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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1505**

In re the Marriage of: Alice Andrews, petitioner,
Respondent,

vs.

James Burton Andrews,
Appellant,

and

County of Itasca, intervenor,
Respondent.

**Filed April 23, 2012
Affirmed
Larkin, Judge**

Itasca County District Court
File No. 31-FA-10-701

Rachel L. F. Weis, Legal Aid Service of Northeastern Minnesota, Grand Rapids,
Minnesota (for respondent)

James B. Andrews, Grand Rapids, Minnesota (pro se appellant)

John Muhar, Itasca County Attorney, Heidi Chandler, Assistant County Attorney, Grand
Rapids, Minnesota (for intervenor respondent)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges a district court's child-custody determination. Because the district court considered the statutorily enumerated best-interests factors, made factual findings that are supported by the record, and the district court's findings support its custody determination, we affirm.

FACTS

Appellant-father James Burton Andrews and respondent-mother Alice Andrews were married in 1995. The parties have six minor children. In February 2010, mother petitioned for dissolution of the parties' marriage. Father filed an answer and counter-petition. In October 2010, the district court awarded father temporary legal and physical custody of the parties' children and awarded mother unsupervised parenting time twice weekly.

The district court held marriage-dissolution proceedings on February 14-17, 2011, to determine, among other things, permanent legal and physical custody of the parties' children. The district court awarded mother and father joint physical custody, but awarded sole legal custody to mother. Father moved to amend the district court's findings, and the district court denied the motion. Later, the district court issued an

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

amended order, clarifying that mother had been granted sole legal custody of the children. This appeal follows, in which father challenges the district court's child-custody determination.

D E C I S I O N

“Appellate 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.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). A district court's findings of fact will be sustained unless they are clearly erroneous. *Id.*; *see also* Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous).

The guiding principle in all custody determinations is the best interests of the children. Minn. Stat. § 518.17, subd. 3(a)(3) (2010); *Durkin v. Hinich*, 442 N.W.2d 148, 152 (Minn. 1989). In making a best-interests determination, the district court must consider all relevant factors, including thirteen statutorily enumerated factors. Minn. Stat. § 518.17, subd. 1(a) (2010) (listing factors that must be considered). In this case, the district court made thorough findings regarding all of the statutory factors and concluded that it is in the children's best interests for mother to have sole legal custody and for the parties to share joint physical custody.

The “main thrust” of father's appeal is summarized by father as follows: “[f]ather's proven healthy parenting, home and schedule, according to all witnesses on both sides *and* according to the [c]ourt's own written words, should have been reaffirmed by the [c]ourt and the [c]ustody [e]valuator, *not* overturned.” Father argues that the

district court ignored mother's "proven poor parenting versus [f]ather's proven responsible parenting" and that "[m]other's abusive parenting was demonstrated to the court . . . and was not given due consideration in the [c]ourt's custody decision." Essentially, father argues that the district court improperly weighed the evidence in making its custody determination and asks this court to "reexamine" the record and issue a different decision.

We cannot provide the relief father seeks. The court of appeals is an error-correcting court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."). This court may not substitute its judgment for that of the district court when reviewing custody determinations. *See Lenz v. Lenz*, 430 N.W.2d 168, 169 (Minn. 1988) (reversing this court's custody decision because the record adequately supported district court's findings); *see also McCabe v. McCabe*, 430 N.W.2d 870, 873 (Minn. App. 1988) (recognizing that simply because the evidence also would have supported different findings does not mean the district court's findings constitute an abuse of discretion), *review denied* (Minn. Dec. 30, 1988). The district court thoroughly considered the statutorily enumerated best-interests factors, and our review of the record reveals that the evidence supports the district court's factual findings on those factors. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court's findings" and an appellate court's "duty is performed when [it] consider[s] all the evidence, as we have done here,

and determine[s] that it reasonably supports the findings”); *Peterka v. Peterka*, 675 N.W.2d 353, 357-58 (Minn. App. 2004) (applying *Wilson* in a family-law appeal). Those findings, in turn, support the district court’s custody award. Father’s dissatisfaction with the custody decision is not a basis for reversal.

