

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0007**

In re the Custody of: A. L. D.,

Michael Anthony Davis, petitioner,
Appellant,

vs.

Amanda Lee Lewis,
Respondent.

**Filed September 8, 2020
Affirmed
Cochran, Judge**

Pine County District Court
File No. 58-FA-12-63

David Sjoberg, Sjoberg Law Office, P.A., Ham Lake, Minnesota (for appellant)

Patrick A. Doran, Miller & Stevens, P.A., Forest Lake, Minnesota (for respondent)

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

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant-father challenges the district court's order granting respondent-mother's motion to relocate with their child to Nevada, arguing that the district court abused its

discretion in granting the motion. Because the district court did not abuse its discretion, we affirm.

FACTS

Father and mother, who have never been married, have one child together, A.L.D. In 2013, the district court entered an order awarding father and mother joint legal custody of A.L.D., and granting mother sole physical custody. The order provided that father would have parenting time with A.L.D. on alternating weekends.¹ The parties entered into the custody and parenting-time arrangement pursuant to an agreement.

In July 2019, mother brought a motion to relocate with A.L.D. from northern Minnesota to Nevada because she had accepted a new job in Nevada. Father, who lives in the Twin Cities, opposed the motion. The district court held an evidentiary hearing on the motion in October 2019. Mother, father, and father's significant other testified at the hearing.

Mother's primary motivation for moving to Nevada was the job that she accepted. She also wanted A.L.D., who is biracial, to attend a more diverse school, and to allow A.L.D. to take advantage of cheerleading and gymnastics opportunities—two activities that A.L.D. enjoys.

Prior to accepting the job in Nevada, mother worked full-time as a registered nurse in Duluth. She also worked three to four shifts per week doing in-home health care in Moose Lake. Mother submitted three years' tax returns showing her taxable income as

¹ During the school year, the weekend consisted of Friday to Sunday. During the summer, the weekend stretched from Wednesday to Sunday.

evidence at the hearing. Mother testified that the job she accepted in Nevada paid more money and required her to work fewer hours than her jobs in Minnesota did. Mother also testified that the benefits offered at her new job in Nevada were superior to those offered by her Minnesota employers. Moreover, mother testified that she had found an apartment to rent in Nevada, and that the rent and cost of living there would be less than in Minnesota.²

Mother testified about D'Vorre & Hal Ober Elementary (D'Vorre), the school that A.L.D. would attend if she relocated to Nevada. Mother had visited D'Vorre and met with A.L.D.'s would-be teacher. Mother testified that D'Vorre is more diverse than A.L.D.'s school in Duluth. She also testified that Nevada schools ranked highly in math and reading scores, and that the student-to-teacher ratio in Nevada schools was approximately 18:1. And mother testified about her belief that there were more cheerleading and gymnastics opportunities in Nevada than in Minnesota.

Mother proposed a parenting-time schedule that provided father with more total parenting time than the original order. Mother indicated that she was willing to reserve father's child-support obligation if he put that money towards A.L.D.'s airfare between Minnesota and Nevada.

Father testified that his relationship with A.L.D. would be harmed if A.L.D. moved to Nevada. He testified that mother could have found a similar job in Minnesota if she had explored opportunities in the Twin Cities. He produced evidence demonstrating that the average nurse salary in the Twin Cities is comparable to that in Las Vegas. Father also

² Mother moved to Nevada before the hearing on her motion. During that time, A.L.D. stayed with mother's significant other in Minnesota.

testified that schools in Minnesota were generally better than those in Nevada, and submitted evidence that compared Minnesota schools, in general, to Nevada schools. Father's significant other testified that she believed that A.L.D. would likely grow apart from father if she moved to Nevada.

After the evidentiary hearing, the district court entered an order granting mother's motion, concluding that mother had met her burden of proof that relocating A.L.D. was in the child's best interest. The district court ordered that father would have parenting time on certain specified dates during the school year, and parenting time for the majority of the summer. The district court's order provided father with more total parenting time than its original 2013 custody and parenting-time order. Father moved the district court to amend its findings and order or to grant a new trial. The district court denied the motion. Father appeals.

D E C I S I O N

Father challenges the district court's order allowing mother to relocate A.L.D. to Nevada. Minnesota Statutes section 518.175, subdivision 3(a) (2018) provides that "[t]he parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree." In determining whether to grant a parent's request to move the child to another state, the district court must consider the best interests of the child, including:

- (1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate

and with the nonrelocating person, siblings, and other significant persons in the child's life;

(2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;

(3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;

(4) the child's preference, taking into consideration the age and maturity of the child;

(5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;

(6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;

(7) the reasons of each person for seeking or opposing the relocation; and

(8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

Id. (b) (2018). When no domestic abuse has occurred, as is the case here, the parent seeking relocation carries the burden of proof that relocation is in the child's best interest. *Id.* (c) (2018).

