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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1612**

Jesse Lambert Colburn, petitioner,
Respondent,

vs.

Gergana Gencheva Gencheva,
Appellant.

**Filed September 19, 2022
Affirmed; motion denied
Jesson, Judge**

Clay County District Court
File No. 14-FA-21-212

Travis R. Jung, Insight Professional Offices, Fargo, North Dakota (for respondent)

Leah Marie Warner, Vogel Law Firm, Fargo, North Dakota (for appellant)

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

NONPRECEDENTIAL OPINION

JESSON, Judge

After a fight with respondent Jesse Lambert Colburn on Christmas Day, appellant Gergana Gencheva Gencheva was arrested and charged with domestic violence. The charge was later dismissed, but following a subsequent child-custody trial, the district court awarded sole physical custody of Gencheva and Colburn's child to Colburn, in part due to this Christmas-Day incident. Because the district court did not abuse its discretion in its

analysis of the best-interests-of-the-child factors nor in its allotment of time for the trial and procedure for approving the referee's order, we affirm.

FACTS

Gencheva and Colburn met in December 2017. Colburn serves in the Marine Corps and Gencheva works from home as a tax accountant. Their child was born in August 2018. Colburn was present at child's birth, and he signed an acknowledgment of paternity.

Child was born with several medical concerns—jaundice, a lip tie, tongue tie, and buccal tie. Because child struggled to latch, breastfeeding required both parents for the first months of child's life. Child also receives therapy for sensory issues. Both parents testified to their efforts to help child overcome these issues, including scheduling doctor's appointments, engaging therapists, and providing treatment.

On December 25, 2020, the police were dispatched to Gencheva and Colburn's home in response to a domestic incident. Gencheva and Colburn had been arguing over whether a rash on child's face required a trip to the hospital, and Colburn had decided to sleep downstairs as a result.¹ Colburn and Gencheva's accounts differ about what transpired next.

According to testimony at trial, Colburn told police that Gencheva slapped him on the arm. Police stated that because both parties were on the lease, they could not take any action; the officers then left. A half an hour later, police were dispatched to the same residence. Colburn told the officers that he was downstairs sleeping on the couch when

¹ The parties' residence was a split-level home with the primary bedroom upstairs and a couch in the basement level where Colburn went.

Gencheva came downstairs and accused him of disturbing her mother, who was staying with Gencheva and Colburn for Christmas and sleeping in an adjacent room. This verbal confrontation escalated and Gencheva struck Colburn in the back of his head, neck, and back with a cell phone. He attempted to retrieve personal property so that he could leave, and Gencheva followed him, pushed him against a wall, and took the belongings he was trying to pack away from him.

Gencheva's recollection of the event differs from Colburn and the two responding officers' accounts. She testified that she went downstairs when she heard loud noises as if someone were watching TV to ask Colburn to turn it off. When he ignored her, she tapped him on the shoulder or the back with her phone to get his attention. There was a verbal altercation, and then Colburn jumped up violently and broke the television.² She denied hitting Colburn, leaving any marks on his body, or pushing him.³ She denied yelling at Colburn, swearing at him, or preventing him from leaving the house, though she did admit that he had to unplug the garage door to prevent her from closing it on him. She testified that it is impossible for someone like Colburn to be afraid of her because he is a marine.

Officers arrested Gencheva for domestic assault and took her to jail. The charges were later dismissed. After Gencheva was released from jail, she returned to the parties' house. The parties tried to parent together, but conflict continued to erupt, and eventually, Colburn moved out. Colburn requested an order for temporary relief in March 2021, which

² Colburn admitted to punching the television as a "display of force."

³ Gencheva admitted to pulling on his clothing. She explained that when Colburn started packing the hunting clothes that she had given him for Christmas, she "pulled back on" them because she wanted to return them.

the district court granted in May 2021, giving Colburn temporary sole physical custody of child, subject to Gencheva's parenting time of alternating weekends and an overnight on Wednesdays during the weeks without weekend parenting time. The court granted joint legal custody to both parents and set up child support payments.⁴ The parties appeared before a district court referee in July 2021 for a one-day trial, and the referee recommended awarding Colburn sole physical custody of child and joint legal custody between Colburn and Gencheva. The district court adopted the referee's recommendations.

