STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1815

In re the Matter of:
Mary Alice Hay, petitioner,
Respondent,

vs.

Sloan Renee King,
Appellant.

Filed April 26, 2011
Affirmed
Toussaint, Judge

Hennepin County District Court
File No. 27-FA-08-4765

Karim G. El-Ghazzawy, Jody M. Alholinna, El-Ghazzawy Law Offices, LLC, Minneapolis, Minnesota (for respondent)

M. Sue Wilson, James T. Williamson, M. Sue Wilson Law Offices, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

TOUSSAINT, Judge

Appellant Sloan Renee King, who lives in Arizona with her child, challenges a district court order requiring her to pay one-half of the expenses of having the child visit

respondent Mary Alice Hay, who was granted third-party visitation under Minn. Stat. § 257C.08 (2010), in Minnesota. Appellant argues that the district court did not have the authority to award visitation expenses or, in the alternative, that the district court failed to make adequate findings justifying such an award. Because the district court has the authority to award equitable expenses and because its findings were sufficient to justify the award, we affirm.

D E C I S I O N

This appeal stems from an amended district court order in a third-party visitation proceeding requiring appellant to pay one-half of the costs of transporting the child to Minnesota to effectuate the child's court-ordered visitation with respondent after appellant moved to Arizona with the child. In relevant part, the amended order provides:

> With respect to visits with [the child] in Minnesota, it is equitable to order the parties to equally share [the child's] airfare costs to and from Minnesota for court-ordered visits with [respondent]. It is in [the child's] best interests to continue to have a relationship with [respondent], and it is inequitable to require [respondent] to pay the entire cost of maintaining that relationship, especially when [appellant] unilaterally moved [the child] across the country knowing [respondent] had court-ordered visitation with [the child]. [Appellant] has demonstrated an ability to contribute to the cost of flying [the child] to and from Minnesota by her own frequent trips to and from Minnesota during the course of this proceeding.

On appeal, appellant argues that chapter 257C does not authorize the district court to order appellant to pay travel costs associated with the child's visitation with respondent, the travel-costs award is in the nature of child support and therefore not authorized under chapter 257C, and the district court did not make sufficient findings justifying the award.

I.

Appellant argues that the district court did not have the authority to order appellant to pay travel costs associated with respondent's visitation with the child. Appellant bases her argument on the fact that chapter 257C does not incorporate chapter 518, except in cases involving third-party or de facto custody proceedings. *See* Minn. Stat. § 257C.02(a) (2010) ("Chapters 256, 257, and 518 and sections 524.5-201 to 524.5-317 apply to third-party and de facto custody proceedings unless otherwise specified in this chapter."). She argues that because respondent withdrew her custody petition, the district court did not have the authority to consider chapter 518 in this action.

But the district court did not rely on chapter 518, or any other statutory authority, in ordering appellant to pay one-half of the costs of transporting the child to Minnesota for his visits with respondent. Instead, the district court made such an order because it considered it "inequitable" not to do so, given the circumstances of appellant's departure to Arizona, and that it was in the child's best interests to continue to have a relationship with respondent.

Appellant argues that "because the concept of third party court-ordered visitation does not exist in common law, but is instead a legislative creation, there is . . . no basis in common law for the court to require appellant to pay any costs associated with respondent's visitation." But we have commented that the "lack of statutory authority explicitly allowing conditional custody awards does not preclude such an award when it is in the child's best interest." *LaChapelle v. Mitten*, 607 N.W.2d 151, 162-63 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). We have also recognized that a

district court may act in a manner contrary to an otherwise applicable statute if doing so is necessary to preserve the child's best interests. *In re Child of E.V.*, 634 N.W.2d 443, 449 (Minn. App. 2001) (commenting on a court's "inherent power to order a statutorily prohibited remedy in the best interests of the child"); *see also Kimmel v. Kimmel*, 392 N.W.2d 904, 908 (Minn. App. 1986) (holding that the court had equitable power to disregard statutory procedure when the child's welfare was in jeopardy), *review denied* (Minn. Oct. 29, 1986).

