STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1196

In the Marriage of:

Phourywathana Cardinale, petitioner,
Respondent,

vs.

David Cardinale,
Appellant,

Scott County,
Intervenor.

Filed May 19, 2025
Affirmed
Bjorkman, Judge

Scott County District Court
File No. 70-FA-10-22203

Phourywathana Milbrett, Apple Valley, Minnesota (pro se respondent)

David Cardinale, Apple Valley, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-father challenges the district court's order partially granting his motion to modify parenting time. He argues that the district court abused its discretion by granting him only two days a week of parenting time rather than the roughly 50% parenting time that he had in 2016, before his arrest and criminal conviction. He contends this is so because the district court (1) impermissibly restricted his parenting time, (2) granted him less than the statutorily presumed 25% parenting time, (3) may have improperly relied on ex parte information from his probation officer, and (4) did not identify a timeline for him to increase his parenting time. We affirm.

FACTS

The marriage of appellant David Cardinale (father) and respondent Phourywathana Cardinale n/k/a Phourywathana Milbrett (mother) was dissolved in 2012. The parties have a minor child (child), who was born in January 2009. At the time of the dissolution, the parties shared joint legal and physical custody of child, and father had parenting time 4 out of every 14 nights. The district court later increased father's parenting time to 6 out of every 14 nights.

All of that changed in 2016 when father was arrested and charged with possession of child pornography. He pleaded guilty in February 2018, received a stayed 60-month sentence, and was placed on probation.

In the meantime, mother moved for sole legal and physical custody and to limit father to supervised parenting time, alleging that father endangers child. In September

2018, the district court granted mother's custody motion, finding that father's parenting environment did not significantly endanger child, but that child was fully integrated into mother's household, and she had been child's sole custodian for more than two years. With respect to parenting time, the court found that it was "premature to address" the issue because father and child will "need to repair their relationship in reunification therapy." To that end, the district court awarded father temporary parenting time of one supervised visit (two and one-half hours) per week, ordered him to start reunification therapy, and indicated that it would decide "regular parenting time" once father completed reunification therapy.

In January 2020, father's probation was revoked and he was sent to prison. He maintained some contact with child while in prison. In January 2024, following his release from prison, the district court permitted father to use his niece as parenting-time supervisor.

In March 2024, father filed a motion seeking, in relevant part, to modify his parenting time. He requested a return to "unsupervised parenting time with a roughly equal parenting time schedule [the parties] last were following" in 2016. Father provided supporting affidavits and materials from his treatment provider, who approved unsupervised contact with child, and his probation officer, who said that "[i]f the family court wants [his] opinion [about parenting time], they can ask." Mother asked the district court to continue supervised parenting time and award father one full day of parenting time every other week. Following a hearing, the district court largely granted father's motion, removing the supervision requirement, increasing father's parenting time to twice weekly

visits (a total of 9-12 hours), and permitting him to attend child's sporting events or other activities.

Father appeals.[1]

DECISION

A district court "shall" modify parenting time if "modification would serve the best interests of the child" and will not "change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b) (2024). On appeal, we review a decision regarding modification of parenting time for an abuse of discretion. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014).

Father advances several challenges to the district court's decision not to grant him the full expansion of parenting time that he requested. None of his arguments persuade us to reverse.

First, father asserts that the district court "restrict[ed]" his parenting time and that "[t]here can no longer be any restrictions on parenting time." He is correct that a district court may "restrict" parenting time, as determined by the amount and reason for the reduction, only in limited circumstances. *See* Minn. Stat. § 518.175, subd. 5(c) (2024) (specifying circumstances justifying restriction); *Suleski*, 855 N.W.2d at 336 (explaining what constitutes a restriction). But the district court's challenged order does not reduce father's parenting time at all. It increases it, albeit less than father asked for and not to the

[1] Mother did not file a brief, but we consider the appeal on its merits under Minn. R. Civ. App. P. 142.03.

level of parenting time that he once enjoyed. As such, father's argument that the order impermissibly restricts his parenting time is unavailing.

Second, father argues that the district court abused its discretion by granting him less than 25% parenting time. We recognize that, "[i]n the absence of other evidence, there is a rebuttable presumption that a child must receive a minimum of at least 25 percent of the parenting time with each parent." Minn. Stat. § 518.175, subd. 1(g) (2024). But father cites no authority for the proposition that the 25% presumption means that a parent who already has less than that amount (by virtue of an unchallenged prior order) must automatically be granted at least that amount upon any modification. To the contrary, the guiding principle in determining parenting time, including whether the 25% presumption holds, is the child's best interests. *See* Minn. Stat. § 518.175, subd. 5(b); *Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010). Father has not demonstrated that the district court abused its discretion by determining, after considering child's best interests, that an increase in parenting time that nonetheless remains under 25% is most appropriate at this time.

Third, father suggests that the district court may have improperly relied on ex parte information from his probation officer. The record does not support this suggestion. At the hearing on father's motion, the district court asked him if he was "okay with [it] reaching out to" his probation officer after the hearing. When father expressed concern that he would not have an opportunity to respond, the court said it would "either issue a final [o]rder or gather more information and give [father] an opportunity to respond." Nothing in the record or the final order indicates that the district court spoke to the

probation officer. And it is apparent from the record that the district court's principal interest in doing so was to assess father's request to remove the supervision requirement—a request that the district court granted. On this record, father has not demonstrated that the district court obtained or relied on any improper ex parte information.

Finally, father argues that the district court abused its discretion by not setting a timeline for increasing his parenting time and urges us to order a seven-phase "ramp up period." He cites only *Wirtzfeld v. Miller-Gore*, No. A11-1607, 2012 WL 4052367 (Minn. App. Sept. 17, 2012), to support his argument. That decision is nonprecedential and, therefore, not controlling. Minn. R. Civ. App. P. 136.01, subd. 1(c). Moreover, it is not persuasive authority for father's position. The opinion in *Wirtzfeld* states only that an order temporarily limiting parenting time did not constitute a restriction; it says nothing about parameters for increasing a temporary parenting-time award. 2012 WL 4052367, at *4. As such, his argument regarding a plan for increasing his parenting time fails.

In sum, none of father's arguments identify reversible error in the district court's decision to grant him only part of the parenting-time increase that he requested.

Affirmed.