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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1392**

In re the Custody of KAG:

Jessica E Hertel, petitioner,
Appellant,

vs.

Robert W Gerding,
Respondent.

**Filed August 19, 2024
Affirmed
Ede, Judge**

Anoka County District Court
File No. 02-FA-22-1453

Samantha J. Gemberling, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for appellant)

Robert W. Gerding, Cambridge, Minnesota (pro se respondent)

Considered and decided by Ede, Presiding Judge; Segal, Chief Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from an order granting third-party visitation rights, appellant-mother argues that the district court abused its discretion, asserting (1) that the visitation award is contrary to the child's best interests, (2) that visitation will interfere with mother's

relationship with the child, (3) that the order disregards the reasonable preference of the child, and (4) that the amount of awarded visitation is excessive. We affirm.

FACTS

Appellant-mother Jessica E. Hertel and respondent Robert W. Gerding were in a romantic relationship for about seven years. When the parties began dating in 2012, mother already had a three-month-old child, J.H. Gerding immediately took on the role of J.H.’s paternal figure. The parties also have one joint biological child, K.A.G., who was born in May 2014. Mother, Gerding, K.A.G., and J.H. all lived together as a family until the couple separated in 2019. Over the next year, by mutual agreement, the parties shared time with both J.H. and K.A.G. (the children) on an equal schedule of alternating weeks.

In September 2022, mother petitioned to establish custody and parenting time for K.A.G. Gerding filed an answer and counterpetition asking that the district court establish custody and parenting time for both children. In January 2023, the parties participated in mediation and agreed on custody terms for K.A.G. The parties stipulated that they would return to mediation for issues related to J.H.

Gerding later filed an amended answer and counterpetition asserting: (1) that he raised J.H. together with mother for seven years beginning when J.H. was just three months old; (2) that J.H.’s biological father had not signed a recognition of parentage or “financially contributed to or otherwise assisted in raising J.H. since the child’s birth”; and (3) that, following the parties’ separation, Gerding had “exercised consistent parenting time with J.H. until [mother] no longer allowed [him] to see the child.” Gerding contended that it was in the best interests of the child for the district court to award him “reasonable

parenting time of 25% or more with J.H.” under Minnesota Statutes section 257C.08, subdivision 4 (2022).

The parties’ dispute about J.H. proceeded to a court trial in May 2023. Three people testified at trial: Gerding; mother; and mother’s current romantic partner, A.T. The parties stipulated to the admission of six exhibits offered by mother, which consisted of screenshots of messages exchanged between mother and Gerding, and messages exchanged between Gerding and A.T.

Following the court trial, the parties submitted proposed findings of fact and orders for visitation. Mother requested that the district court deny Gerding’s petition for parenting time/visitation with J.H. Gerding asked that the district court award him visitation with J.H. every other week, honoring the parties’ previous one-week-on/one-week-off schedule. The district court filed an interim order, awarding Gerding “parenting time” with J.H. one evening per week and every other weekend. Mother moved to stay enforcement of the interim order until the conclusion of any appellate proceedings. In an affidavit supporting her motion, mother expressed “significant concerns that reintroducing J.H. to Mr. Gerding after ten months of absence [would] be distressing to J.H.” But the district court denied mother’s motion to stay enforcement of the interim order.

In August 2023, the district court filed an order and memorandum of law, in which the district court determined that Gerding had “met his burden of proving by clear and convincing evidence the statutory factors required for the [c]ourt to grant [Gerding] reasonable visitation rights with J.H. during his minority.” The district court awarded Gerding one-week-on/one-week-off “parenting time” with J.H., consistent with Gerding’s

parenting-time schedule for K.A.G.¹ The order also provides that the parties each receive two non-consecutive weeks of vacation with J.H. and holidays alternating between odd and even years.

Mother appeals.

