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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-1742**

In Re the Marriage of:

Melissa Ann Kuchera, petitioner,  
Appellant,

vs.

Joel Wayne Biebighauser,  
Respondent,

County of Dakota,  
Intervenor.

**Filed December 15, 2025  
Affirmed  
Bond, Judge**

Dakota County District Court  
File No. 19AV-FA-10-4037

Mary B. Rannells Rowan, Groshek Law, P.A., Minneapolis, Minnesota (for appellant)

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Considered and decided by Bond, Presiding Judge; Ross, Judge; and Larkin, Judge.

**NONPRECEDENTIAL OPINION**

**BOND, Judge**

On appeal from the district court's order granting respondent father's motion to modify child custody and parenting time, appellant mother argues that the district court erred by failing to appoint a guardian ad litem (GAL), clearly erred in finding that mother

coached child's testimony, and abused its discretion by failing to give greater weight to the child's preference in its best-interests determination. We affirm.

## **FACTS**

Appellant Melissa Ann Kuchera (mother) and respondent Joel Wayne Biebighauser (father) are the parents of a minor child S.K.B., born in 2010. The following facts are taken from the district court's factual findings in its order on the parties' cross-motions to modify custody and parenting time after an evidentiary hearing, as well as other portions of the record relevant to the issues on appeal.

The parties dissolved their marriage in 2011 pursuant to a stipulated judgment and decree, which awarded joint legal custody to the parties and sole physical custody to mother. Since then, the parties have engaged in significant litigation concerning custody and parenting time. Relevant here, in 2021, the district court awarded father joint physical custody upon determining that mother interfered with father's rights as a joint legal custodian and that the resulting imbalance in power left child in a position to develop serious mental-health issues.

In February 2023, father moved for expedited relief seeking sole legal custody over medical and mental-health appointments for child and modification of parenting time. As relevant to this appeal, father averred in a supporting affidavit that (1) mother violated the required communications protocol by failing to communicate scheduled appointments within 48 hours after scheduling; (2) mother misrepresented the purpose of one of child's appointments, communicating that it was a wellness-checkup when in fact it was an appointment to address child's anxiety and depression; (3) as a result of this appointment,

child had been prescribed medication without father's consultation or consent; and (4) mother has resisted addressing child's mental-health issues through psychiatric care, opting instead to manage medication and treatment through child's pediatrician.

The day after father filed his motion, a report was made to Carver County Child Protective Services (CPS) alleging that father had injured child while child was at father's house. A CPS social worker interviewed child and determined that, while there had been a prior incident involving red marks on child's hand caused when father grabbed child's phone, there had been no recent incidents and there was no safety concern to child in father's care. After the CPS report was made, mother involved the police, despite the CPS social worker's instructions to mother that it was irregular and inadvisable to do so once CPS had conducted an interview.

In March 2023, after father filed his expedited motion but before the motion was heard, mother filed a petition for an order for protection (OFP) against father on behalf of child. Mother's OFP request was based on an incident during which father called the police nonemergency line because child left the house after dark during an argument with father about cellphone usage. During the argument, father commented that if he had talked to his parents the way child talked to him, he would have gotten soap in his mouth. According to the CPS report of the incident, child reported that father had a bottle of soap in his hand but did not ultimately pour any in child's mouth. The district court granted a temporary ex parte OFP, but, after an evidentiary hearing, dismissed the ex parte OFP without prejudice in order to resolve the matter at the upcoming hearing on father's expedited motion.

On March 15, the district court granted father's motion for expedited temporary relief, awarding him sole legal custody regarding child's medical and mental-health appointments and decreasing mother's parenting time.

In July 2023, mother filed a motion for emergency ex parte relief. Mother's motion requested immediate temporary sole legal and physical custody of child, suspension of father's parenting time pending a hearing, and mandatory appointment of a GAL. In a supporting affidavit, mother alleged that father was physically abusing child and that child had engaged in self-harm. In August 2023, the district court denied mother's motion, determining that mother failed to provide sufficient support that child was in imminent physical or emotional danger warranting emergency ex parte relief.

In November 2023, CPS again became involved with the family because mother reported to the FBI that father had exposed child to child pornography. After an investigation, CPS determined that mother's report lacked credibility. Around this same time, CPS also investigated a report that father allegedly threw a water bottle in child's direction, denting a wall. CPS determined that there were no observable marks on the wall and that child stated that, while she did not like how father treated her, child was not concerned about her safety.

The district court held an evidentiary hearing on the parties' cross-motions to modify custody and parenting time over five days in November 2023 and February 2024. The district court heard testimony from father, mother, child's paternal grandmother, the CPS social worker, child's therapist, two police officers, mother's pastor, and three of

mother's friends. The district court also received child's in camera testimony and multiple exhibits.

