This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0135

In re the Marriage of: Christopher Warren Rupp, petitioner,
Respondent,

vs.

Elisabeth Hastings Felten, f/k/a Elisabeth Hastings Felten Rupp,
Appellant.

Filed November 12, 2019
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-FA-11-2952

Christopher Warren Rupp, St. Paul, Minnesota (pro se respondent)

Elisabeth Hastings Felten, Quakertown, Pennsylvania (pro se appellant)

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

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

REILLY, Judge

Appellant makes several arguments challenging the district court's order denying her motion to modify legal custody and child support. Because the district court neither erred nor abused its discretion, we affirm.

FACTS

Elizabeth Felten (mother) and Christopher Rupp (father) married in 1999, and had a special-needs child in 2001. In September 2011, mother took that child on vacation. Mother later advised father that she would not return to Minnesota. She and the child have lived in Pennsylvania since that time. In October 2011, father petitioned the Minnesota district court to dissolve the parties' marriage. The resulting 2013 dissolution judgment awarded mother sole physical custody of the child, awarded father parenting time, and awarded the parties joint legal custody of the child. Thereafter, mother unsuccessfully petitioned the Pennsylvania district court to accept a transfer of venue of the case. After that, mother moved the Minnesota district court to transfer venue of the case to Pennsylvania on the ground that Minnesota is an inconvenient forum in which to litigate the case. The district court denied that motion, as well as other relief, in May 2016.

In July 2018, father moved the Minnesota district court to enforce prior orders regarding his contact with the child, to adopt certain prior decisions of a parenting time expediter (PTE) regarding father's parenting time, and for other relief. Mother opposed father's motion, and asked the district court to award her sole educational legal custody, to modify parenting time, and other relief. After a hearing, the district court filed an order that, in relevant part, denied mother's requests (a) to modify legal custody; (b) that father pay part of the child's 2014 neuropsychological bill; (c) that father pay over $40,000 in personal-care-attendant and child-care costs for the child; (d) that father pay over $20,000 to reimburse mother for legal fees she incurred bringing a lawsuit against the child's school district; and (e) that father pay a share of future legal costs equal to his share of the parties'

parental income for determining child support (PICS). The district court also (a) reaffirmed father's regular parenting time as previously ordered; (b) granted father parenting time on certain specific dates; (c) reiterated its prior order that father is not required to have the child wear a GPS watch during father's parenting time; (d) granted father's request that mother reimburse him the amount he paid toward mother's portion of a debt owed to the State of Minnesota; and (e) granted father's motion for mother to sign and provide father with certain forms, including the IRS form 8332. Mother appeals.

D E C I S I O N

I. Mother's Challenge to the District Court's May 2016 Order Denying Transfer of Venue Is Not Properly Before this Court.

Mother appears to challenge the district court's May 2016 order denying her motion to transfer venue of the case to Pennsylvania. "It has been the long accepted practice in this state to seek review of a venue order by petitioning this court for a writ of mandamus." *Peterson v. Holiday Recreational Indus., Inc.*, 726 N.W.2d 499, 504 (Minn. App. 2007) (quotation and citation omitted), *review denied* (Minn. Feb. 28, 2007). Here, mother never petitioned for a writ of mandamus.

In addition to addressing mother's motion to transfer venue of this case to Pennsylvania, the May 2016 order addressed the parties' then existing disputes regarding parenting time, appointment of a PTE, and attorney fees. Final orders addressing matters related to child custody are appealable. Minn. R. Civ. App. P. 103.03(h). If an order is appealable, a party may appeal that order within 60 days of the date a party serves written notice of filing of the order. Minn. R. Civ. App. P. 104.01, subd. 1. Here, father served

written notice of filing of the May 2016 order on June 2, 2016, meaning that the time to appeal the May 2016 order expired long before mother took her current appeal. Thus, even if we ignored mother's failure to seek a writ of mandamus, any challenge to the May 2016 order is now untimely and we cannot review it. *See Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1996) (stating that "[e]ven though the decision of the trial court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired"); *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (citing this aspect of *Dieseth* in a family law appeal), *review denied* (Minn. May 16, 2006). We note, however that the district court's May 2016 order weighed the applicable factors listed in Minn. Stat. § 518D.207 (2014), and denied mother's motion to transfer venue because of the district court's "extensive level of familiarity with [the] parties and their child," and level of involvement in the case since its commencement in 2011. Therefore, even if we somehow reviewed the merits of the May 2016 venue decision, we would have great confidence in that decision.

