STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0390

Marc John Laurent, petitioner,
Respondent,

vs.

Melynda Alice Laurent,
Appellant.

Filed January 14, 2013
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-FA-10-2035

Marc Laurent, Minneapolis, Minnesota (pro se respondent)

John M. Jerabek, Niemi, Jerabek & Kretchmer, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

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

HALBROOKS, Judge

In this appeal from the district court's denial of appellant's motion to move the residence of the parties' children from Minnesota, appellant argues that the district court

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

(1) failed to hold an evidentiary hearing on its removal determination; (2) relied on inadmissible statements made during the parties' participation in alternative-dispute-resolution processes in its decision; and (3) inadequately addressed the best-interests factors under the removal statute, Minn. Stat. § 518.175, subd. 3(b) (2012). We affirm.

FACTS

Appellant Melynda Alice Laurent and respondent Marc John Laurent were divorced in October 2010. The parties were granted joint legal and physical custody of their four minor children. The primary residence of the children was established with appellant who resides in Minneapolis. Respondent also resides in Minneapolis. With the exception of the parties' eldest child, who lived out-of-state until the age of two, the children have always resided in Minnesota. Yet since the pendency of the parties' divorce, appellant has wished to move with the children to Georgia in order to be near her fiancé, whom she began dating in 2009. This move was not contemplated in the parties' divorce agreement, and respondent never agreed to it.

In August 2011, appellant moved the district court for permission to move the children to Georgia. Respondent filed a responsive motion, requesting that appellant's motion be denied. Both parties provided sworn statements by affidavit about the impact that the proposed move would have on the children. Appellant argued that she needs to move with the children to Georgia for financial reasons, alleging the inability to find full-time work in Minnesota and the possibility of foreclosure on her house. She presented evidence that she had been offered a full-time teaching job in Georgia. Respondent argued that appellant never attempted to secure full-time work in Minnesota and that she

wants to move to Georgia to be near her fiancé. He further asserted that allowing appellant to move with the children to Georgia would not be in the children's best interests. Appellant's fiancé submitted a sworn statement to the district court, confirming that he and appellant have been dating since 2009 and now plan to marry, that he is prepared to have appellant and her children live with him in Georgia, and that he would allow respondent to visit his children. A hearing on the motion was held in September. Both parties presented argument, but neither party provided sworn testimony or called any witnesses.

The district court denied appellant's motion. In its decision, the district court made findings and conclusions as to each of the eight best-interests factors outlined in Minn. Stat. § 518.175, subd. 3(b), and concluded that appellant had not met her burden of proof that moving to Georgia is in the children's best interests. Chief among the district court's findings was that appellant had not shown that she attempted to obtain full-time employment in Minnesota and that her motivation for moving to Georgia is to start a life with her fiancé. The district court determined that removing the children from Minnesota would disrupt their schooling, home life, relationships with extended family in Minnesota, and routine with respondent. This appeal follows.

D E C I S I O N

I.

Appellant challenges the district court's denial of her motion to remove the children from Minnesota without an evidentiary hearing, arguing that oral testimony subject to cross-examination was required. Whether to hold an evidentiary hearing on a

motion is generally discretionary with the district court and is reviewed for an abuse of discretion. *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007). In family-law matters, it is presumed that non-contempt motions will be decided without an evidentiary hearing "unless otherwise ordered by the court for good cause shown." *Doering v. Doering*, 629 N.W.2d 124, 130 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Sept. 11, 2001); *see also* Minn. R. Gen. Pract. 303.03(d)(1) (establishing the general rule that submission of non-contempt motions is without oral testimony). Minnesota law does not impose a requirement that an evidentiary hearing be held on removal decisions. *See* Minn. Stat. § 518.175, subd. 3 (2012) (lacking an evidentiary-hearing requirement).

Here, appellant does not argue that good cause warranted an evidentiary hearing in her case. Instead, she asserts that the supreme court's holding in *Hummel v. Hummel*, 304 N.W.2d 19 (Minn. 1981), requires one as a matter of course. But this argument is unavailing. The rule of law that appellant ascribes to *Hummel*—"that when denial of a request for removal effects a modification of custody, the trial court 'may not do so absent an evidentiary hearing in which witnesses may be cross-examined'"—is no longer good law. This rule, which in fact derives from *Auge v. Auge*, 334 N.W.2d 393, 396 (Minn. 1983), *superseded in entirety by statute*, Minn. Stat. § 518.175, subd. 3(b)(c), *as recognized in Goldman v. Greenwood*, 748 N.W.2d 279, 283 n.5 (Minn. 2008), has been superseded in its entirety by the removal statute.

