STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0009

In re the Marriage of:
Greta Mae Markuson, n/k/a Greta Mae Garcia, petitioner,
Appellant,

vs.

Brenden Peter Markuson,
Respondent.

Filed September 3, 2019
Affirmed
Ross, Judge

Otter Tail County District Court
File No. 56-FA-12-298

Michael D. Dittberner, Linder, Dittberner and Winter, Ltd., Edina, Minnesota (for appellant)

Joseph R. Ellig, Nycklemoe and Ellig, P.A., Fergus Falls, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

ROSS, Judge

In this child-custody dispute, a mother living in Fargo, North Dakota, hoping to relocate with her children more than 200 miles from the children's father to Sioux Falls, South Dakota, moved the district court to authorize the relocation under the statute that

prohibits the custodial parent from "mov[ing] the residence of the child to another state except upon order of the court or with the consent of the other parent." The district court denied the motion, finding the proposed relocation not to be in the best interests of the children. The mother appeals, arguing that the relocation statute does not apply and challenging the district court's reasons for denying the motion. We affirm the district court's decision to apply the statute that the mother expressly asked the district court to apply, and we affirm its judgment that the proposed move is not in the children's best interests.

FACTS

Brenden Markuson and Greta Markuson (now Greta Garcia) divorced in 2013 under a judgment and decree that gave Garcia physical custody of the parties' two children. The decree gave Markuson parenting time on alternating weekends and holidays during the school year and on alternating weeks during the summer. At the time, Garcia lived in Moorhead, and Markuson lived in Henning, about 90 miles away. The parties' extended families also lived in Henning. Soon Garcia requested Markuson's consent to relocate with the children from Moorhead to Fargo, North Dakota. The additional distance between Garcia and Markuson was negligible, and Markuson consented.

Garcia remarried in 2015, and she and her new husband had two children. Garcia's husband received a job offer in 2018 to work in Sioux Falls, South Dakota, and Garcia asked Markuson's consent to relocate the children there. Her proposed move would add 160 miles to the 90 miles already separating Markuson's home from the children's primary residence. Markuson did not consent. Garcia moved the district court to issue an order

allowing her to relocate to Sioux Falls under the out-of-state relocation statute, Minnesota Statutes, section 518.175, subdivision 3 (2018).

Garcia argued in support of her motion that her 240-mile proposed move would have little impact on Markuson's involvement in the children's day-to-day lives, which she claimed was minimal. Garcia informed the district court that she was not seeking to modify the parenting-time schedule. She said that she might allow Markuson to spend long weekends with the children during the school year and that it was "very possible" she would drive the children to Markuson in the summer. But she did not offer or suggest any change in the parenting-time schedule or commit to do the extra extensive driving that would be required if the district court allowed the move without altering the schedule.

Markuson opposed the motion. He submitted his own affidavit and affidavits from his parents disputing Garcia's representations about Markuson's involvement in the children's lives. The affidavits recounted attendance at the children's extracurricular activities, which they said could not be maintained if Garcia moved the children from Fargo to Sioux Falls.

The district court received documentary evidence, heard oral arguments on the relocation motion, and denied Garcia's motion without an evidentiary hearing. Garcia appeals.

D E C I S I O N

Garcia challenges the district court's denial of her motion for out-of-state relocation under section 518.175. We review the district court's relocation decisions for an abuse of discretion, determining whether the district court made unsupported factual findings or

improperly applied the law. *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 802 (Minn. App. 2013), *review denied* (Minn. Dec. 31, 2013). For the reasons that follow, we hold that Garcia identifies no abuse of discretion.

I

We can easily resolve Garcia's first argument, which is that the district court should never have decided her request under section 518.175. The operative part of that statute declares, "The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree." Minn. Stat. § 518.175, subd. 3(a). According to Garcia's position on appeal (but not in the district court), the statute does not apply here because she had already relocated the children's residence from Minnesota to North Dakota with Markuson's consent, and she was therefore not required to seek his consent or the district court's authorization before relocating to South Dakota.

Garcia's argument faces a barrier at the threshold: the invited-error doctrine "precludes a party from asserting error on appeal which [s]he invited or could have prevented in the court below." *Krenik v. Westerman*, 275 N.W. 849, 852 (1937). Garcia now insists that the district court abused its discretion by applying the very statute that Garcia asked the district court to apply. Garcia's motion expressly sought the district court's "permission to relocate with the minor children . . . to the State of South Dakota *pursuant to Minn. Stat. § 518.175, Subd. 3.*" (Emphasis added.) Her supporting memorandum likewise identified section 518.175, subdivision 3, as the *only* law that controlled her motion, repeatedly cited various parts of the statute, quoted the statute

extensively, and argued that the district court should apply the statute to grant her permission to relocate to South Dakota. But having then failed to convince the district court to grant her the requested permission to relocate under the statute that she asked the district court to apply, on appeal she now argues, "Given that a move already occurred, the subsequent move to South Dakota should not require Mother to seek permission anew" under the statute. There are exceptions to the invited-error doctrine, such as invited jurisdictional defects and invited plain errors. *See In re Hibbing Taconite Mine & Stockpile Progression*, 888 N.W.2d 336, 344 (Minn. App. 2016) (refusing to preclude argument under the invited-error doctrine because the error implicated the court's subject-matter jurisdiction); *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 626 (Minn. 2012) (opining that arguments concerning plain error might not be forfeited under the invited-error doctrine). Those exceptions do not apply here. We will not consider the substance of the forfeited argument.

Garcia argues next that the district court misapplied the best-interests-of-the-children standard to her relocation request. The district court must apply a best-interests standard to out-of-state relocation requests under the statute. Minn. Stat. § 518.175, subd. 3(b). We review a district court's factual findings on a child's best interests for clear error. *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018). Garcia identifies no clear error.

