STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1016

In re the Marriage of:
Melissa Ann Kuchera, petitioner,
Appellant,

vs.

Joel Wayne Biebighauser,
Respondent,

County of Dakota,
Respondent.

Filed July 18, 2022
Affirmed
Wheelock, Judge

Dakota County District Court
File No. 19AV-FA-10-4037

Elizabeth Drotning Hartwell, Kristin Trapp, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

Andrew J. Haugen, Lisa M. Needham, Haugen Law Group, PLLC, Excelsior, Minnesota (for respondent Biebighauser)

Kathryn M. Keena, Dakota County Attorney, Karen L. Hinrichs Wangler, Assistant Dakota County Attorney, Hastings, Minnesota (for respondent County of Dakota)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Mother challenges the district court's modification of physical custody, arguing that the court abused its discretion by (1) denying her request for a continuance, (2) modifying the custody arrangement by finding endangerment warranting a modification and finding that a custody modification was in the child's best interests, and (3) failing to make sufficient findings that enrolling the child in a different school was in the child's best interests. Because the district court did not abuse its discretion in making the rulings mother challenges on appeal, and because the district court's factual findings were supported by the record, we affirm.

FACTS

Melissa Ann Kuchera (mother) and Joel Wayne Biebighauser (father) were married and had a child together in May 2010. They divorced in August 2011, and the stipulated divorce judgment provided for joint legal custody of the child and sole physical custody with mother. In 2014, the district court issued an amended order that addressed several issues, including parenting time. In 2015, the parties agreed to a change in parenting time that was never adopted by court order and that provided father with two consecutive weekends of parenting time followed by one weekend of parenting time with mother. In March 2020, mother emailed father requesting a change to the parenting-time schedule and then unilaterally reverted to the parenting-time schedule in the 2014 amended order.

At the end of 2019 and beginning of 2020, the child experienced several upheavals in her life. The child suffered a serious concussion in an accident; her grandmother died

in February 2020; mother and her fiancé, D.P., ended their relationship; and mother petitioned for and was granted an order for protection (OFP) against D.P. on behalf of mother and the three children mother had with D.P. Mother's OFP against D.P. was based on physical abuse by D.P. of their three children and mother but not of the joint child of mother and father. When the OFP was scheduled to expire and mother had not found housing in the area where the family was living at the time, mother moved all four children to her parents' house, which resulted in the child living farther away from father.

In March 2020, mother arranged for the child to have weekly therapy sessions with a therapist without consulting father. In April 2020, father read the child's diary when she was at his house for the weekend and found several entries relating to suicidal ideation. By this time, father was aware that the child was working with the therapist, and father emailed the therapist on April 12 and scheduled an appointment for the therapist to address the diary entries with the child. The therapist discussed the content of the diary pages with the child and father. At the next regularly scheduled session, the therapist met with the child and mother, who together expressed that they had made a breakthrough. At that session, the child said that father had pressured her to tell him what she said during the therapy sessions, and mother asked the therapist not to include father in future sessions. The therapist did not include father in future sessions. The child continued to have sessions with the therapist until August, when father informed the therapist that she did not have his consent to continue therapy with the child and required that the sessions stop. Mother and father continued to communicate and tried to find a therapist on whom they both agreed, but they

were unsuccessful. Thus, the child lacked a therapist from that point forward during the pendency of the case in the district court.

In July 2020, father filed a motion requesting to modify physical custody, to establish his home as the primary residence, and to modify the parenting-time schedule. In September 2020, father filed an amended motion seeking court orders that the parties agree to a new therapist for the child, that each parent have phone contact with the child when the child is with the other parent, and that the child be allowed to utilize electronic devices in both homes. The district court found that father had made a prima facie showing of endangerment, and it scheduled an evidentiary hearing on the custody and parenting-time issues and issued temporary orders regarding parenting time, therapy, cell-phone use, and other issues. On March 9, 2021, mother's counsel withdrew; however, mother did not file a motion for a continuance until April 27, 2021. The district court denied mother's continuance request without making findings on May 3, 2021. The district court held an evidentiary hearing on May 17 and 19, 2021, during which mother represented herself and father was represented by counsel.

Based on this record, the district court determined that mother emotionally endangered child by interfering with the child's therapeutic relationship, including coaching the child on what to say, and that she interfered with father's rights as a joint legal custodian with regards to the child's mental health by excluding him from child's therapy. Thus, the district court modified the custody arrangement, granting joint physical custody to the parties and requiring that the child attend school in the school district where father lives. Mother appeals.

