

*This opinion is nonprecedential except as provided by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
A22-0961**

In the Matter of: S. A. A.,
Appellant,

vs.

S. D.,
Respondent,
Hennepin County,
Intervenor.

**Filed April 10, 2023
Affirmed in part, reversed in part, and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-PA-FA-18-920

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Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-mother challenges the district court's decisions (1) finding that father did
not commit domestic abuse; (2) ordering the disclosure of her Safe-at-Home address; and

(3) changing child's surname. We reverse and remand the disclosure order but affirm on all other issues.

FACTS

On August 24, 2018, appellant-mother gave birth to child within a marriage to her then-husband M.B. The couple named child together with mother's surname. On November 19, 2018, M.B. commenced a paternity action seeking to rebut the presumption that he was child's legal father. A genetic test showed that appellant-father, who never lived with mother and was not married to her, was the biological father of child. The district court adjudicated father as the legal father of child on August 29, 2019, and dismissed M.B. from the action.

The district court originally scheduled a court trial via Zoom for December 15 and 17, 2021. On August 26, 2021, the parties reached a mutual agreement on parenting time following mediation. Based on the resolution of that issue, the trial addressed the remaining issues of legal and physical custody, child's name, holiday and vacation schedule, and child support.

Mother asserted that father was abusive toward her during their relationship, which father denied. An evaluator from Hennepin County Family Court Services interviewed each party three times and observed them with child separately in preparation of a custody and parenting-time evaluation. In his report, the evaluator found that father did not commit domestic abuse against mother. The district court found father's testimony more credible on the issue of domestic abuse, as it was consistent with the findings in the custody-evaluation report.

Mother participates in the Safe-at-Home (SAH) program and lives at an undisclosed location with child and child's stepsister. After finding that father did not commit domestic abuse against mother, the district court ordered mother to disclose her residential address to father.

At trial, father expressed that it is important for him that child bears a name that ties her to him. Because mother and M.B. named child at her birth without father's input, father initially wanted child's first, middle, and last names to be changed. However, he acknowledged that this would cause confusion for child. In father's proposed order submitted after trial, he asked the district court to change only child's last name to his and keep the first and middle names. The district court granted father's request, reasoning that it is in the best interest of child to change her name to include father's surname and keep the given first and middle names chosen by mother, because this supports child's relationship with both parents.

This appeal follows.

DECISION

I. The district court's finding that father did not commit domestic abuse was not clearly erroneous.

Mother argues that the district court clearly erred by finding that father did not commit domestic abuse against her in violation of Minn. Stat. § 518B.01, subd. 2(a)(1), (2) (2022). We are not persuaded.

We review a district court's factual findings for clear error. *In re Welfare of J.R.B.*, 805 N.W.2d 895, 901 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "A finding is

clearly erroneous only if there is no reasonable evidence to support the finding or when an appellate court is left with the definite and firm conviction that a mistake occurred.” *In re Welfare of J.H.*, 844 N.W.2d 28, 35 (Minn. 2014). We defer to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Domestic abuse occurs when one “family or household member” commits “physical harm, bodily injury, or assault” or inflicts “fear of imminent physical harm, bodily injury, or assault” against another. Minn. Stat. § 518B.01, subd. 2(a)(1), (2).

At trial, the district court heard conflicting testimony from mother and father. It also reviewed the evaluator’s report. The evaluator, who also testified at trial, conducted extensive research in preparation of the report. Consistent with father’s testimony, the evaluator found that, while father’s “jokes” of violent acts were “crude and thoughtless,” they were not real threats.

Mother contends, both at trial and on appeal, that the evaluator failed to consider *all* the evidence she provided, specifically, an audio recording in which father allegedly called mother “stupid and f—ing stupid” multiple times. The evaluator admitted that he did not listen to this recording, likely due to technical problems. However, he explained that, without knowing the context of the recording or whether it had been edited, he would be “very hesitant” to listen to it anyway. Among other things, the record shows that the evaluator interviewed father and mother three times each over Zoom, observed each parent with child, talked to mother’s therapist, and reviewed “all or next to all” communications

between the parties on Our Family Wizard¹ and psychological evaluations of both parties. The evaluator noted that “[mother] often conflates her abuse history with [M.B.] and [father] when describing her visceral reactions to her children’s fathers and men in particular,” and “the specific instances [mother] has chosen to describe are either disputed and unverifiable or are highly questionable examples of abuse.”

Ultimately, the district court found father’s testimony more persuasive and credible. Because substantial evidence in the record supports the district court’s finding that father did not commit domestic abuse against mother, this finding is not clearly erroneous.²

II. The district court erred by ordering mother to disclose her SAH address to father without making the threshold findings and determination under section 5B.11.

Mother argues that the district court erred by ordering the disclosure of her SAH address to father without making the statutorily required findings and determination under Minn. Stat. § 5B.11 (2022). We agree.

¹ Our Family Wizard is a court-approved communication website for families that have difficulty with communication.

