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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1596**

In re the Marriage of:
Yusuf Haji-Ismail Ali, petitioner,
Appellant,

vs.

Myrna Wati Ali,
Respondent,

County of Scott, intervenor,
Respondent.

**Filed June 3, 2019
Affirmed
Jesson, Judge**

Scott County District Court
File No. 70-FA-17-5017

Yusuf Haji-Ismail Ali, Eden Prairie, Minnesota (pro se appellant)

Amy Edwall, Law Offices of Southern Minnesota Regional Legal Services, Inc., St. Paul,
Minnesota (for respondent Myrna Wati Ali)

Ron Hocevar, Scott County Attorney, Ingrid Dixon, Assistant County Attorney, Shakopee,
Minnesota (for respondent Scott County)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant-father Yusuf Haji-Ismail Ali challenges the district court's award of sole legal and physical custody of the parties' children to respondent-mother Myrna Wati Ali. Several months after father returned from an almost two-year trip to Somalia, he filed for dissolution. After a court trial, the district court awarded mother sole legal and physical custody, with parenting time for father. Father argues that the district court erred in its findings of fact, and erred by removing the custody evaluation requirement, denying his continuance request, allowing mother to present her evidence first at trial, and denying his motion for a new trial. Because the district court did not err and acted within its wide discretion, we affirm.

FACTS

Appellant-father Yusuf Haji-Ismail Ali and respondent-mother Myrna Wati Ali married in April 2008. Father and mother are the parents of two children, born in 2009 and 2010. Father filed a petition to dissolve the marriage in March 2017.

Father and mother resided together with their children until March 2015, when father left to claim an inheritance in Somalia. Before father left, he told mother that he was not sure when, or if, he would return. While in Somalia, father had little contact with the children. During this time, mother changed her phone number, but she testified that father's relatives had her new phone number, and father could contact her through social media.

In December 2016, father returned. Upon his return, he moved back into the apartment he previously shared with mother. Mother had already removed father from the lease and did not want him to move back in. But she allowed him to move in because he wanted to be near the children. Mother testified that upon father's return, he became physically abusive and threatened to kill her if she took the children without his permission. In March 2017, father was removed from the home upon service of an ex parte order for protection.¹ After father's removal from the marital home, he moved in with a family friend and her son, S.M., who had previously been adjudicated delinquent for an offense related to child pornography.

Prior to trial, a stipulated order for temporary relief was issued that stated neither party would allow either S.M. or J.C., a friend of mother's with a prior sex-offense conviction, to be around the children. And because father still lived in the same home as S.M., father's parenting time would take place away from his home.

A dissolution pretrial order was issued in July 2017, ordering the parties to complete a custody evaluation prior to trial. Almost five months later, mother filed a letter stating that she could not afford to pay for a custody evaluation. The following day, father filed a letter requesting a continuance on the basis that a custody evaluation should be performed, and that he was unable to secure witnesses for trial because the order for protection prevented him from approaching witnesses in mother's apartment complex. The district

¹ Following an evidentiary hearing, the district court granted mother an order for protection with findings of domestic abuse. Over a year later, father challenged the district court's extension of the order for protection. This court affirmed the district court's decision in *Ali v. Ali*, No. A18-1413 (Minn. App. May 6, 2019).

court denied father's request for a continuance. It further declined to order that the parties pay for a custody evaluation and removed the previously imposed custody evaluation requirement.

In January 2018, the dissolution matter proceeded to a two-day court trial where both parties sought sole legal and physical custody of the children. The district court heard testimony from father, mother, a member of mother's support group, and a representative from the county.

The district court issued its findings of fact, conclusions of law, and order for judgment, granting mother sole legal and physical custody of the children. Shortly thereafter, father filed a motion for amended findings, requesting that the district court amend six findings of fact and one conclusion of law, and requesting a new trial on unspecified grounds. After a motion hearing, the district court denied father's motions.²

Father appeals.

D E C I S I O N

Father raises several arguments on appeal. First, father argues that the district court made erroneous findings of fact not supported by the record. Second, father asserts that, when the district court removed the custody evaluation requirement, it abused its discretion. Third, father contends that the district court erred procedurally when it denied his continuance request and by allowing mother to present her evidence first at trial.

² In support of his motion for amended findings, father submitted new evidence, in addition to what was already presented at trial. But the district court stated that it would not review any new evidence. And in its order, the district court noted that it disregarded all information outside of the record for purposes of father's motion for amended findings.

Finally, father challenges the district court's denial of his motion for a new trial.³ We address each argument in turn.

I. The district court did not make erroneous findings of fact.

Father asserts that the district court made the following errors in its findings of fact: (1) finding that mother's phone number was changed due to a billing dispute; (2) finding that father told mother he may not be returning from Somalia; (3) failing to make a finding that mother alienated the children from father; (4) failing to find that mother did not fully disclose childcare providers in her answers to father's discovery; and (5) finding that father committed acts of domestic abuse against mother. We review the district court's findings of fact for clear error and will only reverse when this court "is left with the definite and firm conviction that a mistake has been made." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted).

