

*This opinion is nonprecedential except as provided by  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  
A24-0174**

In re the Marriage of:

Michelle Marie Dillavou, petitioner,  
Appellant,

vs.

Joseph Alex Abel Sirois,  
Respondent.

**Filed December 9, 2024  
Affirmed  
Segal, Chief Judge**

Scott County District Court  
File No. 70-FA-22-5912

J. Lee Novelli, Novelli Law Office, P.A., Minneapolis, Minnesota (for appellant)

Laurie Mack-Wagner, Lymari J. Santana, Mack & Santana Law Offices, P.C.,  
Minneapolis, Minnesota (for respondent)

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

**NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

In this appeal, mother argues that the district court abused its discretion in denying her motion to modify parenting time because the district court erroneously construed her motion as a request to modify physical custody under Minn. Stat. § 518.18 (2022). In the

alternative, mother argues that even if her motion is properly treated as a motion to modify custody, the district court misapplied Minn. Stat. § 518.18. Appellant also argues that the district court's best-interests findings are inadequate and unsupported by the record. We affirm.

## **FACTS**

Appellant-mother Michelle Marie Dillavou and respondent-father Joseph Alex Abel Sirois were married in December 2007. They had one minor child born in December 2015, while they were living in Colorado. The child has special needs and certain medical conditions that require intensive care.

In 2021, the parties divorced in Colorado and entered into a “permanent parenting plan” (PPP) to establish the parties’ parental responsibilities for the child and a parenting-time schedule. In the PPP, the parties agreed to “make all major decisions regarding the child jointly” and that “day-to-day decisions for the child shall be made by the parent with whom he is staying.” The parties also agreed in the PPP to relocate to Minnesota, specifically northern Scott County, even though father’s job was in Colorado. The PPP specified “that the child’s school shall be in a location no further than 25 minutes from Minneapolis/St. Paul Airport.” The PPP further provided that “after the parties move to either Shakopee, Savage or Prior Lake, Minnesota, the parties agree . . . not to move the child’s residence on a permanent basis more than fifteen (15) miles from the areas noted herein” without consent of the other parent or court order.

The PPP provided a parenting-time schedule that gradually increased father’s parenting time over four phases. The first two phases had specified durations, with phase

three scheduled to start two-and-a-half months after the move to Minnesota. The fourth and final phase called for a 50-50 sharing of time “on a 5-2-2-5 schedule.”<sup>1</sup> The parties signed and filed the PPP with the court in Colorado in April 2021, and mother later registered it in Minnesota.

In July 2021, the parties rented an apartment in Savage and began practicing “a nesting type of arrangement.” The child lived in the apartment in Savage with whichever parent was exercising parenting time and was enrolled in the Prior Lake-Savage Area Schools District. Initially, when mother was not exercising parenting time, she stayed with her family in Mankato and, when father was not exercising parenting time, he returned to Colorado, where he still worked. Father later received permission from his employer to work remotely and purchased a home in South Minneapolis. Around the same time father purchased the home in South Minneapolis, mother purchased a home in St. Peter, Minnesota. It is undisputed that the St. Peter house is outside the geographic area specified in the PPP.

In August 2023, mother filed a motion requesting that the district court (1) modify the parties’ parenting-time schedule such that father would have “parenting time every other Thursday through Sunday overnight and Mother has all other times,” (2) order that the child be enrolled in school in St. Peter, and (3) allow mother and the child to relocate to mother’s house in St. Peter. In the affidavit supporting her motion, mother alleged that father had not followed the parenting-time schedule established in the PPP and exercised

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<sup>1</sup> The record indicates the parties started the fourth phase by June 2022, within a year of the move to Minnesota.

significantly less than the 50% parenting time called for in the PPP. As relevant here, mother argued that her motion should be assessed under Minn. Stat. § 518.175, subd. 5 (2022), which allows the district court to modify parenting time if it is in the child's best interests. Mother also argued in the alternative that, if the district court treated her motion as a motion for a modification of custody under Minn. Stat. § 518.18(d), that she satisfied the criteria for granting such a change for two reasons: (1) the evidence establishes that the child "has been integrated into [mother's] family with [father's] consent"; and (2) the child's "present environment at Father's and with the parenting schedule endangers" the child's safety and development. Mother further argued that the St. Peter school district would better meet the child's educational needs than his current school in Savage. Father opposed the motion and disputed mother's calculation of his exercise of parenting time and her claims of endangerment and integration of the child into mother's family.

The district court, without holding an evidentiary hearing, denied mother's motion in its entirety. The district court determined that mother's request amounted to a request to modify physical custody of the child governed by Minn. Stat. § 518.18(d), and that mother failed to make a prima facie showing to justify the modification. Specifically, the district court found that mother failed to make a prima facie showing either that the child was endangered in father's care or that the child had been integrated into mother's family with father's consent. The district court also found that it was not in the child's best interests to modify the PPP and reduce father's parenting time.

