STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0798
A21-1064

In re the Marriage of:
Catrina M. Rued, petitioner,
Respondent,

vs.

Joseph D. Rued,
Appellant.

Filed June 27, 2022
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-FA-16-6630

Beth Wiberg Barbosa, Gilbert Alden Barbosa PLLC, Edina, Minnesota (for respondent)

James J. Vedder, Moss and Barnett, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the district court's order granting respondent-mother sole legal and physical custody of the parties' minor child, appellant-father argues that the district court clearly erred by making certain findings of fact and abused its discretion by granting

mother custody of the child. Father additionally argues that he is entitled to a new trial, the district court was biased against him, and the district court abused its discretion by awarding mother duplicate attorney-fee awards. We affirm.

FACTS

In 2013, appellant Joseph D. Rued (father) began dating respondent Catrina M. Rued (mother). Mother has two children from a previous marriage, M.A.R., born in 2006, and K.A.R., born in 2009 (stepdaughter and stepson, respectively; stepchildren, collectively). In February 2014, mother and father married. Shortly thereafter, mother became pregnant with W.O.R. (the child).

Almost immediately after marriage, mother and father had serious conflict. For example, father filed for divorce just two months after the wedding (although he did not pursue the divorce proceedings). Around that same time, mother sought to travel from Minnesota to Wisconsin, but father physically blocked her from leaving the premises of the marital home. And father's alcoholism became significantly worse during spring 2014. Father admitted to using alcohol and marijuana daily and cocaine weekly during this period.

In October 2014, mother gave birth to the child.

Sexual-Abuse Allegations

Shortly after the child's birth, father and his parents, Scott and Leah Rued (grandfather and grandmother, respectively; grandparents, collectively), allegedly witnessed stepson exhibiting sexualized behavior toward the child. Grandparents alleged,

for example, that they witnessed video footage of stepson (then age six) "touching, groping, [and] kissing" the child (then 17 months old) in his crib.[1]

In September 2016, father and grandparents reported to Hennepin County child-protection services (CPS) that mother failed to protect the child from sexual abuse by stepchildren. Grandparents specifically claimed that "[stepdaughter] and [stepson's] therapist confirmed that they are likely victims of sexual abuse." CPS initiated the first of five child-protection investigations into the health and safety of the child. CPS interviewed stepchildren, mother, father, grandparents, and stepchildren's therapist. Stepdaughter told the investigator that "[father] drinks wine a lot and gets drunk," "[father] has broken plates all over the kitchen," and denied the sexual-abuse allegations. Stepson similarly stated that "his step-dad is drunk and gets drunk by drinking too much wine" and denied the sexual-abuse allegations. Stepchildren's therapist stated that neither stepchild disclosed sexual abuse but she could not rule out the possibility of sexual abuse. CPS concluded that there was "not a preponderance of the evidence to make a maltreatment finding in any of the allegations."

Around this same time, mother filed for divorce. Father moved to grandparents' house while mother continued living in the marital home with stepchildren. Father and mother shared physical custody of the child pursuant to a court-ordered schedule. Mother was ordered to not leave stepson and the child together unsupervised due to the allegations of sexual abuse.

[1] This video footage was never produced to the district court or any other child-protection or law-enforcement authority.

In September 2017, father reported to CPS that the child allegedly disclosed that stepchildren remove the child's clothes and rub his private parts. In October 2017, father reported to CPS that the child, while riding in the car with grandmother, allegedly stated that stepson touched the child's private parts. CPS opened a second investigation, interviewing stepchildren, the child, and mother, and having "short conversations" with father and grandmother. Stepdaughter and stepson each separately indicated that they "barely play with [the child] and are not allowed to be alone with him." They stated that "they have never rubbed his body nor removed his clothing nor changed his diaper." Stepdaughter indicated that her home life was difficult when father was around due to his drinking and anger issues. The child denied playing with stepdaughter and stepson and, "[w]hen asked about rubs, his responses were not understandable."

In October 2017, father was instructed to bring the child to CornerHouse, a child-advocacy center. CornerHouse conducted a sexual-abuse forensic interview of the child. CornerHouse concluded that, although "[the child] repeatedly mentioned the names [stepson] and [stepdaughter] when talking about 'pee' and 'butt' and 'touch,'" "the connection was unclear and [the child] seemed to vacillate." CornerHouse determined that "[the child's] ability to source monitor was still developing" and "strongly recommended that questioning of [the child] cease immediately."[2] CPS concluded the investigation with "no finding of maltreatment or neglect."

[2] A source-monitoring problem occurs when someone is unable to distinguish how they know something—i.e., whether they actually experienced an event or inaccurately believe that they experienced an event because others said that an event happened to them. The

In June 2018, the child allegedly disclosed to grandmother that stepchildren penetrated his anus with their fingers. CPS opened a third investigation. In June 2018, CornerHouse conducted a second forensic interview of the child. The child again "did not make any disclosures as to being intentionally physically hurt or being sexually abused." Father also brought the child to a hospital, which concluded that there was no "finding concerning for abuse." In August 2018, CPS closed the case, determining that the sexual-abuse allegations were "unfounded."

In September 2018, father allegedly witnessed the child in the shower with the child's finger in his anus. Father asked the child what he was doing, and the child allegedly responded, "I am doing what [stepdaughter] does to me and what [stepson] does to me." Father reported this incident to CPS, which opened a fourth investigation. In October 2018, father reported additional allegations to CPS after the child (then approximately four years old) allegedly disclosed that mother and stepdaughter touched his penis "when it was big" and that mother had her "mouth on him." Shortly thereafter, CPS interviewed the child. The CPS investigator made the following interview notes:

> CPI asked if anyone has touched him on his privates recently, he said [stepdaughter] . . . and [stepson]. CPI asked if there was anyone else, he said Mommy, [mother's ex-husband], [grandmother], and [mother's father]. . . . CPI asked where on his private parts he was touched, he said butt and penis, both. CPI asked when this happened, he said last time. CPI asked what is last time and he said, "like last, um night. . . ." [H]e said he was on the sofa watching TV; he said [stepson] was sitting on his spot, CPI asked when this happened, he said it

parties' neutral custody evaluator testified that "children [the child's] . . . age are the most vulnerable to source-monitoring problems, because [of] their cognitive development[]."

> "happened tomorrow." CPI asked who was there and he said, "[stepdaughter], [stepson], and Momma. . . ."

CornerHouse interviewed the child a third time. CornerHouse again found that, "[i]n regards to the topic of concern, [the child] did name names, but he was unable to provide any context, or sensory or peripheral details." CornerHouse stated that it "would expect [the child] to provide more clear information as to what he had experienced. Instead, it appears that [he] may have been instructed to say that he was touched by his other family members." In November 2018, CPS "ruled out" the sexual-abuse report.

In December 2018, CPS reported a claim of mental injury by father against the child. The Hennepin County Department of Human Services (the county) initiated a child in need of protection or services (CHIPS) petition based on father's alleged false accusations of sexual abuse involving the child. The record in this appeal contains few details about the CHIPS proceedings. However, the record shows that the juvenile court refused to dismiss the CHIPS petition on father's motion because the county stated a prima facie case and that father was only allowed supervised visits with the child for a time. In August 2019, the CHIPS petition was dismissed.

