This opinion is nonprecedential except as provided by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
A21-0569

In re the Marriage of: Holly Joy Klick, petitioner,
Appellant,

vs.

Timothy Richard Klick,
Respondent.

Filed May 31, 2022
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-FA-13-7343

Bradley John Haddy, Minnesota Esquire, LLC, Mendota Heights, Minnesota (for appellant)

Timothy Richard Klick, Plymouth, Minnesota (pro se respondent)

Considered and decided by Wheelock, Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this parenting time dispute, the district court initially granted appellant's emergency motion to temporarily suspend respondent's parenting time and temporarily award sole physical and sole legal custody to appellant. After several months and based on recommendations from a guardian ad litem (GAL), the district court ordered the parties

to gradually increase respondent's parenting time, return to an equal parenting time schedule, and return to a joint physical and joint legal custody arrangement. Appellant challenges the following four aspects of the decision: (1) the district court's denial of appellant's request for an evidentiary hearing; (2) the district court's decision to return to an equal parenting time schedule;[1] (3) the district court's denial of appellant's request to allow the child to testify; and (4) the district court's failure to create a record of two telephone conferences. We conclude that the district court did not abuse its discretion in reaching its decisions with respect to the first three arguments and that appellant's fourth argument is forfeited.

FACTS

Appellant Holly Klick (mother) and respondent Timothy Klick (father) married in 2008 and are the parents of one daughter (the child), who is now 11 years old. The parties divorced in 2014. The dissolution decree awarded the parties joint legal and joint physical custody of the child, subject to father's "reasonable parenting time." At that time, the parties also agreed to work with a parenting consultant. In the spring of 2018, the parties agreed to a stipulation modifying the original decree and providing for an equal parenting time schedule. On October 8, 2020, mother filed an emergency motion to temporarily modify custody and parenting time, alleging that the child was physically and emotionally endangered in father's care. The motion requested that the district court temporarily suspend father's parenting time and temporarily award mother sole legal and sole physical

[1] Appellant does not challenge the decision to return to a joint custody arrangement.

custody of the child, pending father's completion of various conditions, including a chemical assessment, any recommended treatment, and therapy.

Mother submitted an affidavit in support of her emergency motion. The affidavit alleged that father abused alcohol and frequently placed the child in physical danger by driving under the influence of alcohol while the child was in the car. Mother specifically discussed a recent incident in which police arrested father in the parking lot of the child's school and charged father with gross misdemeanor driving while intoxicated (DWI). According to the affidavit, the child asked to speak with police on her own initiative, and she told the officers that father emotionally abused her. Mother's affidavit also alleged that father emotionally abused the child in various ways, such as by "say[ing] hurtful and abusive things" to her, forcing her to stay in her room alone for hours, and making her feel threatened if she was not complicit in his drinking habits. In response to mother's motion, father submitted a sworn statement denying most of mother's allegations.

Four days after mother filed her emergency motion, the district court issued an ex parte order granting most of mother's requested relief. The district court awarded mother temporary sole legal and sole physical custody of the child, and it temporarily suspended father's parenting time, pending an emergency hearing to be held one week later. At the emergency hearing, mother requested that the district court hold an evidentiary hearing on her motion. Mother clarified that she was seeking only temporary changes, not a permanent modification of custody or parenting time. Mother also requested that the evidentiary hearing include testimony from the child through an in camera interview.

The district court made some decisions on the record at the emergency hearing and later memorialized these in a November 19, 2020 order. The district court granted mother's temporary motion but declined to hold an evidentiary hearing at that time, noting that an evidentiary hearing was not required because mother did not request a permanent change in custody. The district court also denied mother's motion to interview the child in camera. Instead, the district court appointed a GAL to make recommendations after interviewing the child and any other necessary individuals. The district court also ordered all of father's parenting time to be supervised but did not issue a specific schedule or specify how long the supervision requirement would last.

On December 18, 2020, the GAL filed a "short report," which summarized her investigation and recommendations based on the information she had obtained up to that point. The GAL's recommendations included the following: the child should continue individual therapy; the parties should undergo family therapy; father should begin two, two-hour sessions of supervised parenting time each week at a supervision center; father should undergo alcohol testing prior to and after his supervised visits; and father should comply with all recommendations from his chemical dependency assessment. Mother objected to the GAL's recommendations and the district court held an informal phone conference with the parties, off the record, on January 5, 2021. The district court issued an order the next day, memorializing the parties' discussions and the district court's decision to adopt the GAL's recommendations over mother's objections. The district court continued its previous award of temporary sole legal and sole physical custody to mother. The district court, however, permitted father to have two, two-hour sessions of supervised

parenting time each week at a supervision center. The order allowed father to have phone contact with the child, but only as arranged by mother. In addition, the parties were to begin family therapy, continue the child's individual counseling, and complete one "full panel drug screen." Father was also ordered to submit to alcohol testing before and within ten minutes after his supervised parenting time, and he was ordered to follow all recommendations of his chemical dependency assessment. In the order, the district court also noted that "there are no pending requests for permanent relief in this matter."

