STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1229

In re the Marriage of: John Richard Strosahl, petitioner,
Respondent,

vs.

Doreen Strosahl,
Appellant.

Filed September 16, 2019
Affirmed
Hooten, Judge

Carver County District Court
File No. 10-FA-16-404

John M. Jerabek, Tom Tuft, Tuft, Lach, Jerabek & O'Connell, PLLC, Maplewood, Minnesota; and

Donna Gray, Law Office of Donna M. Gray, Minneapolis, Minnesota (for respondent)

Valerie Arnold, Micaela Wattenbarger, Arnold, Rodman & Kretchmer, P.A., Bloomington, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Klaphake, Judge.*

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

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this appeal from a marriage dissolution judgment and decree, appellant mother argues that the district court abused its discretion by awarding sole physical custody of the parties' minor child to respondent father, denying her post-trial motions, and sealing the court records. We affirm.

FACTS

Appellant Doreen Strosahl (mother), who is from Germany, met respondent John Richard Strosahl (father), who is from the United States, when they were both working for the same company in Germany. They began dating in 2006 and married in 2010. Shortly after, they moved from Germany to Minnesota, where father's parents lived. In late 2012, while they were living in Minnesota, their daughter, H.S.S., was born.

In June 2016, the parties separated and later filed for dissolution of their marriage. During a contentious trial before the district court, the parties' major dispute involved the custody of their daughter. At trial, mother alleged that father had domestically abused her, citing one specific instance of sexual assault in 2014. Further complicating the matter, mother decided to return to Germany, where her family lived, and proposed bringing H.S.S. to live with her there for 40 weeks out of the year. While H.S.S. has visited Germany, she has only lived in Minnesota.

In December 2017, the district court issued a dissolution judgment and decree. The district court found that there was insufficient evidence to conclude domestic abuse had occurred. The district court determined that it was in H.S.S.'s best interest to continue to

live in Minnesota and not relocate to Germany. To effectuate the best interests of the child, the district court awarded father sole physical custody of the child, with the parties sharing joint legal custody. Practically, that meant that father would have custody during the majority of the school year, while the child would spend the majority of her summer and school breaks with her mother in Germany. The district court also set forth a joint physical custody schedule that would take effect if mother returned to the United States for an extended period.

In February of 2018, mother moved for amended findings, a new trial, and to reopen the record. That May, the district court denied the motion for a new trial, but issued an amended findings, order, and judgment. Mother appeals from the judgment and decree, the denial of her motion for a new trial, and the amended findings.

D E C I S I O N

I. The district court did not abuse its discretion in awarding custody and parenting time.

The district court has broad discretion in deciding parenting-time questions and will not be reversed absent an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). "Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record." *Id.* (quotation omitted). "On appeal, findings of fact are accepted unless they are clearly erroneous." *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014).

a. The district court's findings of fact were not clearly erroneous.

This court will "set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). "When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). When reviewing a district court's findings of fact, an appellate court need not always recite all of the evidence in the record which supports each challenged finding. *See Wilson v. Moline*, 47 N.W.2d 865, 870 (Minn. 1951). When there are facts in the record that support the district court's findings, those findings are not clearly erroneous, even if the district court also could have reached a different conclusion. *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 780 (Minn. 1989).

Most of mother's assignments of clear error fail because there is at least some evidence in the record that supports the district court's findings, even though she sometimes points to evidence that would have also supported the district court had it reached the opposite conclusion. For example, mother argues that the district court clearly erred in accepting the recommendation of the custody evaluator that H.S.S. stay in Minnesota with father, noting that the custody evaluator had initially indicated that she would have obtained custody of her daughter if she were to continue living in Minnesota. But the custody evaluator explicitly explained that it was her opinion that relocation of the

minor child to Germany would result in the "loss of a significant father-daughter relationship," which would be "a detriment to [H.S.S.] that is not outweighed by the positives that the relocation [to Germany] might bring."