Gencheva appeals.⁵

DECISION

Gencheva challenges the award of sole physical custody of child to Colburn, alleging that the district court misapplied the best-interests factors. She further contends that the district court erred in its allotment of time for the custody trial and in its adoption of the referee's recommended order without Gencheva's ability to request review. We review each argument in turn.

I. The district court properly analyzed and applied the best-interests factors.

District courts make child-custody determinations using the best-interests factors and the considerations that go along with them. Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2020). "Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by

⁴ Given time constraints, Gencheva and Colburn agreed to reserve the matter of child support for after the custody trial.

⁵ In addition, Gencheva made a motion to strike portions of Colburn's brief and a motion for attorney fees. This court deferred Gencheva's motions and referred them to this panel.

improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). Here, Gencheva argues that the district court erred in interpreting and applying the best-interests-of-the-child factors. She asserts that a proper analysis of the factors should have prompted the district court to award her sole or joint physical custody. We review findings of fact for clear error. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). And we review the district court’s analysis of the best-interests factors for an abuse of discretion. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018); *see also Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (stating that a district court abuses its discretion if it misapplies the law, makes findings unsupported by the record, or resolves discretionary questions in a manner that is contrary to logic and the facts on record).

The district court considers twelve factors when evaluating the best interests of a child. Minn. Stat. § 518.17, subd. 1(a)(1)-(12). The district court must make detailed findings on each factor based on the evidence presented, and it must “explain how each factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1) (2020).⁶

Below, we review the district court’s analysis of each factor, keeping in mind our discretionary scope of review. Then we turn to the domestic-violence presumption.

Child’s Physical and Emotional Needs

The district court found that the first factor slightly favored Colburn. This factor involves “a child’s physical, emotional, cultural, spiritual, and other needs, and the effect

⁶ We address only the ten factors that Gencheva disputes.

of the proposed arrangements on the child's needs and development." Minn. Stat. § 518.17, subd. 1(a)(1). Gencheva argues that the district court ignored child's Bulgarian heritage and Christian Orthodox faith in making this finding.⁷ But cultural heritage and religious ties are some, but not all, of the elements to consider as part of this factor, and the district court found that both Colburn and Gencheva demonstrated an ability to provide for child's needs. However, the district court placed great weight on child's emotional needs when considering this factor, and it found that Colburn was more capable of providing for child regarding this aspect. The court's decision was based on affidavits, trial testimony, and extensive briefing, and we defer to the district court's evaluation of witness credibility. Accordingly, we hold that the district court did not abuse its discretion in analyzing this factor. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Medical, Mental Health, and Educational Needs

The district court found that the second factor was neutral, stating that both parents are motivated by a desire to keep child healthy and safe. This factor directs a district court to consider "any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services." Minn. Stat. § 518.17, subd. 1(a)(2). Gencheva argues that Colburn does not know the name of child's doctor, she has done all the research on medical treatment, and she brings child

⁷ Gencheva cites case law to support her proposition that failure to consider a parent's ability to raise a child in a particular faith is erroneous, but the cited case involved a court order to raise a child in a particular faith and father's testimony that he would raise the children in another faith. *Johnson v. Johnson*, 424 N.W.2d 85, 88-89 (Minn. App. 1988). Because the court did not order child raised in any faith here, this argument is inapposite.

to his appointments, not Colburn. But she neglects to credit Colburn for his help with child's lip tie, tongue tie, and buccal tie, or work with child on his sensory issues, which Colburn also had as a child. Colburn's assistance in these areas is well supported by the record. The district court did not abuse its discretion when it concluded that this factor was neutral.

Domestic Abuse

The fourth factor instructs a district court to consider: "whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs." Minn. Stat. § 518.17, subd. 1(a)(4). Gencheva argues that the district court abused its discretion by finding that this factor favors Colburn because the evidence does not suggest that domestic abuse occurred, and the district court did not address the nature and context of the alleged abuse. But the district court made extensive factual findings about the domestic-violence incident. It found that Gencheva's recounting of the events was not truthful, reliable, credible, or honest. When an issue turns on the district court's findings of fact, we give "deference to the district court's opportunity to evaluate witness credibility" and reverse only if we are left "with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). Not only did the district court not find Gencheva's testimony about the incident credible, but it found Colburn's testimony, the testimony of the two responding police officers, and physical evidence credible. Because the district court's determination

on the fourth factor turns on an evaluation of Gencheva's credibility, and that determination is supported by the record, Gencheva's argument fails.

