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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0970**

In re the Marriage of:
Heather Newman, n/k/a Heather Osagiede,
Appellant,

vs.

Robert Newman,
Respondent.

**Filed March 26, 2018
Affirmed in part, reversed in part, and remanded
Kirk, Judge**

Isanti County District Court
File No. 30-FA-11-153

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respondent)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

In this parenting-time appeal, appellant-mother argues that the district court erred
by modifying the parties' parenting time when it granted respondent-father's motion to
remove the requirement that father's parenting time be supervised and granted father

unsupervised parenting time with the parties' children, without (1) conducting an evidentiary hearing and (2) making findings regarding the children's best interests. We affirm in part, reverse in part, and remand.

FACTS

Appellant-mother Heather Newman, now known as Heather Osagiede, and respondent-father Robert Newman married in 1999. The parties have three joint-minor children.

In 2011, father was convicted of fourth-degree criminal sexual conduct. The district court stayed imposition of father's sentence and placed him on probation for a period of ten years.

In 2012, father and mother entered into a stipulation to dissolve their marriage. The district court entered judgment on the stipulation, and it was subsequently amended twice. The final amended judgment granted mother sole legal and sole physical custody of the three children and established supervised parenting time for father of up to four hours every other week. The judgment also incorporated the parties' stipulation to appoint a parenting consultant with the "authority to decide all issues relating to parenting time and issues regarding the implementation of the recommendations of [father's therapist and the children's therapist], as to supervised/unsupervised and expanded parenting time." The district court appointed the parenting consultant to a term of two years and provided that the appointment would terminate after two years unless the parties' agreed to extend the appointment or to appoint a new parenting consultant.

The parenting consultant increased father's supervised parenting time from up to four hours every other week to six hours every other week based on the recommendation of the children's therapist. Mother filed a motion in district court to overturn the parenting consultant's decision, which the district court denied. The parenting consultant's two-year term expired in April 2016. The parties were unable to agree to an extension of the parenting consultant's appointment, or to the appointment of a new parenting consultant.

In February 2017, father received an early discharge from probation, after which he filed a motion in district court requesting that the court "remove all restrictions on his parenting time so that he [would] have unsupervised parenting time" with the children every other weekend and on alternating holidays. Father submitted documentation of his successful completion of sex-offender treatment, reports from 43 supervised parenting-time visits, and a report from a psychosexual evaluation concluding that he is able to safely have unsupervised parenting-time visits with the children.

Mother opposed father's motion and moved the district court to deny the motion or to order an evidentiary hearing. Mother argued that father "has a significant propensity for alienation" and that father is likely to alienate the children from her, which would emotionally harm them. Mother submitted a 2012 family assessment in which the assessor found that father "was not forthright in his interview." The assessor expressed concern about father's "active alienation" of the children from mother, father's risk to reoffend and his minimization of his sexual offenses, and father's lack of parental authority.

The district court granted father's motion without holding an evidentiary hearing and modified the parties' parenting-time arrangement to grant father unsupervised

parenting time every other weekend and on alternating holidays. The district court based this decision on its review of father's psychosexual evaluation, father's successful supervised parenting-time visits with the children, and father's early discharge from probation. The court also authorized the children's therapist to communicate with the court on any issue concerning father's parenting time. The court stayed its order pending appeal.

Mother appeals.

D E C I S I O N

"The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion. Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotations and citations omitted). A district court's findings of fact will be upheld unless clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978).

I. The district court did not abuse its discretion by denying mother's request for an evidentiary hearing.

Mother argues that an evidentiary hearing was required because she made allegations of endangerment under Minn. Stat. § 518.175, subd. 5(d) (2016). Minn. Stat. § 518.175, subd. 5(d), provides that "[i]f a parent makes specific allegations that parenting time by the other parent places the parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time."

Here, the district court held a non-evidentiary hearing on father’s motion to change his parenting time from supervised to unsupervised. At the hearing, the district court noted that mother, in her responsive motion, did not allege specific instances of behavior by the children that demonstrated that father had acted to alienate them from mother. The information mother submitted regarding “active alienation” came from the 2012 family assessment, which was conducted before the parties entered into the stipulation to dissolve their marriage, and to establish father’s supervised parenting time.

Although the district court did not explicitly deny mother’s motion for an evidentiary hearing on the basis of her endangerment allegations, it implicitly did so. See *Palladium Holdings, LLC v. Zuni Mortg. Loan Trust* 2006—OA1, 775 N.W.2d 168, 177-78 (Minn. App. 2009) (“Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion.”), *review denied* (Minn. Jan. 27, 2010). Because the record indicates that mother did not make specific allegations of endangerment sufficient to require an evidentiary hearing under Minn. Stat. § 518.175, subd. 5(d), we conclude that the district court did not abuse its discretion by denying mother’s request for an evidentiary hearing on the basis of endangerment.

Mother also argues that the district court’s removal of the requirement that father’s parenting time be supervised and its award of unsupervised parenting time to father constituted a substantial modification of parenting time that required an evidentiary hearing. We note that the Minnesota Supreme Court, in its recent decision in *Hansen v. Todnem*, eliminated the previously recognized common-law distinction between

substantial and insubstantial modifications of parenting time. ___ N.W.2d ___, ___, No. A16-0986, slip op. at 6 (Minn. Mar. 14, 2018). Nonetheless, mother did not raise this argument to the district court. Because an appellate court generally will not consider matters not properly argued to and considered by the district court, we decline to reach this argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

II. The district court abused its discretion by modifying the parties’ parenting time without first finding that the modification was in the children’s best interests.

Mother argues that the district court erred by not making more detailed findings as to the best interests of the children before it granted father’s motion to modify the parties’ parenting time. Minn. Stat. § 518.17, subd. 1(a) (2016), enumerates a number of factors that a district court must consider “[i]n evaluating the best interests of the child for the purposes of determining issues of . . . parenting time.” In *Hansen*, the Minnesota Supreme Court recognized that Minn. Stat. § 518.17 applies when establishing a parenting plan, but that Minn. Stat. § 518.175 governs parenting-time modifications. *Hansen*, slip op. at 6. Minn. Stat. § 518.175, subd. 5(b) (2016), provides:

If modification [of parenting time] would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child’s primary residence. Consideration of a child’s best interest includes a child’s changing developmental needs.

A district court is not required to make “detailed findings on *each and every* best-interest factor when a court decides a request to modify parenting time.” *Hansen*, slip op. at 10. But Minn. Stat. § 518.175, subd. 5(b), does require that the district court find that a

modification “would serve the best interest of the child” before modifying a parenting-time order.

Here, the district court modified the parties’ parenting time by granting father unsupervised parenting time with the parties’ children and by increasing father’s parenting time from six hours every other week to every other weekend and alternating holidays. The district court’s decision was based on evidence regarding father’s ability to have unsupervised parenting time with the children, but the district court made no finding either in its order or on the record that the modification was in the children’s best interests. There is no indication that any consideration was given to the children’s best interests. Thus, we conclude that the district court abused its discretion by modifying the parties’ parenting time without finding that the modification would serve the children’s best interests. We reverse the order granting father’s motion and remand for further proceedings. On remand, the district court must consider the children’s best interests and must specifically consider the children’s changing developmental needs. *See* Minn. Stat. § 518.175, subd. 5(b).

Affirmed in part, reversed in part, and remanded.