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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0272**

In re the Marriage of:

Emily Clare Hahn, petitioner,
Appellant,

vs.

David Andrew Jungwirth,
Respondent.

**Filed November 12, 2024
Affirmed
Johnson, Judge**

Polk County District Court
File No. 60-FA-22-752

Jacey Johnston, Johnston Family Law, Grand Forks, North Dakota (for appellant)

Jennifer E. Jensen, ABST Law, P.C., Fargo, North Dakota (for respondent)

Considered and decided by Bentley, Presiding Judge; Johnson, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In this post-dissolution matter, the district court modified a parenting-time order by giving each parent an equal amount of parenting time, in alternating weeks, on a year-around basis. One parent argues that the modification of parenting time is a *de facto* change of the child's primary residence, which would require a showing of endangerment. We

conclude that the district court did not err by ruling that the modification is not a *de facto* change of primary residence and, thus, did not err by applying a best-interests standard instead of an endangerment standard. We also conclude that the district court did not clearly err in its finding concerning the fourth best-interests factor. Therefore, we affirm.

FACTS

Emily Clare Hahn and David Andrew Jungwirth were married in 2012. Their only joint child, a boy, was born two years later, in May 2014. During the parties' marriage, they resided in the city of Stephen, in Marshall County.

In September 2016, Hahn petitioned for the dissolution of the marriage. Shortly thereafter, she moved to a home in Grand Forks, North Dakota, that is approximately 50 miles from Stephen. In October 2018, the district court filed a judgment and decree in which it ordered joint legal custody and joint physical custody of the child. Because Hahn lived a considerable distance from Jungwirth, the district court found that it was in the child's best interests for Hahn to have the majority of parenting time during the school year and for Jungwirth to have the majority of parenting time during the summer months.

Jungwirth requested reconsideration by asking the district court to provide for an alternative parenting-time schedule in the event that he were to move closer to Hahn's home. In December 2018, the district court granted Jungwirth's motion and filed an amended decree, which provides, in pertinent part,

If [Jungwirth] were to move within approximately 20 miles of the child's residence in Grand Forks, North Dakota, the Court would consider the move a significant change in circumstances that would allow the Court to revisit the parties' parenting time

to determine if an increase in [Jungwirth's] parenting time would be in the child's best interests.

In November 2019, Jungwirth relocated to a home in East Grand Forks, Minnesota, that is approximately 20 miles from Hahn's home in Grand Forks, North Dakota. In February 2020, Jungwirth moved to modify the parenting-time schedule in the manner contemplated by the December 2018 amended decree. Hahn opposed the motion on the ground that the requested modification would change the child's primary residence.

The district court resolved Jungwirth's motion in two orders. First, in September 2020, the district court determined that the best-interests standard applies to Jungwirth's motion because the motion does not seek a *de facto* change in physical custody or primary residence. Second, after an evidentiary hearing in May 2022, the district court filed an order in September 2022 in which it determined that equal parenting time would be in the child's best interests, granted Jungwirth's motion for a modification, and ordered equal amounts of parenting time on alternative weeks, both during the school year and during the summertime.

Hahn appealed. She argued, among other things, that Jungwirth's motion sought relief that would be a *de facto* change in custody and primary residence such that the district court erred by applying a best-interests standard to the motion instead of an endangerment standard. This court concluded that the district court erred in its September 2020 order, in determining whether father's motion sought a *de facto* change in custody, by not considering the totality of the circumstances, including certain factors identified in caselaw. *Hahn v. Jungwirth*, No. A22-1616, 2023 WL 4553453, *2 (Minn. App. July 11, 2023)

(order opinion). Accordingly, we reversed and remanded to the district court for reconsideration. *Id.* at *3.

In January 2024, the district court reconsidered the matter by analyzing the factors identified in caselaw. The district court again determined that Jungwirth’s motion does not seek a *de facto* change in custody or primary residence. The district court reiterated that the best-interests standard applies and that equal parenting time on a year-around basis is in the child’s best interests. Hahn again appeals.

DECISION

I. Applicable Standard

Hahn first argues that the district court erred by determining that Jungwirth’s motion to modify parenting time does not seek a *de facto* change in primary residence.

Jungwirth’s motion is based on a statute providing that if a motion to modify parenting time “would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, *if the modification would not change the child’s primary residence.*” Minn. Stat. § 518.175, subd. 5(b) (2022) (emphasis added). Hahn contends that Jungwirth’s motion sought more than just a change in the parties’ allocations of parenting time. Hahn contends that Jungwirth’s motion sought a *de facto* change in the child’s primary residence and that, as a consequence, Jungwirth was required to prove that 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.” *See* Minn. Stat. § 518.18(d)(iv) (2022).

