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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1649**

In the Marriage of:

Brandon Dale Madery, petitioner,
Respondent,

vs.

Rebecca Ann Madery,
Appellant.

**Filed July 7, 2025
Affirmed
Smith, Tracy M., Judge**

Dodge County District Court
File No. 20-FA-19-61

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Considered and decided by Johnson, Presiding Judge; Frisch, Chief Judge; and
Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this parenting dispute, appellant-mother Rebecca Ann Madery, now known as
Rebecca Ann Johnson, challenges the district court's order modifying parenting time.
Mother argues, first, that the district court misapplied the law because the modification was

a de facto modification of physical custody, requiring application of the endangerment standard and an evidentiary hearing. Mother argues, second, in the alternative, that the order modifying parenting time should be reversed because the district court erred by (1) making a substantial change to mother's parenting time without holding an evidentiary hearing, (2) changing the child's primary residence without holding an evidentiary hearing, and (3) failing to properly analyze the child's best interests. We affirm.

FACTS

Mother and respondent-father Brandon Dale Madery married in 2009. They have one joint minor child, who was born in 2015.

In January 2019, the parties' marriage was dissolved pursuant to a stipulated judgment and decree. The decree awarded the parties joint legal and joint physical custody of the child and provided that the child's primary residence would be with mother. The decree also established parenting time, including parenting-time schedules during the child's school year and summer.

With respect to parenting time, the decree provided that, during the school year, father had parenting time on two weekday evenings (Monday and Tuesday) every week and an alternating weekend schedule, under which father had parenting time from Saturday night until 5:30 p.m. Sunday on the first weekend and parenting time from Friday morning until Saturday at 5:30 p.m. on the second weekend. During the summer, the decree provided father with parenting time from Monday morning through Wednesday morning, including overnights, and the same alternating weekend as the school-year schedule with

the exception that his parenting time on the second week ended on Sunday at 5:30 p.m. rather than Saturday at 5:30 p.m.

At the time of the decree, the child was not quite four years old. The decree laid out a plan to gradually introduce the parenting-time schedule by incrementally increasing the time that the child spent with father until the schedule was fully implemented. The decree provided that, by the end of 2019, the parenting-time schedule would be fully in place, with father having six days with the child every two weeks, which, the decree stated, equated to 43% of the parenting time.

In August 2024, when the child was nine years old, father moved to modify parenting time.¹ Father requested that the parties follow the same parenting-time schedule year-round, proposing that the child stay with him Monday through Wednesday morning each week and Friday through Sunday every other weekend. It is undisputed that father's proposed modification would provide each parent with 50% parenting time. Father asserted that the child would benefit from having a consistent year-round schedule with fewer transitions between homes at the beginning of the week. Mother opposed father's motion.

The district court held a motion hearing in which the parties presented oral arguments. Mother's counsel argued that, based on the number of overnights, father's proposed modification was a de facto modification of physical custody and "a restriction on [mother's] parenting time." Mother's counsel contended that, to support the proposed

¹ Father also moved to remove from the decree a provision requiring each parent to contact the other first if they need someone to care for the child, but father does not challenge the district court's decision on that issue on appeal.

modification, father would have had to establish that the child was endangered and that father had not asserted endangerment.

The district court took the matter under advisement and permitted father seven days to file a response to any issues in mother's pleadings that went beyond what was addressed in father's motion and affidavit. Father's counsel filed a memorandum denying mother's assertions that his motion was requesting a de facto change of physical custody or would result in a restriction of parenting time. Mother requested the opportunity to reply to father's submissions, claiming that father went beyond the scope of the pleadings. The district court denied mother's request, stating that it would "not consider statements by [father] that went beyond the scope of his opportunity to reply to [mother's] pleadings."

In October 2024, the district court granted father's motion to modify parenting time. In its order, the district court determined that the decree provided father with 43% of parenting time and that "[a] change from 43% of parenting time to 50% parenting time is not a de facto change in [physical] custody, particularly when both parties live in the same town and share joint physical custody." The district court noted that the child's primary residence was not changing. It also concluded that the modification of father's parenting time to 50% was not a "restriction" of mother's parenting time. Finally, the district court stated that it "ha[d] considered the best-interest factors" and determined that father's proposed modification would be in the child's best interests.

