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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0509**

Chad Michael Rasset, petitioner,
Respondent,

vs.

Alecia Marie Wertish,
n/k/a Alecia M. Rosheim,
Appellant.

**Filed February 11, 2013
Affirmed
Crippen, Judge***

Crow Wing County District Court
File No. 18-FA-07-2497

Chad Michael Rasset, Brainerd, Minnesota (pro se respondent)

Alecia Marie Rosheim, Eden Valley, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and
Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Alecia Wertish argues that the district court abused its discretion by declining to modify custody to award her sole legal and physical custody of her son. We affirm.

FACTS

Appellant and respondent Chad Rasset are the parents of a son who turned age 7 in May 2012. The child lived with appellant until January 2008, when he began living with respondent. At the time, the parties did not have a formal custody agreement. In May 2008, following a bench trial, respondent was granted joint legal custody and sole physical custody. The district court found that respondent was able to provide a stable, consistent home for his son and concluded that it was in the child's best interests to remain with respondent. In its order, the court also found that appellant did not provide her son with a stable environment while he was in her care and custody and had changed residences four times in seven months. In addition, the district court found that appellant has shown a history of abuse and neglect toward her children, citing three prior instances in 2003 and 2008 involving her other children.

In September 2010, respondent moved for appellant's parenting time to be supervised. He alleged that his son was not receiving consistent toilet training when he spends time with appellant, and that his son had suffered injuries on two occasions due to appellant's neglect. The first incident took place after appellant's summer parenting time in July 2009 and involved sunburns on the child's shoulders that were so severe that half-

dollar-sized blisters had formed and required treatment at an emergency room. The second incident was discovered at the end of appellant's August 2010 parenting time and involved a severe diaper rash. In October 2010, appellant denied the two incidents stemmed from neglect and moved for sole physical and legal custody alleging that the child's present environment endangered his physical or emotional health and respondent had denied and interfered with her parenting time. *See* Minn. Stat. § 518.18(d)(iv) (2012).

Following both motions, the district court appointed a guardian ad litem. Citing concerns for the child's emotional circumstances, the guardian ad litem recommended that sole physical custody be placed with appellant. But in January 2012, following a two-day evidentiary hearing, the court denied appellant's motion to change custody and concluded that appellant had not met her burden of "establishing that the child's present environment endangers his physical or emotional health," stating that "[i]t is not in the best interests of the minor child to change custody to [appellant]."

D E C I S I O N

Our review is limited to determining whether the district court abused its discretion, either in making findings that are unsupported by the evidence or erroneously applying the law. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008). The district court's discretion in custody matters is broad. *Id.* at 282 (quoting *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989)). The district court's findings must be upheld if they are not clearly erroneous, and we defer to the court's opportunity to evaluate the credibility of witnesses. *Id.* at 284 (citing Minn. R. Civ. P. 52.01; *Sefkow v.*

Sefkow, 427 N.W.2d 203, 210 (Minn. 1988)). Clear error exists when the appellate court reaches a firm conviction that a mistake has been made. *Id.* We view the record in the light most favorable to challenged findings. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006).

Minnesota allows for child custody modifications under Minn. Stat. § 518.18(d) (2012), which prohibits modifying a prior determination of the child’s primary residence unless the district court finds that modification is necessary for the best interests of the child due to a change in the circumstances of the child or the parties. In addition, the previous custody arrangement must be retained unless the child’s present environment “endangers the child’s physical or emotional health or impairs the child’s emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.” *Id.*, § 518.18(d)(iv).

Appellant largely suggests that this case is like others where appellate courts have found that there is an inadequate record to sustain or overrule the trial court. The district court’s findings defeat this argument, and there is sufficient evidence to support the findings.

As the moving party, appellant was required to show “a significant degree of danger” to establish endangerment. *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). The district court found that appellant had not met her burden of “establishing that the child’s present environment endangers his physical or emotional health,” and specifically stated that “[i]t is not in the best interests of the minor child to change custody to [appellant].” The court found that respondent is providing the child with

appropriate educational, counseling, and medical care and stated that the child “needs consistency in his daily life,” which respondent has provided since 2008. Although the court noted that appellant appeared to have found a stable living situation, the court questioned appellant’s future ability to provide a stable home, finding that the numerous changes in her living situations could not be overlooked. Appellant has moved her residence at least ten times within the last four years, resulting in the enrollment of her children in six different school districts, and has resided with four different men in five different residences since the original modification in August of 2007.

Given the child’s “delicate emotional situation,” the court also found that “a change of custody would likely be difficult for him to become adjusted to a new environment.” The court rejected appellant’s argument that respondent had abused their son and found that two instances of neglect occurred while the child was in appellant’s care. Because there was evidence to support the district court’s findings, there is no merit in appellant’s argument that the record is inadequate.

Appellant next argues that the district court abused its discretion by allowing a continuance. She also appears to challenge the court’s credibility determinations, specifically those pertaining to respondent’s wife.

The record reveals that the continuance in the case was requested by the guardian ad litem and was agreed to by both parties. Furthermore, because appellant did not preserve this issue for appeal and provides no support for her argument, the point is waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived). “An assignment of error based on mere assertion and not

supported by any argument or authorities in appellant's brief is waived and will not be considered unless prejudicial error is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). As to appellant's credibility challenge, "[d]eference must be given to the opportunity of the trial court to assess the credibility of the witnesses." *Sefkow*, 427 N.W.2d at 210 (citing Minn. R. Civ. P. 52.01). We find no error.

Appellant finally argues that the district court used an incorrect and improper standard for deciding custody, alleging that the court based its decision on her past conduct and the past environment she provided and pointing to the guardian ad litem's recommendation that she receive sole physical custody.

The district court based its decision on the current circumstances. The court stated that although appellant has made changes and her current living situation appears to be stable, there is a question as to her future ability to provide a stable home, finding that numerous, prior changes in her living situations could not be overlooked. And the instances of neglect that the court found to have occurred while appellant cared for the child took place in 2009 and 2010, after the prior custody order.

Although the guardian ad litem recommended awarding physical custody to appellant, the district court rejected this recommendation and, as required, explained its reasoning. *See Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991) (stating that district court has discretion to accept or reject independent evaluator's recommendation but must expressly state its reasons for rejection or make findings examining the factors

raised). The court found that “[t]here is no evidence in the record as to the cause of [the child’s] emotional and educational problems, and the court can only speculate” regarding their source. The court further stated that although the guardian ad litem suggested that the child “is in danger of continued emotional damage if he continues to live in [respondent]’s home as the home is not good for his fragile and tender nature . . . [,] none of the child’s caregivers have ever mentioned concerns about the child’s emotional well-being while living [with respondent].” The court found that “[a]lthough the minor child has been in the presence of many mandated reporters, none of the reporters have ever filed a report with Crow Wing County Social Services expressing concerns for the child’s safety.”

Because the district court examined the child’s current circumstances and made findings regarding its rejection of the guardian ad litem’s recommendation, there was no abuse of discretion.

Affirmed.