

*This opinion is nonprecedential except as provided by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
A22-1389**

In re the Marriage of:

Ariel Theresa Bedner, petitioner,
Appellant,

vs.

Todd David Bedner,
Respondent.

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

Hennepin County District Court
File No. 27-FA-16-149

Ariel Theresa Bedner, Stillwater, Minnesota (pro se appellant)

Michal H. Daub, Minnetonka, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and Worke,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Mother appeals from a district court’s order denying her motion for reunification therapy with child, arguing that the district court (1) erred by relying on ex parte communications; (2) abused its discretion by denying her motion for reunification therapy; and (3) “terminated” her parental rights to child without due process. We affirm.

FACTS

Appellant-mother and respondent-father have a joint child, born in 2012. The parties dissolved their marriage in February 2016, and a seven-year-long custody dispute ensued.

The district court initially awarded mother sole legal and sole physical custody of child. Subsequently, mother brought a petition for an order for protection (OFP) on behalf of child against father, accusing father of inappropriately touching child. Following an evidentiary hearing and appointment of a guardian ad litem (GAL), the district court denied the OFP. The GAL informed the district court that mother appeared to have coached child into making statements about father “having autism” and acting “weird.” Mother reported discussing with child that father had autism, despite no such diagnosis. In September 2016, the district court ordered temporary joint legal and joint physical custody and ordered the parties to participate in a brief focused assessment (BFA).

In December 2016, the BFA evaluator reported to the district court that mother had exposed child to inappropriate information by having child present in five of her personal counseling sessions during which she discussed father’s alleged sexual assault of child. The evaluator also reported that mother had scheduled a “medical examination” for child at CornerHouse, a children’s advocacy center. The district court held a telephone conference and found no evidence of abuse. Multiple professionals, including child’s GAL, the BFA evaluator, and CPS, all expressed a belief that mother was coaching child and exposing child to inappropriate information about father’s alleged sexual abuse. The district court ordered that child not undergo a medical examination at CornerHouse unless

law enforcement directed it as part of an ongoing criminal investigation. The BFA submitted the parties' physiological evaluations ordered by Family Court Services (FCS), which showed that mother met the criteria for borderline personality disorder and had expressed homicidal ideation towards father due to her belief that father would sexually abuse child.

In February 2017, father filed a motion for temporary relief, requesting in part sole legal and sole physical custody of child, with supervised parenting time for mother. Father also requested that mother be ordered to follow her psychologist's recommendations. In July 2017, the parties stipulated to temporary joint legal and temporary joint physical custody and agreed to undergo a reunification evaluation.

2018 Amended Stipulation by the Parties

In May 2018, mother filed a motion to appoint a new parenting consultant. Father responded and in turn requested sole legal and sole physical custody, as well as supervision of mother's parenting time. On June 1, 2018, father filed an amended stipulation signed by both parties, under which father would be awarded sole legal and sole physical custody, and mother's parenting time would be supervised. On June 26, 2018, the district court ordered the parties to comply with the terms of the amended stipulation pending a hearing. The day after, however, mother filed a motion asking the district court to reject the amended stipulation and continue the prior custody order. By an order dated October 15, 2018, the district court declined mother's motion to appoint a new parenting consultant, enforced the amended stipulation as a binding permanent agreement, and granted father

sole legal and sole physical custody, subject to supervised parenting time by mother, pending an evidentiary hearing.

June 2019 Custody Order

On April 15 and 17, 2019, the district court held a two-day trial. Both parties as well as father's fiancée testified. A significant part of mother's testimony focused on relitigating matters previously adjudicated, such as her unsuccessful OFP petition in 2016, or reviving claims made during prior litigation, such as her insistence that father was on the autism spectrum. The district court found father and his fiancée's testimony credible, and mother's less credible and "blatantly evasive" at times. The district court found:

Mother, while insisting that Father suffers serious mental health issues, simultaneously refused to discuss her own current mental health diagnosis, asserting it was private. . . . Mother was convicted of third-degree driving while impaired ("DWI") in December 2018. Mother has admitted past DWI criminal charges and alcohol abuse after her discharge from the Army. . . . A letter from Nystrom and Associates indicates that in 2017 Mother was . . . diagnosed with [a]cute [a]djustment [d]isorder with [a]nxiety.

The district court further found that "[t]he present custodial arrangement endanger[ed] [child's] physical and emotional health and development," and "the harm of preserving the current joint custody arrangement outweigh[ed] the risks of adjusting to a sole custody arrangement with [f]ather."

By an order dated June 12, 2019, the district court reserved mother's parenting time and granted father sole legal custody and sole physical custody. The district court found that mother undoubtedly "loves her daughter very much, and that her daughter loves her." "If Mother would demonstrate a willingness to be honest with herself, and others, about

her health status, demonstrate she is seeking appropriate treatment based on more than self-reports to providers, and make verification available of those efforts, it would be appropriate to address an expansion of parenting time.” At the conclusion of the order, the district court further provided that mother may bring a motion to reestablish supervised parenting time when she (1) “provide[s] releases for all mental-health providers,” (2) “is regularly under the care of appropriate mental[-]health professionals”, and (3) complies “with all the recommendations of those treating professionals.”

