STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0497

In Re the Marriage of:
Vanessa Boroday, petitioner,
Respondent,

vs.

Ivan Ivanovich Lavrusik,
Appellant.

Filed December 24, 2012
Affirmed
Collins, Judge[*]

Scott County District Court
File No. 70-FA-10-15868

John Clark, Clark Legal Counsel LLC, Burnsville, Minnesota (for respondent)

Sean M. Linnan, Linnan & Associates, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins, Judge.

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

COLLINS, Judge

Appellant challenges two provisions of the order modifying his parenting time, arguing that (1) the district court lacked authority to prohibit him from engaging in

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

certain conduct during supervised visits with his minor child, and (2) the district court violated his right to free speech by prohibiting him from interacting with certain individuals or disseminating specific information about the case. We affirm.

FACTS

Appellant Ivan Lavrusik and respondent Vanessa Boroday are the parents of C.L. Based on the parties' agreement entered on April 13, 2011, by judgment and decree filed May 5, 2011 the district court dissolved the parties' marriage, granted Boroday sole physical custody of C.L., and ordered joint legal custody. The district court limited Lavrusik's parenting time to one weekly two-hour session subject to a variety of conditions, including that Lavrusik (1) have no contact with Boroday, consistent with an active order for protection; (2) cooperate with C.L.'s therapist; (3) remove Internet postings regarding Boroday, her attorney, and the guardian-ad-litem; and (4) make no similar Internet postings in the future.

On June 1, 2011, at the recommendation of C.L.'s therapist, the district court issued an emergency ex-parte order requiring that Lavrusik's parenting time be supervised. The therapist asserted that supervision was in C.L.'s best interest, noting that unsupervised visits were aggravating the trauma to C.L. stemming from her parents' divorce and contributing to symptoms of parental alienation between Boroday and C.L.

The district court reviewed the need for supervision on June 24 and September 30, 2011. Each time, the district court found that the need for supervision remained and

ordered both parties to continue cooperating with C.L.'s therapist.[1] Following a third review hearing, on December 16, 2011, the district court imposed additional conditions. Based on previous concerns documented in the record, the district court prohibited Lavrusik from "drawing on or making any type of markings" on C.L. during his supervised visits. The district court also prohibited Lavrusik from having "any type of contact" with the guardian-ad-litem or Boroday's attorney, disseminating their contact information, or posting comments about them on the Internet; limited Lavrusik's personal means of communication with Boroday's attorney or her law firm to surface mail; and required that Lavrusik's communication with C.L.'s therapist be made through counsel, unless specifically instructed otherwise. This appeal followed.

D E C I S I O N

I.

Lavrusik contends that the district court lacked authority to prohibit him from drawing on his daughter's body during his supervised parenting time. A district court has broad discretion to resolve parenting-time disputes, and we will reverse only when the district court has abused its discretion. *Olson v. Olson*, 534 N.W.2d 547, 500 (Minn. 1995).

Because this is a modification-of-parenting-time matter, it is guided by a best-interests-of-the-child analysis. *See* Minn. Stat. § 518.175, subd. 5 (2010). By definition, parenting time has the explicit goal of "enabl[ing] the child and the parent to maintain a

[1] We note that the various district court orders contained other provisions not relevant to this appeal.

child to parent relationship that will be in the best interests of the child." *Id.*, subd. 1(a) (2010). Actions that "allow a child to maintain a two parent relationship" are in the best interests of the child. *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984); *review denied* (Minn. June 12, 1984).

A district court's authority to set parenting-time conditions derives from Minn. Stat. § 518.175, subd. 1(a), which provides that if, after a hearing, a district court concludes that unsupervised interaction between a minor child and one parent is impairing the child's emotional development, the district court "shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant." Lavrusik contends that this statute allows the district court only two choices—either the district court can restrict his supervised parenting time with C.L. as to time, place, and duration, or it can deny parenting time altogether. He argues that "the statute does not empower the court to delineate specific appropriate or inappropriate action during parenting time." We disagree.

The district court "has broad discretion to determine what [is in a child's] best interests [] in the area of visitation. *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984). When applying a statute, we look to its plain meaning and, if unambiguous, interpret the statute's text according to its plain language. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010). Under certain circumstances, the statute mandates time, place, and supervision restrictions and permits the denial of parenting time. Minn. Stat. § 518.175, subd. 1(a). Lavrusik disputes the district court's authority to prohibit him from drawing on his daughter during supervised visits. But, supported by the record,

the district court found the need to impose supervision as a means of restricting Lavrusik's parenting time with C.L. Supervision is defined as, "[t]he act of managing, directing, or overseeing persons or projects." *Black's Law Dictionary* 1576 (9th ed. 2009). When applying this definition, we consider the statute's goal of "allow[ing] a child to maintain a two parent relationship" while simultaneously determining what is in the child's best interests. *See* Minn. Stat. § 518.175, subd. 5; *Clark*, 346 N.W.2d at 385. We conclude that the prohibition imposed by the district court falls within the meaning of supervision, consistent with C.L.'s best interests.

The record establishes that following the hearing on December 16, 2011, the district court reasonably determined that unsupervised parenting time between Lavrusik and C.L. was "likely to endanger the child's physical or emotional health or impair . . . emotional development." *See* Minn. Stat. § 518.175, subd. 1(a). The district court was presented with evidence that Lavrusik's practice of drawing on C.L. was impacting her emotional well-being. The district court considered (1) the guardian ad litem's recommendation that Lavrusik discontinue his practice of drawing on C.L.; (2) a letter from C.L.'s therapist outlining her concern that "given the totality of this case and [its] history . . . that some of this activity is inappropriate" and raised "big red flags";[2] and (3) a letter from Boroday detailing her concerns regarding the practice and noting C.L.'s irritability after such instances. There were also prior concerns that visits with Lavrusik

[2] Based on these concerns, the supervision center was instructed to prevent Lavrusik from drawing on C.L.

contributed to parental alienation between Boroday and C.L., and exacerbated C.L.'s emotional trauma due to her parents'divorce.

We conclude that the district court properly harmonized its ability to condition Lavrusik's parenting time by requiring supervision, while furthering C.L.'s best interests and allowing her to maintain a relationship with both parents. On this record, we conclude that the district court did not abuse its discretion by specifying conditions of supervised parenting time.

II.

Lavrusik challenges the provisions of the district court's order preventing him from contacting certain individuals, disseminating their contact information, or posting comments on the Internet about them. Lavrusik contends that such prohibitions abridge his right of free speech. But on April 13, 2011, Lavrusik stipulated to similarly stated free-speech restrictions. Moreover, we conclude that this issue is time barred and waived.

The May 5, 2011 judgment and decree, consistent with the parties' agreement, contained prohibitions substantially the same in intent and effect as those Lavrusik now challenges on appeal. The time limit to appeal a judgment is 60 days from its entry. Minn. R. Civ. App. P. 104.01, subd. 1. Under the circumstances presented, we are without authority to extend this deadline. Minn. R. Civ. App. P. 126.02. An appealable order is final when the deadline to appeal has expired, even if the order is wrong in certain respects. *Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370, 147 N.W.2d 100, 103

(1966). In July 2011, the judgment became final, and Lavrusik's right to appeal its provisions expired. Therefore, we will not review those provisions of the judgment here.

Affirmed.