

*This opinion is nonprecedential except as provided by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
A22-1134**

In re the Custody of: R. J. H.

Gregory Dennis Hystead, petitioner,
Respondent,

vs.

Wendy Beth Boggs a/k/a Wendy Beth Hoff,
Appellant.

**Filed July 3, 2023
Affirmed
Smith, Tracy M., Judge**

Douglas County District Court
File No. 21-FA-21-893

Matthew P. Franzese, Wheaton, Minnesota (for respondent)

Michael J. Dolan, Thornton, Dolan, Bowen, Klecker & Burkhammer, P.A., Alexandria,
Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bryan, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal of an initial child-custody determination, appellant-mother Wendy Beth Hoff challenges the district court's order granting respondent-father Gregory Dennis Hystead sole physical custody of their child. Mother argues that the district court abused its discretion by (1) failing to properly consider her history of caretaking, (2) improperly considering the conduct of mother and mother's spouse when that conduct did not adversely affect mother's relationship with the child, and (3) making best-interests determinations and conclusions of law that are not supported by factual findings. We affirm.

FACTS

Mother and father began their relationship in 2013 and never married. They moved in together in mother's residence in Alexandria in late 2014 or early 2015. The child was born in March 2015, and the parties signed a voluntary recognition of parentage. In February 2020, their relationship ended, and father moved into his current residence in Alexandria. The following facts are taken from the district court's June 20, 2022 order granting mother and father joint legal custody and father sole physical custody of the child.

On August 24, 2020, mother assaulted her sister at a lake cabin. The child did not witness the altercation, though she was present at the cabin and witnessed the police arrive before she was picked up by father. Based on this incident, the following May, mother was convicted of third-degree assault and domestic assault and sentenced to 60 days in jail and 5 years of probation.

In November 2020, mother began a relationship with J.H.¹ J.H. moved into mother's residence in January 2021, and they were married on March 21, 2021. Up until that point, mother and father had been managing custody of and parenting time with the child with relatively few issues. But mother then largely relinquished control of communications about custody and parenting time to J.H. J.H.'s communications with father were hostile and implicitly threatening, and mother and J.H. also started recording parenting-time exchanges without justification. Communicating and co-parenting therefore became difficult for father, and mother and J.H. also limited father's access to the child.

On March 24, 2021, father filed a petition for an order for protection (OFP) on behalf of the child against mother. The petition was based on a violent incident between J.H. and his children, which both mother and the child witnessed. An ex parte OFP was issued but later dismissed because the child was not the victim of the incident and there was insufficient evidence that mother perpetrated domestic violence against the child.

On May 26, 2021, father filed a petition to establish custody and parenting time, requesting sole legal and sole physical custody, subject to parenting time for mother. Mother filed an answer and a counter-petition requesting joint legal custody and sole physical custody, subject to parenting time for father.

On June 18, 2021, father filed an emergency ex parte motion for temporary relief because mother was required to begin her 60-day jail sentence and she had delegated

¹ A couple months earlier, J.H. committed second-degree assault against a third party. The child was not present for the incident. At the time of the district court's order in June 2022, J.H. was in prison for this offense, with an anticipated release date of November 2022. J.H. was expected to return to mother's home upon release.

parental authority over the child to J.H., who continued to be unwilling to cooperate with father. On July 7, the district court granted father's motion and issued a temporary order granting mother and father temporary joint legal custody and granting father temporary sole physical custody until mother completed her jail sentence, at which point mother was granted parenting time.

A trial to establish custody and parenting time was held on March 29, 2022. At that time, the parties agreed to joint legal custody, but both continued to request sole physical custody subject to the other's parenting time. The district court heard testimony from the parties and the child's paternal grandmother. The district court found father's testimony credible but had "some concerns about [mother's] testimony." The district court concluded that, though mother's testimony was "generally factually credible," mother "tended to minimize significant events and their impact upon the child."

