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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1726**

James Michael Eidson,
Appellant,

vs.

Christine Michele Eidson,
Respondent.

**Filed October 7, 2019
Affirmed
Bratvold, Judge**

Steele County District Court
File No. 74-FA-17-1281

Keith L. Deike, Patton, Hoversten & Berg, P.A., Waseca, Minnesota (for appellant)

Beth A. Serrill, Blethen Berens, Mankato, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Bratvold, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

On appeal from the district court's order denying appellant-grandfather's petition for visitation with his granddaughter, grandfather argues that the record does not support the district court's findings of fact, and that the findings of fact do not support the district court's conclusion that visitation is not in granddaughter's best interest. We conclude that

the district court correctly applied the law and its findings of fact are supported by the record, therefore, the district court acted within its discretion in denying grandfather's petition for visitation. As a result, we affirm.

FACTS

Appellant James Michael Eidson (grandfather) is the father of respondent Christine Michele Eidson (mother) and the grandfather of J.E., born to mother in February 2006. Mother has a history of mental-health issues, has been diagnosed with bipolar disorder, and was treated for depression during her first pregnancy. In September 2006, grandfather bought a home in Owatonna for mother and J.E. so that they could move from Illinois to Minnesota. Grandfather testified that he sought to "help out financially, help out with any [health] problems, [and] help with [his] granddaughter." Grandfather also has a home in Owatonna.

Since 2006, mother and J.E. have lived in the home that grandfather purchased. Mother works in retail and has "various shifts," sometimes working until 10:30 p.m. and sometimes opening at 6:30 a.m. Mother also works three out of four weekends a month. In 2007, J.E. lived with grandfather "for a year and a half" while mother was struggling with mental-health issues. When J.E. was two years old, she moved back to mother's home, but grandfather often cared for her.

Mother began dating J.W., and he moved in with mother and J.E. In 2009, mother got pregnant and stopped taking her mental-health medication for the safety of the unborn baby. Mother later experienced some mental-health issues and needed inpatient treatment. Mother gave birth to her second child, D.E., in November 2009; D.E. had health issues and

remained in the hospital for about a month after his birth. J.E. lived with grandfather during mother's pregnancy, and for about a year after D.E. was born.

In addition to often caring for J.E., grandfather provided her with health insurance, brought her to the doctor and daycare, and paid her school tuition. J.E. had her own room at grandfather's house, and had toys, sports equipment, a bike, and pets at grandfather's house. She also had friends in grandfather's neighborhood.

When J.E. was about seven or eight years old, mother told grandfather she was concerned about the way he treated J.E. and D.E.¹ At some point, mother told grandfather that she did not like it that he was close to J.E. but did not have a relationship with D.E. Mother testified that grandfather did not visit D.E. after his birth in the hospital, did not show affection toward D.E., and did not engage with D.E.'s school events or other activities.

In September 2016, J.E. was ten years old and D.E. was seven years old. Grandfather brought cookies to school for J.E.'s classroom, but did not bring cookies for D.E.'s classroom even though they attended the same school. Later the same month, grandfather took J.E. to horseback-riding lessons. When he dropped off J.E. at home, mother confronted him about his unequal treatment of J.E. and D.E. Grandfather "started yelling back at her" and the two had a "yelling session back and forth." Grandfather followed

¹ For example, mother told grandfather that she did not feel it was appropriate for J.E. to sleep in the same bed as grandfather; grandfather bought a separate bed for J.E. In 2016, mother told grandfather that J.E. felt uncomfortable with the affection that grandfather displayed toward her. Following the court trial, the district court found that there was no evidence that grandfather made J.E. uncomfortable, and did not find credible mother's testimony that grandfather was disrespectful of J.E.'s personal boundaries.

mother inside the house; mother called 911 and she reported that grandfather “threatened her and her children.” The police arrived and took statements from mother, J.W., and grandfather. The district court found that mother later decided she “would not let” grandfather see J.E. or D.E. again. In fact, the district court found that mother has not allowed grandfather to have “phone contact, or to send cards, letters, or gifts to the grandchildren.”

