

*This opinion is nonprecedential except as provided by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
A20-1599**

In re the Marriage of: Stacy Ann Rakow, f/k/a Przybilla, petitioner,
Appellant,

vs.

Ryan Frank Przybilla,
Respondent.

**Filed August 23, 2021
Reversed and remanded
Bryan, Judge**

Morrison County District Court
File No. 49-FA-18-1064

Edward R. Shaw, Brainerd, Minnesota (for appellant)

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respondent)

Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this parenting time dispute, appellant challenges the district court's decision to adopt an equal parenting time schedule. We conclude that because the district court did not make sufficient findings regarding the statutory best interests factors, we are unable to

review the permanent parenting time schedule adopted by the district court. We reverse the district court decision and remand for further findings.

FACTS

Appellant-mother Stacy Rakow and respondent-father Ryan Przybilla married in 2008 and have five joint minor children. On July 23, 2018, mother petitioned for dissolution of marriage. On October 22, 2018, the district court issued a temporary parenting time order based on the parties' agreement. The temporary parenting time order imposed a 5-2-2-5 schedule, allotting each parent seven out of every 14 overnights. On February 19, 2019, the district court dissolved the marriage, but litigation continued regarding permanent custody and parenting time. The parties proceeded with a custody evaluation, and on November 5, 2019, the custody evaluator submitted a report, recommending joint legal custody and joint physical custody. The evaluator also recommended a regular parenting time schedule in which father exercised five out of every 14 overnights during the academic year and six out of every 14 overnights during the summer. Mother would exercise the remaining overnights.

On November 26, 2019, the State of Minnesota charged father with fleeing a peace officer in a motor vehicle and by other means. The complaint alleged that father drove in excess of 35 miles per hour over the speed limit while the oldest minor was in the car, and that the officer detected a strong odor of alcohol coming from a container in the vehicle. In response, the parties stipulated to adding several conditions to the temporary parenting time order. Father agreed that he would refrain from consuming alcohol during his parenting time, install an ignition-interlock system in his vehicle, only transport the

children in the vehicle that has the ignition-interlock system, and submit to a urine test if mother suspected that father was not compliant with these conditions. On January 6, 2020, the district court adopted the stipulation, incorporating it as part of the temporary parenting time order. The custody evaluator subsequently submitted a supplemental report addressing the November 23, 2019 incident, but did not change the previous custody and parenting time recommendations.

The district court held an evidentiary hearing on July 9, 2020, regarding permanent custody and parenting time. Mother requested that the district court adopt the evaluator's recommended school-year schedule, but argued that the district court should order the parties to follow that schedule throughout the entire year (five out of every 14 overnights allotted to father and nine to mother). In addition, mother requested that the district court permit her to claim tax exemptions for all of the parties' minor children for tax year 2019. Father disagreed with the evaluator and mother, requesting an equal-parenting time schedule similar to the temporary order. Father also opposed mother's requested dependency exemptions for tax year 2019.

On October 16, 2020, after the evidentiary hearing, but before the district court issued its decision, mother filed an ex parte motion, requesting that the district court grant the following relief: (1) prohibit father from transporting the children in a motor vehicle; (2) restrict father's parenting time to supervised visits every other weekend; (3) require father to undergo a chemical dependency assessment and follow any resulting recommendations; (4) require father to pay mother's attorney fees and court costs; and (5) any additional relief deemed appropriate.

On October 21, 2020, the district court issued its order establishing permanent custody and parenting time (the 2020 Order). In the 2020 Order, the district court found that nothing “would suggest that either party is neglecting the education of the children in any way,” “[b]oth parties and the Custody Evaluator testified that the minor children, for the most part, do well in school,” and the “Custody Evaluator did not note any concerns of the adequacy of the food at [mother’s] residence.” The district court addressed the incident that resulted in criminal charges against father, concluding that father “does have issues involving alcohol that are unaddressed and concerning as they relate to the best interest of the children involved in this case.” Despite this concern, the district court found that “there has not been any endangerment alleged nor has there been any allegations of chronic failure, as it relates to complying with the prior Parenting Time Order, which would warrant a modification.”

