

*This opinion is nonprecedential except as provided by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
A24-0026**

In re the Custody of: C. R. P. and G. P. P.

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

Freeborn County District Court
File No. 24-FA-21-552

Kimberly Rose Wangsness, Albert Lea, Minnesota (pro se appellant-mother)

Jacob Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota (for respondent-father)

Considered and decided by Larson, Presiding Judge; Segal, Chief Judge; and Klaphake, Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In this custody dispute, appellant, acting pro se, argues that the district court abused its discretion by making findings unsupported by the evidence and awarding respondent sole legal and sole physical custody of the parties' children. Because we see no abuse of discretion, we affirm.

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

DECISION

“Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). “A [district] court has broad discretion in making custody decisions; there is scant room if any for this court to question a district court’s balancing of best-interests considerations.” *In re Welfare of C.F.N.*, 923 N.W.2d 325, 334 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Mar. 19, 2019). “[A] district court needs great leeway in making a custody decision that serves a child’s best interests, in light of each child’s unique family circumstance.” *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

Appellant-mother and respondent-father are the parents of a daughter, C.P., born in January 2014, and a son, G.P., born in December 2015. In February 2021, appellant removed the children from the parties’ home without telling respondent.¹ In April 2021, respondent, who had no contact with the children after their removal, petitioned the district court for sole legal and sole physical custody; in May 2021, appellant filed a counter-petition for sole legal and sole physical custody. In November 2021, respondent was granted two hours of supervised parenting time weekly; his motions for expanded parenting time were denied in February 2022 and August 2022.

¹ Appellant also applied for and was granted an order for protection (OFP) against respondent. Respondent challenged the order, which was affirmed by this court. *In re Wangsness v. Penkert*, No. A21-0896, 2022 WL 274748, *1 (Minn. App. Jan. 31, 2022), *rev. denied* (Minn. Apr. 27, 2022).

Following a nine-day trial on the parties' motions for sole legal and sole physical custody, the district court issued an order, supported by 198 findings, that granted respondent sole legal and sole physical custody and granted appellant 25% parenting time, subject to certain requirements.² Appellant moved for amended findings; her motion was granted with respect to some findings, but the custody award was not changed. By November 2023, when the amended findings were issued, the children had been exclusively in appellant's custody for almost three years.

"The district court's observations of the parties' demeanor, sincerity, and credibility are integral to its balancing of the best-interests considerations. . . ." *Id.* at 796. Throughout its order, the district court reiterated that appellant was not a credible witness.

There are several inconsistencies or omissions between [appellant's] testimony in this trial and the [OFP] hearings. These inconsistencies are important in the court's analysis of [appellant's] credibility. Based on the entirety of [appellant's] testimony, in light of all the other evidence, the Court does not find [her] credible.

The district court specified numerous instances in which appellant's testimony was not credible, including appellant's: (1) account of respondent's sexual activity in a room where the children were sleeping; (2) "unsupported allegations of [respondent's] abuse" of the children when appellant sought the OFP; (3) report to a detective that C.P. was experiencing every sign and symptom of abuse that appellant had found on an internet search engine; (4) claim that respondent had put cameras up in the home and was watching

² Neither party challenges appellant's parenting-time award.

her; (5) insistence that C.P. was sexually abused despite the lack of any evidence of abuse; (6) reports of respondent's sexual abuse of the children to a witness, which conflicted with both appellant's reports to law enforcement and her testimony at the OFP hearing; (7) claim that respondent had anger issues; (8) claim that appellant had a videotape of her mother speaking to respondent, although no such videotape existed; (9) account that she told a witness that respondent told the children that he was going to kill appellant; (10) explanation that she told a witness that respondent was emotionally and mentally unstable and that he tried to induce appellant's panic attacks; and (11) claim to a witness that respondent threatened to kill her and the children and abused C.P. while G.P. was in the next room and could hear what was happening.

The district court also repeatedly observed that respondent's testimony was credible. Particular instances included respondent's testimony concerning: (1) appellant's daily drinking; (2) appellant's belief that the parties' house was haunted by demons; (3) appellant's claim that respondent slammed G.P.'s head on the floor; (4) respondent's having slept with C.P. on vacation because appellant was then breastfeeding G.P.; and (5) respondent's intention to continue the children's mental-health services if the providers would communicate with him. Thus, the district court furnished support for its conclusion that respondent was a significantly more credible witness than appellant.