Grandfather filed a petition for grandparent visitation with J.E., arguing that visitation was in J.E.’s best interest because he had been a consistent and stable presence in her life since birth, and he had provided her housing, school tuition, and other care. Grandfather contended that mother’s mental-health issues were “detrimental to [J.E.’s] emotional and mental development.” Grandfather filed several affidavits from family and friends in support of his petition for visitation.

The district court conducted a three-day bench trial on grandfather’s petition in January 2018. In addition to the facts described above, grandfather testified that mother and J.W. have encouraged J.E. to be scared of him and have kept J.E. away from him. Grandfather also testified that he did not have a close relationship with D.E. and often did not invite D.E. on trips and to activities, as he did with J.E. But grandfather added that this was because D.E. was “too young” and had a father, J.W., unlike J.E., whose father had no contact with her.

Grandfather called several witnesses. K.A. testified that she owns a restaurant, and grandfather and J.E. often ate there and were “very close.” K.A. testified that she would hug J.E. every time she saw her. Recently, when K.A. saw J.E. at the school and at the fair,

J.E. looked “weird” and did not hug her. Next, grandfather’s psychologist testified that she conducted an evaluation. The district court stated the psychologist “found no reason” grandfather should not have contact with J.E. The psychologist also testified about grandparent alienation and the impact it can have on children, and stated that reunification counseling can help reestablish the relationship. Grandfather’s ex-wife testified that she and grandfather were married from 1996 to 2010, and that she and grandfather “raised” and often cared for J.E. because of mother’s health issues and work schedule. Grandfather’s neighbor testified that she often saw grandfather playing with J.E., and J.E. had friends in the neighborhood. The neighbor also testified that she did not recall seeing D.E. at grandfather’s house. Finally, a babysitter testified that when J.E. stayed at grandfather’s house, she “looked to [grandfather] for stability,” and agreed that grandfather “show[ed] affection and love” to J.E.

Mother testified in opposition to visitation and stated that grandfather’s visitation with J.E. would interfere with her ability to parent because he does not treat the children equally. Mother also denied that J.E. lived with grandfather for any significant period of time. J.W. testified that, during the September 2016 incident, grandfather said that “he owns the house,” threatened to take it back, to stop paying for J.E.’s school, and “to disinherit everyone” if he could not see J.E. J.W. testified that grandfather has “strings attached,” and he “hold[s] . . . over [mother’s] head” the things he provides the children.

T.R., J.E.’s therapist, testified that it would not be in J.E.’s best interest to have any contact with grandfather. T.R. also testified that she did not think reunification therapy was appropriate in this case, but acknowledged that she was unfamiliar with this type of

therapy. T.R. acknowledged that mother was present during at least the first therapy session, and that mother had told T.R. that she did not want J.E. to have contact with grandfather.

J.E. testified that she and her grandfather had previously had a good relationship and she was “attached to him,” but she was frightened by the September 2016 incident. J.E. stated that she felt badly that grandfather ignored D.E., and that grandfather’s treatment of D.E. upset her mom. J.E. also testified that she did not want visitation with grandfather. J.E. added that mother had told her about the case and witness statements.

On March 19, 2018, the district court issued a written order denying grandfather’s petition for grandparent visitation. The district court found that J.E. “has stayed or lived” at grandfather’s home for “significantly more than one year,” and mother’s assertions otherwise were “outright lies.” The district court did not find T.R.’s testimony credible, in part, because her testimony was based on information from mother. The court concluded that T.R. was a “hired gun” for mother, and was not helpful to the court because of her lack of knowledge about grandparent alienation and reunification. The district court also found J.E.’s testimony had been influenced by mother; J.E. was “immersed into this controversy by her mother,” and had testified that she did not want visitation with grandfather, in part, because she knew that mother did not want her to have contact with him.

The district court concluded that it was not in J.E.’s best interest to have visitation with grandfather. The court reasoned that grandfather’s unequal treatment of J.E. and D.E. was “destructive to this family system,” and that visitation would interfere with J.E.’s

relationship with mother and their family. The district court also relied on J.E.’s “very clear” testimony that she does not want a relationship with grandfather.