In a detailed written order, the district court granted father sole legal custody over child's medical and mental-health appointments based on endangerment under Minn. Stat. § 518.18(d)(iv) (2024). The district court found the testimony of father, the CPS social worker, and child's therapist credible and persuasive. The district court found mother's testimony inconsistent, evasive and, ultimately, not credible. In particular, the district court found that mother's apparent willingness to make serious unsubstantiated accusations that father possessed child pornography weighed heavily against her credibility. Finally, the district court stated that it "notes and values" child's stated preference to live with mother, but it determined the weight of child's preference to be "significantly diminished" by its finding that child "has been unduly influenced and coached by [m]other."

Mother appeals.

## **DECISION**

Mother advances two arguments on appeal. First, mother argues that the district court erred by failing to appoint a GAL. Second, mother argues that the district court's best-interests determination was an abuse of discretion because it clearly erred when it found that mother coached child's testimony and improperly "disregarded" child's preference for mother to be the custodial parent. We address each issue in turn.

### **I. The district court did not err in failing to appoint a GAL.**

If a district court has "reason to believe" that a child is a "victim of domestic abuse or neglect . . . the court shall appoint a guardian ad litem." Minn. Stat. § 518.165, subd. 2

(2024). “The guardian ad litem shall represent the interests of the child and advise the court with respect to custody and parenting time.” *Id.* We review the appointment of a mandatory GAL de novo. *See J.A.S. v. R.J.S.*, 524 N.W.2d 24, 27 (Minn. App. 1994) (concluding that district court erred by not appointing mandatory GAL when circumstances presented “at least a threshold” indication of abuse).<sup>1</sup> But “[w]e must defer to the district court’s assessment of witness credibility.” *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993).

Mother argues that the district court erred by failing to appoint a GAL. Mother contends that appointment of a GAL was mandatory under Minn. Stat. § 518.165, subd. 2, because the district court had reason to believe that child was a victim of domestic abuse. The GAL statute provides:

In all proceedings for child custody or for marriage dissolution or legal separation in which custody or parenting time with a minor child is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in sections 260C.007 and 626.556, respectively, the court shall appoint a guardian ad litem.

Minn. Stat. § 518.165, subd. 2. “Domestic child abuse” includes “any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means.” Minn. Stat. § 260C.007, subd. 13 (2024).

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<sup>1</sup> Father asserts that mother failed to preserve this issue for appeal because mother did not formally move for appointment of a GAL at trial. We disagree. When appointment of a GAL is mandatory under Minn. Stat. § 518.165, subd. 2, the district court’s failure to appoint a GAL constitutes reversible error, even in the absence of a motion by the parties. *See J.E.P. v. J.C.P.*, 432 N.W.2d 483, 486-87 (Minn. App. 1988).

Appointment of a GAL is mandatory under the statute when there is a “threshold level of circumstantial evidence or ‘reason to believe’” that a child has been subjected to domestic child abuse. *J.A.S.*, 524 N.W.2d at 27 (quoting Minn. Stat. § 518.165, subd. 2). Appointment of a GAL is not mandatory, however, when the allegations of abuse are unsubstantiated. *See Anderson*, 510 N.W.2d at 5 (holding that the district court did not err in failing to appoint a GAL when respondent presented sufficient evidence to rebut unsubstantiated allegations of physical abuse); *Baum v. Baum*, 465 N.W.2d 598, 600 (Minn. App. 1991) (concluding that “[b]ecause appellant presented insufficient evidence of abuse or neglect, the mandatory appointment provision does not apply”), *rev. denied* (Minn. Apr. 18, 1991).

The district court did not expressly address the issue of appointment of a GAL. However, as part of its consideration of the best interests of the child, the district court found that “there was no credible testimony or evidence showing that there is or was physical abuse in [f]ather’s home.” The district court’s finding is supported by the record. The CPS social worker testified about her involvement with child since the February 2023 CPS report, which, as the district court observed, was made one day after father filed his motion seeking modification of custody. Child repeatedly told the CPS social worker that father had not left any bruises on them. The CPS social worker testified that child reported no credible information about maltreatment in father’s home, that father was cooperative with her requests for information and meetings, and that she closed the CPS matter upon determining that there was no concern about child’s safety while in father’s care. Child’s therapist, a mandated reporter, testified that she had never filed a report alleging abuse by

child's father, that father communicates appropriately with her regarding child's treatment and is responsive to child's needs and care, and that child's condition was improving while in father's care. And the sheriff's deputy who responded to father's March 2023 call for assistance testified that she did not think child's safety was in jeopardy. The district court found these witnesses credible and found mother's testimony to the contrary not credible, determinations to which we defer. *Anderson*, 510 N.W.2d at 4. Accordingly, the district court did not clearly err in its factual finding that there are no substantiated allegations of domestic abuse by father.