Following trial, the district court filed its written order. In it, the district court analyzed each best-interests factor under Minnesota Statutes section 518.17 (2022) and determined that nine of the factors favored father and three favored either both parents or neither parent. The district court awarded mother and father joint legal custody and father sole physical custody of the child, subject to parenting time for mother.

Mother appeals.

DECISION

In a custody dispute, the best interests of the child are the court's "guiding principle" and "paramount commitment." *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019) (quotations omitted). A district court must determine custody based on the 12 best-interests

factors identified in Minnesota Statutes section 518.17, subdivision 1. *Id.* “The court must make detailed findings on each of the factors . . . and explain how each factor led to its conclusions and to the determination of custody and parenting time.” Minn. Stat. § 518.17, subd. 1(b).

A district court has broad discretion in making custody determinations. *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019); *see Thornton*, 933 N.W.2d at 790 (noting that “a district court needs great leeway in making a custody decision that serves a child’s best interests, in light of each child’s unique family circumstance”). Appellate courts “review the [district court’s] findings [of fact] for clear error, giving deference to the district court’s opportunity to evaluate witness credibility” and reversing only if they “are left with the definite and firm conviction that a mistake has been made.” *Thornton*, 933 N.W.2d at 790 (quotations omitted).

Mother argues that the district court abused its discretion by (1) failing to properly consider the child’s past residence and caretaking, (2) improperly considering the conduct of mother and J.H. when that conduct did not impact the child, and (3) making best-interests determinations and legal conclusions that are not supported by factual findings. We address each argument in turn.

I. The district court did not abuse its discretion when considering the child’s past residence and caretaking.

Mother argues that the district court abused its discretion by failing to properly consider the child’s past residence with mother and mother’s caretaking. In essence, she argues that the district court abused its discretion by determining that the sixth best-

interests factor, “the history and nature of each parent’s participation in providing care for the child,” favored father. Minn. Stat. § 518.17, subd. 1(a)(6). She makes two arguments.

First, mother asserts that the district court ignored undisputed evidence that the child had resided with mother for her entire life and failed to make factual findings about the history of the parties’ care for the child. We disagree. Contrary to mother’s assertions, the district court agreed with mother that “she has provided more of the child’s care than [father].” However, it also stated that “[t]he changes over the past two years though raises significant ongoing concerns about [mother’s] ability to provide a safe living environment, free of hostility and animosity, such that it would promote the child’s emotional well-being and development.” Mother asserts that the evidence demonstrates that the child is doing well and that the district court failed to credit her history of care for the child’s wellbeing. But the district court also recognized father’s participation in parenting the child and found that mother had been shunting him to a secondary role against his wishes. Mother is essentially asking this court to reweigh this factor and determine that it favors her, something we will not do. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000) (“[The law] leaves scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations.”).

Second, mother argues that the district court did not make findings that the child has been negatively affected by residing with mother and instead speculated that residing with mother could harm the child in the future. But, in considering this best-interests factor, the district court was not required to find past harm to determine that this factor favored father. Because father’s petition followed a recognition of paternity to a child born outside of

marriage, this matter proceeded as an initial custody determination. *See* Minn. Stat. § 257.541, subd. 3 (“If paternity has been recognized under section 257.75, the father may petition for rights of parenting time or custody in an independent action under section 518.156. The proceeding must be treated as an initial determination of custody under section 518.17.”). Unlike modifications of custody based on the child’s present environment endangering the child, *see* Minn. Stat. § 518.18(d)(iv) (2022), initial custody determinations under Minnesota Statutes section 518.17 do not require any showing of endangerment. The district court was not required to make findings of specific harm suffered by the child in mother’s care; for a determination of custody, it was reasonable for the district court to find that “significant ongoing concerns about [mother’s] ability to provide a safe living environment, free of hostility and animosity” can have a detrimental effect on a developing child.

In sum, the district court properly considered the history and nature of each parent’s participation as required by this factor. *See* Minn. Stat. § 518.17, subd. 1(a)(6).