With regard to visitation expenses specifically, in *LaChapelle* we addressed a situation where the mother moved with the child to Michigan and litigation followed regarding, among other things, the district court's apportionment of the costs of transporting the child to Minnesota for visitation awarded to a Minnesota resident. 607 N.W.2d 157-58. In addressing the mother's argument that "the trial court abused its discretion in requiring her to pay costs associated with transporting [the child] to Minnesota every other month for visitation," we stated that the "trial court's discretion in deciding visitation questions is extensive and will not be reversed absent an abuse of discretion," and we saw no abuse of discretion in the district court's apportionment of the visitation expenses. *Id.* at 165.

The district court "shall" grant a third party's visitation petition if it finds, among other things, that "visitation rights would be in the best interests of the child." Minn. Stat. § 257C.08, subd. 4(1). Having found that continued visitation with respondent was in the child's best interests, the district court had limited, if any, discretion to deny the petition. *See* Minn. Stat. § 645.44, subd. 16 (2010) ("'Shall' is mandatory."). To affirm

the award of visitation rights that the statute states must be granted—and which is not challenged on appeal—while simultaneously ruling that the district court lacked the authority to apportion the expenses necessarily incurred in effectuating that visitation would require reading Minn. Stat. § 257C.08, subd. 4, as precluding the district court from acting in the child's best interests. Such a reading is inconsistent with the district court's common-law authority to grant equitable relief "as the facts in each particular case and the ends of justice may require," *Johnston v. Johnston*, 280 Minn. 81, 86, 158 N.W.2d 249, 254 (1968), as well as the specific authority regarding the apportionment of visitation expenses expressed in *LaChapelle*.

We recognize that *LaChapelle* involved visitation with persons who were either a biological parent of the child or had been granted joint legal custody of the child and that in the present case respondent is neither a biological parent nor legal custodian of the child. *See* 607 N.W.2d at 158. But this distinction has no bearing on the propriety of apportioning visitation expense. We also note that *LaChapelle* was decided before the enactment of chapter 257C. 2002 Minn. Laws ch. 304, §§ 1-6, 13, at 428-36, 444. But statutory law is presumed to be consistent with the common law. *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 377 (Minn. 1990). "If statutory enactment is to abrogate common law, the abrogation must be by express wording or necessary implication." *Id.* at 377-78. Because appellant has not shown that anything in chapter 257C expressly or necessarily abrogates the common-law equitable authority of the district court to act in the best interests of the child, we conclude that the district court retains this authority, even in the absence of an express statutory grant of such authority.

Appellant also argues that the district court did not have the authority to award visitation expenses in the present case because "allocation of travel costs associated with respondent's visitation is in the nature of child support . . . ." The cases cited by appellant—*Ballard v. Wold*, 486 N.W.2d 161 (Minn. App. 1992), and *Kellen v. Kellen*, 367 N.W.2d 648 (Minn. App. 1985)—stand for the principle that a district court may adjust child support to cover the cost of visitation expenses. But these cases do not stand for the proposition that an allocation of visitation expenses is an allocation of child support. Appellant also relies on a number of unpublished decisions to support her argument. But unpublished opinions are not binding precedent and therefore are of limited value in deciding an appeal. *See* Minn. Stat. § 480A.08, subd. 3(c) (2010) (stating that "[u]npublished opinions of the court of appeals are not precedential"). Appellant's argument that the district court's order is tantamount to burdening her with an impermissible child-support obligation is therefore unavailing.

II.

A district court has extensive discretion in deciding visitation questions, and a reviewing court will not reverse a district court's resolution of such questions absent an abuse of that discretion. *Al-Zouhayli v. Al-Zouhayli*, 486 N.W.2d 10, 12 (Minn. App. 1992). Appellant's argument that the district court failed to make sufficient findings to support apportionment of the travel expenses centers on her allegation that "the trial court failed to address the financial hardship it was placing on appellant." As such, appellant argues that the district court failed to articulate findings indicating the rationale for its decision.

Contrary to appellant's assertions, the district court's amended findings do indicate the rationale for the decision to divide the child's travel expenses. The district court found that (1) it was in the child's best interests to continue to have a relationship with respondent, (2) appellant "unilaterally" moved to Arizona with the child despite knowing that respondent had been awarded court-ordered visitation and in defiance of the district court's request not to do so, (3) appellant has demonstrated an ability to pay for transportation, and (4) it would be inequitable to place the entire cost of maintaining the relationship on respondent. On this record, the district court did not abuse its discretion by ordering appellant to contribute to the visitation expenses associated with transporting the child to Minnesota for his visits with respondent.

Affirmed.