

*This opinion is nonprecedential except as provided by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
A23-0733**

In re the Marriage of:

Anita Karen Dunne, n/k/a Anita Karen Fischer, petitioner,
Appellant,

vs.

Anthony Kieran Dunne,
Respondent.

**Filed February 12, 2024
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-FA-16-6415

Anita Fischer (confidential address) (pro se appellant)

Anthony Dunne, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Gaïtas, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant-mother Anita Karen Fischer challenges the district court's decision granting respondent-father Anthony Kieran Dunne's motions for modification of parenting time and permission to obtain a passport for the parties' child without mother's consent

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

and denying mother's motions for modification of custody and permission to move the child's residence to another state. Mother argues that the district court denied her a fair hearing on the motions and abused its discretion by reducing her parenting time, denying her motions to modify custody and move the child out of the state, and denying her request for reconsideration. We affirm.

FACTS

The parties were married from 2014 to 2017 and have one joint child, born in February 2015; mother also has two non-joint children, born in May 2007 and June 2019. In 2017, when their marriage was dissolved, the parties agreed to share joint legal and joint physical custody of the child and share equal parenting time during the school year, and that father would have 5/14 parenting time during the summer. Neither party appealed the dissolution judgment.

In October 2019, the district court ordered, based on the parties' agreement, that the child would attend St. Raphael School "for the next three years," and both parties "shall" live within 66 miles of the school during that time. The district court also ordered that the parties "shall" notify the court of any change in residence within ten days.

On August 28, 2021, mother left the child at father's residence and moved out of Minnesota, settling a short time later in Florida. Mother did not notify the district court of her change in address or ask to modify custody or parenting time. Since that time, the child has resided with father, and mother has seen the child in person only four or five times.

In December 2022, father moved to modify parenting time “to reflect the current circumstances of the parties,” and for permission to obtain a passport for the child without mother’s approval. In support of his parenting-time motion, father averred that the child has lived exclusively with him for more than a year, is doing well in the school he has attended since preschool and has a strong family network in the Twin Cities. And regarding the passport motion, father said that his family would be traveling to Ireland the following August to celebrate his parents’ anniversary and he wanted the child to come along.

In early January 2023, mother responded with motions to: (1) modify custody by awarding her sole physical custody, and (2) permit her to move the child’s residence to Florida. In support of her motions, mother averred that she moved to Florida to escape domestic abuse by O.S., the father of her youngest child, against whom she has an order for protection; granting her motions would enable the child to have a fuller relationship with mother and his siblings; it would be easier for father to travel to visit the child than for mother, who has two other minor children; the child prefers to live with mother because she makes “better breakfast”; and living with father is not in the child’s best interests because “continual failures of the system” make Minnesota unsafe for her, the child’s school discriminates against mother, and father has exposed the child to profanity and his friend who smokes. But she did not assert that the child is endangered in father’s care.

The district court scheduled a hearing for March 22, and both parties submitted additional materials ahead of the hearing. Father opposed mother’s motions, reiterating that the child has only lived in Minnesota and is doing well here. He also averred that mother has been dismissive of him as a parent since the dissolution; the child witnessed

O.S.'s domestic abuse against mother; mother has exhibited angry and aggressive behavior that led to suspension of her Minnesota teaching license in late 2019; mother was investigated in early 2020 for allegedly abusing the child and her older child, and both children told police that mother hit them; and mother has not maintained stable housing since the dissolution, in Minnesota or Florida. He also submitted exhibits, including the 2017 custody evaluation, an October 2019 stipulation regarding mother's teaching license, and police reports from a June 2019 incident involving mother and O.S. and a February 2020 police interview with the child and mother's older child.

In response, mother averred that father's assertions were inaccurate or irrelevant, and that the police reports that he submitted do not accurately represent what happened, father disregards the child's needs, and the child-protection investigation closed without a finding of abuse. She also submitted exhibits, including a video from the body camera of the officer who interviewed the children in February 2020 and a March 2020 child-protection record closing the file because investigation "points more toward family dysfunction than abuse." She again did not assert that the child is endangered in father's care.