Furthermore, *Hummel* is distinguishable from this case. The *Hummel* court held that a child-custody-modification order should have been based on a hearing in which

witnesses may be cross-examined. 304 N.W.2d at 20-21. But *Hummel* involved a custody modification; this case does not. And, while the circumstances in *Hummel* included the mother's moving within Minnesota, a request for out-of-state removal was never at issue in that case. Because a removal determination does not require an evidentiary hearing, the district court did not abuse its discretion in holding a hearing on the motion without oral testimony.

Appellant also objects to the reference in the district court's order that the parties provided sworn testimony at the September motion hearing. Harmless error is to be ignored. Minn. R. Civ. P. 61. To prevail on appeal, an appellant must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). A de minimis, technical error does not require a remand. *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985). The district court's finding that the parties "were sworn and gave testimony" at the September hearing is inaccurate. But appellant does not allege that any harm or prejudice has resulted from this error. Because the district court's error was harmless and inconsequential, a remand of the matter would serve no function.

II.

Appellant contends that the district court's consideration of statements that the parties made during previous alternative-dispute-resolution efforts violates Minn. R. Evid. 408. Evidentiary rulings are reviewed for an abuse of discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001). But Minn. R. Evid. 408 is an exclusionary rule, and if a statement violates the rule, a district

court does not have discretion to admit the statement. *C.J. Duffey Paper Co. v. Reger*, 588 N.W.2d 519, 524 (Minn. App. 1999), *review denied* (Minn. Apr. 28, 1999). Rule 408 prohibits admission of evidence of conduct or statements made in compromise negotiations to prove liability for, invalidity of, or value of a claim. Minn. R. Evid. 408. Exclusion of this evidence is not required when offered "for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." *Id.* Rule 408 has been narrowly construed so as to prohibit admission of evidence only when (1) the evidence pertains to a compromise on "a claim which was disputed as to either validity or amount"; (2) the evidence is offered to "prove liability for or invalidity of the claim or its amount"; and (3) the evidence is not offered for another legitimate purpose. *C.J. Duffey Paper Co.*, 588 N.W.2d at 524.

Specifically, appellant challenges the district court's consideration of respondent's statement that appellant discussed with him her desire to move to Georgia to be near her fiancé. In his affidavit, respondent listed the following occasions during which appellant expressed this desire: (1) mediation sessions in October and November 2009; (2) the settlement program offered by the district court; (3) the early-neutral-evaluation process; and (4) in court before a pre-settlement hearing. Appellant submitted a supplemental affidavit to the district court in which she rebutted many of respondent's allegations. But she neither refuted the statements which she now challenges, nor raised any objection to the district court's consideration of those statements. Because appellant raises her rule 408 objection for the first time on appeal, we conclude that she has waived that issue.

Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). Nonetheless, we observe that narrow application of rule 408 reaches only statements made during settlement discussions concerning the disputed validity or value of a claim. It would not apply in this case to statements the parties made about appellant's motivation for moving to Georgia.

Appellant argues, in the alternative, that the district court never determined that rule 408 is inapplicable to these statements. Yet appellant fails to cite any legal authority imposing this stringent requirement on the district court.

III.

Appellant challenges the district court's denial of her motion to remove the children from Minnesota, arguing that the district court abused its discretion by inadequately addressing the best-interests factors outlined in Minn. Stat. § 518.175, subd. 3(b). Our review of a removal decision "is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman*, 748 N.W.2d at 284 (quotation omitted). We will set aside a district court's findings of fact only if clearly erroneous. *Id.* In determining whether to permit a parent to move her children's residence to another state when the other parent opposes the move, the district court must base that decision on the best interests of the children by assessing eight statutory factors. Minn. Stat. § 518.175, subd. 3(b). The parent seeking to remove the children from Minnesota bears the burden

of proof unless the moving party has been a victim of domestic abuse by the other parent. *Id.*, subd. 3(c).

