COLORADO COURT OF APPEALS

DATE FILED: December 15, 2022
CASE NUMBER: 2022CA80

Court of Appeals No. 22CA0080
Jefferson County District Court No. 20DR511
Honorable Randall C. Arp, Judge

In re the Parental Responsibilities Concerning X.I.V., a Child,

and Concerning David Ernesto Mendez,

Appellee,

and

Lea Vallejos, f/k/a Lea Sanders,

Appellant.

ORDER REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE NAVARRO
Welling and Martinez*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced December 15, 2022

Bloch & Chapleau, Cates, Ongert, LLC, Sara Cates, Denver, Colorado, for Appellee

Wheeler Trigg O'Donnell LLP, Frederick R. Yarger, John M. Sandberg, Denver, Colorado, for Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2022.

¶ 1 In this parental responsibilities proceeding involving Lea Vallejos (mother), formerly known as Lea Sanders, and David Ernesto Mendez (father), mother appeals the district court's order permitting father to relocate with the parties' son, X.I.V., to Florida. We reverse the order and remand for further proceedings.

I. Background

¶ 2 In April 2021, the district court entered permanent orders, allocating equal parenting time and joint decision-making responsibility.

¶ 3 In September, father moved to restrict mother's parenting time. He alleged that the child was in imminent emotional and physical danger while in her care because the child tested positive for controlled substances. Following an evidentiary hearing, the district court restricted mother's parenting time to three supervised visits per week.

¶ 4 In December, father filed a verified motion to relocate with the child to Florida and to modify parenting time and decision-making responsibilities accordingly. His motion indicated that, following his conferral or attempts to confer with mother, "[t]here is no agreement regarding this motion at this time." Having received no

response from mother, the district court deemed the motion confessed and partially granted it. The court allowed father to relocate with the child. The court also ordered father "to set a hearing regarding modification of the parenting time and decision[-]making [responsibility] in light of the relocation to Florida."

¶ 5 Mother immediately filed a motion asking the district court to reconsider the child's relocation. In it, she opposed the relocation; indicated that she was unrepresented and looking for an attorney; and explained that she thought she had more time to respond to father's motion to relocate. The court denied mother's motion.

¶ 6 Mother now appeals.

II. Relocation

¶ 7 Mother contends, and we agree, that the district court erred by allowing father to relocate with the child to Florida.

A. Standard of Review

¶ 8 We review for an abuse of discretion a district court's decision on a motion to modify parenting time that involves a relocation request. *In re Marriage of Ciesluk*, 113 P.3d 135, 148 (Colo. 2005); *see In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007) (district court's discretion over parenting time modification issues is

broad, and an appellate court exercises every presumption in favor of upholding its decisions). The court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or if it misapplies the law. *In re Marriage of Evans*, 2021 COA 141, ¶ 25.

¶ 9 We review de novo the legal standard applicable to a relocation request. *See In re Marriage of DeZalia*, 151 P.3d 647, 648-49 (Colo. App. 2006).

B. Discussion

¶ 10 Mother argues that the district court erred by failing to make any factual findings to show that it had considered the child's best interests. We agree.

¶ 11 To begin, we reject father's assertion that we may not review mother's argument because she did not raise it in the district court until her reconsideration motion. Her argument is directed at the court's findings, and she could not have raised it until after the court ruled. A party need not object to a district court's findings to preserve a challenge to those findings. *See In re Marriage of Crouch*, 2021 COA 3, ¶ 17; *see* C.R.C.P. 52. Thus, mother's argument is preserved, and we will consider it.

¶ 12 Relocation by a majority time parent is governed by section 14-10-129(1)(a)(II), C.R.S. 2022, which provides in relevant part:

> In those cases in which a party with whom the child resides a majority of the time is seeking to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party, the court, in determining whether the modification of parenting time is in the best interests of the child, shall take into account all relevant factors, including those enumerated in paragraph (c) of subsection (2) of this section.

¶ 13 The district court must consider multiple factors under section 14-10-129(2)(c), including (1) the reasons why the party wishes to relocate, (2) the reasons why the opposing party objects, (3) the history and quality of each party's relationship with the child since the previous parenting time order, (4) the educational opportunities for the child at each location, (5) the presence of extended family at each location, (6) the advantages of the child in remaining with the primary caregiver, (7) the anticipated impact of the move on the child, (8) whether the court will be able to fashion a reasonable parenting time schedule if the relocation is granted, and (9) any other factors bearing on the best interests of the child. In addition, the court must consider the eleven best interests factors in section

14-10-124(1.5)(a), C.R.S. 2022, before allowing a majority time parent to relocate with a child. *Ciesluk*, 113 P.3d at 140.

