

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1132**

In re the Marriage of: Shilpa Gupta, petitioner,
Appellant,

vs.

Amit Mahipal,
Respondent.

**Filed April 26, 2021
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-FA-16-1029

Zachary P. Marsh, Marsh PPLC, Minneapolis, Minnesota (for appellant)

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Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant-mother challenges the district court's denial of her motion to move the residence of the parties' children from Rochester, Minnesota, to Cleveland, Ohio, arguing

that the district court abused its discretion in denying her motion. Because the district court's findings are supported by the record and the district court carefully applied the relevant law, we affirm.

FACTS

Appellant Shilpa Gupta and respondent Amit Mahipal, both physicians, are respectively the mother and father of two sons, born in 2009 and 2011 during the parties' marriage. When the marriage was dissolved in 2017, the parties stipulated to joint legal and joint physical custody. During the school year, the boys lived primarily with appellant in Minneapolis, where she worked at the University of Minnesota and they attended a private school; they spent Wednesday evenings and some weekends with respondent in Rochester, where he works at the Mayo Clinic. In the summers, the pattern was reversed so that most of the boys' time was spent with respondent. Appellant lives and works in the United States on an H-1B visa and is seeking permanent residency here.

In March 2019, appellant moved the district court for permission to relocate the boys to Cleveland at the end of the 2018-2019 school year. Respondent opposed the motion. In June 2019, before the district court had released its decision on the motion, appellant took the boys with her to Cleveland, where she began a new job. The motion was denied shortly afterwards. Appellant did not challenge the denial.

In September 2019, the boys moved to Rochester to live with respondent and attend a private school there. Until late November 2019, the parties had no fixed parenting-time schedule: their parenting consultant (PC) then helped them to establish one. In February 2020, appellant again moved the district court to relocate the boys to Cleveland. In July

2020, relocation was again denied. The boys are now successfully completing their second school year in Rochester.

Appellant challenges the denial of her motion, arguing that it was an abuse of the district court's discretion.

DECISION

“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 and citations omitted). Motions to remove a child to another state are governed by Minn. Stat. § 518.175, subd. 3 (2020), providing that:

(a) The 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. . . .

(b) The court shall apply a best interests standard when considering the request of the parent with whom the child resides to move the child's residence to another state.

The statute lists eight nonexclusive factors that a district court deciding a motion to remove should consider. The district court made findings on each factor in denying both appellant's 2019 motion and her 2020 relocation motions.

The first factor is the nature, quality, extent, and duration of the child's relationships with the relocating parent and the nonrelocating parent, as well as with siblings and other significant persons. The district court found that appellant “alleges that respondent is

‘abusive’ to the children . . . and describes [his] parenting as ‘manipulative and controlling.’ There is no evidence for these generalizations. Although the court recognizes that [appellant] may have a closer relationship with the children, her February 19, 2020, affidavit [supporting her second relocation motion] raises concerns about possible enmeshment.”

Appellant argues that this factor weighs in favor of relocation because she was the children’s primary caretaker until she moved to Cleveland in June 2019, they thrived in her care, they missed her, and they preferred her parenting style. Appellant does not refute respondent’s detailed and supported claims that, since moving to Rochester, the boys have excelled in school and participated successfully in many sports and activities, which would indicate that they are now thriving there. Contrary to appellant’s argument, this factor does not show that the district court clearly erred in ruling that moving to Cleveland would not be in the children’s best interests.

The second factor is the ages, development stages, and needs of the children, and the probable impact of relocation on their physical, educational, and emotional development. Minn. Stat. § 518.175, subd. 3(b)(2). The district court stated that it “has no concerns about how [r]espondent has cared for the children since June of 2019” when appellant moved to Cleveland. Thus, the record supports the district court’s determination that this factor supports the denial of her relocation motion.

Appellant argues that “[a]lmost certainly, the move [to Cleveland] would have a positive impact on the children’s development given the evidence provided by . . . the [PC].” But the PC actually wrote in a November 2019 letter to the parties:

[The child consultant] is of the opinion that the optimal resolution would be for [appellant] to resume residency in Minnesota. I concur.

....

[Appellant], the unfortunate reality is that it will not be possible for you to be as involved or have the same influence over the boys' development from afar as you had while they resided primarily in your care. That is the crux of this difficult situation. Calling the boys and texting them multiple times a day, for example, cannot replace the authenticity of your presence. And, as [the child consultant] noted, the frequency of your contact puts the boys in the position of having to say "goodbye" too many times for their own good; it also causes them to worry about you. It definitely disrupts the routines that [respondent] is trying to establish.

