IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

STATE ON BEHALF OF AZAYLIA S. V. LORI R.

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STATE OF NEBRASKA ON BEHALF OF AZAYLIA S., A MINOR CHILD, APPELLEE,

V.

LORI R., FORMERLY KNOWN AS LORI B., APPELLANT, AND CHRISTOPHER S., APPELLEE.

Filed November 24, 2026. Nos. A-25-807, A-25-932.

Appeals from the District Court for Buffalo County: JOHN H. MARSH, Judge. Affirmed.

Lori R., formerly known as Lori B., pro se.

No appearance for appellees.

BISHOP, WELCH, and FREEMAN, Judges.

FREEMAN, Judge.

I. INTRODUCTION

In these consolidated appeals, Lori R., self-represented, appeals from the orders of the Buffalo County District Court arising from the modification of the parties' parenting plan. In case No. A-25-807, Lori appeals the district court's order dismissing her complaint to modify the underlying paternity order and awarding Christopher S. sole legal and physical custody of the parties' minor child. In case No. A-25-932, Lori appeals the subsequent order denying her emergency motion to stay enforcement of the modified parenting plan and child support order. For the reasons stated herein, we affirm both orders.

II. BACKGROUND

1. FACTUAL BACKGROUND

Lori and Christopher are the biological parents of Azaylia S., born in October 2015. This is the second appeal regarding the modification of the parenting plan for Azaylia. See *State OBO*

Azaylia S. v. Christopher S. v. Lori B., No. A-22-926, 2023 WL 5597901 (Neb. App. Aug. 29, 2023) (selected for posting to court website). Much of the relevant factual background concerning this case is set forth in our memorandum opinion in the prior appeal and recounted as necessary here.

In 2016, pursuant to the parties' agreement, the district court awarded Lori and Christopher joint legal custody of Azaylia, and awarded Lori primary physical custody, subject to Christopher's parenting time. In 2017, the district court modified Christopher's parenting time to include Wednesdays, every other weekend, and, once Azaylia turned 3 years old, 2 nonconsecutive weeks during the summer. The modified parenting plan provided that "[t]ransportation for exchanges will be shared between the parents with the parent receiving parenting time picking Azaylia up from the other parent, childcare provider, or school." When the 2017 parenting plan went into effect, both parties lived in Kearney, Nebraska.

The parties operated under that arrangement until December 2020, when Lori, represented by counsel, filed a complaint to modify the parenting plan. The complaint alleged that Azaylia had been exposed to sexual trauma by a third party while in Christopher's care and that Christopher did not provide Azaylia a safe and stable environment. She sought modification of Christopher's parenting time and child support.

In his amended answer and counterclaim, Christopher, also represented by counsel, alleged a material change in circumstances affecting Azaylia's best interests, including Lori's interference with his relationship with Azaylia and parental alienation. Christopher sought primary physical custody of Azaylia or, alternatively, extended parenting time, child support, and attorney fees.

In November 2021, Lori moved from Kearney to Hastings, Nebraska. The court later held the modification hearing in April 2022. At that hearing, the court heard testimony from multiple witnesses, including but not limited to, Lori; Christopher; Jody Angel-Trejo, Azaylia's individual therapist; Leah Gleason, the Guardian ad Litem (GAL); and the principal of Azaylia's school. In September 2022, the district court found that Christopher had established a material change in circumstances and modified custody. Specifically, the court found:

> [Lori] has engaged in a number of actions which cause concern to the court. [Lori] had made a statement, "I would move my happy ass to Chadron[,"] as well as keeping [Christopher] in litigation until he could no longer afford to do so. [Lori's] motives in making reports of abuse, which have been unfounded, are suspect. [Lori's] actions evidence a disregard of the importance of [Christopher's] relationship with [Azaylia], if not an outright attempt to destroy that relationship. [Lori] moved [Azaylia] a distance away requiring a change in school without consulting [Christopher]. [Lori's] motives for the move to another community are also suspect. [Lori] further aggravated that situation by not listing [Christopher's] name on the school census card. Such actions appear to corroborate the previously referenced testimony of . . . Angel-Trejo describing [Lori] as a high conflict parent, with major mental health issues.

Based on those findings, the district court awarded Christopher primary physical custody of Azaylia, finding that placement to be in Azaylia's best interests. The court further granted Christopher final decision-making authority if the parties could not agree after good faith discussions. As to parenting time, the court directed the parties to follow the June 2016 parenting

plan modification, "with [Lori] having the regular parenting time formerly provided to [Christopher]" and ordering the parties to "continue to alternate holidays pursuant to their previous practice." The court also awarded Christopher $3,000 in attorney fees.