DECISION

I. The district court did not abuse its discretion by denying mother's request for a continuance.

We review a district court's ruling on a continuance request for abuse of discretion. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010). "The test [for an abuse of discretion] is whether a denial [of a continuance] prejudices the outcome of the trial." *Weise v. Comm'r of Pub. Safety*, 370 N.W.2d 676, 678 (Minn. App. 1985). "Withdrawal of counsel does not create any right to continuance of any scheduled trial or hearing." Minn. R. Gen. Prac. 105.

Mother argues that the district court erred by denying her continuance request because mother was still seeking a new attorney, who would need time to review the record and would potentially facilitate mother reaching an agreement with husband. She argues that she was prejudiced by the denial of a continuance because the denial materially affected the outcome of the hearing, constituting an abuse of discretion.

In *Hamilton v. Hamilton*, we concluded that two months was sufficient time for a party to obtain a new attorney, and therefore the district court had not abused its discretion when it denied that appellant's request for a continuance. 396 N.W.2d 91, 94 (Minn. App. 1986). Here, mother's counsel withdrew on March 9, 2021, mother requested a continuance on April 27, the district court denied her request on May 3, and the evidentiary hearing went forward on May 17. Similar to the appellant in *Hamilton*, mother had approximately two months between the day her counsel withdrew and the evidentiary hearing. In addition, mother did not request a continuance until approximately seven weeks

after her previous attorney withdrew. We therefore conclude that the district court did not abuse its discretion by denying mother's request for a continuance because mother had sufficient time to obtain a new attorney.

II. The district court's findings in support of custody modification are not clearly erroneous, and the district court did not abuse its discretion by modifying the custody arrangement.

The district court may modify a custody arrangement if "a change has occurred in the circumstances of the child or the parties and . . . the modification is necessary to serve the best interests of the child." Minn. Stat. § 518.18(d) (2020). The court shall retain the provision specifying the child's previously established primary residence unless, in relevant part, "the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." Minn. Stat. § 518.18(d)(iv).

Our review of custody determinations is limited to "whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008). We acknowledge that "[d]istrict courts have broad discretion on matters of custody and parenting time." *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018).

Factual findings that underlie a custody decision must be sustained unless they are clearly erroneous. *Ayers v. Ayers*, 508 N.W.2d 515, 518 (Minn. 1993); Minn. R. Civ. P. 52.01. Factual 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) (quotation omitted). We review the record in a light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

"The existence of endangerment must be determined on the particular facts of each case." *Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (quotation omitted). "A majority of courts, including Minnesota courts, agree that a sustained course of conduct by one parent designed to diminish a child's relationship with the other parent is unacceptable and may be grounds for denying or modifying custody." *Id.* at 231-32. But "[a] denial or interference with visitation is not controlling in a custody-modification proceeding" and should instead be considered along with the custody-modification standard set out by Minn. Stat. § 518.18. *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000). Mother argues that the district court erred in finding (1) that the child's emotional health was endangered and (2) that the present environment existing at the time of the custody hearing endangered the child's health.

The district court laid out detailed findings in support of its determination that "the minor child [had] been emotionally endangered in Mother's care" and that "Mother [had] substantially interfered in Father's rights as a joint legal guardian." Specifically, the district court found that mother placed the child in therapy without notifying father. In therapy, the child reported some concerns of verbal abuse by D.P., and she told the therapist that her mother yelled at her, had hit her once, and called her names. The district court also found that mother unilaterally reverted to the 2014 court-ordered parenting-time schedule

after five years of adhering to an informal agreement that provided father with increased parenting time. And it found that when father read the child's diary and learned that the child had written that she was unhappy and contemplated suicide, he contacted the child's therapist to schedule an appointment. The district court discredited father's statement that he only learned of the therapist after finding the diary, because the record contained an email from father to the therapist requesting information approximately two weeks earlier. The court further found that mother interfered with the child's therapeutic relationship by coaching the child on what to say and that mother interfered with father's rights as a joint legal custodian with regards to the child's mental health.

Finally, the district court found: "Mother enrolled the minor child in therapy without notifying Father, failed to provide Father with important information regarding therapy and the minor child's mental health. Mother admitted she did not tell Father when she learned of the diary or the suicidal ideation." It also noted that mother had an OFP against D.P. that prevented contact between D.P. and mother and the other children. The court noted that mother restricted the child's access to father by moving to mother's parents' home at a time when the child was "struggling significantly in [mother's] home and requesting more time with father."

a. The district court did not err by finding the child was emotionally endangered.