In its conclusions of law, the district court generally concluded that an equal parenting time schedule was in the children’s best interests: “it is in the best interests of the children that the previous order regarding parenting time remain in its entirety,” and that the “[m]odification proposed by [mother] would not serve the best interests of the parties’ minor children.” In spite of this general statement, however, the district court also noted the parenting time modification standard set forth in Minnesota Statutes section 518.175, subdivision 5(c) (2020), applied in this instance. The district court concluded that it “may not restrict parenting time unless it finds that: (1) parenting time is likely to endanger the child’s physical or emotional health or impair the child’s emotional development; or (2) the parent has chronically and unreasonably failed to comply with court ordered

parenting time.” The district court then proceeded to briefly analyze parenting time according to the modification standard. Pursuant to this standard, the district court determined that mother had not established endangerment. In the absence of this showing, the district court reasoned that the temporary parenting time order must remain. In the first paragraph of its order, the district court ruled that “[mother’s] request to change the parenting time schedule as requested is DENIED.” The district court further ordered that “the current temporary parenting time order remains now as a Permanent Order with the same restrictions as previously ordered and set.” The district court reiterated the equal 5-2-2-5 schedule previously imposed. The district court also adopted all “additional recommendations listed in [the custody evaluator’s report], which are not inconsistent with this Order . . . in their entirety.” The 2020 Order did not mention or expressly rule on mother’s posttrial October 16, 2020 motions.

On October 30, 2020, nine days after the 2020 Order, mother submitted additional motions and an additional affidavit. The October 30, 2020 motions repeated verbatim the five motions brought on October 16, 2020. The October 30, 2020 motions also included five additional motions requesting that the district court grant the following relief: (1) hold father in contempt for failing to follow the temporary parenting time schedule and the permanent parenting time schedule adopted in the 2020 Order; (2) require exchanges to occur at a particular location in Pierz, Minnesota; (3) require non-school exchanges to occur at 6:00 p.m.; (4) adopt a revised holiday parenting time schedule; and (5) allow mother to play a video of father transporting the children in a vehicle that was not equipped with an ignition interlock device at a hearing regarding the motions. Following a hearing

regarding these motions, the district court orally denied all ten of mother's motions. Mother appeals the permanent parenting time schedule.¹

DECISION

Mother argues that the district court made insufficient findings regarding the requisite best interests factors in the 2020 Order. We agree, reverse the district court's permanent parenting time decision, and remand for further findings.

Minnesota Statutes section 518.17, subdivision 1 (2020), governs the establishment of permanent parenting time schedules. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). "In considering the child's best interests, a district court must 'consider and evaluate all relevant factors,' including 12 factors set forth by statute." *Thornton v. Bosquez*, 933 N.W.2d 781, 789 (Minn. 2019) (quoting Minn. Stat. § 518.17, subd. 1(a)). "The court must provide 'detailed findings' on each of the statutory best interests factors and explain how each 'led to its conclusions and to the determination of custody and parenting time.'" *Id.* (quoting Minn. Stat. § 518.17, subd. 1(b)(1)). "The district court has broad discretion in determining parenting time issues and will not be reversed absent an abuse of that discretion." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotation omitted).

¹ Mother also asserts error in the district court's denial of the posttrial motions and her request regarding the dependency exemptions in tax year 2019. Because mother cites no authority supporting these arguments, we decline to address them. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."); see also *State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue).

In this case, both parties agree that the best interests standard, and not the modification standard, applies to initial determinations of a permanent parenting time schedule, even when the district court is considering whether to make permanent the schedule it had previously adopted on a temporary, or *pendente lite*, basis. The parties are correct. Because the district court did not make detailed findings regarding the best interests factors, we are unable to review the permanent parenting time schedule adopted. We reverse the district court decision and remand for further findings. *See Thesing v. Thesing*, 390 N.W.2d 469, 471 (Minn. App. 1986) (remanding because this court was “unable to determine whether the court considered the factors listed in Minn. Stat. § 518.17”); *see also, e.g., Rogge v. Rogge*, 509 N.W.2d 163, 165-66 (Minn. App. 1993) (remanding because, while the district court made “findings that appear to address” several of the best interests factors, “it is unclear whether the trial court considered all of the relevant ‘best interests’ factors”), *review denied* (Minn. Jan. 28, 1994); *Bjerke v. Wilcox*, 384 N.W.2d 250, 252 (Minn. App. 1986) (remanding because “the legitimacy of the trial court’s decision cannot be judged by the parties or by this court” without particularized findings regarding the best interests factors). On remand, the district court is instructed to make its findings regarding the initial award of parenting time based only on evidence received during the July 9, 2020 evidentiary hearing.²

Reversed and remanded.

² A comparison to the initial parenting time award is required to determine the standards and burdens of proof applicable to any future modification motions based on circumstances that may have occurred after the July 9, 2020 evidentiary hearing.