Father further argues that because mother and her witness were not credible and, in fact, committed “perjury,” the district court should have discredited their testimony. Father argues that he, in contrast, “has practiced a lifestyle of honesty.” But “[d]eference must be given to the opportunity of the [district] court to assess the credibility of the witnesses.” *Sefkow*, 427 N.W.2d at 210. The district court’s findings, and corresponding custody and parenting-time determinations, reflect its implicit determination that mother and her witness were credible. For example, mother and father presented conflicting testimony regarding a parenting-time schedule that would be in the children’s best interests. Mother recommended equal parenting time, while father recommended a restricted schedule for mother. The district court found that father’s request for limited parenting time between mother and the children was not supported by the evidence and adopted an alternating weekly schedule consistent with mother’s proposal. We defer to the district court’s credibility determination.

Father also argues that the custody evaluator was not credible, as shown by the custody evaluator’s “false accusations,” including that he was “working the visitation” hours, “withholding” the children from mother, and not communicating with mother regarding decisions about church and sports activities. Father asserts that the custody evaluator’s opinions that he was “oppressive” and manipulated mother with “power,”

“control,” and “guilt” were not credible because they were based solely on mother’s reports to the evaluator. Father also asserts that the district court wrongly accepted the custody evaluator’s accusation that he “guilts” the children into obeying him. Father insists that “[t]he [c]ustody [e]valuator’s duty is to determine what is in the best interests of the children based strictly on her observance of the thirteen applicable factors used to determine custody” and alleges that the custody evaluator “decided to be [mother’s] advocate in this case,” repeatedly “sprang new accusations” on father during the proceedings “that she had never mentioned in her written report,” and directly contradicted herself. But the district court’s custody and parenting-time determinations indicate that it found the custody evaluator credible. For example, the district court relied on the custody evaluator’s report that the children appear to enjoy the time they have with both parents and that the older children indicated a desire to spend more time with mother, including overnight. Once again, we defer to the district court’s credibility determination. *See id.*

Father next argues that the district court’s custody award is an abuse of discretion because the district court failed to provide justification for “reversing” its temporary custody order. This argument reflects a misunderstanding of the law. “A temporary order . . . [s]hall not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding.” Minn. Stat. § 518.131, subd. 9 (2010). In denying father’s motion for amended findings, the district court explained that it had not “reversed anything.” The temporary custody order was issued after a 30-minute hearing. In contrast, the permanent custody order was issued after four days of

proceedings, at which numerous witnesses testified and the court received over 30 exhibits. The district court was not required to determine if there was a sufficient basis to alter the temporary order; rather, the district court was required to review the evidence presented, consider the best-interests factors, and make a custody determination without using the temporary order to the benefit or detriment of either party.

Lastly, father argues that the district court erred by refusing to allow the family's therapist to testify on his behalf regarding the cause of mother's mental-health issues and by refusing to allow father to question mother about her past abuse by her father. But father cites no legal authority to support these assignments of error. 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. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997); *see also Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (stating that "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys"). We discern no obvious, prejudicial error. The district court adequately addressed mother's mental health in considering the relevant best-interests factors. For example, the district court found that mother struggled with her emotional health during the marriage but that she addressed her mental-health issues after the parties separated. The district court found that mother completed a psychological evaluation and parental-capacity assessment and that she was participating in numerous services at the time of the proceedings, including weekly individual counseling. The district court also found that mother has learned better

ways to control her emotions. The district court explained that the testimony of other witnesses supported mother's testimony regarding her current success in treatment. The district court also specifically found that "[mother] has provided testimony and documentation to show that she has learned from her mistakes and sought ways to resolve her past." In sum, this record does not reveal error resulting from the district court's refusal to allow father to delve into the specific details regarding what caused mother's mental-health issues or her purported abuse by her father.

In conclusion, because the district court's findings are supported by the evidence and the district court properly applied the law, we affirm.

Affirmed.