"In evaluating the best interests of the child[ren] for purposes of determining issues of custody and parenting time, the [district] court must consider and evaluate all relevant

factors” Minn. Stat. § 518.17, subd. 1(a) (2022) (listing the 12 best-interest factors). In its memorandum, the district court considered all 12 factors and concluded that, except for the third factor, the children’s reasonable preferences, which was neutral because they were too young to have reasonable preferences, the factors favored respondent.

The first factor is the physical, emotional, cultural, spiritual, and other needs of the children. *Id.*, subd. 1(a)(1). The district court found that respondent, now a business owner, has worked consistently since 2000 and can provide the children with a stable home, while appellant “worked on and off in a part-time fashion” and moved the children about nine times before she settled down, which dysregulated their behavior. The district court also found it “very likely that [appellant] has worked to alienate the children from [respondent],” based on February 2021 recordings appellant made of her conversations with C.P. in which “[C.P.] very clearly states that [respondent] did not touch her inappropriately, but [appellant] continued to question [C.P.] with extremely leading questions and place[d] ideas into [CP’s] head that are not founded in reality. . . . This interview shows that [appellant] cannot appropriately handle the children’s emotional needs.”

As to the second factor, the children’s mental health and educational needs, the district court found that the children were “on their third therapist in two years,” the therapists had “allowed [appellant] to be in the room for almost all of the sessions,” the children never disclosed any of the sexual abuse that appellant said occurred, and appellant would not sign releases so that respondent could speak to the therapists. The district court

also found that, although appellant had said she had been homeschooling the children since 2020, there was little evidence of their progress and their “schooling ha[d] been non-existent to inconsistent at best” while they lived with appellant, while respondent said that, if the children lived with him, he would enroll them in the local public school system.

As to the fourth factor, domestic abuse, the district court did not “find [appellant’s] allegations [of respondent’s sexual abuse of her and the children] credible based on the evidence presented at trial.” The district court noted that C.P. had disclosed no sexual abuse to any of the three therapists who had treated her, and that neither the sheriff’s office nor the department of human services, both of which investigated the matter, saw any evidence of sexual abuse. The district court also found that appellant’s allegation that respondent slammed G.P.’s head on the floor was not supported by the evidence because appellant was not in the room when it happened. G.P. hit his head after falling two to four inches from a mattress on the floor and there was no evidence of any injury.

As to the fifth factor, the parents’ physical-, mental-, or chemical-health issues, the district court relied on the psychological evaluations of the parties done by Dr. D.E. Dr. D.E. observed that: (1) appellant’s test results were of “questionable validity due to the possibility of random responding” and “suggest[ed] a proneness to embellish experience with fantasies and projection”; (2) appellant said she attempted suicide as a teenager and picked up a gun and contemplated suicide in 2020; (3) appellant’s diagnosis included panic disorder, unspecified personality disorder with dramatic features, history of multiple trauma, and manipulative behavior in the service of her goals; and (4) appellant’s anxiety

or panic attacks and suicidal ideation would “clearly have an effect on the children’s safety and developmental needs.” Dr. D.E. recommended that appellant complete Dialectical Behavioral Therapy (DBT). Although appellant testified that she is seeing a therapist, the therapist did not respond to requests for records, and whether the therapist offers DBT is not known. Appellant’s history also included excessive drinking, to the point where she passed out, and the use of marijuana, causing the district court to observe that her “untreated chemical dependency problems, . . . if left untreated could impact the safety and development of the children.”

Dr. D.E. found that respondent “displayed distinct avoidance of self-disclosure” but showed no psychopathy, irrationality, or psychosis, and that he did “not have mental health or chemical dependency concerns that would impact his ability to provide for the safety and development of the children.”

As to the sixth factor, the history of the children’s care, the district court found that, prior to the children’s departure in February 2021, respondent shared in their care, making dinner after work, playing with them, bathing them, and putting them to bed, and noted that “[appellant] even admitted that [respondent] was a good father to the children.” Appellant was the sole caretaker after she took the children from the home, and she adequately provided them with food and housing. However, while G.P. was in her care and she was watching him, he suffered a sledding accident in which he broke both his arms, and a playground accident that resulted in a head wound for which he was airlifted to the Mayo Clinic in Rochester.

