

*This opinion is nonprecedential except as provided by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
A24-0426**

In the Matter of:

Jacob Thomas Carlson, petitioner,
Respondent,

vs.

Dawn Marie Pieper,
Appellant.

**Filed January 27, 2025
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-FA-21-4086

M.P. Boulette, Abby N. Sunberg, Taft Stettinius & Hollister, LLP, Minneapolis, Minnesota
(for respondent)

Courtney R. Sebo Savica, Sebo Savica Law Firm, PLLC, Rochester, Minnesota (for
appellant)

Considered and decided by Reyes, Presiding Judge; Bentley, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this custody proceeding, appellant-mother challenges the district court's (1) grant of respondent-father's motion for joint physical and joint legal custody and (2) award of conduct-based attorney fees to respondent. We affirm.

FACTS

Appellant Dawn Marie Pieper (mother) and respondent Jacob Thomas Carlson (father) dated for four years. The couple never married, but they share one daughter (child). Following the end of their relationship in 2021, mother and father have had a contentious relationship in which mother withheld child from father for prolonged periods, despite a prior district court order that allotted him scheduled parenting time. Mother also reported that father neglected or abused child, asserting that father's ADHD, alleged sex addiction, alcoholism, and alleged homosexuality adversely affected his parenting of child.

After mother's continued allegations regarding father's fitness to parent child and father's complaints of mother impeding his parenting time, father filed an emergency motion requesting the district court expand his parenting time. To further assist parents in resolving their disputes, the district court appointed parenting consultant Jordan Wulf and parental evaluator and licensed psychologist Mindy Mitnick.¹ Mitnick found no evidence that domestic abuse occurred in the home, that father's medical issues did not affect his parenting, and that father had no history of inappropriate conduct while child was in his

¹ Because mother's arguments on appeal are centered around Mitnick's report, we address Mitnick's report here.

care. Mitnick further noted that father's history and psychological test results did not reflect major mental-health issues and that father's negative alcohol testing during parenting time "suggests good capacity to control his drinking when motivated to do so." Mitnick's report also stated that father's online sexual behaviors impacted his relationship and self-esteem, but that there "is no clear indication that they have impacted parenting directly" although his behavior has the "potential to introduce unpredictability and chaos into his life in ways that could impact his ability to care for his daughter optimally." Mitnick recommended in part that (1) both parents share in decision-making; (2) father not consume alcohol while child is in his care; (3) both parents attend therapy; and (4) father attend parenting classes. Wulf proposed a phased parenting plan that would provide father weekly parenting time with child.

The district court held a court trial for five days beginning on June 13, 2023. The district court received evidence and testimony from the parents, Mitnick, as well as the reports from the parental consultant and parental evaluator.

On October 31, 2023, father served mother and her counsel, and filed with the district court, a memorandum of law seeking need-based and conduct-based attorney fees. The memorandum included affidavits from father and his counsel, and an accounting of fees generated through the litigation. On November 6, 2023, mother's counsel filed a letter with the district court objecting to the attorney-fee request as untimely and argued that father caused the delay in the litigation.

On January 17, 2024, the district court issued its findings of fact and conclusions of law, determining that joint legal and joint physical custody served the best-interests of child, and awarding father \$25,000 in conduct-based attorney fees. This appeal follows.

DECISION

I. The district court appropriately determined that joint legal and joint physical custody served the best-interests of child.

Mother argues that the district court erred because it did not properly consider the best-interests of child. We are not persuaded.

“The guiding principle in all custody cases is the best interest[s] of child.” *Pikula v. Pikula*, 374 N.W.2d 705, 711 (Minn. 1985). “[When] considering the child’s best-interests, a district court must ‘consider and evaluate all relevant factors,’” including the twelve statutory factors. *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019) (quoting Minn. Stat. § 518.17, subd. 1(a)(1)-(12)) (2018)) (quotation marks omitted). The district court must also provide “detailed findings” on each of these factors and explain how each “led to its conclusions and to the determination of custody and parenting time.” *Thornton*, 933 N.W.2d at 789 (quoting Minn. Stat. § 518.17, subd. 1(b)(1) (2018)) (quotation marks omitted).

The twelve best-interest factors include:

- (1) child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child’s needs and development;
- (2) any special medical, mental health, developmental disability, or educational needs that the child may have . . . ;
- (3) the reasonable preference of child . . . ;

(4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; . . .

(5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;

(6) the history and nature of each parent's participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child's well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to child in limiting parenting time with either parent;

(11) . . . the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child.

Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2022).

District courts have broad discretion on matters of custody and parenting time. *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008). A district court abuses its discretion if it makes findings of fact that lack evidentiary support, misapplies the law, or makes a decision contrary to logic and the facts in the record. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022).