Lori timely filed a motion for a new trial or, in the alternative, a motion to alter or amend. Following a hearing, the district court granted the motion, in part, providing that the parties were to follow the March 2017 modified parenting plan as further modified by the court's 2022 order modifying custody. The court emphasized that all prior orders would remain in effect except as expressly modified.

Lori appealed, and in August 2023, this court affirmed the order of the district court.

2. Complaint to Modify and Subsequent Proceedings

In September 2024, Lori, self-represented, filed an ex parte motion for temporary custody seeking sole legal and physical custody of Azaylia. The motion alleged that Christopher had, among other things, physically and mentally abused Azaylia, deprived her of access to medical care, and isolated her from mandatory reporters of abuse and neglect and other persons.

In response, Christopher, represented by counsel, sought sole legal and physical custody of Azaylia, reduced parenting time for Lori, increased child support, and attorney fees. Christopher alleged a material change in circumstances affecting Azaylia's best interests, including Lori's continued "dysregulation" and "high-conflict" behaviors, which he stated undermined his authority as the custodial parent. He further reported a material change in circumstances warranting an "upward deviation" in Lori's child support obligation.

In January 2025, Lori filed a motion for an order to show cause related to attorney misconduct. Lori asked the district court to "review" several alleged acts of misconduct by Christopher's counsel, including allegedly advising Christoper "not to uphold" specific provisions of a prior court order and engaging in "financial harassment." The court subsequently determined that it lacked jurisdiction over the motion because the "Nebraska Supreme Court has exclusive jurisdiction over attorney discipline."

The following month, Lori filed a motion and application to enter and dispute the GAL report with a motion to amend judgment on the GAL payment. Lori claimed that the GAL failed to act impartially or in Azaylia's best interests and instead favored Christopher. The motion further asserted that the GAL report, offered at the April 2022 modification proceedings, contained "subjective bias," "factual errors," "unreliable information," "libel," "false evidence," "incomplete investigation," and "veteran disability discrimination." Lori requested a hearing at which she could dispute the report and require the GAL to support its sources and conclusions.

She also sought to amend the November 2022 order requiring payment of GAL fees. She argued that she should not be required to pay for services she contended were not performed. Lori asked the district court to admit the GAL report and her objections, find her not in contempt for unpaid GAL fees, relieve her of any remaining liability, and order reimbursement of the $1,932 she had already paid. Lori attached a copy of the GAL report as an exhibit.

In March 2025, Lori filed an affidavit and application for an order to show cause, together with a more detailed motion, seeking to hold Christopher in contempt for alleged violations of the parenting plan concerning visitation. Lori's motion and affidavit alleged that Christopher repeatedly restricted her parenting time; failed to communicate about Azaylia's school, medical

care, transportation, and exchanges; used derogatory language; interfered with her telephone contact and school involvement; and improperly exercised his final decision-making authority. Lori asked the district court to require Christopher to show cause why he should not be held in contempt and, if found in contempt, to remove his final decision-making authority and reinstate her physical custody of Azaylia while the modification proceedings remained pending.

The district court held a hearing on Lori's motion to show cause in May 2025. Lori testified to a pattern of communication and parenting time disputes with Christopher. Among other things, she testified that Christopher scheduled parent-teacher conferences during her parenting time without informing her, limited makeup visitation time, was late for several exchanges, and failed to communicate with her for approximately 2 months between September and November 2024. Lori also presented exhibits containing communications concerning the disputes over parent-teacher conferences, transportation, and medical care, as well as messages in which Christopher used derogatory language toward her.

Christopher acknowledged that when communications with Lori became difficult, he would "shut down" and not respond. On cross-examination, Christopher was asked whether he complied with the parenting plan provision requiring both parents to keep one another reasonably informed in advance of school events. Christopher responded, "[A]pparently not."

Following the hearing, the district court found that Lori "met her burden of proof regarding . . . the ability to communicate effectively." The court nevertheless observed that communication issues were not "all" attributable to Christopher and that Lori would have to take "some responsibility in that." The court specifically identified Christopher's derogatory text messages, the parties' ineffective communications about parent-teacher conferences, and disputes over holiday parenting time. Based on those circumstances, the court held Christopher in contempt and ordered him to comply with the parenting plan to purge the contempt.

3. Modification Hearing

The modification hearing was held over 2 days in July 2025. At the hearing, Lori appeared representing herself and Christopher appeared represented by counsel. The following evidence was adduced.