Gluten and Dairy Allergy Allegations

In addition to their concerns that the child was sexually abused, father and grandparents expressed concern that the child had (and continues to have) severe food allergies to gluten and dairy. In October 2016, responding to father's concerns, mother had the child tested for food allergies by Dr. David Schroeckenstein, an allergy specialist at the child's pediatric clinic. Dr. Schroeckenstein conducted a skin allergy test which showed

that the child was allergic to neither wheat nor dairy.[3] The following month, father took the child to another allergy specialist, Dr. Robert Zajac, who conducted a blood allergy test. The blood allergy test showed that the child was moderately allergic to dog dander[4] but not cow's milk or wheat.[5] In September 2017, father took the child to see Dr. Zajac for another blood allergy test. This second blood allergy test indicated that the child was allergic to casein, a protein in cow's milk, but not gluten.

Notwithstanding these test results, father and grandparents remained convinced that the child had serious allergies to dairy and gluten. In May 2017, after mother notified father that the child ate macaroni and cheese for dinner, father called the police to conduct a welfare check on the child at mother's residence. Father repeatedly contacted and admonished the child's providers, including the child's daycare centers, for serving the child foods containing dairy and gluten. In March 2020, the child's daycare disenrolled

[3] The skin allergy test could only determine whether the child had food allergies, not food intolerances.

[4] Father and grandparents have a dog at their house, which they assert is hypoallergenic. Mother does not have a dog in her home.

[5] The test showed that the child's level of allergic reaction was a "0/1" on a 6-point scale, meaning that he had a "[v]ery low level" of dairy intolerance. The last page of the test result confusingly appears to contain a separate allergy analysis of the child, this time on a 0-3 scale. The numerical entries on this last page, however, are illegible. Moreover, it is unclear how or why a separate test result was reached and how it differs from the primary test result showing that the child had a very-low level of dairy intolerance.

him after father repeatedly contacted the daycare about the child's diet in what the district court found was harassing behavior.[6]

In 2020, during the custody trial, the child underwent further allergy testing at the Mayo Clinic. The Mayo Clinic conducted another skin allergy test on the child, again finding that he was allergic to dog dander but not dairy.[7] The Mayo Clinic did not test the child for allergies to gluten.

Custody-Evaluation Report and Psychological Evaluations

In November 2016, the district court appointed licensed psychologist Mindy Mitnick to conduct a neutral custody evaluation. This evaluation was more involved and took significantly longer than other evaluations that she had previously completed; Mitnick issued her full report in September 2018, almost two years after her appointment. Mitnick's report noted that "[t]his case's outcomes are fraught with peril for [the child] . . . . I make the following recommendations with the knowledge that the Court will have information available that was not available to me." Mitnick's report analyzed the 12 best-interests factors, recommending that father and mother share joint custody of the child.

Mitnick's report noted several peculiarities about father's conduct involving the child and stepchildren. The report described, for example, that "[father] indicated that [the

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[6] A referee heard this matter and made recommendations which the district court adopted. Because the district court adopted the referee's recommendations, we refer to the actions of the referee as the actions of the district court. Minn. R. Civ. P. 52.01 ("The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.").

[7] The Mayo Clinic test also found for the first time that the child was allergic to peanuts.

child] said . . . no less than 10 times, '[stepdaughter] and [stepson] poop on [his] nose' and [father] took this to be literally true because [the child] is 'never nonsensical.'" The report noted another occasion that father reported that the child disclosed that stepson "massages his testicles." But the report was skeptical of father's allegation, noting that "[a]n almost three-year-old would not have used the word 'massage' . . . . 'Massage' is a description provided by [father]." Mitnick's report described another occasion when father "was concerned about [stepdaughter (then approximately 11 years old)] spreading her legs while sitting on the floor and doing a backwards bridge because she was 'presenting herself.'" Mitnick's report disagreed with father's concern, stating that "[t]hese are both entirely typical behaviors for girls and do not have any sexual connotation."[8]

Mitnick concluded her report by stating that it seemed unlikely that mother or stepchildren were abusing the child. She wrote:

> There is no independent information supporting a determination that [the child] has been physically or sexually abused. [The child] has been sensitized to report negative information about his mother and [step]siblings. He may be reporting accurately but the interpretation is inaccurate and he may be reporting things that did not occur as young children sometimes do. He may also be reporting what he has heard others say to him and what he has overheard that others did not intend him to hear. He gains a great deal of attention from these negative reports.

[8] Mitnick's report also noted that "the attorney for [father and grandparents] stated in court in June 2018 that [grandmother] reported suspected abuse of [the child] *because I told her to*. I do not direct clients to take any action during evaluations because that would compromise my role as a neutral evaluator." (Emphasis added.)

The parties also hired licensed psychologist Dr. Samuel Albert as a neutral evaluator to conduct psychological assessments of the parties. Dr. Albert issued his final reports in July 2018, which Mitnick relied upon in her report.

Custody Trial

Between February and July 2020, the district court held a six-and-a-half-day custody trial. The district court received the following evidence.

Mother testified that she always supervised the child when he was with stepchildren following the court order requiring that stepson not be left unsupervised with the child. Mother testified that after Dr. Schroekenstein concluded that the child was not allergic to gluten or dairy, she resumed feeding the child those foods. Mother testified that she did not witness the child experience any adverse reaction after consuming gluten or dairy. Mother testified that the child's daycare also fed him foods containing gluten and dairy, and the daycare never contacted mother about the child having an allergic reaction. Mother also testified to certain allegations of domestic abuse, including that in January 2016, father punched and slapped her repeatedly, resulting in stepdaughter calling the police.

Mother testified that on at least four occasions, father woke her up in the middle of the night to exorcise demons from her. Mother testified that "the [demon] extraction process involved [father] usually on top of me or pinning me down, pushing his forehead against mine, screaming for demons to get out," although the severity of the incident depended father's level of intoxication. Mother testified that to get the demon-extraction sessions to stop, she had to admit that her father (the child's maternal grandfather) molested her. Mother testified that father also held similar demon-extraction sessions with stepson.

Father testified to numerous examples of sexualized behavior by the stepchildren. He testified that in 2014, he found the stepchildren in a closed room with stepson's hand up stepdaughter's skirt. Father testified that he witnessed stepson (then six years old) on top of the child (then six or seven months old), gyrating his groin on the child's face with an erection. Father testified to additional instances of witnessing stepson acting in sexually inappropriate ways and performing sexually inappropriate acts on the child. Father testified that the child disclosed that mother also sometimes participated in the sexual abuse and that she was present during instances when the stepchildren would touch the child's private parts. Father also testified that mother physically abused the child.

Father testified that mother is a "master manipulator" and was able to manipulate stepchildren, the CPS investigators, the therapists, and other experts into believing her version of events. Father testified that he believes in demons but never performed an exorcism as mother testified; instead, he "prayed for her." Father also testified that the child did not like his play therapist, whom father alleged the child referred to as "Momma's friend."

Father testified to two instances when police took him to the psychiatric unit of a hospital for alcohol detoxification. Father testified, regarding one of the incidents, that he returned to grandparents' home drunk and found the house locked; he broke several windows and fell asleep outside. When grandparents returned, they called the police. The police took father to a hospital psychiatric ward. But according to father, the police officer told him, "you seem fine" and "you really shouldn't be here [in the psychiatric unit]."

