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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2127**

In re the Marriage of:

Lydia Christine Higgins,
n/k/a Lydia Christine Brylski, petitioner,
Appellant,

vs.

Corey Melvin John Higgins,
Respondent.

**Filed January 27, 2014
Affirmed
Schellhas, Judge**

Stearns County District Court
File No. 73-FA-08-5160

Lydia Christine Brylski, Olivia, Minnesota (pro se appellant)

Corey Melvin John Higgins, McGrath, Minnesota (pro se respondent)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and
Minge, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's grant of primary physical custody of the parties' minor child to respondent. We affirm.

FACTS

The parties' child, J.H., was born in March 2006. The parties married in July 2006, separated in October 2007, and divorced in January 2009. Respondent Corey Higgins also has a biological child with K.R.

In January 2009, the district court granted appellant Lydia Brylski sole legal and physical custody of J.H., subject to Higgins's supervised parenting time. Higgins did not exercise his parenting time while he was incarcerated for failing to register as a sex offender. In March 2010, Higgins moved the district court for more parenting time, and the court appointed a guardian ad litem (GAL) for J.H. The GAL reported that each party had grown a great deal; Brylski was raising J.H. well; and, because Brylski "is protective and somewhat possessive," it likely would be "more difficult for Ms. Brylski to allow [J.H.] to have a relationship with her father than it [would] be for [J.H.] to reconnect with her father."

In October 2010, the district court granted Higgins unsupervised parenting time. Brylski denied Higgins parenting time on two scheduled dates before she began to cooperate in facilitating Higgins's parenting time. Brylski subsequently claimed that Higgins sexually abused J.H. and denied Higgins his parenting time with J.H. The police investigated and found no evidence of sexual abuse.

In January 2011, J.H.'s school reported that J.H. had "an excessive amount of tardies and absences." J.H.'s report card reflects that she had at least 3.5 absences and at least one tardy arrival during each trimester of the 2011–12 school year. In May 2011, the district court granted Higgins additional parenting time. Higgins claimed that Brylski subsequently denied him parenting time. On June 1, 2011, the district court granted Higgins temporary sole legal and physical custody of J.H. In a June 15, 2011 order, the district court noted Brylski's admission of interference with Higgins's parenting time; vacated the June 1, 2011 order; and expressly conditioned the return of custody on Brylski's "compliance with Court Orders." In a July 2011 report, the GAL noted no current parenting-time issues, and, in August, the court adopted with minor modifications the parties' stipulation of a new parenting-time arrangement.

In January 2012, the GAL reported no parenting-time issues but noted numerous school-attendance issues for J.H. Brylski had sustained a concussion and claimed that, while she was recovering from the concussion, she had difficulty getting J.H. to school. In February 2012, J.H.'s school required Brylski to sign a "School Attendance Contract." The district court ordered Brylski to undergo a psychological evaluation and to ensure that J.H. would have "no further unexcused absences or tardies from school."

In April 2012, Higgins moved the district court for a grant of primary physical custody of J.H. In June 2012, the GAL reported the psychological evaluator's diagnostic impressions of Brylski. They included adjustment disorder with anxiety and depression (Axis I) and concerns regarding economics, parenting issues or concerns regarding the safety of her daughter, and occupational problems (Axis II). J.H. continued to accrue

unexcused school absences and tardy arrivals, and Brylski interfered with Higgins's parenting time. In contrast to J.H., one of the children living in Higgins's home was rarely absent or tardy. Citing Brylski's educational neglect of J.H., the GAL recommended that the district court grant Higgins physical custody of J.H.

In September 2012, construing Higgins's custody motion as a request for custody modification under Minn. Stat. § 518.18(d)(iv) (2012), the district court found that the circumstances had changed since the June 15, 2011 order restoring physical custody to Brylski and that a best-interests analysis supported a change of custody. The court found that J.H.'s emotional development was endangered by her present environment and that the "balance of harms" in the case showed that J.H. "will have a better chance at academic and developmental success in the care of [Higgins]." The district court granted the parties joint legal and physical custody of J.H. but granted *primary* physical custody to Higgins.

