July 2010 order. He makes five arguments: (1) that his parenting time should not be supervised; (2) that his parenting time should be at least 25 percent of the children's time; (3) that he should be allowed overnight parenting time; (4) that the district court failed to take the children's ages and relationship with him into consideration; and (5) that his phone communication with the children should not be restricted. But a district court has broad discretion in deciding parenting-time issues and will not be reversed absent an abuse of that discretion. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). The district court abuses its discretion when its findings are clearly erroneous or when it improperly applies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

We must decide whether the challenged restrictions on Anderson's parenting time reflect an abuse of discretion. A district court may restrict parenting time if it finds that an unrestricted parenting-time arrangement endangers the children's physical or emotional health or impairs their emotional development, or that the parent has "chronically and unreasonably failed to comply with court-ordered parenting time." *See* Minn. Stat. § 518.175, subd. 5 (2010). We have reviewed the record and the district court's thorough analysis. The district court received ample evidence that Anderson's parenting time endangered the children. We see no abuse of discretion in the July 2010 order. We are satisfied that the order and its conditions are consistent with the district court's objective to protect the children while still providing Anderson access to the children as he restores and maintains his parental relationship with them.

II

Anderson also argues that the district court abused its discretion by denying his motion to modify parenting time without an evidentiary hearing in its June 2011 order. Any modification requires a change in circumstances. Minn. Stat. § 518.175, subd. 5; *Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002). The June 2011 order answered Anderson's parenting-time modification motion, which he made without including evidence that he had complied with the conditions of the July 2010 order. A district court may condition the modification of parenting time on the successful completion of stated obligations. *See Moravick v. Moravick*, 461 N.W.2d 408, 409 (Minn. App. 1990) (noting broad discretion of district court in deciding parenting-time issues and discussing the modification of father's parenting-time rights made contingent

on counseling). Anderson produced a psychological evaluation that was completed by Dr. Dickman rather than by Dr. Manheim. He offered no evidence that he had sustained nine months of consistent visitation without disparaging McDonnell or making unmet promises to the children, and presented no proof that he could appropriately parent the children.

The only evidence of changed circumstances that Anderson offered in support of his motion was his assertion that McDonnell was being investigated for financial fraud. He claimed that a police report he included with his motion proved that she was endangering the children. But the police report does not support any of Anderson's parent-related allegations. The district court therefore acted within its discretion by declining to consider modifying Anderson's parenting time, with or without a hearing, until he provides evidence that he has satisfied the conditions in the July 2010 order.

III

Anderson also contends that the district court judge was biased against him. He did not raise this issue before the district court. We are limited to review issues argued before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We also observe that nothing in the record indicates bias.

Affirmed.