DECISION

Mother challenges the district court's order granting third-party visitation rights to Gerding under Minnesota Statutes section 257C.08, subdivision 4. Mother asserts that the district court abused its discretion in making the following determinations: (1) that granting Gerding visitation rights would be in J.H.'s best interests; (2) that Gerding's visitation rights would not interfere with the relationship between mother and J.H.; (3) that J.H. was not of a sufficient age to express a preference and, alternatively, that J.H. preferred to have visitation with Gerding; and (4) that the amount of visitation the court awarded to Gerding comported with applicable law.² As explained below, we conclude that the district court did not abuse its discretion in awarding Gerding visitation with J.H.

"The district court enjoys broad discretion in determining visitation." *SooHoo v. Johnson*, 731 N.W.2d 815, 825 (Minn. 2007). "When reviewing visitation determinations for an abuse of discretion, [an appellate court] must determine whether the [district] court

¹ Although the district court's order uses the term "parenting time," the court expressly cited Minnesota Statutes section 257C.08, subdivision 4, as the legal basis on which it ordered third-party visitation between Gerding and J.H.

² On appeal, mother does not dispute that Gerding and J.H. had established emotional ties, creating a parent and child relationship sufficient for purposes of Minnesota Statutes section 257C.08, subdivision 4(2).

made findings unsupported by the evidence or improperly applied the law.” *Id.* An appellate court “will not reverse the [district] court’s findings unless they are clearly erroneous[,]” which occurs “if [the appellate court is] left with the definite and firm conviction that the [district] court made a mistake.”³ *Id.* And this court “review[s] the [district] court’s findings in a light most favorable to those findings.” *Id.*

A person “other than a foster parent” is permitted to “petition the district court for an order granting the person reasonable visitation rights to [an unmarried minor] during the child’s minority[,]” provided that the “unmarried minor has resided in a household with [the] person . . . for two years or more and no longer resides with the person[.]” Minn. Stat. § 257C.08, subd. 4. “The [district] court shall grant the petition if it finds” that all three of the following factors are met: (1) “visitation rights would be in the best interests of the child”; (2) “the petitioner and child had established emotional ties creating a parent and child relationship”; and (3) “visitation rights would not interfere with the relationship between the custodial parent and the child.” *Id.* The party seeking visitation must prove the above statutory factors by clear and convincing evidence. *SooHoo*, 731 N.W.2d at 823-24.

³ More recently, the Minnesota Supreme Court has further explained that, when reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, (4) do not reconcile conflicting evidence, and (5) “need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted); *see also Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a grandparent visitation appeal), *rev. denied* (Minn. Feb. 28, 2024). Instead, “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.” *Kenney*, 963 N.W.2d at 222 (quotation omitted).

In addition, “if the [district] court considers the child to be of sufficient age to express a preference[.]” the district court must also “consider the reasonable preference of the child[.]” Minn. Stat. § 257C.08, subd. 4.

We next address each of mother’s challenges to the district court’s order in turn.

I. The district court did not abuse its discretion in determining that visitation rights would be in J.H.’s best interests.

Mother argues that the district court abused its discretion “in finding that an award of visitation to [Gerding] was consistent with [J.H.]’s best interests.” Mother contends that Gerding provided little to no testimony to support this determination. Mother also asserts that the district court’s “flawed finding . . . [did] not rest on the best interests of J.H., but rather the moving party’s requirement to prove an established emotional bond with the child[.]” And mother maintains that the district court neglected to analyze the best interests of J.H. because it overlooked the effect of Gerding’s ability to meet and follow J.H.’s schedule, Gerding’s “denigrating conduct” about mother to J.H., and J.H.’s “cultural needs and express wishes to explore a relationship with his biological father.” Based on our review of the record, we conclude that mother’s arguments lack merit.

First, regarding the sufficiency of Gerding’s trial testimony to support the district court’s finding that the visitation award he received aligns with J.H.’s best interests, the record reflects that Gerding testified about his relationship with J.H. and explained why he believes that visitation is beneficial to J.H. On redirect examination, Gerding’s attorney asked Gerding why he thought having time with J.H. was “good” for J.H. Gerding

responded: “Because I was always there for him. I raised him since he was a little kid and I feel like I am the father figure in his life. I should be anyway.”

