This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0097

In re the Matter of:

Kelsey Anne Canaday, petitioner,
Respondent,

vs.

Haley Jo Canaday,
Appellant,

and

Edward Lee Hogan,
Respondent.

Filed October 3, 2022
Reversed
Kirk, Judge[*]

Hennepin County District Court
File No. 27-PA-FA-18-22

Kelsey Anne Canaday, St. Paul, Minnesota (pro se respondent)

Kathleen M. Miller, KMH Custom Family Law, PLLC, Eagan, Minnesota (for appellant)

Edward Lee Hogan, Minneapolis, Minnesota (pro se respondent)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Kirk, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant Haley Jo Canaday (H.J.C.), respondent Kelsey Anne Canaday (K.A.C.), and respondent Edward Lee Hogan (E.L.H.) are the legal parents of six-year-old S.D.C-H. S.D.C-H. is the biological daughter of K.A.C. and E.L.H., but K.A.C. was married to H.J.C. when S.D.C-H. was born and all three have been adjudicated the parents of S.D.C-H. H.J.C. and E.L.H. share joint legal custody of S.D.C-H. H.J.C. has sole physical custody of S.D.C-H. and provides her primary residence, subject to limited supervised parenting time on Sundays for E.L.H. and K.A.C. H.J.C. sought to move herself and S.D.C-H. to California, but the district court denied her motion to relocate. Arguing that the record does not support the district court's findings regarding S.D.C-H.'s best interests, and that the district court misapplied relevant caselaw, H.J.C. appeals. Because the district court's findings on three factors were contrary to logic and the facts in the record, we reverse.

FACTS

Before H.J.C. and K.A.C. married, H.J.C. had two sons with an ex-husband. H.J.C. is Caucasian and her ex-husband is Black. The boys are 17 and 11 years old and reside full-time with H.J.C. Also, during the time preceding H.J.C. and K.A.C.'s marriage, K.A.C. worked with E.L.H. and they had an "occasionally sexually physical" relationship that lasted into her marriage, through 2015. Simultaneously, E.L.H. was in a "romantic relationship" with a woman he later married and with whom he shares a child.

In 2013, H.J.C. and K.A.C. married, and K.A.C. moved into H.J.C.'s Minneapolis home. K.A.C. was laid off from her job in 2014. K.A.C., who is Black, was adopted and

had a difficult time being raised by White parents, and following her layoff went to visit her birth mother. In the aftermath of the trip, K.A.C. struggled with substantial mental-health and chemical-use issues. Her long-standing drug and alcohol use intensified. In 2015, H.J.C. called 911 after she and K.A.C. got into an argument. K.A.C. was ultimately arrested and pleaded guilty to domestic assault.

The police report from the 2015 incident provided H.J.C.'s account of the events. The police report indicates that K.A.C. threw a glass through a window and blocked the bedroom door—preventing H.J.C. from leaving—and slapped and pushed H.J.C.'s face multiple times until she ultimately allowed H.J.C. to leave. H.J.C. also reported that K.A.C. "threaten[ed] her about once a week," that K.A.C. had used alcohol and marijuana the previous night, and that K.A.C. consumed alcohol on the morning of the incident. K.A.C. pleaded guilty, but later stated that the argument was mutual, that she never blocked H.J.C. from leaving, and that the arrest was racially motivated and biased.

Following the 2015 incident, H.J.C. obtained an order for protection (OFP) against K.A.C. for herself and her sons and K.A.C. moved out of H.J.C.'s home. Despite the OFP, the women mutually agreed to attempt to repair their relationship. H.J.C. dropped the OFP and K.A.C. moved back in with her. During this time, K.A.C. and E.L.H. conceived S.D.C-H.[1] K.A.C. told H.J.C. about her pregnancy, but it is unclear whether H.J.C. knew of E.L.H. E.L.H. did not know about K.A.C.'s pregnancy.

[1] A DNA test confirmed that E.L.H. is S.D.C-H.'s biological father with 99.98 percent probability.

S.D.C-H. was born in March 2016. She tested positive for THC at her birth, resulting in child-protective services becoming involved with her care. K.A.C. asserted that marijuana use during pregnancy alleviated her nausea, but admitted that she stopped nursing S.D.C-H. after ten days in order to consume more alcohol and drugs. In July 2016, H.J.C. took her sons to a movie following an argument with K.A.C. In an attempt to get H.J.C. to return home, K.A.C. sent H.J.C. text messages during the movie that included a photograph of S.D.C-H. and text that read "I will kill her."

Upon reading the message, H.J.C. immediately returned home. When she arrived, K.A.C. was "extremely intoxicated." H.J.C. reported—and K.A.C. does not refute—that K.A.C. shook, kicked, and attempted to choke her during this incident. When law enforcement arrived and arrested K.A.C., she gave S.D.C-H. to H.J.C. K.A.C. was later charged with and found guilty of domestic assault.