This appeal follows.

D E C I S I O N

As appellant, Brylski had "the burden to provide an adequate record." *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968). The record before us contains no transcript or any evidence of a request for a transcript. We therefore need not review the district court's findings. *See Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 919 (Minn. App. 2003) ("A transcript was not provided; therefore review is limited to whether the findings support the district court's conclusions of law."). *But cf. Noltimier*, 280 Minn. at 29, 157 N.W.2d at 531 (noting that "[i]nasmuch as we cannot

determine from the record . . . whether the court acted arbitrarily or whether the determination of the court is supported by the evidence, we are compelled to hold that the appeal must be dismissed”). We nevertheless discuss whether the district court’s factual findings are supported by the limited record provided to this court.

“Appellate review of custody modification and removal cases is limited to considering whether the trial 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, 284 (Minn. 2008) (quotations omitted). Appellate courts “set aside a district court’s findings of fact only if clearly erroneous.” *Id.*; see Minn. R. Civ. P. 52.01. A district court’s finding is clearly erroneous if this court “is left with the definite and firm conviction that a mistake has been made” when “giving deference to the district court’s opportunity to evaluate witness credibility,” *Goldman*, 748 N.W.2d at 284 (quotation omitted), and “view[ing] the record in the light most favorable to the trial court’s findings,” *In re Custody of N.A.K.*, 649 N.W.2d 166, 174 (Minn. 2002).

Minnesota Statutes section 518.18(d)(iv) provides as follows:

If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child’s primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a *change has occurred in the circumstances* of the child or the parties and that the *modification is necessary to serve the best interests of the child*. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child’s primary residence that was established by the prior order unless:

....

(iv) 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*[:.]

(Emphasis added.)

Section 518.18(d)(iv) predicates a district court’s child-custody modification on “the child’s present environment endanger[ing] the child’s physical or emotional health or impair[ing] the child’s emotional development and the harm likely to be caused by a change of environment . . . [not] outweigh[ing] . . . the advantage of a change to the child.” “The concept of ‘endangerment’ is unusually imprecise, but a party must demonstrate a significant degree of danger to satisfy the endangerment element of section 518.18(d)(iv).” *Goldman*, 748 N.W.2d at 285 (quotations omitted). An endangerment finding may not be “based . . . solely on the history of care,” although “[t]he history of a child’s care is a relevant consideration in addressing the child’s current circumstances” and “may indicate what can be presently expected.” *Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997). “[T]he burden is on the party opposing the current custody arrangements.” *Gordon v. Gordon*, 339 N.W.2d 269, 271 (Minn. 1983).

Identification of Baseline Order for Changed-Circumstances Determination

We must first determine which order sets the baseline for determining whether a change in circumstances has occurred. *See* Minn. Stat. § 518.18(d) (stating the statutory provision concerns modification of “a prior custody order or a parenting plan provision which specifies the child’s primary residence”). Here, the January 2009 marriage-

dissolution judgment granted physical custody of J.H. to Brylski, thereby establishing her primary residence with Brylski; the June 1, 2011 emergency temporary order granted temporary sole physical custody of J.H. to Higgins; and the June 15, 2011 order vacated the June 1, 2011 emergency temporary order, thereby restoring the pre-existing, but temporarily suspended, grant of physical custody of J.H. to Brylski.

We conclude that the January 2009 marriage-dissolution judgment sets the baseline for determining whether a change in circumstances has occurred. *See Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009) (concluding that “the parties’ baseline parenting-time schedule” was “found in the dissolution judgment—the last permanent and final order setting parenting time—because [the other order being considered as setting the baseline] reflect[ed] only a short-term change in parenting time, not a permanent change to the dissolution judgment”). The district court therefore erred by treating the June 15, 2011 vacation order as the baseline order. We also conclude that the district court’s error is harmless because the record clearly demonstrates that J.H.’s circumstances substantially changed between entry of the January 2009 marriage-dissolution judgment and September 2012, when the district court considered Higgins’s motion to modify child custody. We disregard harmless errors. *See Goldman*, 748 N.W.2d at 285 (noting Minn. R. Civ. P. 61 “require[es] courts to disregard harmless error”).

