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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0754**

In the Matter of the Welfare of the Child of:
L. D.-P., Parent.

**Filed October 29, 2018
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-JV-16-3728

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Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-mother argues that the juvenile court lacked jurisdiction to modify visitation and abused its discretion by imposing restrictions on visitation that were not recommended by the guardian ad litem (GAL), delegating authority to the child to determine a visitation schedule, and finding that it was not in the child's best interests to increase visitation without certain parameters. We affirm.

FACTS

Appellant-mother L.D.-P. and respondent-father B.P. are the parents of a daughter, born in October 2005. In January 2016, respondent Hennepin County Human Services and Public Health Department (the department) filed a petition alleging that daughter was in need of protection or services. The department subsequently petitioned to transfer permanent legal and physical custody of daughter from mother to father, and the juvenile court granted the department's petition. The order granting the petition stated that mother "shall have the right to reasonable visitation/parenting time with the child." The order also stated that "[a]n application seeking modification of this custody order must be made to the Juvenile Court pursuant to Minn. Stat. § 260C.521, subd. 2, and the standards of Minn. Stat. § 518.18 and § 518.185."

In December 2017, mother moved to transfer custody and visitation issues to the jurisdiction of family court, or in the alternative, for a visitation modification consistent with the best interests of the child. Father opposed the motions and requested the appointment of a GAL to represent daughter's best interests. The juvenile court assigned

a GAL and ordered him to investigate and compile a report concerning daughter's position. The GAL reported daughter's impression that the most recent visit with mother "did not go well" and that daughter was "very uncomfortable" during the visit. Daughter told the GAL that she was "open to the idea that the visits could be conducted in a therapeutic setting" but did not want a "forced, 'set' visitation schedule." The GAL recommended that mother and daughter participate in a "restorative parenting process" and follow a provider's recommendations so that visitation can be safe and productive. Both parents supported the GAL's recommendations.

In its order, the juvenile court stated that it did "not specifically retain jurisdiction for this matter" in its order transferring legal and physical custody to father. However, citing a 2014 district-wide standing order, the juvenile court determined that it had jurisdiction over the case and denied the request to transfer the matter to family court. The juvenile court also concluded that, although it was in daughter's best interests to have a relationship with mother, certain parameters were necessary to ensure daughter's overall safety. To that end, the district court gave daughter authority over certain elements of visitation, including the duration and location of visits, whether to add visits, whether to engage in reunification therapy, and which therapy provider to use. These parameters were not addressed in the GAL's report. This appeal followed.

DECISION

Jurisdiction

Mother argues that the juvenile court erred by declining to transfer the case to family court. This court reviews questions as to the district court's jurisdiction de novo. *Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015).

“The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services” Minn. Stat. § 260C.101, subd. 1 (2016). The juvenile court also has “original and exclusive jurisdiction in proceedings concerning . . . permanency matters under sections 260C.503 to 260C.521.” *Id.*, subd. 2(2) (2016). Those sections lay out possible permanency dispositions, including that “[t]he court may order permanent legal and physical custody to a fit and willing relative in the best interests of the child.” Minn. Stat. § 260C.515, subd. 4 (2016). If the juvenile court transfers permanent legal and physical custody to a relative, it must follow the relevant statutory standards as well as “the procedures in the Minnesota Rules of Juvenile Protection Procedure.” *Id.*, subd. 4(2).

Under rule 42.07, subdivision 1, of the Minnesota Rules of Juvenile Protection Procedure, “[t]he court may order transfer of permanent legal and physical custody to a fit and willing relative pursuant to [Minn. Stat.] § 260C.515, subd. 4.” But “[i]f the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court.” Minn. R. Juv. Prot. P. 42.07, subd. 2. “If the court retains jurisdiction, [it] may order further in-court hearings at such intervals as it determines to be in the best interests of the child” *Id.*, subd. 3.