"While '[t]he concept of "endangerment" is unusually imprecise, in the context of child custody, the legislature likely intended to demand a showing of a significant degree of danger.'" *Sharp*, 614 N.W.2d at 263 (quoting *Ross v. Ross*, 477 N.W.2d 753, 756

(Minn. App. 1991)). "Normally, given the statutory requirement for proof of endangerment as a condition for a custody modification, the conduct or circumstance of a parent, including visitation interference, does not establish danger to the welfare of children without evidence of actual adverse effects." *Dabill v. Dabill*, 514 N.W.2d 590, 595-96 (Minn. App. 1994). Mother argues that the district court erred by finding that the child's emotional health was endangered. Mother contends that the district court's findings do not rise to the level of endangerment contemplated by Minnesota law and that the findings that she interfered with the therapeutic relationship were not supported by the record.

We conclude that the district court did not err by determining that mother's conduct endangered child. The district court's findings that mother called the child names and yelled at her, that the child engaged in suicidal ideation, and that mother interfered with therapy for the child's suicidal ideation support its determination regarding endangerment. Contrary to mother's arguments that the district court's findings were not sufficiently specific or significant, it is a specific concern that mother yelled at the child, that the child contemplated suicide, and that mother interfered with the child's mental-health treatment by coaching the child on what to say in therapy. It is significant that the child contemplated suicide and that she wrote multiple diary entries considering potential means for dying by suicide and expressing her desire to die for various reasons, one of which was the negative impact of her relationship with her mother. It is also significant that mother did not provide father with important information regarding the child's mental health and the child's therapy work. It is not clearly erroneous for the district court to consider the child's suicidal ideation to be evidence of actual adverse effects of her parents' conflict and her relationship

with her mother because the child wrote specific diary entries that stated she was considering suicide in response to her mother's treatment of her. Thus, the district court did not err by determining that the present environment endangered the child's emotional health because the totality of the circumstances supports a conclusion that the child was emotionally endangered.

Mother's argument that the district court ignored evidence supporting a finding that father interfered with the therapeutic relationship does not convince us that the district court clearly erred. As noted above, factual 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," *Kenney*, 963 N.W.2d at 221 (quotation omitted), and we defer to the district court's credibility determinations, *Vangsness*, 607 N.W. 2d at 472.

The district court's order stated that due to the child's "history of suicidal ideation while primarily in Mother's care, it is of particular concern to this Court that Mother interfered with the minor child's therapeutic care" and that mother also interfered "with Father's rights as a joint legal custodian" regarding the child's mental health. The district court relied on therapy notes to support this finding but only referred to notes from earlier sessions in which the child shared that mother was interfering with what the child said in therapy. The court's order did not mention later notes in which the child stated that it had instead been father who had interfered with what the child said. In the absence of an explanation in the record, the contradiction in the therapist's notes appears to diminish the strength of the statements relied upon by the district court, but it does not establish that the

district court's findings were clearly erroneous. As a whole, the evidence reasonably supports the district court's finding that mother interfered with the child's therapeutic care.

b. The district court did not err in its evaluation of the present environment as contemplated by Minn. Stat. § 518.18(d).

Mother next argues that there was insufficient evidence to support the district court's finding that the *present environment* endangered "the child's physical or emotional health or impair[ed] the child's emotional development." Minn. Stat. § 518.18(d)(iv). Mother argues that the district court erred by analyzing the "past" environment rather than the "present" environment that existed at the time of the custody hearing. The child's present environment should be determined based on the child's present circumstances and "not solely on the history of care." *Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997). We concluded in *Hassing* that when the district court acknowledged the mother's recent improvement in parenting skills but only considered prior poor conduct in its determination of the child's present environment, the district court erred. *Id.* Mother relies on *Szarzynski v. Szarzynski*, in which we affirmed the district court's determination that appellant had failed to make a prima facie showing of endangerment when the source of the alleged endangerment, mother's father, died, thereby eliminating the only "specifically identified source of endangerment." 732 N.W.2d 285, 292 (Minn. App. 2007).

Here, the district court's findings that "a substantial change in circumstances has occurred" and that the child "has been emotionally endangered" in mother's care do not explicitly address whether the present environment endangers the child's health. However,

in contrast to those in *Hassing*, the district court's findings describe the environment in mother's care and show that mother's behavior toward the child had not changed and that the identified source of endangerment was therefore not eliminated.

Mother argues that the present environment had significantly changed because mother moved away from D.P. and obtained a protective order restricting him from seeing her and her other children with him (but not the child in this case). While it is true that the district court emphasized its concerns about the child's potential interactions with D.P., these were not the only concerns the court identified about the child's present environment. The district court also noted that during therapy, the child disclosed incidents of mother yelling at her and saying negative and disparaging things to her. The district court further found that mother interfered with the child's therapeutic relationship and that the child stated she was "more comfortable with dad than mom bringing her" to therapy.