Mother also argues that the district court erred when it found that domestic abuse was not a significant factor in the parties' relationship, and that there was insufficient evidence of abuse to find that abuse ever occurred. It based these findings on the lack of evidence, specifically "that there is insufficient credible evidence to support the claims of domestic violence." Mother argues that findings that domestic abuse did not occur, and that it was not a significant part of the relationship are clearly erroneous.[1]

But the record supports the district court's finding that father "categorically denied the sexual assault incident" in that father testified that he "never forced" himself upon mother. And, the district court made explicit credibility determinations regarding mother's allegations of domestic abuse. *See Goldman*, 748 N.W.2d at 284 (holding that this court must give "deference to the district court's opportunity to evaluate witness credibility"). The district court noted, "Neither party has sought or previously obtained an Order for Protection against the other, or on behalf of the minor child. There are no police reports

[1] Mother also argues that the finding is clearly erroneous "because the district court made an error of law in the burden of proof it placed on appellant." First, mother does not cite to any legal authority to support this argument, and it is therefore forfeited. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (noting that an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is forfeited unless prejudicial error is obvious on mere inspection). Second, it does not appear that the district court placed a burden of proof regarding the allegations of domestic abuse on either party. It is unclear what burden mother is alleging the district court applied, where or how it applied that burden, or how mother was prejudiced by the alleged error.

and [mother] has not sought medical attention for any injuries." The district court noted all of mother's testimony about the claimed abuse and found that she was inconsistent in her reporting of the existence of domestic abuse to third parties. Its conclusion that there was insufficient evidence of domestic abuse is very clearly supported by the record.[2]

Mother also challenges the district court's finding that she agreed that father could stay with her and the child when he came to Germany. Although she had previously told the custody evaluator that she was looking for a residence with a separate living space where father could stay when he came to visit the child in Germany, at trial, she testified that because of the domestic abuse, she no longer felt comfortable with father staying with her when he came to Germany. The district court appears to have simply found mother's later contradictory testimony at trial not credible. The fact that mother made this previous statement supports the district court's finding that there was insufficient evidence of domestic abuse and that domestic abuse was not a significant factor in the parties' relationship.

Mother alleges that the district court clearly erred when it found that "the Court does not believe that domestic violence will be an issue going forward between the parties or with [H.S.S.]." While this finding is mainly supported by the same evidence that supported the finding that there was insufficient evidence of domestic abuse in the past, this court only concludes that findings are clearly erroneous when we are left with a "definite and

[2]While mother contests the district court's finding that, "[w]hile several of the [domestic *abuse] incidents allegedly took place in front of [H.S.S.], none of the alleged incidents* directly involved [H.S.S.]," she concedes that she is not claiming that the child was the subject of any abuse.

firm conviction that a mistake has been made." *Id*. And here, where there is insufficient evidence of any domestic abuse at any time in the past, it follows that there is unlikely to be domestic abuse in the future.

Mother claims that the district court clearly erred when it found that, in her words, "though the parties have had some conflict, they have been able to successfully co-parent since their separation." Mother argues on appeal that in actuality "there has been ongoing tension and conflict during parenting time exchanges." Even taking mother's characterization of the evidence and argument at face value, it does not contradict the district court's finding that the parties have had some conflict, but have been able to successfully co-parent. This finding is supported in the record by testimony from both parties. For example, mother testified about shifting communication methods after the separation, and admitted that they have been able to "effectively communicate" depending on the case. And father described mother as a "good mom," testifying "we're both very loving."

Mother argues that because father testified that he was in a new relationship and did not have a kindergarten picked out, it was clearly erroneous for the district court not to find that "the child's life would, in fact, be more stable and predictable if permitted to relocate to Germany." The district court found that moving H.S.S. to Germany would result in "significant changes that would greatly affect [H.S.S.'s] well-being and development" and that her "everyday routine would drastically change." It also found that if H.S.S. remained in Minnesota "she will continue to reside at the farm that has been her home for several years," and that the child's "home, daycare, and community would substantially remain the

same." Mother challenges the finding that the child would remain at "the farm" in Watertown, arguing that father and the child have moved in with father's girlfriend in Eden Prairie, Minnesota. But, mother does not argue that the child's home is not "substantially similar" to the house where she spent the first few years of her life. Because it was undisputed that the child has lived in Minnesota all of her life and had only visited Germany occasionally, the district court did not clearly err in its findings regarding the effect that a move to Germany would have on the child's everyday routine.