Grandmother testified that she learned to ask children about sexual-abuse allegations at a parenting class about child sex abuse that she took over 20 years ago. Grandmother testified that she kept logs of the child's sexual-abuse disclosures based on these parenting-class techniques. She testified that she witnessed stepson "dry humping" the child on multiple occasions and witnessed the child make numerous disclosures about sexual abuse by the stepchildren. Grandmother testified that she was "99.99% certain[]" that stepson, stepdaughter, *and* mother sexually abused the child.

Grandfather testified to similar allegations of sexual abuse against the child. He testified that there was no doubt in his mind that stepson, stepdaughter, and mother sexually abused the child. Father's nanny provided similar testimony.

Mitnick testified that she did not observe any behavior between stepson and the child that indicated that stepson sexually abused the child. She also testified to the source-monitoring problem and explained that she did not believe that father and grandmother's questioning of the child was appropriate. Mitnick testified that she had "very serious concerns" about father and grandparents' "inability or refusal . . . to relinquish that belief [of sexual abuse being perpetrated against the child] in the face of multiple child protection assessments." Lastly, she testified that the false sexual-abuse allegations "[are] such a serious issue that I have to consider . . . that that alone disqualifies [father] from having legal and physical custody."

Dr. Albert testified at trial that he believed that father and grandparents were much more credible than mother.

Daycare Disenrollment and Daycare Order

As of January 2019, the child was enrolled in a private preschool. In March 2020, the preschool disenrolled the child after father repeatedly contacted it about the child's alleged food allergies. The district court credited evidence showing that father's contacts with the daycare were threatening and harassing, awarded mother attorney fees, and ordered father to not "hav[e] any contact with any future preschool or daycare or childcare provider for the child."[9]

Custody Order

In August 2020, the district court issued an 86-page custody order. The district court made numerous, detailed findings of fact.[10] It found that "both parties have made claims during the litigation that has caused their veracity to be questioned." The district court found that despite mother's sometimes-inconsistent statements, "it is [mother] [who] is the more credible of the parties, and that [father] is far less credible." The district court specifically found that "[father] is not a credible reporter of historical facts," father, grandparents, and the nanny are strongly biased against mother, and father, grandparents, and nanny's testimonies were "rehearsed."

The district court particularly emphasized the food-allergy and sexual-abuse issues. The district court found that the child was not allergic to dairy or gluten, but he was allergic

[9] Father filed a motion to amend the findings from this order, which the district court denied without a hearing.

[10] The district court noted that mother's counsel "raised virtually no objections throughout the trial" which resulted in "a plethora of evidence [being] introduced that otherwise would not have been admitted."

to dog dander. The district court noted that "the child only showed [allergy] symptoms when in [father's] care." The district court also found that not only did father "fail[] to prove that [the child] was physically and/or sexually abused by anyone," but it specifically found that the child "was not physically and/or sexually abused by anyone, specifically [stepson], [stepdaughter], [mother], [mother's] ex-husband or her parents." (Emphasis in original.)

Turning to the question of custody, the district court stated that "[i]n spite of [father's] protests to the contrary the issue has always been simple: in whose custody is [the child] most protected." It opined:

> If [the child] is being physically and/or sexually abused in [mother's] custody, then clearly he is most safe with [father]. However, if he is not being physically and/or sexually abused in [mother's] custody, then [father's] allegations are detrimental to [the child's] health and well-being and he is most safe with [mother].

The district court then methodically analyzed the 12 best-interests factors and concluded that it was in the child's best interests for mother to have sole legal and physical custody of the child. These best-interests findings span 16 pages of the district court's order.

The district court made the following best-interests findings. The district court found that the child's physical and emotional needs were best met by mother because father's inflexible beliefs that the child has been sexually abused and has serious food allergies were harming the child. The district court found, for the same reasons, that the child's medical and mental-health needs were best met by mother. The district court found that although both parties contributed to the domestic violence during their marriage,

"because they are now separated and are likely to have only minimal contact in the future, this conduct will not affect [the child]." The district court instead stated that the "more salient concern" was whether the child had been physically and sexually abused while in mother's care. And, as it previously found, the district court determined that the child had not been so abused. The district court found that "these false allegations have endangered the child as they can alienate the relationship he enjoys with his mother and [step]siblings. It could also cause him to believe that he was victimized when, in fact, he was not."

The district court next found that the mental- and chemical-health circumstances of the parents favored mother. The district court found that mother suffers from "significant mental health issues," including post-traumatic stress disorder (PTSD), but she is improving in therapy. The district court found that father "had serious chemical health issues during the marriage" and "has been sober for almost four years now." "However, [father] has significant barriers to understanding and admitting the effect that his drinking had on the marriage, and that affects his views on parenting issues related to [the child] in the present." The district court found that "[father] shows no signs of letting go of his uncompromising ways, and this will always work to [the child's] detriment. As such, this factor favors [mother]."

The district court also found that mother was more suited to provide ongoing care for the child and that the parties' proposed arrangements favored mother because "[father's] proposal . . . would effectively eliminate [the child's] relationship with his [step]siblings." The district court found that the benefits and detriments to limiting parenting time with one parent weighed in mother's favor because father's stringent belief

that the child has been sexually abused "is detrimental to [the child]." The district court found that the parents' ability to support one another weighed in mother's favor. The district court stated that "[t]here are serious doubts that [father] will ever support [the child's] relationship with [mother]" but that "[mother], on the other hand, has expressed a willingness to try to work with [father] to co-parent [the child]." The district court concluded that each factor weighed either neutrally or in mother's favor and awarded sole legal and physical custody of the child to mother.

The district court then granted mother's request for attorney fees. The district court ordered that "[father] shall pay to [mother's] attorney the sum of $150,000.00 in need and conduct-based attorney's fees."

Posttrial Motions and Contempt Proceedings

In September 2020, father filed motions for a new trial and amended findings. Father argued that he was entitled to a new trial because the district court solely relied on two issues—whether the child was sexually abused and had food allergies—rather than assess each of the best-interests factors. Father also argued that a new trial was required because the district court "improperly made credibility determinations based on its own personal and professional experience" and "numerous procedural irregularities . . . occurred during trial." Father then filed a nearly 250-page motion for amended findings, contesting numerous facts in the district court's custody order.[11] Mother then filed a motion requesting that father be prohibited from having any contact with the child's

[11] The district court initially denied father a hearing on his motion to amend the findings, but later granted a hearing.

daycare provider and from "harassing" mother regarding the child's alleged food allergies. Mother attached to her motion an affidavit from the director of the child's new daycare, wherein the director averred that father delivered multiple harassing and threatening letters relating to the daycare feeding the child foods containing gluten and dairy. Father also filed another motion in December 2020, requesting an order that the child undergo a full-scope food-allergy examination. In January 2021, the district court held a hearing on the parties' motions.

On March 1, 2021, the district court ordered father to show cause and appear relating to the contact he made with the child's new daycare regarding the child's diet. The district court alleged that father violated its March 2020 order, which barred father "from having any contact with any future preschool or daycare or childcare provider for the child." On March 22, 2021, the district court held a contempt hearing and examined father as to whether he violated the March 2020 order. Father testified that he did not violate the March 2020 order because the subsequent August 2020 custody order expressly revoked all prior orders, there was nothing in the August 2020 custody order about the child's diet, and father was expressly allowed under Appendix A to the August 2020 custody order to have information related to the child's medical records. The district court declined to hold father in contempt but stated that it could have and issued a warning to both parties to not violate its orders going forward.