Here, in its order transferring permanent legal and physical custody to father, the juvenile court stated that “[a]n application seeking modification of this custody order must be made to the Juvenile Court pursuant to Minn. Stat. § 260C.521, subd. 2, and the standards of Minn. Stat. § 518.18 and § 518.185.” We read this statement as a specific retention of jurisdiction. Admittedly, in its order denying mother’s motions, the juvenile court concluded that it “did not specifically retain jurisdiction for this matter.” However, we review questions of jurisdiction de novo and are not bound by this conclusion. Because we conclude that the juvenile court specifically retained jurisdiction over this case within the meaning of rule 42.07, we need not address the effect of the 2014 district-wide standing order relied upon by the juvenile court.

GAL recommendations

Mother argues that the juvenile court erroneously declined to follow the GAL’s recommendations and failed to make explicit findings explaining its reasoning. The district court has broad discretion to determine the best interests of the child, and that determination is reviewed for an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). A district court is not bound by an independent evaluator’s recommendation. *Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993), *review denied* (Minn. Jan. 28, 1994). However, if the district court rejects an independent evaluator’s recommendation, it must express its reasons for doing so, or provide detailed findings considering the same factors as the evaluator. *Id.*

Here, in its findings-of-fact section, the juvenile court recited the findings from the GAL’s report as well as the GAL’s recommendations. In its analysis section, the juvenile

court stated that the GAL “has suggested that the family engage in some sort of therapeutic program, such as restorative parenting, to help [mother] and [daughter] rebuild their relationship.” While the juvenile court agreed that it was “in [daughter]’s best interests to have a relationship with her mother[,]” it noted that it did “share some of [father]’s concerns regarding [mother]’s stability. For those reasons, [it found] that it is in [daughter]’s best interests to set up initial boundaries regarding visitation and contact.” The juvenile court then explained that mother’s fractured relationship with daughter “is largely, if not entirely, of [mother]’s making” and that mother’s “blunderbuss approach thus far is ill-considered.”

The bases for the juvenile court’s departure from the GAL’s recommendations were: (1) it had some “concerns regarding [mother]’s stability,” and (2) mother’s approach to the “issue of visitation has been demanding, bullying, litigious and further damaging to the mother/daughter relationship.” Although the exact nature of the juvenile court’s concerns about mother’s stability are not immediately clear, in its findings of fact, the juvenile court discussed father’s concerns that mother had missed several opportunities to visit daughter, had asked daughter to engage in “secret communications,” and had provided no documentation of sobriety. In light of the juvenile court’s broad discretion to determine the best interests of the child, we conclude that the juvenile court did not abuse its discretion by declining to follow the GAL’s recommendations for implementation of a restorative-parenting therapeutic program.

Input from daughter

Mother argues that the juvenile court improperly gave daughter, who was 12 years old at the time of the order, “significant input and decision-making authority relative to the

frequency and duration and other aspects of parenting time and the restorative parenting process.” In determining custody and visitation,¹ a child’s preference must be given substantial weight if the child is old enough to express a preference. *Barrett v. Barrett*, 394 N.W.2d 274, 279 (Minn. App. 1986). A child’s preference with respect to custody and visitation matters is of “predominant importance.” *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991); *see also State ex rel. Feeley v. Williams*, 222 N.W. 927, 928 (Minn. 1929) (giving significant weight to the preference of a child who was 12 and a half years old in determining custody).

Here, daughter reported to the GAL that her most recent visit with mother “did not go well” and that daughter was “very uncomfortable” during the visit. The juvenile court also found that it was “beyond dispute that [daughter] has suffered trauma from her mother’s actions over the past several years.” Daughter told the GAL that she was “open to the idea that the visits could be conducted in a therapeutic setting” but did not want a “forced, ‘set’ visitation schedule.” For these reasons, the juvenile court gave daughter input with respect to aspects of future visitation.