Grandfather filed a motion for “amended/additional” findings and “alteration” of judgment. Mother opposed grandfather’s motion. The district court denied grandfather’s motion. Grandfather appeals.

D E C I S I O N

On appeal, grandfather challenges the district court’s denial of his petition for grandparent visitation. We review an order denying a grandparent-visitation petition for an abuse of discretion. *See Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). We consider whether the district court “made findings unsupported by the evidence or improperly applied the law.” *SooHoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007). When a grandparent seeks visitation, “in order to afford due deference to the fit custodial parent, the burden of proof must be on the party seeking visitation, and the standard of proof must be clear and convincing evidence.” *Id.* at 823.

“A parent’s right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right” under the Fourteenth Amendment’s Due Process Clause. *Id.* at 820 (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2060 (2000)); *see also Rohmiller v. Hart*, 811 N.W.2d 585, 595 (Minn. 2012) (noting *Troxel* is a plurality opinion). The grandparent-visitation statute, however, provides that, “[i]f an unmarried minor has resided with grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by the minor’s parents, the grandparents or great-grandparents may petition the district court for an order granting

them reasonable visitation rights to the child.” Minn. Stat. § 257C.08, subd. 3 (2018). Here, the district court found that J.E. resided with grandfather “for a cumulative period of time that exceeds 12 months,” and therefore, grandfather has standing under section 257C.08, subdivision 3, to request grandparent visitation. Mother contested this in the district court, but does not challenge the district court’s finding on appeal.

The district court “shall grant” the petition if it finds that grandparent visitation rights would be in the “best interests of the child.” *Id.* A grandparent seeking visitation rights must prove that visitation would not interfere with the parent-child relationship. *Id.*; see also *In re C.D.G.D.*, 800 N.W.2d 652, 656 (Minn. App. 2011), review denied (Minn. Aug. 24, 2011). Because of the importance of a parent’s fundamental right to make decisions about their children, the district court must give “special weight” to a “fit” custodial parent’s wishes regarding visitation. *Id.* at 661-62.

The paramount concern in grandparent-visitation cases is the best interests of the child. *Olson*, 534 N.W.2d at 549. “[W]hat is at issue in grandparent visitation cases is the right of the child to know [her] grandparents, and not the interests of the grandparents.” *Id.* (quotation omitted). In the best-interests analysis, a district court considers “the amount of personal contact between the . . . grandparents of the party and the child prior to the application.” *Id.*; see also *In re Santoro*, 594 N.W.2d 174, 177 (Minn. 1999). The district court can also consider the “best interest” factors under the custody-dissolution statutes, including the child’s preference for visitation. See Minn. Stat. § 518.17, subd. 1(a)(3) (2018); *Santoro*, 594 N.W.2d at 178-79 (reversing order for grandparent visitation where trial court did not consider the strong preference of the child against visitation).

Grandfather argues that the district court abused its discretion in denying his visitation petition. We disagree. The district court specifically found that grandfather's unequal treatment of D.E. and J.E. was "destructive to this family system." In his testimony, grandfather acknowledged his unequal treatment of D.E. But the district court found that grandfather did not recognize the "strain that he has caused within [mother's] home because of his unequal treatment." For example, the district court found that grandfather claimed that the "only reason" he was not permitted to see J.E. was the September 2016 incident. The district court also found that grandfather's testimony was not credible and that the reason he could not see the children was "years in the making."

Additionally, the district court found that the family struggled because grandfather failed to follow mother's wishes when caring for J.E. For example, mother told grandfather that she wanted to take J.E. to horseback-riding lessons, which would be "very special" between them. Soon after, grandfather took J.E. to horseback-riding lessons, without informing mother or asking for her permission. Mother also told grandfather on several occasions to treat D.E. and J.E. equally. But grandfather continued to favor J.E., which lead to "heated argument[s]," some of which J.E. and D.E. witnessed. Also, with the exception of school tuition, the district court found that grandfather bought J.E. gifts that he did not buy D.E., such as vacations, a cell phone, food, and clothing. In fact, the district court found grandfather had "an engrained behavior pattern of favoring his granddaughter over his grandson." These findings are fully supported by the record, and even by grandfather's very petition which seeks visitation with J.E. and not with D.E.