In April 2021, the district court issued an order on the parties' posttrial motions. The district court denied father's motion for a new trial, concluding that it did not make the custody trial "a two-issue case," did not make credibility determinations based on its

own experience, and no procedural irregularities occurred during trial. The district court denied father's motion for amended findings based on its broad discretion to make custody determinations and concluded that his motion "is in reality an unauthorized motion for reconsideration." The district court also denied father's motion to have the child further tested for food allergies. The district court granted mother's additional request for conduct- and need-based attorney fees. And the district court issued a new order prohibiting father from having contact with the child's future daycare providers.

Also in April 2021, mother moved the district court to prohibit father and grandparents from having contact with the child's future pediatrician and future therapist and award mother additional attorney fees. In an affidavit attached to this motion, mother testified that no doctor at the child's pediatric clinic would see the child because of father's numerous harassing communications. Mother also testified in the affidavit that the child's therapist discontinued serving the child because of father's harassing behavior. The following week, father responded to mother's motion by moving the district court to find mother in contempt for violating the district court's prior orders.

In May 2021, the district court held a hearing on these motions and issued an order shortly thereafter. The district court found that father violated its prior order by failing to pay mother's attorney $150,000 in fees.[12] The district court found that father's communication with the child's pediatrician was "harassing and abusive" and that the child's pediatrician terminated his services because of father's behavior. The district court

[12] The district court noted that father was likely in contempt of court, but that a contempt hearing would need to occur at a later date.

granted mother's motion to prohibit father from having contact with the child's future pediatrician. The district court also found that the child's therapist terminated her services because of father's behavior. The district court granted mother's motion that father be prohibited from contacting the child's future therapist. The district court further found that "[father] and [grand]parents continue to endanger [the child] while he is in their care." The district court prohibited father "and any third-party that acts on his behalf, including [grand]parents," from having contact with the child's medical providers. The district court also granted mother's request for additional attorney fees.

Father appeals.

DECISION

The record in this case is voluminous, consisting of 10 volumes of trial transcripts, totaling over 2,000 pages; 20 volumes of evidentiary material, containing over 3,000 pages and hundreds of exhibits; and over 40 volumes of documents, containing more than 8,000 pages. All together, we have carefully and painstakingly reviewed more than 13,000 pages of record in addition to the parties' briefs and multiple lengthy district court orders. We specifically highlight the importance of the parties' respective obligations to provide complete and accurate citations to the record in their briefs given the voluminous record and detailed allegations in this appeal. As our caselaw makes clear, citations to the record "are particularly important where . . . the record is extensive." *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff'd*, 568 N.W.2d 705 (Minn. 1997).

In their respective briefs, both parties make numerous factual assertions without citing to the record. Failure to cite to the record is a violation of Minn. R. Civ. App.

P. 128.03, and "[a] flagrant violation of the rules to fail to provide citations to the record may lead to non-consideration of an issue or dismissal of the appeal." *Brett v. Watts*, 601 N.W.2d 199, 202 (Minn. App. 1999) (quotation omitted), *rev. denied* (Minn. Nov. 17, 1999). Although we do not conclude that any of the parties' failures to cite to the record in this case are flagrant, we note that the failure to comply with the rule diminishes the persuasiveness of the briefs. *See* 3 David F. Herr & Eric J. Magnuson, *Minnesota Practice* § 128.3 (1996).

Father makes four arguments on appeal. He claims that the district court: (1) clearly erred and abused its discretion when it granted mother sole custody of the child; (2) was biased against him; (3) abused its discretion in various evidentiary rulings, necessitating a new trial; and (4) erred by granting mother duplicate attorney-fee awards. We address each argument in turn.

I. The district court did not clearly err by making certain findings of fact or abuse its discretion by granting mother sole custody of the child.

Father argues that the district court clearly erred when it found as a matter of fact that the child was not sexually abused and was not allergic to gluten or dairy and that, in the context of those erroneous findings, the district court abused its discretion when it granted mother sole custody of the child.[13]

[13] Father also argues that the district court abused its discretion by initiating a contempt proceeding against him. But the district court did not hold father in contempt. This issue is moot as we cannot provide father any relief. *State ex rel. Young v. Schnell*, 956 N.W.2d 652, 662 (Minn. 2021); *A.J.S. v. M.T.H. (In re Paternity of B.J.H.)*, 573 N.W.2d 99, 105 (Minn. App. 1998).

A. The district court did not clearly err by making certain findings of fact.

We review the district court's findings of fact for clear error. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019); *see also A.S. v. K.C.-W. (In re Welfare of C.F.N.)*, 923 N.W.2d 325, 334 (Minn. App. 2018), *rev. denied* (Minn. Mar. 19, 2019). Fact findings are clearly erroneous "when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). We "giv[e] deference to the district court's opportunity to evaluate witness credibility and revers[e] only if we are left with the definite and firm conviction that a mistake has been made." *Thornton*, 933 N.W.2d at 790 (quotation omitted). The clear-error standard does not permit us to reweigh the evidence, to engage in fact-finding anew, or to reconcile conflicting evidence. *Kenney*, 963 N.W.2d at 221-22. "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted).

1. The district court did not clearly err when it found that the child had not been sexually abused.

Father argues that the district court clearly erred when it found that the child was not sexually abused by mother, stepson, or stepdaughter. Father specifically asserts that this finding is unsupported by the record because the CPS investigations and relevant experts did not reach such a conclusion; they only found that the sexual-abuse allegations were "unfounded."

There is ample evidence in the record to support the district court's finding. CPS conducted *four* separate investigations into allegations that the child was sexually abused. None of these investigations concluded that there was evidence to support the allegations. And CPS did not just determine that the allegations were "unfounded"; it also determined that there was "not a preponderance of the evidence to make a maltreatment finding," made "no finding of maltreatment or neglect," and "ruled out" the sexual-abuse allegations. As part of these investigations, the child was subjected to three forensic interviews. These interviews similarly did not provide any support for the allegations of abuse. Instead, CPS arrived at the conclusion that father was making false sexual-abuse allegations and launched an investigation into *him* for causing mental injury to the child. While father is technically correct that none of the investigations affirmatively determined that the child was not sexually abused and the CHIPS proceeding against father was ultimately dismissed, these investigations *do* reasonably support the district court's finding that the child was not sexually abused. The district court did not clearly err by drawing a reasonable inference that the child was not sexually abused based on four unsubstantiated CPS investigations, three forensic interviews, and one CHIPS proceeding.

Father similarly asserts that Mitnick's testimony does not lend support to the district court's sexual-abuse finding. He relies on Mitnick's testimony to argue that "she could not say with certainty what happened to [the child] because something that is unsubstantiated could still be true." Even if we agreed with father's argument, Mitnick's testimony that she could not conclude "with certainty" that the child was sexually abused does not contradict the district court's finding. *See Kenney*, 963 N.W.2d at 221 (stating that findings

are clearly erroneous only "when they are manifestly contrary to the weight of the evidence"); *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[O]n appeal, error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.").