Caregiving

The district court found that the sixth factor, "the history and nature of each parent's participation in providing care for the child," favored neither party. Minn. Stat. § 518.17, subd. 1(a)(6). Gencheva argues that the district court abused its discretion because Colburn's testimony contained sweeping assertions about being child's caregiver that were called into question on cross-examination. While it is true that Colburn's testimony was pared back, the district court relied on testimony that remained uncontested in its findings. For example, Colburn's testimony about attending pre-birth medical appointments, involvement in the birthing process, and support of child's post-birth medical issues was uncontested. The district court's finding that both parents have played significant roles in child's care is supported by the record.

Developmental, Emotional, Spiritual, and Cultural Needs

The district court found that the seventh factor slightly favored Colburn because he has a greater ability to control his emotions. This factor directs the district court to consider "the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time." Minn. Stat. § 518.17, subd. 1(a)(7). Gencheva argues that the district court focused on the December 25-26 incident to the exclusion of all others in its determination. But this is not the case—the district court commented on Colburn's ability to control his emotions and put child's needs first should

discord arise in any situation, not just the December 25-26 incident. This finding is supported by the record—Colburn testified to his reactions in several discordant situations, and the district court credited his accounts. Again, “determination of a child’s best interests is generally not susceptible to an appellate court’s global review of a record, and . . . an appellate court’s combing through the record to determine best interests is inappropriate because it involves credibility determinations.” *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

Changes to Home, School, and Community

The district court found that the eighth factor was neutral because there are no plans to change child’s home, school, or community. A district court considers “the effect on the child’s well-being and development of changes to home, school, and community” under this factor. Minn. Stat. § 518.17, subd. 1(a)(8). Because Colburn is a marine and his assignment ends in August 2022, Gencheva posits that there is no guarantee that he will not be transferred to another state, which would make coparenting difficult. But the district court credited Colburn’s testimony that he will likely be able to finish his military career in his present location. We defer to this credibility determination and hold that the district court did not abuse its discretion with regard to this factor.

Relationships Between the Child and Other Significant Persons

The district court found that the ninth factor favors neither party because both parties have established healthy and supportive relationships with extended family members and child and there is no reason to believe this will change. Per this factor, district courts look at “the effect of the proposed arrangements on the ongoing relationships between the child

and each parent, siblings, and other significant persons in the child’s life” when making child-custody determinations. Minn. Stat. § 518.17, subd. 1(a)(9). Gencheva contends that the district court disregarded the social relationships that Gencheva helped foster for child and that the district court abused its discretion when it determined that Colburn provided the same types of connections for child. But the district court credited both parties’ testimony about child’s relationship with their families.⁸ Gencheva argues that the district court did not explicitly credit the social connections she helped foster for child with peers. Though Gencheva is correct, these connections were with peers, not necessarily significant persons, so it is not clear that the district court should consider these connections in its analysis of this factor. Accordingly, the district court did not abuse its discretion in this analysis.

Parenting Time

The district court determined that the tenth factor favored Colburn. This factor involves consideration of “the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent.” Minn. Stat. § 518.17, subd. 1(a)(10). The district court found that joint physical custody does not serve child’s best interests because Gencheva committed an act of domestic violence against Colburn, Gencheva is the parent who exposes child to parental conflict, and she is unwilling to accept responsibility for her actions.

⁸ The district court found that child has close relationships with Colburn’s mother, step-daughter, and sister. It also found that child has a healthy and supportive relationship with Gencheva’s mother.

In response, Gencheva contends that the district court ignored all the steps that she has taken to improve as a parent, such as a course on high-conflict parenting, attending parenting coaching sessions, and seeing a counselor. But regardless of these efforts, the district court's analysis is supported by the record. Gencheva did deny almost all involvement in the December 25-26 incident, and the district court did not believe her minimizing account. Given the nature of her actions and her testimony, we conclude that the district court did not abuse its discretion.