Appellate courts should neither “reweigh the evidence” nor “reconcile conflicting evidence.” *Matter of Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). Moreover, an appellate court need not “go into an extended discussion of the evidence to

prove or demonstrate the correctness of the findings of the [district] court.” *Meiners v. Kennedy*, 20 N.W.2d 539, 540 (Minn. 1945).

At the outset, we note that mother appears to challenge the district court’s findings, which are based on the district court’s credibility determinations. However, mother did not file a motion for amended findings or, in the alternative, a motion for reconsideration. This court’s review is therefore limited to whether the district court’s findings are supported by the evidence in the record and whether the district court properly applied the law in considering the best-interests of the child. *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002).

Mother challenges the district court’s analysis of all 12 best-interests factors except for the factor of the preference of child, which is inapplicable here. All but the first challenge appears to be of the district court’s findings, which rest on the district court’s credibility determinations of the parents and the parental evaluator. We begin by reviewing the first factor followed by a review of whether the district court’s findings are supported by the record.

Mother appears to contend that the district court misinterpreted and misapplied the first best-interests factor by analyzing child’s “basic needs” rather than child’s “physical, emotional, cultural, spiritual, and other needs” as stated by the statute. *See* Minn. Stat. § 518.17, subd. (1)(a)(1). Mother’s argument is one of form over substance. The district court’s order analyzes the first factor by quoting the statute then discussing it in plain English. It is apparent that the district court used “basic needs” to refer to the needs listed in the statute. We discern no error by the district court.

Our careful review of the entire record shows that the district court’s detailed order thoroughly considered evidence related to child’s best interests. Moreover, the district court made credibility determinations to which we defer. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (appellate courts defer to district court’s credibility determinations). For example, it found that it had received “no credible testimony . . . that either party lacked the ability to provide for [] child’s basic needs” and expressed confidence that the parties’ “ability to provide for [] child’s needs will continue.” The district court further found that no domestic abuse occurred because mother did not present credible evidence of abuse or maltreatment of child by father. The district court also found mother’s allegations of father’s ADHD, sex/porn addiction, and homosexuality were not substantiated by “credible testimony or evidence in the record” nor were they “inherently related to parenting” of child. Nevertheless, the district court found both parents to be dedicated and capable parents and found that maximizing parenting time with both parents served the best-interests of child. The law “leaves scant if any room for an appellate court to question the [district] court’s balancing of the best-interests considerations.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

We conclude that the district court appropriately considered the best-interests of child and did not abuse its discretion because its findings are supported by the record.

II. The district court did not abuse its discretion by awarding conduct-based attorney fees against mother.

Mother argues that the district court (1) violated her due-process rights because father did not file a notice of motion, or a motion, and that she was not afforded a hearing

before the district court awarded the attorney fees and (2) failed to specify the basis for the amount of the fees. We are not persuaded.

A party seeking an award of attorney fees over \$1,000 must make the request by motion. Minn. R. Gen. Prac. 119.01. A district court may award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1 (2022); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 294-95 (Minn. App. 2007). “A motion for conduct-based attorney fees may be based on the opposing party’s pursuit of frivolous or bad-faith claims.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 239 (Minn. App. 2016). A district court must “make findings revealing its rationale on the [attorney-fee] issue.” *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992). “[When] the court is familiar with the history of the case and has access to the parties’ financial information, it may waive the requirements of Rule 119.” *Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999). The principal consideration in a procedural due-process claim is whether the moving party received adequate notice and had an opportunity to respond. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quotations omitted). An appellate court reviews an attorney-fee award for an abuse of discretion. *Gully*, 599 N.W.2d at 825.

Father filed a letter with the district court indicating his intent to seek attorney fees which included his memorandum of law seeking need-based and conduct-based attorney fees in October 2023 and served the same on mother and her counsel. In response, mother filed a letter with the district court requesting that father’s motion be denied as untimely.

Here, mother's letter confirms receipt of father's memorandum of law, as well as the amount of fees he requested and the ledger he submitted in support of those fees. More importantly, mother's letter demonstrates that she had notice of father's request for attorney fees. Despite this notice, mother did not file a formal motion or request a hearing to challenge either of father's requests. Notably, the district court issued its order granting father's request for conduct-based attorney fees more than 60 days after father filed his request. Given that mother had reasonable notice of father's motion, yet she did not submit a responsive pleading, request a hearing, or file a motion for amended findings, mother's due-process argument fails.

Moreover, the district court attributed the award of attorney fees to mother's conduct and multiple reports of unsubstantiated abuse, which unreasonably added to the delay and expense of litigation. Finally, the district court's \$25,000 award is supported by the fee statements provided by father. We therefore discern no abuse of discretion by the district court in awarding father conduct-based attorney fees.

Affirmed.