

FILED AUG 10 2020

LYNN K. McDONALD
CLERK OF COURT

COURT OF APPEALS OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
SMSC RESERVATION **STATE OF MINNESOTA**

James Van Nguyen,

Appellant.

vs.

File No. Ct. App. 049-20

Amanda Gustafson,

Appellee.

OPINION AND ORDER

PER CURIAM

On May 4, 2020, the Appellant, James Van Nguyen, appealed portions of the Order that the Tribal Court of the Shakopee Mdewakanton Sioux Community (“Trial Court”) entered on April 3, 2020, in Court File No. 867-1 (“the April 3 Order”) setting forth the parties’ vacation parenting times, clarifying the dates for the Tet New Year of 2021, adopting an exchange location, and requiring the Appellant to provide the physical address of his home to the Appellee, Amanda Gustafson, and the Trial Court. Appellant appeals from the portions of the Order setting the vacation schedule and requiring him to disclose his physical address.

For the reasons set forth below, we reverse and remand.

I. PROCEDURAL HISTORY

This matter was initiated by the Appellee's petition for dissolution of the parties' marriage and determination of custody of the parties' minor child filed on July 20, 2017. In this fifth appeal to us, the Appellant seeks resolution of two issues: (1) whether the Trial Court erred in awarding to the Appellant as one of his vacation weeks a week that was already awarded to him as a regular visitation week, and (2) whether the Trial Court abused its discretion in ordering the Appellant, a participant in the State Minnesota Data Protection for Victims of Violence program, to disclose the address of the physical location of his home.

The majority of the history of the prior litigation between the parties before the Shakopee Mdewakanton Sioux Courts and in other jurisdictions is detailed in our opinion in *James Van Nguyen v. Amanda Gustafson*, File No. Ct. App. 045-19 (Jan. 21, 2020). The limited procedural record pertinent to the present appeal is as follows. On May 3, 2019, the Trial Court issued its *Findings of Fact, Conclusions of Law, Order for Final Judgment, Judgment and Decree* ("May 3rd Judgment"). A regular visitation schedule rotating parenting time between the parties on a four days on four days off schedule, and a holiday and school release schedule was ordered. The vacation schedule was to be determined as follows: "Each party is granted three non-consecutive weeks of vacation time with the minor child, which shall supersede the four-day rotation schedule, and which shall not disrupt the . . . holiday schedule. Said vacation time shall be selected and mutually agreed upon no later than April 1st of the year for which said vacation time is sought."

Following the issuance of the May 3rd Judgment, the parties continued to have disagreements on a range of issues. The details of the conflicts and proceedings that followed the judgment are set forth in this Court's recent opinion, *James Van Nguyen v. Amanda Gustafson*, File No. Ct. App. 047-20 (July 10, 2020). On October 21, 2019, the Appellee moved the Trial Court to modify

its earlier judgment to grant her sole legal and physical custody of the minor child and to limit the Appellant's visitation to alternating weekends, vacations, holidays, and extended time during the summer months. After carefully considering the relevant factors detailed in the Shakopee Mdewakanton Sioux (Dakota) Community Domestic Relations Code, Chapter III, Section 2 a., the Trial Court found that it was in the minor's child best interest that the Appellee be the child's sole custodian. Memorandum Opinion and Order, Court File 867-17, Jan. 6, 2020, Buffalo, J. at 24. Consequently, the Trial Court modified the provisions of the May 3rd Judgment concerning placement and visitation. In its Memorandum Opinion and Order issued on January 6, 2020, the Trial Court adopted the following modifications, in pertinent part:

6. Petitioner's Motion Seeking to Modify Custody and Placement of the Parties' Minor Child. The Petitioner's Motion (Docket #208) seeking to modify custody and placement of the parties' minor child and to provide reasonable visitation rights is granted as follows.

a. Custody and Placement. The Petitioner Amanda Gail Gustafson shall have sole legal custody and sole physical custody of the parties' minor child . . . Sole physical custody means that the minor child shall reside with the Petitioner at all times except when the Respondent may exercise visitation rights as provided in this order.

...

e. Parenting Time/Father's Visitation Rights. Consistent with the Petitioner's sole legal custody and physical custody rights, the Petitioner shall have placement of the parties' minor child at all times not specifically awarded to the Respondent as visitation rights as provided in the following schedule:

...

1) Every Other Weekend. The Respondent shall have visitation every other weekend from no later than 5:00 p.m. on Friday until no later than 5:00 p.m. on Sunday. . . .