Next, regarding the findings of the district court that mother challenges on appeal, the court specifically analyzed in its order whether awarding visitation rights to J.H. would be in the child’s best interests by addressing various aspects of J.H. and Gerding’s relationship. The district court found that mother and Gerding “created a family unit with [the children] until the end of their romantic relationship.” The district court also noted that Gerding “has no alleged chemical health, physical, or mental issue that would affect J.H.” and that Gerding “has an exceptional history of participation in providing [J.H.] care.” Moreover, the district court rejected mother’s argument that, by removing J.H. from his other siblings and eliminating time that J.H. could spend with his biological father, visitation with Gerding would not be in J.H.’s best interests. Instead, the district court determined that mother had only recently offered “two alternative adults as potential father figures for J.H.: [A.T.], [who is mother’s] new significant other and the man with whom she has created a new family unit, and J.H.’s biological father, who had been utterly uninvolved in J.H.’s life until [Gerding] was intentionally pushed out by [mother].” The district court also found that Gerding “provided uncontroverted testimony establishing that his extended family ha[d] been so integrated into J.H.’s life that severance of that bond would harm J.H. and promotion of that bond would enrich J.H.’s development.” Gerding testified that his parents consider J.H. to be their grandchild. Gerding further stated that, when the parties were together, the children would spend holidays with Gerding and his parents. Mother does not dispute this testimony.

The district court’s order also addresses each issue that mother asserts the court failed to analyze. First, the district court determined that, while mother “ha[d] established rules at her home . . . [Gerding] was not obligated to have identical rules if he in his judgment did not agree with the propriety of them.” The district court acknowledged mother’s testimony that Gerding missed one of J.H.’s karate events, did not bathe the children to her liking, and did not maintain the children’s sleep schedule. But the district court ultimately determined that Gerding “presented clear and convincing evidence that, while in his care, J.H.’s physical, emotional, educational, and developmental needs are met—even if his standards do not match [mother’s] stated requirements.”

Second, the district court acknowledged that Gerding had made demeaning comments toward mother and A.T. The district court found that the exhibits submitted by mother reveal messages in which Gerding “used curse words against [mother]” and messages showing that Gerding “call[ed] [A.T.] a control freak and a--hole.” But the district court also found that, although mother and Gerding “often engage in high conflict behavior,” both parties “have the capacity to work together when it comes to their children.”

Finally, the district court considered J.H.’s cultural needs and wishes to explore a relationship with his biological father, who is African American.⁴ The district court noted

⁴ Although Minnesota Statutes section 257C.08, subdivision 4—unlike section 518.17, subdivision 1(1) and (7) (2022)—does not expressly require the district court to consider J.H.’s current and ongoing cultural needs, as well as his development, district courts have the discretion to analyze those issues as part of the best-interests analysis under section 257C.08, subdivision 4(1). As explained below, the district court largely focused on the past and not on the present or future in reasoning that “the cultural needs and development

that both mother and Gerding are white. The district court also determined that J.H. did not have a “distinct cultural identity apart from the one within which [mother] and [Gerding] raised him[,]” observing that “[n]either [mother] nor [Gerding] engaged in any special cultural activities for J.H. during the term of their relationship together, although J.H. is biracial.” And the district court found that “J.H. had no shared cultural affinity, sense of belonging, or identity with his biological father whatsoever growing up.”

We conclude that these findings are supported by evidence in the record. Gerding testified that he raised J.H. from the time that J.H. was three months old and that he considers J.H. to be his son. Gerding also stated that J.H.’s biological father was not involved in raising J.H. during the time that Gerding and mother were in a relationship. And Gerding said that neither he nor mother did anything specific to support J.H.’s multiracial identity while they cohabitated as a family. In her testimony, mother confirmed that J.H.’s biological father was not involved in the coparenting process during the seven years that the parties were together. And mother testified that J.H.’s biological father only became involved in the “last couple months” preceding the trial. The record reflects that