Mother’s Motion for Supervised Time and Reunification Therapy

Two and a half years later, mother filed a motion for supervised parenting time and reunification therapy with child. Mother contended that she had fulfilled the requirements set forth in the June 2019 order, stating that (1) she was under the care of K.S., a licensed independent clinical social worker (LICSW), (2) she met with K.S. monthly and had completed dialectic behavioral therapy, and (3) she had been diagnosed with adjustment disorder with no further services needed. Mother’s attorney requested that the district court review mother’s mental-health records in camera. Father filed a response affidavit stating that mother never made use of her opportunities to have video or phone calls with child and had not seen child since October 2, 2018, which was before the district court reserved her parenting time.

At the January 12, 2022 hearing, mother claimed that she was ready and willing to maintain consistent contact with child. In an affidavit to the district court, mother explained that she “was at a loss as what to do” when the district court denied her request for unsupervised parenting time, and “therefore, on September 19, 2018, the visits ended.”

The district court noted how mother characterized the end of her visits as something other than her own choice. In father's motion to dismiss, he described that mother had a pattern of engaging with child and then abandoning child shortly after, and "being a mother only when she feels like it and then disappearing when she doesn't." For instance, father alleged that mother had told him that she was going to see child under her terms or not at all.

The district court found that "[m]other's intentional, knowing refusal to provide details of any current diagnosis can only lead the [c]ourt to conclude that such information would be consistent with materials previously submitted in prior proceedings." Consequently, the district court found that mother failed to meet the conditions set forth in the June 2019 order.

The district court's April 12, 2022 order requested K.S. to provide the court an unredacted copy of mother's therapy records dating back 18 months from the date of the order, and reserved mother's motion for reunification therapy pending review of mother's medical records. It agreed to review mother's therapy records in camera and would only share information it deemed pertinent with father's attorney under a protective order to keep it confidential.

The district court received by email copies of mother's unredacted therapy records from March 2021 through April 2022. Subsequently, on June 1, 2022, K.S. submitted a letter to the court along with mother's journal entries, written at K.S.'s request, in which mother wrote about what she wished the court would know pertaining to the custody dispute. According to K.S., mother had agreed to share the journal entries with the district court.

After reviewing both mother's therapy records and her journal entries, the district court found that mother (1) "fail[ed] to acknowledge that she was originally afforded supervised parenting time pending the 2019 trial and unilaterally stopped exercising parenting time in September 2018;" (2) "d[id] not acknowledge or take any responsibility for her choice;" (3) did not demonstrate the ability to be consistently present for child; and (4) continued to hold the same beliefs that father had autism and sexually abused child, which had been repeatedly discredited by the court, multiple neutral professionals, and evidence in the record.

By an order dated August 2, 2022, the district court denied mother's request for reunification therapy and stated that all past orders from this case remain in effect. Again, as in its June 2019 order, the district court stated that "if mother is able to demonstrate a willingness to be honest with herself about her mental health and demonstrate that she is seeking appropriate treatment, it would be appropriate to address an expansion of parenting time." Mother appeals.

DECISION

I. The district court did not rely on ex parte communications.

Mother argues that the district court erred by considering and relying on K.S.'s June 1, 2022 correspondence, which she asserts constitute ex parte communications because the district court's April 12, 2022 order only requested K.S. to provide mother's therapy records dating back 18 months, which K.S. previously submitted by email on April 22, 2022. We disagree.

“A judge shall not initiate, permit, or consider ex parte communications . . . outside the presence of the parties or their lawyers, concerning a pending or impending matter,” except, among others, “when expressly authorized by law to do so.” Minn. Code Jud. Conduct Rule 2.9 (A). However, an interested person may submit documents to the court for in-camera review after notice to all parties and obtaining advance approval from the court by motion. Minn. R. Gen. Prac. 14.07(a). Whether K.S.’s June 1, 2022 correspondence, which included a letter and mother’s journal entries, constitute impermissible ex parte communications is a question of law which we review de novo. *Gams v. Houghton*, 884 N.W.2d 611, 616 (Minn. 2016).

Here, the district court reviewed mother’s mental-health records in camera at the request of mother’s attorney. The purpose of the review was to provide mother an opportunity to demonstrate improvement of her mental health since June 2019, when the district court reserved her parenting time. Contrary to mother’s assertion that she had no opportunity to respond after the January 2022 hearing, both parties were on notice of the nature of the evidence and had a chance to respond after the district court completed its in-camera review. Because the district court’s in-camera review of mother’s mental-health records complied with rule 14.07, it did not consider or rely on impermissible ex parte communications.