Our independent review shows that Mitnick's testimony and report supports the district court's finding. In her report, Mitnick opined that "[t]here is no independent information supporting a determination that [the child] has been physically or sexually abused" and "[the child] gains a great deal of attention from these negative reports." Mitnick testified at trial that the child may have been reporting events that were told to him rather than events he experienced himself. Mitnick specifically testified that she had "very serious concerns" about father and grandparents' "inability or refusal . . . to relinquish that belief [of sexual abuse being perpetrated against the child] in the face of multiple child protection assessments" and that the "false" sexual-abuse allegations "[are] such a serious issue that I have to consider . . . that that alone disqualifies [father] from having legal and physical custody [of the child]."

Contrary to father's assertions, the CPS investigations, forensic interviews, and Mitnick's report and testimony support rather than undermine the district court's finding that the child was not sexually abused. Accordingly, the district court did not commit clear error by making such a finding.[14]

[14] We also note that we defer to the district court's credibility determinations. *Thornton*, 933 N.W.2d at 790. Regardless, father does not argue on appeal that the district court erred

2. The district court did not clearly err when it found that the child was not allergic to gluten or dairy.

Father next argues that the district court clearly erred when it found that the child was not allergic to foods containing dairy or gluten.[15] Father specifically argues that the district court "relied on one outdated skin allergy test to adopt Mother's position . . . and disregarded ample evidence that supported Father's position." We disagree that the district court clearly erred and conclude that the record evidence supports the district court's finding of fact.

In October 2016, mother brought the child to his primary pediatric clinic; Dr. Schroeckenstein conducted a skin allergy test, and the child tested negative for dairy and gluten allergies. The following month, father brought the child to a different allergy clinic; Dr. Zajac conducted a blood allergy test and the child again tested negative for dairy and gluten allergies, but the child did test positive for a dog-dander allergy. These two tests provide sufficient support for the district court's finding of fact.[16] We find no

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by discrediting the testimony of father, grandfather, grandmother, and the nanny regarding the sexual-abuse incidents that they allegedly observed perpetrated against the child.

[15] Father also argues that the district court "mischaracterized" his position, because he argued that "[the child] may have an allergy, sensitivity, *or* intolerance to these foods." (Emphasis added.) This argument does not square with father's repeated characterizations of the child's alleged allergies as extreme and life-threatening. Relatedly, father now makes much of the child's newly discovered peanut allergy. But, again, father's harassing behavior toward mother, the child's service providers, and others concerned the child's alleged allergies to gluten and dairy, not peanuts.

[16] The record contains another test by Dr. Zajac that appears to support father's position, indicating that the child is allergic to a protein found in cow's milk. But that test alone is insufficient to establish that the district court clearly erred. *See Kenney*, 963 N.W.2d at

evidence in the record that any doctor ever limited the child's diet to restrict consumption of foods containing dairy or gluten and, as the district court found, "[the child] only showed symptoms when in [father's] care." As noted herein, the district court also specifically found that father was "not a credible reporter of historical facts." Because there is a factual basis in the record to support the district court's finding that the child did not have dairy and gluten allergies and the district court finding was not "manifestly contrary to the weight of the evidence," we cannot conclude that the district court clearly erred.[17] *Kenney*, 963 N.W.2d at 221.

B. The district court did not abuse its discretion by granting mother custody of the child.

Father next argues that the district court abused its discretion when it awarded mother custody of the child by "making this a two-issue case" and conducting only a cursory review of the best-interests factors. The district court is required to consider and assess the 12 statutory best-interests factors when weighing issues of custody and parenting

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221 ("We will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed."). We also note that the Mayo Clinic conducted another skin allergy test on the child which indicated that the child was not allergic to dairy, and this is the most recent allergy-test result in the record. We reiterate that we afford great discretion to the district court in its assessment of the credibility of evidence and do not disturb factual findings based on the credited record. *Thornton*, 933 N.W.2d at 790; *see also Kenney*, 963 N.W.2d at 223 ("When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." (quotation omitted)).

[17] Father also argues that the district court abused its discretion by denying his request for a full-scope allergy evaluation for the child. Given that the district court did not clearly err by finding that the child was not allergic to foods containing gluten or dairy, the district court acted within its discretion by denying father's motion.

time. Minn. Stat. § 518.17, subd. 1(a) (2020). The best-interests factors include: the child's physical, emotional, and cultural needs (factor 1); the child's medical, mental-health, and educational needs (factor 2); the preference of the child, if old enough (factor 3); the implications of domestic abuse on parenting (factor 4); physical, mental-, and chemical-health issues (factor 5); the history and nature of each parent's caregiving for the child (factor 6); the willingness and ability of the parents to provide ongoing care for the child (factor 7); the effect of changes to the child's home, school, and community (factor 8); the effect of the proposed arrangements on the child, including impacts to significant persons in the child's life (factor 9); the benefits and detriments of minimizing and/or maximizing time with either parent (factor 10); the parents' ability to support the other parent (factor 11); and the willingness of the parents to cooperate in rearing the child (factor 12). *Id.*, subd. 1(a)(1)-(12).

A district court has broad discretion to determine the custody of the parties' children. *See Thornton*, 933 N.W.2d at 790 ("[A] district court needs great leeway in making a custody decision that serves a child's best interests, in light of each child's unique family circumstance."). A district court abuses its discretion if it misapplies the law, makes findings unsupported by the record, or resolves discretionary questions in a manner that is contrary to logic and the facts on record. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). "[D]etermination of a child's best interests is generally not susceptible to an appellate court's global review of a record, and . . . an appellate court's

combing through the record to determine best interests is inappropriate because it involves credibility determinations." *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) (quotation omitted).

1. The district court did not "mak[e] this a two-issue case."

Father argues that the district court abused its discretion by relying on its sexual-abuse and food-intolerance findings "almost to the exclusion of every other best interest factor." Father's assertion is belied by the district court's detailed 86-page order, 16 pages of which analyzed each statutory best-interests factor with particularity. While the district court placed significant emphasis on the unsupported sexual-abuse and food-intolerance allegations, opining that "[i]t is in this backdrop that this Court is asked to determine custody," our review does not support father's claim that the district court "exclu[ded]" other evidence that relates to the best-interests factors. Instead, we conclude that the district court properly and thoroughly evaluated all of the evidence received and sufficiently addressed each of the 12 best-interests factors. We also observe from our extensive review of the record and father's argument on appeal, that the focus of the overwhelming majority of father's arguments related to his position regarding the sexual-abuse and food-allergy allegations. That the district court devoted significant attention to these allegations is unsurprising and unremarkable given the copious evidence that father introduced regarding these issues and the continued attention that father devotes to these issues on appeal. Nevertheless, while father may disagree with the district court's determinations and the weight that it afforded to the evidence, the district court acted within

its discretion by incorporating its sexual-abuse and food-intolerance findings in its determination of the best interests of the child.[18]

2. The district court did not abuse its discretion by granting mother custody of the child.

Father next argues that the district court abused its discretion by failing to fully consider certain best-interests factors, asserting that the district court's analysis was "utterly deficient." Father argues that the district court failed to fully consider mother's psychological profile; the proposed changes to the child's home, school, and community; the impact that custody would have on the child's relationships with father and grandparents; and the ability of the parties to support one another. We reiterate that district courts have broad discretion to assess the best-interests factors and we generally defer to the district court's determinations because they inherently involve credibility findings that