Mother appeals.

DECISION

Mother first argues that the district court erred by granting father's motion because the modification was a de facto modification of physical custody, requiring application of the endangerment standard and an evidentiary hearing. Second, in the alternative, mother argues that the district court erred by substantially modifying mother's parenting time, changing the child's primary residence, and not properly evaluating the best-interest factors. Each of mother's arguments is addressed in turn.

I. The district court did not err by not applying the endangerment standard to father's motion to modify parenting time.

We first address mother's argument that the district court erred by applying the law applicable to a modification of parenting time rather than the law applicable to a modification of physical custody.

"Parenting time" refers to "the time a parent spends with a child regardless of the custodial designation regarding the child." Minn. Stat. § 518.003, subd. 5 (2024). Generally, a district court must modify parenting time "[i]f modification would serve the best interests of the child" and "would not change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b) (2024).

"Physical custody and residence," on the other hand, "means the routine daily care and control and the residence of the child." Minn. Stat. § 518.003, subd. 3(c) (2024). A motion to modify physical custody may be granted in statutorily defined circumstances, including if the district court finds 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.” Minn. Stat. § 518.18(d)(iv) (2024). Before modifying custody based on endangerment, the district court must hold an evidentiary hearing in which the parties may cross-examine witnesses. *Crowley v. Meyer*, 897 N.W.2d 288, 294 (Minn. 2017).

Mother asserts that, although father did not move to modify legal or physical custody, the effect of his proposed modification of parenting time was a de facto modification of physical custody. As a result, she argues, the district court should have applied the endangerment standard and should not have modified custody without holding an evidentiary hearing.²

To determine whether a motion to modify parenting time is a de facto motion to modify physical custody,

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. The factors considered may include the apportionment of parenting time, the child’s age, the child’s school schedule, and the distance between the parties’ homes, but these factors are not exhaustive.

Christensen v. Healey, 913 N.W.2d 437, 443 (Minn. 2018). We review a district court’s determination whether a proposed parenting-time modification constitutes a de facto

² To be clear, mother does not contend that the district court erred by not holding an evidentiary hearing on endangerment—she does not contend that father presented a prima facie case of endangerment (nor does he claim to have done so). *See Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981) (holding that a party moving to modify custody must present sufficient evidence of endangerment to be entitled to an evidentiary hearing). Rather, she argues that physical custody could not be modified absent an evidentiary hearing because modification could be based only on endangerment.

change of physical custody under an abuse-of-discretion standard. *Bayer v. Bayer*, 979 N.W.2d 507, 512 (Minn. App. 2022).

In its modification order, the district court analyzed the factors in *Christensen* and determined that father's proposed modification did not amount to a de facto change in physical custody. The district court observed that both mother and father were living in the same town where the child attends school, the child was already at father's house after school on Monday and Tuesday afternoons, and allowing the child to stay with father overnight would not significantly reduce mother's time with the child because the child would mostly be asleep during that time. The district court also found no evidence suggesting that father was unwilling or unable to establish appropriate morning and evening school-day routines for the child. It further found that reducing the number of transitions between households and having the same schedule for the entire year would provide more consistency for the child.

On appeal, mother argues that the district court erred by finding that the decree provided father with 43% of the parenting time, contending that father's parenting time under the decree was 23%, based on the number of overnights that the child spent with him, and that a change from 23% to 50% parenting time is so substantial that it constitutes a de facto modification of physical custody. The argument is unconvincing.

