STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1154

In re the Marriage of:
Stacy Lynn Blair, n/k/a Stacy Lynn Meyer, petitioner,
Respondent,

vs.

Michael Jeffrey Blair, a/k/a Max Blair,
Appellant.

Filed March 11, 2013
Affirmed
Peterson, Judge

Dakota County District Court
File No. 19-F7-07-015759

Mary L. Hahn, Jacqueline A. Dorsey, Hvistendahl, Moersch, Dorsey & Hahn, P.A., Northfield, Minnesota (for respondent)

Patricia A. O'Gorman, Cottage Grove, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

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

PETERSON, Judge

In this parenting-time dispute, appellant-father argues that the district court (a) erred in ruling that father lacked standing to move to modify parenting time; (b) incorrectly applied the endangerment standard to appellant's motion to modify

parenting time; and (c) erred when it ruled that granting father's motion would constitute a restriction of respondent-mother's parenting time. Because we agree with the district court that granting father's motion would constitute a restriction of mother's parenting time, and the district court did not err in finding that there is no endangerment that would permit a restriction of mother's parenting time, we affirm.

FACTS

The marriage of appellant-father Michael Jeffrey Blair and respondent-mother Stacy Lynn Blair, n/k/a Stacy Lynn Meyer, was dissolved in 2008 by a judgment and decree that incorporated the parties' marital termination agreement. The dissolution judgment awarded the parties joint legal and joint physical custody of their two children. The parenting plan in the dissolution judgment acknowledges that the children's needs will change as the children grow older and contains the following provision:

> [Father] and [mother] may, from time to time, experiment with different schedules in order to try to find an exchange schedule that does not unduly disrupt the children's daily schedule, but that will still allow for significant parenting involvement by each of them. They will follow an initial parenting schedule as follows based upon [father] living in Plymouth until school starts in the fall when the return time for the children will be Sunday at 5:00 PM, and the Wednesdays will not be overnight. When [father] moves to Ramsey or Washington County and [mother] resides in Stillwater, [father] will have every Wednesday overnight.

The initial parenting schedule provides for the children to spend every other weekend and Wednesday nights with father.

The parenting plan also contains the following provisions:

> 4.25 Duration of the Parenting Plan. [Father] and [mother] understand this Parenting Plan will be in effect until they make changes in the Plan, and the court subsequently issues a new court order reflecting the new changes. They agree that they will make any changes to the Parenting Plan in writing, and they will each date and sign them. Until their divorce decree is amended to reflect written changes, they realize agreements made in this Parenting Plan will legally govern any dispute.
>
> 4.26 Future Conflict Resolution. In the future, the parties agree to be flexible and cooperative, and to communicate with each other in order to meet the changing needs of their children. When they cannot agree about the meaning of a part of the Parenting Plan, or if a significant change (such as a move or remarriage) causes conflict, they will make a good faith effort to resolve their differences through mediation, *before petitioning the court*. Should they be unable to resolve their differences in mediation, they will select and share the cost of a neutral child expert who will meet with the children and with each parent. Then, the neutral expert will present a plan in mediation that will allow the parents to overcome their differences. The costs of the neutral shall be shared and the neutral may not be called as a witness in any court proceeding. (Emphasis added.)

After moving to Washington County in May 2010, father moved to modify the parenting-time schedule to a 50/50 parenting-time split. The parties participated in mediation and agreed to the appointment of a parenting-time evaluator. The parties agreed to waive confidentiality and that the evaluator could be called as a witness and testify at any hearing. The evaluator recommended that the parties share parenting time equally.