¹ Both parties use the terms “visitation” and “parenting time” interchangeably in their briefs. In a recent case, this court noted that the juvenile court repeatedly used the terms “visitation” and “parenting time” interchangeably, and that to do so was error. *In re Welfare of Child of A.H.*, 879 N.W.2d 1, 6 (Minn. App. 2016). This court also noted that the juvenile-protection statutes repeatedly discuss visitation, and that these statutes define “bests interests” without reference to the parenting-time statute, Minn. Stat. § 518.175. *Id.* This court stated that “juvenile-protection statutes neither require nor allow the juvenile court to use the family court marital-dissolution statutes to establish or evaluate visitation, which the juvenile court has the authority to award.” *Id.* The juvenile court, in reliance on *A.H.*, determined that it should treat mother’s motion as a motion to modify visitation, rather than parenting time. We conclude that the juvenile court did not err in reaching this conclusion.

We are concerned that the juvenile court's order may require daughter to play an uncomfortable role in controlling future visitation. *See Barrett*, 394 N.W.2d at 279 (stating that a district court may not delegate its role of determining an appropriate visitation schedule to a child). "It is not in . . . children's best interests to become bargaining agents between their parents in working out arrangements for each visitation." *Id.* Nonetheless, in light of daughter's statements concerning recent visitation and the history of trauma as a result of mother's actions, we conclude that the district court did not abuse its discretion by permitting daughter to control certain aspects of future visitation.

Best interests of the child

Mother argues that the juvenile court erred by issuing a decision contrary to the best interests of the child and the weight of the evidence. In particular, mother argues that the juvenile court erred by deciding that it was not in daughter's best interests to increase mother's visitation.

The district court has broad discretion to determine visitation issues and will not be reversed absent an abuse of discretion. *Olson*, 534 N.W.2d at 550. The district court abuses its discretion if it misapplies the law or if its findings are unsupported by the record. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). The district court's findings of fact will be upheld unless they are clearly erroneous. *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). In making a visitation determination, the district court must assess whether visitation is in the best interests of the child. *A.H.*, 879 N.W.2d at 6. Juvenile-protection statutes define "best interests" as including "all relevant factors to be considered and evaluated." Minn. Stat. § 260C.511(a) (2016).

Here, mother requested amendments to the visitation schedule, including: (1) a “set parenting time schedule whereby [mother] ha[s] certain set days and times of in-person parenting time with [daughter], to be initially supervised by a third party”; (2) “remote contact, such as telephone contact and Facetime contact, which will give [mother] the opportunity to grow [her] relationship with [daughter] and keep [mother] better apprised of [daughter’s] everyday life”; and (3) a “set parenting time schedule in a greater quantity than [father] has been allowing.” The juvenile court granted mother’s request for a modification, but determined that “[t]o facilitate the relationship” between mother and daughter, “certain parameters are necessary to ensure [daughter]’s physical, mental, and emotional safety.” The juvenile court based this conclusion on its finding that it “share[d] some of [father]’s concerns regarding [mother]’s stability.” The juvenile court also found that mother’s “approach to the issue of visitation has been demanding, bullying, litigious and further damaging to the mother/daughter relationship.”

The GAL stated that daughter was “very uncomfortable” during a recent visit with mother and felt “fear, nervousness, and anxiety” during the visit. Daughter “made it clear to the GAL that she ‘does not feel comfortable with how the visits have gone’ and is open to the idea that the visits could be conducted in a therapeutic setting.” Daughter also told the GAL that she did not want “a forced, ‘set’ visitation schedule at this time.” The GAL stated that although mother claimed to have been sober for several months and attended alcohol-addiction programming, mother could not provide any documentation demonstrating sobriety. We conclude that the record contains evidence supporting the juvenile court’s “concern” as to mother’s stability as well as the juvenile court’s finding

that mother's approach to visitation has further damaged her relationship with daughter. The juvenile court did not abuse its discretion by making findings as to daughter's best interests.

Affirmed.