In the stipulated decree, the parties specifically identified and agreed to father's percentage of parenting time as 43% based on counting the days that the child was in father's care. Moreover, even if the decree did not clearly establish father's percentage of parenting time, the district court would not have abused its discretion by determining that

father's time with the child during the evenings on Monday and Tuesday should be included in the parenting-time calculation, even though those evenings were not full overnights. Parenting time “*may* be determined by calculating the number of overnights that a child spends with a parent *or* by using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight.” Minn. Stat. § 518.175, subd. 1(g) (2024) (emphasis added). It would have been reasonable for the district court to find that the child was spending a significant period of time with father on the days where she spent the majority of her waking hours with him. And because the child stayed with father for six days every two weeks, the district court did not abuse its discretion when it determined that father had 43% of the parenting time and that the change from 43% to 50% parenting time was not so substantial as to constitute a de facto modification of physical custody.

Mother also argues that the district court's modification decision was erroneous because the district court failed to note that the modification in parenting time changes her “care and control of the minor child from nearly every school day to one half of the school days”; that the modification impacts her ability to ensure that the child gets to school, does her homework, and gets to bed on time; and that the child's preference is to remain with mother. But the district court addressed that mother's time with the child would not be significantly reduced and that father could establish the necessary morning and evening routines with the child. And, although the district court did not address the child's preferences, the only evidence of the child's preferences came from competing accounts by the parties about what they believed the child's preferences to be, and we discern no

abuse of discretion by the district court in not considering the parents' conflicting statements as part of its analysis.

In sum, we discern no abuse of discretion in the district court's conclusion that father's proposed modification was not a de facto change in physical custody. The district court therefore did not err by not applying the custody-modification law—specifically, the endangerment standard—to father's motion.

II. The district court did not abuse its discretion by granting father's motion to modify parenting time.

We turn to mother's argument in the alternative that, even if father's motion was to modify parenting time and not physical custody, the district court erred by granting his motion.

A district court has broad discretion when deciding parenting-time questions. *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014). Accordingly, we review a decision to modify parenting time for an abuse of discretion. *Id.* "Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotation omitted). "Determining the legal standard applicable to a change in parenting time is a question of law and is subject to de novo review." *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). A district court's findings of fact, on which a parenting-time decision

is based, will be upheld unless they are clearly erroneous. *See Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978) (addressing the standard of review in a visitation case).³

Mother argues that, even if the modification of parenting time did not result in a de facto change of physical custody, the district court's order should be reversed because (A) it was a substantial change to mother's parenting time, (B) it changed the child's primary residence, and (C) the district court did not properly analyze the child's best interests. We address each of mother's arguments in turn.

A. Substantial Modification in Parenting Time

First, mother asserts that the district court's order should be reversed because the proposed modification was "substantial" and, as a result, the district court needed to hold an evidentiary hearing. We interpret mother's use of the term "substantial" as asserting that father's proposed modification amounted to a "restriction" of mother's parenting time.⁴

³ "In 2000, legislation was passed replacing the term 'visitation' with 'parenting time' and allowing parties to create 'parenting plans.' 2000 Minn. Laws ch. 444, art. 1, §§ 1-8. Minnesota statutes now refer to parenting time, not visitation." *In re Welfare of B.K.P.*, 662 N.W.2d 913, 914 n.1 (Minn. App. 2003).

⁴ We reach this conclusion, in part, because the caselaw cited by mother uses the term "substantial" in the context of a "restriction." Mother cites *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993), which discusses the standard governing a "substantial alteration of visitation rights amounting to a 'restriction,' of visitation" and *Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002), which makes a related statement. Additionally, during the motion hearing before the district court, mother's counsel stated that father's proposed "change is a restriction on [mother's] parenting time."

To the extent that mother meant to address whether the change was "substantial" in the context of a de facto modification of physical custody, that argument was addressed above when we determined that the district court did not abuse its discretion in determining that the modification was not a de facto modification of physical custody under *Christensen*. *See Christensen*, 913 N.W.2d at 443 ("[A] court should consider the totality

Minnesota Statutes section 518.175, subdivision 5 (2024) governs motions to modify parenting time. It provides that “[a] modification of parenting time which increases a parent’s percentage of parenting time to an amount that is between 45.1 to 54.9 percent parenting time is not a restriction of the other parent’s parenting time.” Minn. Stat. § 518.175, subd. 5(c). It is undisputed that father’s proposed modification increased his parenting time to 50%. Accordingly, the district court did not abuse its discretion when it determined that father’s proposed modification cannot be considered a “restriction.”