Three days after the incident, H.J.C. petitioned for another OFP against K.A.C. on behalf of herself and her sons. The district court issued an OFP, which precluded K.A.C. from contacting H.J.C. outside of a mobile application that facilitates communication regarding the care of children shared by separated parents and other caregivers. After the 2016 incident, H.J.C. and K.A.C. made a parenting-time arrangement regarding S.D.C-H.'s care. K.A.C. originally received parenting time, which was to take place at her adoptive parents' home and under their supervision, from Thursday through Sunday each week. Over the years, this parenting time was reduced to Friday nights, then to just four hours of parenting time on Sundays. Multiple OFP violations, including harassing comments by K.A.C. toward H.J.C. and K.A.C.'s refusal to register to use the mobile

application and her eventual misuse of the application, resulted in two, two-year-long OFP renewals in 2018 and 2020.

E.L.H., who is Black, only learned of S.D.C-H.'s existence in late summer 2016 and did not meet her until late August 2016. As such he was not included in the original parenting-time arrangement. Throughout 2016 and 2017, he completed a total of 11 two-to-three-hour parenting-time sessions. H.J.C. contends that he missed and failed to reschedule many other sessions. E.L.H. married his now-wife, who he was dating when S.D.C-H. was conceived, soon after he learned of S.D.C-H.'s existence. His wife gave birth to a child approximately nine months after S.D.C-H. was born. E.L.H.'s wife obtained an ex parte OFP against him following allegations of physical abuse that was later resolved in his favor and dismissed. E.L.H. has six hours of parenting time with S.D.C-H. every Sunday. Apart from the ten total hours of parenting time shared by K.A.C. and E.L.H. each week, H.J.C. is effectively S.D.C-H.'s sole parent; S.D.C-H. spends every overnight with H.J.C., who also home schools her. Accordingly, H.J.C. shoulders nearly all the burden associated with parenting a young child.

In March 2017, K.A.C. filed a summons and petition for legal separation from H.J.C., and H.J.C. filed an answer and counterpetition for dissolution with child one month later. In September 2017, E.L.H. filed a custody and parenting-time petition against K.A.C., seeking an order awarding him joint custody over S.D.C-H., shared between himself and K.A.C. H.J.C. intervened in that proceeding. In December 2017, a guardian ad litem (GAL) was appointed for S.D.C-H. Approximately one month later, K.A.C. initiated a parentage proceeding against H.J.C. and sought to obtain a determination of non-

existence of parentage. Around this time, the GAL issued her report recommending that H.J.C. have sole legal and sole physical custody of S.D.C-H., that K.A.C. have supervised parenting time "at least twice weekly," and that E.L.H. receive supervised parenting time to "serve as a reintroduction format for [S.D.C-H.] to connect with her father." The report also contained various concerns regarding K.A.C.'s engagement with S.D.C-H., as well as her chemical health, excessive and inadequate communication with H.J.C. about S.D.C-H.'s welfare and daily activities, and her failure to follow court orders and enter therapy. The report also noted:

> [K.A.C.] has consistently made concerning statements to me, her former therapist, staff at Relationships, LLC, and her probation officer. These comments include, but are not limited to: threats to conduct welfare checks on [S.D.C-H.], threats of harm, threats to go to jail, stating she will not follow court orders, and threatening not to return [S.D.C-H.] to [H.J.C.]'s care. Such comments and threats directly relate to [S.D.C-H.] and have threatened her safety and well-being. It leaves the professionals having to guess which comment is valid and which is not. Most concerning has been when she has threatened to go get [S.D.C-H.], leave with [S.D.C-H.], or cause harm to herself and [S.D.C-H.] The most recent occurrence took place on 1/3/2018 in which [K.A.C.] sent me a text message saying, "I'm going to [H.J.C.]'s and getting my child." Additionally, I was informed that on 12/30/2017, when [K.A.C.] was picking up belongings at [H.J.C.]'s home, [K.A.C.] went to the daycare provider's home knocking on the door looking for [S.D.C-H.]. [S.D.C-H.] was placed upstairs and was playing with another child and [K.A.C.] was not allowed inside. This occurred while a sheriff's deputy was nearby at [H.J.C.]'s home. The daycare provider lives across the street. [K.A.C.] did not follow the court order in this instance as has been a continual pattern.
>
> It is difficult to determine when K.A.C. is making valid threats or making idle comments.