[18] Father argues that *Dabill v. Dabill*, in which we reversed the district court's custody-modification order based on unsubstantiated sexual-abuse claims, is analogous to the facts here. 514 N.W.2d 590 (Minn. App. 1994). But *Dabill* is distinguishable for multiple reasons, not the least of which is that *Dabill* involved a motion to modify custody while the current case involves an original award of custody. In custody-modification proceedings, a district court uses a different analysis than in an original award of custody. *Compare* Minn. Stat. § 518.17 (2020) (basing an initial award of custody on a child's best interests), *with* Minn. Stat. § 518.18(d) (2020) (requiring that "the district court shall not modify a prior custody order" unless it finds "that a change has occurred in the circumstances of the child"). And *Dabill* concerned only one or two abuse incidents and a single CPS investigation. Here, father and grandparents' allegations spurred four CPS investigations, three forensic interviews of the child, and one CHIPS proceeding against father. Moreover, in *Dabill* we held that the record did not support the district court's finding that anyone was "continuously reminding" the children of past abuse. 514 N.W.2d at 596. Not so here, as these allegations of abuse occurred continuously over multiple years and trial testimony established that such allegations could lead the child to wrongly believe that he is a victim of sexual abuse. Finally, unlike in *Dabill*, where the district court did not make any express finding as to whether abuse occurred, here the district court expressly found that *no* abuse occurred.

we are ill-equipped to review. *D.L.D.*, 771 N.W.2d at 546. Even so, we conclude that father's arguments lack merit.

First, we disagree with father that the district court failed to consider mother's psychological profile. Father acknowledges that the district court found that mother "has significant mental health issues," including PTSD. But father argues that the district court "minimized" these issues, noting that she was progressing in therapy, and failed to include Dr. Albert's uncontroverted psychological findings. The district court, however, is not required to adopt the recommendation of any witness, including an expert witness. *Kenney*, 963 N.W.2d at 224 ("[A] factfinder is not bound by witness testimony, even if uncontradicted, when there is reason to doubt the testimony."); *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985) ("The trial court is not . . . bound to adhere to such expert testimony if it believes it is outweighed by other evidence."). Moreover, father ignores the district court's analysis that *he* had significant chemical-health issues which contributed to him "show[ing] no signs of letting go of his uncompromising ways" which "will always work to [the child's] detriment." We are unconvinced that the district court failed to properly address mother's mental-health issues or that the district court abused its discretion by balancing the evidence before determining that this factor favored mother.

Second, father asserts that the district court abused its discretion by summarily finding that factor 8, the effect of proposed changes to the child's home, school, and community, weighed neutrally. Father primarily claims that the district court abused its discretion by not addressing the different educational plans mother and father proposed for the child—father planned to send the child to a private school whereas mother desired to

send the child to the local public school. We disagree that the district court abused its discretion by not considering the child's future educational institution and reject father's assumption that his preferred private school is a superior choice for the child over mother's preferred public school. We also note that the child would have experienced a different educational environment regardless of whether the district court awarded custody of the child to father or mother, and the district court acted within its discretion by weighing this factor neutrally.

Third, father argues that the district court abused its discretion by failing to consider the impact that the child's placement with mother would have on the child's relationships with father and grandparents in its analysis of factor 9. The district court determined that this factor weighed in favor of mother because if father had sole custody, the child would likely become isolated from stepchildren and mother. While the district court did not specifically analyze the child's relationships with father and grandparents under this factor, it noted in its analysis of factor 11 that "[t]here are serious doubts that [father] will ever support [the child's] relationship with [mother]" but that "[mother], on the other hand, has expressed a willingness to try to work with [father]." The district court implicitly considered the relationships between the child, father, and grandparents and determined that those relationships could more likely be preserved by granting custody of the child to mother, whereas other important relationships to the child would not be preserved by granting custody of the child to father. The district court acted within its discretion by making such an assessment and determination.

Fourth, father argues that the district court abused its discretion by concluding that factor 11, the parents' willingness to support one another, favored mother. Father argues that the evidence demonstrated that mother "would not support [the child's] relationship with Father or his paternal grandparents" and the district court's conclusion that mother would support father in parenting the child is "unsupported by the evidence in the record." In support of his position, father cites to mother's trial testimony that she did not know what benefits the child derived from father or grandparents' presence in the child's life. We disagree that the district court clearly erred by making such a finding or abused its discretion by concluding that factor 11 favored mother. Trial testimony indicates, for example, that mother understood that the child loved and enjoyed spending time with father and grandparents. Because there is sufficient evidence in the record to support the district court's finding and conclusion, we see no clear error or abuse of discretion.

We specifically note that the district court thoroughly, separately, and with particularity analyzed each of the 12 statutory best-interests factors in 52 single-spaced paragraphs, spanning 16 pages of its order. Although father disagrees with the conclusions reached by the district court, we see no abuse of discretion in its analysis or conclusions.

II. The district court did not exhibit impermissible bias against father.

Father next argues that the district court "allowed its experience as a former prosecutor to influence its decision on what it deemed the most 'salient' issue in the case—whether [the child] suffered sexual and physical abuse" and the district court abused its discretion when it stated that it was "very familiar" with a CornerHouse interviewer.

"Our judicial system presumes that judges are capable of setting aside collateral knowledge they possess and are able to 'approach every aspect of each case with a neutral and objective disposition.'" *State v. Dorsey*, 701 N.W.2d 238, 247 (Minn. 2005) (quoting *Liteky v. United States*, 510 U.S. 540, 561-62 (1994)); *see also State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) ("There is the presumption that a judge has discharged his or her judicial duties properly.").

Father argues that the district court's statement that "[t]his Court is very familiar" with a CornerHouse interviewer suggests improper influence. But that statement alone does not suggest bias or impropriety. Indeed, on the same page of the order, the district court wrote, "[t]he Court has reviewed the CornerHouse interview . . . and agrees with [the interviewer's] assessment, particularly as it relates to her suspicions that [the child] was coached to make allegations that he was abused." The district court stating that it reviewed the interview and credited the interviewer's assessment does not demonstrate bias, nor does it suggest that the district court clearly erred or abused its discretion.

Father also argues that the district court "allowed its experience as a former prosecutor to influence its decision on . . . whether [the child] suffered sexual and physical abuse" and "was undoubtedly influenced by its past experience and perhaps even sensitized to consider the impact of sexual abuse allegations on the alleged perpetrator rather than the impact on the alleged victim." We disagree.

The colloquy at issue occurred when the district court examined father's expert witness following father's counsel's redirect examination. Our review of the transcript demonstrates that the district court described a different case as an example to form a

question for the expert. The district court stated: "I used to be a prosecutor, and I recall very early on in my career where a gentleman was, and I'm convinced of this, falsely accused of sexually abusing his daughter." The district court used this example to question the expert regarding the unsubstantiated sexual-abuse allegations involving the child here. The district court then asked the expert a series of questions about how the expert thought it should weigh the evidence in the context of the unsubstantiated allegations.[19] The district court went on to *distinguish* the situation in the example from the instant case, stating:

> [I]n that situation, the daughter clearly was making this [sexual-abuse allegation] up because her and the father weren't getting along. . . . [The daughter's actions] didn't conform with his religion, so she made this up. *I mean, that's different from this situation because very clearly in that situation, it was an intentional false allegation*.

(Emphasis added.) This colloquy does not support father's contention that the district court was biased against him or predisposed to favor the victim of a sexual-abuse incident. Our review demonstrates that the district court posed an example fact pattern to an expert witness who, in turn, responded to the district court's question. The mere fact that the district court referenced another case to pose a question does not overcome the presumption that the district court adjudicated this case objectively. *See Dorsey*, 701 N.W.2d at 247.

