STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0097

In re the Marriage of:
David Allen Anderson, petitioner,
Respondent,

vs.

Lisa Marie Syverson, f/k/a Lisa Marie Anderson,
Appellant.

Filed December 30, 2013
Affirmed in part, reversed in part, and remanded
Klaphake, Judge[*]

Clearwater County District Court
File No. 15-FA-11-289

Ronald S. Cayko, Bemidji, Minnesota (for respondent)

Thomas T. Smith, Smith Law Firm, P.A., Bemidji, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Chutich, Judge; and Klaphake, 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

KLAPHAKE, Judge

Appellant Lisa Marie Syverson (f/k/a Lisa Marie Anderson) argues that the district court abused its discretion by awarding joint legal and physical custody of the parties' four children, and by ordering her to pay costs previously waived because of her in forma pauperis status. Because the district court did not abuse its discretion by ordering joint legal custody or by ordering appellant to pay costs previously waived, we affirm in part. But because the district court's analysis of the custody factors does not sufficiently explain the award of joint physical custody, we reverse in part and remand for further analysis.

D E C I S I O N

Custody Determination

The district court has broad discretion in making child custody determinations. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). Our review is limited to determining whether the district court abused its discretion by making findings unsupported by the record or by improperly applying the law. *McCabe v. McCabe*, 430 N.W.2d 870, 872 (Minn. App. 1988), *review denied* (Minn. Dec. 30, 1988). Findings of fact will be sustained unless they are clearly erroneous. *Id.*

When determining child custody, the district court must consider "the best interests of the child," which includes consideration of all relevant factors, including 13 statutory factors. Minn. Stat. § 518.17, subd. 1(a) (2012). The district court must "make detailed findings on each of the factors," and must "explain how the factors led to its

conclusions and to the determination of the best interests of the child." *Id.* The district court must not use one factor to the exclusion of others. *Id.*

Where a party seeks joint legal or joint physical custody, the court must consider four additional factors. Minn. Stat. § 518.17, subd. 2 (2012). Once joint legal custody has been requested by either party, the district court applies a rebuttable presumption that joint legal custody is in the best interests of the child. *Id.* This presumption does not exist with respect to joint physical custody. *See id.*

Appellant first argues that several of the district court findings are clearly erroneous. The district court made extensive and detailed findings on each of the statutory factors. These findings are supported by the record and not clearly erroneous. Appellant argues that the evidence could support different findings. But whether additional or different findings could be made does not make the existing findings clearly erroneous. *See McCabe*, 430 N.W.2d at 873 (concluding that this court must defer to the district court where the evidence could support multiple determinations).

Next, appellant argues that the district court erred by disregarding the factor requiring consideration of the children's preferences. The district court should consider "the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference." Minn. Stat. § 518.17, subd. 1(a)(2). The district court clearly considered the preferences of the children. It simply concluded that their preferences were not reasonable or mature. This is largely a credibility determination, which we will not disturb on appeal. *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004)

("[Reviewing courts] neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.").

Appellant also argues that the district court misapplied two of the statutory factors. She argues that the district court misinterpreted the factor requiring consideration of "the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child" when it considered the extent to which she has actively promoted the other parent's bond with the children. *See* Minn. Stat. § 518.17, subd. 1(a)(13). She argues that the district court's analysis of "whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing" incorrectly addresses only sole legal custody and should consider only "a history of appellant making poor decisions as a custodian of the children." *See id.* subd. 2(c).

Appellant's arguments as to these factors are unsupported by legal citation or the statutory language. Subdivision 1(a)(13) requires consideration of the extent to which a parent encourages *and* permits contact by the other parent. And there is nothing in the language of subdivision 2(c) limiting the district court to consideration of only past instances of poor parental conduct when determining the best interests of the child.

Finally, appellant argues that the district court "repeatedly reiterated its elevation of the relationship between the father and the children as its exclusive criterion in determining custody." She argues that the record does not support the district court's conclusion because "the balance of the statutory factors weigh strongly in favor of appellant being awarded custody of the children."

When making a custody determination, the district court must consider all statutory factors and "explain how the factors led to its conclusions and to the determination of the best interests of the child." *Id.* subd. 1(a). The district court "may not use one factor to the exclusion of all others." *Id.* Although we conclude that the district court's analysis as to each factor was supported by the record and correctly addressed the statutory language, the district court does not explain how examination of the factors as a whole supports the ultimate conclusion that joint physical custody was in the best interest of the children.

