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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0799**

In re the Marriage of: Marcy M. Christensen-Byrns, petitioner,
Appellant,

vs.

Michael C. Byrns,
Respondent.

**Filed February 16, 2021
Affirmed
Florey, Judge**

Crow Wing County District Court
File No. 18-FA-12-466

Jason L. Schellack, Nathaniel Gurol, Minneapolis, Minnesota (for appellant)

Michael Byrns, Johnston, Rhode Island (pro se respondent)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this parenting dispute, appellant-mother argues that the district court (1) should have restricted respondent-father's parenting time and (2) failed to consider the best interests of the child. We affirm.

FACTS

Mother is a physician in Minnesota. Father is an epidemiologist and infectious-disease expert in Rhode Island. The 2011 Pennsylvania judgment dissolving the parties'

marriage awarded them joint legal custody of their minor child and awarded mother primary physical custody, subject to father's parenting time. Later, mother and the child moved to Minnesota, father moved to Rhode Island, and a Minnesota court awarded father parenting time during most of the summer and certain school breaks.

In February and April 2020, mother would not allow the child travel to Rhode Island for father's parenting time. Father moved the Minnesota district court to reevaluate the parenting schedule. Mother opposed the motion. On May 13, 2020, noting that mother refused to let the child travel during the COVID-19 pandemic, father moved the district court for an emergency order requiring mother to send the child to Rhode Island for his parenting time, which was scheduled to start on May 23, 2020.

Father argued that while his strong understanding of COVID-19 made him aware of the risks associated with travel, these risks could be addressed through proper safeguards. He pointed out that the pandemic could continue for more than a year, which he believed would be too long for a child to not see a parent. Father asked the district court to order that the child be brought to Rhode Island for parenting time for the summer 2020.

Mother asked the district court to not order the child to travel to Rhode Island in order to protect his health and safety during the COVID-19 pandemic. She cited data regarding the COVID-19 pandemic and argued that both air and car travel would put the minor child at an unnecessarily high risk of infection. She requested the district court to order that the child stay in Minnesota for the entirety of the summer 2020 and proposed that father have more telephone and Skype time with the child.

The district court issued an order on May 29, 2020, specifying that the 2012 parenting-time order remained in effect and ordered mother to return the child to father no later than June 5, 2020. The district court reasoned

Withholding [child] from his father is not warranted under these circumstances. The Court does not make these findings with the suggestion that the pandemic circumstances are not real, or that they are not being appropriately considered by both parents. Given [father's] background and his recognition of COVID-19 risk, while also considering [mother's] background and concerns about risk, there is no reasonable basis to conclude [child] is safe in Minnesota and in peril if he is in Rhode Island. The record does not reflect that [child], nor any other party to this matter, are particularly susceptible to COVID-19 risks. Without minimizing risks, based on COVID-19, [child's] right to an in-person relationship with his father also needs to be considered and addressed. It is in [child's] best interests for the current Court ordered schedule to be followed at this time.

The district court ordered the child be returned to father no later than June 5, 2020. Mother requested a stay from the district court, which the district court denied. Mother then asked this court to review the denial of the stay, which was denied in an order on June 30, 2020.

Around July 4, 2020, father drove to Minnesota from Rhode Island to facilitate the transfer of child for purposes of court-ordered parenting time, but was unsuccessful. He again moved the district court to enforce the existing parenting-time order. The district court held an emergency hearing, which mother did not attend despite father serving the documents upon mother's attorney of record with no response. Mother argues that neither she nor her attorney received notice of the hearing. The district court issued another order on July 6, 2020, pursuant to father's motion, granting father's request to have the child

returned to him for his summer 2020 parenting time and ordering mother to return the child immediately, with law-enforcement assistance if necessary.

Mother filed a motion to dismiss. The district court determined that another hearing on father's emergency motion was warranted due to mother's claimed lack of notice. At the hearing, mother argued that the reason she did not comply with the district court's May 29, 2020 order was "to protect the parties' minor child from exposure to the COVID-19 virus." At the conclusion of the hearing, the district court upheld its July 6, 2020 order and explained to mother that if she did not transfer the child to father a bench warrant would be issued for her arrest. On July 8, 2020, mother transferred the child to father, who then brought him to his home in Rhode Island.

Mother appeals.

