

*This opinion is nonprecedential except as provided by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
A24-1789**

In Re the Custody of: A.L.,
Ian Larsen, petitioner,
Respondent,

vs.

Sian Minske,
Appellant.

**Filed August 18, 2025
Affirmed
Reilly, Judge***

Roseau County District Court
File No. 68-FA-16-982

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

Suzanne M. Weber, Grand Forks, North Dakota (for respondent)

Considered and decided by Bentley, Presiding Judge; Larson, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this custody-modification appeal, appellant-mother challenges the district court's grant of sole physical custody to respondent-father, arguing that the district court abused

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

its discretion by failing to conduct an in-camera interview with the child, relying on a custody-evaluation report, and not considering the impact of the custody change on the child. We affirm.

FACTS

Appellant-mother Sian Minske and respondent-father Ian Larsen are the parents of the minor child, A.L., born in 2010. The parties were never married. In 2017, the district court granted the parties joint legal and joint physical custody, with mother's home being the child's primary residence.

In May 2022, father moved to modify custody, and the district court denied his motion in June 2022. In October 2023, mother filed an ex parte motion, seeking to limit father's parenting time. The district court declined to make an ex parte determination and scheduled the matter for a hearing. Before that hearing, father moved to modify custody under the "endangerment" standard.

In November 2023, the district court held a hearing on the parties' motions. The court granted father an evidentiary hearing on his custody-modification motion and, by joint stipulation of the parties, appointed a custody evaluator. The evaluator, after reviewing records and conducting interviews and home visits, filed recommendations with the district court.

At the evidentiary hearing, the district court received the evaluator's report into evidence over mother's hearsay objection. The court heard testimony from several individuals, including the parties and the evaluator. The court found the evaluator's testimony to be credible and put "great weight on her recommendations."

In October 2024, the district court filed an order modifying custody, awarding father sole physical custody of A.L., and making father's home the child's primary residence. The court found that there had been a change of circumstances since the 2017 custody order and that custody modification was in the child's best interests. The court found that mother had willfully and persistently denied or interfered with father's parenting time and endangered A.L.'s emotional well-being.

The court noted the following relevant circumstances. In July 2022, father was exercising parenting time with A.L. at the county fair, and when it was time to leave, father found A.L. with mother. A.L. refused to leave. Father agreed to let A.L. stay, but because of A.L.'s defiance, he removed her "ride pass," which he had purchased. Mother then called law enforcement and accused father of abusing A.L. Father's wife had recorded the interaction between father and A.L., and after viewing the video and speaking to father, law enforcement took no further action. For the next 15 months, A.L. refused to engage in parenting time with father.

The evaluator, after viewing the video of A.L. and father at the fair, did not believe that father's actions constituted any type of abuse. The district court likewise found that there was "no credible evidence that [father] has abused [A.L.]." The evaluator believed that A.L. avoided parenting time with father "for the sole purpose of being constantly physically and emotionally available to . . . mother at all costs." The district court found that A.L. was "voicing her desire for no parenting time with [father]," but the court found that "given her age and the inappropriate emotional relationship [with] . . . [mother]," A.L.'s decision "was not being made freely." The court noted evidence that mother had

inappropriately relied on A.L. for emotional support, that A.L. “has been parentified,”¹ and that mother had exposed A.L. to topics that were not age appropriate. The court found that mother had “been reluctant to involve [father] in the daily parenting decisions . . . and ha[d] restricted his parenting time.”

Mother appeals. Father did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

DECISION

Mother challenges the district court’s custody modification. 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) (2024) (setting forth endangerment standard for custody modification).

We review custody-modification decisions for an abuse of discretion. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008). “A district court abuses its discretion by making findings unsupported by the evidence or improperly applying the law or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

¹ Testimony at the hearing conveyed that “parentification” is treating a child like an adult, and such treatment can harm a child’s mental health.

Mother raises three arguments: (1) the district court should have conducted an in-camera interview with A.L. and considered A.L.’s custody preference; (2) the district court should not have relied on the custody-evaluation report because the evaluator “lacked the required education and experience” and the report “applied the best interest standard instead of the endangerment standard”; and (3) the district court failed to consider the impact of the custody change on A.L.. We address each argument in turn.

I. The district court did not abuse its discretion by not conducting an in-camera interview with A.L. and by dissuading mother from calling A.L. as a witness.

Mother argues that the district court erred by failing to conduct an in-camera interview with A.L. and by disregarding A.L.’s custody preference. Mother also argues that the district court discouraged her from calling A.L. as a witness by stating that such testimony would be “construed” against her.