The GAL filed a full report on February 19, 2021. The report noted that, as part of her investigation, the GAL had interviewed both parents, the child, the child's therapists, a social worker, and the parenting consultant who has worked with the parties since 2014. In addition, the GAL had reviewed the parenting consultant's records, police records, the counseling progress report, and relevant court filings and affidavits. The GAL reported that there was "a high level of animosity and tension exhibited by both parents with regards to the opposite parent." The GAL had interviewed the child twice, and she was "highly concerned" that mother was potentially coaching the child to make certain comments about father, based on the child "mispronouncing big words that were not age-appropriate in reference to this court case." Based on observations of the child's parenting time with father, the GAL believed that there was "a strong father-child attachment." The GAL commented that mother's reporting of events involving the child often differed from the child's accounts, as well as the GAL's impressions.

The GAL report also explained that shortly after his DWI arrest in October 2020, father completed a chemical assessment. The assessment determined that father did not

meet the criteria for substance use disorder but recommended that he abstain from all mood-altering substances. The GAL also noted that father tested positive for alcohol use in January 2021. The GAL opined that father's DWI and positive urinalysis test were "concerning" and "add[ed] credibility to the concerns brought forth by" mother. The police records from father's DWI arrest showed that, after police spoke with child protective services, police closed the criminal investigation.

Based on her investigation, the GAL concluded that "[w]hile [father's] infractions with drinking are a cause for concern, so is the infringement on his role as [father]" by mother. The GAL opined that the amount of parental conflict needed to be addressed to ensure that the child could develop a healthy relationship with each parent. The GAL recommended that the district court adopt a graduated parenting time schedule. Under this arrangement, as father met certain conditions, such as completing a chemical assessment and participating in family therapy, father would gradually increase his parenting time with the child until the parties would eventually resume an equal parenting time schedule.

On February 23, 2021, the district court held a telephone conference with the parties, off the record. The district court memorialized the discussions in a March 2, 2021 order.[2] The district court again rejected mother's requests for an evidentiary hearing and to interview the child, finding that the child "has been interviewed extensively by professionals" and "that the minor child's therapists are in a better position than the Court

[2] The district court originally issued its decision in a February 25, 2021 order, but it later issued an amended order on March 2, 2021, to show the correct signature date. We address the amended order because mother's notice of appeal referred to the March 2, 2021 order.

to recommend further assessments and evaluations of the minor child's mental health." The district court reasoned that the child "would be best served by her parents deescalating their conflict, not by prolonged litigation," and that the GAL's recommendations appropriately considered the child's interests. Accordingly, the district court adopted the GAL's recommendations and ordered the parties to follow a four-phase parenting time schedule. Father's parenting time would gradually increase, conditioned on father's compliance with certain specified requirements and with the involvement of the parenting consultant. The parties would ultimately return to an equal parenting time schedule at some unspecified point in the future, but only after family therapy had begun and father completed all recommendations of his chemical dependency assessment. In addition, should father test positive for any mood-altering chemicals, the parenting consultant had authority to determine when and whether father would progress to the final stage.

Mother requested permission to bring a motion to reconsider, which the district court denied. Mother appeals.[3]

[3] As a preliminary matter, although the parties did not brief this issue, we question whether mother has standing to bring this appeal. "To have standing to appeal, a party must be aggrieved by the decision of a court from which the party appeals." *Webster v. Hennepin County*, 910 N.W.2d 420, 434 (Minn. 2018). We observe that the district court granted much of the relief that mother sought in her temporary motion. That motion asked the district court to temporarily grant her sole legal and physical custody and to temporarily suspend father's parenting time. The district court did so, granting the request from October 2020 through some indefinite point after March 2021 when father had the opportunity to progress through the four-phase parenting time schedule. We need not decide, however, whether this is sufficient for mother to have standing because we conclude that mother's arguments fail on their merits.

DECISION

Mother challenges the following four aspects of the district court's decision: (1) the denial of her request for an evidentiary hearing; (2) the decision to return to an equal parenting time arrangement; (3) the denial of her request to interview the child in camera as part of the evidentiary hearing; and (4) the failure to create a record of two telephone conferences. We address each argument in turn.

I. Denial of Request for an Evidentiary Hearing

Mother first argues that the district court erred by refusing to conduct an evidentiary hearing on her emergency, temporary modification motion. We conclude that the district court did not abuse its discretion when it decided not to hold an evidentiary hearing because the district court considered the parties' written and verbal submissions, which provided extensive factual information, and because mother does not identify what facts she was unable to present through previous submissions.

