

*This opinion is nonprecedential except as provided by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
A22-1290**

Nathaniel Scott Gustamante, petitioner,
Appellant,

vs.

Emily Louise Schwamberger,
Respondent.

**Filed August 21, 2023
Affirmed
Johnson, Judge**

Blue Earth County District Court
File Nos. 07-FA-15-1364, 07-FA-14-3930

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The parents of a ten-year-old child, who share joint legal custody, could not agree on which school the child should attend after the child's mother moved from one city to another. The district court granted the mother's motion for an order specifying the school district of her new residence. In addition, the child's father moved to modify custody and

parenting time. The district court granted the father's motion in part by awarding equal amounts of parenting time but denied his motion in part by not ordering joint physical custody. We conclude that the district court did not clearly err in any of its factual findings related to the mother's motion. We also conclude that the district court applied the proper legal standard to father's motion to modify physical custody and did not clearly err in any of its factual findings related to the father's motion. Therefore, we affirm.

FACTS

Nathaniel Scott Gustamante and Emily Louise Schwamberger (now known as Emily Kibler) are the parents of a child who was born in April 2013.

In September 2015, when the child was two years old, the parties entered into a stipulation concerning custody and parenting-time, which the district court adopted and filed as an order and judgment. The stipulated order provides that the parties will share joint legal custody of the child and that Kibler will have sole physical custody. The stipulated order also provides that Gustamante will have parenting time on alternating weekends and every Wednesday evening. The stipulated order further provides that the best-interests standard described in section 518.17, subdivision 1(a), of the Minnesota Statutes will govern motions to modify physical custody or parenting time.

For several years, both parties lived in the city of Mankato and co-parented the child pursuant to the stipulated order. In May 2020, when the child was seven years old and the COVID-19 pandemic had begun, the parties informally agreed to increase Gustamante's parenting time to an amount that was equal to Kibler's parenting time and to adopt a week-

on-week-off schedule for the summer of 2020. The parties continued to follow a week-on-week-off schedule when the child returned to school in the fall of 2020.

In 2021, Kibler and her husband purchased a home in the city of Le Sueur, which is approximately 30 miles from Mankato. In January 2022, Kibler filed a motion for an order that the child shall attend a school in the Le Sueur-Henderson school district, beginning with the 2022-23 school year. Gustamante opposed Kibler's motion. He also moved to modify the September 2015 stipulated order to provide for joint physical custody, to provide for a week-on-week-off parenting-time schedule with equal amounts for each party, and to provide for other relief that is not at issue on appeal.

The district court conducted a hearing in March 2022. The parties agreed that an evidentiary hearing was unnecessary and that the issues could be determined based on the parties' submissions of affidavits and exhibits.

In May 2022, the district court filed an order in which it granted Kibler's motion with respect to the selection of a school. The district court also granted Gustamante's motion to modify parenting time by ordering equal amounts with a week-on-week-off schedule. The district court denied Gustamante's motion for joint physical custody.

In June 2022, Gustamante filed a motion for amended findings in which he challenged the district court's grant of Kibler's motion concerning the selection of a school. In August 2022, the district court denied Gustamante's motion for amended findings.

Gustamante appeals.

DECISION

I. Selection of School

Gustamante first argues that the district court erred by granting Kibler’s motion for an order that the child shall attend a school in Le Sueur instead of Mankato.

The selection of a child’s school is a matter to be determined by a child’s legal custodian or custodians. Minn. Stat. § 518.003, subd. 3(a) (2022) (defining “legal custody” to mean “the right to determine the child’s upbringing, including education, health care, and religious training”). If two parents share joint legal custody, they “have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education.” Minn. Stat. § 518.003, subd. 3(b); *see also Wolf v. Oestreich*, 956 N.W.2d 248, 253 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021).

If joint legal custodians are unable to agree on the selection of a school, the matter may be submitted to a district court, which shall decide the issue according to the best interests of the child. *Novak v. Novak*, 446 N.W.2d 422, 424-25 (Minn. App. 1989) (citing Minn. Stat. § 518.17 (1988)), *rev. denied* (Minn. Dec. 1, 1989). The district court may not attempt to decide the issue based on the joint legal custodians’ respective interests or rights. *Id.* Accordingly, a joint legal custodian with sole physical custody does not have greater rights than the other joint legal custodian with respect to the selection of a school. *Id.*