As to the seventh factor, the parents' willingness and ability to meet the children's needs, the district court found that respondent believes that, while the children need both parents in their lives, appellant should deal with her mental health concerns before her contact with the children is unrestricted. The district court also found that appellant (1) "has been adamant that [respondent] should not have parenting time or that if he does it should continue to be supervised," (2) appellant has refused to sign releases to enable the children's care providers to communicate with respondent; (3) although the parties had not decided on a particular church in which they wished to raise their children, appellant began taking them to a church without telling respondent; (4) appellant's homeschooling of the children has been intermittent; (5) although appellant says both children would need Individual Education Plans (IEP's) if they went to school, she does not explain how her homeschooling accommodates their individual needs.

As to the eighth factor, the effect on the children of changes to their home, school and community, the district court contrasted the parties. Appellant has moved the children eight to ten times to different residences and types of residences all over the state; she is unemployed, and she says she would like to move out of the state but doesn't know where. Respondent's home, from which the children were taken in February 2021, has been and continues to be a constant in their lives; respondent is gainfully employed, financially stable, and "expressed a credible desire to enroll the children in school and remain in the same community that [they] are familiar with." The district court agreed with the custody evaluator's view that attending school would be a positive change for the children because it would provide contact with other children.

As to the ninth factor, the effect of a change of custody on the children's significant relationships, the district court found that, since appellant removed them from the home in February 2021, the children have had minimal contact with their parents' families. Appellant's parents have not seen them for almost two years, and respondent's parents have not seen them since late 2020. Prior to that time, the children had contact with members of both families. The district court wrote that, "[i]f [appellant] were given sole legal and physical custody . . . the children will never see or have an ongoing relationship with their biological family members." Appellant would not allow respondent to bring family members with him to his supervised visitation, and she "use[s] . . . church members as replacement family members for those that the children already have." Respondent said he would foster the children's relationship with appellant's parents, with whom he has no problem, and with his own extended family.

As to the tenth factor, the effect of maximizing or limiting parenting time on the children, the district court noted that the children missed respondent since they were taken away from him and enjoy their visitation time with him, playing games or watching movies. In contrast, "the children have become co-dependent on [appellant] to an unhealthy degree"; for example, when G.P. is questioned, he looks at appellant for the response. Having less time with appellant, after three years spent almost exclusively with her because they were not in school and did not see family members, would not be detrimental to them.

As to the eleventh factor, the disposition of each parent to support the children's relationship with the other parent, the district court pointed out that appellant "told every service provider and therapist that she did not want [respondent] to be involved in [the children's] lives" and "referred to [respondent] as a pedophile when speaking to [Dr. D.E.]." The district court concluded that appellant is not likely to support the children's relationship with respondent. Conversely, respondent testified that he would support the children's relationship with appellant once she addressed her mental-health issues, and he did support that relationship prior to her taking the children from the home.

As to the twelfth factor, the parents' ability to cooperate in rearing the children, the district court said that it did "not believe that [appellant] would be able to cooperate in rearing the minor children with [respondent]," given her behavior in: (1) telling providers that she does not feel respondent should have a relationship with the children after what he did to them, (2) refusing to sign releases of information that would let respondent be involved in their therapy, and (3) refusing to let respondent bring them presents when he had parenting time with them. The district court also found that respondent independently enrolled in and completed a co-parenting class, respondent thinks the children should have appellant in their lives, and respondent "has demonstrated that he is able to cooperate with [appellant] in rearing the children."

Thus, the district court concluded that, except for the children's preference, the best-interest factors favored respondent and awarded him sole legal and sole physical custody. Particularly because the parties' credibility is "integral to [the district court's] balancing of

the best-interests considerations” and a custody award is given “great deference,” we affirm. *See Thornton*, 333 N.W.2d at 796.³

Affirmed.

³ The district court also considered the rebuttable presumption that joint legal custody is in the best interests of the children, *see* Minn. Stat. § 518.17(b)(9) (2022), and concluded that, “[g]iven the concerns with [appellant’s] ongoing mental and chemical health and inability to provide for the children’s needs in a consistent manner” and the fact that she is not “in the right frame of mind to make important decisions regarding the children’s health and education,” the presumption was rebutted.