Still, grandfather makes other objections to the district court’s decision. Initially, grandfather urges this court to adopt a four-part test that district courts “must use in fashioning a remedy in grandparent visitation matters.”² We decline to adopt this test for two reasons. First, grandfather has not provided any legal authority supporting this test. *See, e.g., Christie v. Estate of Christie*, 911 N.W.2d 833, 837 n.4 (Minn. 2018) (concluding that an argument made without providing any analysis or citation to legal authority was waived). Second, the district court followed Minnesota Statutes and determined that visitation was not in J.E.’s best interest. The district court performed the analysis required by Minnesota Statutes and caselaw and we find no reversible error in the district court’s decision. *See C.D.G.D.*, 800 N.W.2d at 656.

Next, grandfather argues that J.E. testified that she preferred no visitation with grandfather because she had been influenced by mother. As stated above, the child’s preference is relevant in determining the best interest of the child. *Santoro*, 594 N.W.2d at 178-79. In this case, J.E. told her therapist, her parents, and also testified at trial that she

² Grandfather describes his “framework” for the district court as follows:

Clearly, if the parties are in court, there is an issue in the grandparent-grandchild relationship. First, then, the trial court needs to diagnose the problem. Second, the trial court should then determine whether there are any methods to attempt to resolve the problem. Third, the trial court must determine whether the grandparent-grandchild relationship between the particular parties involved in the case has value, or is it worth the effort to save it (i.e., do the potential benefits outweigh the risks). Fourth, if the relationship is worth saving, the trial court needs to refer the parties to the provider most appropriate to attempt to resolve the issue.

did not want contact with grandfather. Grandfather is correct that the district court found that J.E. “has been immersed into this controversy by her mother” and that J.E. knows that mother does not want her to have contact with grandfather. But the district court also found, despite these influences, J.E. “clearly and credibly” stated that she does not want contact with grandfather. The district court properly considered mother’s influence over J.E. and determined that J.E. did not want contact with grandfather. *See id.* at 179 (“Although the children’s desire not to see [their grandparents] may have been influenced by the [custodial parent’s] attitude and conduct, the trial court is not now free to disregard the children’s wishes.”).

Grandfather also argues that the district court should have considered “reunification therapy.” We disagree. The district court found that grandfather did not prove by “clear and convincing evidence that visitation would not interfere” with J.E. and mother’s relationship. *See* Minn. Stat. § 257C.08, subd. 3 (providing petitioner must prove visitation is in the “best interests of the child *and* would not interfere with the parent and child relationship”) (emphasis added). Also, the district court’s determination that grandfather’s visitation may interfere with J.E.’s relationship with mother is supported by the record. In particular, testimony establishes that grandfather’s visitation would interfere with mother’s ability to parent J.E. because his help comes with strings attached, he holds over mother’s head the things he provides the children, and he does not treat the children equally.

Finally, grandfather argues that the district court did not properly consider the best-interest factors because it found that, “[a]t this point,” visitation was not in J.E.’s best interest. Grandfather contends that the court did not properly weigh the strength of the prior

relationship he had with J.E. and J.E.'s "long-term best interests." Grandfather asserts that his "past relationship" with J.E. was "worth saving" because "everyone agreed [the relationship] was in [J.E.'s] best interest until the September 2016 argument." We disagree with grandfather's characterization of the district court's decision. The district court not only considered J.E.'s best interests at the present time, but also considered what would be best for her going forward. For example, the court found that grandfather's unequal treatment of J.E. and D.E. would continue to "occur into the future," and that this unequal treatment has had an adverse effect on J.E. and her family.

In sum, we conclude that the district court did not abuse its discretion in denying grandfather's petition for visitation.

Affirmed.