"Appellate review of custody modification and removal cases is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*,

748 N.W.2d 279, 284 (Minn. 2008) (quotations omitted); *see also Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009) (“The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion.”). Appellate courts “set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility.” *Goldman*, 748 N.W.2d at 284. “Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Father asserts that the district court made clearly erroneous findings concerning several best-interests factors set forth in the statute, and that the district court abused its discretion in concluding that relocating to Nevada was in A.L.D.’s best interests. With regard to the best-interests factors, father limits his challenge to factors two, three, and six.³ Father also argues that the district court abused its discretion in ultimately concluding that relocating to Nevada is in A.L.D.’s best interests because mother failed to seek comparable employment in Minnesota. We first address the district court’s findings on each of the best-interests factors challenged by father and then turn to father’s argument that mother should have been required to seek in-state employment before seeking to relocate A.L.D. to Nevada.

³ Father does not challenge the remaining factors. The district court’s findings on these unchallenged factors reflect that it considered these factors to be relatively neutral to A.L.D.’s best interests.

A. The district court's findings regarding the second factor are not clearly erroneous.

Father first challenges the district court's findings on the second factor, which includes the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child. *See* Minn. Stat. § 518.175, subd. 3(b)(2). Specifically, father argues that the district court's findings regarding the impact that the relocation will have on A.L.D.'s educational development were clearly erroneous. He contends that the district court clearly erred by finding that D'Vorre is more diverse than A.L.D.'s school in Duluth. He argues that no evidence was introduced that showed that D'Vorre is superior to A.L.D.'s school in Duluth, and that he presented evidence that Minnesota schools are superior to Nevada schools. He also maintains that the district court erroneously adopted mother's testimony that the student-to-teacher ratio at D'Vorre was 18:1.

The district court did not, however, make the findings that father contests. In its order, the district court discussed the evidence presented by both parties about schools in Minnesota and Nevada but did not actually find one school to be superior to the other. It noted that mother had visited D'Vorre, provided evidence about the school's student-to-teacher ratio, and testified that she believed that D'Vorre is more diverse than the child's school in Duluth. But the district court did not find that D'Vorre is in fact more diverse than A.L.D.'s school in Duluth. Nor did the district court adopt mother's evidence regarding the student-to-teacher ratio. It simply recognized that mother presented

the evidence. With regard to father's evidence, the district court noted that father presented statistical evidence comparing Minnesota schools to Nevada schools but found that the evidence offered was unpersuasive because the statistics were outdated. It is apparent from its order that the district court considered the evidence presented by the parties regarding the impact on A.L.D.'s educational development from the move and, in effect, concluded that the impact would be neutral.

In addition to challenging the district court's findings regarding A.L.D.'s educational development, father also argues that the district court ignored how the relocation would likely affect A.L.D.'s emotional development. Specifically, he argues that, although the parenting-time schedule that the district court adopted provided him with more total parenting-time days than the prior order, the relocation would have a significant negative impact on his relationship with A.L.D. because he would have less frequent contact with A.L.D. We are not persuaded that the district court failed to consider this aspect of A.L.D.'s emotional development. While the district court did not make explicit findings about the impact the move would have on A.L.D.'s emotional development, the district court addressed the argument father now makes when it found that father would be able to maintain his relationship with his daughter through: (1) increased overall parenting time, (2) a significant amount of continuous parenting time over the summer, and (3) the ability to communicate with the minor child by telephone during evening hours when the child is in Nevada. We discern no clear errors in the district court's findings on this best-interests factor.

B. The district court’s findings on the third factor do not require reversal.

Father next challenges the district court’s findings regarding the third factor, which considers the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable parenting-time arrangements, considering the logistics and financial circumstances of the parties. *See* Minn. Stat. § 518.175, subd. 3(b)(3). Father argues that the district court clearly erred when it found that father would have parenting time each month. Under the new schedule, the district court awarded father parenting time for most school holidays during the academic year and extended parenting time during the summer. But the Thanksgiving and Christmas schedule—the November and December holidays—rotates between the parties each year, so that during a given year one parent has parenting time over Thanksgiving and the other has parenting time over Christmas. Thus, in the years that father has parenting time over Thanksgiving, he will not have parenting time in December. And in the years that father has parenting time over Christmas, he will not have parenting time in November. In its order, however, the district court indicated that the new parenting-time schedule provided father with parenting time during “the majority of the summer *and each month during* the academic year during extended weekends for school holidays.” (Emphasis added). For the reasons explained above, we conclude that the district court’s statement that father would have parenting time “each month during the academic year” is inconsistent with the parenting-time schedule that it articulated later in its order.

We conclude, however, that the error was harmless. *See* Minn. R. Civ. P. 61 (“[N]o error or defect in any ruling or order in anything done or omitted by the court or by any of

the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”). Though the district court overlooked this issue when it stated that father would have parenting time each month, the district court’s order clearly demonstrates its determination that the increased parenting time afforded to father under the new schedule, and father’s ability to communicate with A.L.D. over the phone, bolstered the feasibility of preserving father’s relationship with A.L.D. despite the relocation.

