STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1443

Heidi Ann Collins, petitioner,
Respondent,

vs.

Angel Marie Morgan,
Respondent Below,

Brandon Lee St. George,
Appellant.

Filed July 22, 2024
Affirmed
Bjorkman, Judge

St. Louis County District Court
File No. 69DU-FA-22-614

John B. Schulte, Leah L. Fisher, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Brandon St. George, Superior, Wisconsin (pro se appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

In this child-custody dispute, appellant-father argues that the district court abused its discretion by granting respondent-aunt sole legal and physical custody of the child and that the district court was biased against him. We affirm.

FACTS

Appellant-father Brandon Lee St. George and mother Angel Marie Morgan never married but have a child, who was born in 2014. Child resided primarily with mother until 2017, when St. Louis County initiated child-protection proceedings. At that time, child was removed from mother's home and placed in the care of her paternal grandmother and step-grandfather. The two obtained joint legal and physical custody of child in 2019 but separated shortly thereafter. Child lived with grandmother until September 2020, when child found her dead from an overdose. Thereafter, child lived with step-grandfather until shortly before his death in August 2022.

Following grandfather's death, a paternal uncle (uncle) took child to Ohio to live with her paternal aunt, respondent Heidi Ann Collins (aunt). Aunt obtained temporary physical and legal custody of child while petitioning for permanent physical and legal custody. Father opposed aunt's petition and filed a cross-petition seeking custody. Following a May 2023 trial, the district court awarded aunt sole physical and legal custody of child.[1]

[1] Mother appeared at the courthouse but did not participate in the trial. The district court entered a default judgment against her, which she did not appeal.

Father appeals.

DECISION

I. The district court did not abuse its discretion by granting aunt sole legal and physical custody of child because aunt is an interested third party under Minn. Stat. §§ 257C.01-.08 (2022) and placement with aunt is in child's best interests.

Our review of a district court's third-party custody determination is limited to whether the court abused its discretion. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006). A district court abuses its discretion by making unsupported findings of fact or improperly applying the law. *Ramirez v. Luna*, 830 N.W.2d 163, 166 (Minn. App. 2013). We will not set aside a district court's findings of fact unless they are clearly erroneous, but we review questions of law de novo. *Id.*

A person who is not a parent may petition for custody of a child if they establish that they are an interested third party under Minn. Stat. §§ 257C.01-.08.[2] To meet this burden, a person must:

> (1) show by clear and convincing evidence that one of the following factors exists:
>
> (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent that the child will be harmed by living with the parent;
>
> (ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
>
> (iii) other extraordinary circumstances[.]

[2] The parties frame the issue here as whether aunt has "standing." We conclude the issue is more appropriately characterized as whether aunt falls within the statutory definition of an interested third party under Minn. Stat. §§ 257C.01-.08.

Minn. Stat. § 257C.03, subd. 7(a)(1). If the person makes this showing, they must also "prove by a preponderance of the evidence that it is in the best interests of the child" to be in their custody and that they do not have a disqualifying criminal conviction. *Id.*, subd. 7(a)(2), (3). The district court must then consider eight statutory factors including, in relevant part:

> (1) the amount of involvement the interested third party had with the child during the parent's absence or during the child's lifetime;
>
> (2) the amount of involvement the parent had with the child during the parent's absence;
>
> . . . .
>
> (4) the facts and circumstances of the parent's absence;
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> . . . .
>
> (6) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence[.]

Id., subd. 7(b).

In granting aunt's petition, the district court found that she presented clear and convincing evidence that father "abandoned, neglected, or otherwise exhibited disregard for [child's] well-being" and that "[p]lacement of [child] with [aunt] takes priority over preserving the day-to-day parent-child relationship because of the dangers and harms that [father] has exposed the child to," as Minn. Stat. § 257C.03, subd. 7(a)(1), requires. And the district court carefully analyzed the 12 best-interests factors outlined in Minn. Stat. § 257C.04, subd. 1(a)(1)-(12), ultimately determining that "it is clearly in [child's] best interests for [aunt] to be granted permanent sole physical and legal custody of [child]." [3]

[3] These factors include who the child's primary caretaker is, the intimacy of the child's relationship with each party, the length of time the child has lived in a safe and stable

Father contends that the district court abused its discretion, primarily arguing that the record shows that he did not abandon child and that aunt's limited engagement with child prior to seeking custody precludes her from being an interested third party. Neither argument persuades us to reverse.

As to father's conduct regarding child, the record shows that he has a history of chemical dependency, domestic violence, and estrangement from his family—including child—because of his "threatening behaviors." As a result, father has not been a consistent presence in child's life for several years. Mother provided most of the care during the first three years of child's life until the county took custody in 2017. In 2019, while living with grandmother, child had some regular contact with father because he lived in the attic of the same house. But when the house was sold following grandmother's death, drug paraphernalia was found in the attic, calling into question the nature of father's engagement with child while they lived under the same roof. Step-grandfather was so concerned about father's "substance abuse and history of volatility" that he required father to complete chemical-dependency treatment before he could have contact with child. Father did not do so. As a result, he had almost no contact with child during the two years before aunt initiated this proceeding.