Child Endangerment

The district court found that J.H.’s emotional development was endangered by her present environment in Brylski’s custody because of Brylski’s “medical difficulties” that

caused or exacerbated J.H.'s school absences and tardiness. In balancing the harms of a change in custody, the court found that J.H. "will have a better chance at academic and developmental success in the care of [Higgins]." Brylski argues that the district court's finding that J.H.'s emotional health was presently endangered is clearly erroneous, its balancing of harms was clearly erroneous, and it clearly erred by disregarding all evidence against Higgins. We address each argument in turn.

Educational Neglect

Brylski argues that the evidence does not support the district court's findings that J.H. has been subjected to "educational neglect" and that there are "ongoing" issues with tardiness and academic difficulties. She argues that "[t]he school did not file a CHIPS petition and social services was not involved" after she signed an attendance contract. She also states that the GAL testified that J.H.'s attendance was no longer an issue. Because no transcripts are in the record, we need not address this argument. *See Noltimier*, 280 Minn. at 29, 157 N.W.2d at 531 (stating that appellant carries "the burden to provide an adequate record . . . to enable us to review questions [appellant] desires to raise on appeal" and that "[e]rror cannot be presumed"). But we note that, if the GAL had so testified, that testimony would have contradicted the GAL's written report. Brylski also states that the GAL's report, referenced by the district court in its September 2012 order, is not in the record. She is incorrect; the report is in the record.

Brylski argues that a number of J.H.'s absences were due to medical needs and therefore excused absences. She points to ten doctor visits for J.H., five of which occurred after the June 15 custody order, to show that J.H. has medical problems. But

Brylski is uncertain about whether a 2012 unexcused absence was medically related, and the evidence fails to show that the tardy arrivals were medically related. Brylski argues that J.H.’s attendance record and report card do not indicate continuing attendance issues. We disagree. As reported by the GAL, J.H.’s attendance record indicates that she had tardy arrivals and absences after the June 15 order that restored physical custody to Brylski. J.H.’s report card indicates that she had at least 3.5 absences and at least one tardy arrival during each trimester of the 2011–12 school year.

Brylski has a history of difficulty getting J.H. to school on time, resulting in J.H.’s school warning Brylski about J.H.’s “excessive amount of tardies and absences” and requiring Brylski to sign a “School Attendance Contract.” The attendance issues continued even after the district court ordered Brylski to ensure “no further unexcused absences or tardies from school.” J.H.’s teacher reported that socially J.H. “ha[d] been struggling to relate with her peers” and that showing up late to J.H.’s first class “can be very disruptive to the class when [J.H.] does arrive.” The GAL characterized Brylski’s behavior toward J.H. as “educational neglect” and recommended that J.H.’s primary physical custody be changed to Higgins. According to the GAL, the psychologist who evaluated Brylski questioned whether Brylski has personality or character issues and recommended that she seek (1) further psychological assessment, (2) an in-home worker to address parenting issues, and (3) a professional to help with organizational strategies.¹ Before the June 15, 2011 custody order, J.H. had many unexcused absences from school

¹ The record does not include the psychological evaluation. We therefore rely on the GAL’s summary in her report.

and unexcused tardy arrivals. Between November 30 and December 8, 2011, J.H. had unexcused tardy arrivals; between January 31 and May 21, 2012, J.H. had one unexcused absence and one unexcused tardy arrival. The district court's findings are based on this sufficient record evidence.