Father further argues that the district court’s findings on this factor—which focuses on preservation of the child’s relationship with the nonrelocating parent—were erroneous because the district court was “dismissive” about how the parenting-time schedule might affect A.L.D.’s relationship with him. As discussed above, he maintains that the schedule reduces the frequency of his parenting time with A.L.D. He asserts that the district court’s reasoning on this factor “defies all logic, common sense, or guidance from any expert or even the courts.” While we understand father’s concern regarding his ability to maintain his relationship with A.L.D. with less frequent parenting-time, we do not agree that the district court’s conclusion requires reversal.⁴ And as a reviewing court, we do not reweigh

⁴ In asserting that the district court’s reasoning on this factor defies common sense, father relies in part on a pamphlet concerning parenting-time decisions that was not introduced to the district court. An appellate court generally does not review evidence not presented to the district court. See Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial

the evidence. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court adequately explained why it determined that it was feasible to preserve father’s relationship with A.L.D. based on the evidence in the record. Consequently, we conclude that the district court did not abuse its discretion in its analysis of how the relocation, and the parenting-time schedule, would affect father’s relationship with A.L.D.⁵

C. The district court’s findings of fact on the sixth factor are not clearly erroneous.

Father also contends that the district court’s findings on the sixth factor are clearly erroneous. The sixth factor examines whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child. See Minn. Stat. § 518.175, subd. 3(b)(6). The district court concluded that this factor favored relocation, finding that mother’s job in Nevada would allow her to work fewer

court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”); *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (“An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.”). We do not consider the pamphlet in our review of the district court’s order.

⁵ We also note that *Anh Phuong Le v. Holter*, 838 N.W.2d 797 (Minn. App. 2013), review denied (Minn. Dec. 31, 2013), cited by father in his brief, is unpersuasive. Father cites *Anh Phuong Le* to support his argument that the district court abused its discretion in granting mother’s motion because, despite additional parenting time, the relocation to Nevada will have a significant negative impact on his relationship with A.L.D. But in *Anh Phuong Le*, we affirmed the district court’s order denying relocation where the district court concluded that relocating children to another state “would have a significant negative effect on the children’s relationship with [the father] and held that [the mother] had failed to sustain her burden of proof for removal.” 838 N.W.2d at 800. The district court here did not find that relocation would have a significant negative effect on father’s relationship with A.L.D., and adequately explained why it was feasible to preserve the relationship despite the relocation.

hours while earning a higher income. The district court noted that mother's work schedule in Nevada would allow her to spend more time with A.L.D.

Father argues that the district court clearly erred in its analysis of this factor because it overstated the financial benefits that mother gained from her new job in Nevada. Specifically, father argues that the district court's findings on this factor understate mother's income in Minnesota, and that mother does not gain a significant financial benefit from her new job. Again, we are not persuaded.

The district court's findings about mother's income are not clearly erroneous. The district court found that mother's tax returns showed her taxable income amounts for 2016, 2017, and 2018—all of which were less than \$70,000. The tax returns that mother submitted at the hearing support the district court's findings. The district court also found that mother's job in Nevada offered her a base salary of approximately \$80,000 per year to work only 36 hours per week. Mother's testimony supports this finding. Thus, the record supports the district court's finding that mother's new job allowed her to work fewer hours while earning a higher income. Moreover, as mother argues in her brief and father does not contest, mother earns significant benefits at her new job and has a lower cost of living in Nevada. Viewed as a whole, we discern no clear error in the district court's findings on this factor.

Overall, the district court's order makes it clear that it determined that most of the best-interests factors were relatively neutral, but that the improved quality of life that would accompany the move to Nevada would benefit A.L.D. In reaching this conclusion, the district court emphasized that the mother's job opportunity in Nevada, along with the

proposed parenting-time schedule, would maximize A.L.D.'s time with both parents. We cannot conclude from this record that the district court abused its discretion by finding that it was in A.L.D.'s best interests to relocate with mother to Nevada.

D. Mother was not required to seek comparable in-state employment.

Finally, father argues that the district court abused its discretion in granting mother's motion to relocate because mother did not seek similar job opportunities in the Twin Cities, where she might have found another job with a salary comparable to the Nevada job. Father concedes that the statute does not require a parent seeking relocation to seek employment in Minnesota, and cites no legal authority that establishes such a requirement. Father argues, however, that "it is implicit for an individual considering relocation to at least consider similar in-state opportunities without wholly disregarding comparable said prospects." Father thus asks us to read into the statute an implicit requirement not present in the statute's text. But when interpreting a statute, we cannot disregard the letter of the law "under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2018). Because the law does not require a parent to seek in-state employment opportunities before seeking to relocate with a child to another state, we cannot conclude that the district court abused its discretion in granting mother's motion to relocate to Nevada on this basis.

In sum, we conclude that the district court made no clearly erroneous findings that would require reversal and did not abuse its discretion in granting mother's motion to relocate with A.L.D. to Nevada.

Affirmed.