The day of the hearing, mother did not appear. The district court waited 15 to 20 minutes before proceeding "by default" without her. During a brief exchange with father's counsel, the district court noted that it had reviewed all of the parties' submissions except for the February 2020 body-camera video that mother had submitted by email the prior evening, noting that "I'm not sure that I even need to get to that level of detail about what's going on" to decide the motions. When father's counsel highlighted a timing concern

regarding obtaining a passport for the child, the district court offered to address it in a separate order and “sign that faster.” Later that day, mother wrote to the court and said that she missed the hearing because she put the wrong time into her calendar.

On March 28, the district court granted father’s motions, noting that even if mother had appeared, the parties’ submissions show that granting father’s motions is in the child’s best interests. The district court also determined that mother failed to present a prima facie case for custody modification and that moving the child to Florida would not be in his best interests. Accordingly, the district court ordered that father has 100 percent of parenting time with the child during the school year, except alternating holidays and spring breaks and if mother visits the child in Minnesota, for which mother must provide advance notice and father must “attempt to accommodate” mother’s plans; mother has three weeks of parenting time during the summer, for which she must pay the cost of transporting the child to Florida; and father may obtain a passport and travel internationally with the child without mother’s approval.

Mother filed correspondence with the district court requesting reconsideration, asserting that she was late for the hearing “by mistake” because of various medical conditions and “requesting grace,” apparently seeking a new hearing. She did not assert error in any aspect of the district court’s decision. The district court denied the request.

Mother appeals.

DECISION

Mother asserts numerous and varied challenges to the district court's handling of the parties' motions; its decisions on the parenting-time, custody, and removal motions; and its denial of her request for reconsideration.¹ We address each challenge in turn.

I. Mother has not demonstrated reversible error in the district court's handling of the parties' motions.

Mother contends the district court failed to “exercise fair and equal treatment” because (1) she is a domestic-abuse victim with a confidential home address and the district court failed to protect the confidentiality of her address, and (2) the district court judge was biased in favor of father.

A. Confidential Address

A domestic-abuse victim may have their home address designated as confidential. Minn. Stat. §§ 5B.03, subd. 3, .05(a) (2022). Generally, when a person is properly informed that an address is confidential, the person “must not knowingly disclose” it. Minn. Stat. § 5B.05(d) (2022). But this provision does not apply to court records, which are governed by court rules. *Id.*

Court records are generally presumed to be accessible to the public. Minn. R. Pub. Access to Recs. of Jud. Branch 2. But certain records may be inaccessible, such as by court

¹ Mother also asserts errors in the initial dissolution process and in the state's handling of the various criminal matters involving O.S. But those matters were not before the district court in addressing the parties' motions and are not before us in this appeal. Similarly, mother cites to federal cases and rules that are inapposite in this family-law matter. *See Angell v. Angell*, 791 N.W.2d 530, 534 (Minn. 2010) (“Divorce and other family law matters are traditionally within the historic police power of the states.”). And mother references the passport order but does assert a discernible challenge to it.

order or statute. Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(v). If a party is filing documents with restricted identifiers or other nonpublic information, it is the party's responsibility to designate the documents as nonpublic. Minn. R. Gen. P. 11.03(a). Nonpublic documents that are not submitted as such are accessible to the public, "but the court may, upon motion or on its own initiative, order that any such document be nonpublic." *Id.* (c). If a party fails to comply with requirements for identifying nonpublic documents, any person may bring the violation to the district court's attention and the court may impose sanctions. Minn. R. Gen. P. 11.05.

Mother argues that the district court failed to protect her confidential home address by permitting documents with her address to be publicly accessible. This argument is unavailing. Mother filed several documents stating that her home address is confidential, but nothing in the record indicates that she alerted the district court to any improper filings or requested that documents containing her address be made inaccessible to the public. To the contrary, mother herself listed her address on both of her motions and did not file either as nonpublic or ever request that they be designated as such. Because mother failed to raise the issue to the district court, she has forfeited review of it. *See Hagen v. Schirmers*, 783 N.W.2d 212, 219 (Minn. App. 2010). But even if we considered the issue, mother has not demonstrated any error. The record confirms that, after mother indicated that her home address is confidential, all subsequent filings identify mother's address as "confidential" or as a P.O. Box. In short, neither father nor the district court disclosed mother's confidential home address.

