STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1262

Scott Daniel Haugen, petitioner,
Respondent,

vs.

Samantha Stefanie Adamek,
Appellant.

Filed April 28, 2009
Affirmed
Shumaker, Judge

Todd County District Court
File No. 77-FO-06-050082

Robin W. Finke, 211 11th Street North, Benson, MN 56215 (for respondent)

Marc G. Kurzman, Kurzman Grant Law Office, 219 S.E. Main Street, Suite 403, Minneapolis, MN 55414 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

SHUMAKER, Judge

On appeal in this custody dispute, appellant-mother Samantha Adamek contends that the district court abused its discretion by awarding physical custody of the parties' minor child to respondent-father Scott Haugen and by awarding the parties a modified form of joint legal custody. We affirm.

FACTS

Mother and father are the parents of one child born in February 2006. Father was adjudicated the child's biological father in July 2006. The parties never married.

When custody proceedings in this matter began, father's parenting time was limited, but gradually it increased. According to the district court, "[t]he expansions of [father's] parenting time were granted largely because of [mother's] continued resistance to and obstruction of [father's] parenting time, which was not in the child's best interests."

In May 2007, the district court temporarily awarded the parties joint physical and legal custody of the child, and ordered them to begin alternating weeks for parenting time. The court appointed a parenting-time expediter, required the parties to begin counseling, to use a computer program called Our Family Wizard to communicate about the child, and to seek a daycare in the Alexandria or Garfield area.

A custody trial was held on August 28, 2007, December 21, 2007, and March 6, 2008. Both parties sought joint legal custody of the child, but each wanted sole physical

custody. Mother had also proposed that the parenting-time arrangement remain the same with the child dividing time between the parents.

During the three-day custody trial, the court heard testimony from nine witnesses, including the parties; the child's daycare provider; Geri Krueger, a court-appointed custody evaluator; and Jerry Klecker, a social worker and licensed psychologist who had administered parenting-capacity assessments and psychological evaluations to both parties. In addition, the court received numerous exhibits, including the original and updated custody study, the psychological evaluations and parenting assessments, notes documenting the parties' exchanges of the child, and child-protection reports from a county's social services file.

In May 2008, the district court issued its findings of fact, conclusions of law, order for judgment and judgment as to custody and parenting time. The district court addressed each of the statutory best-interest factors, but also noted that the parents have had "numerous petty disputes" and communication problems, "which serve to undermine the parties' ability to co-parent the minor child."

Based on its findings, the court awarded father physical custody, subject to mother's reasonable and liberal parenting time. The alternating week schedule was to continue until August 24, 2008, and then mother's parenting time was reduced to a visit "every other weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday or every weekend for one twenty-four hour period," and a visit every Wednesday evening. The custody order also provided for additional parenting time during the summer and on holidays.

The court awarded the parties a "modified version" of joint legal custody, directing the parties to "confer and consult" with one another on "all major issues affecting the child's health, education, and welfare," but giving father "the right to make the final decision" if the parties could not reach an agreement. The court concluded that this arrangement was in the child's best interests because the parties had not displayed an ability or willingness to make joint decisions on major issues affecting the child during the pendency of the custody proceedings and had "numerous significant disagreements on parenting issues in the two years since their child was born."

This appeal by mother followed.

D E C I S I O N

On appeal, mother challenges several of the district court's rulings. In particular, she alleges that many of the district court's findings are erroneous, that the district court abused its discretion by awarding sole physical custody to the father when the recent history between the parties indicated that the split parenting-time arrangement had been working, and that the award of a modified form of joint legal custody was an abuse of discretion.

A district court has broad discretion to provide for the custody of the parties' children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "In making a custody or custody-related decision, the court must find that the facts support that decision, and the court's conclusions of law must be based on adequate factual findings." *Dailey v. Chermak*, 709 N.W.2d 626, 632 (Minn. App. 2006), *review denied* (Minn. May 16, 2006). "Even though the [district] court is given broad discretion in determining custody

matters, it is important that the basis for the court's decision be set forth with a high degree of particularity." *Durkin v. Hinich*, 442 N.W.2d 148, 151 (Minn. 1989) (quotation omitted).

