**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1916**

In Re the Custody of: D.K.S., Daniel Scott Suave, petitioner,
Respondent,

vs.

Kristine Louella Suave,
Appellant.

**Filed May 6, 2013**
**Affirmed**
**Connolly, Judge**

Beltrami County District Court
File No. 04-FA-11-112

Daniel Scott Suave, Bemidji, Minnesota (pro se respondent)

Alan B. Fish, Dennis H. Ingold, Alan B. Fish, P.A., Roseau, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Harten, Judge.*

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

**CONNOLLY, Judge**

Appellant-mother challenges the denial of her motion to modify custody of the parties' child. The parties had stipulated in their custody agreement that, if one parent

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

moved the child out of the current school district and attempted to enroll her in a different district, the other party would immediately be entitled to seek to modify custody. Because it was appellant who moved with the child away from the school district where the parties had resided, it is respondent, not appellant, who was entitled to seek a modification of custody. Therefore, we affirm the denial of appellant's motion.

## FACTS

D.K.S., now nine years old, is the child of appellant-mother Kristine Suave and respondent-father Daniel Suave, who are not now and have never been married. The three of them lived together until December 2010, when appellant, with D.K.S., moved out of respondent's home. In May 2011, appellant graduated with a degree in accounting, but she was unable to obtain a job in that field and continued to work for a low wage in another field.

Respondent served a motion to establish custody and parenting time of D.K.S. In October 2011, the district court issued a judgment based on the parties' stipulated custody agreement. The judgment awarded the parties joint legal and physical custody of D.K.S., whose primary residence was with appellant; during the school year, respondent had parenting time on Tuesday nights, alternate weekends, and during MEA break and spring break. The judgment also provided that:

> Should either party relocate to a residence outside of the Bemidji [s]chool district with the intention [of] enrolling [D.K.S.] into a different school district, such relocation shall be the grounds for the non-moving party to immediately initiate a modification of custody proceeding where the modification standard shall be the best interests standard and not the standard for modification as found in [Minn. Stat.

> § 518.18(d) (2012) (providing in relevant part that a child's primary residence not be changed unless it endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by the change is outweighed by the advantage of the change to the child)].

In June 2012, appellant and D.K.S. moved to Bowbells, North Dakota, where appellant's fiancé lives and from where appellant can commute to Minot, North Dakota, where she has obtained an accounting job with a good salary and benefits. In July 2012, appellant moved for sole physical custody of D.K.S. or for permission to have her reside in Bowbells during the school year. Respondent filed a countermotion, also seeking sole physical custody of D.K.S.

Following a hearing at which both parties were represented by counsel, the district court issued a second amended order denying appellant's motion on the ground that it was made less than one year after entry of the October 2011 custody order and there had been no showing of endangerment.

Appellant challenges the denial of her motion.[1]

**D E C I S I O N**

"Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court." *Davies v. W. Publ'g Co*., 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001).

The district court applied Minn. Stat. § 518.18 (2012) to deny appellant's motion. It provides in relevant part that:

[1] Respondent acts pro se on this appeal.

> (a) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (c).
>
> . . . .
>
> (c) the time limitation[] prescribed in paragraph[] (a). . . shall not prohibit a motion to modify a custody order or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

*Id.* While we agree with the district court's result, we reach that result on different grounds. "[W]e will not reverse a correct decision simply because it is based on incorrect reasons." *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987).

The statutory prohibition of custody-modification motions brought within one year of a custody provision begins with the phrase "[u]nless agreed to in writing by the parties." Minn. Stat. § 518.18(a). Here, the parties had agreed in writing that either party's attempt to move the child to another school district and enroll the child there would entitle the other party to move immediately for custody modification. Therefore, the statutory prohibition does not apply to respondent's motion. Because of this, we need not address appellant's argument that the statute does not apply to D.K.S.'s custody because the parties were never married and Minn. Stat. § 518.18 applies only to custody provisions contained in "a decree of dissolution or legal separation." *See id.*

When the legislature's intent is clearly discernible from a statute's unambiguous language, we interpret the language according to its plain meaning and without resorting

to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004). The legislature's intent not to have Minn. Stat. § 518.18 supercede the parties' written agreement on custody is clearly discernible from the phrase "[u]nless agreed to in writing by the parties . . . ." at the beginning of the statute. Appellant's decision to move from the Bemidji school district and enroll D.K.S. in school in Bowbells, North Dakota, gave respondent the right to move immediately for a modification of D.K.S.'s custody under the "best interests," not the "endangerment," standard.

The denial of appellant's motion for custody or permission to enroll D.K.S. in school in Bowbells, North Dakota, is affirmed.

**Affirmed.**