STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0316

In re the Matter of:

Deandre D'Shaun Adams, petitioner,
Respondent,

vs.

Antoinette York,
Appellant.

Filed April 28, 2025
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-FA-22-722

Daniel B. McGuire, RAM Law PLLC, Roseville, Minnesota (for respondent)

Calandra Revering, Revering Law & Consulting, Minnetonka, Minnesota; and

Victoria Taylor, Shawn Reinke, Reinke Taylor, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Parents having equal parenting time with their five-year-old daughter live in different states and disagree about where she should enter school. The district court held that the girl should attend a Minnesota school near her father rather than a Wisconsin school

near her mother, a holding that consequently changes the parenting-time arrangement. Mother appeals, arguing that the district court decision improperly restricted her parenting time, modified custody, and changed the child's primary residence without an evidentiary hearing or requisite findings. Because mother assented to the district court's procedure to resolve the parties' school-choice dispute and because the decision was well supported by the district court's reasoning and the undisputed circumstances, we affirm.

FACTS

Deandre Adams and Antoinette York, unmarried, had a daughter in 2018. We will call the girl April, a name we have randomly chosen in the interest of protecting her privacy. At the time, both parents lived in Mankato but later moved to different cities—Adams to Plymouth and York to Madison, Wisconsin. They stipulated to an order affording them joint legal custody, joint physical custody, and equal parenting time on a weekly alternating schedule. They effectuated the schedule by meeting for exchanges halfway between their homes, which are separated by a roughly four-hour drive.

As April approached age five and neared time to enroll in primary school, Adams and York disagreed about where she should attend kindergarten, each parent favoring enrollment near his or her home. York moved the district court to grant her sole legal and physical custody so April could attend school in Madison. Adams opposed York's motion, arguing that York had not alleged endangerment to support her custody-change request. York countered, insisting that "[a]n endangerment standard would not be appropriate to use solely in determining the appropriate parent for the child during the school year, especially if both parents have no endangerment issues." The district court denied York's

motion, observing that she had not made a *prima facie* case of endangerment and reasoning that the dispute should be determined instead based on the statutory standard for permitting removal of a child from the state, Minnesota Statutes section 518.175, subdivision 3 (2024). The district court observed that the fundamental issue was whether to move April's primary residence to another state.

Neither party objected to the district court's reframing of the issue, and they then presented information relevant to the school-choice decision. Each party implicitly acknowledged that the school determination would necessarily affect the parenting-time schedule. Each advocated for school enrollment near his or her home and for nearly exclusive parenting time during the school year while conceding that the other parent should have extensive parenting time during the summer and during school-year breaks.

York gave her reasons that April should attend school in Madison. She asserted that she has more time than Adams to care for April's needs because she is a stay-at-home mother and has support from her husband. She emphasized too that April would have two siblings in York's home and that April is close with them. And she pointed out that April has many friends and engages in activities in Madison. She asserted that, by contrast, Adams works three jobs and relies on his mother to care for April while he works. She said also that she, rather than Adams, has taken April to medical appointments. And she emphasized that April is black, claiming that she would benefit from attending a more racially diverse school, like the one she would attend in Madison and unlike the schools Adams suggested near his home in Plymouth.

Adams gave his reasons that April should attend school in Plymouth. Disputing York's representation about his employment and reliance on other caregivers, he said he has only one job and that it is in the Eden Prairie School District. He maintained that his role as an educator allowed him to help April remain current in her education while they withheld her from starting kindergarten during their school-choice dispute. Adams observed that Gleason Lake Elementary, one of three schools he offered for April to attend, is the ninth-ranked public elementary school in Minnesota. He contrasted Gleason Lake's academic success (having 74% of its students proficient in reading and 80% proficient in math and being in the top-ranked school district in the state) with the lack of academic success of the school that York proposed (having only 27% of its students proficient in reading and 17% proficient in math). Adams had earlier acknowledged that April's primary care providers are in Madison, but he asserted that he too takes her to doctor visits. He added that much of April's extended family lives in Minnesota, including her grandparents with whom she has a strong bond.

The district court did not hold an evidentiary hearing on the parties' competing school-choice and parenting-time affidavits but received arguments from counsel at a motion hearing. It then filed an order in which it analyzed the dispute under its previously announced standard—the removal best-interests factors. The district court's order discussed the parties' evidence outlined in their affidavits, indicating the court's disappointment that it had to choose between two exceptional parents who have both been significantly and properly involved in April's life. It determined that, on balance, April's interests are best served attending Gleason Lake Elementary. It based this on various

circumstances, especially the school's academic success given that April would begin kindergarten at a delayed age. It considered but was unconvinced by York's school-diversity argument. Recognizing that continuing with equal parenting time would no longer be feasible, it granted Adams parenting time during the school year and afforded York "the entire summer [except for one week to Adams], every holiday, and every school break more than two days, and [one additional two-day weekend each month]." It also designated thrice-weekly electronic contact between York and April during the school year.

York appeals.

DECISION

York makes two arguments on appeal. She first argues, for the first time on appeal, that the district court erred by restricting her parenting time, effectively modifying the custodial arrangement, and changing April's primary residence without first conducting an evidentiary hearing or making endangerment or parenting-time noncompliance findings. She argues second that the district court failed to apply the best-interests factors listed in Minnesota Statutes section 518.17, subdivision 1 (2024). Both arguments fail.