3) **Summer Break.** Starting the first Friday after the school year ends, the Respondent shall have visitation every third week during the summer from Friday at 5:30 p.m. until the following Friday at 5:30 p.m. . . .

4) **Extended Vacation Schedule.** Each party shall have three non-consecutive weeks of vacation time with the minor child, which shall supersede the alternating weekend visitation schedule but shall not disrupt the above holiday schedule. Said vacation time shall be selected and mutually agreed upon no later than April 1 of each year for the following 12 months until March 31 of the following year. . . .

. . .

6) **Logistics and Arrangements for Visitation.** Unless the parties agree in advance, all exchanges for visitation shall take place at a neutral site. . . .

Id. at 28-29.

Under the modification, the Appellant's summer break visitation commences on the Friday before the first week following the end of the school year, and thereafter occurs every three weeks.

II. VACATION TIME

The Appellee filed a motion seeking expedited review without a hearing on February 12, 2020, seeking an order sealing the court file records, prohibiting the Appellant from taking a fourth week of vacation and approving the third week of her vacation time for the year. The resulting Order issued on February 28, 2020, approved the Appellee's requested third week of vacation, reserved its ruling on the outstanding issues, and ordered that "The parties shall provide to the Court the dates for the 3 non-consecutive weeks of vacation by close of business on April 1, 2020." Order, Court File 867-17, Feb. 28, 2020, Buffalo, J. By email dated March 31, 2020, the Appellee's counsel wrote to the Court Clerk and set forth the three vacation weeks that the Appellee was requesting for the period from April 1, 2020 through March 31, 2021. A Declaration from the

Appellant was filed with the Trial Court in which he makes numerous vague and unclear requests for vacation weeks. In paragraph 3, he requests that he be allowed to exercise vacation time during both the winter and spring breaks of the school year. Under the original May 3rd Judgment parenting time provisions, spring break and winter break are under the “Holiday and School Release Schedule” and those days are specifically allocated to each parent in the Year 2020 in accordance with the regular parenting schedule, and alternate between the parents in subsequent years. The May 3rd Judgment visitation provisions were left undisturbed in the Court’s January 6th Order, with the exception that the holiday and school release schedule would supersede the Appellant’s every-other-weekend visitation schedule. Given the specific assignment of the spring and winter breaks to each parent annually, it would be reasonable to conclude that those weeks are not available as vacation weeks to the parent that is not designated to receive parenting time.

In Paragraph 4, of the Appellant’s Declaration, under the section titled “Vacation Schedule,” he states that his first week of “Summer Break” visitation (under the January 6th Order) is June 12, 2020 through June 19, 2020. This is a week to which he is entitled to regular visitation during the summer months. He then requests to elect, as a vacation week, the following week of June 19, 2020 to June 26, 2020, as his first vacation week. In Paragraph 5 of his Declaration, under the heading “Vacation,” he states that he would like to take the minor child to a wedding on October 3, 2020. At the time that the parties were directed by the Trial Court to submit their vacation dates, the International School of Minnesota had not posted yet the 2020-2021 school calendar. The School has since posted its start dates.¹ This Court takes judicial notice of the fact that for students in grades 1 through 12, which includes the parties’ minor child, school starts on

¹ See http://www.internationalschoolmn.com/blog/back-to-school-2020?utm_campaign=COVID%2019&utm_content=135310945&utm_medium=social&utm_source=facebook&hss_channel=fbp-313001204840&fbclid=IwAR0Ehs1dCd9YcRtqhFcyHQB6-l_Bf4YrttAhmxyIPNNW7cL2WxGfrKrr-hg (last visited August 9, 2020).

August 25, 2020. Appellant's regular school year visitation starts with every weekend after the start of school, which would September 5-6, 2020, September 19-20, 2020, and October 2-3, 2020. October 3, 2020 already falls within his regular visitation weekend. Thus, it appears that Appellant only explicitly requested one vacation week, June 19, 2020 to June 26, 2020.

The April 3rd Order reflects that the Trial Court construed the Appellant's request to be for a vacation week in the spring and a vacation week in the winter. Given the confusing presentation of his Declaration, this is not an unreasonable interpretation by the Trial Court. The Trial Court granted the Appellant vacation weeks of June 12, 2020, through June 19, 2020, and June 19, 2020 through June 26, 2020, and December 19, 2020, through December 26, 2020. The Trial Court also granted the Appellant visitation on the weekend of October 3, 2020, to October 4, 2020, to facilitate his and the minor child's attendance at the wedding if it occurs.