Mother argues that the district court's finding that H.S.S. had a "nanny/babysitter" during the evenings during mother's parenting time was clearly erroneous. But father testified that one of the child's "teachers from daycare was also doing some side work in the evenings" and that "[a]pparently she helped out [mother] in some of the evenings." This support in the record for the district court's finding renders it not clearly erroneous.

Finally, mother assigns as error a number of "findings of fact" that the district court should have made. But, a district court need not make findings of fact explaining its decision "where the record is reasonably clear, where the order decides the disputed facts, where the findings are immaterial, or if no findings in favor of the appellant are justified." *Wakefield v. Anchor Bancorp, Inc.*, 416 N.W.2d 814, 819 (Minn. App. 1987) (quotations and citations omitted). Specifically, mother complained that the district court failed to acknowledge or state her motivations for recording the parenting time exchanges with father, but found that her constant recording of her interactions with father contributed to the conflict between them. But that is not what the district court found. The district court found that both parties contributed to the conflict, but only found that father "testified that

[appellant] was constantly recording him." The district court did not state that it was giving significant weight to this testimony, or that father was credible in his testimony. Mother also claims that while the district court was correct in finding that the custody evaluator found that H.S.S. has an intimate relationship with both parents, it represents clear error for the district court not to have found that the custody evaluator stated that H.S.S. spent significantly more time with mother than father. But the district court found that the custody evaluator determined that mother had been H.S.S.'s primary parent, "in sometimes greater amounts than others," for most of H.S.S.'s life.

In addition, mother complains that the district court failed to make the following findings: (1) that father testified that he could see her phone in one of the 180 videos she took of father that she turned over during discovery; (2) stating the reasons why father was concerned that mother would not support H.S.S.'s American culture; (3) her reporting of an alleged occurrence of sexual assault by father to her therapist; and (4) that the custody evaluator had recommended that father continue with his parenting coach. On appeal, mother fails to establish why these findings are relevant or meaningful to any further analysis, or how the district court possibly erred in not making these findings. *See Wakefield*, 416 N.W.2d at 818–19 (noting that district courts need not make findings about irrelevant facts). As to the reasons why father was concerned that mother would not support H.S.S.'s American culture, the district court found that father testified that "history has shown that [mother] is not accommodating to the American culture." Specifically, father reported that mother had stated that Americans "have no fashion sense," are fat, and "don't understand social skill sets [any]more as everybody focuses on their family and

doesn't have a more active social life with their friends." Father's testimony regarding mother's own struggle with assimilation and criticisms of American culture supported the district court's finding regarding father's concerns about whether mother would support the child's American culture.

b) The district court did not abuse its discretion in applying the best-interests factors.

While mother does not dispute that the custody evaluator's initial recommendation was based on the erroneous assumption that mother would remain in Minnesota, she nonetheless maintains that the district court should have weighed this initial recommendation more heavily in its consideration of the best-interests factors. She also challenges the district court's conclusions applying the best-interests factors, including its conclusion that it was in H.S.S.'s best interests to continue to see her current doctors in Minnesota for treatment of her congenital cataracts. Yet, mother fails to identify why any of the district court's findings were "clearly erroneous" or that the district court abused its discretion in weighing the evidence. Fact-finding errors "must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 465 (Minn. 1944). Mother neither explains why she begins with the presumption that an error occurred, nor does she explain in each case what the alleged error could be. Her challenge is with regard to the district court's weighing of what is best for the child, rather than the factual

foundation for that application of discretion, and was therefore committed to the discretion of that court. *See Vangsness*, 607 N.W.2d at 477.[3]

Mother challenges the weight that the district court gave to the custody evaluator's recommendations in light of its questioning of the evaluator's neutrality. But, the district court, while acknowledging its concerns, indicated that it "still considers her report and file with the weight it deserves." Because this court defers to the district court's credibility determinations, this claim also fails. *See Goldman*, 748 N.W.2d at 284.