II. The District Court Properly Declined to Hold an Evidentiary Hearing on Mother's Motion to Modify Legal Custody.

Mother argues the district court should have held an evidentiary hearing on her assertion that she should make educational decisions for the child because father's conduct has done educational damage to the child. Legal custody includes the right to make educational decisions for a child. Minn. Stat. § 518.003, subd. 3(a) (2018). Therefore, we read mother's argument as a request for an evidentiary hearing on what was functionally a motion to modify the educational decision-making prong of the legal custody award.

To obtain an evidentiary hearing on an endangerment-based motion to modify child custody, the moving party must make a prima facie case for the relief sought. *In re the Custody of M.J.H.*, 913 N.W.2d 437, 440 (Minn. 2018). A prima facie case for an endangerment-based motion to modify custody requires the moving party to allege, among other things, that "the children's present environment endangers their physical health, emotional health, or emotional development." *Id.* (citation omitted); *see also Matson v. Matson*, 638 N.W.2d 462, 467 (Minn. App. 2002) (noting that the same requirements apply to motions to modify legal and physical custody). When addressing whether a moving party makes a prima facie case, the district court assumes that the moving party's allegations are true, and then exercises its discretion to determine whether those allegations amount to a prima facie case to modify custody. *Boland v. Murtha*, 800 N.W.2d 179, 183 (Minn. App. 2011). On appeal from an order that denies, without an evidentiary hearing, a motion to modify custody, appellate courts review de novo whether the district court treated the moving party's allegations as true, review for abuse of discretion the district court's decision regarding whether the moving party's alleged facts establish a prima facie case, and review de novo whether the district court properly determined the need for an evidentiary hearing. *Id*.

Mother's affidavit supporting her motion alleges that (a) after she successfully sued the child's school, father refused to sign the resulting agreement with the school district to place the child in a private school for children with autism; (b) father's refusal to sign the agreement delayed the settlement and the child's placement in the school; (c) as a result, the child lost "critical schooling time in her ideal setting;" (d) the school district offered to

extend the agreement for two additional years, but father again refused to sign the extended agreement; and (e) father later did sign the agreement. Treating these allegations as true, the district court stated that the failure to promptly settle the suit "does not show that the child would be endangered if the parties continued to retain joint legal custody. Any delay in signing the settlement terms . . . is due to [mother] commencing the lawsuit on her own without consulting with [father]."

While the concept of endangerment is unusually imprecise, a moving party must show "a significant degree of danger" to satisfy the endangerment element of the test to modify custody. *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (quoting *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991)). Here, the failure to promptly resolve the lawsuit arose, in significant part, out of mother's conduct of that suit without input from father. As a result, any associated danger to the child arose, in significant part, out of mother's conduct rather than father's conduct. Absent more, mother failed to allege that father's conduct created the significant degree of danger necessary to support her motion to modify custody, and the district court did not abuse its discretion in ruling that mother did not make a prima facie case to modify custody. As a result, the district court did not err in not holding an evidentiary hearing on mother's motion to modify the educational decision making prong of the award of legal custody.[1]

[1] On appeal, mother argues that the district court (1) failed to give proper weight to evidence of domestic violence and evidence from Pennsylvania-based sources from 2015; (2) improperly disregarded the fact that the child attempted self-harm due to visitation with father; (3) failed to mention Pennsylvania documents from 2015 indicating that father abused the child; and (4) ignored reports from 2016 allegedly corroborating these matters. On this record, this evidence is not relevant to mother's motion requesting that the district

III. The District Court did not Abuse its Discretion when it Denied Mother's Motions to Modify Various Aspects of Child Support.

Whether to modify child support is discretionary with the district court. *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001) *review denied* (Minn. Feb. 21, 2001). A district court abuses its discretion if it makes findings of fact that are unsupported by the record, misapplies the law, or renders a decision that is contrary to logic and the facts on record. *Johnson v. Johnson*, 902 N.W.2d 79, 84 (Minn. App. 2017); *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016).

We reject mother's challenges to the district court's denial of her motion to modify apportionment of child care costs. When addressing child care costs, "[t]he court must require verification of employment or school attendance and documentation of child care expenses from the obligee." Minn. Stat. § 518A.40, subd. 3(a) (2018). Mother was not in school and did not provide verification of her employment. Therefore, the district court did not abuse its discretion when it denied mother's request on this point.

