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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0670**

In re the Custody of J. M. H. and
A. M. H. Roland John Hillstrom,
petitioner,
Respondent,

vs.

Heather Joy Aschoff,
Appellant

**Filed March 5, 2018
Affirmed
Worke, Judge**

Isanti County District Court
File No. 30-FA-15-63

Carrie A. Doom, McKinnis & Doom, P.A., Cambridge, Minnesota (for respondent)

Elizabeth A. Schading, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for
appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by awarding respondent
equal parenting time contrary to the wishes of their children and the recommendation of a

neutral psychologist, by modifying the children's primary residence, and by modifying respondent's child-support obligation without current income information. We affirm.

FACTS

Appellant-mother Heather Joy Aschoff and respondent-father Roland John Hillstrom are the parents of 15-year-old J.H. and 12-year-old A.H. The never-married parties ended their relationship, and in March 2015, father filed a petition to establish custody and parenting time. The parties agreed to retain Dr. Michael Keller to meet with the children and make a recommendation as to the children's primary residence. Dr. Keller issued a report in April 2015 in which he stated that although the children reported that they love their parents equally, the children have a stronger and closer relationship with mother. Dr. Keller recommended that both children should live with mother as their primary parent and as their primary household, but that they should have a schedule of visitation and parenting time with father.

The district court filed an order for temporary relief in June 2015 directing father to pay a total of \$1,407 per month in child support. The district court also granted the parties temporary joint legal custody of the children, named mother's home as the children's temporary primary residence, and ordered that father would have parenting time every other weekend and one overnight per week.

Dr. Keller issued another report in December 2015, noting that both children reported being angry with father for ending his relationship with mother to pursue another relationship. Dr. Keller recommended that the temporary parenting schedule be

maintained, and that father participate in parent-child therapy with his children to address their feelings about how and why father and mother ended their relationship.

In January 2016, the district court filed a stipulated order in which the parties agreed to joint legal custody, with mother's residence serving as the children's primary residence. The parties also agreed to share parenting time, with mother having the children four days per week. The parties agreed to follow Dr. Keller's therapeutic recommendations and agreed that father would continue to pay \$1,407 per month in child support.

In December 2016, father moved to modify parenting time and child support. Father sought the addition of parenting time for two Thursdays per month, meaning that the parties would have equal parenting time. The district court instructed the parties to have Dr. Keller speak with the children again regarding father's motion to modify parenting time.

Dr. Keller issued a report in January 2017 stating that the children reported that the relationship with their father had notably improved and that parent-child counseling contributed to that improvement. Dr. Keller reported that the children preferred fewer days of parenting time with father but that the present schedule would be acceptable to both children. Dr. Keller recommended that the current parenting-time schedule be maintained.

The district court filed an order in February 2017 granting father's motion to modify parenting time and child support. The district court found that the relationship between father and the children had improved and that adding parenting time for father would be beneficial to the children because it would "continue the forward process of strengthening their relationship." The district court acknowledged the children's hesitancy about spending more time with father, so it awarded father an additional Thursday overnight per

month immediately, with a second Thursday overnight to be added on February 1, 2018. The district court also ordered that father's child-support obligation would remain as currently ordered until February 1, 2018, but that as of March 1, 2018, his monetary child-support obligation would end.

In April 2017, mother moved for amended findings, or in the alternative, for a new trial on the issue of parenting time. The district court denied mother's motion.¹ Mother appeals.

DECISION

Parenting time/primary residence

Mother argues that the district court abused its discretion by awarding father equal parenting time and by modifying the children's primary residence. "The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). The district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). "A district court's findings of fact underlying a parenting-time decision will be upheld unless they are

¹ We note that proceedings to modify custody and proceedings to modify parenting time are not trials; they are "special proceedings," under Minn. R. Civ. App. P. 103.03(g). *Huso v. Huso*, 465 N.W.2d 719, 720 (Minn. App. 1991) (quotation omitted). Therefore, a motion for a new trial in a proceeding to modify custody or parenting time is "not authorized" and "unnecessary to preserve issues for appeal." *Id.* at 721. Further, an order denying such a motion is not appealable. *Id.* Finally, we note that a district court cannot abuse its discretion by denying an unauthorized motion.

clearly erroneous.” *Dahl*, 765 N.W.2d at 123. This court may not find facts. *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009).

Parenting time

Mother argues that the district court abused its discretion by, contrary to the recommendation of Dr. Zeller and the preference of both children, awarding father equal parenting time.

The district court may modify a parenting-time award if it would “serve the best interests of the child[ren].” Minn. Stat. § 518.175, subd. 5(b) (2016). “In evaluating the best interests of the child[ren] for purposes of determining issues of . . . parenting time, the court must consider and evaluate all relevant factors.” Minn. Stat. § 518.17, subd. 1(a) (2016). Among those factors is “the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference.” *Id.*, subd. 1(a)(3). “[T]he choice of an older child is a very important factor for the court to consider.” *Steinke v. Steinke*, 428 N.W.2d 579, 583 (Minn. App. 1988). “The [district] court must make detailed findings on each of the factors in paragraph (a),” but it “may not use one factor to the exclusion of all others, and . . . shall consider that the factors may be interrelated.” Minn. Stat. § 518.17, subd. 1(b)(1).