In our prior opinion, which is the law of the case, *see Interstate Power Co., Inc. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 582 (Minn. 2000); *Sigurdson v. Isanti Cnty.*, 448 N.W.2d 62, 66 (Minn. 1989), we stated:

When determining whether a motion to modify parenting time is a de facto modification to physical custody, and therefore requires an application of the standard to modify custody rather than parenting time, “a court should consider the totality of the circumstances to determine whether the *proposed modification* is a substantial change that would modify the parties’ custody arrangement.” *Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018) (emphasis added). “The factors considered may include [1] the apportionment of parenting time, [2] the child’s age, [3] the child’s school schedule, and [4] the distance between the parties’ homes, but these factors are not exhaustive.” *Id.*

Hahn, 2023 WL 4553453, at *2 (alterations added). We also identified the applicable standard of review:

We review de novo whether the district court applied the correct legal standard—that is, the standard for modification of parenting time in Minn. Stat. § 518.175, subd. 5(b), or for modification of physical custody in Minn. Stat. § 518.18(d)(iv). *Bayer v. Bayer*, 979 N.W.2d 507, 512 (Minn. App. 2022) (citing *Christensen*, 913 N.W.2d at 440). We review the district court’s application of the *Christensen* factors and its “ultimate determination of whether a proposed change constitutes a de facto modification of physical custody” for an abuse of discretion. *Id.* The district court abuses its discretion if it misapplies the law, makes findings unsupported by the evidence, or delivers a decision that is against logic and the facts on record. *Id.* (citing *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022); *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022)).

Id. Because Hahn’s appeal concerns the district court’s application of the *Christensen* factors, we apply an abuse-of-discretion standard of review. *See Bayer*, 979 N.W.2d at 512.

On remand, the district court expressly considered the four factors identified in *Christensen*: (1) the apportionment of parenting time, (2) the child’s age, (3) the child’s school schedule, and (4) the distance between the parties’ homes. *See Christensen*, 913 N.W.2d at 443. First, the district court stated that the prior orders apportioned one-third of annual parenting time to Jungwirth and that his motion sought to increase his parenting time to one-half. Second, the district court noted that the child was five years old and in his first year of school when Jungwirth filed his motion and that the child had not spent a significant period of time in the school. Third, the district court stated that Jungwirth’s motion was not seeking to change the child’s school or the school schedule. And fourth, the district court stated that Hahn and Jungwirth are now living in the same community so that there are no obstacles to “the child’s ability to develop friendships, socialize with classmates outside of school, and participate in extracurricular school activities.” After considering the four *Christensen* factors, the district court reiterated that the child’s primary residence will remain with Hahn during the school year and will remain with Jungwirth during the summertime.

Hahn contends that the district court erred in analyzing the first *Christensen* factor on the ground that the district court made a significant change to the apportionment of parenting time awarded to each party. Her contention is based on the general premise that a reduction of parenting time from two-thirds to one-half necessarily implies a change in a

child's primary residence during the school year. But Hahn has not cited any caselaw supporting that premise. Furthermore, supreme court caselaw strongly suggests that Hahn's premise is incorrect. In *Christensen*, the supreme court considered whether a parent's motion to increase parenting time to 50 percent necessarily would modify the other parent's award of sole physical custody. 913 N.W.2d at 440. The supreme court endorsed this court's view that "'merely increasing Christensen's parenting time to 50 [percent], without more, would not modify the award to Healey of sole physical custody.'" *Id.* at 442 (quoting *In re Custody of M.J.H.*, 899 N.W.2d 573, 577 (Minn. App. 2017), *rev'd sub nom.*, *Christensen v. Healey*, 913 N.W.2d 437 (Minn. 2018)). The supreme court reasoned that such a bright-line rule would be inconsistent with the flexible nature of the definition of sole physical custody. *Id.* at 442-43. Because the term "primary residence" is not defined by statute, *see id.* at 440, unlike the various forms of "custody," which are defined by statute, *see* Minn. Stat. § 518.003, subd. 3 (2022), there is even less reason to believe that a modification of parenting time resulting in an equal division necessarily would change a child's primary residence. Accordingly, Hahn has not demonstrated that the district court abused its discretion in analyzing the first *Christensen* factor.

Hahn also contends that the district court erred in its analysis of the second, third, and fourth *Christensen* factors. With respect to the second *Christensen* factor, she asserts that the child is now nine years old. But Hahn does not explain the difference, for purposes of a change in primary residence, between five years old (the child's age when Jungwirth filed his motion), eight years old (the child's age at the time of the district court's September 2022 decision), and ten years old (the child's present age). With respect to the

third *Christensen* factor, Hahn asserts that the child will have a different routine before and after school for half of the weeks of the school year. But the third *Christensen* factor is concerned with a child's "school schedule," not the child's schedule while at home. With respect to the fourth *Christensen* factor, Hahn states that, because the child's school is very close to her home but approximately 16 miles from Jungwirth's home, the child will have a longer drive to and from school for half of the school year. That assertion suggests that the child will spend more after-school time at Hahn's home than at Jungwirth's home, which is consistent with the district court's determination that Hahn's home remains the child's primary residence during the school year. In any event, Hahn does not challenge the district court's reasoning that the proposed change in parenting time would allow the child "to develop friendships, socialize with classmates outside of school, and participate in extracurricular school activities." Accordingly, Hahn has not demonstrated that the district court abused its discretion in analyzing the second, third, and fourth *Christensen* factors.