(a) Lori's Mental and Physical Health

In her opening argument at trial, Lori returned to Angel-Trejo's characterization of her as reflected in the 2022 order. Lori argued that Angel-Trejo never treated her, had not reviewed her "psychiatric evaluations," and had not worked with her treating mental health care provider. According to Lori, Angel-Trejo knew only that Lori "received disability for mental health issues." Lori also referenced Title II of the Americans with Disabilities Act (ADA) and a U.S. Department of Justice publication stating that individuals with disabilities must be treated based on "facts and objective evidence," rather than "generalizations or stereotypes." Lori argued that the evidence would show that Angel-Trejo's statements about Lori were "nothing more than slanderous disability discrimination."

Lori later called Meredith McDowell, a therapist who had treated Lori for approximately 4 years. Lori initially questioned McDowell about the provisions of the counseling code of ethics. Christopher's counsel objected to McDowell offering expert testimony concerning the code of

ethics because she had not been disclosed as an expert witness, and the district court sustained the objection. The court cautioned Lori that, to the extent she sought to establish that Angel-Trejo committed an ethical violation, the findings in the 2022 order were the law of the case and could not be relitigated. Lori clarified that she instead sought testimony concerning assessments McDowell had performed, explaining that if the prior order found she had "major mental health issues," she could demonstrate a change through assessments indicating otherwise.

McDowell testified that she had conducted approximately 15 assessments of Lori, none of which raised concerns. She further testified that, after speaking with Lori weekly for approximately 4 years, she had no concerns about Lori and had not observed Lori exhibit a "major mental health disorder" while in her care.

Lori offered exhibit 150, an "evaluation" prepared by the U.S. Department of Veterans Affairs (VA), and asked McDowell whether the evaluation was consistent with what she had observed through her own assessments. Christopher's counsel objected on foundation grounds and because the question called for an expert opinion. The district court sustained the objection and did not receive the evaluation.

McDowell also identified an affidavit she prepared in July 2024, which the district court received as exhibit 149. In the affidavit, McDowell addressed six criteria associated with major mental health disorder and stated that Lori had not exhibited those criteria while in her care. When Lori asked McDowell about a posttraumatic stress disorder diagnosis associated with Angel-Trejo, Christopher's counsel again objected on the ground that McDowell had not been qualified to offer an expert opinion, and the court sustained the objection.

Lori also testified on her own behalf that she attended "regular therapy" and has had "psychiatric eval[uation]s." Both Lori and Christopher testified that Lori received "disability income."

The evidence also addressed the physical limitations Lori attributed to her disability. Lori's interrogatory answers identified "trochanteric bilateral bursitis" in her hips and "musculoligamentous bilateral strain" in her knees. In the interrogatory, Lori also stated that she "ha[d] given testimony at two prior hearings that [she] cannot drive more than three hours in a day without suffering severe joint flare ups." Her husband, Brandon R., similarly testified that "long drives cause[d] [Lori's] hips to flare up" and that spending "too much time in the car" caused pain, which limited what she could do afterward. In his opinion, Lori's disability did not otherwise affect her ability to parent.

(b) Parenting Time Exchanges

Initially, the parties followed the 2017 parenting plan by exchanging Azaylia in Wood River, but they later agreed to a different arrangement. Lori would pick Azaylia up in Kearney, where Lori worked, and Brandon would return Azaylia to Christopher at a gas station in Hastings, where Lori lived. Because the parties lived approximately an hour apart, Wednesday parenting time required Azaylia to spend about 2 hours traveling.

Despite the revised arrangement, the parties continued to disagree about exchange locations, scheduling, and delayed pickups. On one occasion, a dispute arose at Azaylia's school over which parent was authorized to pick her up, prompting law enforcement to respond. Lori also introduced text messages documenting several delayed or rescheduled exchanges that reduced her

parenting time. Christopher denied intentionally interfering with Lori's parenting time and attributed delays to unplanned late arrivals.

(c) Education and Counseling

At the time of trial, Azaylia was in the third grade and continued to attend the same elementary school despite a change in Christopher's residence.

Lori testified that she remained involved in Azaylia's education and expressed concern that Azaylia had limited opportunities to participate in extracurricular activities while in Christopher's care. Testimony from Azaylia's principal established that the only extracurricular activity available through Azaylia's school was the "Good News Club" and that he had not seen Azaylia attend its meetings. Lori also introduced evidence of disagreements over parent-teacher conferences, asserting that Christopher did not consistently provide conference dates and times.