Asserting that the legal costs she incurred in suing the child's school are "medically necessary educational legal fees," mother challenges the district court's denial of her request that father reimburse her for those costs. Generally, "unreimbursed and uninsured medical expenses" are apportioned between parties based on their respective shares of their combined PICS. Minn. Stat. § 518A.41, subd. 5 (2018). Unreimbursed medical costs are "a joint child's reasonable and necessary health-related expenses if a joint child is covered

---

court grant her sole "educational legal custody" due to concerns that father has not taken appropriate steps to educate himself on the child's educational needs, and does not make decisions in the child's best educational interests.

by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred." *Id*., subd. 1(h) (2018). Here, mother makes no argument and cites no authority to support her assertion that these legal costs are "unreimbursed and uninsured medical expenses." And we see no obvious error in the district court's refusal to treat them as such. Therefore, the question is not properly before this court, and we decline to address it. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that 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").

Mother also challenges the district court's denial of her request that father reimburse her for a neuropsychology bill she incurred for the child. The district court found that mother failed to satisfy the provision of the dissolution judgment requiring that requests for reimbursement of unreimbursed or uninsured medical expenses be made at least semi-annually, and include verification of the amount paid. The bill in question is dated August 1, 2014, and the record lacks evidence that mother requested reimbursement within the timeframe set in the judgment. Mother has not shown that the district court abused its discretion by denying mother's request for reimbursement for the neuropsychology bill.

IV. The District Court did not Abuse its Discretion by Ordering Mother to Sign Federal Form 8332.

Asserting that, as the custodial parent, she pays 100% of child care costs and incurs other support costs for the benefit of the child, mother argues that the district court abused

its discretion when it ordered her to sign federal form 8332, releasing a claim to the child for federal tax purposes. The dissolution judgment awards father the right to claim the child as a dependent for state and federal tax purposes, and requires mother to execute all forms necessary to effectuate this provision. "A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal." Minn. Stat. § 518.145, subd. 1 (2018). Mother did not appeal the dissolution judgment. Therefore, father is entitled to the child dependency exemption, and mother is required to sign the relevant forms. A district court may issue orders to implement or enforce provisions of a judgment, *Erickson v. Erickson*, 452 N.W.2d 253, 255 (Minn. App. 1990), and appellate courts will not alter a district court's implementation of a judgment provision unless the district court abuses its discretion, *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011). Mother does not explain how the district court abused its discretion by enforcing the unchallenged provision of the dissolution judgment awarding father the tax dependency exemption for the child. Therefore, we affirm the district court on this point.

V. The District Court did not Abuse its Discretion Regarding Child's Therapy.

Mother argues that the district court lacks authority to order a mental health provider in Pennsylvania to release the mental health records of the child, who is a Pennsylvania resident. Mother also argues that the district court lacks authority to order the child's therapist to include father in the child's therapy without the child's consent as, under Pennsylvania law, the child is old enough to consent to her own medical treatment.

We initially note that the district court's order does not, in fact, require the therapist to release the child's mental health records. Instead, it requires mother to sign any releases

necessary for the father to obtain those records, and grants father's request to order mother to sign all releases and authorizations necessary for father to participate in the child's therapy. The parties have joint legal custody of the child, and joint legal custody "means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training." Minn. Stat. § 518.003, subd. 3(b) (2018). Thus, the district court's order merely implements the relevant provision of the dissolution judgment. Additionally, the district court is to grant the parties the "right of access to, and to receive copies of: school, medical, dental, religious training, police reports, and other important records and information about the minor children" unless the court finds that not doing so is necessary to protect the welfare of a party or child. Minn. Stat. § 518.17, subds. 3a(1), (b) (2018). The district court made no such finding. Accordingly, given the parties' status as joint legal custodians, father is allowed access to all of the minor child's records and is permitted to be involved in her therapy. The district court's order regarding the child's therapy and associated records was not an abuse of its discretion.

VI. The District Court did not Abuse its Discretion by Ruling that the Child is not Required to Wear the GPS Watch During Father's Parenting Time.