B. Bias

Judges must perform all duties of their office fairly, impartially, and without bias. Minn. Code Jud. Conduct Rule 2.2, 2.3. We presume that the district court judge discharged all judicial duties in a proper manner. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013). We objectively review the facts and circumstances surrounding a claim of judicial bias to determine whether a “reasonable examiner,” fully informed of those circumstances, would question the judge’s impartiality. *In re Jacobs*, 802 N.W.2d 748, 752 (Minn. 2011) (quotation omitted). Adverse or erroneous rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

Mother argues that the district court was biased against her because it (1) did not afford her a hearing even though she requested one, (2) stated at the hearing that it had already determined that the evidence favored father’s motions, and (3) stated that it did not need to consider the body-camera video evidence that mother submitted the evening before the hearing because it did not need to “get to that level of detail about what’s going on.” The record defeats mother’s claim of bias. The hearing transcript reveals that the district court waited for mother to appear at the hearing, prepared for the hearing by reviewing all of the parties’ submissions except for the video that mother had submitted only the prior evening, and focused its analysis on evidence pertinent to the statutory standards for the motions before it. Mother does not contend that the district court’s approach deprived her of an opportunity to present her evidence, and she acknowledges that her failure to appear at the hearing was attributable to her own calendaring error, not any deception or error by

the district court. Because our review of the record as a whole reveals an objectively sound basis for the district court's decision to conduct the hearing in mother's absence, and for its statements during the hearing, mother's claim of bias is unavailing.

II. The district court did not abuse its discretion by reducing mother's parenting time.

A district court "shall" modify parenting time if doing so "would serve the best interests of the child," provided "the modification would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b) (2022). But a district court may not "restrict" parenting time absent a finding that parenting time is likely to endanger the child, or a parent has chronically and unreasonably failed to comply with court-ordered parenting time. *Id.*, subd. 5(c) (2022). Whether a reduction in parenting time constitutes a restriction or simply a modification depends on the reasons for the change and the amount of the reduction. *Suleski v. Rupe*, 855 N.W.2d 330, 336 (Minn. App. 2014). The "ultimate issue" in parenting-time disputes is the child's best interests. *Hagen*, 783 N.W.2d at 216. A district court has "broad discretion" in deciding parenting-time matters, and we will not reverse absent an abuse of discretion. *Suleski*, 855 N.W.2d at 334.

The district court determined that granting father 100 percent of parenting time during the school year and granting mother little more than three weeks of summer parenting time is not a restriction because it simply reflects the parties' current circumstances. And it determined that modifying parenting time in that manner serves the child's best interests. Mother argues that the district court abused its discretion in making

this parenting-time decision because (1) it awarded her less than the presumptively appropriate 25 percent parenting time, (2) it failed to adequately consider or made unsupported findings regarding the child's best interests, (3) it should have considered the child's preference, (4) it relied on hearsay, and (5) the evidence she submitted supports the opposite result. None of these arguments is availing.

First, the presumption that a parent is entitled to receive at least 25 percent parenting time is, as mother acknowledges, "rebuttable" by "other evidence." Minn. Stat. § 518.175, subd. 1(g) (2022). Such other evidence may "relate[] to the child's best interests and considerations of what is feasible given the circumstances of the parties." *Hagen*, 783 N.W.2d at 218. Mother did not raise the issue of the presumption to the district court such that it was necessarily required to expressly address its reasons for awarding less than 25 percent. *See id.* at 217 (stating that district court must "demonstrate an awareness and application" of the presumption "when the issue is appropriately raised"). But it is apparent that the district court based its parenting-time decision largely on two facts: (1) the great distance between the parties virtually necessitates one parent having the substantial majority of parenting time, and (2) the child has a strong connection to Minnesota and father because he has lived and attended school exclusively in this state and has lived exclusively with father since August 2021. These facts are well established in the record and amply justify the district court's deviation from the 25-percent presumption.

