

*This opinion is nonprecedential except as provided by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
A22-1628**

In re the Custody of: J. A. J.,

Carol Marie Dahl, petitioner,
Respondent,

vs.

Mandy Marie Johnson,
Appellant,

Joseph Ryan Hage,
Respondent.

**Filed September 11, 2023
Affirmed
Ross, Judge**

Carlton County District Court
File No. 09-FA-21-627

Abigail M. Nouska, Cloquet, Minnesota (for respondent Carol Dahl)

David Sjoberg, Sjoberg Law Office, P.A., Ham Lake, Minnesota (for appellant)

Joseph Hage, Duluth, Minnesota (self-represented respondent)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Smith, John,
Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

The district court ordered sole physical custody of a child to his grandmother and joint legal custody to his grandmother and father. In this appeal of the order by the child's mother, the mother does not identify findings of fact that she believes are erroneous and argues unconvincingly that the statutory elements to establish third-party custody have not been met. We therefore affirm the district court's order.

FACTS

Appellant-mother Mandy Johnson and respondent-father Joseph Hage had a child together, whom we will call Daniel in the interest of privacy. Respondent Carol Dahl, Daniel's maternal grandmother, regularly cared for Daniel on weekends and in the summer, and she served as his primary caretaker after Johnson left Daniel in Dahl's care. Dahl petitioned the district court for custody of Daniel in April 2021, alleging that she was the child's *de facto* custodian. The district court granted her *ex parte* motion for temporary custody, and Dahl amended her petition after a September 2021 hearing to assert that she was also an interested third party. Hage supported Dahl's petition. The district court conducted a seven-day evidentiary hearing ending in August 2022 to determine the facts to resolve the custody dispute.

Evidence at the hearing revealed that Johnson and Daniel, along with Johnson's other child, moved into Dahl's home in October 2019. Dahl performed most of the parenting responsibilities while Johnson and the children resided with her, including furnishing Daniel with food and clean clothing.

Johnson's mental health began to decline in March 2020. She often had outbursts, which the district court described as "rages in which she would scream, yell, curse, berate, name call, and insult those around her," including Daniel, who was often her target. The district court found that Johnson verbally abused Daniel on a near-daily basis, multiple times a day. The court listened to recordings of Johnson's outbursts, commenting that it was "hard pressed to remember anything as disturbing or traumatizing and was horrified to hear Ms. Johnson behave toward her child in such a manner." Johnson regularly told Dahl that she was depressed, wanted to die, and needed to be hospitalized. Johnson attempted to explain her statements to Dahl, testifying that she had lied to her about her mental health to gain Dahl's attention. Mental-health examinations revealed that Johnson may exhibit a lack of insight into her behavior and may resist admitting to personal shortcomings. The district court disbelieved Johnson's testimony that she had no mental-health challenges. Daniel refused to go anywhere with Johnson starting in spring 2020.

Johnson moved three hours from Dahl's home in September 2020 for a job, bringing her other child with her but leaving Daniel in Dahl's care. The district court heard testimony from Daniel's therapist, who testified that Daniel wished to remain in Dahl's care. The therapist also testified that Johnson had not met the criteria to participate in Daniel's therapy.

The district court granted Dahl's petition for physical custody of Daniel, holding that she was an interested third party. It held that Johnson "abandoned, neglected, or otherwise exhibited disregard for [Daniel's] well-being" and that it was in Daniel's best interests for Dahl to have sole physical custody of Daniel. It also ordered joint legal custody

of Daniel to Dahl and Hage. The order provided for Johnson to have supervised parenting time with Daniel once weekly and monitored audio and video calls twice weekly.

Johnson appeals the custody order.

DECISION

Johnson challenges the district court's custody order. We review custody determinations for an abuse of discretion, analyzing factual findings for clear error and legal issues *de novo*. *Rodgers v. Knauff*, 649 N.W.2d 166, 174 (Minn. 2002). Because Johnson fails to challenge any particular district court finding, and because the findings of fact support the district court's order, we hold that the district court did not abuse its discretion in determining custody of Daniel.