Under Minn. Stat. § 518.17, subd. 1(a)(3) (2024), in considering the best interests of the child, the district court must consider “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.” 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.” The decision to interview a child “is a discretionary choice” for the district court because “[a]n interview is not the only way to determine a child’s preference.” *Madgett v. Madgett*, 360 N.W.2d 411, 413 (Minn. App. 1985).

Here, in its best-interest analysis, the district court acknowledged A.L.’s preference to keep mother’s home as her primary residence. The district court noted its concern over that stated preference given the child’s desire to make herself emotionally available to mother. In this way, the district court satisfied the requirements of Minn. Stat. § 518.17, subd. 1(a)(3) and implicitly determined that the child could not put forth an independent and reliable custody preference. As for the district court’s decision to not conduct an in-camera interview, again, such decisions are discretionary, and we discern no abuse of the district court’s discretion here.

We now turn to mother’s argument that the district court discouraged her from calling A.L. as a witness by stating that such testimony would be “construed” against her. In her brief to this court, mother failed to include a record cite for this alleged exchange between herself and the district court, and we could not locate any such exchange in the record. For purposes of our review, we assume, without deciding, that the district court dissuaded mother from allowing A.L. to testify.²

We are not persuaded that the district court abused its discretion. Under Minn. R. Gen. Prac. 303.03(d)(7): “Any motion relating to custody or visitation shall additionally

² In November 2024, on the same day she filed her notice of appeal, mother moved in district court to stay the district court’s custody-modification order. She effectively raised the same argument she raises now, and in an accompanying affidavit, she stated as follows: “When [A.L.] was at the Courthouse to testify, I understood it would be used against me to call [A.L.] as a witness to the stand. At that point, I felt threatened that if I did call [A.L.], it would be construed against me, so I relented and did not call her.” Again, we make no determination about any exchange between mother and the district court but assume that the district court dissuaded mother from allowing mother to call A.L. to testify. *See In re Nelson*, 495 N.W.2d 200, 202, 204 (Minn. 1993) (concluding that this court erred in considering a letter sent to district court one month after the case was decided).

state whether either party desires the court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and court approval.” While mother included A.L. in her second amended witness list, A.L. was 13 at the time of the evidentiary hearing. Therefore, the district court had discretion to disallow A.L.’s testimony. *See* Minn. R. Gen. Prac. 303.03(d)(7).

Additionally, the district court expressly acknowledged and considered A.L.’s preference to keep mother’s home as the primary residence. Mother therefore fails to establish prejudice stemming from the district court’s decision not to permit A.L. to testify. The appellant bears the burden of showing that the district court’s error was prejudicial. *Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993), *rev. denied* (Minn. June 28, 1993); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored on appeal).

The district court did not abuse its discretion in its custody-modification determination by failing to conduct an in-camera interview with A.L. and by dissuading mother from calling A.L. as a witness.

II. The district court did not abuse its discretion by relying on the evaluator’s report.

Mother argues that the district court erred by relying on the evaluator’s report because the evaluator “lacked the required education and experience.” Mother points to the evaluator’s “lack of experience, failure to properly apply Minnesota custody law, reliance on prejudicial and hearsay evidence, and inconsistent testimony.”

In contested custody proceedings, a district court may order a professional custody investigation and report. *Kremer v. Kremer*, 827 N.W.2d 454, 463 (Minn. App. 2013), *rev. denied* (Minn. Apr. 16, 2013); *see also* Minn. Stat. § 518.167, subd. 1 (2024) (“In contested custody proceedings, . . . the court may order an investigation and report concerning custodial arrangements for the child.”). The report prepared by the custody evaluator must:

(1) state the position of each party; (2) consider and evaluate the [best-interest] factors . . . ; (3) include a detailed analysis of all information considered for each factor; (4) state the investigator’s recommendation and the reason for the recommendation; and (5) reference established means for dispute resolution between the parties.

Minn. Stat. § 518.167, subd. 2 (2024).

As for the evaluator’s qualifications, the custody evaluator testified that she is licensed to practice law in North Dakota and Minnesota, she has been practicing law for over three years, she primarily practices in family law, and she is a certified parenting investigator. The record supports a determination that the evaluator was qualified, and mother stipulated to the evaluator’s appointment. Generally, stipulations are treated as binding contracts. *Emerick ex rel. Howley v. Sanchez*, 547 N.W.2d 109, 112 (Minn. App. 1996).

Mother argues, without legal citation, that the custody evaluator relied on hearsay. The Minnesota Rules of Evidence apply to custody-modification proceedings. *See* Minn. R. Evid. 1101(a) (explaining that the rules of evidence apply to all state court proceedings unless otherwise noted). Testimony is hearsay if it is an out-of-court statement offered to

prove the truth of the matter asserted. Minn. R. Evid. 801(c). The rules prohibit admitting hearsay unless an exception applies. Minn. R. Evid. 802.

