STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0142

In re the Matter of:
Brooks J. Waldron, petitioner,
Respondent,

vs.

Uneica Nicole Garrett,
Appellant.

Filed August 30, 2021
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-FA-16-1681

Brooks Waldron, Minnetonka, Minnesota (pro se respondent)

Francis Herbert White III, Francis White Law, PLLC, Woodbury, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-mother challenges an order clarifying her non-custodial right to information regarding her child's education, and denying her request for conduct-based attorney fees. Because we conclude the district court (1) had jurisdiction to hear

respondent-father's motion, (2) properly effectuated the parties' agreement regarding contact with the child's schools and otherwise made adequate and supported findings, and (3) did not abuse its discretion by denying attorney fees, we affirm.

FACTS

Appellant Uneica Garrett (mother) and respondent Brooks Waldron (father) have a child born in August 2015. They were never married and stipulated to temporary joint legal and physical custody. In early 2017, the district court ordered permanent joint legal and physical custody pursuant to the parties' stipulation.

Custody was modified in 2018 after father obtained an order for protection following communications from mother threatening harm to herself, father, and the child. At the same time, the district court limited mother's parenting time to supervised visits at a facility. Following an evidentiary hearing in early 2019, the district court granted father sole legal and physical custody of the child.

Mother subsequently brought two motions seeking to modify custody and increase her parenting time. The district court denied both motions. In its order denying the second motion, the district court determined that mother did not make a prima facie showing that the child was endangered, and did not establish that father was systematically denying mother parenting time or that modification of parenting time was warranted by changed circumstances. The district court also ordered the parties to "engage in mediation" before bringing future motions. Mother appealed the second order.

In September 2020, father moved to clarify his custodial rights and mother's non-custodial rights with respect to the child's education. He specifically asked the district

court to determine that mother is not entitled to "two-way communications with [child's] schools." Father brought the motion after the child's preschool expressed concerns about communications with mother. These concerns ultimately led to the child's expulsion. In its letter to the parties, the preschool stated that it removed the child because it was "not comfortable communicating" with mother due to her "unrealistic expectations" about what information she is entitled to receive.

Mother argued that the district court lacked jurisdiction to hear father's motion due to her pending appeal and because the motion involved the rights of the preschool, which is not a party. She also contended the motion was improper and she is entitled to conduct-based attorney fees because father did not attempt to mediate the dispute. During the December 2020 hearing, the parties agreed that—going forward—they would "follow whatever feedback or policies" the child's schools provided to them for "communication regarding important records and information with a non-custodial parent." In its subsequent order, the district court stated that it had jurisdiction to hear the motion, denied mother's attorney-fee request, and memorialized the parties' stipulation—"[t]he parties agreed that they would obtain and abide by the policies provided by the child's current school, as well as any future schools in which [the child] may be enrolled." Mother appeals.

DECISION

I. The district court had jurisdiction over father's motion.

Mother argues that the district court lacked subject-matter jurisdiction to hear father's motion because the custody order was being reviewed on appeal and lacked

personal jurisdiction because the motion implicated the rights of a third party—the preschool. We review questions of subject-matter and personal jurisdiction de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002) (subject-matter jurisdiction); *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016) (personal jurisdiction).

Generally, a "timely and proper appeal suspends the trial court's authority" to make a further order that "affects the order or judgment appealed from." Minn. R. Civ. App. P. 108.01, subd. 2. But "the trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from." *Id.* An order is independent, supplemental, or collateral "if it involves a new set of facts and does not require the district court to consider the merits of the issue on appeal." *Perry v. Perry*, 749 N.W.2d 399, 403 (Minn. App. 2008).

Mother appealed the denial of her motion to increase her parenting time and to modify legal and physical custody.[1] Father's motion arose from different facts and involved an entirely different issue. Father did not ask the district court to modify custody or parenting time in any respect. Rather, he asked the district court to clarify a narrow aspect of his legal custodial rights—the intersection between his right to determine matters of the child's education and mother's statutory right to be informed about the child's education. Minn. Stat. §§ 518.003, subd. 3(a), .17, subd. 3a(4) (2020). Because resolution of this issue did not implicate the broader custody issues at stake in mother's then-pending

[1] While this appeal was pending, this court affirmed the district court's custody and parenting-time order. *See Waldron v. Garrett*, No. A20-0863, 2021 WL 957300, at *3-6 (Minn. App. Mar. 15, 2021) (affirming the denial of mother's motions to modify custody and parenting time).

appeal, father's motion presented a matter "independent of, supplemental to, or collateral to" that appeal. Minn. R. Civ. App. P. 108.01, subd. 2.

Citing the district court's finding that "the essence of the underlying dispute is . . . between [mother] and the child's school," mother further argues that the court lacked personal jurisdiction because father's motion "raised the rights and obligations of a third-party." We are not persuaded. Father's motion did not seek to dictate the preschool's conduct; it asked the court to clarify and set limitations on how the parties could exercise their respective rights to receive information from and interact with the child's schools. Mother does not dispute that the district court had personal jurisdiction over the parties—mother and father.

II. The district court made adequate and supported findings.

Mother contends that the district court failed to make required statutory findings and that the record does not support its order regarding the parties' communications with the child's schools. Mother's arguments are unavailing for three reasons.