DECISION

I. The district court did not err by enforcing the existing parenting-time order.

Mother argues that the district court erred by not suspending father's 2020 parenting time even though she presented evidence of "the dangers of interstate travel and the COVID-19 pandemic." "A district court's findings of fact underlying a parenting-time decision will be upheld unless they are clearly erroneous." *Newstrand v. Arend*, 869 N.W.2d 681, 691 (Minn. App. 2015), *review denied* (Dec 15, 2015). A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotations omitted). When determining whether findings are clearly erroneous, we view the record in the light most favorable to the district court's findings. *Lossing v. Lossing*,

403 N.W.2d 688, 690 (Minn. App. 1987). Also, we defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Here, the evidence submitted by mother included statistics from the CDC and various news articles on avoiding unnecessary travel during the COVID-19 pandemic, the vastness of the COVID-19 pandemic, and the concentration of COVID-19 cases in New England, where father lives. After a careful review, the district court found that there was “no reasonable basis to conclude that [the child] is safe in Minnesota and in peril if he is in Rhode Island.” It further found that neither the child nor his parents were “particularly susceptible to COVID-19 risks.” The district court also observed that, without minimizing the risks of COVID-19, the child’s right to an in-person relationship with father had to be taken into consideration. Therefore, the district court concluded that there were “not appropriate facts to support a restriction of father’s parenting time” and ordered transport of the parties’ minor child to Rhode Island. Viewing the record in the light most favorable to the district court’s findings, mother has not shown these findings to be clearly erroneous. *See Elliot v. Mitchell*, 249 N.W.2d 172, 174 (Minn. 1976) (affirming district court’s findings even though “the evidence might [have] support[ed] another conclusion.”).

II. The district court did not abuse its discretion in declining mother’s proposed parenting-time modification.

Mother argues that the district court abused its discretion by not considering whether her proposed parenting-time modification served the child’s best interests. Under Minn. Stat. § 518.175, subd. 5(b) (2018), “[i]f modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order

granting or denying parenting time, if the modification would not change the child's primary residence.”

It is unclear whether mother is arguing that the district court did not make a best-interest analysis or that it did make a best-interest analysis but failed to make adequate findings of fact on the factors required by that test. Regardless, mother’s argument fails under both scenarios. The district court concluded it was unnecessary to analyze the best-interest standard because father was not attempting to modify parenting time; rather he was requesting that the current parenting-time order be enforced.¹ Nevertheless, while mother argues that “the district court explicitly did not perform a best interests analysis,” the record shows that the district court concluded that even if it were required to analyze the best-interest standard, it “finds that it would not be in [the child’s] best interest to not see his father, in person, at this time as is provided in the Court’s Order.” Thus, the district court did consider the best-interest standard, even though it noted that such an analysis was not necessary in this case since father was requesting that an order be enforced, not modified. We agree with this analysis of the district court, and determine the district court did not abuse its discretion.

Alternatively, mother’s brief may be interpreted to argue that the district court failed to properly analyze the factors of the best-interest test. Mother contends that “the district court explicitly did not weigh these factors,” but rather “simply made the conclusion that

¹ We note that mother did not move to have the parenting-time order modified. Rather, she requested the district court deny father’s motion to enforce the current parenting-time order.

the best interests of the parties' minor child was to have in-person parenting time with [father] as soon as possible." Minn. Stat. § 518.17 (2018) provides a number of factors for district courts to consider when determining the child's best interests in custody and parenting-time issues.

Mother seems to contend that the district court's decision to give father in-person parenting time pursuant to the court's order must be reversed because "[t]he district court failed to weigh the danger posed to the minor child by being forced to travel to Rhode Island during a global pandemic." Thus, while she now argues that the district court should have considered and weighed other factors pertinent to a best-interest analysis, our review of the record shows that the only issues raised to the district court exclusively revolved around the potential dangers and health risks of traveling during the COVID-19 pandemic.

The district court made thoughtful findings on the evidence presented on the COVID-19 pandemic. It took into consideration father's "background and his recognition of COVID-19 risks" while also considering mother's "background and concerns about risk." With these considerations in mind, and noting that it was not suggesting "the pandemic circumstances are not real" nor that "they [were] not being appropriately considered by both parents," the district court determined that "there [was] no reasonable basis to conclude that [the child] is safe in Minnesota and in peril if he is in Rhode Island." Ultimately, the district court concluded that "[w]ithout minimizing risks, based on COVID-19, [the child's] right to an in-person relationship with his father also needs to be considered and addressed. It is [the child's] best interest for the current Court ordered schedule to be followed at this time." Because the district court made clear findings on the issue before

it, and given that our review is deferential, we conclude the district court did not abuse its discretion by not analyzing the other factors of the best-interests analysis.

Affirmed.