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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2231**

Charlene Theresa Eve Roach, petitioner,  
Respondent,

vs.

Ann Teresa Turner,  
Appellant.

**Filed August 5, 2008  
Affirmed in part, reversed in part, and remanded  
Hudson, Judge**

Ramsey County District Court  
File No. F9-06-1760

John G. Westrick, Kirk M. Anderson, Westrick & McDowall-Nix, PLLP, 450 Degree of Honor Building, 325 Cedar Street, St. Paul, Minnesota 55101 (for respondent)

Evon M. Spangler, Spangler and de Stefano, P.L.L.P., 779 East Seventh Street, St. Paul, Minnesota 55106 (for appellant)

Considered and decided by Hudson, Presiding Judge; Shumaker, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**HUDSON, Judge**

In this third-party custody dispute, appellant/mother argues that the district court (1) abused its discretion by granting custody to respondent, the child's paternal aunt,

because its findings were unsupported by the evidence; (2) abused its discretion by admitting into evidence the report and testimony of the guardian ad litem (GAL); (3) abused its discretion by allowing respondent to determine the extent and location of appellant's parenting time; and (4) failed to make findings in denying mother's request for compensatory parenting time and abused its discretion by failing to order compensatory parenting time. We affirm the district court's decision to award custody to respondent and to accept the evidence from the GAL. But we conclude that the district court abused its discretion by allowing respondent to determine the location and extent of appellant's parenting time, erred by failing to make findings on compensatory parenting time, and abused its discretion by failing to order compensatory parenting time in a neutral, supervised location. We therefore reverse and remand on those issues.

## **FACTS**

Appellant Ann Turner is the mother of H.R., who was born in June 2000 and has been diagnosed with autism, ADHD, pervasive developmental disorder, and asthma. Shortly after H.R.'s birth, she was reported as "high-risk," based on the parents' intellectual functioning and lack of parenting skills. Although neglect was reported when H.R. was one month old, the family could not then be located, and no services were provided.

Appellant and H.R.'s father divorced in 2001, and appellant obtained legal and physical custody of H.R. H.R.'s father filed a post-dissolution motion to modify custody, but he died in 2006 before the motion could be heard. In 2005, appellant married Bruce Turner, who has been diagnosed with traumatic brain injury. A mental-health report

indicates that Turner shows a pattern of “impulsivity, anger, and dysphoria [that] could put him at increased risk for harming himself or acting out towards others.” Appellant and Turner moved temporarily to Tennessee with H.R. and lived briefly with Turner’s brother and sister-in-law. A child-protection case was opened in Tennessee on a report that Turner was hitting H.R., but the case was closed when the couple returned to Minnesota.

Respondent Charlene Roach, H.R.’s paternal aunt, began this third-party custody proceeding in 2006. The district court granted respondent temporary legal and physical custody, subject to reasonable supervised visitation by appellant; ordered a parenting-time evaluation; and appointed a GAL. Appellant moved for unsupervised parenting time or supervised parenting time on a designated schedule. She also moved for compensatory parenting time, based on an allegation that respondent had cancelled supervised visits at Chrysalis without making up for missed visits.

After an evidentiary hearing in July 2007, the district court issued its order granting permanent legal and physical custody to respondent. The district court found that H.R.’s father, before his death, had made a prima facie case that H.R. would be endangered by remaining in appellant’s care. The court found that there was little interaction and physical affection in appellant’s relationship with H.R.; that Turner lacked anger-management skills and excessively punished H.R. with yelling and profanity; and that despite appellant and Turner using services for parenting skills, H.R. suffered neglect in appellant’s care. The court found that appellant had “not consistently provided appropriate care or supervision, . . . met [H.R.’s] developmental, educational,

medical, and emotional needs, [or] provided a stable and satisfactory living environment.” The court found that although appellant and H.R. love each other, appellant’s mental-health deficits, including an attachment disorder, do not allow her to form the necessary attachment with H.R. for H.R. to thrive, and that appellant was unable to meet H.R.’s need for a physically and emotionally safe and stable environment. The court found that respondent provided H.R. with “a safe, clean, stable, and loving environment” and that H.R.’s behavior had improved significantly in respondent’s care. The district court granted appellant once-per-month, supervised parenting time, at a location selected by respondent, as long as respondent felt the visits were positive for the child. The district court also granted appellant such telephone contact with the child as respondent deemed to be in the child’s best interests and implicitly denied appellant’s motion for compensatory parenting time, but made no findings to support that denial. This appeal follows.