Mother did not agree to the recommended schedule, and father moved the district court to adopt the evaluator's recommendations. The district court found:

> 4. Despite the "joint physical custody" label, parenting time under the parenting plan is not equal, with the children's primary residence being with Mother. Said parenting time, as originally ordered, resembles a "typical" sole physical custody schedule with Father having every other weekend from Friday until Sunday and Wednesday evenings. The parties' comprehensive parenting plan states that once Father moved to Ramsey or Washington County he would have Wednesday overnights rather than just evenings. This change did in fact occur.
>
> 5. . . . [U]nder [the conflict-resolution provision in] the stipulated Parenting Plan, the Parenting Plan can only be modified if there is disagreement about its meaning or there is a significant change that causes conflict.
>
> 6. The Court now finds that Father's requested relief, a 50/50 parenting time split, is not the product of a disagreement about the meaning of the parties' Parenting Plan, but rather a request to change the Parenting Plan.
>
> 7. It appears that Father's motion is based upon his move to Washington County, which is the type of significant change contemplated in the Parenting Plan. However, this change, and its effect on Father's visitation schedule, is specifically addressed in paragraph 4.4 of the Parenting Plan. Thus, Father's move to Washington County does not rise to the level of a significant change in this instance.

The district court determined that, under the stipulated parenting plan, father lacked standing to bring his modification motion. The court determined further that, even if father had standing, his requested relief would change the children's primary residence, and, because the parties did not agree to use the "best interests of the children" standard when requesting a modification that would change the children's primary residence, father must meet the more stringent "endangerment" standard. The district court also determined that father must meet the endangerment standard because father's proposed

parenting schedule would restrict mother's parenting time. Finally, the court determined that father failed to make a prima facie showing of endangerment. Consequently, the district court denied father's modification motion.

Father moved for amended findings. The district court interpreted the motion as one for reconsideration and denied it as procedurally defective. The district court also denied the motion on the basis that, even assuming that the motion was one for amended findings, the record supported all of the findings in the previous order.

D E C I S I O N

The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of discretion. *Hagen v. Schirmers*, 783 N.W.2d 212, 215 (Minn. App. 2010). A district court abuses its discretion by making findings that are not supported by the evidence or by improperly applying the law. *Id.* The district court's determination as to the existence of a prima facie case for the modification or restriction of parenting time is reviewed for an abuse of discretion. *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011). But whether the district court properly determined the need for an evidentiary hearing is subject to de novo review. *Id.* Determining the proper statutory standard to apply is also subject to de novo review. *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993).

I.

Father argues that the district court erred in determining that father lacked standing to move to modify parenting time. We agree. The district court reasoned that, under the parenting plan, there could be a modification only if there is a disagreement about the

meaning of the parenting plan or if a significant change causes conflict. The court determined that father's motion, which was based on father's move to Washington County, was a request to change the parenting plan, rather than to resolve a disagreement about the meaning of the plan, and father's move, which was specifically addressed in the parenting plan, did not rise to the level of a significant change. Therefore, the court concluded, father's motion did not satisfy either of the conditions for modification under the parenting plan, and father did not have standing to bring the motion.

We disagree with the district court's determination that, under the parenting plan, there can be a modification only if there is a disagreement about the meaning of the parenting plan or if a significant change causes conflict. The plain language of paragraph 4.26 in the parenting plan does not limit the circumstances in which the parties can seek a modification of the parenting plan; it simply describes the steps that the parties will take "before petitioning the court" "[w]hen they cannot agree about the meaning of a part of the Parenting Plan, or if a significant change (such as a move or remarriage) causes conflict." Consequently, paragraph 4.26 did not limit father's standing to bring his motion. But the district court's error with respect to standing does not require that we reverse the denial of father's modification motion because, in spite of its determination that father lacked standing, the district court considered the merits of father's motion.

II.

Father argues that the district court incorrectly applied the endangerment standard to his motion to modify parenting time. The district court stated two separate reasons why the endangerment standard applies; (1) father's requested relief would change the

children's primary residence, and the parties did not agree to use the "best interests of the children" standard when requesting a modification that would change the children's primary residence, and (2) father's requested relief would restrict mother's parenting time.