[19] For his part, the expert witness did not express any concern that this example was inappropriate and answered the district court's questions thoughtfully. The expert testified: "[T]hat's for the Court to decide what level of risk do we find and what is justified and recommended as a result of what we know and what we don't know."

III. Father is not entitled to a new trial.

Father argues that he must receive a new trial because the district court abused its discretion by admitting and excluding certain evidence and erred by denying him a hearing on his April 2020 motion to amend the findings.

"We review a district court's decision to grant or deny a new trial for an abuse of discretion." *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). "But when an order for a new trial is based on a question of law, we review the district court's decision de novo." *Larson v. Gannett Co.*, 940 N.W.2d 120, 146 (Minn. 2020). "Where evidence is said to conflict with the trial court's ruling on this issue, 'the broadest possible discretionary power is vested in the trial court.'" *Vangsness*, 607 N.W.2d at 472 (quoting *Grorud v. Thomasson*, 177 N.W.2d 51, 53 (Minn. 1970)). "The refusal to grant a new trial will be reversed only if misconduct is 'so prejudicial that it would be unjust to allow the result to stand.'" *Id.* (quoting *Jack Frost, Inc. v. Eng. Bldg. Components Co.*, 304 N.W.2d 346, 352 (Minn. 1981)); *see generally* Minn. R. Civ. P. 61 (requiring that harmless error be ignored). An error is harmless "[w]hen there is no reasonable possibility that it substantially influenced the [fact-finder's] decision." *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (quotation omitted); *see Midway Ctr. Assocs. v. Midway Ctr., Inc.,* 237 N.W.2d 76, 78 (Minn. 1975) (stating that to prevail on appeal, an appellant must show both error and that error prejudiced the appellant); *Toughill v. Toughill,* 609 N.W.2d 634, 639 (Minn. App. 2000) (citing this aspect of *Midway*).

A. The district court did not abuse its discretion by making certain evidentiary rulings.

Father argues that the district court erred by admitting letters from the child's play therapist and abused its discretion by excluding CPS interviews of the child, supplemental exhibits, and evidence that would have allegedly corroborated grandmother's testimony. We conclude that any error by the district court was harmless and see no abuse of discretion by the district court.

Father argues that the district court's admission of letters from the child's play therapist was "highly prejudicial" because the "district court discredited [father's] concerns about [the play therapist] based on the district court's description of [the play therapist] as 'experienced' and a 'well-known expert'" and the district court used the letters to find that the child was not subject to sexual abuse. But father does not identify any specific prejudice associated with the district court's ruling because he does not explain how the omission of the play therapist's letters would have changed the result of the trial. Our review of the district court's order and the record as a whole demonstrates that the district court relied far more heavily on the CPS investigations, Mitnick's report and testimony, the parties' trial testimony, and other evidence in a voluminous record. Any error by the district court in admitting the play therapist's letters was harmless.

Father's arguments regarding the district court's exclusion of the child's CPS interviews and exclusion of his late-filed supplemental affidavits fail for the same reason. Father alleges that the CPS interviews "included [the child's] disclosures of sexual and physical abuse." But father does not offer useful record citations for this argument or

specify what these CPS interviews would have shown or how they would have changed the result of the trial. Similarly, father summarily argues that the district court abused its discretion by excluding his supplemental affidavits as untimely without providing any information or argument as to how their exclusion prejudiced him. Any error by excluding this evidence was harmless.

Father argues that the district court abused its discretion by excluding grandmother's journals, which allegedly contained records of the questions that she asked the child regarding the child's sexual-abuse disclosures. Father specifically asserts that this evidence is admissible under Minn. R. Evid. 801(d)(1)(B), which defines certain evidence as "not hearsay" when it is "consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness." But "[w]e afford the district court broad discretion when ruling on evidentiary matters, and we will not reverse the district court absent an abuse of that discretion." *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Here, it was well within the district court's discretion to exclude this evidence because it did not believe that the journal would have been helpful in evaluating grandmother's credibility. Father does not provide any compelling alternative argument as to how the district court abused its discretion by excluding such evidence or, again, how such exclusion was not harmless.[20]

[20] Father also argues that the district court abused its discretion by eliminating his Appendix A rights to the child's medical records because its decision "was based on multiple levels of hearsay." But the district court's decision expressly did not rely on hearsay, and the district court is permitted to alter the rights mentioned in Appendix A "if it finds it is necessary to protect the welfare of a party or child." Minn. Stat. § 518.17,

B. The district court did not err by denying father a hearing on his motion to amend the findings.

Father next argues that the district court violated his due-process rights and erred as a matter of law by denying him a hearing on his April 2020 motion to amend the findings of the district court's March 2020 order. However, as father repeatedly argued in the underlying proceedings, the district court's August 2020 custody order and May 2021 order superseded the March 2020 order about which father now complains. Father's argument is therefore moot.[21] *Schnell*, 956 N.W.2d at 662 ("An appeal must be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible."); *B.J.H.*, 573 N.W.2d at 105 (declining to address an issue in an appeal because the issue was moot).

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subd. 3(c) (2020). The district court relied on father's own letters to the child's physician and mother's affidavit, stating that the child's primary physician (and the entire pediatric clinic) would no longer see the child, finding that "the issue of why [the child's physician] terminated medical care for . . . [the child] can be determined without the double hearsay statement" by "relying on the numerous correspondences written by [father] to [the physician]." The district court also specifically found that father's "correspondences to [the physician] follow the same pattern of abusive, harassing, and accusatory behavior that [father] exhibited with other professionals." This record unambiguously shows that the district court neither considered, nor needed to consider, any hearsay evidence to eliminate father's Appendix A rights.

[21] Father argues that the district court's denial of his request for a hearing was "highly prejudicial" to him because "numerous findings in the Court's August 28, 2020 [custody] Order were based on findings from its March 27, 2020 Order that Father sought to have corrected." We disagree that father suffered any such prejudice, as father received a full six-and-a-half-day trial to present his case to the district court in advance of the August 2020 custody order.

IV. The district court did not abuse its discretion by granting mother attorney fees.

As a final matter, father argues that the district court abused its discretion by awarding mother attorney fees. Specifically, father argues that the district court abused its discretion by: (1) awarding mother $150,000 in attorney fees and denying father an opportunity to respond to counsel's attorney-fee affidavits; (2) awarding mother duplicate attorney-fee awards; and (3) awarding mother conduct-based attorney fees for conduct occurring outside of the litigation.

A district court has discretion to award need-based or conduct-based attorney fees, and we will not reverse a district court's award of attorney fees absent an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999); *see* Minn. Stat. § 518.14, subd. 1 (2020). The party seeking need-based attorney fees must establish that

> (1) the fees are necessary for the good-faith assertion of the party's rights . . . and will not contribute unnecessarily to the length and expense of the proceeding, (2) the party from whom fees are sought has the means to pay them, and (3) the party to whom fees are awarded does not have the means to pay them.

Phillips v. LaPlante, 823 N.W.2d 903, 907 (Minn. App. 2012) (citing Minn. Stat. § 518.14, subd. 1). A district court may exercise its discretion to award "additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. Generally, conduct-based fees are based on conduct occurring during the course of litigation. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). The district court must make findings that explain the basis for an award of conduct-based attorney fees. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn.