of J.H. were set in the culture [to which] he was accustomed, not a culture [mother] is forcing J.H. to adopt as of late due to his paternal genetics.” In its order, the district court does not appear to have analyzed J.H.’s changing needs as he enters his teenage years, including those relating to J.H.’s lived experiences as a growing biracial preteen, his interest in developing a relationship with his biological father, and his desire to wear his hair in a particular style. While district courts have the discretion to give more consideration to such needs, we cannot conclude under the current statutory framework that the court here abused its discretion by choosing to focus on J.H.’s childhood years with his mother and Gerding. But we are mindful that, as part of the section 257C.08, subdivision 4(1) best-interests analysis, a child’s current and ongoing cultural needs—which may change over time, depending on their specific circumstances—are valid considerations for district courts under Minnesota Statutes section 257C.08, subdivision 4.

J.H. was almost 11 years old at the time of the trial and that he had been raised by two white parents his entire life. Nothing in the record contradicts the foregoing.

Considering the evidence in a light most favorable to the district court's findings, we conclude that the record adequately supports the district court's determination that awarding Gerding visitation rights would be in J.H.'s best interests, and we are not left with the definite and firm conviction that the district court made a mistake. *See SooHoo*, 731 N.W.2d at 825. We therefore discern no abuse of discretion by the district court in its section 257C.08, subdivision 4(1), best-interests analysis.

II. The district court did not abuse its discretion in determining that Gerding's visitation rights would not interfere with the relationship between mother and J.H.

Mother asserts that the district court abused its discretion because "[i]t was [Gerding]'s responsibility to prove he would not interfere with the parent-child relationship with clear and convincing evidence, not [mother]'s burden to disprove [Gerding]'s assertions," but the district court "clearly placed the burden" on her. Mother maintains that she provided multiple examples of Gerding's conduct that undermined her parenting. We are not persuaded that the district court abused its discretion in its application of the burden of proof and in determining that Gerding's visitation rights would not interfere with the relationship between mother and J.H.

The district court found that mother's "testimony fails to establish any basis for which [Gerding] should not have continued parenting time with J.H." Rather, the district court reasoned that mother's "testimony in fact supports a finding that [mother] share an equal schedule with [Gerding]" because that schedule "matched [mother's] initial 'best

interests’ analysis of what to do with J.H.’s relationship with [Gerding] at the time of the [p]arties’ breakup” and remained “a state of events [that] lasted for an extended period of time after the [p]arties separated.” The district court therefore determined that mother “ha[d] failed to rebut [Gerding]’s clear and convincing evidence that . . . [Gerding] having parenting time with J.H. would [not] interfere with her relationship with J.H.”⁵

We conclude that the district court did not place the burden on mother to prove that Gerding’s relationship with J.H. would interfere with her own relationship with the child. Indeed, the district court specifically found that Gerding had met his burden to establish by clear and convincing evidence that visitation with J.H. would not interfere with mother’s relationship with the child and that mother had failed to rebut such evidence. This finding has sufficient support in the record. The evidence shows that, when mother and Gerding separated in 2019, Gerding maintained time with the children every other week for the next year and a half. It was not until after mother relocated with the children to a city away from where Gerding lived that she began limiting Gerding’s visitation with J.H.

Mother contends that the evidence revealed that Gerding “actively undermined [her] stated preferences and desires for [J.H.]’s schedule and care[,]” as well as her “leadership role as a parent[.]” Mother cites the following three cases in support of her argument that allowing Gerding visitation rights interferes with her relationship with J.H.: *Smith v. Kessen*, 996 N.W.2d 581 (Minn. App. 2023), *rev. denied* (Minn. Jan. 31, 2024); *In re the*

⁵ In its conclusions of law, the district court also expressly determined that Gerding had “presented clear and convincing evidence that granting visitation rights in the amount of week-on/week-off parenting time would not interfere with J.H.’s relationship with [mother].”

Minor Child of C.D.G.D., 800 N.W.2d 652 (Minn. App. 2011), *rev. denied* (Minn. Aug. 24, 2011);⁶ and *Kulla v. McNulty*, 472 N.W.2d 175 (Minn. App. 1991), *rev. denied* (Minn. Aug. 29, 1991).