York's first category of argument overlooks the manner in which she and Adams presented the issues for the district court's determination. Generally speaking, "litigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below." *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957); *Roth v. Weir*, 690 N.W.2d 410, 413 (Minn. App. 2005) (holding that an appellant who has not raised an issue in district court may forfeit the issue even if it was raised by an adverse party). And also generally, where a child attends school is decided by the child's

legal custodian. *See* Minn. Stat. § 518.003, subd. 3(a) (2024) (defining "legal custody" as the "right" to make decisions about, among other things, a child's education). Where, as here, parents share joint legal custody, they have "equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education." Minn. Stat. § 518.003, subd. 3(b) (2024). So when joint legal custodians do not agree about where their child will attend school, the district court resolves the dispute based on the child's best interests. *See Novak v. Novak*, 446 N.W.2d 422, 424 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989). In this case, however, the district court did not decide the issue as a matter of legal custody. When it denied York's initial motion, it announced that, under the circumstances of the school-choice dispute and in the absence of any allegation of endangerment, it would instead resolve the parties' disagreement by relying on the statutory best-interests factors that apply when the court considers ordering a move in a child's primary residence to another state. This seemed reasonable to the district court since under the existing equal-time arrangement, each party's home was designated as the primary residence. Neither party objected to that order. And both tacitly acquiesced by submitting affidavits using the removal best-interests factors. Neither party asserted that resolving the school-choice issue would constitute a *de facto* change in custody or asserted that an endangerment finding would be necessary, even though both proposed a schedule that recognized that the parent who wins the school-choice contest would consequently have nearly exclusive school-year parenting time.

We observe too that, when the district court's final order announced that it "does not interpret the law regarding the issues in this matter to require an evidentiary hearing,"

it was not denying York's request for an evidentiary hearing but Adams's request for one. Contrary to York's position on appeal, she plainly (and successfully) argued to the district court that an evidentiary hearing was unnecessary:

> I know that counsel wants to have an evidentiary hearing, but . . . substantial modifications of visitation rights would require an evidentiary hearing if the moving party makes a *prima facie* showing that visitation is likely to endanger the child's physical or emotional wellbeing, but insubstantial modifications would not require an evidentiary hearing and would be appropriate if they are in the child's best interest.
>
> Our position today is that the child would not be subjected to any abuse or any endangerment. This is a best interest standard and we've shown through our affidavits that it would be in [April]'s best interest to go to school with her mother. I know that [Adams] wants the Court to hold an evidentiary hearing. Our position is that an evidentiary hearing . . . is not necessary, Your Honor. In that the Supreme Court and Court of Appeals allows Your Honor to make a determination about modifying the parenting time and allowing [April] to be with [York] during the school year without a hearing.
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> I know that the parties were sharing equal parenting time, and that [Adams] believes that his parenting time would be significantly reduced or diminished. Our position is that Ms. York is willing to allow [Adams] to have a significant amount of modified parenting time. What that means, Your Honor, is she's willing to offer [Adams] summers, holidays, expanded weekends, but the child is five years old, and it is very important that she be with her mother during the school year; during her first year of school.

Having convinced the district court that no evidentiary hearing was needed and that the school-choice issue could be determined without an endangerment finding, and having tacitly accepted that the removal best-interests factors should influence the district court's

analysis, York's contentions on appeal are not well received. She has failed to preserve most of her arguments contesting the district court's procedure.

We decline to address York's unpreserved arguments on their merits. We recognize that we may address them despite York's waiver in the interests of justice. *Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002); *see* Minn. R. Civ. App. P. 103.04. But the interests of justice do not weigh in York's favor given her urging of the district court to employ the process it ultimately employed. And although it may be true that the removal standard is not a perfect fit, neither are the potentially applicable child-custody and parenting-time statutes that York offers on appeal. York did not believe that the process or an unequal division of parenting time was unjust when she argued for it, and under these circumstances, neither do we.

York also argues that the district court should have made findings under all the statutory best-interests factors from Minnesota Statutes section 518.17, subdivision 1(a). We review the district court's choice of a legal standard *de novo*. *Anderson v. Archer*, 510 N.W.2d 1, 4 (Minn. App. 1993). But the supreme court has held that the best-interests factors under Minnesota Statutes section 518.17 govern the creation and initial approval of parenting plans, that section 518.175 governs parenting-time modifications, and that a district court must consider only *relevant* best-interests factors. *See Hansen v. Todnem*, 908 N.W.2d 592, 596–99 (Minn. 2018). The district court was not bound to analyze the inevitable modification here under the section 518.17 best-interests factors. It therefore did not err by instead making detailed findings under the other, clearly relevant, best-interests factors in section 518.175, subdivision 3, and coming to a well-reasoned decision.

York finally forwards a policy argument, which is that granting custody to the parent in the better school system is financially discriminatory. We need not address this issue because York did not present the argument or highlight any supporting evidence in the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We add that the policy concern York espouses is not immediately compelling on its face and that, in any event, as we repeated in *LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000), our role is to correct legal errors, not establish public policy. And to the extent that York positions her policy argument in a constitutional, equal-protection frame, we have also explained that the state's interest in a child's best interests can outweigh a parent's assertion of even constitutional rights. *See Geske v. Marcolina*, 642 N.W.2d 62, 70 (Minn. App. 2002). York's policy argument fails.

Affirmed.