## D E C I S I O N

### I

In reviewing a custody determination, we examine “whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002) (citation omitted); *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). A district court’s findings of fact will be sustained unless clearly erroneous. *Pikula*, 374 N.W.2d at 710; *see N.A.K.*, 649 N.W.2d at 174.

To satisfy the statutory criteria for a change in custody to an interested third party, the petitioner must show, by clear and convincing evidence, the existence of one of the following factors: (1) the parent's neglect, abandonment, or disregard for the child's well-being that shows the child will be harmed by living with the parent; (2) physical or emotional danger to the child that indicates the child will be harmed by living with the parent; or (3) "other extraordinary circumstances." Minn. Stat. § 257C.03, subd. 7(a)(1) (2006). After an evidentiary hearing, the district court then determines whether, "by a preponderance of the evidence . . . it is in the best interests of the child to be in the custody of the interested third party." Minn. Stat. § 257C.03, subd. 7(a)(2), (3) (2006). The district court must consider "all relevant factors," including listed statutory factors, in determining the child's best interests. Minn. Stat. § 257C.04 (2006).

In its 12-page order granting legal and physical custody to respondent, the district court made extensive findings that reflected the court's consideration of the statutory best-interests factors. The court found that H.R. has special needs; that child protection had found maltreatment and neglect of H.R. in appellant's home; and that appellant has had poor personal hygiene, provided H.R. with inadequate nutrition, and had failed to administer H.R.'s medications, including a nebulizer, regularly. The court found that although appellant loves her child, she "has not consistently provided appropriate care or supervision" and "is simply not able to provide the physically and emotionally safe and stable environment which the child needs." The district court found that respondent provides needed structure and stability in H.R.'s life, and that since H.R. had been placed

with respondent, the child's school had reported a "significant decrease in the child's behavioral problems, and an increase in her positive relationships."

Appellant alleges that the district court's findings were unsupported by the evidence. Specifically, appellant argues that the district court misinterpreted the evidence and improperly credited the testimony of witnesses who supported the change of custody, including Turner's brother and sister-in-law in Tennessee. We defer to the district court's assessment of the weight and credibility of witness testimony. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court weighed the testimony of a number of witnesses, including appellant and Turner, and made an express finding that appellant's testimony, which minimized negative allegations concerning her and Turner's parenting skills, was not credible. We decline to disturb that determination.

Appellant also argues that the district court placed excessive emphasis on past conditions in appellant's home and failed to take account of appellant's progress in learning parenting skills. But the district court appropriately recognized appellant's willingness to participate in services offered to her, while finding that appellant still lacked "hands on" practice in parenting that would indicate she was able to appropriately parent H.R. The district court's findings were not clearly erroneous, and the record supports the grant of custody to respondent.

## II

Appellant maintains that the district court abused its discretion by admitting the GAL's report and testimony into evidence. Appellant argues that the GAL, who was originally appointed in the earlier custody-modification proceeding brought by H.R.'s

late father, was biased against appellant and failed to perform her statutory duty to conduct an independent investigation. *See* Minn. Stat. § 518.165, subd. 2a (2006) (listing responsibilities of guardian ad litem); Minn. R. Gen. Pract. 905 (listing same). Absent an erroneous interpretation of the law, the decision whether to admit evidence lies within the district court's discretion. *Kroning v. State Farm Mut. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997).

Appellant did not object to the GAL's testimony at trial. Therefore, the issue is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But even if we were to consider appellant's argument, we would reject it. The GAL's previous appointment to represent H.R's interests in the earlier custody-modification matter brought by H.R's father does not establish the GAL's bias in this proceeding. The district court was entitled to find credible the GAL's testimony that, although relying on some observations she made for that case, she examined this case as a neutral evaluator and represented the child's best interests. We also note that appellant's attorney thoroughly cross-examined the GAL on the basis for her recommendations. The district court did not abuse its discretion in admitting the GAL's report and testimony into evidence.

### III

Appellant argues that the district court abused its discretion by allowing respondent to determine the location and extent of appellant's parenting time.<sup>1</sup> The

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<sup>1</sup> Appellant acknowledges that, because she has relocated to Tennessee, she is not challenging the portion of the district court's order providing once-per-month parenting

district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). An abuse of discretion occurs when the district court makes findings that are not supported by the record or when it improperly applies the law. *Courey v. Courey*, 524 N.W.2d 469, 472 (Minn. App. 1994).