Mother argues that, because the district court’s April 2022 order only required submission of “therapy records dating back 18 months,” the June 1, 2022 letter and mother’s journal entries exceeded the scope of review. Mother’s argument fails for two reasons. First, mother relies on an unreasonably narrow interpretation of “therapy records.”

The record shows that K.S. asked mother to journal her thoughts as part of her therapy treatment, making the journal entries products of mother's therapy and a part of the therapy records. Because the journal entries were dated March 20, 2022, they were within the scope of review set forth in the district court's April 2022 order. Second, mother cites no legal authority that prohibits K.S. from submitting the therapy records in two parts. To the contrary, both submissions complied with procedures for in-camera review set forth in rule 14.07, which permits submission both by email with attachment and regular mail to the district court. We therefore conclude that the district court did not err by relying on impermissible ex parte communications.

II. The district court did not abuse its discretion by denying mother's motion for reunification therapy.

Mother claims that the district court abused its discretion by denying her motion for reunification therapy because it (1) failed to follow its prior orders and (2) did not find that reunification therapy would endanger child. We are not convinced.

A district court has broad discretion in deciding parenting-time questions and will not be reversed absent an abuse of that discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). A district court must modify parenting time if it would serve the child's best interests. Minn. Stat. § 518.175, subd. 5 (2022). The court must also consider "a child's changing developmental needs" when deciding a motion to modify parenting time. Minn. Stat. § 518.175, subd. 5(b).

A. The district court followed its prior orders.

Both the June 2019 and April 22 orders provided that mother may bring a motion to reestablish supervised parenting time when she meets several conditions. After reviewing the new evidence, including mother's therapy records and journal entries, the district court found that, while "[m]other ha[d] received some mental health treatment, she continue[d] to maintain past beliefs and attitudes that the [c]ourt ha[d] already found to be without merit," and "[m]other's unfounded beliefs" prevented her from being honest with herself and others about her mental health status, which was one of the conditions that the district court required in its prior orders. Mother's claim that the district court did not follow its prior orders fails.

B. The district court did not abuse its discretion by denying mother's motion for reunification therapy.

A district court may not *restrict* parenting time without first finding either (1) "parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development;" or (2) "the parent has chronically and unreasonably failed to comply with court-ordered parenting time." Minn. Stat. § 518.175, subd. 5(c) (2022) (emphasis added). "When determining whether a reduction constitutes a restriction, the court should consider the reasons for the change as well as the amount of the reduction." *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993) (citation omitted). "[A] reduction of total visitation time [] is not necessarily a restriction of visitation," but a restriction may occur when the court makes a "substantial alteration of visitation rights." *Id.* (quotations and citations omitted).

Here, mother cites no legal authority to support her argument that a denial of her request for reunification therapy constitutes a “restriction” of her parenting time under section 518.175, subdivision 5. Moreover, because the district court had already reserved mother’s parenting time in its June 2019 order, the August 2022 order denying reunification therapy made no change to mother’s parenting time. The district court did not “restrict” her parenting time within the meaning of section 518.175.

Even if we were to assume without deciding that the district court restricted mother’s parenting time, it made specific findings that supervised parenting time and reunification therapy would put child “at continued risk for emotional harm given [m]other’s history.” The district court therefore did not abuse its discretion by denying mother’s motion for reunification therapy.

III. The district court did not deprive mother of due process.

Mother argues that the district court deprived her of due process by “completely cutting off her parenting time with no pathway back to it.” We are not persuaded.

Whether a due-process violation occurred involves a question of law that we review *de novo*. See *In re Welfare of Child of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). Mother undisputedly has a protected liberty interest with child. See *Rew v. Bergstrom*, 845 N.W.2d 764, 786 (Minn. 2014) (“[P]arents have a fundamental liberty interest in the care, custody, and control of their children.”). “Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.” *In re Welfare of Child of D.F.*, 752 N.W.2d at 97. “Although the amount of

process due in a particular case varies with the unique circumstances of that case, prejudice as a result of the alleged violation is an essential component of the due process analysis.”

Id.

Contrary to mother’s argument, the district court’s denial of reunification therapy does not equate to termination of her parental rights, as mother may move to reestablish parenting time once she fulfills the requirements stated in the district court’s prior orders. Moreover, mother’s right to parent is subordinate to the welfare of the child when there is a conflict. *See Eisel v. Eisel*, 110 N.W.2d 881, 884 (Minn. 1961). Substantial evidence in the record supports the district court’s finding that it is in child’s best interests to avoid contact with mother until mother can address some of her mental-health issues. Finally, mother fails to demonstrate prejudice. As discussed in Section II, the district court’s order denying reunification therapy did not further reduce or alter mother’s parenting time with child, because it had already reserved mother’s visitation in prior orders. We therefore conclude that the district court did not violate mother’s due-process rights by denying reunification therapy.

Affirmed.