In *Smith*, this court affirmed the denial of a grandparent’s petition for visitation, noting both the district court’s finding that the grandparent had “displayed a significant pattern of disrespect and unwillingness to accept and follow [r]espondents’ parenting decisions” and the court’s resulting determination that a visitation award to the grandparent “would interfere with the parent-child relationship.” 996 N.W.2d at 583-84 (quotations omitted). But in this case, the district court made no such finding and determination. Instead, relying on testimony from both parties that they had agreed that it was in J.H.’s best interests for Gerding to have visitation with J.H. after their separation, the district court specifically determined that Gerding’s visitation with J.H. would not interfere with mother and J.H.’s parent-child relationship.

As noted above, the record supports this finding by the district court. Mother testified that, when her relationship with Gerding ended, J.H. was six years old, “[a] lot of big changes were happening[.]” she “wanted [the children] to have the most stable transition possible[.]” and Gerding “was a known person in their life.” As the district court found, mother “never claimed that the former week-on/week-off parenting time arrangement ever negatively impacted her relationship with J.H. at any time when this arrangement was implemented.” Based on the trial exhibits and testimony, we conclude

⁶ We discuss *C.D.G.D.* in section IV of this decision, below.

that the district court did not abuse its discretion in determining that, despite evidence mother presented “of several instances of negative conduct by [Gerding],” those “events tended to revolve around the [p]arties’ interpersonal conflict more than regarding how either [p]arty felt about or treated either K.A.G. or J.H.”

Kulla is likewise unavailing. There, we concluded that the record “lack[ed] any . . . competent evidence bearing on whether visitation between [the] appellant and [the child] would interfere with the child’s relationship with her parents” other than a report from a licensed psychologist. *Kulla*, 472 N.W.2d at 177, 183. That report was made after the psychologist conducted a 40-minute observation of a supervised visit between the appellant and the child. *Id.* at 177. Based on the evidence before us in *Kulla*, we affirmed the district court’s finding that conflict between the parties would cause any visitation between the appellant and the child to interfere with the child’s relationship with the respondent. *Id.* at 183. But *Kulla* is distinguishable because the parties in that case “dispute[d] the details and nature of their relationships to one another and to the minor child[.]” *Id.* at 176-77. Here, neither party disputes the nature of their underlying relationship, the fact that Gerding had acted as J.H.’s paternal figure since J.H. was three months old, and that the parties’ post-separation visitation arrangement did not interfere with mother’s relationship with J.H. while it was in place.

We therefore conclude that the district court did not abuse its discretion in its non-interference determination under Minnesota Statutes section 257C.08, subdivision 4(3), because the district court made findings supported by the evidence and properly applied the law. *See SooHoo*, 731 N.W.2d at 825.

III. The district court did not abuse its discretion in its determinations as to J.H.'s preference.

Mother maintains that the district court abused its discretion by ignoring J.H.'s reasonable preference. And mother contends that the district court's alternative finding that J.H. had an "organic preference" for visitation with Gerding and that neither mother nor A.T. "provided specific testimony regarding J.H. not wishing to spend time with [Gerding]" is "wholly unsupported" by the record. We are not convinced.

As noted above, if it determines that the child is of sufficient age to express a preference, the district court must consider the child's reasonable preference. Minn. Stat. § 257C.08, subd. 4. Here, in "[c]onsidering the reasonable preference of the child," the district court found "that J.H. was ten years old at the time of the hearing and ha[d] since turned eleven years old[.]" and the court determined that it did "not have sufficient evidence to believe that J.H. as a ten-year-old child could express a reasonable preference." The district court provided no explanation to support this finding.