In considering a child’s best interests pursuant to section 518.17, a district court “must consider and evaluate all relevant factors,” including 12 factors set forth by statute. *See* Minn. Stat. § 518.17, subd. 1(a), 1(a)(1)-(12) (2022). The district court must provide “detailed findings” on each of the statutory best-interests factors and “explain how each

factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1) (2022). To the extent that a party challenges a district court’s factual findings on issues relevant to the best interests of a child, this court applies a clear-error standard of review. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

In this case, the district court applied the statutory twelve-factor best-interests test. The district court made findings with respect to each factor and determined whether or not each factor supported Kibler’s motion. Specifically, the district court determined that four factors weighed in favor of granting Kibler’s motion and that the remaining eight factors were neutral. The district court concluded that it is in the child’s best interests to attend school in Le Sueur beginning in the fall of 2022. On appeal, Gustamante challenges the district court’s findings with respect to six of the twelve factors.

Before considering Gustamante’s arguments with respect to the six factors he has challenged, it is appropriate to describe the clear-error standard of review of a district court’s factual findings. Findings of fact are clearly erroneous if “they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). “If there is reasonable evidence to support the trial court’s findings of fact, a reviewing court should not disturb those findings.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). “In applying the clear-error standard, we view the evidence in a light favorable to the findings.” *Kenney*, 963 N.W.2d at 221. “We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Id.* (quotations omitted). Importantly,

clear-error review does not permit an appellate court to engage in fact-finding, reweigh the evidence, make credibility determinations, or reconcile conflicting evidence. *Id.* at 221-22. “Consequently, an appellate court need not ‘go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court.’” *Id.* at 222 (quoting *Meiners v. Kennedy*, 20 N.W.2d 539, 540 (Minn. 1945)).

Rather, because the factfinder has ‘the primary responsibility of determining the fact issues’ and the ‘advantage’ of observing the witnesses in ‘view of all the circumstances surrounding the entire proceeding,’ an appellate court’s ‘duty is fully performed’ after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. (quoting *State ex rel. Peterson v. Bentley*, 71 N.W.2d 780, 786 (Minn. 1955)).

A.

At oral argument, Gustamante’s attorney focused on the district court’s findings with respect to the first factor. The district court found that the first factor was neutral because the child “will start fourth grade in a new school regardless of this Court’s determination.” This finding is based on a finding that Gustamante’s home is not within the attendance area of the child’s current school, Washington Elementary, which would require her to switch to Roosevelt Elementary if she were to remain in the Mankato school district. Gustamante contends that these findings are clearly erroneous because his evidence “made it clear that he could enroll the minor child in Washington Elementary and there was no evidence that [he] would remove the child” from her current elementary school.

A careful review of the parties' evidence shows that the district court's findings are not clearly erroneous. Gustamante submitted an affidavit in February 2022 in which he stated that he and the child had toured Roosevelt Elementary, which he said has small class sizes. Kibler submitted an affidavit in March 2022 in which she stated the child would need to change schools "either way" because Gustamante does not live in the attendance area of Washington Elementary. In March 2022, Gustamante submitted another affidavit in which he stated, "It is true [the child] will have to change schools next year" He also provided a map showing the walking route from his home to Roosevelt Elementary. Gustamante's affidavits do not mention Washington Elementary, let alone say that the child would be or could be enrolled there after Kibler's move from Mankato to Le Sueur. In his motion for amended findings, Gustamante conceded that "[n]either party made an attempt to open enroll the child, or even find out if the child could remain in Washington Elementary." In light of this evidence, the district court did not clearly err by finding that the child would switch schools in the fall of 2022 regardless of whether Kibler's motion was granted or denied.

Gustamante also challenges the district court's findings concerning his argument that Mankato schools would provide the child with a better education. The district court did not credit Gustamante's evidence on the ground that it would be "speculative" to draw inferences from a referendum concerning school funding in the Le Sueur-Henderson school district. We defer to the district court's evaluation of the appropriate weight to be given to Gustamante's evidence. *See Kenney*, 963 N.W.2d at 221-22.

B.

Gustamante also challenges the district court's factual findings with respect to five other best-interests factors. We have reviewed the evidentiary record and have concluded that the challenged findings are not clearly erroneous, for the following reasons. *See id.*

Second factor: The district court found that this factor is neutral because the child is doing well in school and in her development generally. Gustamante contends that the district court ignored the disruption of the child's multiple extra-curricular activities in Mankato. The district court's finding is not clearly erroneous because Kibler submitted evidence that the child can engage in comparable extracurricular activities in Le Sueur.