[The child consultant] and I agree that you are going to have to choose between putting your career first by remaining in Ohio or parenting the boys in the manner they have become accustomed to by returning to Minnesota. . . . I acknowledge that . . . you feel there are no suitable research opportunities in Minnesota. The potential shift from research to a treating physician is clearly not something of interest to you, and I respect your preference. However, as an oncologist, you are employable in Minnesota in some capacity.

(Emphasis omitted.) Appellant's implication that the PC supports moving the children to Cleveland is thus contrary to the record. This factor does not support granting the motion to relocate.

The third factor is the feasibility of preserving the relationship between the nonrelocating parent and the children through suitable parenting-time arrangements, considering the logistics and financial circumstances of the parties. *Id.*, subd. 3(b)(3). The district court found in July 2020 that, "in the last year, [i.e., since moving to Cleveland in June 2019, appellant] has been able to travel to Minnesota frequently to see the children," but noted that the parties were unable to agree on a parenting schedule until the problem

was resolved by the PC in November 2019 and surmised that “[t]he lack of a predictable and consistent parenting time schedule no doubt contributed to the children’s slow adaptation to [r]espondent’s home.”

Appellant refers to the “expanded” parenting time respondent would experience if the children lived in Cleveland, but the district court noted that respondent would no longer be involved with their music recitals, parent conferences, extracurricular activities, and homework. Even if respondent had not been involved in their academic lives prior to June 2019, when they attended school in Minneapolis and he lived in Rochester, respondent has undoubtedly been the primary parent associated with their schooling since September 2019, and they have done very well. Respondent’s relationship with the boys seems to have improved, and appellant’s does not seem to have been damaged, by the move to Rochester. The record supports the district court’s determination that this factor does not favor relocating the children in Cleveland.

The fourth factor is the children’s preferences, considering their ages and maturity. *Id.*, subd. 3(b)(4). The district court noted that neither party mentioned the children’s preferences, which was appropriate, but also observed that “[appellant’s] affidavit states that the children have ‘continuously stated their desire’ to live with her” and that the court did not doubt this was true. “However, the Court finds that [appellant] has inappropriately exposed the children to the relocation dispute and probably told them they would be moving to Cleveland” and that appellant “more likely than not made disparaging comments to the children about [r]espondent and/or their new home [in Rochester].”

Appellant claims the district court “disregarded correspondence dated February 15, 2020, by the children’s current therapist” who said that the children had verbalized sadness at their changing living situation and at missing their mother, but that this was understandable given her earlier role as their primary caretaker. The therapist also noted that the children “can verbalize things that they enjoy about Rochester,” they “have been engaged in activities to help them build friendships and a positive support system of friends,” and they were both “very sweet, loving, bright and kind boys.” The therapist’s letter thus supported helping the boys adjust to Rochester, not moving them to Cleveland.

The fifth factor is whether the parent seeking relocation had a practice of either promoting or thwarting the children’s relationship with the nonrelocating parent. *Id.*, subd. 3(b)(5). The district court said it was “concerned about [appellant’s] inability to respect [r]espondent’s parenting since her relocation” and found that her “excessive contact [by phoning and texting was] disruptive to the children and . . . a significant obstacle to their successful transition into [r]espondent’s household.” The district court also found that appellant’s taking “the children to a prospective school in Cleveland” in June 2019 “unquestionably contributed to the children’s difficult transition.”

Appellant points out that the PC recommended expanding the times when she could phone the boys and giving them privacy during her calls with them. But the PC noted that both parents “contend the other parent is undermining [their] ability to parent the boys. [Appellant] is requesting that the boys be given privacy while speaking with her. [Respondent] is requesting a directive that [appellant] cease disparaging him to the boys.” The PC granted both these requests, saying it was important that appellant “not disparage

[respondent] during these calls or otherwise speak negatively about the educational and extra-curricular routines he is providing for [the boys].” The PC agreed with the child consultant that the boys should not have their phones with them in their bedrooms at night because “the boys may call or text with [appellant] late into the evening, rather than adhere to a healthy bedtime routine of uninterrupted sleep.” The record supports the district court’s determination that this factor does not support moving the boys to Cleveland.

