

*This opinion will be unpublished and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
A18-0061**

In re the Matter of:
William Gussert, petitioner,
Respondent,

vs.

Jeff Walters,
Appellant.

**Filed November 26, 2018
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-FA-16-4497

William Gussert, Mound, Minnesota (pro se respondent)

David C. Olson, Lanners & Olson, P.A., Plymouth, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant-father challenges the district court's order awarding respondent-stepfather third-party visitation rights, arguing that the district court abused its discretion

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

in ordering an evidentiary hearing and in determining that visitation would not interfere with his relationship with his minor children. We affirm.

FACTS

Appellant Jeff Walters and Deanna Gussert married on May 29, 1999. During their marriage, they had two children, P.W., born December 22, 2001, and C.W., born May 26, 2003. Walters and Deanna Gussert (mother) divorced on April 8, 2011. Shortly thereafter, mother and the children moved into the home of respondent William Gussert. On June 1, 2012, mother and Gussert married. The children resided primarily with mother and Gussert until mother's death on December 24, 2015. P.W. and C.W. then moved into Walters's home. Gussert saw P.W. and C.W. sporadically until March 2016, when Walters ended the visits.

On June 27, 2016, Gussert filed a petition seeking visitation rights with the children under Minn. Stat. § 257C.08, subd. 4 (2016). The district court ordered the parties to participate in a parenting-time evaluation and mediation sessions. Robert Hyland from Hennepin County Family Court Services conducted the parenting-time evaluation and facilitated mediation sessions. The parties initially agreed to a two-phase visitation schedule. For the first month, the parties agreed that Gussert would have visitation time every other weekend, but no overnights. During phase two, the parties agreed to expand the visitation time to include overnights. But the parties had a difficult time implementing the schedule.

On May 24, 2017, the parties appeared before the district court and indicated that the schedule had broken down. They asked the district court to issue an order establishing

a visitation schedule. The district court issued a temporary visitation schedule and scheduled an evidentiary hearing.

On October 24, 2017, the district court held an evidentiary hearing. Walters, Gussert, and Hyland testified at the hearing. On November 17, the district court issued an order awarding Gussert visitation rights. The district court determined that visitation is in the best interests of the children, that Gussert had established emotional ties with the children, and that awarding Gussert parenting time would not interfere with Walters's parental rights. The district court also found that both children are of sufficient age to express a preference and had expressed their desire to have extensive visitation with Gussert. The district court awarded Gussert visitation every other weekend and after school on Wednesdays and Thursdays. This appeal follows.

D E C I S I O N

We review a district court's determination of third-party visitation for an abuse of discretion. *Soohoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007). When reviewing visitation determinations, we examine "whether the [district] court made findings unsupported by the evidence or improperly applied the law." *Id.* "[W]e will not reverse the court's findings unless they are clearly erroneous." *Id.*

The third-party visitation statute provides that

[i]f an unmarried minor has resided in a household with a person . . . for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority.

Minn. Stat. § 257C.08, subd. 4. The district court shall grant the petition if it determines that “(1) visitation rights would be in the best interests of the child; (2) the petitioner and child had established emotional ties creating a parent and child relationship; and (3) visitation rights would not interfere with the relationship between the custodial parent and the child.” *Id.*, subd. 4(1)–(3). The party seeking visitation bears the burden of establishing the existence of each factor by clear and convincing evidence. *Soohoo*, 731 N.W.2d at 823.

I.

Walters argues that the district court erred in granting an evidentiary hearing on Gussert’s petition. He argues that the petition was insufficient to establish a prima facie case for all three elements required by the statute. Minn. Stat. § 257C.08, subd. 4(1)-(3). Specifically, he argues that Gussert failed to establish a prima facie case that awarding visitation would not interfere with Walters’s relationship with the children, and therefore the district court erred in holding an evidentiary hearing. We review the district court’s determination that the petitioner has made a prima facie showing of each statutory element for an abuse of discretion. *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011).

In determining whether to hold an evidentiary hearing, the district court found that the parties had presented scant evidence as to whether visitation would interfere with Walters’s relationship with the children. But the district court noted that Gussert was unequivocal in his assertion that he did not intend to interfere with Walters’s relationship with the children and was not seeking a grant of custody. The petition similarly indicates that Gussert did not intend to interfere with the relationship, and the affidavits submitted

by Gussert demonstrate that he had not previously contested or attempted to interfere with any of Walters's parenting decisions. To the contrary, Gussert had taken affirmative steps to respond to Walters's concerns and was seeking to cooperate with him. The parties had previously modified the parenting-time schedule to allow Walters to bring the children to a mid-week religious service, and Gussert acknowledged that decisions concerning the children's religion were "not [his] decision to make." We agree with the district court that this was sufficient to establish a prima facie case that visitation would not interfere with the relationship between Walters and the children. The district court therefore did not err in granting an evidentiary hearing on the petition.

II.

Walters argues that the district court abused its discretion in determining that visitation rights would not interfere with his relationship with the children. The party seeking visitation bears the burden of establishing clear and convincing evidence that "visitation rights would not interfere with the relationship between the custodial parent and the child." Minn. Stat. § 257C.08, subd. 4(3); *see also SooHoo*, 731 N.W.2d at 823. Walters argues that he provided extensive testimony regarding the parties' differences in opinion with respect to parenting style, religious beliefs, and standard of living. He argues that these differences have negatively impacted his relationship with his children. He also asserts that Gussert has interfered with his authority to make medical decisions for the children.

