

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1670**

In re the Marriage of:
Molly Kathryn Sanders, joint-petitioner,
Respondent,

vs.

Johannes Moen, joint-petitioner,
Appellant.

**Filed July 3, 2017
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-FA-14-1884

Micaela Wattenbarger, Valerie Arnold, Arnold, Rodman & Kretchmer, PLLC,
Bloomington, Minnesota (for respondent)

Johannes Moen, Norway (pro se appellant)

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-father challenges the district court's parenting-time-modification order, arguing that the district court's findings are not supported by the record and the conduct upon which the district court relied in making its findings is not recent or severe enough to restrict his parenting time. We affirm.

FACTS

In July 2014, the parties petitioned for dissolution of their marriage. The parties have one minor child, F.M., born in 2011. The parties agreed that respondent-mother Molly Kathryn Sanders would have sole legal custody and sole physical custody of F.M. Appellant-father Johannes Moen's parenting time would be agreed upon by the parties and serve the best interests of F.M. In August 2014, the district court adopted the parties' stipulation in the judgment and decree.

In August 2015, Moen moved to modify legal custody of F.M. to joint legal custody, claiming that the parties could not agree on parenting time and that Sanders was limiting his time with F.M. and would not allow him to be alone with F.M. Moen sought to have his parenting time in Norway, where he lived. Sanders filed a responsive motion, alleging that Moen physically harmed F.M. and threatened to harm F.M. to punish Sanders. She sought an order directing the parties to cooperate in parenting-time evaluations and comprehensive testing, including psychosexual testing, in order to obtain recommendations regarding a parenting-time schedule.

In December 2015, following a hearing, the district court denied Moen's request to modify legal custody because his allegations failed to establish a prima facie case for modification. The district court determined that Sanders's allegations established a prima facie case for modification of parenting time, finding that if true, the allegations showed that it was necessary to restrict Moen's parenting time to protect F.M. The district court granted Sanders's request for parenting-time evaluations and comprehensive testing. The district court appointed a guardian ad litem (GAL), and requested that the GAL and the

parenting-time evaluator (PTE) make parenting-time recommendations because the sole issue to be determined was Moen's parenting time that is in F.M.'s best interests.

The GAL issued a report recommending that it is in F.M.'s best interests that Moen have supervised parenting time in Minnesota until he completed an anger-management program. The PTE issued a report supporting the GAL's recommendations, but recommending that there be no overnight visits until Moen demonstrated progress in therapy. The PTE concluded that Moen has "extreme reactions to normal childhood behavior[,] . . . lack[s] basic parenting skills for addressing normal oppositional behavior," did not "appear to understand normal childhood development or to have reasonable expectations for a young child," has "intense self-focus that diminishes his ability to attend to the needs of others," has "admitted to making aggressive and threatening statements about F.M. to get back at" Sanders, and "poses risks of physical and emotional [harm] to F.M. as well as risks due to poor sexual boundaries."

Following a hearing in April 2016, the district court concluded that the risk of physical and emotional harm to F.M. required restricting Moen's parenting time. This appeal followed.

D E C I S I O N

Moen argues that the district court's findings supporting its conclusion that Moen's parenting time should be restricted are not supported by the record.

The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion. A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the

law. A district court's findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous.

Dahl v. Dahl, 765 N.W.2d 118, 123 (Minn. App. 2009) (citations omitted). We defer to the district court's credibility determinations, *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000), and will not "disturb findings of fact based on conflicting evidence . . . unless [the findings are] manifestly and palpably contrary to the evidence as a whole." *In re S.G.*, 828 N.W.2d 118, 127 (Minn. 2013) (quotation omitted).

A district court's analysis of parenting-time disputes focuses on what is in the best interests of the child. *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984). Generally, modification of a parenting-time order is governed by Minn. Stat. § 518.175, subd. 5 (2016). A district court may restrict parenting time if it finds that "parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development." Minn. Stat. § 518.175, subd. 5(c)(1).

Here, the district court concluded that the risk of physical and emotional harm to F.M. required restricting Moen's parenting time. The district court reached this conclusion after finding that the "credible evidence" established that Moen committed multiple harmful acts against F.M. and Sanders and engaged in repeated behaviors that showed a reckless disregard for F.M.'s safety. The district court specified 27 acts harmful to F.M. and Sanders. The district court's findings are supported by the record.

Sanders testified about specific instances of Moen's behavior. Sanders testified that Moen threw F.M. on a bed when she was very young, covered F.M. with a blanket, bit F.M.'s finger, threatened to punch F.M. in the face, put a pillow over F.M.'s face, pushed

F.M. in a baby buggy quickly down a rocky path, pushed Sanders, kept Sanders awake at night, would not allow Sanders to go to bed before him, called Sanders a “b-tch” in front of F.M., and pushed Sanders and F.M. into a wall.