The sixth factor is whether the relocation would enhance the general quality of life for the parent seeking relocation and the children, including but not limited to financial or emotional benefit or educational opportunity. *Id.*, subd. 3(b)(6). Appellant had accepted a position in Cleveland at a significantly higher salary before the district court first denied her request to move the boys. In 2019, she testified during a deposition that, in her job at the University of Minnesota, she was “the most productive faculty” member, “the one with the most publications, going to most of the meetings, [and] presenting,” so that her boss and others were happy with her and that was “why [she] got promoted.” She also said that, if she “just wanted to go see patients, [she could] do [that] anywhere,” but she wants to do research. Although appellant testified in 2020 that she had been victimized at the University of Minnesota and subjected to conditions “tantamount to harassment” since 2018, she did not make or even mention this argument in connection with her 2019 relocation motion.

The district court found that appellant’s claim to have made a “sincere and desperate” attempt to find a research position in Minnesota was unsupported. Appellant argues that her “new position significantly increased her prior salary” and “enhanced

financial opportunities for both [her] and the children” and that the educational opportunities in Cleveland are superior to those in Rochester. But both parents have ample resources, and the boys are doing well in a private school in Rochester and have many opportunities there. There is no indication that a move to Cleveland would enhance their general quality of life, (although it does enhance appellant’s), so this factor does not favor the relocation.

The seventh factor is the parents’ reasons for seeking or opposing relocation. *Id.*, subd. 3(b)(7). It is undisputed that appellant’s reason for moving to Cleveland and seeking to relocate the boys was a career opportunity. Appellant again relies on language from the PC’s letter: “[The children] are so closely bonded with [appellant] that [her] relocation for the sake of [her] career has put their optimal development at-risk.” Two points are worth noting in this connection. First, the PC letter was written in November 2019, just two months after the boys had begun living with respondent and attending school in Rochester and before appellant had established a parenting-time schedule with them. Second, both the PC and the child consultant recommended that appellant “resume residency in Minnesota,” not that the boys relocate to Cleveland. Again, appellant’s statement that, “taken in their totality the opinions of the neutral professionals weigh in favor of granting [her] request for relocation” is contrary to the record.

Appellant’s reason for relocating the boys is that she has already relocated and wants the boys to live with her. Respondent’s reason for opposing the relocation is that it will weaken and damage his relationship with the boys. This court has affirmed the denial of a mother’s motion to relocate after concluding that “[t]he district court did not abuse its

discretion in giving greater weight to [the father's] prediction as to the impact the move would have on the children's relationship with [him]." *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 803, 804-05 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). Here, the district court also found that respondent opposed the move because he "believes the children have made significant steps towards adapting to their lives in Rochester," and their success in school and activities supports this view. We affirm the district court's determination that this factor does not support relocation.

The eighth factor is the effect of domestic abuse. Minn. Stat. § 518.175, subd. 3(b)(8). In its June 2019 denial of appellant's first relocation motion, the district court noted that appellant "alleges there has been domestic abuse in the parties' relationship," but found "that domestic abuse is not a factor in this analysis." In its current order, the district court noted that appellant "continues to have concerns about [r]espondent's ability to control his anger," but appellant does not address this factor in her brief and has therefore waived the issue. *See Am. Fed'n of State, Cty, Mun. Emps. v. Grand Rapids Pub. Utils. Comm'n*, 645 N.W.2d 470, 474 n.1 (Minn. App. 2002) (holding that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 6, 2002).

Finally, appellant argues that the district court should consider the fact that she had "no choice" but to relocate. She argues that she needed to obtain a research position in order to preserve her H-1B visa status and her priority status in seeking permanent residency. The district court did consider that argument and found it unpersuasive, writing that:

[B]oth parties provided information and opinions regarding [appellant's] H-1B [visa] status and her ability to stay in Minnesota while her green card is pending. Based on this information the Court is not convinced that [appellant] had no other choice than to relocate to Cleveland. . . .

The Court does not question that the immigration matter is incredibly complex and requires the analysis of many significant factors, some of which may not be in [appellant's] control. . . . However, the Court cannot find that [appellant] has exhausted her efforts to work in Minnesota.

Appellant chose to move to Cleveland for career reasons before the district court had released its decision on her first motion to relocate her children, and she testified in connection with that motion that, if she would work as a practicing rather than a research oncologist, she could work anywhere. The district court did not abuse its discretion in not regarding appellant's need to move to Cleveland as the dispositive factor in her relocation motion.

Affirmed.