In addition, the district court found that "the evidence provided by the witnesses shows that J.H. did tend to show an organic preference for parenting time with [Gerding] until J.H. 'got on board' with [mother] and [A.T.]'s repeated statements that there would be no visitation or parenting time with [Gerding]." The district court observed that "[n]either [mother] nor [A.T.] provided specific testimony regarding J.H. not wishing to spend time with [Gerding]" and determined that mother and A.T. had instead made "insinuations the [c]ourt did not find credible." The district court concluded its analysis of

this issue by stating that it “did not provide consideration to any testimony regarding J.H.’s supposed preferences as was distilled by the witnesses due to his young age.”

We conclude that the district court did not abuse its discretion in its determinations about J.H.’s preference. Although the district court’s decision that it did “not have sufficient evidence to believe that J.H. as a ten-year-old child could express a reasonable preference” was conclusory, Minnesota Statutes section 257C.08, subdivision 4, specifically affords the court the discretion to make that determination and does not expressly require that the court make particular findings in support of it. Thus, while it would have helped our appellate review to better understand the reasons for the district court’s determination that J.H. is not of sufficient age to express a preference—particularly where no independent witnesses, such as a parenting-time consultant, testified about J.H.’s needs and wishes—we are mindful that “[t]he district court enjoys broad discretion in determining visitation” and that we “review the court’s findings in a light most favorable to those findings.” *SooHoo*, 731 N.W.2d at 825. Given that Minnesota Statutes section 257C.08, subdivision 4, commits the decision of whether a child is of sufficient age to express a preference to the district court’s discretion, we cannot say that the court abused that discretion here.

We also conclude that the record evidence supports the district court’s alternative finding that J.H. preferred to have visitation with Gerding. The district court acknowledged that mother “testified as to her understanding of J.H.’s preferences as to parenting time with [Gerding]” but “did not find that testimony credible or compelling.” Appellate courts “give deference to the opportunity of the trial court to assess the credibility of the

witnesses.” *Thompson o/b/o Minor Child v. Schrimsher*, 906 N.W.2d 495, 500-01 (Minn. 2018) (quotation omitted). Despite mother’s testimony that, when Gerding “interjects himself into [J.H.]’s life, he becomes very anxious and worried” to the point “of wetting the bed again[,]” A.T. testified that J.H. only resumed bedwetting once he learned that mother and Gerding would have to go to court to resolve this dispute. Moreover, A.T. testified that, as late as August 2022, J.H. was still requesting to see Gerding but “ultimately quit asking because every time, [mother and A.T.] would have to let him down and tell him no.”

Based on the totality of the trial evidence, we cannot say that the district court’s determinations about J.H.’s preference were an abuse of its discretion. The district court properly applied section 257C.08, subdivision 4, in considering whether J.H. was a child of sufficient age to express a preference, and its alternative finding that J.H. preferred to have visitation with Gerding is supported by the evidence. *See SooHoo*, 731 N.W.2d at 825.

IV. The district court did not abuse its discretion in the amount of visitation it awarded to Gerding.

Finally, mother argues that the district court abused its discretion because the amount of visitation it awarded to Gerding “is excessive” and “akin to a de facto award of joint physical custody, which is neither sought by [Gerding] [n]or warranted.”⁷ We

⁷ Mother also asserts that “the volume of visitation . . . is an impermissible violation of her constitutional rights[.]” In *SooHoo*, the Minnesota Supreme Court rejected both facial and as-applied challenges to the constitutionality of Minnesota Statutes section 257C.08, subdivision 4. 731 N.W.2d at 824-25. For the same reasons as expressed in *SooHoo*, we likewise reject mother’s constitutional arguments here.

conclude that the amount of visitation that the district court awarded to Gerding does not establish an abuse of discretion.

In support of her argument, mother cites *C.D.G.D.*, in which we concluded that the district court abused its discretion in ordering visitation that “treat[ed a] grandmother essentially as a noncustodial parent and [in] impos[ing] a schedule that on its face interfere[d] with the father’s parent-child relationship.” 800 N.W.2d at 654. But *C.D.G.D.* does not apply to the case before us because it concerns an award of grandparent visitation under Minnesota Statutes section 257C.08, subdivision 1 (2010), as *C.D.G.D.* itself explains in distinguishing its facts from *SooHoo*. *See id.* at 656, 660-61.