"A child's best interests are the fundamental focus of custody decisions." *Vangsness v. Vangsness*, 607 N.W.2d 468, 476 (Minn. App. 2000). A court determines a child's best interests by balancing all relevant factors, including 13 statutorily enumerated factors. Minn. Stat. § 518.17, subd. 1 (2008). The district court must make detailed written findings regarding its consideration of the best-interests factors. *Id.* The "law leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness*, 607 N.W.2d at 477.

In addition to the 13 statutory best-interests factors, courts consider four other relevant statutory factors when contemplating whether to award joint legal or joint physical custody: the parents' ability to cooperate in rearing the child; the available methods for resolving disputes over any major decision concerning the life of the child and the parents' willingness to use such methods; whether it would be detrimental to the child if one parent had sole authority over the child's upbringing; and whether domestic abuse has occurred between the parents. Minn. Stat. § 518.17, subd. 2 (2008). If joint physical custody is awarded over the objection of a party, the court must make "detailed findings" on the joint-custody factors "and explain how the factors led to its determination that joint custody would be in the best interests of the child." *Id.* Further, if domestic abuse has occurred between the parties, a rebuttable presumption exists that joint physical custody is not in the child's best interests. *Id.*

Although the district court must make written findings which reflect consideration of all the custody award factors in Minn. Stat. § 518.17, subds. 1, 2, this does not mean that the district court must expressly address each factor. *Schultz v. Schultz*, 358 N.W.2d 136, 138 (Minn. App. 1984). Rather, "[i]t is sufficient if the findings as a whole reflect that the trial court has taken the statutory factors into consideration, insofar as they are relevant, in reaching its decision." *Id.* (quotation omitted).

Appellate review of custody determinations is limited to determining "whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996) (quotation omitted). We will sustain the district court's findings of fact, unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). In order to successfully challenge a district court's findings of fact,

> the party challenging the findings must show that despite viewing that evidence in the light most favorable to the [district] court's findings (and accounting for an appellate court's deference to a [district] court's credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made."

Vangsness, 607 N.W.2d at 474. "So long as there is evidence to support the [district] court's decision, there is no abuse of discretion." *Doren v. Doren*, 431 N.W.2d 558, 561 (Minn. App. 1988).

I

On appeal, mother argues that many of the court's findings are clearly erroneous. Based on our review of the record, we conclude that all findings are supported by the

evidence. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness*, 607 N.W.2d at 474. Many of mother's claims revolve around the district court's credibility findings and its weighing of the evidence. A district court is in the best position to judge the weight and credibility of evidence, as well as to draw any inferences based on that evidence, and appellate courts generally defer to a district court's determinations on these subjects. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996); *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

We will address two of mother's claimed errors in more detail. First, mother asserts that the district court erroneously found her to be less mature than father, while simultaneously ignoring certain "deficits" in father's personality or his maturity levels. Mother further suggests that those deficits create an issue of child endangerment.

In its findings, the district court stated that it

> is concerned that [mother's] apparent emotional immaturity will lead to the child serving the [mother's] needs rather than the other way around. For example, [mother] insisted that [father] come to a visitation exchange despite terrible icy weather in which transportation (of parents and child) was unsafe, and refused to allow a make-up visit until the Court ordered it.

Additionally, the court noted its belief that mother "is less emotionally mature as a parent than [father] is," because she has "continued resistance to [father's] right to parent the child, and [an] apparent inability to see what the child's best interests are in a given situation."

These findings are supported by the record. Klecker, the psychologist who had administered the parties' parenting assessments and psychological evaluations, testified that mother "was having some difficulty coping on a day-to-day basis with the new responsibility of being a parent" and did not appreciate how her choices "may invariably have contributed to the situation she finds herself in," that she did not see how the choices she made in her late adolescence connected to her current situation, and that she had "a compromised capacity for insight," which suggested that "she was psychologically immature, might have some difficulty with problem solving, making decisions, and most importantly anticipating consequences." He also testified that he would have more concerns about mother's ability to parent than about father's.

