STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1240

In re the Matter of:
John Erik Ensrud, petitioner,
Respondent,

vs.

Janette Lea Eastman,
Appellant.

Filed May 8, 2023
Affirmed
Wheelock, Judge

Hennepin County District Court
File No. 27-FA-17-1630

Rachel L. Farhi, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota (for respondent)

Janette Lea Eastman, Maple Grove, Minnesota (pro se appellant)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this custody dispute, appellant argues that the district court appointed the wrong guardian ad litem (GAL) for the child and should not have relied on the evidence the GAL submitted in making its parenting-time order. Because we conclude that mother did not preserve her arguments for appeal, we affirm.

FACTS

Appellant Janette Lea Eastman (mother) and respondent John Erik Ensrud (father) are the parents of E.E. (the child), born in April 2015. Mother and father were not married and separated in August 2016. The child has significant special needs.

In September 2017, the district court issued an initial custody order granting mother sole legal and sole physical custody and father weekly parenting time. A subsequent parenting-time order modified father's parenting-time schedule and supervision requirements.

In August 2020, the district court filed an amended parenting-time order granting father parenting time on the second and fourth Saturday of each month and, beginning in December 2020, an overnight on the fourth Saturday of each month. The order provided that father's parenting time would be supervised by his parents (grandparents) at their residence. The district court further amended the order in February 2021 to clarify that father's overnight visitation would occur every other month.

In April 2021, mother filed a motion to modify father's parenting time. The motion requested that the district court reinstate professionally supervised parenting time for father. Mother's accompanying affidavit alleged that, since the new parenting-time schedule began, the child had developed behavioral concerns. Mother made several other allegations, including that father was not appropriately informed about the child's care or in communication with the child's care team, father might be abusive to the child, mother's communication with grandparents had become "stilted and hostile," and grandparents were not appropriate supervisors for father's parenting time. One month later, in May, the

district court temporarily suspended father's overnight parenting time based on these allegations.

The district court appointed a GAL in July 2021. In December, the GAL filed her initial report, in which she recommended that father have unsupervised parenting time on the second and fourth weekend of every month. Mother's attorney then requested an evidentiary hearing. Mother's affidavit in response to the GAL's report asserted several concerns about the GAL, including that she ignored the district court's prior orders, the child's special needs, and the requirement that father engage with the child's treatment team; she misstated and ignored important facts of the case; she failed to support her recommendations with evidence; and she failed to talk to the child's treatment team or teacher. Father's response to mother's affidavit accepted the GAL's report and requested that father's proposed parenting time end on Sunday evenings rather than Monday mornings.

The district court set the matter for a review hearing in March 2022. Shortly after the hearing, the GAL submitted a supplemental report in which the GAL asserted that mother's affidavit restated mother's original arguments, that the GAL had already considered those arguments, and that mother did not provide "any new information that would support modifications to the [GAL's] recommendations" in the initial report.

On June 28, 2022, the district court filed a new parenting-time order. The district court found that mother did not meet her burden of proof to modify father's parenting time. It also found that four overnights per month with father would not be a substantial modification to the parenting-time arrangement that would require an evidentiary hearing.

The district court granted father unsupervised parenting time that would increase incrementally until December 2022, at which point father's parenting time would be the second and fourth weekend of every month from Friday afternoon to Sunday evening.

Shortly after the district court released its order, mother filed a pro se request to bring a motion under Minn. R. Gen. Prac. 115.11 asking the district court to reconsider its decision; she also filed a motion under Minn. R. Gen. Prac. 904, which governs removal and suspension of GALs. In September 2022, mother filed a notice of appeal of the June 28, 2022 order. The district court denied mother's request to bring a rule 115.11 motion for reconsideration, based on lack of jurisdiction due to the pending appeal, and it declined to schedule a hearing on her rule 904 motion.

DECISION

Mother first asserts that the GAL "should never have been assigned a disability case" because "[s]he had no background in families affected by disabilities or autism." Mother cites the "Minnesota Supreme Court Rules of Guardian ad Litem Procedure," which were promulgated in 1997 and have since been revised and renamed as the "Guardian ad Litem Program Requirements and Guidelines (Non-statutory)" under the administration of the State Guardian ad Litem Board.[1] The current version of the cited provision states that the district court shall consider

> [a]ll pertinent factors . . . in the identification and selection of the guardian ad litem to be appointed, including the age, gender, race, cultural heritage, and needs of the child; the

[1] The "Guardian ad Litem Program Requirements and Guidelines" are distinct from the "Rules of Guardian ad Litem Procedure in Juvenile and Family Court" found in Minn. R. Gen. Prac. 901-907.