Here, the record supports the district court's findings of fact. Mother's testimony addressed all of these disputed facts. And the district court made clear that it found mother credible and made its findings because of that credibility determination. See *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that a reviewing court defers to the

³ Father also appears to argue that the district court made inappropriate findings on the best-interests factors and failed to apply them judiciously. But he does not challenge any particular best-interests factor finding. In its order, the district court addressed each of the best-interests factors, determined who the factors favored, and balanced the factors, ultimately determining that mother should have sole physical and legal custody, with parenting time for father. And this court will affirm a trial court's analysis of the best-interests factors, unless the trial court abused its discretion or erroneously applied the law. *Vangness v. Vangness*, 607 N.W.2d 468, 475 (Minn. App. 2000). Here, the district court did neither.

district court for credibility determinations). Because the findings of fact that father challenges are supported by the record, the district court did not clearly err in making its findings of fact.

II. The district court did not abuse its discretion in removing the custody evaluation requirement.

Minnesota Statutes section 518.167 (2018) governs the district court's ability to order a custody evaluation. As part of a custody dispute, "the court may order an investigation and report concerning custodial arrangements for the child." Minn. Stat. § 518.167, subd. 1. We review the district court's decision to order a custody evaluation for an abuse of discretion. *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 696 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

Before this case was reassigned, the previous judicial officer ordered a custody evaluation pursuant to Minnesota Statutes section 518.167, subdivision 1. But due to the parties' inability to pay for a custody evaluation, the district court removed the requirement.⁴ In doing so, the court found that both parties were receiving public assistance. And the district court "may not order costs . . . to be paid by a party receiving public assistance." Minn. Stat. § 518.167, subd. 5.

Still, father challenges the district court's decision to remove the custody evaluation requirement. But he fails to argue *how* the district court abused its discretion by removing the evaluation. At no point does he assert that he attempted to have a custody evaluation

⁴ Mother filed a letter with the court stating that she was unable to afford a custody evaluation. While father asserted that he wanted the custody evaluation, he did not indicate how he planned to pay for it.

completed. Nor did he state how he intended to pay for the custody evaluation. And the record does not establish that the district court was unable to reach a determination as to custody without the assistance of a custody evaluation. As such, the district court did not abuse its discretion when it removed the custody evaluation requirement.

III. The district court did not err procedurally.

Father contends that the district court erred twice procedurally. First, father asserts that the district court erred in allowing mother to present her case-in-chief first. Then, father challenges the district court's denial of his continuance request.

At trial, father did not object to mother presenting her case-in-chief first. Before trial began, the district court informed father that “[t]ypically we would have the person who files the petition start with the presentation of the evidence,” but asked if he would allow mother to present her evidence first, as she was represented by an attorney. Father stated, “I don’t have an issue with that.” As such, father did not preserve for appeal any allegation of error on this point. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that, generally, appellate courts address only questions previously presented to and considered by the district court). Additionally, father fails to demonstrate how he was prejudiced by mother presenting her case first. Thus, even if this was error, “error without prejudice is not ground for reversal.” *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (quotation omitted).

Father’s second procedural argument is that the district court erred in denying his continuance request. Because it is within the district court’s discretion to grant a continuance request, the denial of such a request will not be reversed absent a clear abuse

of that discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). And “[t]he test is whether a denial prejudices the outcome of the trial.” *Jones v. Jones*, 402 N.W.2d 146, 150 (Minn. App. 1987).

Here, father requested a continuance because, he asserted, he could not secure witnesses due to the order for protection against him. But father was unable to even identify any possible witnesses. In response, the district court noted that the trial had already been continued from October and found that father was aware of alternative methods for contacting witnesses for trial beyond personally entering mother’s apartment complex in violation of the order for protection. And it found that father did not make use of any alternative contact methods, which father does not dispute. Based upon the record before us, the district court did not abuse its discretion in denying father’s continuance request.

VI. The district court did not abuse its discretion when it denied father’s motion for a new trial.

Father argues that the district court abused its discretion when it denied his motion for a new trial. This court reviews a district court’s decision to grant or deny a new trial for an abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). This court may not grant a new trial on grounds not raised in the motion for a new trial. *Peters v. Indep. Sch. Dist. No. 657*, 447 N.W.2d 757, 760 (Minn. App. 1991). There are seven grounds upon which a new trial may be granted. Minn. R. Civ. P. 59.01(a)-(g). Father fails to identify the ground upon which he is requesting a new trial. Because father

failed to identify any specific ground for a new trial, the district court did not abuse its discretion in denying father's request for a new trial.

In sum, the district court thoughtfully considered father's arguments and did not err or abuse its discretion in denying father's motions and awarding mother sole legal and physical custody, with parenting time for father.

Affirmed.