The district court's conclusion that the child was endangered in the present environment was based not only on findings that the child was interacting with D.P., but also on findings that mother was disciplining the child in a particularly harsh manner and interfering with the child's therapy. Because mother does not point to evidence showing that these other factors changed,[1] we conclude that the district court did not err when it determined that the child was endangered in the present environment.

[1] "[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944); *accord Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999).

c. The district court did not err by finding that custody modification was in the child's best interests.

Mother argues that the district court erred by determining that the custody modification was in the child's best interests because (1) it found that mother's move was contrary to the child's best interests; (2) the evidence does not support its finding that father was able or willing to care for the child; (3) it failed to consider the impact of the child's separation from her siblings; and (4) it granted joint physical custody to two parents who are unable to cooperate. The best interests of the child are determined according to the twelve factors listed in Minn. Stat. § 518.17 (2020). *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997).

First, mother argues that the district court erred by finding that "Mother has moved on at least two (2) separate occasions and has changed the minor child's school enrollment without notifying Father." Mother asserts that the district court "appeared to deride Mother for not maximizing her financial resources" by finding that mother moved in order to interfere with father's custody of the child. However, the district court did not make its finding regarding the reason for the move as part of the best-interests analysis. Rather, in the best-interests analysis, the district court focused on the impact on the child: mother has moved twice and has changed the child's school without notifying father, which affects the child's interests in stability and in father's involvement in any enrollment changes. Mother does not argue that these facts are not supported by the record, and therefore she has not shown that the findings were clearly erroneous.

Second, mother argues that the district court erred by finding that father is able and willing to care for the child. The district court found that both parents had demonstrated a willingness and ability to provide care for their child. Mother relies on the therapist's notes, where the therapist said that after mother and the therapist agreed that father should not be involved in the child's therapy, father was not involved and did not take the crisis phone number the therapist offered. It was not clearly erroneous for the district court to determine that father was able and willing to care for the child notwithstanding his lack of involvement with the child's therapist in light of the facts regarding mother engaging the therapist without telling father and intentionally excluding father from the therapy appointments by having the therapist agree that father would not be allowed to participate in therapy with the child.[2]

Next, mother argues that the district court erred by failing to evaluate the impact of the child's separation from her siblings in its best-interests analysis. The district court must make detailed findings regarding each factor, explaining how they led to its conclusions and its determinations of the child's best interests. Minn. Stat. § 518.17, subd. 1(b)(1). In the district court's best-interests analysis, it found that the child had a close relationship with both parents and with her three siblings, and it noted that the child had lived with her siblings for a "significant period of time." The district court further found that the child would benefit from continued relationships with both parents and maximizing parenting time with both. Mother's argument that the child has close relationships with her three

[2] Again, an appellant must affirmatively show error on appeal. *Waters*, 13 N.W.2d at 464-65; *accord Luthen*, 596 N.W.2d at 283.

other children does not support a conclusion that the district court erred when it found that the child would benefit from "maximizing parenting time with both parents" and the continued "opportunity to maintain close relationships with the significant people in her life." The findings here are similar to the findings reviewed in *Kremer v. Kremer*, 827 N.W.2d 454, 458 (Minn. App. 2013), *rev. denied* (Minn. Apr. 16, 2013), which this court described as findings "that both sets of the child's grandparents have significant positive involvement in her life." Here, the district court acknowledged the child's close relationships and the interest in maintaining and maximizing those relationships. The district court's findings here are thus sufficiently detailed.

Finally, mother argues that the district court erred by granting joint physical custody to two parents who are unable to cooperate. Mother relies on the case *Greenlaw v. Greenlaw*, in which this court said that "the statutory standards preclude the use of either joint physical or joint legal custody if the parties do not cooperate." 396 N.W.2d 68, 73 (Minn. App. 1986) (citing Minn. Stat. § 518.17, subd. 2(a) (1984) (repealed 2015)). However, since *Greenlaw*, the legislature has repealed subdivision 2(a) and issued new statutory language regarding joint custody. Now, except in cases of domestic abuse or cases in which one or both of the parties request joint custody, "[t]here is no presumption for or against joint physical custody." Minn. Stat. § 518.17, subds. 1(b)(7), (9) (2020). Thus, the statutory standards appear to no longer preclude the use of joint physical or legal

custody if the parties do not cooperate, and the critical question for purposes of child custody is whether the custodial arrangement in question is in the child's best interests.[3]

The district court considered whether mother and father have a willingness and ability to cooperate and found that both parties failed to consistently demonstrate that willingness and ability with respect to their child. Mother routinely did not communicate with father, who shared joint legal custody of the child, and father failed to communicate and respond to mother's messages. The district court also stated its concern that father involved D.P. in the litigation, further exacerbating the conflict between mother and father. In considering the parties' conflict, the district court reasoned that establishing joint physical custody would minimize the child's exposure to conflict and provide a means to resolving disputes. Based on the current statutory language, this determination appears to be within the district court's discretion and based on findings that are not clearly erroneous.