The district court rejected Walters's arguments. The district court found that the children's negative attitude toward Walters predated Gussert's petition for visitation. The

district court noted that in 2014, a guardian ad litem submitted a report that “made several statements regarding the boys’ strained relationship with [Walters] due to his lack of emotion and rigidity.” And the district court credited Hyland’s testimony that there was no causal connection between the children’s attitude toward Walters and their relationship with Gussert. Rather, the district court determined that Walters’s fractured relationship with his children was the result of his “inability to connect with them on an emotional level and his inability to demonstrate genuine feelings for them.”

The district court also rejected Walters’s claim that Gussert was attempting to interfere with his decision to raise the children as Jehovah’s Witnesses. The record supports this determination. Walters’s claim is based on a generalized assertion that Gussert was attempting to interfere; he does not cite to any specific examples to support his claim. At the evidentiary hearing, he admitted that the children had never identified Gussert as having made disparaging remarks about their religion. He testified that he felt the children “discount the viability of the Bible in our lives today,” but did not link that belief to Gussert. And Gussert testified that he had never attempted to interfere with the children’s religious training. Indeed, as noted, the parties had previously modified the parenting-time schedule to accommodate Walters’s desire to take the children to a mid-week religious service. The record therefore does not support Walters’s bald assertion that visitation with Gussert would interfere with his parental right to make decisions regarding the religious training of the children.

The record also belies Walters’s contention that Gussert was attempting to interfere with his authority to make medical decisions for the children. Walters’s claim is based on

an incident that occurred shortly after mother passed away, in which the school nurse contacted Gussert to inform him that P.W.'s medication for the month had not been dropped off. Gussert explained that mother had previously decided that P.W. would take Adderall to help him focus during the school day. Once a month, mother or Gussert would fill P.W.'s prescription and deliver it to the school nurse. Following mother's death, the school nurse contacted Gussert to inform him that P.W.'s medication had not been dropped off. Gussert filled the prescription and delivered it to the school, consistent with the routine established by mother. When Walters found out, he took the medication away and decided that P.W. would no longer take Adderall. Gussert did not attempt to contest this decision. The record therefore does not support Walters's contention that Gussert was attempting to interfere with his authority to make medical decisions.

Finally, Walters argues the district court erred in considering that the children previously lived with Gussert and applied an incorrect burden to Gussert's petition. Walters argues that the district court's determination that visitation would not interfere with Walters's parental rights was "based largely on the conclusion" that the children had previously resided with Gussert. This argument misstates the district court's analysis. The district court did note that Walters has "vastly more parenting time than he did previously." But the court went on to address each of Walters's concerns in detail. The district court's decision was therefore not "based largely on the conclusion" that the children had previously resided with Gussert. And the district court explicitly stated that it was applying the clear and convincing burden to the petition. On this record, the district court did not

abuse its discretion in determining that awarding Gussert visitation would not interfere with Walters's parental rights.

III.

Walters argues that the district court abused its discretion by awarding Gussert excessive visitation time. He argues that the district court impermissibly treated Gussert as a noncustodial parent. He cites *In re C.D.G.D.* to support his argument. 800 N.W.2d 652, 659 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). In *C.D.G.D.*, this court determined that the district court abused its discretion in awarding visitation because it treated the child's grandparent as a noncustodial parent, rather than a third party seeking visitation. *Id.* But in *C.D.G.D.*, the district court's visitation decision was heavily influenced by a pamphlet titled "A Parental Guide to Making Child-Focused Parenting Time Decisions," which provided guidance on how to allocate parenting time to foster a relationship between the child and each parent. *Id.* at 658-59. This court determined that by relying on a guide designed to apply to parenting-time decisions, the district court had impermissibly elevated the grandparent to the position of a parent. *Id.* at 659.

Here, the district court did not rely on such a pamphlet. And in *SooHoo*, the supreme court recognized that there is no authority to support the proposition that "an award of visitation to a third party that is commensurate with what would be awarded to noncustodial parents is inherently unreasonable." 731 N.W.2d at 825-26. Rather, the supreme court recognized that the reasonableness of an award of visitation depends on the specific facts and circumstances of each case, and that the district court "is in the best position to determine what is reasonable under the circumstances." *Id.* at 826.

The record reflects that the district court carefully considered the facts and circumstances of the case in making its visitation determination. The district court noted that both children asked to spend the majority of their time with Gussert. The district court appropriately determined that such a schedule would not be permissible, as it would effectively award Gussert custody of the children. But the district court took into account the children's request to spend meaningful time with Gussert. See Minn. Stat. § 257C.08, subd. 4 (stating that the district court "shall consider the reasonable preference of the child"). And the district court emphasized that visitation with Gussert would allow the children to continue their relationship with their mother's family, as Walters had very little contact with her family. Finally, the district court credited Hyland's testimony that Gussert's intention is to continue acting as the children's stepfather, not to become the primary parent or gain decision-making authority. Because the district court carefully evaluated the circumstances of the case and the district court is in the best position to determine what constitutes reasonable visitation under the circumstances, we conclude the district court did not abuse its discretion in establishing a visitation schedule.

Affirmed.