

*This opinion is nonprecedential except as provided by  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  
A22-0259**

In re the Custody of:

J. A. V., A. J. V., C. R. S. B. and M. J. V.,

Araceli Danielle Salas, petitioner,  
Appellant,

vs.

Johnny Joseph Verdeja,  
Respondent.

**Filed May 15, 2023  
Affirmed  
Jesson, Judge**

Ramsey County District Court  
File No. 62-FA-08-2003

Araceli D. Salas, Eagan, Minnesota (pro se appellant)

Kelly Lawton Rogosheske, Rogosheske Law and Mediation PLLC, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON, Judge**

Appellant Araceli Danielle Salas (mother) and respondent Johnny Joseph Verdeja (father) share four children, although they never married. The children were in mother's

sole physical custody, subject to father's parenting time, from birth until 2019 when father sought sole legal and physical custody. Father alleged that the children were endangered in mother's care. After a contested hearing, the district court awarded temporary sole physical custody of the children to father, joint legal custody to both parents, and parenting time to mother. And after an evidentiary hearing, the district court issued an August 2021 order awarding permanent sole physical custody to father and permanent joint legal custody to both parents, but it reduced mother's parenting time. Mother appeals. Because the district court's thorough decision is supported by the record, we affirm.

### **FACTS**

Mother and father share four children: twin daughters born in 2006, a son born in 2008, and another son born in 2009. For the first part of the children's lives, mother and father shared legal custody, but mother had sole physical custody of the children, per a November 2010 district court order. Children lived with mother and had parenting time with father, who paid \$300 in child support per month. In March 2019, mother filed a motion for modification of child support. Soon after, father filed a motion seeking sole legal and physical custody of children, claiming that they were endangered in mother's care because of alleged criminal activity and domestic violence in her home. After a review hearing, the district court found that father had made a prima facie showing of endangerment, and it modified the custody and parenting-time order on a temporary basis so that the children lived with father and had parenting time with mother pending a final resolution of the parties' disputes. This October 2019 order stated that mother received parenting time every Wednesday after school until school drop off on Thursday morning

and every other weekend beginning Friday after school to Sunday at 6:00 p.m., the same parenting time that father had when mother had sole physical custody.

After a May 2021 contested evidentiary hearing, the district court awarded permanent sole physical custody of children to father and joint legal custody to both parents in an August 2021 order. Mother's parenting time was reduced to every other weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m.

Mother appeals.<sup>1</sup>

## DECISION

Mother challenges the district court's decision in two respects. She argues that the record does not support the district court's findings regarding (a) modification of physical custody and the children's primary residence and (b) modification of parenting time. We address each argument in turn.

### **I. The district court did not abuse its discretion by modifying the November 2010 custody order to give father full physical custody of children.**

Mother asks this court to reinstate the district court's November 2010 order that granted her permanent physical custody over all four children. We review a district court's custody-modification decision for an abuse of discretion. *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence,

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<sup>1</sup> Mother submitted a pro se appellate brief. Father, although represented by counsel at the contested evidentiary hearing, did not submit a response brief. *See* Minn. R. Civ. App. P. 142.03 (stating that, if a respondent fails to file a brief, the appellate court will decide the appeal on the merits).

misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). An appellate court will “set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

Here, father sought to modify the children’s primary residence and the physical custody order. As a result, the legal standard in Minnesota Statutes section 518.18(d) (2022) applies to father’s motion. The relevant part of this standard requires the district court to find that four elements are met in order to modify children’s primary physical residence and custody based on endangerment:

1. The circumstances of the children or custodian have changed;
2. Modification would serve the children’s best interests;
3. The children’s present environment endangers their physical health, emotional health, or emotional development; and
4. The benefits of the change outweigh its detriments with respect to the children.

*Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017); *see also* Minn. Stat. § 518.18(d)(iv).

The district court addressed each of the four required prongs for the endangerment analysis. With regard to the first prong, it found that the circumstances of the children and mother have changed because of the multiple criminal cases against mother since the November 2010 order, the prevalence of domestic violence in mother’s home between 2010 and present, and multiple school-attendance issues for the children. These findings

of fact are supported by the record, which contains the guardian ad litem's report listing open criminal cases against mother at the time of the evidentiary hearing, hundreds of pages of police reports involving domestic-violence issues at mother's house, and testimony from school officials about the attendance and behavioral issues the children faced.

Turning to the second prong, the district court found that modification of the November 2010 custody order would serve the best interests of the children. *See* Minn. Stat. § 518.17, subd. 1 (2022) (listing the best-interests factors). For example, the district court found that father has demonstrated an ability and willingness to meet the children's physical, emotional, cultural, and other needs due to the activities father does with children, the life skills he teaches them, and the way he prioritizes their education. The district court found that the children's attendance and grades improve when they are in father's care, which has benefitted the children's well-being and development. It stated that father can provide security and stability to children because his household has two adults who have maintained full-time employment and can act as healthy role models for the children. These findings are supported by the record, given the district court's detailed consideration of father's testimony and father's sister's testimony, the preferences of the older girls, the pattern of domestic abuse in mother's house, and the testimony of school personnel.