Mother's hearsay argument is unpersuasive because the evaluator was permitted by statute to rely on out-of-court statements in preparing her report. Under statute, the evaluator was permitted, in preparing her report, to "consult any person who may have information about the child and the potential custodial arrangements except for persons involved in mediation efforts between the parties," and the evaluator was permitted to "consult with and obtain information from medical, psychiatric, school personnel, or other expert persons who have served the child in the past after obtaining the consent of the parents." Minn. Stat. § 518.167, subd. 2(a). If mother had an issue with any out-of-court statements, she had a right to call "any person whom the investigator has consulted for cross-examination at the hearing." *Id.*, subd. 3 (2024).

This court recently, in a nonprecedential opinion, concluded that such hearsay statements were admissible in an evaluator's report. *See Lesch v. Lesch*, No. A24-0515, 2025 WL 1024402, at *2 (Minn. App. Apr. 7, 2025) (concluding that the district court did not err in admitting, over objection, hearsay in a custody evaluator's report because the evidence was admissible under Minn. R. Evid. 703 and Minn. Stat. § 518.167 (2024)).

Mother argues that the evaluator failed to apply the "*Christensen*" factors, which apply to a custody-modification proceeding. *See Christensen*, 913 N.W.2d at 443 (noting factors a district court may consider when deciding whether a motion to modify parenting time is a de facto motion to modify physical custody). Mother also argues that the evaluator

erred by applying the best-interest factors rather than the endangerment standard in section 518.18(d)(iv).

Mother's argument is unpersuasive for two reasons. First, Minn. Stat. § 518.167, subd. 2(b)(2), specifically requires the evaluator to "consider and evaluate" the best-interest factors "in section 518.17, subdivision 1." Second, the district court applied the correct endangerment standard, and therefore, even accepting that the evaluator put the incorrect standard in her report, there was no prejudice to mother. *See Bloom*, 499 N.W.2d at 845.

Mother argues that the best-interest factors are "only relevant in a custody modification if there is a written agreement between the parties to apply those standards or if the child has been integrated into the petitioner's home with the other parent's consent." Mother is incorrect. *See* Minn. Stat. § 518.18(d) (2024) (requiring a finding that "modification is necessary to serve the best interests of the child"); *see also* Minn. Stat. § 518.17, subd. 1(a) (2024) (noting that a best-interest analysis is conducted "for purposes of determining issues of custody"); *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997) (explaining that the best-interests factors enumerated in statute are the second required finding when deciding whether to modify custody).

In sum, mother fails to show that the district court abused its discretion in relying on the evaluator's report in reaching its custody-modification determination, and we defer to the district court's credibility determinations of that report. *See Kremer*, 827 N.W.2d at 463 (stating that it "was within the district court's discretion to rely on [a] custody evaluator's testimony and report" and deferring to the district court's credibility determination regarding that evidence).

III. The district court did not abuse its discretion in considering the effect of the custody change on A.L.

Lastly, mother argues that the district court erred by not considering the effect of the custody change on A.L., most specifically, the effect that the change would have on A.L.'s involvement in competitive dance. Father lives in rural Roseau, and mother lives in Thief River Falls.

The district court conducted a thorough analysis of the best-interest factors and weighed the harm to A.L. from the change against the benefits of the change. For example, the district court found: "While [mother] has provided for [A.L.] and [A.L.] is used to this environment, [father] has a better ability to provide for [A.L.'s] basic needs." The court also adopted a portion of the evaluator's report addressing A.L.'s dance classes:

There was previously an issue between the parties where [father] was not bringing [A.L.] to all of her summer dance classes during his parenting time. This resulted in an Order requiring [that] he bring her to all classes. The issue now is that [mother] has behaved as if she has sole legal custody and signs [A.L.] up for classes that interfere with her time with her father, without any consultation of [father]. Not only does she not consult him, she tells him last minute. [Mother] has unilaterally signed [A.L.] up for nine dance classes this summer and a summer dance camp. These classes will require [father] or [his wife] to be in Thief River Falls two nights per week all summer. Additionally, [mother] signed [A.L.] up for a Pom class this spring unilaterally that required [father's] Sundays be cut short every week. [A.L.] is passionate about dance, but the volume of classes she takes interferes with her time with her father and her father's side of the family as well as her ability to perform well in school. [Mother] is rigid about parenting time but continues to limit [father's] time and minimize his role as a parent by cutting him out of any and all decisions that relate to [A.L.].

In sum, the district court considered the effect of the change on A.L. and specifically considered A.L.'s close connection to dance. Because mother fails to establish that the district court abused its discretion in modifying custody and granting father sole physical custody, we do not disturb that decision.

Affirmed.