

*This opinion is nonprecedential except as provided by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
A23-0814**

In re the Parentage of L.M.T., born 7/9/2019;
Kevin Lamont Thompson, petitioner,
Respondent,

vs.

Tierra Deanna Bunnell,
Appellant.

**Filed April 1, 2024
Reversed and remanded
Schmidt, Judge**

Scott County District Court
File No. 70-FA-21-12031

Kevin Lamont Thompson, Shakopee, Minnesota (pro se respondent)

Laura E. Kvasnicka, Michael P. Boulette, Victoria Brenner, Taft Stettinius & Hollister
LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Wheelock, Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant-mother challenges the district court's award of joint legal custody to respondent-father. Because the district court made a finding that domestic abuse had occurred, which triggered the rebuttable presumption against joint legal custody, we reverse and remand for the district court to apply the correct standard.

FACTS

Appellant Tierra Deanna Bunnell (mother) and respondent Kevin Lamont Thompson (father) are the parents of a minor child, L.M.T. After the parties ended their relationship, mother moved to Colorado with L.M.T. Father filed a petition for joint legal custody of L.M.T.¹ Mother opposed father's petition for joint legal custody and filed a petition for an order for protection (OFP) against father. The district court granted the OFP based on finding "a pattern of physical and verbal abuse." Mother later requested an extension of the OFP, which the court granted for an additional five years. The court then amended the OFP to allow father to have two video calls per week with L.M.T.

The parties appeared for a one-day trial to determine legal custody and parenting time. Father requested joint legal custody, which mother opposed. The district court said it took judicial notice of the OFP² and heard testimony from father, mother, and mother's friend. Mother testified that the parties cannot make joint decisions about their child, but noted she wants L.M.T. to have a relationship with father. Mother also testified that father had called her vulgar names, engaged in violent behavior, and had emotionally abused mother's older child. Mother described a 2016 incident when father "charged towards" mother and "choke[d]" her. After that incident, mother testified that she feared for her safety. Mother's friend corroborated her accounts of the physical and verbal abuse.

¹ Physical custody is not disputed because both parties agree that L.M.T. will continue to live with mother in Colorado.

² Because it is not an issue in this appeal, we express no opinion regarding whether the district court's statement that it took "judicial notice" of the OFP satisfied the Minnesota Rules of Evidence. *See* Minn. R. Evid. 201 (addressing judicial notice).

Father testified that he has attended parenting, leadership, and anger management classes. He also testified that joint legal custody would work because the parties could communicate about important issues regarding L.M.T. over email.

The district court applied the generally applicable, but rebuttable, statutory presumption in favor of joint legal custody and granted the parties joint legal custody of L.M.T. The district court went on to analyze the statutory best-interests factors, including the domestic-abuse factor in which the court found “Mother’s allegations that Father has physically pushed her in the past to be credible.”

Mother appeals the legal custody determination.

DECISION

Mother challenges the district court’s order granting legal custody. We review de novo a district court’s interpretation of the rebuttable statutory presumption in favor of, or against, joint legal custody because it “requires an interpretation of law.” *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

Although the district court made findings to support its conclusion of joint legal custody, the court applied the wrong rebuttable presumption. The OFP against father—based on a finding of “a pattern of physical and verbal abuse”—was consistent with the court finding mother’s domestic-abuse allegations “credible.” As such, the statute required the district court to “use a rebuttable presumption that joint legal custody . . . is not in the best interests of the child[.]” Minn. Stat. § 518.17, subd.1(b)(9) (2022).³

³ The statute references the definition of domestic abuse in Minnesota Statutes section 518B.01 (2022). See Minn. Stat. § 518.17, subd. 1(b)(9) (referencing section 518B.01).

Because the district court applied the wrong rebuttable presumption, we must reverse the award of joint legal custody, and remand for the district court to readdress legal custody. On remand, the district court must apply the correct rebuttable presumption—against joint legal custody—given the finding of domestic abuse. The district court must also “give special focus to ‘the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.’” *Thornton*, 933 N.W.2d at 793 (quoting Minn. Stat. § 518.17, subd. 1(a)(4) (2018)).⁴

Reversed and remanded.

The OFP—which the district court granted based on finding “a pattern of physical and verbal abuse”—meets the statutory definition in section 518B.01. *See* Minn. Stat. § 518B.01, subd. 2(a)(1), (b)(5).

⁴ Because the district court must make detailed findings on each of the statutory best-interests factors while using the proper presumption, we do not assume the district court made implied findings to rebut the presumption against joint legal custody. Given our remand, we do not address the district court’s other findings or analysis of the statutory factors. The district court is free to reopen the record or issue a new order—applying the correct standard—based upon the record already submitted.