Here, appellant acknowledges that the district court addressed each of the eight statutory best-interests factors in its order. But she nonetheless contends that remand is warranted because the district court (1) failed to make findings as to the parties' financial means, (2) failed to make findings as to educational opportunities for the children, and (3) erroneously found that appellant did not provide information about her job-seeking efforts in Minnesota. We address each argument in turn.

A. Financial findings

Appellant contends that the district court made "no factual findings on the financial circumstances of the parties." This assertion is contradicted by the record. Under the third best-interests factor, the court must consider: "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." *Id.*, subd. 3(b)(3).

In its consideration of this factor, the district court made three central determinations. First, the district court concluded: "While it is the case that eliminating one parent from the daily parenting time equation would eliminate conflict between the parties, such a removal is not in the best interests of the children." Second, the district court concluded that appellant's new life with her fiancé should not minimize respondent's parenting time and that the district court would not give preference to appellant's fiancé over respondent. Third, the district court noted that because both

parties faced financial hardship, appellant's argument that respondent could visit Georgia whenever he desires unfairly placed the responsibility on him to pay for travel in order to see his children.

The district court also made several findings as to the parties' financial circumstances. The district court found that, although appellant previously faced foreclosure, by the time of the hearing, she had worked out a repayment schedule with her bank to avoid foreclosure. The district court considered the financial means of appellant's fiancé before concluding that his wherewithal was not relevant to its removal determination. And, contrary to what appellant argues, the record does not indicate that the district court ignored the fact that appellant's job offer in Georgia would pay a great deal more than what she currently earned through sporadic substitute-teaching positions in Minnesota. The district court noted that appellant had a job lined up in Georgia and that she had none in Minnesota. These findings reflect that the district court considered—as it is required to do—what bearing the parties' financial circumstances have on the feasibility of preserving the relationship between respondent and the children should appellant be allowed to move the children to Georgia.

B. Educational findings

Appellant contends that the district court made "no findings regarding the educational opportunities afforded the children in either Minnesota or Georgia." This too is unsupported by the record. The sixth best-interests factor requires the district court to consider "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." *Id.*, subd. 3(b)(6).

In its discussion of this factor, the district court concluded, "The children have only ever known the Minneapolis school system, and are well-established there, and it is in the best interests of the children to retain that stability." These findings indicate that the district court did consider whether the children's quality of life would have been impacted by a change in school systems. In its decision, the district court "decline[d] to make judgments about the quality of the [school systems in Minneapolis and Georgia]." Appellant interprets this single statement as an indication of the district court's refusal to assess the educational opportunities available to the children. But the fact that the district court declined to comment on the objective quality of each school system in question, does not show that it failed to make that consideration. Rather, the statement reflects the district court's judgment that the objective quality of the two public-school systems did not have a great effect on its overall assessment of the effect that relocating would have on the children's quality of life.

C. Job-seeking findings

Appellant challenges the district court's finding that she provided insufficient proof of her job-seeking efforts in Minnesota, arguing that her supplemental affidavit to the district court contradicts this finding. The district court found that appellant "did not provide the [district court] with applications for teaching positions or other work, proof that she has been denied employment, proof that employment is unavailable, or any other information about why it is she has been unable to obtain employment in Minnesota."

Appellant argues that her supplemental affidavit provided this information. We disagree. In her supplemental affidavit, appellant merely asserts that working in school districts outside of Minneapolis was "logistically unrealistic" and states only that she "looked into" teaching jobs in other districts. She also contends that finding a full-time teaching job with eight years of experience and a master's degree would be "next to impossible" or "difficult," but she does not show that she ever applied and failed to receive any of these teaching positions or other positions outside of her field. Appellant did submit to the district court a listing of filled substitute-teaching positions in Minneapolis, but no evidence of job applications that she completed or any other proof that other employment, beyond substitute positions in her city, was unavailable. The district court finding is supported by the record.

In sum, the district court properly applied the best-interests inquiry in making its removal determination under Minn. Stat. § 518.175, subd. 3. The district court did not abuse its discretion in denying appellant's motion on the basis that relocating the parties' children to Georgia is not in the children's best interests.

Affirmed.