STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1670

Kristina Hacker Tompach, petitioner,
Appellant,

vs.

Paul Christopher Tompach,
Respondent.

Filed July 22, 2013
Reversed and remanded
Stauber, Judge

Hennepin County District Court
File No. 27FA096820

Kay Nord Hunt, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota; and

Eric J. Braaten, Gena A. Braaten, Braaten & Braaten, P.A., Chaska, Minnesota (for appellant)

Joani C. Moberg, Henschel Moberg, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Toussaint, Judge.[*]

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

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

STAUBER, Judge

On appeal from the district court's denial of appellant-mother's motion to relocate with the parties' children to Wisconsin, appellant argues that the district court abused its discretion by denying her motion to relocate because it failed to consider the best-interest factors set forth in the relocation statute. Because the district court failed to consider the best-interest factors set forth in Minn. Stat. § 518.175 (2012), which is required upon a motion to relocate, we reverse and remand for consideration of the best-interest factors.

FACTS

The marriage between appellant Kristina Hacker Tompach and respondent Paul Christopher Tompach was dissolved in February 2011. The parties had two children during the marriage, a daughter born June 23, 2003, and a son born February 1, 2007. The parties had earlier stipulated to a parenting plan, under which the parties would share joint-legal custody, with appellant granted primary residence and respondent granted reasonable parenting time. The parenting plan was incorporated into the subsequent judgment and decree, and further provides that "[n]either party shall move the residence of the minor children of the parties from Minnesota except upon order of the court or with the consent of the other party."

Also at the time of the dissolution, appellant requested that she be allowed to relocate to Madison, Wisconsin, with the children. Appellant claimed that the primary reason for the relocation was to be near her extended family, that the cost-of-living was more affordable in Madison, and that she could find good employment there. At trial,

appellant also testified about a possible romance in Madison and that relocation there would facilitate that relationship.

The district court found that "it is not in the children's best interests to grant [appellant's] request to relocate the children's residence to Wisconsin." The court found that (1) a move to Wisconsin will hinder the children's relationship with respondent; (2) the children would be impacted emotionally and developmentally by a move away from their father; and (3) appellant was unable to demonstrate that her financial circumstances would be better in Wisconsin or that she would be able to find employment that would benefit the family. The court found that although appellant has familial support in Wisconsin, "[i]t is more important for the children to remain in Minnesota and maintain a greater relationship with [respondent]." Thus, in the order dissolving the marriage, the district court denied appellant's motion to relocate the children to Wisconsin. That decision was not appealed.

After the parties' marriage was dissolved, appellant became engaged and was scheduled to be married in July 2012. In light of the pending marriage, appellant submitted to the parties' parenting consultant her request to modify the parties' parenting time schedule on the basis of her intent to move to Madison. The parenting consultant denied the request, and appellant subsequently moved the district court for an order reversing or modifying the parenting consultant's decision.

The district court found that "[w]hile her motion does not expressly state it, [appellant] is seeking Court permission to move the children's primary residence to Madison." But the court found that the "only thing that has changed since [appellant] lost

this request following trial is that she has become engaged to a man who lives in Madison. This is not enough." Thus, the district court denied appellant's motion because "[t]here is no substantial change in circumstances from those present at the time of the February 2011 decree to support an alternate outcome to a request to move the children's residence out of state." This appeal followed.

D E C I S I O N

This court's review of a removal decision "is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). This court will set aside a district court's findings of fact only if clearly erroneous. *Id.* But the interpretation of a statute is a question of law that is reviewed de novo. *Id.* at 282.

A parent who has physical custody of a child subject to a parenting time order may not remove the child to another state except upon a court order or with the consent of the noncustodial parent. Minn. Stat. § 518.175, subd. 3(a) (2012). If the move is an attempt to defeat parenting time, the district court shall not permit the move. *Id.* In determining whether to permit a parent to change her children's residence to another state when the other parent opposes the move, the district court must base its decision on the best interests of the children by assessing eight statutory factors. Minn. Stat. § 518.175, subd. 3(b) (2012). The parent seeking to remove the children from Minnesota bears the burden of proof unless the moving party has been a victim of domestic abuse by the other parent. *Id.*, subd. 3(c) (2012).

Appellant argues that the district court abused its discretion by failing to address the best interest factors set forth in section 518.175, subdivision 3(b). We agree. The relocation statute states that the district court "shall" consider the best-interest factors when considering a request to relocate. Minn. Stat. § 518.175, subd. 3(b). And, it is well settled that the word "shall" is mandatory. Minn. Stat. § 645.44, subd. 16 (2012).

Here, in denying appellant's motion to relocate, the district court failed to consider the best-interest factors set forth in section 518.175, subdivision 3(b), as of the time of the second request to relocate. By not addressing the statutory best-interest factors, the district court abused its discretion in denying appellant's motion. While we acknowledge that the district court did find that nothing had changed in the 17 months following the denial of appellant's earlier relocation motion, the plain language of the relocation statute requires an analysis of the best-interest factors any time a party files a motion to relocate. Accordingly, we reverse and remand the matter for consideration of the best-interest factors based on the record as of the time the district court filed its July 2012 order denying appellant's motion to relocate.

Reversed and remanded.