Hahn further contends that the district court erred by not considering factors in addition to the four non-exhaustive *Christensen* factors. *See Christensen*, 913 N.W.2d at 443; *Hahn*, 2023 WL 4553453, at *2. Hahn contends that the district court erred by not considering the change in the child's home environment during the school year, the fact that the child has a sensory disorder that would benefit from a consistent routine, the parties' inability to make joint decisions, the high-conflict relationship between the parties, and the resulting reduction in Jungwirth's monthly child-support obligation. Most of these considerations are irrelevant to the identification of the child's primary residence. They

are more relevant to a best-interests analysis. Accordingly, the district court did not abuse its discretion by not considering factors other than the four *Christensen* factors.

The district court expressly considered the four *Christensen* factors and determined that Jungwirth's motion to modify parenting time did not seek a *de facto* change in the child's primary residence. The district court did not abuse its discretion in making that determination.

II. Best-Interests Analysis

Hahn also argues that the district court erred in its analysis of the fourth best-interests factor, which asks whether domestic abuse has occurred in the parties' relationship, in their joint household, or in either party's household. *See* Minn. Stat. § 518.17, subd. 1(a)(4) (2022). A clear-error standard of review applies to a district court's findings concerning the best-interests factors. *Thornton v. Bosquez*, 933 N.W.2d 781, 790, 794 (Minn. 2019); *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018).

Hahn's primary contention is that the district court erred by not recognizing that a finding of domestic abuse previously had been made and by not accounting for that finding when balancing the best-interests factors. But the district court included two pages of discussion of the fourth best-interests factor in its order granting Jungwirth's motion. The district court noted that, in the 2018 decree, a different district court judge found that "[e]ach party appears to have inflicted domestic abuse upon the other." The prior judge nonetheless awarded the parties joint legal custody and joint physical custody in 2018. In discussing the fourth best-interests factor, the district court also noted that Jungwirth testified that there was no domestic abuse in the parties' joint household or in his

household, and the district court further noted that Hahn did not testify to the contrary. The district court found that, between the time of the 2018 decree and the 2022 evidentiary hearing, “no domestic abuse has taken place between the parties.” Consequently, the district court found that the fourth factor “does not apply.” Our review of the record indicates that the district court accurately described the parties’ testimony. In light of Jungwirth’s testimony, the district court’s finding that no domestic abuse has occurred since the 2018 decree is not clearly erroneous. *See In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted) (stating that findings are clearly erroneous if “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole”).

Hahn’s secondary contention is that the district court erred by not crediting and relying on the testimony of two expert witnesses whom she called at the May 2022 evidentiary hearing. The first expert was qualified to testify about domestic violence. That expert testified on direct examination that Hahn was a victim of domestic violence. But on cross-examination, the expert conceded that her opinion was based solely on information provided by Hahn, that she had not reviewed other materials filed with the district court, that she had not spoken to Jungwirth, and that her opinion could change if she were to review additional information. The second expert was qualified as a mental-health counselor to testify about the impact of domestic abuse on Hahn. That expert testified on direct examination that Hahn meets the criteria for post-traumatic stress disorder (PTSD) but that he was unable to complete a diagnostic assessment. On cross-examination, he conceded that his opinion was based solely on a limited amount of information provided

by Hahn, that he had provided therapy to Hahn for only a short period of time, and that he had not spoken to Jungwirth.

The district court discussed the evidence provided by these two experts in detail. The district court noted that Hahn did not testify about domestic abuse. The district court also noted that Hahn previously had objected to the disclosure of her mental-health records, which prevented Jungwirth from discovering such records, but that Hahn changed her position on the relevance of her mental-health records when she presented expert evidence. Given the circumstances, the district court gave the experts' testimony "little weight" and found that there was a lack of evidence of domestic abuse. The weight given to expert testimony "is ultimately the province of the fact-finder." *In re Welfare of Children of J.B.*, 698 N.W.2d 160, 168 (Minn. App. 2005). In this circumstance, the district court did not clearly err by not crediting and relying on the testimony of Hahn's expert witnesses.

Thus, the district court did not err in its finding concerning the fourth best-interests factor.

In sum, the district court did not err in its application of the *Christensen* factors or in its analysis of the fourth best-interests factor. Therefore, the district court did not err by granting Jungwirth's motion to modify parenting time.

Affirmed.