School-performance problems may constitute evidence of endangerment. *See Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991) (noting that child had suffered emotional distress that resulted in school-performance problems that would be alleviated by change of custody); *Kimmel v. Kimmel*, 392 N.W.2d 904, 908–09 (Minn. App. 1986) (noting child's poor school performance and significant progress since placement with his father), *review denied* (Minn. Oct. 29, 1986); *cf. Roehrdanz v. Roehrdanz*, 438 N.W.2d 687, 691 (Minn. App. 1989) (noting, in case in which district court denied evidentiary hearing, that no evidence existed of abuse or problems in school), *review denied* (Minn. June 21, 1989). We conclude that the court did not clearly err by finding that J.H.'s "difficulties in attending school" contributed to present endangerment of J.H.'s emotional development.

Interference with Parenting Time

Brylski challenges the district court's finding that she "has been unable to deliver [J.H.] to [Higgins] . . . in accordance with the existing parenting time Orders." Brylski's arguments relate to statements allegedly made at hearings for which no transcript is provided. We do not address these arguments. *See Noltimier*, 280 Minn. at 29, 157 N.W.2d at 531 (stating that appellant carries "the burden to provide an adequate record . . . to enable us to review questions [appellant] desires to raise on appeal" and that

“[e]rror cannot be presumed”). Based on our careful review of the record, we conclude that sufficient record evidence supports the district court’s findings.

Although the district court did not expressly rely on Brylski’s interference with Higgins’s parenting time in its finding of present endangerment, we note that custodial-parent interference with a noncustodial parent’s parenting time is relevant to child-custody modification, but not controlling standing alone. *See Grein v. Grein*, 364 N.W.2d 383, 386 (Minn. 1985) (“[U]nwarranted denial of or interference with visitation is one factor to be considered in determining whether custody orders should be modified. In and of itself an unwarranted denial of or interference with visitation is not controlling.”); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007) (“[W]hile deprivation of parenting time may be considered in addressing motions to modify custody, it is *not* an independently sufficient basis to modify custody.”); *Dabill v. Dabill*, 514 N.W.2d 590, 595 (Minn. App. 1994) (“[U]nwarranted denial of or interference with visitation, in and of itself, is not controlling. Rather, it is only one factor that must be considered along with the standards set forth in Minn. Stat. § 518.18(d).”).

Brylski argues that the evidence is insufficient because J.H. was not “unhappy, ill-mannered, or otherwise emotionally disturbed” other than encountering a class bully. We disagree. Record evidence supports the district court’s concern about the endangerment of J.H.’s emotional health caused by Brylski’s interference with Higgins’s parenting time.

Balance of Harms of Custody Modification

Brylski argues that the district court's finding that a change of custody to Higgins serves J.H.'s best interests is clearly erroneous. She also argues that the court clearly erred by disregarding all evidence adverse to Higgins.

Minnesota Statutes section 518.17, subdivision 1(a) (2012), provides a nonexclusive list of 13 best-interest factors that a district court must consider when evaluating the best interests of a child.² The district court must "make detailed findings

² The best-interest factors under Minn. Stat. § 518.17, subd. 1(a), are as follows:

- (1) the wishes of the child's parent or parents as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each parent and the child;
- (5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363A.03, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (11) the child's cultural background;

on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.” Minn. Stat. § 518.17, subd. 1(a). The district court must not use one factor to the exclusion of others. *Id.*

Here, the district court found that factors (1)–(2), (4), and (10)–(12) favored neither parent. As to factor (3), the court found that Brylski was J.H.’s current primary caretaker, favoring Brylski, and that factors (5)–(9) and (13) favored Higgins. Under factor (7), the court noted that Brylski had both “physical and psychological ailments” that “made stability and [J.H.’s] home environment an issue that the Court now seeks to correct.” Under factor (8), the court noted that Higgins and his girlfriend had “been together for five (5) years at the time of this Order, and have a three-year-old child together.” The girlfriend has a non-joint child (M.) who was “rarely absent or tardy at school”; the court viewed M.’s school attendance as a “promising indicator” of stability. (Quotation marks omitted.) Under factor (10), the district court found that “[Brylski] and [Higgins] are both equipped to provide [J.H.] with love, affection, and guidance. [J.H.’s] cultural and religious upbringing is not presented as a factor in dispute.” Under factor (13), the court noted that Higgins had not indicated he would interfere with Brylski

(12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; and
(13) except in cases in which a finding of domestic abuse as defined in section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

visiting J.H., while Brylski “has struggled with the task of meeting [Higgins] for parenting time.”