Mother points out, however, that Klecker testified that father viewed custody as "a zero sum game" and that he had concerns about whether father would be willing to co-parent. Mother's counsel suggested at oral argument that there are concerns about the child's welfare, in light of this testimony. But, importantly, Klecker testified, "Overall, I did not see [father] exhibit any psychiatric or psychological problems, the magnitude of which would be a mitigating factor in his ability to parent." Contrastingly, with regard to mother, Klecker stated that he would have "some concerns that [mother] would have difficulty parenting [the child] alone, even with the support of her parents."

The court's findings are further supported by testimony from Krueger, the custody evaluator. She characterized father as being "more stable, more mature," and said that mother was "very much dependent on her parents." Although mother asserts that Krueger is biased, the district court specifically rejected that claim, noting that "there is

no evidence to suggest that she prejudged the issues, and it appears that her recommendations were based upon the facts and patterns of behavior she observed during her investigations, as well as her training and experience." Absent clear evidence of error, we defer to the district court's credibility determinations. *L.A.F.*, 554 N.W.2d at 396; *R.T.B.*, 492 N.W.2d at 4. Mother has not shown any clear error in the court's credibility assessments.

In light of the evidence in the record, the district court's finding regarding the parties' respective maturity levels is not clearly erroneous.

Second, mother asserts that the district court erred in rejecting her proposal to send the child to school in a community midway between her home and father's home, particularly when both parties had agreed to such an arrangement. At trial, mother suggested that when the child starts attending school that the child should go to a school close to where both parents are living. Father expressed concern over such an arrangement, noting that in the past mother had suggested that they find a school somewhere in between Alexandria and St. Cloud. Mother said she would agree to find a school that was "at most" 20 minutes away from father's home. Father said that he would not object if the school was only 20 minutes away, but did not think it would be logical to have the child attend a school halfway between the parents' homes.

The district court found that mother testified that she expected to move to the St. Cloud area and that she suggested, in support of her request for joint physical custody, that the child attend a school "that is equidistant from the parents' respective residence[s]." The court rejected this proposal because it "would require that each parent

should transport the child 30-40 minutes to a mid-point school, which would make it hard for the child and both parents to attend school activities." The court explained that "[s]ubjecting the child (and parents) to that much daily transportation and isolation from any sense of community would not be in the child's best interests."

Mother argues that the district court's findings are erroneous because mother's testimony called for the school to be 15-20 minutes away and because there is nothing in the record suggesting that the child would be isolated from any sense of community under mother's school proposal. But father testified that mother had previously suggested a school located between their two homes, and at trial, mother's attorney asked father if he would agree to an arrangement where he drove 20 minutes away and mother drove 40 or 50 minutes to get the child to school. Furthermore, the court is entitled to draw inferences based on its interpretation of the evidence. If the school was less than 20 minutes away from father but farther away from mother, and the child split his time with his parents equally, the child would still be isolated from his school (at least when he was with mother). Such an arrangement would make playing with school friends outside of school, attending school activities, and meeting teachers, difficult. The court's rejection of mother's school proposal is not clearly erroneous.

Mother also suggests that father agreed to the arrangement, and therefore the district court abused its discretion by rejecting her proposal. Mother cites *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989), as being relevant to this issue. But she provides no legal analysis or argument whatsoever, so it is not clear how she thinks this case supports her claim. Furthermore, the mere fact

that parties to a custody dispute agree on an issue respecting the child does not bind the court, which has the duty to independently determine the child's best interests. *See Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) (reciting this proposition in the context of a marital termination agreement).

In *Novak*, we held that when parents share joint legal custody of a child, both parents have the equal right to participate in major decisions determining the child's upbringing, including education. *Id.* But where joint legal custodians cannot agree on which school their child should attend, the district court must resolve the dispute consistent with the child's best interests. *Id.*

Here, the district court simply found that mother's proposal would not be in the child's best interests. Father testified that he had a concern about choosing a location halfway between Alexandria and St. Cloud, so the district court did not err by addressing the issue. Furthermore, as mother's counsel admitted at oral argument, there is nothing in the district court's order which prevents the parties from reaching an agreement and sending their child to any particular, agreed-upon school.