On May 4, 2020, the Appellant commenced this appeal by filing a Memorandum of Law in Support of Appeal of April 3, 2020, Order. In his Memorandum, concerning the vacation weeks, the Appellant states, "As I am seeking to exercise my vacation times during the winter and spring breaks [t]he dates I can provide are an estimate of this and would reflect the same December and March dates Ms. Gustafson has requested in her notice to the court yesterday." *Id.* at 5. He objects to the January 6th Order because "[He] was provided two of the three weeks [he] requested at the cost of a week of vacation parenting time." We agree that the Appellant was already entitled to the week of June 12, 2020, to June 19, 2020, as his regular summer break visitation, and it, therefore, was an abuse of discretion to designate that week as a vacation week. The Appellant is entitled to one more week of vacation time. This Court recently opined in *James Van Nguyen v. Amanda Gustafson*, File No. Ct. App. 045-19 (Jan. 21, 2020) that,

"District courts have broad discretion on matters of custody and parenting time." *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn.

2018). Review of decisions on parenting time is typically “limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002). An abuse of discretion occurs “if a relevant factor that should have been given significant weight is not considered, if an irrelevant or improper factor is considered and given significant weight, or if a court commits a clear error of judgment in the course of weighing proper factors.” *Aaron v. Target Corp.*, 357 F.3d 768, 774 (8th Cir. 2004).”

Id. at 16-17.

It was relevant to the allocation and designation of the vacation time that June 12, 2020 to June 19, 2020 was previously designated as one of Appellant’s regular summer visitation weeks. Accordingly, we reverse the portion of the April 3 Order that set the vacation schedule and remand to the Trial Court for reconsideration of the decision regarding the Appellant’s vacation weeks.

III. DISCLOSURE OF PHYSICAL ADDRESS

During the proceedings below, the Appellant provided the Trial Court with documentation establishing that he is a participant in Minnesota’s “Safe at Home” program, under which Minnesota law bars persons or government officials from requiring program participants to provide their actual physical addresses. The provisions creating this bar appear at Minnesota Statutes §5B.05(a):

When a program participant presents the address designated by the secretary of state to any person, that address must be accepted as the address of the program participant. The person may not require the program participant to submit any address that could be used to physically locate the participant either as a substitute or in addition to the designated address, or as a condition of receiving a service or benefit, unless the service or benefit would be impossible to provide without knowledge of the program participant’s physical location. Notwithstanding a person’s or entity’s knowledge of a program participant’s physical location, the person or entity must use the program participant’s designated address for all mail correspondence with the program participant.

Notwithstanding the breadth and clarity of this provision, the Trial Court in its April 3rd Order directed the Appellant to “provide the physical address of the location of his home where he engages in his parenting time to the Court and the Petitioner in case of emergency”, and to “notify the Court and the Petitioner of any changes of the physical address of where [he] engages in his parenting time at least 30 days prior to any change”. In doing so, the Trial Court did not identify any exception to the requirements of Minnesota Statutes §5B.05(a) that would authorize its mandate; in the materials she has filed with us, the Appellee has cited none to us; and in our view there is none.

This is an instance where Public Law 280, 28 U.S.C. §1360(a), applies – where “the laws of [Minnesota] that are of general application to private persons or private property shall have the same force and effect” within the Shakopee Mdewakanton Sioux Community, and for members of the Community, “as they have elsewhere within the State.” When the Community adopted its Domestic Relations Code, it did not expressly or implicitly modify the effect of Minnesota Statutes §5B.05(a), and the effect of the provision, here and generally, is not such that any fundamental interest of the Community is damaged. Given the digital resources that now exist, there are ample ways for the Appellee and her counsel to communicate with the Appellant, and vice versa, to ensure that the interests of the parties’ child, and of the Appellee, are protected; and should the Appellant fail to honor his obligations to the Appellee or to the child, the Trial Court clearly has the power to sanction him by, *inter alia*, reducing or suspending his visitation with the parties’ child pending his compliance.

IV. CONCLUSION

For the foregoing reasons, the appeal is granted. Accordingly, we reverse and remand for reconsideration the Trial Court's decision on the Appellant's parental visitation vacation weeks, and we reverse and vacate the portion of the April 3rd Order that mandated the Appellant's disclosure of his physical address.

Dated: August 10, 2020



Chief Judge John E. Jacobson



Judge Terry Mason Moore



Judge Jill E. Tompkins