The district court is required to make custody and parenting-time determinations based on the best interests of the child, considering the factors laid out in Minn. Stat. § 518.17 (2018). When "supported by defensible findings that address relevant best-interests factors," "there is no articulated, specific standard of law available for use of the appellate court when reviewing whether a best-interests determination . . . constitutes an abuse of [district] court discretion or misapplication of the law." *Vangsness*, 607 N.W.2d at 477. "Put differently, current law leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Id.*

While we review the factual support for clear error, "In matters of custody, the [district] court is vested with a wide discretion, and its determination will not be reversed unless there is a clear abuse of that discretion." *LaBelle v. LaBelle*, 207 N.W.2d 291, 292 (Minn. 1973). While a misapplication of law does constitute an abuse of that discretion,

[3] Furthermore, it does make logical sense that the doctors who have seen and treated H.S.S. for her entire life would be best equipped to continue treating her, and even under the clearly erroneous standard of review we would not be "left with the definite and firm conviction that a mistake has been made." *Goldman*, 748 N.W.2d at 284.

"[w]e cannot reweigh the evidence presented to the [district] court." *Vangsness*, 607 N.W.2d at 475.

Mother argues that the district court, in its consideration of the best-interests factors, applied a "disparate standard" in analyzing: the willingness and ability of each parent to satisfy the child's cultural needs and provide consistency under Minn. Stat. § 518.17, subd. 1a(7); domestic abuse under Minn. Stat. § 518.17, subd. 1b(9); and the effect of the custodial arrangement upon the ongoing relationships between the child and each parent and other significant persons in the child's life under Minn. Stat. § 518.17, subd. 1a(9). Mother fails to explain how the district court applied a disparate standard to these factors, or how there is any legal error here. Mother's argument is again simply asking this court to reweigh the evidence, which is not our role. *Id.* Although mother is unhappy that the district court found that father is supportive of the child's German culture while mother is not supportive of the child's American culture, there is evidence in the record to support these findings. While mother does not agree with the district court's conclusion that there was insufficient evidence of domestic abuse, it does not mean that the district court applied an improper legal standard or that the record does not support such finding. The district court found that father would "make more attempts to foster maternal relative relationships than [mother] would to foster paternal relative relationships." While the district court did find that father would make more attempts to foster maternal relationships, it ultimately concluded that this factor was "neutral" to the court's analysis due to the "significant effect on [H.S.S.'s] familial relationship in both [parties'] proposals." Therefore, even if the

district court did apply some disparate standard to this factor, it is unclear how mother could have been prejudiced by the alleged error such that she would be entitled to reversal.

(c) Grant of sole physical custody to father.[4]

Mother claims that the district court misapplied the law when it granted sole physical custody to father. This does not mean that mother will never get to see the child, as the district court's order does result in the child spending the majority of time in Germany when school is not in session.[5] What this disposition does mean is that father will have control over "the routine daily care and control and the residence of the child." Minn. Stat. § 518.003, subd. 3(c) (2018).

Mother claims that this ruling was incorrect as a matter of law because "no evidence was offered at any time that sole physical custody" for father was appropriate. Mother is wrong. The custody evaluator, after a thorough investigation, concluded that it was in the child's best interest to remain living in America, and mother made it clear that she was moving back to Germany regardless of the district court's decision. This only left the option of the child living for most of the year with father in the United States, and father

[4] Mother also alleges that the district court erroneously "found" that it is in H.S.S.'s best interest that father receive sole physical custody and that the child should remain in Minnesota. Mother also alleges that the district court "made a finding that joint legal custody is in the child's best interest." But as noted in the standard of review, the ultimate best-interest determination is not a factual finding. *Vangsness*, 607 N.W.2d at 475 ("The [district] court's determination of the ultimate best-interests issue will be affirmed unless it constitutes an abuse of the [district] court's discretion or the [district] court rationale suggests an erroneous application of law."). Therefore, mother's "clearly erroneous" argument fails with regard to these determinations.

[5] Furthermore, the order laid out a roughly equal, in mother's favor, monthly parenting-time schedule that the parties will utilize if mother travels to the United States.

never objected to this plan or argued that it was a mistake. There is evidence in the record supporting the district court's decision, and mother has failed to provide any legal authority explaining or holding why this evidence is insufficient.