App. 2007). The party moving for attorney fees has the burden to show that the conduct of the other party warrants an award. *Baertsch*, 886 N.W.2d at 238.

A. The district court did not abuse its discretion by awarding mother $150,000 in need-based attorney fees.

The district court did not abuse its discretion when it awarded mother $150,000 in attorney fees. In its initial August 2020 order, the district court ordered that "[father] shall pay to [mother's] attorney the sum of $150,000.00 in *need and conduct-based* attorney's fees." (Emphasis added.) In April 2021, the district court amended its order to state that it was awarding the attorney fees exclusively under a need-based theory.

Father asserts that the district court's amended order was "inconsistent" with its findings of fact. He appears to argue that the district court's order was inconsistent because the district court stated that "[i]t is very obvious that [father] was trying to bankrupt [mother] in hopes that her attorney would withdraw for nonpayment" while simultaneously acknowledging that "[father] has already contributed to [mother's] attorney's fees and costs in this proceeding." Father's argument fails as it does not address the need-based attorney-fee standard, which requires the good faith of the movant and the ability of the nonmovant to pay.[22] Minn. Stat. § 518.14, subd. 1. Even so, we see no merit to father's argument that the district court's findings were inconsistent or that this alleged

[22] We note also that father provided lengthy trial testimony attempting to establish that he was unable to pay mother's attorney fees because he had already incurred over $1.5 million in attorney fees by the time of trial. But father also testified that he would be willing to expend additional money to pay for private-school tuition for the child and another special master to supervise the child's alleged food-allergy issues, among other additional expenditures. To the extent father argues that he does not have the means to pay fees, the record supports the district court's finding otherwise.

inconsistency somehow precludes an award of attorney fees to mother. The district court expressly found that "[*a*]*lthough* [father] has already contributed to [mother's] attorney's fees and costs . . . [mother] *does not have the ability to contribute to her own attorney's fees and costs*." (Emphasis added.) Thus, the district court expressly acknowledged that father had provided mother *some* attorney fees while also finding that mother required *additional* attorney fees.

Father argues that the district court "failed to give proper weight to [mother's monthly budget] surplus of $431 per month, none of which she was using to pay her own fees." This argument also fails. The statute requires that the party being awarded fees "does not have the means to pay them." Minn. Stat. § 518.14, subd. 1(3). Such a finding does not require that the district court conclude that a requesting party have *no* excess income or that a party first bankrupt herself before the district court can award fees. Moreover, mother testified at trial that she had no surplus income because her total monthly expenses exceeded her net pay. The district court acted within its discretion by concluding that mother was entitled to need-based fees notwithstanding any alleged nominal surplus income that mother earned.

Father also argues that the district court did not permit him to respond to mother's attorney-fee affidavits. But father does not cite to anywhere in the record demonstrating that he attempted to respond to mother's affidavits or to a ruling from the district court denying him the opportunity to respond. We cannot find any support in the record for the

proposition that father attempted to contest these affidavits.[23] Because we do not consider matters not argued to and considered by the district court, we decline to consider father's argument. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

B. Father's second attorney-fee argument is inadequately briefed.

Father next argues that the district court abused its discretion by awarding mother $61,407.50 in conduct-based attorney fees in May 2021. Father again claims that he was unable to respond to mother's attorney-fee affidavit, argues that this award was duplicative of the district court's previous $150,000 award because the fees were from the same time period, and summarily argues that the district court did not have a basis for issuing conduct-based fees.

"[O]n appeal error is never presumed. It must be made to appear affirmatively . . . [and] the burden of showing error rests upon the one who relies upon it." *Loth*, 35 N.W.2d at 546; *see Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (applying this concept to a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001). We decline to consider issues that are inadequately briefed. *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers,*

[23] Father argues in his reply brief that he "raised this due process issue in his September 25, 2021 Motion for Amended Findings." But father does not cite to the record and we cannot find such a motion in the record. Moreover, even if father did submit such a posttrial motion raising this issue, an issue is raised "too late" if it is first raised in a motion for a new trial or a motion for amended findings of fact. *See Antonson v. Ekvall*, 186 N.W.2d 187, 189 (Minn. 1971) (new trial); *Allen v. Cent. Motors, Inc.*, 283 N.W. 490, 492 (Minn. 1939) (amended findings); *see also Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (citing these aspects of *Antonson* and *Allen* in a family-law appeal), *rev. denied* (Minn. Oct. 15, 2002).

Inc., 558 N.W.2d 480, 480 (Minn. 1997); *see Brodsky*, 733 N.W.2d at 479 (applying *Wintz* to a family-law appeal).

The record contains numerous attorney-fee affidavits. Father does not cite to the record or inform us as to which awards he believes are duplicative. It is unclear from our review of the record which of the awards may be duplicative. The mere fact that certain fees overlap in time, by itself, does not necessarily mean that the bills are duplicative. For example, mother included two fee affidavits in her addendum that itemize costs for overlapping periods of time but clearly break down the costs at issue and demonstrate that the billed amounts are not for the same work performed. We decline to reach father's attorney-fee argument because it lacks specificity and is inadequately briefed.

C. The district court did not abuse its discretion by awarding mother $22,290 in attorney fees.

Father argues that the district court erred by awarding mother $22,290 in attorney fees after he "advocat[ed] for [the child's] dietary needs." Father argues that the district court erred because (1) it awarded conduct-based fees for behavior occurring outside of the litigation and (2) it awarded fees based on the conduct of grandparents who are non-parties to this litigation.

The district court may award conduct-based attorney fees when a party "unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1; *see Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. 2001). Generally, conduct-based fees are based on conduct occurring during the course of litigation. *Baertsch*, 886 N.W.2d at 238; *see Brodsky*, 733 N.W.2d at 477 (affirming an award of

conduct-based fees made under Minn. Stat. § 518.14, subd. 1, for fees incurred in proceedings ancillary to a dissolution proceeding).

Here, it appears that the district court's order for attorney fees related to events that occurred during and in connection with the litigation. In its May 24, 2021 order, the district court awarded mother conduct-based attorney fees on the theory that

> [father's] unreasonable conduct relating to [the child's pediatrician] and [play therapist's] terminations, [father's] parents contact with [the child's] school, and having to respond to [father's] meritless and frivolous requests . . . cause [mother] to incur attorney's fees to address these issues, which unnecessarily lengthen the proceeding.

It is unclear why father believes that these events occurred outside of the litigation. As the district court found, father and grandparents' actions repeatedly forced mother to engage in additional litigation and incur additional attorney fees. The nature of father's conduct, primarily contacting and harassing providers regarding the child's alleged dietary needs, was entirely related to the present litigation.

We also see no abuse of discretion in the district court's conclusion that grandparents' actions here are attributable to father. The record shows that after the district court prohibited father from contacting the child's daycare, grandparents picked up where he left off, resuming the same harassing conduct that the district court had ordered father to stop. The district court specifically stated that it is "disturbing" that grandparents continue to assert that the judiciary lacks jurisdiction over them in this matter as they "endanger" the child by performing the same acts as father. Our review of the record supports the district court's conclusion that grandparents' actions are equally attributable

to father here, and we see no abuse of discretion by the district court in awarding mother additional attorney fees.

Affirmed.