² Mother asserts that the district court should analyze her request for sole legal custody without the presumption for joint legal custody on remand. Minn. Stat. Ann. § 518.17, subd. 1(b)(9) (2022). Because we conclude that the district court’s finding on domestic abuse was not clearly erroneous, we need not address this issue. Mother also argues that the time limit at trial deprived her of the opportunity to provide more testimony regarding father’s domestic abuse or to cross-examine father on this matter. We are not persuaded. Because mother did not move for a new trial at the district court, as she admits, “the only questions for [our] review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.” *Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). As discussed above, the evidence supports the district court’s finding that father did not commit domestic abuse against mother. Mother’s claim fails.

The purpose of Minnesota statutes chapter 5B is to protect “individuals attempting to escape from actual or threatened domestic violence, sexual assault, or harassment or stalking” by providing them address confidentiality. Minn. Stat. § 5B.01 (2022). Eligible individuals may apply to the secretary of state to become certified participants in the SAH program. Minn. Stat. § 5B.03, subd. 1 (2022). The secretary of state designates “a mailing address to which all mail for program participants is to be sent.” Minn. Stat. § 5B.03, subd. 5 (2022).

Notwithstanding the confidentiality protection, the statute allows limited disclosure of a program participant’s address in a judicial proceeding if a court finds that:

- (1) there is a reasonable belief that the address is needed to obtain information or evidence without which the investigation, prosecution, or litigation cannot proceed; and
- (2) there is no other practicable way of obtaining the information or evidence.

The court must provide the program participant with notice that address disclosure is sought and an opportunity to present evidence regarding the potential harm to the safety of the program participant if the address is disclosed. In determining whether to compel disclosure, the court must consider whether the potential harm to the safety of the participant is outweighed by the interest in disclosure.

Minn. Stat. § 5B.11.

Here, the district court failed to make the findings and determination required by section 5B.11. We therefore reverse the disclosure order and remand the case to the district court to analyze whether mother’s address should be disclosed under the appropriate standard.

III. The district court did not abuse its discretion by granting the change of child's surname.

Mother claims that the district court abused its discretion by granting father's request to change child's surname. We disagree.

"We review a district court's grant of a request to change a child's name for [an] abuse of discretion." *Foster v. Foster*, 802 N.W.2d 755, 756 (Minn. App. 2011). "A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the law, or the court settles a dispute in a way that is against logic and the facts on the record." *Id.* (citations and quotations omitted).

"[N]o minor child's name may be changed without both parents having notice of the pending of the application for change of name, whenever practical, as determined by the court." Minn. Stat. § 259.10 (2022). When either parent opposes the name-change request, the opposing parent bears the burden to show "that evidence in support of the name change is not clear and compelling that the substantial welfare of the child necessitates such change." *Foster*, 802 N.W.2d at 757 (quotation omitted). The district court then "must examine the evidence and arguments of the parent opposing the request" and "set forth clear and compelling reasons for its decision whether the court grants or denies the request." *Id.* (quotation omitted).

"Upon meeting the requirements of section 259.10, the court shall grant the application unless . . . [it] finds that such name change is not in the best interests of the child." Minn. Stat. § 259.11(a) (2022). In *In re Saxton*, our supreme court provided five nonexclusive factors for determining whether a proposed name change serves a child's best

interests, including: (1) the length of time that the child has had the current name; (2) any potential harassment or embarrassment the change might cause; (3) the child's preference; (4) the effect of the change on the child's relationship with each parent; and (5) the degree of community respect associated with the present and proposed names. 309 N.W.2d 298, 301 (Minn. 1981).

Here, contrary to mother's assertion that the district court did not state reasons for granting the name change except for the father's preference, the district court considered all five best-interest factors from *Saxton*. Specifically, it found that (1) child had carried mother's surname since birth; (2) the change of surname to that of father's is unlikely to result in any harassment or embarrassment; (3) child was too young to express a preference; (4) the change to father's surname, while keeping the first and middle names chosen by mother, would promote child's connection with both parents; and (5) there is no difference in the degree of community respect associated with the current or proposed surname for child.

Because the district court made particularized findings supporting its determination that the change of surname is in child's best interests, the burden shifts to mother to demonstrate that evidence supporting the name change is not clear and compelling. *See Foster*, 802 N.W.2d at 757. Our review of mother's trial testimony and her proposed findings of fact shows that mother's main opposition was against father's initial choice of child's given names. Neither at the district court nor on appeal has mother provided any evidence to demonstrate that evidence supporting the change of child's surname was not clear and compelling.

Mother's reliance on *Aitkin County Family Service Agency v. Girard* is misguided. 390 N.W.2d 906 (Minn. App. 1986). In *Girard*, we reversed a district court's decision granting the change of the minor children's surnames over the mother's objection because it did not make any findings about the best interests of the children. *Id.* at 909. *Girard* is also factually distinguishable from the present case. The mother in *Girard* retained *full custody* of the children after she and the father had separated, and we deferred to the custodial mother's preference to keep the children's names because "[i]t is in the best interest of such young children to provide them with stability and continuity." *Id.* at 909 (emphasis added). That concern does not exist here because the district court granted father and mother joint legal and joint physical custody, and both parties will share parenting time equally.

As for mother's alternative request to add her surname in conjunction with father's without a hyphen, the district court implicitly denied it by determining that it does not promote child's best interests in preserving an *equal* connection to both parents. We therefore conclude that the district court did not abuse its discretion by granting father's request to change child's surname.

Affirmed in part, reversed in part, and remanded.