Mother cites to *Miller v. Miller* to support her argument that because father had initially agreed to split physical custody when both were living in Minnesota, he should not be awarded sole physical custody. 415 N.W.2d 920 (Minn. App. 1987). But that case is inapposite. First of all, that case involved a dispute about legal custody rather than physical custody. *Id.* at 923. The father in *Miller* already had sole physical custody of the child and neither party was challenging that. *Id.* Second, unlike here, the parties in *Miller* had an agreement regarding legal custody. The court noted, "It is evident to both parties that the grant of sole legal custody to respondent was a mistake. The parties had agreed to the contrary. No evidence was offered at any time that sole legal custody is appropriate." *Id.* Here, to contrast, father has at all times advocated for H.S.S. not to relocate to Germany. His initial proposal of splitting physical custody was based on the assumption that mother would remain in Minnesota. When mother clarified that she has no intention of staying in Minnesota regardless of the placement of the child, father changed his position regarding physical custody.

(d) Grant of joint legal custody to both parties.

Mother asserts that the district court erred when it failed to apply the presumption against joint legal custody created by Minn. Stat. § 518.17, subd. 1(b)(9). But this presumption requires a predicate finding of domestic abuse, and despite mother's noted testimony, the district court never made a finding that there was ever any domestic abuse.

Because the district court never made a predicate finding of domestic abuse, a presumption against joint custody would have been a legal error, and the district court correctly did not apply that presumption.

(e) Grant of less than 25% parenting time to mother.

Mother argues that the district court erred when it granted her less than 25% parenting time. Under Minn. Stat. § 518.175, subd. 1(g) (2018), there is a rebuttable presumption that each party is "entitled" to 25% of the parenting time. Father argues that mother forfeited this argument by not raising it to the district court and further notes that the district court essentially adopted mother's parenting plan, with the significant major change that the child remain in the United States rather than relocating to Germany.

Father is correct, and the argument is forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that arguments that are not made to the district court are generally forfeited on appeal). Mother did not raise the issue to the district court, and did not respond to the forfeiture argument in her reply brief. And there is even published caselaw noting that the failure to rebut the presumption in favor of at least 25% parenting time is only error if that presumption is raised to the district court. *Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010) (noting that district courts are required "to demonstrate an awareness and application of the 25% presumption *when the issue is appropriately raised* and the court awards less than 25% parenting time") (emphasis added). Here, mother never raised Minn. Stat. § 518.175, subd. 1(g), to the district court and never argued that there was a rebuttable presumption in favor of at least 25% parenting

time. In fact, this may have been a strategic move by mother, as she was requesting that the district court assign father less than 25% parenting time.

And as noted above, the district court ordered that, at a minimum, H.S.S. spend nine weeks during the summer, Christmas break, and one week for either spring break or Karneval with mother in Germany. Assuming two weeks for Christmas break, that works out to a minimum of 11 weeks a year, or 21.2% custody time. And the order allows H.S.S. to spend significantly more time with mother when she comes to the United States. We therefore hold that mother forfeited the argument that the district court erred by not applying the 25% presumption, because mother never raised the issue to the district court.

To conclude, we hold that the district court did not abuse its discretion when it balanced the best-interest factors, nor when it granted joint legal custody to the parties and sole physical custody of H.S.S. to father.

II. The district court did not abuse its discretion when it denied mother's post-trial motions for a new trial and to reopen the judgment.

Mother argues that the district court erred in denying her post-trial motions for relief based on claims of fraud and irregularities during trial. This court reviews post-trial motions for a new trial for an abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). "A district court abuses its discretion if its decision is against the facts in the record or if its ruling is based on an erroneous view of the law." *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (quotation omitted). "[O]n appeal error is never presumed. It

must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters*, 13 N.W.2d at 464–65.