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environment, the permanence of the family unit in each of the proposed custodial homes, the mental and physical health of the parties, and the ability of each party to love and guide the child as they grow up. Minn. Stat. § 257C.04, subd. 1(a)(1)-(12).

In contrast, aunt had frequent contact with child while child lived with grandmother and later with step-grandfather. These contacts included phone calls, video chats, and two or three in-person visits. In a November 2020 letter, step-grandfather told the family that if something happened to him, he wanted aunt to have sole physical and legal custody of child.[4] When step-grandfather later died, child was brought to Ohio to live with aunt, in keeping with step-grandfather's wishes.

Not only does the record defeat father's assertions that he did not abandon or neglect child and that aunt has not had the requisite contact with her to qualify as an interested third party, but it supports the district court's detailed best-interests findings. Since moving to Ohio, child has done well. She regularly attends school and is succeeding academically. She lives with four cousins and has acclimated to the stability of being in a cohesive family unit. Child receives needed medical and dental care, including treatment addressing her pre-existing "toe walking" condition and mental-health care addressing the trauma she has experienced during her young life. Uncle, aunt, aunt's half-brother (no relation to father), and aunt's cousin (no relation to father), all testified to aunt's ability to parent, how well child is doing in her care, and concerns they have about father's substance use and parenting ability. In sum, the record supports the district court's finding that aunt has and "will continue to be able to give the child a stable and loving environment to grow up in."

[4] The district court noted this letter in its order.

Father acknowledged in his testimony that he is homeless and cannot raise child while living in a van. But he stated that he was maintaining sobriety. The district court found this testimony not credible, instead finding that behaviors father displayed during trial coupled with the testimony of other witnesses suggest father has a continued "substance use disorder or perhaps an underlying mental health problem."

Based on our careful review of the record, we see no clear error in the district court's findings of fact. And we discern no abuse of discretion by the district court in awarding aunt—as an interested third party—sole legal and physical custody of child.[5]

II. Father is not entitled to relief based on claimed judicial bias.

"The parent-child relationship is among the fundamental rights protected by the constitutional guarantees of due process." *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008). Due process requires, among other things, the right to a fair trial before an impartial decision-maker. *Id.* Father argues that the district court was not impartial because it continually overruled father's objections but "unilateral[ly] favor[ed]" objections made by aunt and her counsel, "rais[ing] serious concerns about judicial bias." He also contends that the district court impermissibly restricted his proffered testimony

[5] Father also argues that the district court committed legal error by analyzing child's best interests at the time of trial, rather than at the time aunt filed the custody petition. We are not persuaded because child's best interests include consideration of her circumstances at the time of trial. *See* Minn. Stat. § 257C.04, subd. 1(a) (stating "the court must consider and evaluate all relevant factors in determining the best interests of the child"). He also essentially asks us to reweigh the district court's credibility determinations as to the parties' respective testimony about their relationship with child. That is not our role, and we decline to do so. *In re Welfare of Child of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007) ("We defer to the district court's determinations of witness credibility and the weight to be given to the evidence."), *rev. denied* (Minn. July 17, 2007).

and other evidence, which undermined his "right to a complete defense." These arguments are unavailing for three reasons.

First, father fails to point us to any part of the trial transcript that demonstrates bias. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see also Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family-law appeal), *rev. denied* (Minn. Oct. 24, 2001).

Second, the district court's exclusion of certain evidence flows from father's failure to comply with court-ordered disclosure requirements. Father was given the opportunity to submit witness and exhibit lists, was made aware of the deadlines for doing so, and failed to meet them. Aunt moved to exclude father's exhibits and witnesses as a sanction, and the district court did so. This is permissible under Minn. R. Civ. P. 37.02(b)(2): if a party fails to obey a discovery order, the district court can "prohibit[] that party from introducing designated matters in evidence." And "[w]hile an appellant acting *pro se* is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987); *see Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (stating that courts generally will not modify ordinary rules and procedures because a pro se party lacks the

skills and knowledge of an attorney). Father was still allowed to make an opening statement, cross-examine aunt's witnesses, and testify on his own behalf.

Third, father's argument suggests that he is primarily dissatisfied with the outcome of the proceedings. But the fact that the district court rejected father's arguments and granted aunt sole custody does not show bias. We presume that district court judges have discharged their duties properly. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). And adverse rulings by a judge do not, by themselves, establish judicial bias. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). In sum, the record reflects no judicial bias that would entitle father to relief.[6]

We do not doubt father's expressed love for child or his desire to have a relationship with her. But the record supports the district court's findings that he is not in a position to care for her and that granting sole legal and physical custody to aunt serves child's best interests. We are hopeful that, as the district court stated in its order, the parties will "not allow disagreements to interfere with weekly phone calls between [father] and the child"

[6] Father contends that the district court erred by not appointing a guardian ad litem, not ordering welfare checks of child, and transferring jurisdiction of this case from juvenile court to family court. Father forfeited these contentions by failing to support them by any arguments or legal authorities. *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is forfeited and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)). And we see no prejudicial error. Father also asserts in his reply brief that aunt's counsel has a disqualifying conflict of interest. We do not consider arguments presented for the first time in a reply brief. *Wood v. Diamonds Sports Bar & Grill Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002), *rev. denied* (Minn. Feb. 26, 2003).

and that these calls along with two annual visits will allow father and child to maintain a relationship.

Affirmed.