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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-0563**

Robert Allan Stone,
Respondent,

vs.

Martha Patricia Saenz,
Appellant,

and

Scott County,
Intervenor.

**Filed September 4, 2012
Affirmed
Worke, Judge**

Scott County District Court
File No. 70-FA-09-18287

Christopher S. Petros, Tuttle Bergeson Petros, P.A., Shakopee, Minnesota (for respondent)

Jill Clark, Golden Valley, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

In this custody dispute, appellant-mother argues that the district court failed to (1) conduct a best-interests analysis and relied solely on the report of a custody evaluator who was biased against her, and (2) consider joint custody. We affirm.

DECISION

Appellant Martha Patricia Saenz argues that the district court abused its discretion by granting respondent Robert Allan Stone sole legal and sole physical custody of the parties' daughter, O.R.S. (DOB 03/30/2007). District courts have broad discretion in determining child-custody matters. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate review is limited to whether the district court "abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). We will sustain the district court's findings of fact unless they are clearly erroneous, viewing the record in the light most favorable to the findings. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Custody determinations must center on the child's best interests. *Id.* at 476; Minn. Stat. § 518.17, subd. 1(a) (2010) (stating that a district court must consider, at minimum, the thirteen statutory best-interests factors to the extent they are relevant). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness*, 607 N.W.2d at 477.

Appellant argues that the district court failed to conduct an independent best-interests analysis and, instead, relied solely on the report of the custody evaluator who

was biased against appellant. The record shows that the district court conducted a best-interests analysis, which supports the district court's findings.

The parties were never married. When O.R.S. was two-years old, respondent moved the district court to establish paternity and to grant him sole legal and sole physical custody. On August 31, 2009, the district court established paternity, granted the parties temporary legal custody, and issued a parenting-time schedule. In May 2010, the district court appointed a custody evaluator, who issued a report in October recommending that respondent have sole legal and sole physical custody of O.R.S. and that appellant have parenting time. Following a hearing in December 2010, wherein the district court heard testimony from the parties, the custody evaluator, appellant's parenting mentor, appellant's adult daughter, appellant's neighbor, and O.R.S.'s daycare provider, the district court awarded respondent sole legal and sole physical custody of O.R.S. and granted appellant parenting time.

Regarding the best-interests factors, the district court found that both parents desire sole legal and sole physical custody of O.R.S. *See* Minn. Stat. § 518.17, subd. 1(a)(1). The district court found that respondent and O.R.S. have a very loving relationship and that O.R.S. has a strong emotional attachment to respondent. *Id.*, subd. 1(a)(4). The court found that neutral observers noted that appellant is also a loving and nurturing parent. *Id.* The district court found that O.R.S. is well-adjusted to both parents' homes. *Id.*, subd. 1(a)(6). And the district court found that both parents have demonstrated a high capacity for giving O.R.S. love and affection. *Id.*, subd. 1(a)(10).

But the district court found that respondent, who has a more permanent residence and steady employment, has provided a more stable environment for the child. *Id.*, subd. 1(a)(7). And the district court also found that while respondent does not wish to cut appellant out of O.R.S.'s life, appellant has consistently denied respondent access to O.R.S. *Id.*, subd. 1(a)(13). The district court specifically found that appellant significantly interfered with respondent's telephone contact with O.R.S. The district court noted that when respondent called appellant's home to talk with O.R.S., appellant allowed her other minor daughter and other individuals to use inappropriate language in speaking to respondent. Further, the district court found that appellant is disrespectful toward her children's fathers in the children's presence, which overshadows her ability to focus on her children's needs. Additionally, the district court found that O.R.S. witnessed appellant assault appellant's other minor daughter's father. *Id.*, subd. 1(a)(12). The district court stated that appellant had "highly contentious relationships" with her children's fathers and that appellant's inability to "control her anger toward the fathers, is a risk factor for [O.R.S.]"

The district court's findings are supported by the record. The custody evaluator's report states that respondent desires custody of O.R.S. because he is concerned that she is not safe in appellant's care and because appellant has denied him access to his daughter. Appellant, on the other hand, desires custody of O.R.S. because she believes that O.R.S. is attached to her and appellant does not want respondent to have any contact with O.R.S. The custody evaluator also expressed "grave concerns about the appropriateness of [appellant] as primary caregiver" based on information that she received from an

employee of Scott County Mental Health Services who conducted a parenting assessment and made observations during home visits. This individual noted that as to both O.R.S. and her other daughter, who is three years older, appellant experiences difficulty providing structure, becomes agitated when the children do not follow her directives, struggles to set age-appropriate boundaries, is unable to suppress her emotions, and has both children sleep in her bed with her. This individual further reported that appellant “has demonstrated that her need to discuss her negative feelings toward the children’s fathers overshadowed her ability to focus on the children’s immediate needs.”