The court balanced the harms of a custody change and found that J.H. “will have a better chance at academic and developmental success in the care of [Higgins]” and modified custody, granting the parties joint legal and physical custody, with primary physical custody of J.H. to Higgins.

Brylski argues that the district court’s finding under factor (7) is clearly erroneous. We disagree. The results of Brylski’s psychological evaluation show that the district court did not clearly err in finding that psychological conditions contributed to the present endangerment of J.H.’s emotional development. Moreover, record evidence supports the court’s finding that Brylski’s physical ailments made the stability of J.H.’s home an issue. Brylski does not dispute that her concussion interfered with her ability to get J.H. to school on time. She simply claims that her concussion no longer affects her. We conclude that the district court did not clearly err in finding Brylski’s “various physical and psychological ailments . . . have made stability and [J.H.’s] home environment an issue.”

Brylski argues that the district court’s findings under factor (8) are clearly erroneous. She argues that M. does not reside in Higgins’s household. But Higgins stated in an affidavit that M. lived in his household “from Wednesday through Sunday of each week,” and the GAL found that M. was “rarely absent or tardy at school.” Therefore, even if Brylski is correct that M. does not reside in Higgins’s household full time, Higgins’s household has some responsibility for M.’s school attendance. The district

court did not clearly err by treating M.'s attendance as a "promising indicator" of stability for J.H. Brylski also asserts, without citation, that the district court's findings under factor (8) are clearly erroneous because the court disregarded "a great deal of evidence which throws [Higgins's] stability into question." Brylski's argument is not persuasive. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971) (noting that "[a]n assignment of error based on mere assertion" that is "not supported by any argument or authorities . . . is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection").

Brylski argues that the district court's finding under factor (10) is clearly erroneous because the court disregarded her testimony that "Higgins fails to regularly visit with [J.H.]." But the record shows that Higgins visited regularly and therefore the district court did not clearly err in its finding under factor (10).

Brylski argues that the district court's findings under factor (13) are clearly erroneous because, *during a hearing*, the court allowed Higgins to pay a decreased child-support amount to compensate him for travel expenses associated with his parenting time. Because Brylski's argument is dependent on a transcript that is not in the record, we do not address it. *See Noltimier*, 280 Minn. at 29, 157 N.W.2d at 531 (stating that appellant carries "the burden to provide an adequate record . . . to enable us to review questions [appellant] desires to raise on appeal" and that "[e]rror cannot be presumed"). But we note that the relevant district court order did not modify child support; the order instead advised that the parties must file a motion in the expedited child-support process to modify child support because "[t]his case is a IV-D case."

Brylski also argues that the district court's finding under factor (13) ignores Higgins's role in his lack of parenting time. Indeed, the record shows Higgins's responsibility for at least one parenting-time problem when he was unable to drive due to a back injury. But the record amply supports the court's finding that Brylski "has struggled with the task of meeting [Higgins] for parenting time." The district court's finding is not clearly erroneous.

In sum, Brylski fails to show that the district court relied on any clearly erroneous findings to support its balance of harms regarding a change of J.H.'s physical custody.

Citing *Weatherly v. Weatherly*, 330 N.W.2d 890, 892–93 (Minn. 1983) (reversing a grant of custody to father where the trial court "disregarded all evidence which reflected negatively on [father]"), Brylski also argues that the court disregarded all evidence against Higgins when finding that the balance of harms show that J.H. "will have a better chance at academic and developmental success in the care of [Higgins]." In *Weatherly*, the district court granted custody to the father instead of to the mother after disregarding "two professional evaluations of [father's] chemical dependency" and determining father was more emotionally stable than mother because father had held a job for one year. 330 N.W.2d at 891–92. Brylski's reliance on *Weatherly* is misplaced.