The district court's statutory charge on parenting-time issues is to "grant such parenting time . . . as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child." Minn. Stat. § 518.175, subd. 1(a) (2006). Thus, the best interests of the child are the determinative factors in parenting-time disputes. *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

The district court found that "for the child's well-being and safety, she should see her mother once a month in a supervised setting," without Turner present. The record supports this finding. The evidence shows that, although appellant loves her child, she has difficulty expressing empathy and nurturing the child, which may amount to an attachment disorder, and that parenting deficits remain despite intervention. The record also supports the district court's decision to exclude Turner from parenting time on evidence of his mental-health evaluation showing hostility and characteristics of paranoia, as well as his significant history of anger-management issues.

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time because she would be unable to exercise parenting time more than one time per month.



But the district court also went further, granting appellant parenting time “at a location to be selected by [respondent and] as long as [respondent] feels that these visits are positive for [the child] and in her best interests.” Thus, the district court granted respondent the authority to determine the location of appellant’s parenting time and whether that parenting time would consistently take place.

We conclude that the record does not support the district court’s granting such broad authority to respondent and that it abused its discretion by doing so. Allowing respondent to control the location of parenting time, and to maintain discretion over whether parenting time even occurs, creates the potential to restrict or deny parenting time based on considerations other than the child’s best interests. Indeed, appellant alleges that respondent cancelled parenting-time visits at Chrysalis with little notice and discouraged appellant from exercising parenting time at locations other than respondent’s mother’s home, and our review of the record supports these allegations. Therefore, we reverse that portion of the district court’s order allowing respondent discretion over the location and extent of appellant’s parenting time, and we remand for further findings on this issue.<sup>2</sup>

#### IV

Appellant also argues that the district court (1) erred by failing to make findings in denying her motion for compensatory parenting time, and (2) abused its discretion by

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<sup>2</sup> Appellant has supplemented the record on appeal with information that appellant’s preferred site, Chrysalis, no longer offers the service of supervised visitation. We direct the district court on remand to weigh existing neutral parenting-time locations and issue an appropriate order.

denying appellant compensatory parenting time after respondent cancelled two parenting-time sessions at Chrysalis.

A district court may consider a request for compensatory parenting time, and “[i]f the court finds that a person has been deprived of court-ordered parenting time, the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied.” Minn. Stat. § 518.175, subd. 6(a), (b) (2006). The district court ordered that appellant “shall have parenting time once a month” but did not grant appellant compensatory parenting time for the missed sessions at Chrysalis. Therefore, the court implicitly denied appellant’s motion.

But the district court made no findings on its denial of compensatory parenting time. Respondent argues that the statute only requires the district court to make findings if the court “finds [that] a parent has been deprived of court ordered parenting time, and [then] the . . . court refuses to award any compensatory time.” Respondent maintains that, because the district court did not find that appellant was deprived of parenting time, it was not then required to make findings on its denial of compensatory parenting time.

This issue presents a question of statutory interpretation, which we review de novo. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006). “If a statute is clear and unambiguous on its face, we are obligated to give effect to its plain meaning.” *Joel v. Wellman*, 551 N.W.2d 729, 731 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Oct. 29, 1996). A statute is unambiguous if it is susceptible to only one reasonable interpretation. *Id.*

We conclude that the only reasonable interpretation of Minn. Stat. § 518.175, subd. 6(b), requires the district court, on a motion for compensatory parenting time, to make findings determining both (1) whether a parent has been deprived of court-ordered parenting time, and (2) whether compensatory parenting time is appropriate. Any other interpretation of the statute would not require the district court, in every case, to make findings supporting its decision to grant or deny the relief requested in a motion for compensatory parenting time. Therefore, the district court's order is defective because it fails to set forth findings in support of its implicit denial of compensatory parenting time.

We also agree with appellant that, on the facts of this case, the district court abused its discretion in denying appellant's motion for compensatory parenting time. Although respondent provided two compensatory parenting-time sessions at the home of respondent's mother, these sessions did not appropriately substitute for parenting-time sessions at a neutral location, given the current level of distrust between the parties. Further, appellant deserves an adequate opportunity to improve her parenting skills, and she must be allowed to practice those skills in a supervised, structured setting. We therefore reverse the district court on this issue and remand for the grant of appropriate compensatory parenting time to appellant at a supervised, neutral location.

Appellant has also shown that, during the period after appellant failed to receive scheduled parenting time at Chrysalis, she accrued two more monthly parenting-time visits, which were never provided. While these additional visits amount to only a few hours, appellant has pointed out that they are significant in terms of her limited, court-

ordered parenting time. Thus, we direct the district court on remand to order compensatory parenting time for the loss of these visits as well.

**Affirmed in part, reversed in part, and remanded.**