> cultural heritage, understanding of ethnic and cultural differences, background, and expertise of each available guardian ad litem, as those factors relate to the needs of the child; the caseload of each available guardian ad litem; and such other circumstances as may reasonably bear upon the matter.

See Minn. Guardian ad Litem Bd., *Guardian ad Litem Program Requirements and Guidelines*, https://mn.gov/guardian-ad-litem/assets/GALP%20PROGRAM%20REQUIREMENTS_tcm27-419529.pdf [**https://perma.cc/W4NZ-QRJM**].

The district court may appoint a GAL in child-custody proceedings in which custody or parenting time is an issue. Minn. Stat. § 518.165, subd. 1 (2022). The district court has "extremely broad discretion" in its decision to appoint a GAL. *Sheeran v. Sheeran*, 401 N.W.2d 111, 117 (Minn. App. 1987). Appellate courts review the district court's decision to appoint a guardian ad litem for an abuse of discretion. *Reed v. Albaaj*, 723 N.W.2d 50, 59 (Minn. App. 2006). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

Mother's argument implies that the district court failed to consider the child's disability and the GAL's background and expertise regarding disabled children when it appointed the GAL. Thus, we construe mother's argument to be that the district court abused its discretion by misapplying the cited provision of the Guardian ad Litem Program Requirements and Guidelines.

Mother does not cite any statute or caselaw, however, to support her argument that the district court abused its discretion in its appointment of the GAL. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Minn. Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). Thus, mother's argument on this point is not properly before this court, and we need not address it.

Even if this court did address mother's argument, however, relief would still not be appropriate. Appellate courts do not presume error by the district court, and the burden of showing the existence of an error by the district court is on the party asserting the existence of that error. *See 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."); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quoting this aspect of *Waters* in a family-law appeal); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying this aspect of *Loth*). Here, the record does not identify the factors the district court considered in appointing the GAL, and it does not include a description of the GAL's work experience. Thus, the record does not show that the district court failed to consider relevant factors when it appointed the GAL or that the GAL lacked a background in working with

disabled children. Because neither mother's brief nor the record presented to this court convinces us that the district court abused its discretion in its appointment of the GAL in this case, relief would not be appropriate even if we considered that argument.[2]

Mother next argues that the district court ignored her evidence and accepted hearsay from the GAL as fact and that the GAL committed perjury by falsifying oral testimony at the review hearing and written testimony in the GAL's report. Mother requests that this court "review this case as a whole considering the best interests" of the child and "review [mother's] affidavits and supporting documents . . . and reverse the lower court's decision." She also requests that this court "strik[e] former GAL [B.W.]'s testimony, report and recommendations from the record, or remand to amend findings of the facts." The record does not indicate that mother moved to strike the GAL's testimony, report, and recommendations in the district court; she raised this issue for the first time on appeal. Because we may not consider an issue that an appellant raises for the first time on appeal, we conclude that mother forfeited this issue. *Thiele*, 425 N.W.2d at 582.

[2] Alternatively, we could construe mother's argument to be that the district court should have removed the GAL from this matter because, after the district court filed its challenged parenting-time order, mother filed a motion to "Allow Formal Complaint Finding pursuant to Rule 904 to be admissible as evidence." But the district court denied mother's motion because it had no pending motions or evidentiary hearings scheduled in the matter, and it therefore found that mother's rule 904 motion was not properly before the district court at that time. Thus, an argument that the district court erred by not removing the GAL is not properly before this court on appeal because that issue was not presented to or considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)).

Finally, we note that mother failed to provide transcripts of the district court proceedings. It is the appellant's duty to provide a transcript for the appellate record. *Bender v. Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003). "While the lack of a transcript does not automatically require dismissal of an entire appeal, lack of a transcript does limit the scope of appellate review to whether the district court's conclusions of law are supported by its findings of fact." *Id.*

Here, the district court included detailed findings of fact in its parenting-time order that supported its conclusions of law. We discern no error in the district court's parenting-time order within our limited scope of review.

Affirmed.