## DECISION

Mother asserts two central arguments on appeal. First, mother argues that the district court made insufficient best-interests findings under Minn. Stat. § 518.175, subd. 5. She maintains that the district court denied the motion simply because she sought a change in the provisions of the PPP without considering all relevant factors, such as mother's interest in moving to St. Peter to be closer to her family so that they could assist her in caring for the many needs of the child. Second, she argues that the district court erred in determining that her motion should be construed as a motion to modify custody or a parenting-plan provision specifying the child's residence under Minn. Stat. § 518.18(d). She maintains that she and father avoided using any labels in the PPP such as joint custody or primary residence and that the district court improperly superimposed these labels by treating the motion as one for custody modification under the standards of Minn. Stat. § 518.18(d). Mother also argues that, because of work demands, father did not adhere to the 50-50 parenting time schedule in the PPP until very recently, after she filed her motion for approval of the changes in schedule, residence, and school.

We address first mother's argument that the district court made insufficient findings on the best interests of the child. A determination that a "modification would serve the best interests of the child" is a prerequisite to "modify[ing] the decision-making provisions of a parenting plan or an order granting or denying parenting time." Minn. Stat. § 518.175, subd. 5(b). The best interests of the child is the "ultimate issue" in parenting-time disputes. *Hagen v. Schirmers*, 783 N.W.2d 212, 216 (Minn. App. 2010).

“Appellate courts recognize that a district court has broad discretion to decide parenting-time questions, and will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record.” *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014) (citations omitted). 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, and (4) do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family-law appeal), *rev. denied* (Minn. Feb. 28, 2024). “[A]n 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 (quotations omitted); *see Vangsness v. Vangsness*, 607 N.W.2d 468, 472, 474 (Minn. App. 2000) (discussing clear-error standard of review).

When a district court is considering a motion to modify parenting time, rather than establishing a parenting-time schedule in the first instance, the court is not required to make “detailed, specific findings” on each of the best-interests factors enumerated in Minn. Stat. § 518.17 (2022). *See Hansen v. Todnem*, 908 N.W.2d 592, 597-99 (Minn. 2018). Instead, the district court must “consider only the *relevant* best-interests factors” and “make sufficient findings to enable appellate review.” *Id.* at 597 & n.2.

Mother argues that the district court did not actually analyze the best-interests factors but merely denied the motion because the modifications were contrary to the

parties' PPP. We disagree. While the district court found that mother's requests were contrary to the provisions of the PPP, the district court also found that the modifications sought by mother were not in the child's best interests because a significant reduction of father's parenting time would interfere with consistency and stability in the child's current routines and negatively impact his growth and development.

The district court's best-interests findings include the court's findings "that both Mother and Father care deeply for [the child] and his well-being . . . [and] that both Mother and Father meet his needs, as great as they are." Additionally, the district court recognized that both parties had developed strong support systems surrounding their relationship with the child, observing: "Mother and her extended family have developed a wonderful relationship with [the child]; and Father has found a community of people, including other children with [the child's type of special needs], that have readily accepted [the child] as one of their own." The district court noted that "one of Mother's primary concerns is the consistency and stability of [the child's] schedule" and that "[d]epriving [the child] of further interaction and routines with his Father is antithetical to those stated concerns." The district court commented: "Both Father and Mother expound frequently on their respective routines with [the child] and how that helps him on his developmental journey. Restricting one side of this relationship could seriously impact [the child's] growth and development." The district court concluded that "[i]t is not in [the child's] best interests for Mother to restrict Father's parenting time and move [the child's] primary residence to Saint Peter, Minnesota."

These findings reflect that the district court considered the child's needs, the ability of each parent to meet those needs, the benefits to the child and his development in maximizing time with both parents, and the effect the proposed modification would have on the community and support system each parent has established, which are all best-interests factors enumerated in the statute. *See* Minn. Stat. § 518.17, subd. 1(a). The district court did not expressly consider the benefit to the child in enrolling in the St. Peter school district, but that request is inextricably intertwined with mother's request to modify the parenting-time schedule and move the child to St. Peter. Mother has not suggested that it would be plausible to enroll the child in school in St. Peter without also modifying the parenting-time schedule, and it appears self-evident that having the child spend two hours being transported to and from school to accommodate father's parenting time would not be in the child's best interests. Given the district court's emphasis on the benefit to the child of maximizing time with each parent and its finding that each parent is willing to and does meet the child's needs, the district court's lack of a specific finding on the alleged benefit offered by the St. Peter school district does not undermine the ultimate best-interests determination.

Mother argues that the district court's finding that parenting time was roughly equal is inaccurate because mother had more than half of the parenting time based on the graduated "nesting" schedule in the PPP and the times that mother cared for the child because of father's work conflicts. Mother thus maintains that her proposed modification to father's parenting time would not be that significant. Mother concedes, however, that at least since she filed her motion, father has been caring for the child according to the 50-



50 schedule. Based on the evidence in the record, we discern no abuse of discretion in the district court's determination that a reduction in father's parenting time to every other weekend would not be in the child's best interests.

Because we discern no abuse of discretion in the district court's best-interests determination, mother is not entitled to a reversal of the district court's ruling on her motion regardless of whether her motion is construed as a motion for modification of custody under Minn. Stat. § 518.18(d) or for a modification of parenting time under Minn. Stat. § 518.175, subd. 5. Both statutes require that the proposed changes be in the child's best interests. Consequently, we need not address mother's argument that the district court erred in construing her motion as a motion to modify custody under Minn. Stat. § 518.18(d).

**Affirmed.**