II. The district court did not improperly consider conduct of mother and her spouse that did not affect mother’s relationship with the child.

Mother argues that the district court improperly considered her conduct and J.H.’s conduct when their conduct did not affect her relationship with the child. When undertaking the best-interests analysis, the district court “shall not consider conduct of a party that does not affect the relationship with the child.” Minn. Stat. § 518.17, subd. 1(b)(4).

The district court made findings of fact that included the child's exposure to instances of domestic violence for which J.H. and mother were criminally convicted. In its analysis, the district court explicitly addressed how the child's exposure to these violent incidents affected the child's relationship with mother and connected the effects to statutory best-interests factors. The district court found that mother's household had transformed from "peaceful" to one in which "violence and conflict are present at times" and that mother has "little insight" into the changes in her behavior and attitude or into the "atmosphere within her home." It found that "the incidents had an impact upon [mother's] availability for parenting, together with the child's safety, well-being, and development." Because the district court explicitly explained how mother's and J.H.'s conduct affected the child's relationship with mother, it did not improperly consider conduct that did not impact mother's relationship to the child.

Caselaw relied on by mother does not persuade us otherwise. In *Stenzel v. Stenzel*, we held that the district court did not err by not considering the conduct of a third party in awarding mother physical and joint legal custody where the evidence did not establish that the third party adversely affected mother's parenting ability or relationship with the child. 401 N.W.2d 130, 132 (Minn. App. 1987). That is not the case here, where there is considerable evidence of J.H.'s adverse effect on mother's relationship with the child. Not only did J.H. engage in a physical altercation with his children in front of the child, but J.H. took over communications surrounding parenting time and tried to minimize and control father's relationship with the child. And *Thornton*, also cited by mother, is likewise inapposite. In that case, the supreme court awarded sole legal custody to mother, despite

her history of domestic violence against father, because it concluded that the district court's custody award was in the child's best interests. *Thornton*, 933 N.W.2d at 794-96. No such facts are present here.

In sum, the district court did not abuse its discretion by considering mother's and J.H.'s conduct in determining custody.

III. The district court's award of sole physical custody to father is based on factual findings that are supported by the record.

Mother argues that "many of the [district court's] findings have no direct connection to custody and parenting time issues." She asserts that, "[i]n some instances, the findings are inaccurate and at best, inconsistent with the [district court's] ultimate conclusion." Mother makes a number of arguments, but she particularly focuses on an asserted lack of connection between J.H.'s conduct and the best-interests factors and an asserted absence of support for the determination that instances of violence affect the atmosphere in the home or the child.

"Appellate [courts] 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. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted). "When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness*, 607 N.W.2d at 472.

Mother's arguments are unpersuasive. In its order, the district court made extensive findings of fact regarding all 12 best-interests factors, determining that 9 favored father, 2 favored both parents, and 1 favored neither party. The district court then balanced those factors to make its custody and parenting-time determinations. Again, we do not reweigh factors on appellate review. *See id.* at 477. As to the arguments that mother particularly focuses on, as discussed above, we disagree that the district court's factual findings concerning the violence that the child has witnessed is irrelevant to the custody or parenting-time issues in this case. And, upon our careful review of the record, we disagree that those factual findings lack evidentiary support. *See, e.g., In re Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021) (observing that an appellate court fully performs its duty under the clear-error standard of review when it fully considers the evidence and determines that it reasonably supports the decision). In addition, to the extent that mother's arguments are based on her own testimony, they are unpersuasive because the district court, while finding mother "generally factually credible," also found that mother's demeanor was guarded, that she minimized significant events and their impact upon the child, and that she lacked insight about the negative change in atmosphere within her home and relationships. And we defer to the district court's credibility determinations. *See Thornton*, 933 N.W.2d at 790 (quotations omitted).

In sum, we conclude that the district court did not abuse its discretion in making findings about the child's best interests and awarding sole physical custody to father.

Affirmed.