Support

The district court found that the eleventh factor was not applicable in light of its findings of domestic abuse. This factor instructs a district court that: “except in cases in which domestic abuse . . . has occurred, the disposition of each parent to support the child’s relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent” should factor into child-custody decisions. Minn. Stat. § 518.17, subd. 1(a)(11). Gencheva argues that because the district court clearly erred in finding that domestic violence had occurred, it should have considered this factor and that it favors her. But the district court did not clearly err when it found that the incident on December 25 and 26 was an instance of domestic violence. This determination turned on the district court’s evaluation of witness credibility, and because we are not left “with the definite and firm conviction that a mistake has been made,” we will not reverse. *Goldman*, 748 N.W.2d at 284 (quotation omitted).

Cooperation

Finally, the district court found that the twelfth factor favored Colburn. This factor directs a district court to consider “the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child” when determining child custody. Minn. Stat. § 518.17, subd.1(a)(12). Gencheva again argues that the district court incorrectly weighed the evidence before it when it came to this conclusion—emphasizing evidence that portrayed her negatively and ignoring any evidence in her favor. But Gencheva is essentially asking us to reweigh the evidence, and the clear-error standard does not permit us to do so. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). “When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Id.* at 223 (quotation omitted). Accordingly, Gencheva’s argument fails here.

In sum, the district court’s factual findings are supported by the record, and Gencheva has failed to meet her burden of establishing clear error on appeal. The district court did not abuse its discretion in its careful application of the best-interests factors. Because we defer to the district court’s determinations of witness credibility, and because there is scant, if any, room for this court to question the district court’s balancing of the best-interests factors, we conclude that granting sole physical custody to Colburn was not

an abuse of discretion. *Sefkow*, 427 N.W.2d at 210; *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Domestic Violence Presumption

Still, Gencheva asserts that the district court erred by applying a presumption that a victim of domestic violence must be awarded sole physical custody of a child. Minnesota law states that if domestic abuse has occurred between the parents, there is a rebuttable presumption that joint physical custody is not in the best interests of the child:

The court shall use *a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse . . . has occurred* between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.

Minn. Stat. § 518.17, subd. 1(b)(9) (2020) (emphasis added); *see Thornton*, 933 N.W.2d at 791 (noting that this presumption is against joint custody, not for or against a particular custodian). Domestic abuse includes physical harm, bodily injury, or assault, committed against a family or household member by a family or household member. Minn. Stat. § 518B.01, subd. 2 (2020).

We begin our analysis by observing that the district court never specifically cited this presumption against joint custody in its best-interests analysis.⁹ But assuming the district court did so (and mindful of the statutory directive that the court “shall use” a

⁹ While the district court mentioned the domestic abuse best-interests factor in its order for temporary relief, it did not cite this presumption in that document either.

rebuttable presumption), we discern no error. Because this argument turns on a balancing of the best interests of child, we review the district court's determination for an abuse of discretion, and we find no such abuse here. *Hansen*, 908 N.W.2d at 596. Though the finding of domestic abuse, a factual finding that we review for clear error, did impact the district court's analysis of the best-interests factors, it did not act as a presumption against awarding custody as Gencheva argues. *Thornton*, 933 N.W.2d at 790. Rather, it acted as an un rebutted rebuttable presumption against joint custody. *Id.* at 793. The district court weighed each parent's demeanor and temperament, ability to control their emotions should discord arise, and willingness to protect child from witnessing parental discord, and it found that all these factors favored Colburn. Colburn was the victim of domestic violence. Gencheva denied most of the incident and minimized her actions. The district court did not isolate this factor, rather, it considered this factor in its careful analysis of the best-interests factors. Thus, the presumption against joint physical custody in cases where domestic abuse has occurred was not rebutted, and that presumption operated properly. The district court did not abuse its discretion.