Both of these reasons are based on the parenting-time statute, which states:

> If modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provided in section 631.52,[1] the court may not restrict parenting time unless it finds that:
>
> (1) parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development; or
>
> (2) the parent has chronically and unreasonably failed to comply with court-ordered parenting time.[2]

Minn. Stat. § 518.175, subd. 5 (2012).

The district court determined that father's requested relief would change the children's primary residence. The court recognized that, under the parenting-plan statute, parents "may agree . . . to apply the best interests standard in section 257.025 or 518.17 . . . for deciding a motion for modification that would change the child's primary residence." Minn. Stat. § 518.1705, subd. 9(b) (2012). But the court determined that the parties did not agree to use the best-interests standard when requesting a modification

[1] Section 631.52 addresses the effect of certain criminal convictions on custody and parenting-time rights. It is not relevant to this proceeding.

[2] There is no claim that either party has failed to comply with court-ordered parenting time.

that would change the children's primary residence and, therefore, father must meet the endangerment standard to obtain his requested relief.

Citing Minn. Stat. § 518.18(d) (2012), father argues that the district court erred in determining that the endangerment standard applies to his motion. Father contends that because Minn. Stat. § 518.18(d) provides that the endangerment standard applies to a motion to modify "a parenting plan provision which specifies the child's primary residence," the endangerment standard does not apply to his motion because the parties' parenting plan does not contain a provision that specifies the children's primary residence. But, unlike section 518.18(d), section 518.175, subd. 5, does not refer to modifications that would change "a parenting plan provision which specifies the child's primary residence"; it refers to modifications that would change "the child's primary residence." Because father does not cite any authority that indicates that, when used in these two statutes, the legislature intended these two different phrases to have the same meaning, and because the district court found a separate, independent reason why the endangerment standard applies to father's motion, we will not attempt to resolve the differences between these two statutes. *Cf. Vlahos v. R & I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 677 n.4 (Minn. 2004) (stating that "[t]he legislature would not have employed different terms in different subdivisions of the statute if it had intended those subdivisions to have the same effect"); *Apple Valley Red-E-Mix, Inc. v. State by Dept. of Pub. Safety*, 352 N.W.2d 402, 404 (Minn. 1984) (stating that in pari materia is a canon of statutory construction which provides that statutes relating to the same person or thing or having a common purpose should be construed together); 2A Norman J. Singer, Statutes

and Statutory Construction § 46.06 (6th ed. 2000) (stating that "when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended").

The district court's separate reason why the endangerment standard applies to father's motion is that father's requested relief would restrict mother's parenting time, and, under Minn. Stat. § 518.175, subd. 5, "the court may not restrict parenting time unless it finds that . . . parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development." Father does not contend that mother's parenting time is likely to endanger the children, but he argues that the endangerment standard does not apply to his motion because his requested relief would not restrict mother's parenting time.

There is not a bright line that indicates when a parenting-time order restricts parenting time. But this court has determined that a motion to modify parenting time from a 50-50 split to one that granted mother parenting time during the school year and at least two weeks during the summer involved a great enough alteration of parenting time that it was governed by the endangerment standard. *Lutzi v. Lutzi*, 485 N.W.2d 311, 315 (Minn. App. 1992); *see also Clark v. Clark*, 346 N.W.2d 383, 385-86 (Minn. App. 1984) (concluding that endangerment standard applied to reduction of parenting time from 14 weeks to five and one-half weeks during four-year period), *review denied* (Minn. June 12, 1984). Mother currently has parenting time with the children about 261 days per year, and father's proposal would reduce it by about 80 days per year. Under *Lutzi*, father's requested alteration of mother's parenting time is great enough that it would constitute a

restriction of parenting time and, therefore, the endangerment standard applies to father's motion. Consequently, because father does not contend that mother's parenting time is likely to endanger the children, the district court did not abuse its discretion in denying father's motion.

Affirmed.