First, the parties agreed on the record that they would request and abide by school policies regarding "communication with a non-custodial parent" about "important information and records" concerning the child. Mother contends this stipulation is invalid and should be disregarded. But the district court incorporated the stipulation into its order. As a result, the stipulation became part of the order, and "cannot thereafter be the target of attack by a party seeking relief." *Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). Instead, "[t]he sole relief . . . lies in meeting the requirements of Minn. Stat. § 518.145, subd. 2." *Id.* The statute permits a district court, on motion, to grant relief from an order

or judgment based on mistake, newly discovered evidence, fraud, and other grounds. Minn. Stat. § 518.145, subd. 2 (2020). Mother brought no such motion before the district court. We generally do not consider arguments that were not presented to or decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We thus decline the invitation to set aside the district court's order on the ground that the parties' stipulation was invalid.[2]

Second, the district court was not required to make specific findings to support its order. Minn. Stat. § 518.17, subd. 3a(4), grants mother a non-custodial right "to be informed by school officials about the [child]'s welfare, educational progress and status, and to attend school and parent-teacher conferences." Mother argues that the order violates Minn. Stat. § 518.17, subd. 3(b) (2020), which requires district courts to grant the rights enumerated in Minn. Stat. § 518.17, subd. 3a (2020), unless it makes "specific findings" to

[2] Mother also asserts that the order memorializing the stipulation violates her First Amendment rights. But she voluntarily relinquished these rights by entering into the stipulation. *See State ex rel. Johnson v. Indep. Sch. Dist. No. 810*, 109 N.W.2d 596, 602 (Minn. 1961) (stating that "[w]aivers . . . should be favored, and except as limited by public policy a person may waive any legal right, constitutional or statutory"); *see also In re Welfare of B.C.G.*, 537 N.W.2d 489, 492 (Minn. App. 1995) (holding juvenile effectively waived his constitutional protection against ex post facto application of a law). Mother has not identified—and we do not see—a public policy preventing parents from agreeing how they will communicate with their child's school. And we observe that the stipulation creates a reasonable time, place, and manner restriction because it (a) is content-neutral—it merely governs the form of mother's communications, (b) is narrowly tailored to serve a significant governmental interest—the best interests of the child as it relates to education, and (c) leaves open ample alternative channels of communication—mother is free to communicate with father regarding school information instead of directly with the child's schools. *See River Towers Ass'n v. McCarthy*, 482 N.W.2d 800, 803-04 (Minn. App. 1992) (outlining the elements of a valid time, place, or manner restriction), *review denied* (Minn. May 21, 1992).

do otherwise under Minn. Stat. § 518.68, subd. 1 (2020). This argument is misplaced. Minn. Stat. § 518.68, subd. 1, provides that a district court may not "waive" or restrict a non-custodial parent's notice of her statutory rights unless it finds that it is "necessary to protect the welfare of a party or child." The district court did not waive or otherwise restrict mother's right to such notice; it affirmed her right to receive information pertaining to the child's education within the parameters of the parties' stipulation.

Mother also contends that the district court was required to make findings sufficient to support custody modification. This argument is also unpersuasive. The statutory rights enumerated in Minn. Stat. § 518.17, subd. 3a, are not custodial rights. Father's motion did not seek to modify custody, and the stipulated order regarding communications with the child's school did not alter mother's non-custodial parental rights. The district court was thus not required to make particularized findings to support its order.

Third, the record supports the district court's findings as to mother's role in the child's expulsion from the preschool. We will set aside findings of fact only if they are clearly erroneous. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Mother contends the district court's finding that her "communication and behavior with the school, whatever it may have been, led to the child being withdrawn" is too vague to support its order. We disagree. Both mother and father introduced substantial evidence regarding mother's communications with the preschool, including the fact that representatives became so uncomfortable that they contacted law enforcement on one occasion. Mother made numerous and burdensome requests to administrators, asking for the preschool's curriculum plan, school schedule, COVID plan, information on the "parent-child visit,"

and to be included on "any and all emails and fliers" sent to parents. Despite the fact she does not have legal custody, mother asked the child's teacher to include her in all communications to parents, to contact her if the child becomes ill at school, and to provide copies of "all the homework that would go home with [the child]." Emails between father and the preschool reveal escalating concerns about mother's contacts that culminated in the decision to expel the child. A September 25, 2020 letter from the preschool to mother expressly linked the child's expulsion to mother's conduct, stating the child was removed due to "the unrealistic expectations of information [mother] feel[s] [she is] entitled to," and because "[t]he staff at [the preschool] are not comfortable communicating with [mother]." On this record, we discern no clear error in the district court's finding that mother's actions "led to the child being withdrawn" from the preschool.

III. The district court did not abuse its discretion by denying conduct-based attorney fees.

"Conduct-based fee awards may be awarded against a party who unreasonably contributes to the length or expense of the proceeding." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). We review a district court's decision whether to award attorney fees for an abuse of discretion. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010). "[A] district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *Id.* (quotation and citations omitted).

Mother asserts that she is entitled to conduct-based attorney fees because father brought a motion over which the district court lacked subject-matter and personal

jurisdiction. For the reasons stated above, we disagree. Father had good reason to bring the motion—mother's conduct and expectations surrounding school communications undermined his exclusive legal right to determine the child's education. We agree with the district court that it was not unreasonable for father to bring a motion seeking to prevent "any potential future harm to [the child's] education." Accordingly, we discern no abuse of discretion in the district court's refusal to grant conduct-based attorney fees to mother.[3]

Affirmed.

[3] Citing the "inherent authority" of this court, mother urges us to remove the judicial officer for purported bias—relief she did not seek in the district court. We generally consider "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985) (quotation omitted). Moreover, mother asks us to engage in fact-finding, which "is not within the province of this court." *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966). But we note that adverse rulings are not a basis for imputing bias to a judicial officer. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).