This court addressed how district courts should use a child’s preference in its best-interests analysis in *Ross v. Ross*, 477 N.W.2d 753 (Minn. App. 1991) and *Steinke*. In *Ross*, the district court denied a father’s motion to modify custody even though the 16-year-old child wanted to live with the father, the child had moved in with the father, a psychologist observed that the child was “very distressed” by his mother’s anger and that this had

affected his behavior in school, and the record contained evidence showing that living with the father had improved the child's school performance significantly. 477 N.W.2d at 754. This court noted that, in determining a child's custody, "[t]he choice of an older teenage child is an overwhelming consideration." *Id.* at 756. Similarly, in *Steinke*, the district court awarded the father joint physical custody without considering the "clearly expressed preference of the ten year old child" to live with the mother. 428 N.W.2d at 581, 583. This court concluded that the district court misapplied the law by "failing to justify its decision to disregard the preference of the . . . child." *Id.* at 584.

Unlike *Ross*, in which the child expressed a clear custody preference based on significant emotional distress caused by living with the mother, these children have expressed no opposition to continuing joint custody. Dr. Keller also reported that the children are psychologically well-adjusted and love both parents equally. Furthermore, unlike *Steinke*, the district court expressly considered the preference of both children. The district court noted that, "[a]ccording to the report from Dr. Keller, the girls still have some hesitancy about spending time with their [f]ather." Although the district court concluded that "[i]t is in [the children's] best interest to have an equal parenting time schedule with both parents," the district court noted that, "given the reservations of the girls, it would be in their best interest to stagger the additions."

The district court also found that "adding parenting time for father is beneficial to the girls as it will continue the forward process of strengthening their relationship that has been started between them." Mother claims that this finding is not supported by the evidence. In Dr. Keller's December 2015 report, he stated that "[b]oth children . . . are

angry with their father for how and why he and their mother ended their relationship . . . and that their anger plays a significant role as to their current reported discomfort when at their father's home." Dr. Keller recommended that father participate in parent-child therapy with his children to address the children's "thoughts and feelings about how and why [father] and [mother] ended their relationship." Dr. Keller also recommended that the temporary parenting schedule, in which father had parenting time every Wednesday and every other weekend, should be maintained going forward.

The parties ultimately agreed to a parenting-time schedule granting father more parenting time than Dr. Keller recommended. In Dr. Keller's final report, he stated that "[t]he children report that their relationship with their father has notably improved and that parent-child counseling has contributed to the improvement." The record contains evidence that, as father spends more time with the children, their relationship improves. Therefore, the district court's finding that spending more time with father would benefit the children by strengthening their relationship with father is supported by evidence in the record and is not clearly erroneous. The district court did not abuse its discretion by granting father equal parenting time.

Primary residence

Mother argues that the district court abused its discretion by ordering equal parenting time, which de facto modified the children's primary residence. This court generally does not review issues that were not presented and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). An issue is raised "too late" when first raised in a motion for amended findings. *Allen v. Cent. Motors, Inc.*, 204 Minn.

295, 297, 283 N.W. 490, 492 (1939). Similarly, a party may not raise an issue for the first time in a motion for a new trial. *Ellingson v. Burlington N. R.R.*, 412 N.W.2d 401, 405 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

Mother raised the issue of primary residence for the first time to the district court in her motion for amended findings or new trial. Moreover, the district court did not address the primary-residence argument in either its order granting father's motion for modification of parenting time or its order denying mother's motion for amended findings or new trial. Because mother failed to properly raise primary residence before the district court, mother raised this argument too late and it is not properly before this court. On this record, we will not address mother's primary-residence argument.

Child support

Mother argues that the district court abused its discretion by ordering modification of father's child-support obligation without current income information. This court reviews orders modifying child support for an abuse of discretion and will reverse only if the district court resolved the question in a manner "that is against logic and the facts on record." *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

The district court may modify a child-support order "upon a showing of a substantial change in circumstances that makes the order unreasonable and unfair." *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009) (quotation omitted). The party moving to modify a child-support order "has the burden of demonstrating both a substantial change in circumstances and the unfairness and unreasonableness of the order because of the change." *Id.*

Mother cites Minn. Stat. § 518A.39, subd. 2(b)(1) (2016) for the proposition that district courts must use current income information to calculate child support. That statute states that a substantial change in circumstances is presumed and the terms of a support order shall be rebuttably presumed unreasonable and unfair if

the application of the child support guidelines in section 518A.35, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order or, if the current support order is less than \$75, it results in a calculated court order that is at least 20 percent per month higher or lower.

Minn. Stat. § 518A.39, subd. 2(b)(1). Here, father supplied current income information in support of his motion to modify child support. Mother did not attach any income information in response. Additionally, the district court's order expressly permitted the parties to bring a motion to modify child support based on a change of financial circumstances prior to March 1, 2018. If mother is dissatisfied with father's child-support obligation, she may seek modification. The district court did not abuse its discretion by modifying father's child-support obligation.

Affirmed.