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[3] Although there are opinions from our court upholding the rule that joint legal custody should be granted "only where the parents can cooperatively deal with parenting decisions," and these opinions do not appear to have been expressly overruled, these cases predate the revisions to Minn. Stat. § 518.17 on this point. *See, e.g.*, *Wopata v. Wopata*, 498 N.W.2d 478, 482 (Minn. App. 1993); *see also In re Glover*, No. A16-1746, 2017 WL 3013246, at *2 (Minn. App. July 17, 2017) (citing *Wopata* for the proposition that legal custody should only be granted where the parents can "cooperatively deal with parenting decisions"); *Rucker v. Rucker*, No. A16-0942, 2016 WL 7439094, at *5 (Minn. App. Dec. 27, 2016) (citing *Wopata* and other cases for the proposition that joint legal custody is inappropriate when parties lack the ability to cooperate and communicate); *In re Custody of A.E.M.L.*, No. A07-1207, 2008 WL 2574485, at *3 (Minn. App. July 1, 2008) ("Awarding joint physical custody is an abuse of discretion when the difficulties between the parents are so significant and pervasive as to preclude cooperation."). We further note that unpublished/nonprecedential opinions are of limited value in deciding an appeal. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.").

Because we conclude that the district court did not err in its findings related to the child's best interests, the court did not abuse its discretion when it found that custody modification was in the child's best interests.

d. The district court did not fail to analyze the potential harm posed by a change in custody in relation to the benefits.

The district court shall retain the custody arrangement unless the present environment endangers the child and "the harm likely to be caused by a change in environment is outweighed by the advantage of a change to the child." Minn. Stat. § 518.18(d)(iv). Mother argues that the district court's findings "thereon are scant and unsupported by the record." The district court found that the harm was outweighed by the advantage of the custody modification because "[t]he minor child has had substantial upheaval in her life due to instability in her home life at Mother's residence, and the change in environment occasioned by the below parenting time schedule will provide the minor child with more stability." The district court then discussed the difficulty the parents have had with following the existing custody agreement and concluded that the "imbalance of power caused by the unequal parenting time schedule has caused continual conflict and the need for court involvement over the past seven (7) or more years." The district court discussed throughout its order the instability the child has felt living with mother and the child's interest in maintaining relationships with both parents and their families. The district court therefore sufficiently weighed the harms and benefits of modifying the custody agreement.

III. The district court did not abuse its discretion by determining that the child should enroll in the school district where father lives.

Mother argues that the district court abused its discretion by requiring the child to enroll in the school district where father lives because it failed to make detailed findings supporting its decision, including findings regarding the impact on the child of separation from her three half-siblings. Mother does not provide any legal support for this argument, instead relying on "the same reasons outlined in the custody and parenting time analysis." An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (applying this aspect of *Schoepke*), *rev. denied* (Minn. Apr. 26, 2017). Thus, mother's argument here is forfeited.

Even if mother's argument had not been forfeited, it fails. "[I]n a child custody proceeding, the court shall make such further order as it deems just and proper concerning" the legal custody, the physical custody and residence, and the support of the child. Minn. Stat. § 518.17, subd. 3(a). "'Legal custody' means the right to determine the child's upbringing, including education . . . ." Minn. Stat. § 518.003, subd. 3(a) (2020). To determine custody, the court shall consider the best interests of the child. *Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989); *see* Minn. Stat. § 518.17, subd. 3(a)(1).

Here, the district court did not separately review the best-interests factors as they would apply to the choice of school. Instead, the district court reviewed mother's and

father's testimony regarding the options for the child's education. Because the district court found that father had resided in the same town for several years and enrollment there would provide the child with stability, it found that "it [was] in the minor child's best interests" to enroll her in the school district where father lives. The district court did not say that this decision was based on the best-interests factors it reviewed in the previous section. However, the district court's decision was structured so as to show that both the custody-and-parenting-time decision and the school-placement decision were based on the foregoing best-interests analysis. The school-placement decision was properly supported by the district court's best-interests analysis; therefore, mother's argument fails.

Affirmed.