Sixth factor: The district court found that Gustamante relies heavily on his new partner to take the child to school each morning and on day-care providers to watch the child on summer weekdays. The district court also found that Kibler was responsible "for the vast majority of the daily care for the child." Gustamante contends that the district court did not consider the fact that Kibler became a stay-at-home mother only recently and may return to work soon. The district court's finding is not clearly erroneous because Kibler's affidavit does not say that she intends to return to work soon and Gustamante does not cite any other evidence to support his statement that Kibler may return to work.

Seventh factor: The district court found that this factor favors Kibler's motion because she is better able to care for the child and meet the child's needs, in part because she is less reliant on others to take the child to and from school during the day. Gustamante contends that the district court's findings are unsupported by the record. The district court's finding is not clearly erroneous because Kibler's affidavit states she is available to

bring the child to and from school each day and to respond to school-day needs while Gustamante's affidavit states that his partner is responsible for caring for the child in the morning and is able to rearrange her work schedule to transport the child to school.

Eighth factor: The district court found that this factor is neutral because neither party demonstrated that either school would have any particular benefit or detriment to the child. Gustamante contends that the district court ignored "voluminous evidence" that the schools, programs, and activities available in Mankato are superior. The district court's finding is not clearly erroneous because the parties presented conflicting evidence about the features of the schools in both cities.

Eleventh factor: The district court found that this factor slightly favors Kibler's motion because, among other reasons, Gustamante does not fully support Kibler's relationship with the child. Gustamante contends that this finding has no support in the record. The district court's finding is not clearly erroneous in light of Kibler's affidavit, which describes Gustamante's criticism of Kibler's proposal concerning the child's health care.

In sum, the district court did not clearly err in any of its factual findings concerning Kibler's motion for the selection of a school. Thus, the district court did not err by granting Kibler's motion.

II. Modification of Custody

Gustamante also argues that the district court erred by denying his motion to modify physical custody.

A.

Gustamante first argues that the district court erred by applying the statutory endangerment standard to his motion for joint physical custody instead of the best-interests standard to which the parties agreed in their September 2015 stipulation.

In general, the modification of a custody order is governed by section 518.18. *See Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). Absent an agreement between the parties, a motion to modify custody typically is analyzed under subsection 518.18(d)(iv), which allows a district court to modify custody upon a finding that “the child’s present environment endangers the child’s physical or emotional health or impairs the child’s emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.” Minn. Stat. § 518.18(d)(iv) (2022). But if the parties have previously agreed that the best-interests standard in section 518.17 should apply to a motion to modify custody, then that standard applies. *Id.*, § 518.18(d)(i) (2022); *Woolsey*, 975 N.W.2d at 507. In this case, the parties agreed in their September 2015 stipulation that the best-interests standard in section 518.17 should apply to a motion to modify custody.

Gustamante’s argument is based on a few passages in the district court’s order in which the district court stated that Gustamante had not shown that “a modification of custody is necessary to serve the best interests of the child.” Gustamante focuses on the word “necessary,” which, he asserts, indicates that the district court applied an endangerment standard, not a best-interests standard. Gustamante misreads the district court’s order. The district court noted the parties’ prior stipulation to the best-interests

standard, considered each of the statutory best-interests factors, and referred to the best-interests standard in its conclusions of law. The district court did not expressly refer to the endangerment standard, and its use of the word “necessary” in connection with the term “best interests” does not imply that the district court applied an endangerment standard.

Thus, the district court properly applied the best-interests standard to Gustamante’s motion for joint physical custody.

B.

Gustamante also argues that the district court erred in its analysis of certain best-interests factors related to its denial of his motion to modify physical custody. Specifically, Gustamante challenges the district court’s analysis of the fifth and twelfth best-interests factors. An abuse-of-discretion standard of review applies. *Vangsness v. Vangsness*, 607 N.W.2d 468, 475 (Minn. App. 2000); *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

Fifth factor: The district court found that this factor did not support Gustamante’s motion. Gustamante contends that the factor supports his motion because neither party has any issues concerning their physical, mental, or chemical health. The district court did not make any findings concerning the parties’ physical, mental, or chemical health. The district court based its analysis on other factual issues. The district court did not abuse its discretion in doing so.

Twelfth factor: The district court found that this factor did not support Gustamante’s motion. Gustamante argues that this factor supports his motion because both parents are willing and able to co-parent the child. The district court did not find otherwise. The district court noted that the parties agreed to mediate disputes and have complied with

that agreement. The district court made findings on other factual issues, which may have contributed to its analysis of this factor. The district court did not abuse its discretion in doing so.

In sum, the district court did not err by denying Gustamante's motion to modify physical custody.

Affirmed.