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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1505**

April Ann Rowe,
Appellant,

vs.

Michael Paul Osborn,
Respondent.

**Filed August 9, 2021
Affirmed
Worke, Judge**

Mower County District Court
File No. 50-FA-18-1107

April Ann Rowe, Albert Lea, Minnesota (pro se appellant)

Danielle DiFiore, Anderson Law Firm, Rochester, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and Worke,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this custody dispute, appellant-mother argues that the district court (1) failed to consider certain evidence; (2) failed to allow her to fully cross-examine a witness; (3) admitted impermissible hearsay; and (4) was biased against her. We affirm.

FACTS

Appellant-mother April Ann Rowe and respondent-father Michael Paul Osborn were in a romantic relationship for several years. They ended their relationship while mother was pregnant. Mother gave birth to their son in June 2017.

In May 2018, mother initiated an action to establish parentage and child support. A child support magistrate issued an order awarding mother temporary custody, requiring father to pay child support, and referring disputed issues, including permanent physical and legal custody, to the district court.

In August 2019, father moved for temporary joint legal custody, a temporary parenting-time schedule, and the parties' participation with a custody evaluator (CE). In his affidavit, father described how mother refused his many attempts to see the child. The district court granted father's request for parenting time and ordered the parties to participate in a custody evaluation; father was responsible for 80% of the cost, and mother was responsible for 20% of the cost.

Not long after, father moved for, among other things, temporary joint legal custody, additional parenting time, and an order prohibiting mother's boyfriend from being present during exchanges. Father claimed that mother continued to refuse him parenting time and that mother's boyfriend harassed him and the staff at the Seibel Center where exchanges occurred. The district court granted these requests.

In February 2020, the district court held a trial on the disputed issues. The CE testified as an expert witness. She testified that she observed father in his home with the child. She stated that the child was very comfortable and received a lot of attention. She

observed the child leading the play, “laughing, smiling,” and “lots of affection and interaction.” The CE testified that father talked to the child about mother in a positive way and commented to the CE that mother must be doing a good job with the child because he is “an exceptional little boy.”

In contrast, the CE testified that mother’s home environment did not have a lot of laughter or affection. The CE stated that the child was “more hesitant with [mother] . . . wanting to make sure he did things right.” Additionally, the CE testified that mother spoke only negatively about father. The CE testified that she was “very concerned about [the child’s] emotional well-being” due to “him being exposed to negativity.” The CE also had concerns about mother’s boyfriend, stating that the boyfriend’s involvement in the child’s life would affect the child’s ability to have a healthy relationship with father.

The CE further testified that she reviewed information from the Seibel Center describing the staff’s many concerns and incidents involving mother and mother’s boyfriend using “[f]oul language in front of the children,” making accusations about an unfounded injury, and calling the police. Based on this information, the CE stated that mother interfered with father’s parenting time, and she did not believe that mother would follow through with court-ordered parenting time. The CE recommended that it was in the child’s best interests that father have sole physical and sole legal custody. She stated that she had more confidence in father sharing information with mother and supporting the child’s relationship with mother.

Mother’s attorney cross-examined the CE as depicted in 50 pages of the transcript. As the day concluded, mother’s attorney raised the issue of the CE returning to continue

testifying. The district court stated that mother failed to pay her court-ordered percentage of the CE's fees, and that in order for the CE to return, "financial arrangements [had] to be made." Mother's attorney stated that she would discuss with mother whether to bring the CE back for additional cross-examination. When the second day of trial convened, the CE appeared. Mother's attorney stated that mother did not pay the CE and "wasn't anticipating continuing any cross on [the CE]." The district court excused the CE.

After considering all of the evidence, including testimony from mother, father, the CE, and the staff at the Seibel Center, the district court filed an order awarding father sole legal and sole physical custody of the child. The district court found that it had "significant concerns about the child's emotional needs and development if the [c]hild remains in mother's custody." The district court found that the evidence showed that, while exchanges with father went smoothly, the child "experienced anxiety and fear" during exchanges with mother. The district court also found that mother's boyfriend had a "controlling demeanor" that "contributed to the [c]hild's negative emotional experiences during exchanges." Because mother was still in a relationship with her boyfriend, the district court had "concerns about the potential for [mother's boyfriend] to negatively affect the [c]hild's relationship with his father."

The district court also found that the staff at the Seibel Center testified about mother's "demanding, intimidating, and rigid demeanor." The district court stated:

The court finds that the child's emotional well-being suffered significantly as a direct result of [m]other's behavior during these exchanges. The extreme level of conflict that [m]other created during exchanges borders on the point of emotional abuse for the [c]hild. It is particularly concerning to

the court that she seems to lack awareness of how her behavior negatively affects those around her, including—most importantly—her child.

The district court stated that it carefully evaluated all relevant best-interests factors and found that “given the acrimonious nature of the parties’ relationship,” joint legal and physical custody would be “harmful to the best interests of the [c]hild.” The district court concluded, “The best interests of the [c]hild are best served by an award of both legal and physical custody to [f]ather.” Mother was awarded reasonable parenting time.

Mother moved for a new trial, arguing that the district court erred by excluding her boyfriend’s testimony and precluding her from cross-examining the CE. The district court denied mother’s motion. This appeal followed.

DECISION

Mother raises several issues on appeal, but she failed to raise all but one in district court. In her motion for a new trial, mother argued that the district court should have permitted her to cross-examine the CE. Therefore, with the exception of this one claim, mother’s claims raised for the first time on appeal are forfeited.¹ *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003) (holding that in absence of a motion for a new trial, our scope of review is limited to substantive legal issues properly raised to and considered by the district court).

¹ These claims include, the district court (1) did not sufficiently weigh evidence of domestic abuse, (2) failed to consider evidence of witness tampering, (3) allowed inadmissible hearsay, and (4) was biased against her.

Cross-examination of expert witness

The only issue appropriately before us is whether the district court failed to allow mother to complete her cross-examination of the CE. The district court has authority as gatekeeper for admitting evidence, and its evidentiary rulings will not be reversed unless they are based on an erroneous view of the law or an abuse of discretion. *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998).

Mother's attorney cross-examined the CE, depicted in 50 pages of the transcript. The district court found in its order denying mother's request for a new trial that mother cross-examined the CE from 3:11 – 4:30 p.m. (79 minutes). The district court stated that the CE would be required to return to the next trial date subject to mother paying her 20% portion of the CE's fee. Mother did not pay. The district court ruled that because the CE was an expert witness, she could not be compelled to testify without payment. And although the CE appeared on the second day of trial, mother's attorney stated that she was not expecting the CE to be there or to testify. Thus, despite mother's assertion, her attorney cross-examined the CE for over an hour. Mother then failed to pay her court-ordered expense and stated that she had not planned to continue cross-examination of the CE. The district court properly exercised its discretion in its authority over the admission of expert testimony.

Affirmed.