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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0790**

In re the Marriage of: Amanda Lynn Johnson, n/k/a Amanda Lynn Leathers, petitioner,
Appellant,

vs.

Benjamin Patrick Johnson,
Respondent.

**Filed April 27, 2020
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-FA-12-1405

Robert A. Manson, Robert A. Manson, P.A., Roseville, Minnesota (for appellant)

Kyle L. Prouty, J. Virgil Bradley, Cornerstone Family Law, LLC, Minneapolis, Minnesota
(for respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin,
Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant-mother challenges the district court's order denying her request for expanded parenting time. Because the district court did not abuse its discretion in denying her request, we affirm.

FACTS

Appellant-mother Amanda Lynn Leathers and respondent-father Benjamin Patrick Johnson were divorced on January 3, 2013, pursuant to a stipulated judgment and decree. Mother and father have one minor child, N.L., who was born in 2007. The district court awarded mother and father joint legal and joint physical custody of the child and established an equal parenting-time schedule.

In December 2015, father moved the district court to modify custody and parenting time. In August 2016, the district court issued an order granting father sole physical custody of the child and designating father's residence as the child's primary residence. It declined to modify legal custody of the child, and it limited mother's regular parenting time to Wednesdays from 5:00 p.m. to 8:00 p.m. and every other Saturday and Sunday from 10:00 a.m. to 4:00 p.m.

The district court's August 2016 order provided that, nine months after the filing of that order, mother could request a hearing to review parenting time and to determine whether an expansion of parenting time was warranted. The district court indicated that at that hearing, it would consider mother's compliance with the following expectations: (1) maintain stability in safe housing, (2) continue to receive regular mental-health treatment, (3) abstain from use of alcohol and nonprescribed mood-altering substances, (4) arrive no more than 15 minutes late to parenting-time exchanges, and (5) "ke[ep] Father immediately updated regarding any change in residence, as well as provide[] the identity of all individuals with whom she shares a residence." Mother did not appeal.

In June 2017, mother moved the district court to restore the previous, equal parenting-time schedule. The district court denied that motion in an October 2017 order. In doing so, it expressed concern that mother had not complied with the expectations set forth in the August 2016 order. In particular, it found that her housing was not stable, that she had been more than 15 minutes late to several parenting-time exchanges, and that she “did not timely disclose to Father her changes in residence or the identity of the individuals with whom she shares it.” The district court continued the parenting-time schedule established in the August 2016 order. The district court stated that, 12 months after the filing of the October 2017 order, mother could again request a hearing to determine whether an expansion of parenting time was warranted. The district court indicated that it would once again consider whether mother had complied with the five expectations that it had set forth in the August 2016 order. Mother did not appeal.

In December 2018, mother requested expanded parenting time. At the hearing on that request in February 2019, mother argued that the current parenting-time schedule did not provide her enough time with the child. Father testified at the hearing and opposed mother’s request.

The district court issued an order in April 2019, denying mother’s request for expanded parenting time. It made findings regarding mother’s compliance with the five expectations set forth in its August 2016 order. As to housing, the district court noted that the parties’ testimony was conflicting. Mother testified that, for the past one-and-one-half years, she had been living in an apartment with a zero-tolerance policy for alcohol and drugs. But father alleged, and mother admitted, that mother had spent much of her

parenting time at her current boyfriend's apartment. Father also testified that the child told him that she had not been to mother's apartment since Thanksgiving 2018 (more than two months before the February 2019 hearing). The district court took judicial notice that a domestic-abuse no-contact order was issued against mother's boyfriend in protection of mother in October 2018, and that it was vacated approximately one month later when mother's boyfriend pleaded guilty to disorderly conduct. Mother claimed to be unaware of the criminal charge against her boyfriend. Upon further questioning by the district court, she recalled that there may have been charges against her boyfriend that were eventually dismissed.

As to mother's mental and chemical health, the district court found that mother "appears to regularly receive mental health treatment" and "testified that she is in alcohol treatment programming and that she has not consumed alcohol" since the denial of her previous motion for expanded parenting time. As to mother's tardiness for parenting-time exchanges, the district court noted the parties' dispute regarding that issue. Mother acknowledged that she had been late to some exchanges but maintained that she was early for most of them. Father, by contrast, asserted that on 15 occasions, mother was either late or did not arrive at all.

Lastly, the district court considered the communication between the parties. Its findings regarding that expectation were not limited to whether mother updated father regarding her residence and instead focused on the parties' communication regarding parenting issues. Father testified regarding two events that had occurred since the district court issued its previous order. First, father alleged that without his knowledge, mother

had attempted to make arrangements to visit the child at father's home while father was at work on a day when mother did not have scheduled parenting time. Mother denied that allegation, but she admitted that she had told the child that she could pick the child up from father's house while father was at work, even though that arrangement had never been acceptable to father. Second, father alleged that mother had given the child a cell phone and encouraged the child to keep it a secret from father. Mother admitted that she had given the child a cell phone without telling father, but she asserted that it was not a secret.