Mother's motion sought temporary relief, and the parties and the district court treated this motion as a request governed by Minnesota Statutes section 518.131 (2020). This statute provides that temporary orders are to be made "solely on the basis of affidavits and argument of counsel," unless either party moves "that the matter be heard on oral testimony before the court, or if the court in its discretion orders the taking of oral testimony." Minn. Stat. § 518.131, subd. 8. Similarly, the General Rules of Practice provide that, with limited exceptions, family court "[m]otions shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel." Minn. R. Gen. Prac. 303.03(d)(1). A party requesting that the district court take

oral testimony must make a motion to do so "not later than the filing of that party's initial motion documents." *Id.* (d)(2). Both the statute and the rules acknowledge that district courts generally do not hold evidentiary hearings,[4] and we review that decision for an abuse of discretion. *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 800 (Minn. App. 2013). A district court abuses its discretion if it acts against logic or the undisputed facts in the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

Here, the district court initially granted mother's requested relief, suspending father's parenting time, granting mother sole custody, prohibiting father from having contact with the child, and appointing the GAL to investigate and make recommendations regarding the duration of the temporary relief granted. Over the course of the next few months, father was required to comply with several conditions regarding chemical dependency, testing for use of mood-altering chemicals, family therapy, and the child's individual counseling. The parties presented written submissions regarding father's conduct. In addition, the GAL submitted a final written report after reviewing records (including the parenting consultant's records, police records, the counseling progress report, and the parties' court filings and affidavits) and conducting interviews (including with both parents, the child, the child's therapists, a social worker, and the parenting consultant who had been helping the parties resolve disputes since their divorce in 2014).

[4] We recognize that an evidentiary hearing may be required when a party requests permanent modification of custody or permanent and substantial modification of parenting time. Minn. Stat. §§ 518.175, .18 (2020); *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008); *Suleski v. Rupe*, 855 N.W.2d 330, 336 (Minn. App. 2014). Mother does not argue that these provisions apply to her temporary modification motion.

These written submissions were thorough, and the parties had ample opportunity to make arguments. We also observe that the parties had a parenting consultant appointed to resolve parenting time disputes, and, other than the testimony of the child, mother does not point to any facts that she was unable to present through written submissions. Given these observations as well as the temporary nature of mother's requested relief, mother has not shown that the district court abused its discretion by relying on the written and verbal submissions of the parties and the GAL instead of proceeding with an evidentiary hearing.

II. Decision to Return to Equal Parenting Time

Mother challenges the factual findings underlying the district court's decision to return to equal parenting time. We conclude that the district court did not clearly err when it relied on the facts in the GAL's report.

When reviewing a parenting time decision, we review the district court's factual findings for clear error. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). A finding is clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). Appellate courts do not reconcile conflicting evidence or weigh the evidence as if considering the matter de novo. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). When evidence in the record supports the findings at issue on appeal, it is immaterial that the record might also support findings to the contrary. *Id.* at 223.

Mother challenges the district court's factual finding that mother had "coached" the child. We are not convinced by this argument, given our standard of review. The GAL explained her suspicions, noting that the child "was mispronouncing big words that were

not age-appropriate." In addition, the GAL's observations of the child's parenting time with father conflicted with mother's account of this contact. Based on her first-hand observations, the GAL believed that the child and her father had a strong relationship, and the GAL included examples from her experience and training to support this belief. While mother's statements could support alternative findings, we do not weigh conflicting evidence, *see Kenney*, 963 N.W.2d at 221, 223, and conclude that the record contains sufficient evidence to support the findings made by the district court.[5]

III. Denial of Request to Interview the Child

Mother also argues that the district court abused its discretion by denying her request to allow the child to testify or for the district court to interview the child in camera. Because the district court's decision not to interview the child was not against logic or the factual findings, we conclude that the district court did not abuse its discretion.

The Minnesota General Rules of Practice provide that for motions related to custody or visitation, "[n]o child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval." Minn. R. Gen. Prac. 303.03(d)(7). We review a decision regarding whether to interview the child for an abuse of discretion. *Knott v. Knott*, 418 N.W.2d 505, 509 (Minn. App. 1988).

In this case, the district court received statements regarding the child's preference and the child's relationship with father from mother and the GAL. The GAL interviewed the child twice and observed her interactions with father during parenting time. In addition,

[5] Mother does not argue that the factual findings do not support equal parenting time. Rather, mother argues that the district court should have made alternative factual findings.

the GAL communicated with the child's therapists and school social worker and learned what the child had reported to those professionals. The GAL relayed this information in her report. The GAL also expressed suspicion that mother unduly influenced the child. The district court also considered the complex history of the parents' disputes and tried to ascertain what impact this conflict had on the child. Given the information contained in the GAL's report, the district court's concerns about mother's influence on the child, and the concerns about the parents' escalating conflict, the district court acted within its discretion when it decided not to allow the child to testify or be interviewed in camera.

IV. Failure to Create a Record of Two Telephone Conferences

Finally, mother argues that the district court erred by failing to create a record of the January 5 and February 23, 2021 telephone conferences. Mother cites no legal authority to support this argument and conceded at oral argument that there was no authority requiring the district court to create a transcript of these proceedings.[6] Nor does mother identify any inaccuracies in the district court's written summary of these conferences, argue that the district court violated her due process rights, or explain how the outcome would have been different if the conferences had been recorded. Accordingly, we deem the argument forfeited. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue not adequately briefed); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal);

[6] Mother cites one unpublished case, *Robbennolt v. Weigum*, No. A15-1440, 2016 WL 1551686, at *2 (Minn. App. Apr. 18, 2016). In that nonbinding case, we noted the specific standard of review that applies to cases with a limited appellate record, but that case does not support the legal proposition articulated by mother.

see also Waters v. Fiebelkorn, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.").

Affirmed.