Moen admitted that he “dropped [F.M.] on the bed from a short height” because he wanted her to stop crying, but claimed that it was “such a long time ago.” Moen admitted that he covered F.M. with a blanket, but claimed that it was a loose-knit blanket. He admitted that he put F.M. under a duvet, but claimed that it was not an attempt to stop her breathing, because he was under the duvet with her attempting to block the sound of her crying from neighbors. Moen admitted that he bit F.M.’s finger after she scratched him, telling Sanders at the time, “[i]s it better if I punch her face,” or “[t]he next time I will punch her in her face.” He acknowledged that his actions could be seen as “threatening to harm” F.M., but asserted that it occurred three years ago and he did it to teach F.M. that “pain causes pain and this is not something you should do” because she was too young to understand language.

Moen admitted that he threw a pillow at F.M., but claimed that it did not hit her; walked quickly away from Sanders with F.M. in a stroller up a rocky path; called Sanders a b-tch in front of F.M., but claimed that F.M. did not understand it; and once trapped Sanders and F.M. between a wall and himself. Moen also admitted that he said that he wanted to throw F.M. in the garbage when she was crying, said that he hated F.M., and once threatened to kidnap F.M. Moen also testified that his father sexually abused his half-sister and he worried that it was inheritable. He testified that on one occasion when F.M. sat on his lap he asked himself, “what kind of sensation is this?” Moen testified that he

“found out [that] it’s more of a pleasant than an unpleasant feeling in [his] penis when F.M. is on [his] lap.”

Moen admitted to committing many of the acts, but he expressed regret or justified his actions. The district court’s findings are not clearly erroneous because they are supported by the record.

Moen also argues that the conduct upon which the district court relied is not recent or severe enough to restrict his parenting time and there is little risk of it reoccurring. First, we note that Moen presents no legal argument or citation to legal authority in his appellate brief and error is not obvious on this point. Therefore, Moen’s argument is insufficient to obtain relief from this court. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (“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 on appeal unless prejudicial error is obvious on mere inspection.”); *see also State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming arguments set out in the pro se supplemental brief forfeited because “[t]he brief contain[ed] no argument or citation to legal authority in support of the allegations”).

Second, Moen asks this court “to consider if the order from [the] [d]istrict [c]ourt was right.” Moen essentially asks us to reweigh the evidence. But this court does not reassess witness credibility or reweigh evidence on appeal. *Foster v. Foster*, 802 N.W.2d 755, 759 (Minn. App. 2011) (“[W]e are not permitted to reweigh the evidence when reviewing a district court’s decision to determine whether the court abused its discretion.”).

Third, Moen raised the assertions regarding the severity of the harm and when it occurred and whether there is a risk of it reoccurring in district court. The district court addressed Moen's assertions.

Moen testified that he did not believe that any of this behavior was "something you can be convicted for in court, something that has caused harm or substantial and lasting emotional harm." The district court found that Moen declined to work with professionals, denied and minimized his actions, blamed Sanders for his behavior, and asserted that Sanders's anxiety led her to misinterpret and/or overreact to his behavior. The district court found that professionals who worked with/evaluated Moen have "expressed concern about [F.M.]'s emotional and physical well-being during [Moen's] parenting time" because of domestic violence and co-parenting conflict, and Moen's parenting skills and mismanagement of his anger.

Moen testified that, "in [his] eyes," his behavior was not harmful, but if it had been, there was no present risk because more than three years passed since he did something to F.M. that could arguably be harmful. The district court stated that Moen's assertion failed for several reasons: Moen has not had unsupervised time with F.M. during recent years, Moen's inability to understand the risk to F.M. from his past behaviors creates a high probability that his behaviors will continue, and Moen continued to exhibit behavior that was concerning to professionals even without the history of physical harm.

Moen testified that anger management will not necessarily make him a better father. Moen claimed that although he was not in an anger-management program, he believed that he "passed the exam on anger management" because he was doing other things to develop

himself, such as yoga, exercise, and meditating in nature. The district court found that there are significant concerns that Moen will act out again in anger toward F.M. because he is not receiving therapeutic services, did not finish an anger-management program, does not believe that he needs an anger-management program, disputes the characterization of his actions, continues to attempt to explain and justify his actions, and continues to deny any harm to F.M. from even his most clearly harmful actions. The district court's findings are supported by the record.

Finally, Moen requests an explanation or clarification of some of the district court's findings. But he should have raised this request with the district court. Moen further argues: "It seems . . . that on most episodes, if not all, where there is a disagreement between [Sanders and Moen] about what happened, [the district] [c]ourt decides to believe [Sanders]." This is a credibility issue. The district court believed Sanders's version of events, and this court defers to the district court's credibility determinations. See *Vangsness*, 607 N.W.2d at 472. The district court did not abuse its discretion by restricting Moen's parenting time.

Affirmed.