The district court's analysis repeatedly emphasized the importance of the relationship between respondent and the children, and in particular the need to repair the strained relationship between respondent and the oldest child. This is not an improper consideration, but what is absent here is how this factor is balanced against the other factors which point to a different result.

With respect to the joint custody factors in particular, the district court found that the parties had difficulty cooperating in raising their children and did not have clear strategies in place to resolve conflicts. But, it concluded that any difficulties in cooperating were "neither substantial nor insurmountable, and the benefit to the children in awarding joint custody greatly outweighs any such insufficiencies." It further found that appellant would "try to think about the long-term impact of [a parenting] decision on the children and make her decisions from that vantage point." The district court "note[d] no apparent lack of cooperation on the part of [respondent] to effectively co-parent the

children," but did not hear any testimony from respondent on the dispute resolution factor.

The district court's findings on these factors leave a number of questions unanswered. The district court does not explain how the benefits of joint physical custody would lead to cooperation between the parties, or how appellant's focus on the long-term impact of parenting decisions on the children will help resolve conflicts, especially if appellant believes that her opinion on what is best for the children is more valid than respondent's. In particular, we are concerned about whether the parties are equipped to resolve the conflict with respect to whether appellant will continue to homeschool the children. Just because parents are "equally qualified to raise the children does not mean that they are qualified to raise them jointly." *Wopata v. Wopata*, 498 N.W.2d 478, 483 (Minn. App. 1993).

The district court found that sole custody by appellant would be detrimental to the extent that "granting sole authority of [the eldest child's] upbringing to [appellant] would only serve to further divide the vital relationship between [respondent] and the child, a relationship that is in desperate need of repair." But again, the district court did not explain or analyze how joint physical custody would repair the damaged relationship.

Joint legal custody

Appellant also appeals the district court's award of joint legal custody. Although we remand for reconsideration of joint physical custody, we affirm as to joint legal custody. The record supports that both parents are willing and capable to exercise legal authority over the children, and that this reflects the parents' relationship with the

children prior to the dissolution of their marriage. Given the presumption that joint legal custody is in the best interests of the children, we defer to the district court's determination on this issue. *See* Minn. Stat. § 518.17, subd. 2.

Fees and costs

Appellant argues that the district court erred when it ordered her to pay $1,150 in fees and costs previously waived due to her in forma pauperis (IFP) status. Minn. Stat. § 563.01, subd. 3(c) (2012) allows the district court to order payment of all or a portion of fees and costs previously waived if "at or following commencement of the action, the party is or becomes able to pay all or a portion of the fees, costs, and security for costs." The district court has broad discretion in determining whether expenses should be paid under the IFP statute. *Thompson v. St. Mary's Hosp. of Duluth*, 306 N.W.2d 560, 563 (Minn. 1981).

The district court found that appellant was able to pay certain fees and costs following the award of the homestead property and resulting home equity. It found that this would not constitute a significant financial hardship, especially as there is no requirement that she pay the entire amount in a lump sum. Appellant argues that this finding is not supported by the record, as her circumstances changed little from the commencement of the proceedings until the date of the district court's order. She argues that the district court's order is arbitrary and capricious given the lack of notice or opportunity to address whether she continues to qualify for IFP status.

The district court's finding that appellant's circumstances had changed due to the award of home equity is supported by the record. Although appellant disputes the extent

that this change in circumstances makes her able to pay the assessed costs and fees, she does not dispute that the changed circumstance occurred. And the district court did not misapply the law, which allows the district court to order payment "at or following commencement of the action" without any requirement of notice or evidentiary hearing. *See* Minn. Stat. § 563.01, subd. 3(c).

Having overseen the property division and support portions of this proceeding, the district court was in the best position to make the determination that appellant became able to pay all or a portion of the fees. Appellant does not present a compelling argument for this court to interfere in the district court's exercise of discretion on this issue.

Because the district court did not abuse its discretion by ordering joint legal custody or by ordering appellant to pay costs previously waived, we affirm in part. But because the district court's analysis did not sufficiently address the findings with respect to joint physical custody, we reverse and remand for further analysis and, at the discretion of the district court, further proceedings to take into consideration any relevant change in circumstances since the prior hearing.

Affirmed in part, reversed in part, and remanded.