Second, the district court’s best-interests findings are thorough and have ample support in the record. The court made findings on each of the 12 best-interest factors a court must consider when awarding parenting-time in the first instance, Minn. Stat. § 518.17, subd. 1(a) (2022), even though it was not required to do so in addressing a motion for parenting-time modification, *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018). And all of its findings correspond to evidence in the record—a fact that mother does not dispute even though she argues that the district court should have made different findings.

Third, the district court did not abuse its discretion by determining that the child was too young to state a preference as to parenting time. A court may consider “the reasonable preference of the child” when assessing what type of parenting-time arrangement serves the child’s best interests, but only if “the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference.” Minn. Stat. § 518.17, subd. 1(a)(3). At the time of the district court’s decision, the child recently turned eight years old. Mother contends that a child that age must be old enough to state a preference, pointing to the following language: “Upon the request of either parent, the court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and each parent under the order or decree or any substantial amendment thereof.” Minn. Stat. § 518.175, subd. 2 (2022). But the implicit recognition that an eight-year-old child may be able to understand certain information about parenting time does not mean the child is necessarily mature enough to articulate a preference as to parenting time.

More importantly, the record supports the district court's decision as to child preference. Father argued that the child was not mature enough to articulate a reliable preference, while mother asserted that the child prefers to live with her because he says that he misses his family, mother makes "better breakfast," and "if he had a choice when to move he'd move in 2 weeks." Given the child's young age and the vague statements mother presented as the child's preference, the district court did not abuse its discretion by determining the child is too young to state a preference.

Fourth, mother's hearsay challenge is misguided. She objects to the district court's consideration of one portion of the February 2020 police report—a statement from an official at the child's school that mother said that "sometimes she just gets so mad, she doesn't know how to handle it." But mother's argument to the district court regarding the police report focused solely on its accuracy with respect to the officer's conversation with her children. She did not dispute any other aspect of the report or assert that any of it is inadmissible hearsay. As such, she has not preserved a hearsay challenge for this court's review. *See Lewis-Miller v. Ross*, 710 N.W.2d 565, 570 (Minn. 2006). Moreover, the statement in question was only one of several pieces of evidence the district court considered in weighing whether the parties have any physical-, mental-, or chemical-health issues that affect the child's safety or developmental needs, which was itself only one part of the district court's comprehensive best-interests analysis. Any error in considering the statement is therefore harmless and does not warrant reversal. Minn. R. Civ. P. 52.01; *see Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

Fifth, mother’s assertion that her evidence supports an opposite result does not establish a basis for reversal because where, as here, “the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021) (quotation omitted).

Finally, mother does not appear to argue that the modification amounts to an impermissible parenting-time “restriction.” But even if we infer such an argument from her brief, it also fails. As noted above, whether a modification of parenting time constitutes a restriction depends on the reasons for the change and the amount of the reduction. *Suleski*, 855 N.W.2d at 336. Generally, the existing parenting-time order, not the parties’ current practice, is the baseline for determining whether a modification is a restriction. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). But the parties’ circumstances necessarily inform how much parenting time each parent can feasibly exercise. For this reason, we have recognized that removal of a parent or child to another state generally requires a parenting-time modification, and such a necessary modification is not a restriction. *Danielson v. Danielson*, 393 N.W.2d 405, 407 (Minn. App. 1986); *see also Hagen*, 783 N.W.2d at 219 (noting “that reasonable modifications in parenting time caused by a good-faith removal to another state are not usually ‘restrictions’”).

As the district court observed, mother’s “move from Minnesota is the reason the parenting[-]time schedule must be modified” and “the reason for the change substantially outweighs the extent of the change,” given the great distance between the parties and the fact that father has been the child’s primary caretaker since August 2021. On this record,

the district court did not abuse its discretion by reducing mother's parenting time to reflect the parties' current circumstances.