The district court noted mother's testimony that she was in jail for two days in October 2018, purportedly because of a bench warrant originating from a traffic ticket from two years earlier. It took judicial notice that the bench warrant was actually issued based on mother's failure to follow the terms of probation and that the underlying offense was tampering with a motor vehicle, and not a traffic offense, as mother had indicated. Mother did not inform father that she had been in jail.

The district court determined that father was more credible than mother. It explained:

The Court has serious concerns regarding Mother's request to expand parenting time. A major component of expanding parenting time is the ability to trust the other parent. . . . While Mother appears to have demonstrated progress in maintaining housing and attending mental and chemical health treatment, the information before the Court indicates that Mother has tried to undermine Father's parenting. Mother avers that she has tried to openly communicate with Father . . . , however, the two major incidents with the secret phone and secret pick up indicate otherwise. Through her behavior, Mother is effectively teaching the child that deception and subterfuge is acceptable, so long as she is not caught.

Moreover, Mother has failed to honestly communicate with Father. Mother has not informed Father regarding her frequent parenting time at [her boyfriend's] condo, Mother did not inform Father about the criminal incident with [her boyfriend], and Mother did not inform Father that she had spent time in jail. . . . The fact that Mother testified to the belief that jail time is not an important enough event to communicate to the other parent is in itself seriously concerning.

From the record, it is difficult for the Court to assign any meaningful degree of confidence in the fact that a substantial change of circumstances has occurred since the Custody Order rendering an expansion [of] parenting time in the child's best interests. What the Court does know with confidence is that Mother was not being forthright with the Father, or for that matter, the Court about what exactly occurs during the child's parenting time.

The district court concluded that an expansion of mother's parenting time was not in the child's best interests and continued the existing parenting-time schedule. Mother appeals.

D E C I S I O N

Mother contends that the district court erred in denying her motion to expand parenting time. "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 when it misapplies the law or makes findings of fact that are unsupported by the record. *Id.* This court upholds the district court's findings of fact unless they are clearly erroneous. *Id.*

A district court must modify parenting time if modification would serve the best interests of the child and the modification would not change the child's primary residence.

Minn. Stat. § 518.175, subd. 5(b) (2018). When the district court issues a parenting-time order, it “may reserve a determination as to the future establishment or expansion of a parent’s parenting time.” *Id.*, subd. 1(a) (2018). “In that event, the best interest standard . . . shall be applied to a subsequent motion to establish or expand parenting time.” *Id.*

In arguing that the district court erred, mother quotes Minn. Stat. § 518.175, subd. 5(c) (2018), which states that a district court may not restrict parenting time unless it finds that parenting time is likely to endanger the child or that the parent has failed to comply with court-ordered parenting time. Mother maintains that the district court’s findings are not sufficient to show endangerment. For the reasons that follow, mother’s reliance on the endangerment standard is unavailing.

The district court restricted mother’s parenting time in its August 2016 order. In that same order, it provided mother an opportunity to expand her parenting time in the future. Mother did not appeal that order. The order challenged here is not the August 2016 order restricting mother’s parenting time. This appeal is taken from the April 2019 order denying mother’s motion to expand parenting time. Therefore, the endangerment standard in Minn. Stat. § 518.175, subd. 5(c), does not apply. Instead, the best-interests standard in Minn. Stat. § 518.175, subds. 1(a), 5(b), is the proper standard.

Mother argues that she met the five expectations that the district court set forth in its previous orders. And she takes issue with the district court’s findings regarding the fifth expectation regarding communication. Mother does not challenge the accuracy of those findings, but she points out that they address circumstances that are beyond the scope of the communication expectation set forth in the August 2016 order. She asserts that the

district court “appears to now expect [mother] to also be trusted by [father] and to be honest and transparent in her dealings” and “seems to interject a requirement that somehow [mother] must inform [father] of all that is going on in the parenting time with the child and in her life.” Mother argues that such requirements are unrealistic, and she accuses the district court of attempting to “micromanage” the parties’ relationship.

Mother is correct. The district court’s findings were not limited to the communication expectation set forth in the August 2016 order, which simply required mother to update father immediately on any change in residence and to provide the identity of the individuals with whom she shared a residence. Nevertheless, even if mother satisfied the expectations set forth in the August 2016 order, she is not necessarily entitled to expanded parenting time. The district court never indicated that those expectations would be the only relevant circumstances.

In denying mother’s request for expanded parenting time, the district court found that mother had “failed to honestly communicate” with father regarding her frequent exercise of parenting time at her boyfriend’s residence, the criminal incident involving her boyfriend, and her incarceration for two days. The district court also found that mother had attempted to make arrangements to pick up the child from father’s home and had given the child a cell phone without father’s knowledge, which demonstrated an attempt to undermine father’s parenting authority and taught the child that deception was acceptable. The district court did not err in considering all of those circumstances in its best-interests analysis, even though they did not precisely align with the district court’s articulated expectations.

In sum, our review of the record reveals support for the district court's findings of fact and its well-reasoned application of the best-interests standard. The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). We discern no reason to do so in this appeal.

Affirmed.