As support for her argument that a GAL appointment was mandatory, mother cites *J.E.P.* In *J.E.P.*, we concluded that the district court erred in failing to appoint a GAL in a visitation dispute after a hearing on mother's petition for an OFP against the father alleging father's sexual abuse of their children. 432 N.W.2d at 486. We concluded that the district court had reason to believe that abuse was occurring because an independent criminal investigation was underway at the time of the proceedings, mother and the children's therapist testified that the children had described the sexual abuse, and the district court appointed an expert witness to investigate whether sexual abuse had occurred. *Id.* at 487. Accordingly, appointment of a GAL was mandatory. *Id.*

In contrast to *J.E.P.*, in this case the CPS social worker, the child's therapist, and the sheriff's deputy all testified that there was no concern about father physically harming child. The district court credited this testimony and found there was no credible allegation of abuse. Because the district court's factual findings establish that there was no reason to believe child was subject to abuse or neglect, we conclude that the district court was not

required to appoint a GAL under Minn. Stat. § 518.165, subd. 2. *Anderson*, 510 N.W.2d at 5; *Baum*, 465 N.W.2d at 600.

**II. The district court did not clearly err in its factual findings or abuse its discretion in its best-interests determination.**

“District courts have broad discretion on matters of custody and parenting time.” *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). We review the district court’s modification of a custody order for an abuse of discretion. *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 are unsupported by evidence, misapplies the law, or delivers a decision that is against logic and the facts on the record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022).

A parent seeking custody modification based on endangerment must demonstrate that “(1) the circumstances of the [child] or custodian have changed; (2) modification would serve the [child’s] best interests; (3) the [child’s] present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the change outweigh its detriments with respect to the [child].” *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018); *see also* Minn. Stat. § 518.18(d)(iv) (setting forth endangerment standard for custody modification).

Appellate courts review the district court’s findings of fact on the best-interests factors for clear error. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). Factual findings are clearly erroneous “when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment*

of *Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). The clear-error standard does not permit a reviewing court to reweigh the evidence, to engage in fact-finding anew, or to reconcile conflicting evidence. *Id.* at 221-22. Thus, under this standard

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. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an 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.

*Id.* at 222 (quotations and citation omitted); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (explaining that the district court's "findings must be sustained unless clearly erroneous" and that "[d]eference must be given to the opportunity of the [district] court to assess the credibility of the witnesses" (quotation omitted)).

Mother challenges the district court's determination that awarding father sole legal custody over child's medical and mental-health appointments is in the best interests of child, arguing that the district court clearly erred in finding that child's testimony was coached by mother. The district court found that the weight of child's stated preference to live with mother was diminished because child had been coached by mother. This finding is supported by the record. The CPS social worker testified that, in her interactions with child, child displayed an inappropriate level of knowledge regarding the litigation, and it appeared that mother shared information with child about the litigation and the interpersonal conflicts between the parents. The CPS social worker also testified that child reported that child looked through father's belongings to try to find things that would help

mother in court. The district court found the CPS social worker's testimony credible and, further, that child feels compelled to take mother's side. We will not second guess these credibility findings. *See Kenney*, 963 N.W.2d at 221-22. Accordingly, we conclude that the district court did not clearly err in its finding that child's testimony had been coached by mother.

Mother argues that the district court improperly "disregarded" child's stated preference to live with mother. In considering the best interests of the child, one of the factors the district court must consider is "the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference." Minn. Stat. § 518.17, subd. 1(a)(3) (2024). Under Minn. Stat. § 518.166 (2024), a district court may conduct an in camera interview of a minor child during a custody-modification proceeding "to ascertain the child's reasonable preference as to custodian, if the court deems the child to be of sufficient age to express preference."

Mother's argument that the district court disregarded child's preference is not supported by the record. The district court received and considered the child's in camera testimony. In its order, the district court expressly stated that it "notes and values" the child's preference, but found that the weight of child's testimony is diminished because mother had unduly influenced and coached child. We have held that, in assigning weight to a child's preference, a district court may consider whether the child has been manipulated or inappropriately influenced by a parent. *Roehrdanz v. Roehrdanz*, 438 N.W.2d 687, 691 (Minn. App. 1989), *rev. denied* (Minn. June 21, 1989). Furthermore, the district court found that, even with its diminished weight, the "reasonable preference of the

child” factor weighed slightly in mother’s favor. The district court then weighed the “reasonable preference” factor alongside the other 11 statutory best-interests factors, none of which mother challenges on appeal. *See* Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2024). We conclude that the district court acted within its discretion when it assigned less weight to child’s stated preference to live with mother upon making a factual finding that child had been coached by mother.

In sum, the record reflects that the district court considered the testimony of the witnesses and the other evidence it received during the five-day evidentiary hearing. The district court considered child’s preference and made detailed findings on each of the relevant best-interests factors, finding that the testimony of father, the CPS social worker, and child’s therapist was credible, while mother’s testimony was not. Because the record supports the district court’s factual findings, the district court did not abuse its discretion when it determined that it is in the best interests of child to grant father’s request for sole legal custody over child’s medical and mental-health appointments.

**Affirmed.**