Mother first argues that the district court erred by not finding that father engaged in fraud or misconduct. Mother argues that the district court's custody determination was based on father claiming that if H.S.S. lived with him she would enjoy continuity in her day care, residence, etc., but that once the district court assigned physical custody to father he "[a]lmost immediately . . . uprooted the child from her community." Father responds that the district court order only found that by remaining with him, H.S.S.'s circumstances would remain "substantially" the same, and that they have remained "substantially" the same. The district court's "Findings, Order, Judgment and Decree-Dissolution Amended" does not appear to directly address mother's claim that father intentionally misrepresented facts to the district court.

We treat the district court's decision not to directly address mother's claims of misrepresentation as an implicit denial of the argument. "[G]enerally, a district court's failure to specifically address or reserve a motion constitutes a denial of that motion." *Anderson v. Anderson*, 897 N.W.2d 828, 832 (Minn. App. 2017), *review granted* (Minn. Aug. 22, 2017) *and appeal dismissed* (Minn. Jan. 30, 2018); *see also Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.*, 775 N.W.2d 168, 177–78 (Minn. App. 2009), *review denied* (Minn. Jan. 27, 2010). Here, while the district court did not directly address mother's claim of misrepresentation raised in her post-trial motion, it did issue amended findings. Crucially, the district court did not modify its award of either physical or legal custody for either party. We treat that decision not to change the custody award as an implicit rejection

of mother's argument, because to act otherwise would require this court to assume that the district court erred in not addressing the argument, which this court is not permitted to do. *Palladium Holdings*, 775 N.W.2d at 177–78 ("[A]ppellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion."). And treating the decision not to address the argument as an implicit denial of that argument, mother does not claim that such a denial is clearly erroneous. We therefore hold that the district court implicitly denied mother's argument, and affirm that denial as mother has not established any error.

Mother also claims that there was an "irregularity" during the trial. This occurred when father disclosed the name of his current girlfriend. The district court stated, "I'll tell you, if I find out *that people are calling her and giving her a hard time, and I see you writing her name down*, there is going to be trouble." Mother characterizes this warning as preventing her "from contacting a potential witness or uncovering information to which she was entitled." But the district court did not instruct mother not to subpoena father's girlfriend or have a representative contact her for legitimate reasons. It only admonished mother, in the middle of a contentious divorce proceeding, not to harass father's new girlfriend. And mother has not cited to any legal authority which would allow this court to reverse the district court for instructing a party in such a manner. *See Waters*, 13 N.W.2d at 464–65. We therefore hold that mother has failed to establish that she is entitled to relief for this supposed "irregularity."[6]

[6] Furthermore, the district court directly asked mother's attorney before father revealed his girlfriend's name, "Is it your intention to call [father's girlfriend] and start asking her

III. Whether the district court erred when it sealed court records is not properly before this court.

Mother also argues that the district court erred in sealing the record. We review a district court's order sealing court records for an abuse of discretion. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 206 (Minn. 1986). "A district court abuses its discretion if its decision is against the facts in the record or if its ruling is based on an erroneous view of the law." *State ex rel. Swan Lake Area Wildlife Ass'n*, 799 N.W.2d at 625 (quotation omitted). Generally, "litigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below," *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957), and an appellate court generally will not consider matters not argued to and considered by the district court. *Thiele*, 425 N.W.2d at 582.

Father argues that this claim is not properly before this court. We agree. Mother did not raise this issue to the district court before this appeal was taken, and so it is not properly before us at this time. It appears that mother made a motion to the district court on this issue some months after this appeal was taken and the district court has deferred consideration of that motion pending completion of this appeal. *See* Minn. R. Civ. App. P. 108.01, subd. 2 (referring to suspension of district court's authority to issue orders affecting

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questions about her relationship with [father]?" And mother's attorney responded, "No." Therefore, mother's current argument that she was prevented from contacting a potential witness is likely also forfeited in addition to being meritless, and is potentially also waived because of mother's attorney's response. *See State v. Beaulieu*, 859 N.W.2d 275, 278 n.3 (Minn. 2015) ("[While] forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.") (quotation omitted).

decision being appealed). We express no opinion on the pending motion, beyond the observation that it is the policy of the judicial branch that case records be accessible to the public, in the absence of a specific exception that limits access. Minn. R. Pub. Access to Recs. of Jud. Branch 2.

Affirmed.