II

Mother next argues that the district court abused its discretion by awarding father physical custody because the parties had been sharing physical custody by alternating weeks of parenting time with the child, and the parties' recent history indicated that the split arrangement was working.

"There is neither a statutory presumption disfavoring joint physical custody, nor is there a preference against joint physical custody if the district court finds that it is in the

best interest of the child and the four joint custody factors support such a determination." *Schallinger v. Schallinger*, 699 N.W.2d 15, 19 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005); s*ee also Wopata v. Wopata*, 498 N.W.2d 478, 482 (Minn. App. 1993) ("Joint physical custody . . . is not a preferred arrangement."). Awarding joint physical custody is an abuse of discretion when the difficulties between the parents are so significant and pervasive as to preclude cooperation. *Wopata*, 498 N.W.2d at 483; *see also Heard v. Heard*, 353 N.W.2d 157, 162 (Minn. App. 1984) (concluding that joint physical custody was inappropriate where parents could not cooperate or resolve their disputes on their own).

The court found that the parties have had "numerous petty disputes" and communication problems, "which have served to undermine the parties' ability to co-parent the minor child" and that the parties "continue to have problems communicating and resolving issues with consideration and respect for the other." This finding is supported by the evidence.

The parties admitted that communication was a problem in their relationship. The parties' daycare provider testified about an incident in which the parties' disrupted a daycare session and explained that mother raised her voice, "flipped papers" in father's face, and argued with father at the daycare. Police officers had to be called to resolve the situation.

Similarly, the parenting-time expediter testified that the parties have difficulty communicating, explaining, "They don't really communicate. It's part of the problem, I think. I have not seen too much communication, viable communication between the

parties." She also testified that mother "sometimes misunderstands" what she says and that she has to go over it again, and that mother "did not want to" meet together with her and father. Likewise, one of the parties' counselors testified that she thought it would be "very difficult" for the parties to work through their issues.

Finally, Krueger testified that the parties have had problems communicating, stating that "these two people are 180 degrees different in how they view things and how their personalities allow them to address things. They both make it difficult to communicate." She also testified that joint physical custody "was not working, it was a struggle," and recommended that father be granted sole physical custody.

The district court found that both parents had played a role in creating these problems, but found that "mother [wa]s more responsible for this problem than [father]." Although mother attacks this finding by noting that father threatened to "quit counseling" and sometimes failed to use the Our Family Wizard communication tool, the district court's finding is not clearly erroneous merely because other evidence in the record might have supported a different conclusion. *Vangsness*, 607 N.W.2d at 474. In light of the district court's findings regarding the parties' inability to communicate and cooperate with one another, the district court did not abuse its discretion by awarding father physical custody.

III

Mother also challenges the award of a modified version of joint legal custody. Although she raises this issue in her brief, mother has provided neither legal argument nor directed this court to any legal authority to support whatever position she is taking,

other than to say she is displeased with the award. Mother's counsel conceded at oral argument that the issue was not fully briefed, and he did not provide any authority at oral argument to support mother's claim that the award constituted an abuse of discretion. Because appellant's claim is unsupported by argument or authority, we decline to address it further. *State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that assignment of error in brief based on mere assertion and unsupported by argument or authority is waived unless prejudicial error is obvious on mere inspection); *Ganguli v. Univ. of Minn*., 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (holding that court may decline to address allegations unsupported by legal analysis or citation).

Finally, the record is replete with evidence that attests to the lack of basic respect each parent has shown the other. As the court noted, they have engaged in repeated petty disputes throughout the history of this proceeding. In doing so, they have focused this litigation entirely on themselves without any apparent concern for how their behavior is depriving the child of his right to expect to have two loving, respectful, mature (or at least maturing) parents whom he can respect and cherish as role models. The record shows that each party loves the child and each has the capacity to measure up and to become a parent rather than a combatant. The district court has shown remarkable restraint in not imposing restrictions to ensure that the child's emotional health is not further endangered through parental default.

Affirmed.