Johnson correctly emphasizes that parents have a fundamental right to direct the care of their children. This significant right exists at common law and is fundamental under constitutional law. *See Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995) (acknowledging common-law deference to parents in a grandparent-visitation case); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion) (“[T]he Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”). The Minnesota Supreme Court in *SooHoo v. Johnson* recited and applied this constitutionally guarded right. 731 N.W.2d 815, 820 (Minn. 2007) (citing *Troxel*, 530 U.S. at 65). And we reversed a district court's third-party-custody decision when we recognized that, among other reasons to reverse, the district court failed to appropriately presume the validity of a parent's wishes about his child's care. *Givens v. Darst*, 800 N.W.2d 652, 661–62 (Minn. App. 2011). We did so emphasizing

that courts must accord “special weight” to a fit parent’s decisions. *Id.* at 661 (quoting *Troxel*, 530 U.S. at 70). But although Johnson vaguely references the fundamental importance of parental rights, she does not apply relevant common-law or constitutional authority to this case or present any comprehensible argument as to how the district court’s order infringed on her parental rights. She provides us no basis to review the district court’s order under parental-right theories. We therefore address only her argument that the district court’s order fails under the statutory elements of third-party custody.

The district court held that Dahl met the statutory requirements to be an interested third party. To establish she is an interested third party, a petitioner must first show one of three things by clear and convincing evidence:

- (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child’s well-being to the extent that the child will be harmed by living with the parent;
- (ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
- (iii) other extraordinary circumstances.

Minn. Stat. § 257C.03, subd. 7(a)(1) (2022). The petitioner must also prove by a preponderance of the evidence that it is in the child’s best interests to be in her custody under Minnesota Statutes section 257C.04 (2022), and she must prove by clear and convincing evidence that granting the petition would comply with Minnesota Statutes section 518.179 (2020), which imposes additional requirements for individuals convicted of certain crimes. *Id.*, subds. 7(a)(2)-(3), (c) (2022). We understand the district court’s order as holding under section 257C.03, subdivision 7(a)(1)(i), that Johnson exhibited disregard

for Daniel's well-being based on its findings that Johnson did very little caretaking of Daniel; that she exhibited rages that frequently targeted Daniel; and that she verbally abused Daniel almost daily. Johnson does not challenge these findings on appeal, and our independent review of the record, including the audio recordings capturing some of the behavior just described, supports the district court's findings that Johnson's outbursts were disturbing and harmful to Daniel.

Johnson argues that no evidence connected her behavior to a detrimental impact on Daniel, but the district court's best-interests analysis includes the finding that "[Johnson's] mental health issues have affected the minor child who has been diagnosed with Other Trauma and Stressor Related Disorder." The record supports this finding. Daniel's therapist testified about the diagnosis, and she opined that Daniel suffered harm because of the "emotionally dysregulated events," referring to Johnson's frequent outbursts. And Johnson admitted at trial that she hurt Daniel and that he experienced trauma because of her behavior. The child's stated preference to reside with Dahl also shows the effect of her behavior. We are not persuaded otherwise by Johnson's reliance on *In re Welfare of P.L.C.*, 384 N.W.2d 222, 227 (Minn. App. 1986). To the extent that Johnson argues that the district court's order contradicts *P.L.C.* because its conclusion lacks a nexus between her behavior and an impact on Daniel, we disagree based on the record support for the district court's holding. Although the supporting evidence is not overwhelming, it is sufficient to withstand Johnson's unfocused challenges on appeal based on our deferential review of factual findings.

In sum, Johnson has not presented an argument that convinces us to reverse the district court's custody order. But we emphasize that the district court's order assigning custody does not terminate Johnson's parental rights. Nothing in the order prevents Johnson from remedying the behavior the district court found harmful so as to put her restored relationship with the child within the child's best interests, allowing her to move to modify the custody order in a manner that might rehabilitate a healthy mother-child relationship. *See* Minn. Stat. § 257C.06 (2022).

Affirmed.