III. The district court did not abuse its discretion by denying mother's motions to modify custody and move the child out of the state.

A district court "shall not" modify custody unless it finds that (1) "a change has occurred in the circumstances of the child or the parties," (2) modification is "necessary to serve the best interests of the child," and (3) "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."² Minn. Stat. § 518.18(d)(iv) (2022). And a district court may permit the parent "with whom the child resides" to move the child's residence to another state if the requesting parent shows that the move (1) is not intended to interfere with the other parent's parenting time and (2) is in the child's best interests, as determined by a nonexclusive list of eight factors. Minn. Stat. § 518.175, subd. 3 (2022). This court reviews decisions regarding custody modification and moving a child out of state for an abuse of discretion. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (custody); *Hagen*, 783 N.W.2d at 215 (removal). A district court acts within its discretion in denying

² Alternatively, the third prong of this analysis is satisfied if the parties previously agreed that a best-interest finding suffices, the parties currently agree to a custody modification, the child has been integrated into the family of the moving party with the other party's consent, or a custodial parent moved to another state after being denied permission to move with the child. Minn. Stat. § 518.18(d)(i)-(iii), (v) (2022). But none of these circumstances is present here.

a custody-modification motion without a hearing if the moving party fails to make a prima facie showing as to the statutory requirements. *Goldman*, 748 N.W.2d at 286.

The district court addressed the statutory criteria in ruling on mother's motions. Regarding custody, the district court found that mother's move to Florida is a substantial change of circumstances, but that mother failed to make even a prima facie showing that a custody change would serve the child's best interests or that the child is endangered in father's care. The court noted that even mother's non-endangerment concerns about father's parenting are "not credible" because she has left the child in his care since August 2021. Regarding removal of the child to Florida, the district court found that the move would not serve the child's best interests.

Mother challenges the district court's denial of her custody and removal motions on some of the same bases as its grant of father's motions—that the district court failed to adequately consider or made erroneous findings as to the child's best interests, and that her evidence supports the opposite result. But these challenges are unavailing for the reasons discussed above. The district court made express findings as to all statutory criteria, mother does not identify errors in any of the findings, and our careful review confirms that each finding is based on evidence in the record. And even if mother is correct that the record would have supported alternative findings, that does not undermine the district court's well-supported decision. *See Kenney*, 963 N.W.2d at 223. Accordingly, mother has not

demonstrated that the district court abused its discretion by denying her motions for custody modification and removal.

IV. The district court did not abuse its discretion by denying mother’s request for reconsideration.

“Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.” Minn. R. Gen. P. 115.11. Reconsideration is typically limited to those instances when “intervening legal developments have occurred” or the court’s “earlier decision is palpably wrong in some respect.” *Stern 1011 First St. S., LLC v. Gere*, 979 N.W.2d 216, 220 (Minn. 2022) (quotation omitted). We review a district court’s decision on a request for reconsideration for an abuse of discretion. *Goerke Fam. P’ship v. Lac qui Parle-Yellow Bank Watershed Dist.*, 857 N.W.2d 50, 52–53 (Minn. App. 2014).

Mother argues that the district court abused its discretion by denying her request for reconsideration because she inadvertently missed the motion hearing and apologized for her absence. This argument is unavailing. As the district court observed in denying the request, mother focused solely on her reasons for missing the hearing, not the substance of the court’s order. She did not present any of the claims of factual or legal error that she presents in this appeal. And even if she had, they would not have justified reconsideration, as the above analysis demonstrates. Because mother failed to present the district court

compelling circumstances related to the decision at issue, the court did not abuse its discretion by denying her request for reconsideration.³

Affirmed.

³ Mother also references “Federal Rule 60” and asserts that the district court’s decisions “should be thrown out.” We construe this as an argument that the district court should vacate its decisions under Minn. R. Civ. P. 60.02. But mother did not ask the district court for relief under rule 60.02, so there is no decision regarding application of that rule for us to review. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts address only those questions previously presented to and decide by the district court).