Specifically, Brylski argues that the district court disregarded Higgins's criminal history, that he did not provide clothing or school supplies for J.H., that he allegedly brought J.H. to bars with him, that he allegedly rarely visited or called J.H., and that he did not pay child support. Brylski is correct that Higgins has a criminal history that is not reflected in the September 2012 order. But the record clearly shows that the court

received the evidence regarding the sexual offense that Higgins committed at age 13. The evidence about the age of the victim is conflicting. The GAL reported that the victim was 11, but a police report states that an officer learned from “the BCA” that the victim was 4.

As to Brylski’s claim that the district court disregarded the fact that Higgins did not provide clothing or school supplies for J.H., Brylski stated in an affidavit that she directly asked Higgins to buy J.H. clothing and school supplies but that Higgins did not help. Higgins stated in an affidavit that he had provided clothing and Brylski had never directly asked him to buy clothing or school supplies. The court did not address this conflict in its order but the omission does not lead us to conclude that the court’s order is not supported by sufficient record evidence. As to Brylski’s claim that the court disregarded evidence that Higgins brought J.H. to bars with him, we cannot find such evidence in the record. As to Higgins’s contact with J.H., the evidence in the record is conflicting. We assume that the court weighed the conflicting evidence, judged the parties’ credibility, and found Higgins to be more credible. *See Goldman*, 748 N.W.2d at 284 (giving deference to the district court’s opportunity to evaluate witness credibility). As to the issue of child support, Brylski stated in an affidavit that Higgins “[had] not paid child support for most of this past year”; Higgins stated in an affidavit that he had made “child support payments during the last year.” The district court did not discuss child-support payments, but we assume that the court found Higgins more credible. *See Goldman*, 748 N.W.2d at 284 (giving deference to the district court’s opportunity to evaluate witness credibility). Brylski’s claims of error are unpersuasive.

Change of Circumstances

A change of circumstances under section 518.18(d) must be “significant,” *Goldman*, 748 N.W.2d at 284 (quotation omitted), and must not be “a continuation of conditions that existed prior to the [original custody] order,” *Tarlan v. Sorensen*, 702 N.W.2d 915, 923 (Minn. App. 2005). “What constitutes changed circumstances for custody-modification purposes is determined on a case-by-case basis.” *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Sept. 26, 2000).

In its September 2012 order, the district court found that changed circumstances had occurred since the June 15, 2011 order restoring physical custody to Brylski. And the court noted that it had restored physical custody to Brylski “on the express condition that [Brylski] continue to obey the Court’s Orders, and particularly that [Brylski] would not interfere with the parenting time of [Higgins].”³ The court found that, “[s]ince the Court’s prior Order, [J.H.’s] attendance at school has suffered, and [Brylski] has been unable to maintain the terms of the prior agreement regarding parenting time.” Brylski argues that the district court’s finding of changed circumstances under section 518.18(d), particularly J.H.’s educational problems and Brylski’s denial of Higgins’s parenting time, are not supported by sufficient evidence.

We conclude that the district court’s findings that Brylski subjected J.H. to “educational neglect,” that J.H. has ongoing issues with tardiness and academic

³ In January 31, 2012, the district court ordered that J.H. “shall have no further unexcused absences or tardies from school.”

difficulties, and that Brylski has interfered with Higgins's parenting time are supported by sufficient record evidence and are not clearly erroneous. The GAL recommended that J.H.'s physical custody be transferred to Higgins. Even on the limited record provided to this court, we conclude that the factual issues raised by Brylski are insufficient to establish that the district court's findings are clearly erroneous and do not support its conclusions of law.

Affirmed.