The custody evaluator stated concerns regarding appellant’s ability to encourage and permit respondent contact with O.R.S. The temporary order granted respondent unlimited telephone contact with O.R.S. Respondent kept records of his attempts to reach O.R.S. by telephone, which indicated that appellant’s telephone is usually busy or calls are screened by an answering machine. The custody evaluator determined that appellant demonstrates “an appalling pattern of interference with [respondent’s] phone access to [O.R.S.]” And even though he was rarely allowed to speak to O.R.S., when he did, respondent’s calls were cut short “by a hang up.” Additionally, respondent recorded calls in which appellant “mimic[ked]” respondent in the background. In another call, appellant’s other minor daughter called respondent a derogatory name. In yet another call, respondent asked to speak with O.R.S. and appellant’s other minor daughter stated, “It’s the f***ing a**hole[.]” The custody evaluator expressed concern not only with the behavior, but that there was no adult intervention. The custody evaluator also listened to

a phone call in which respondent asked to speak with O.R.S. and appellant responded “with an angry, vulgar, insulting rant about him.”

The district court considered the custody evaluator’s report and testimony. The court also considered the testimonies of respondent, appellant, appellant’s neighbor/friend, appellant’s adult daughter who lived with her father since she was a teenager, appellant’s parenting mentor, and the minor children’s daycare provider. Based on all of the evidence, the district court engaged in a best-interests analysis and determined that it is in O.R.S.’s best interests to live primarily with respondent and for respondent to have sole legal custody of O.R.S.

Appellant asserts, however, that “the district court, having heard much evidence at trial of the bias of the [c]ustody [e]valuator in favor of [respondent] and against [appellant], failed to consider the potential bias [of the custody evaluator].” Appellant states that she “is not identifying a particular type of bias (or reason for the bias), but [] is contending that the way in which the [e]valuator” took information supporting respondent at face value, sought out information that was negative to appellant, took all inferences in favor of respondent, and vilified appellant showed bias.

A review of the record indicates that appellant’s argument is meritless. First, she claims that the evaluator determined that respondent was alcohol free despite evidence to the contrary, but the only “evidence” was appellant’s otherwise unsupported allegations. Next, she claims that the evaluator was biased for requesting a police report. This police report was relevant because it involved appellant assaulting the father of one of her children during a custody exchange, at which O.R.S. was present. Finally, appellant

claims that the evaluator took all inferences in favor of respondent and against appellant and ignored respondent's bad conduct and vilified appellant. But she fails to provide a single example, and there is no support in the record for these assertions. The evaluator's concerns were based on observed behaviors, recorded telephone conversations, and information that she received from other individuals.

Finally, appellant argues that the district court failed to consider joint custody. This is inaccurate. When a party requests joint custody, courts must employ a rebuttable presumption that joint legal custody is in the child's best interests. Minn. Stat. § 518.17, subd. 2 (2010). When the record demonstrates that the parties "lack the ability to cooperate and communicate, joint legal custody is not appropriate." *Wopata v. Wopata*, 498 N.W.2d 478, 482 (Minn. App. 1993). In such cases, joint custody would compromise the child's well-being by increasing conflict between the parents. *Heard v. Heard*, 353 N.W.2d 157, 162 (Minn. App. 1984). When joint custody is at issue, the court considers:

- [1] the ability of parents to cooperate in the rearing of their children;
- [2] methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
- [3] whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and
- [4] whether domestic abuse, as defined in section 518B.01, has occurred between the parents.

Minn. Stat. § 518.17, subd. 2.

The district court found that appellant and respondent have no ability to cooperate on O.R.S.'s behalf because appellant "refuses to communicate with [respondent] and she

clearly holds him in disdain. On the rare occasions when they have telephone contact, she is vulgar and rude. She does not view her children's fathers as parenting partners." The district court also found that it would be "detrimental to [O.R.S.] if [appellant] were to have the sole authority over [her] upbringing. She may marginalize [respondent's] role in [O.R.S.'s] life and eventually damage her relationship with him." The district court found that it would not be detrimental to O.R.S. if respondent were granted sole custody because he "has shown strong concern for [O.R.S.'s] well-being" and he has "a track record" of encouraging his children to continue relationships with their mothers.¹ The district court did not abuse its discretion in awarding respondent sole legal and sole physical custody of O.R.S.

Affirmed.

¹ Respondent has an adult son from a previous marriage.