Unlike *SooHoo*, which “involved a visitation order in favor of a woman who had separated from her same-sex partner after spending seven years co-parenting her partner’s adopted children as her own[.]” *C.D.G.D.* addressed “a contest between a parent and a grandparent[.]” *Id.* at 660-61. In *C.D.G.D.*, we highlighted that *SooHoo* was “a dispute between two women who co-parented the children, recognized themselves as a family unit with two mothers, and represented themselves to others as such.” *Id.* at 661 (quotation omitted). We also emphasized in *C.D.G.D.* that the children in *SooHoo* “referred to the petitioner as mommy and to her parents as their grandparents.” *Id.* (quotation omitted). And *C.D.G.D.* distinguished *SooHoo* because the latter case “relied on the separate provision of the statute that allows visitation for persons who have a parent-child relationship and who resided with the child for at least two years.” *Id.* (citing Minn. Stat. § 257C.08, subd. 4 (2010)) (other citation omitted).

We conclude that the facts of this matter are far more analogous to *SooHoo* than they are to *C.D.G.D.* for the same reasons that *C.D.G.D.* differentiated itself from *SooHoo*. When the parties began dating in 2012, J.H. was three months old. Gerding immediately took on the role of being J.H.'s paternal figure, and J.H. refers to Gerding as "Dad." Gerding's parents consider J.H. to be their grandchild. Mother, Gerding, and the children all lived together as a family unit until the couple separated in 2019. From that point, the parties exercised an equal one-week-on/one-week-off schedule until mother unilaterally determined that Gerding's relationship with J.H. should end. But Gerding continued to express an interest in visitation with J.H. and even bought a home closer to the children's school in the community to which mother moved. The district court considered that Gerding has raised both children as his own in ordering visitation with J.H. that coincides with Gerding's stipulated parenting time agreement as to K.A.G.

Even so, we acknowledge mother's contention that the district court "seems to have gone beyond awarding visitation and in lieu thereof granted de facto joint physical custody," particularly given the court's limited analysis justifying the half-time visitation schedule that the court awarded Gerding. The district court's order notes that Gerding "provided material support, emotional support, parental guidance, food, shelter, clothing, and other necessities to J.H. throughout his life[,] " "participated in his parent/teacher conferences and attended various activities[,] " and "purchased a second home to be closer to J.H.'s new home, school, and community since [mother] moved in with [A.T.]" On those bases, the district court determined that "there would be little to no adjustment required for J.H. to successfully re-integrate into [Gerding's] care to this extent." The district court,

however, does not appear to have specifically considered whether Gerding would continue to ensure that J.H. would enjoy a continuity of after-school sports or other activities.

With those concerns in mind, we observe that our analysis of this case very well may have been different but for the supreme court's holding in *SooHoo* that there is “no authority . . . for the proposition that an award of visitation to a third party that is commensurate with what would be awarded to noncustodial parents is inherently unreasonable[,]” that “the reasonableness of an award of visitation turns on the specific facts and circumstances of each case[,]” and that “[t]he district court, having heard the witnesses, is in the best position to determine what is reasonable under the circumstances.” 731 N.W.2d at 825-26. As the supreme court explained in *SooHoo*, “[g]iven the evidence presented in the record before us, and the [district] court's broad discretion, we are not in a position to say, based on our standard of review, that the court's findings are clearly erroneous or that the court abused its discretion.” *Id.* at 826. We are bound by this precedent, and any change in the scope of a district court's discretion to award the sort of expansive third-party visitation ordered here “must come from the supreme court or the legislature and not this court.” *Abdul-Haqq v. LaLiberte*, 985 N.W.2d 357, 362 (Minn. App. 2023), *rev. denied* (Minn. May 16, 2023).

Based on the foregoing, we conclude that the district court “carefully reviewed the applicable law and then applied that law to the facts contained in the record.” *SooHoo*, 731 N.W.2d at 826. Thus, we discern no abuse of discretion in the amount of visitation that the district court awarded to Gerding.

Affirmed.