The thrust of Garcia's best-interests challenge focuses on the district court's finding that the relocation would reduce the children's time with Markuson and his extended family. The challenge fails. The district court received evidence that the additional travel time necessary for regular parental exchanges would encroach into his parenting time. It

also received evidence that Markuson currently attends some of the children's extracurricular activities on days of Garcia's parenting time, like their swim meets. We see no clear error in the district court's evidentially supported finding that the additional travel distance would compromise Markuson's ability to attend activities and would encroach on the children's time with him.

We add that Garcia's argument on brief and during the oral hearing in this appeal seemed to imply a threat to relocate the children's residence regardless of the district court's decision or the outcome of this appeal, facilitating her husband's job change by moving approximately the same onerous distance from Markuson but within Minnesota ostensibly to avoid the effect of the statute. Markuson points out the unseemly tenor of the implicit threat, but we choose not to discuss it further because the issue of Garcia's potential flouting of the district court's best-interests determination is not now before us.

II

Garcia argues that the district court's rationale demonstrates that it was actually penalizing her for not moving to modify parenting time. We do not believe this characterization accurately reflects the district court's analysis. A district court abuses its discretion, calling for our reversal, if it misapplies the law. *Anh Phuong Le*, 838 N.W.2d at 802. Garcia correctly observes that the relocation statute does not require a relocation-requesting parent to include a parenting-time modification motion with her motion to relocate. But her argument overlooks her burden of proving that the move was in the children's best interests, including "the feasibility of preserving the relationship between the nonrelocating person and the child[ren] through suitable parenting time

arrangements." Minn. Stat. § 518.175, subd. 3(b)(3). And Garcia specifically informed the district court that she was *not* seeking any changes to parenting time. Garcia suggests that the district court should have granted her motion to relocate and simultaneously modified the parenting-time schedule. But she cites no authority permitting, let alone requiring, the district court to modify parenting time sua sponte to accommodate one parent's motion to move the children. We see no abuse of discretion in the district court's considering how the additional transportation burden would affect parenting time in the context of the extant parenting-time schedule.

III

Garcia argues that the district court abused its discretion by overly emphasizing the relationship between Markuson's parents and the children, weighting the relationship the same as a parent-child relationship. The argument unfairly characterizes the district court's reasoning. The statute directs the district court to consider the impact of Garcia's relocation request on the children's best interests, including on their relationships with Markuson "and other significant persons" in their lives, like their grandparents. *See* Minn. Stat. § 518.175, subd. 3(b)(1). The district court did so, and we see nothing in its reasoned application of this statutory directive that offends a parent's constitutional or statutory rights in the parent-child relationship. *See Troxel v. Granville*, 530 U.S. 57, 69–70, 120 S. Ct. 2054, 2062 (2000) (discussing a parent's fundamental right to parent one's children); *In re C.D.G.D.*, 800 N.W.2d 652, 658–63 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011) (prohibiting district court "from ordering grandparent visitation that interferes with

the parent-child relationship"). The district court's rationale cannot reasonably be interpreted as improperly elevating grandparent rights over Garcia's parental rights.

IV

Garcia argues that the district court wrongly found "that there was no meaningful benefit" to be gained by her husband's work schedule in his new position in Sioux Falls. We will sustain district court factual findings that are not clearly erroneous. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). The district court's factual findings are not clearly erroneous if reasonable evidence supports them. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). The district court was required to consider whether the relocation would enhance the quality of life of both Garcia and the children. *See* Minn. Stat. § 518.175, subd. 3(b)(6). The district court found that, although the new work schedule for Garcia's husband would increase the quality of family time in the Garcia home, this benefit was outweighed by the detriment to the children's ability to spend time with their father. The finding is supported by the evidence. The district court reasoned that the husband's job change did not ultimately result in a benefit to the children after considering the harm the move would cause them. Garcia does not challenge the facts underlying these findings, only the apparent weight that the district court gave the evidence. "On appellate review, we do not weigh the evidence." *Rogers*, 603 N.W.2d at 658. Although a different fact-finder might have weighed the evidence differently, we see no clear error in the district court's findings here.

V

Garcia contends that the district court should have convened an evidentiary hearing on her relocation motion. We review a district court's decision whether to hold an

evidentiary hearing on a relocation motion for an abuse of discretion. *Anh Phuong Le*, 838 N.W.2d at 800. Again we see no abuse of discretion.

The district court was not required to hold an evidentiary hearing. Minn. R. Gen. Prac. 303.03(d)(1) (explaining that the general rule is that motions shall be decided without oral testimony). Garcia's reliance on our decision in *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007), does not support her argument that a hearing was necessary here. In *Thompson*, we observed that a district court should hold an evidentiary hearing on a motion to reopen a judgment and decree of dissolution if there is a genuine issue of material fact in dispute. 739 N.W.2d at 429–30. In *Doering v. Doering*, the case we relied on in *Thompson*, we explained that a motion to reopen a judgment "is an alternative to an 'independent action to relieve a party from a judgment.'" 629 N.W.2d 124, 130 (Minn. App. 2001) (quoting Minn. Stat. § 518.145, subd. 2 (2000)), *review denied* (Minn. Sept. 11, 2001). Because a district court may summarily dispose of a complaint in an independent action for relief from judgment only by summary judgment, we held that that standard should govern whether to hold an evidentiary hearing on a motion to reopen a judgment and decree of dissolution. *Id.* Garcia's motion for relocation does not implicate the same concerns. And she does not establish that the pleadings were insufficient to afford the district court an adequate basis to decide her motion.

Affirmed.