While both sons did express to the guardian ad litem their preference to remain with mother, the guardian ad litem testified that this may be due to alienation, and the district court found the guardian ad litem's explanation persuasive. Because we do not reevaluate

the district court's credibility determinations, this preference by two of the children is not enough to overturn the best-interests finding. *Goldman*, 748 N.W.2d at 284.

Still, mother argues that awarding physical custody to father would not be in the children's best interest because the modification would take the children away from their school.<sup>2</sup> The effect of changes to home, school, and community on the child's well-being and development is one of the best-interests factors a court considers when modifying custody and residence. Minn. Stat. § 518.17, subd. 1(8). But father testified that he is open to the children staying at the same school, and the district court credited this testimony when it found that father "supports the children continuing to attend school in Eagan and playing sports where they attend school."

Turning to the third prong in the endangerment analysis, the district court found that the children's living arrangements endanger and adversely affect their mental and emotional health and development. "The existence of endangerment must be determined on the particular facts of each case." *Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (quotation omitted). Here, the district court based its decision on the children's exposure to domestic violence, the children's problems with school attendance and academic performance when they were in mother's care, and father's ability to provide the children with a stable and secure home base. This finding is supported by evidence in the record, such as testimony from the guardian ad litem about ongoing domestic violence

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<sup>2</sup> In her appellate brief, mother lists eight (purported) best-interests "factors" and alleges that all the "factors" listed favor her. But these "factors" are different from the statutory factors in Minnesota Statutes section 518.17, subdivision 1, which the district court properly evaluated.

in mother's home, testimony from the children's principal about their improved attendance and school performance in father's care, and father's testimony about his commitment to the children attending therapy. When a court properly applies the law and that application is supported by facts in the record, its decision is not against logic or facts in the record. *Bayer v. Bayer*, 979 N.W.2d 507, 512-13 (Minn. App. 2022). The district court has done so here, and as a result, its determination is not an abuse of discretion.

Finally, the district court determined that "the benefits of the change of physical custody to [father] outweigh its detriments with respect to the children." The court acknowledged that mother losing her physical custody would cause some harm to children, but it emphasized that the benefits of living in a domestic-violence-free environment with a parent who is supportive of their educational and mental-health needs outweigh this harm. This finding is also supported by the record described above.

Because the district court made findings under the proper legal standard that are supported by the evidence in the record, and because its decision to modify custody is in accordance with logic and the facts on the record, the district court did not abuse its discretion in modifying the November 2010 custody decision to grant father full physical custody of the children.<sup>3</sup>

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<sup>3</sup> Mother also challenges the district court's decision modifying the children's residence to live with father, subject to mother's parenting time. A child's residence is part of the district court's overall custody decision, and it must serve the child's best interests. Minn. Stat. § 518.17, subd. 3(a)(2) (2022). Because the district court's custody decision was not an abuse of discretion, we conclude that the district court's analysis of residence also was not an abuse of discretion.

## **II. The district court did not err in its parenting-time decision.**

Still, mother argues that even if the district court did not abuse its discretion in its custody decision, its parenting-time decision was incorrect. She asks this court to reinstate the parenting schedule in the district court's November 2010 order.

This court will not reverse a parenting-time decision unless the district court abused its discretion. *Id.* "Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record." *Id.* (quotation omitted).

In the October 2019 order, mother received parenting time every Wednesday after school until school drop off on Thursday morning and every other weekend beginning Friday after school to Sunday at 6:00 p.m., essentially granting her the parenting time that father had when mother had sole physical custody. The August 2021 order reduced mother's parenting time to every other weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m., as father requested.

The applicable statute states that "[i]f modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child's primary residence. Consideration of a child's best interest includes a child's changing developmental needs." Minn. Stat. § 518.175, subd. 5(b) (2022). A district court "must find changed circumstances" when it reduces a party's parenting-time rights. *Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002). Because the August 2021 order that mother appeals reduces her parenting time, but does not change the children's residence, the district court must find the modification in the children's best interests and the existence of changed circumstances.

The district court found that the children's best interests would be served by its decision and changed circumstances exist here. These changes included multiple criminal cases against mother since the November 2010 order, the prevalence of domestic violence in mother's home between 2010 and present, and multiple school-attendance issues for the children since 2010. And because the best-interests and changed-circumstances findings were not clearly erroneous, as explained above, mother's argument challenging the parenting-time decision is unpersuasive. Mother alleges that the district court changed the custody arrangement without her agreement, but because the district court followed the proper legal avenue and made factual findings and conclusions supported by the record, that argument is unavailing.

In sum, because the record supports the district court's best-interests analysis and decision to modify physical custody—including the children's primary residence—and parenting time, we affirm.

**Affirmed.**