In May 2018, H.J.C., K.A.C., and E.L.H. entered into a binding mediation agreement resolving issues related to parentage, legal custody, and parenting time. The district court subsequently issued a judgment and decree consistent with the terms of the mediation agreement that adjudicated H.J.C, K.A.C., and E.L.H. the parents of S.D.C-H., awarded H.J.C. and E.L.H. joint legal custody, awarded H.J.C. sole physical custody, and awarded K.A.C. and E.L.H. parenting time in accordance with the graduated parenting-time schedule established in the mediation agreement. H.J.C. and K.A.C. divorced in July 2018. K.A.C. is now with a different partner and has since given birth to a second child. Neither K.A.C. nor E.L.H. have had their parenting time increased with S.D.C-H. since H.J.C. was granted sole physical custody.

In October 2021, H.J.C. filed a motion under Minn. Stat. § 518.175, subd. 3 (2020), seeking an order permitting her and S.D.C-H. to relocate to San Diego, California so she could pursue a career opportunity. Relying on S.D.C.-H. flying between California and Minnesota throughout the year as her school schedule allows, the parenting-time schedule H.J.C. proposed with her motion gives the Minnesota-based parents approximately 35 percent more collective parenting time with S.D.C-H. per year than the current arrangement provides.

Following a hearing, the district court denied the motion. The district court assessed the eight statutory best-interest factors and determined that four factors were neutral, two favored relocation, and two disfavored relocation. After balancing the factors, the district court denied the motion. H.J.C. appeals.

DECISION

H.J.C. argues that the district court erred in determining that her proposed relocation to California was not in S.D.C-H.'s best interest. District courts are afforded broad discretion regarding parenting-time issues. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). "Appellate review of custody modification and removal cases is limited to considering whether the trial court abused its discretion." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

H.J.C. argues that the district court's findings are not supported by the record. A district court's findings of fact are not set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *see Goldman* at 284 (applying rule 52.01 in a family-law appeal). The clear error standard of review "is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). "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).

In addressing H.J.C.'s motion to relocate, the district court first determined that the purpose of the move was not to interfere with K.A.C. and E.L.H.'s parenting time. *See*

Minn. Stat. § 518.175, subd. 3(a). The district court then considered the eight statutory best-interest factors:

> (1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;
>
> (2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;
>
> (3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting time arrangements, considering the logistics and financial circumstances of the parties;
>
> (4) the child's preference, taking into consideration the age and maturity of the child;
>
> (5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;
>
> (6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;
>
> (7) the reasons of each person for seeking or opposing the relocation; and
>
> (8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

Minn. Stat. § 518.175, subd. 3(b); *see also* Minn. Stat. § 518.175, subd. 3(c) (providing that all best-interest factors must be considered).

Before assessing each factor, the district court noted the burdens of proof established by statute. Pursuant to Minn. Stat. § 518.175, subd. 3(c):

> The burden of proof is upon the parent requesting to move the residence of the child to another state, except that if the court finds that the person requesting permission to move has been a victim of domestic abuse by the other parent, the burden of proof is upon the parent opposing the move.

Accordingly, H.J.C. had the burden of demonstrating that moving S.D.C.-H. away from E.L.H. was in S.D.C.-H.'s best interests. *Id.* But because K.A.C. had committed domestic abuse against H.J.C., the burden was on K.A.C. to prove that moving S.D.C.-H. was *not* in S.D.C.-H.'s best interests. *Id.*

The district court determined that factors (1) and (2) weighed against relocation, factors (3) and (5) favored relocation, and factors (4), (6), (7), and (8) were neutral. H.J.C. specifically contends that the district court erred with respect to its determinations on factors (1), (2), and (8). We address each of these factors in turn.

I. The nature, quality, extent of involvement, and duration of S.D.C-H.'s relationships with each of her parents, siblings, and other significant persons in her life does not weigh against relocation.

With respect to the first factor, the district court stated:

> [S.D.C-H.] spends the vast majority of her time with [H.J.C.], including every overnight. [K.A.C.] has her for four hours every Sunday; [E.L.H.] has six hours the same day. This is the schedule she has known for most of her life. However, [S.D.C-H.] also has other significant persons whose relationships with her would be affected by a move. She has a half-sister who lives primarily with [K.A.C.], and a half-brother who lives with [E.L.H.]. [K.A.C.]'s partner also has a six-year-old with whom [S.D.C-H.] is close. She is close to [E.L.H.]'s wife. And [S.D.C-H.] has extended family in the Twin Cities through

> both [K.A.C.] and [E.L.H.]. This factor weighs against relocation.

The district court directly contradicted this finding with respect to the amount of parenting time permitted for each parent when it addressed the third best-interest factor concerning the preservation of the relationship between the child and the nonrelocating parent(s) and found that "[H.J.C.] has proposed a parenting-time schedule through frequent visits from San Diego to Minnesota that would actually give [K.A.C.] and [E.L.H.] significantly more time with [S.D.C-H.] than they have now, including overnights." Based on the determination that the proposed schedule provided a suitable parenting-time arrangement and did not raise any logistical or financial concerns, the district court found that the third factor weighed in favor of relocation.