II. Limiting the custody trial to one full day was within the district court's wide discretion.

Next, Gencheva argues that the district court abused its discretion by limiting the length of the trial to one day. "[T]he limitation of time for arguments of counsel is within the sound discretion of the trial judge." *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992) (quoting *United States v. Bednar*, 728 F.2d 1043, 1049 (8th Cir. 1984)). We

will not reverse unless a party can demonstrate that they were unable to fully and fairly present their case. *Butler v. United States*, 317 F.2d 249, 257 (8th Cir. 1963).

When the district court evaluates the use of trial time, discusses with the parties how to use their time productively, and obtains counsel's approval for the allocation of trial time, it does not abuse its discretion. *Id.* That is precisely what the district court did here. It issued a scheduling order in March alerting the parties that the trial would be "a full day trial commencing on July 9, 2021." Gencheva had four months' notice of this timing, yet she did not object until the pretrial hearing. And the court stated, "in my experience, I think this case can very readily be tried in a half a day for each counsel." To expedite the trial, the district court had reserved the matter of child support for another day. And the court asked each party how many witnesses they intended to call, discussed scheduling concerns, and indicated that because of the nature of the matter, it was best for it to be concluded sooner. At the beginning of the trial, the district court apportioned equal time to each party and again denied Gencheva's request for additional time. Throughout the trial, the district court kept track to ensure equal time between the parties. The district court treated the time allotted intentionally and communicated transparently with the parties about it. These actions do not constitute an abuse of discretion.

III. The district court followed the correct procedure for review of recommended referee findings.

Finally, Gencheva argues that the district court erred as a matter of law by not allowing her an opportunity to request review of the referee's recommended order before it was confirmed by the district court. Minnesota Statutes section 484.70, subdivision 7(d)

(2020), allows parties to request review of a referee's recommended order by a district court judge *if* they file a request within ten days of notice of the recommended order.¹⁰ As with any question of law, we review the district court's interpretation of this statute de novo. *Thornton*, 933 N.W.2d at 790.

Gencheva alleges nowhere, and the record does not indicate, that she requested that a district court judge review the recommended findings. Minn. Stat. § 484.70, subd. 7(d). Rather, she argues that she did not have the opportunity to request review because the district court adopted the referee's recommendation on the same day it was issued.¹¹ But the statute only places a ten-day window on requests for review, not a ten-day waiting period for the district court's approval. *Id.* Gencheva's argument regarding her ability to request review of the referee's finding fails.

In conclusion, Gencheva's challenge to the district court's award of sole physical custody of child to Colburn fails because she did not meet her burden to show that any of the factual findings were clearly erroneous or the district court's analysis of the best-interests factors was an abuse of discretion. Her arguments about the time the district

¹⁰ The full statute states:

Review of any recommended order or finding of a referee by a judge may be by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review shall specify the grounds for review and the specific provisions of the recommended findings or orders disputed, and the court, upon receipt of a notice of review, shall set a time and place for a review hearing.

Minn. Stat. § 484.70, subd. 7(d).

¹¹ Also, according to the record, the district court judge signed the order three days after the referee's recommendation issued, not one.

court allotted for the custody trial and her ability to request review of the referee's recommended order before the district court adopted it also fail because trial timing is within the discretion of the district court, and we are not persuaded by her reading of the statute about referee recommendations.¹²

Affirmed; motion denied.

¹² While this appeal was pending, Gencheva moved to strike 11 portions of Colburn's responsive brief. Gencheva argues that portions of the brief are not supported by the record. To the extent that Colburn's statements in his responsive brief were not supported by the record, we did not rely on any of these statements in resolving this appeal. Therefore, we need not consider Gencheva's arguments to strike these statements. *See Clark v. Clark*, 642 N.W.2d 459, 467 (Minn. App. 2002) (denying a motion to strike as unnecessary when the matter at issue was in the record or reference to that matter was not required for resolution of the appeal, or both).

Gencheva's motion also asks this Court for an award of attorney fees that she incurred in filing this motion pursuant to rule 139.05 of the Minnesota Rules of Civil Appellate Procedure. But she failed to identify authority allowing us to award the fees she seeks. Nor did she include documentation which would permit us to address the appropriate amount of fees. Minn. R. Civ. App. P. 139.05 1998 advisory comm. cmt. (stating that a motion for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees). And because we denied the motion to strike, we cannot say that fees are merited here. We deny the motion for attorney fees.