¶ 14 Each parent shares equally in the burden of demonstrating how the proposed relocation will impact the child's best interests. *Id.* at 147-48. The court may not apply a presumption in favor of either parent's position. *Id.*

¶ 15 The district court must thoroughly disclose the reasons for its decision and make specific findings with respect to each of the relevant statutory factors. *Id.* at 148, 150; *see* § 14-10-129(2); C.R.C.P. 52 (district court shall "set forth the findings of fact and conclusions of law which constitute the grounds of its action"); *see also People in Interest of A.M.K.*, 68 P.3d 563, 566 (Colo. App. 2003) (though the district court need not make specific findings on every best interests factor, there must be some indication that the court considered the pertinent factors).

¶ 16 Here, the district court's order states,

> THIS MATTER COMES BEFORE THE COURT on [Father's] Verified Motion to Relocate Minor Child Pursuant to CRS Sections § 14-10-124 and § 14-10-129, As Amended. No Response or Objection has been filed. Pursuant to CRCP 121, Section 1-15, the motion is deemed confessed.

> THE COURT being fully advised in the premises and having considered said Motion, and good cause appearing therefore, does hereby GRANT [Father's] Verified Motion to Relocate Minor Child Pursuant to CRS Sections § 14-10-124 and § 14-10-129, As Amended.

¶ 17 The order does not indicate that the court considered the relevant factors in section 14-10-129(2)(c) and section 14-10-124(1.5)(a) concerning the child's best interests. The court made no findings, nor did it explain the basis for its order (other than a general reference to "good cause appearing therefore"). *In re Marriage of Rozzi*, 190 P.3d 815, 822 (Colo. App. 2008) (the district court must make findings of fact and conclusions of law that are sufficiently explicit to give an appellate court a clear understanding of the basis of its decision). The absence of findings and explanation is particularly problematic here because father's motion to relocate the child and the case's history strongly suggested (at the very least) that father's motion was contested. Yet we cannot tell whether, in the face of this dispute, the court found that the child's relocation to Florida was in his best interests, or what considerations supported such a finding. Therefore, we must reverse the order.

¶ 18 In doing so, we reject father's new argument that the district court could properly grant his request to relocate the child to Florida without considering the statutory factors because the court did not simultaneously modify parenting time. Granting such a substantial change in the geographic ties between the child and mother necessarily implicates the question whether the parties' parenting time order must be modified. Hence, in father's motion, he joined his request to relocate the child with his request to modify parenting time. Citing *Ciesluk*, father conceded that sections 14-10-129(2)(c) and 14-10-124(1.5)(a) governed both requests. Father's concession below is consistent with — indeed, mandated by — our supreme court's analysis in *Ciesluk*, which explains that "before a court may allow a majority time parent to relocate with the child, the new statutory language in subsection 14–10–129(2)(c) dictates that the court shall consider twenty-one relevant factors" (i.e., those listed in section 14-10-129(2)c) and in section 14-10-124(1.5)(a)). *Ciesluk*, 113 P.3d at 140.

¶ 19 We would ordinarily remand the case for the district court to simply enter an amended order containing factual findings and legal conclusions to support its decision. But where, as here, facts

essential to the best interests analysis, and the circumstances surrounding such facts, are in dispute, a relocation hearing on remand is required. Determining whether to grant a majority time parent's relocation request under sections 14-10-129(2)(c) and 14-10-124(1.5)(a) is necessarily a fact-based inquiry and, therefore, requires a hearing. *See In Interest of D.R.V-A.*, 976 P.2d 881, 884 (Colo. App. 1999) (district court erred by denying a parent a hearing on her request for unsupervised parenting time); *see also In re Marriage of Finer*, 893 P.2d 1381, 1388 (Colo. App. 1995) (without a hearing, a parent seeking to remove child from state was denied opportunity to present evidence concerning child's best interests, and thus was deprived of due process); *In re Marriage of Sepmeier*, 782 P.2d 876, 877-78 (Colo. App. 1989) (district court erred by refusing to grant a hearing on parenting time modification). And the court should conduct that hearing forthwith. *See* § 14-10-129(2)(c) ("A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket.").

¶ 20 Because the district court's order as it relates to the relocation was entered over a year ago, the court should consider the child's

best interests as of the time of remand and provide the parties an opportunity to present evidence concerning the current circumstances. *See In re Parental Responsibilities Concerning M.W.*, 2012 COA 162, ¶ 27. The child's relocation to Florida shall remain in effect pending the court's entry of any new order regarding relocation and parenting time. *See id.*

¶ 21 Given our disposition, we need not address mother's remaining argument that the district court erred by treating father's motion to relocate as confessed under C.R.C.P. 121 § 1-15.

III. Conclusion

¶ 22 The order allowing father to relocate with the child to Florida is reversed. The case is remanded to the district court for reconsideration consistent with the views expressed herein.

JUDGE WELLING and JUSTICE MARTINEZ concur.

Court of Appeals

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PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

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