Furthermore, H.J.C.'s proposed schedule indicates that she is willing to do everything in her power to give K.A.C. and E.L.H. meaningful presence in S.D.C-H.'s life, including allowing her to spend time with them on holidays, granting E.L.H. "unlimited electronic access" to her and establishing a standing weekly video call between her and K.A.C. Both biological parents would also be permitted to visit S.D.C-H. in California with the appropriate notice provided to H.J.C., per the proposal. As the district court noted, the GAL indicated that H.J.C. has "consistently followed court orders and has maintained communication" with the other parents. All three parents need to adhere to the proposed schedule which will be a legally enforceable document.

K.A.C. did not proffer evidence to sustain her burden of showing that S.D.C-H. had any meaningful relationships with extended family members. Because the nature, quality,

extent of involvement, and duration of S.D.C-H's relationships with each of her parents shows that H.J.C. has done the lion's share of the parenting work and has formed an essential primary bond with her, the district court's decision with respect to this factor is clearly erroneous. *See Guzman*, 892 N.W.2d at 810.

II. S.D.C-H.'s age, developmental stage, needs, and the likely impact the relocation will have on her physical, educational, and emotional development, taking into consideration special needs, do not weigh against relocation.

Regarding the second factor, the district court found:

> [S.D.C-H.] is five years old and has no special needs. She has been home-schooled to date. Developmentally, a move to California should not be difficult for her. However, [S.D.C-H.] is darker skinned, and [E.L.H.] and his family will play an important role in her life as she gets older and has to deal with the reality of being a biracial[2] child in this society. This factor weighs against relocation.

H.J.C. argues that she is "able and willing to raise [S.D.C-H.] in a racially sensitive and supportive environment," and that she has demonstrated this capacity by raising two biracial sons, by surrounding S.D.C-H. with Black and Latino friends, and by maintaining a diverse friend group herself. Nothing in the record indicates that H.J.C. is incapable of relaying and engaging with the reality that S.D.C-H. is a Black girl in this society. To the contrary, H.J.C. contends that a move to San Diego would allow S.D.C-H. to "live in a more diverse community, both around [the] home and at [year-round] school" while still providing for "frequent trips back to Minnesota" and facilitating electronic

[2] The record indicates that S.D.C.-H., as the biological daughter of two Black parents, is not biracial, but we acknowledge the realities the district court intended to portray.

communications that would allow her to converse with her biological parents regularly regarding race and her corresponding personal realities.

Related to the emotional-development needs addressed within this factor, H.J.C. argues that S.D.C-H. would be better supported with the proposed move, given that she would not be "subjected to . . . high-conflict parenting-time exchanges between [H.J.C.] and [K.A.C.]" each week, particularly when K.A.C. only has four hours of parenting time per week and H.J.C. cares for her nearly all of the remainder of the time, including homeschooling her. The district court's decision to weigh this factor against relocation on the sole basis that S.D.C-H. will have "to deal with the reality" of being a Black child in the United States, despite acknowledging the fact that a move to California would not be developmentally difficult for her, is clearly erroneous and does not weigh against relocation.

III. The effect of domestic abuse on the safety and welfare of the S.D.C-H. and H.J.C. is not neutral and weighs in favor of granting relocation.

As to this final factor, the district court determined:

> While there has been domestic abuse between [H.J.C.] and [K.A.C.] in the past, it does not seem to be an issue now that an [OFP] is in place. The court is not aware of any allegations that [S.D.C-H.] has been the victim of domestic abuse. Thus, this factor is neutral.

While it does not appear that S.D.C-H. has been the victim of domestic abuse herself, K.A.C. has violated OFPs from 2016 through 2021, and S.D.C-H. has occasionally witnessed these violations. The violations have most often taken the form of written threats via text or other electronic messaging platforms, including the mobile application intended

for communications regarding S.D.C-H. We also note that the incident in July 2016 that led to H.J.C. seeking and being granted a second OFP was caused by K.A.C. sending H.J.C. a text message with a photograph of S.D.C-H. along with the text "I will kill her."

Although K.A.C. asserted that she has been attending therapy every week, and E.L.H. explained that the three parents have steadily improved their cooperation over the years, H.J.C. called law enforcement out of concern for her and S.D.C-H.'s safety as recently as August 2021. H.J.C.'s concerns regarding domestic abuse—and her past domestic-violence experiences with K.A.C., to which K.A.C. has pleaded guilty—should not simply be dismissed. Accordingly, the record does not support the district court's finding and the effect of domestic abuse on the safety and welfare of S.D.C-H. and H.J.C. weighs in favor of granting H.J.C.'s relocation motion.

Because the district court's findings with respect to factors (1), (2), and (8) are unsupported by the record, we reverse on this basis and need not address H.J.C.'s argument that the district court erroneously relied on inapposite caselaw in its analysis.

Reversed.