Mother argues that the district court abused its discretion by denying the child access to her GPS watch[2] during parenting time with father. "The district court is granted broad discretion to determine what is in the best interests of the child when it comes to [parenting

[2] The child's watch has global positioning satellite (GPS) technology. Mother refers to it as an "assistive communication device." We use the district court's terminology, and refer to the device as a GPS watch.

time] and we will not overturn its determination absent an abuse of discretion." *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). A district court abuses its discretion if it makes findings of fact that are unsupported by the record, misapplies the law, or renders a decision that is contrary to logic and the facts on record. *Johnson*, 902 N.W.2d at 84.

Mother told the child to wear the GPS watch during visits with father in summer 2017, and wrote on the child's arm under the watch that "if my watch is off I need help." Because the child did not want to wear the watch, father took the watch off the child and erased the writing on her arm. He put the watch back on the child when he returned the child to mother. Realizing the watch had been taken off of the child, mother took the child to the police, and filed a police report against father. In August 2018, the district court adopted the PTE's ruling that father is not required to have the child wear the GPS watch during visits. Mother then filed a motion requesting, in part, that the child's GPS watch "remain on and in [the child's] possession during the visitation" with father. The district court denied that motion, confirming that the child was not required to wear the GPS watch, and ruling that mother's "having the child wear a GPS device, writing on the child, and taking the child to the police station are detrimental to the child and sends a message to the child that [father] has or will harm the child and is dangerous." The district court's findings on these matters are supported by the record. Further, given the district court's discretion

in addressing a child's best interests, we cannot say that it otherwise abused its discretion by ruling that the child need not wear the GPS watch during father's parenting time.[3]

Mother also argues the district court abused its discretion when it refused to hear testimony from the child's trauma therapist, about the purpose, use, and necessity of the GPS watch. Procedural and evidentiary rulings are discretionary with the district court and are "reviewed under an abuse-of-discretion standard." *Braith*, 632 N.W.2d at 721. Generally, "[m]otions shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing . . . or as otherwise provided for in these rules," and "[r]equests for the taking of oral testimony must be made by motion served and filed not later than the filing of that party's initial motion documents." Minn. R. Gen. Prac. 303.03(d). Here, before filing her motion, mother filed a letter, rather than a formal motion, asking the district court to permit the child's therapist to participate in the hearing by telephone. The district court denied mother's request to hear testimony from the child's therapist, noting that her request was for testimony to be heard at a motion hearing but that she had not tried to obtain an affidavit or deposition of the therapist. The district court did not abuse its discretion by denying mother's request for oral testimony from the therapist at the motion hearing.

[3] For the first time on appeal, mother argues that the district court's ruling that the child does not have to wear her GPS watch violated the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act in denying the child use of her watch. Because these questions were not presented to and considered by the district court, they are not properly before this court, and we decline to address them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

VII. There is No Current Appointment of Parenting Time Expeditor.

Mother argues that the use of a PTE is inappropriate in this case because the case involves "conflicts due to disabilities, complex medical issues and sexual abuse which constitutionally should be handled by a judge." The district court may appoint a PTE at the request of either party, by stipulation of the parties, or on the court's own motion. Minn. Stat. § 518.1751, subd. 1 (2018). Here, the parties' last PTE resigned on September 19, 2017. Thus, since there is not a PTE currently assigned to the case, we decline to address this argument.

VIII. Mother's Argument that the District Court Erred by Not Ordering Father to Authorize the Child's Public School to Issue Payment to a Summer Program is not Properly Before the Court.

Mother makes a series of assertions challenging the district court's determination that father "did not have to authorize the child's public school to issue payment to a summer program, despite the terms established under legal settlement with the parties." The district court ruled that father "should not be ordered to sign the requested authorization as he did not consent to the child attending that program." Because mother provides no legal authority to support her contention that the district court erred, we decline to address the matter. *See 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).

IX. The Proper Appeal From an Order for Recovery of Money is From the Resulting Judgment.

Mother argues it is fundamentally unfair for the district court to require her to pay father an amount already paid to the State of Minnesota and to pay it at a rate faster than

the rate agreed to with the State of Minnesota. Mother mischaracterizes the district court's order. The district court ordered mother to reimburse father for the amount father paid on a joint debt owed for a Minnesota State Grant from 2010-2012 as established in the parties' judgment and decree. The district court was merely enforcing the judgment and decree. Moreover, an order for the recovery of money is not appealable, and the proper appeal is from the resulting judgment. *Sheeran v. Sheeran*, 481 N.W.2d 578, 579 (Minn. App. 1992). Here, the proper appeal is from the judgment.

Affirmed.