B. Child’s Primary Residence

Next, mother argues that the modification changed the child’s primary residence, and, as a result, the district court misapplied the law by applying the best-interest standard instead of the endangerment standard. But the modification order explicitly states that the child’s primary residence is still mother’s home, and mother never argued before the district court that father was attempting to change the child’s primary residence. Accordingly, we decline to further consider this argument on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

C. Best-Interest Factors

Finally, mother argues that, even if the district court correctly determined that an evidentiary hearing was not necessary and the best-interest standard applied, reversal is

of the circumstances to determine whether the proposed modification is a *substantial* change that would modify the parties’ custody arrangement.” (emphasis added)).

warranted because the district court did not properly analyze whether the modification was in the child's best interests. Specifically, mother argues that the district court's findings fail to identify any of the relevant factors listed in Minnesota Statutes section 518.17, subdivision 1(a) (2024), and that its findings were conclusory, therefore preventing this court from discerning what factors were considered. Father counters that the district court's findings are sufficient because section 518.17, subdivision 1(a), only requires that the district court review *relevant* factors, and, under *Hansen v. Todnem*, 908 N.W.2d 592, 597 (Minn. 2018), the district court was not required to make specific detailed findings on every relevant statutory factor.

As stated in Section I above, Minnesota Statutes section 518.175, subdivision 5(b), directs a district court to modify parenting time if, in relevant part, "modification would serve the best interests of the child." Subdivision 5(b) further states that "[c]onsideration of a child's best interest includes a child's changing developmental needs" but does not further define "best interests." Minnesota Statutes section 518.17, subdivision 1(a), provides that, "[i]n evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the [district] court must consider and evaluate all relevant factors, including" the 12 factors set forth in that section.

As father asserts, *Hansen* held that the best-interest standard does not require the district court to make detailed findings on each factor and that only the *relevant* best-interest factors must be considered when modifying parenting time. 908 N.W.2d at 597, 599. Although *Hansen* analyzed the best-interest standard in relation to a modification of parenting time under section 518.175, subdivision 8, we have applied *Hansen's* reasoning

to section 518.175, subdivision 5(b). *See, e.g., Huyck v. Huyck*, No. A24-0613, 2025 WL 586025, at *3 (Minn. App. Feb. 24, 2025) (citing other nonprecedential cases in which this court has applied *Hansen* to section 518.175, subdivision 5(b)).⁵ Under *Hansen*, the district court here only needed to review relevant factors and make sufficient findings to enable appellate review. It did not need to provide specific references to every relevant best-interest factor listed in section 518.17, subdivision 1(a).

In its order, the district court did not cite section 518.17, subdivision 1(a), but it did state that it “considered the best-interest factors” and made the following findings: The child is loved and well-cared for by both parties. The parties co-parent well, as evidenced by this modification being the first judicial intervention since the decree was signed, mother having accommodated father’s schedule, and mother having allowed father to contact the child during mother’s parenting time. Additionally, the child can continue to attend the same school and participate in the same activities and relationships while at either parent’s home. And, under father’s proposed modification, the child would spend equal time with each parent.

These findings correlate to eight of the factors in section 518.17, subdivision 1(a). They determine that the modification will not negatively affect the child’s ability to have their needs met, the way in which the parties care for the child, the parties’ ability to provide consistent ongoing care for the child, the child’s development and well-being, the child’s relationships with each party and other individuals in the child’s life, the child’s ability to

⁵ We cite to this nonprecedential opinion for its persuasive value only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

maximize parenting time with each parent, each party's ability to support the child's relationship with the other parent, or the willingness or ability of the parents to cooperate in raising the child. *See* Minn. Stat. § 518.17, subd. 1(a)(1), (6)-(12). The only factors that the findings do not address are those that mother, in an affidavit filed in opposition to father's motion, already acknowledged do not apply. *See id.*, subd. 1(a)(2)-(5). Because the district court's findings address all relevant factors on which it had information, it did not abuse its discretion when it modified parenting time.

Affirmed.