In January 2025, Azaylia began counseling with Susan L. Ables-Athey, a licensed independent mental health provider. Ables-Athey met with Azaylia weekly during the school year and school breaks, during which Christopher transported Azaylia to her appointments. Ables-Athey testified that she recommends parents partake in an 8-week "Circle of Security" parenting class. Christopher completed the program.

Lori also communicated with Ables-Athey regarding Azaylia's counseling. In March 2025, Lori emailed Ables-Athey with insurance information and an update regarding Azaylia's response to therapy. In May 2025, after locating Lori's earlier email, Ables-Athey responded and offered Lori the opportunity to participate in the "Circle of Security" parenting class. Lori replied that she was familiar with the program but did not believe that her relationship with Azaylia presented the attachment concerns the program was designed to address. Lori did not complete the parenting program.

While at school, Azaylia periodically reported matters occurring outside of school that upset or concerned her. Azaylia's school principal testified that the school had contacted the child abuse hotline more than once regarding Azaylia. According to the principal, the school made reports based on statements Azaylia made about Christopher's home; those reports were investigated and, to his knowledge, determined to be unfounded. As Azaylia continued to repeat similar allegations, school personnel continued reporting them until the Nebraska Department of Health and Human Services (DHHS) indicated that it was aware of the concerns.

The principal also testified that school personnel had concerns relating to statements made about Lori's home, although he was uncertain whether those concerns resulted in separate hotline reports. He explained that staff sometimes believed Azaylia appeared "coached a little bit." He stated that "some of the things she was saying were beyond her, what we thought, vocabulary and knowledge."

(d) Relationship With Each Parent

Outside school, Azaylia divided her time between the parties' households. During Lori's parenting time, Azaylia lived with Lori, Brandon, and Lori's 13-year-old son. Brandon described Lori's relationship with Azaylia as loving and testified that Azaylia referred to him as "daddy." He also described Azaylia's relationship with her brother as positive. Brandon characterized the

household as active and testified that the family regularly participated in extracurricular activities together, while Lori stated that the family also attended church.

During Christopher's parenting time, Azaylia lived with Christopher, his significant other, and their 4-year-old daughter. Christopher described his relationship with Azaylia as "good," and testified that she regularly helped cook, read books, watched movies, and spent time with the family. He also stated that his significant other helped care for Azaylia and that their relationship is fun, loving, and caring. Christopher maintained, however, that Azaylia occasionally refused to follow his significant other's direction because "her mom tells her she doesn't have to." According to Christopher, this behavior created tension in the household and affected his younger daughter's behavior.

Azaylia also discussed both households during an interview with a member of DHHS. She stated that she enjoyed relaxing at Christopher's home and liked joking with his significant other. When discussing Lori, Azaylia stated, "[S]he's amazing, there are no arguments anymore and we always do stuff."

(e) Azaylia's Medical Care

There was considerable evidence about how the parties handled several of Azaylia's healthcare needs. In 2022, Lori took Azaylia to multiple pediatric appointments for interval medicine checks, behavioral issues, allergies, stomach issues, and blood sugar problems. During one examination, the pediatrician observed multiple bruises and ordered urine testing for Henoch-Schönlein purpura. The testing was normal, and the pediatrician documented that none of the bruises appeared consistent with handprints or physical abuse.

In January 2023, Lori took Azaylia to the emergency room after she injured her right arm in a hoverboard accident. Imaging revealed no injury. Four months later, Lori again took Azaylia to the emergency room after Azaylia struck her head on a steel bar. Providers found no evidence of a concussion or brain bleeds.

On June 21, 2023, Lori sent Christopher a picture of skin irritation behind Azaylia's ears. Christopher responded that he would require Azaylia to bathe nightly instead of every other night and planned to discuss the condition with his significant other, who worked in healthcare. Lori insisted that Christopher schedule a dermatology appointment to address the issue and disparaged his significant other's qualifications.

One week later, Lori sent an additional message advising Christopher that Azaylia had developed "raised bumps that look almost like chigger bites." She again requested that Azaylia receive a skin consultation. Christopher responded that Azaylia had not complained of any symptoms and noted that she had been running around in her swimsuit and rolling in the grass. He stated that Azaylia did not "need to see a [doctor] for every little thing that you seem to find." Lori nevertheless took Azaylia to a physician, who advised about insect bites and rashes.

On January 13, 2024, Lori messaged Christopher that Azaylia needed an eye exam based on an "at-home vision test." Lori stated that she had scheduled an eye doctor appointment for January 17 at 3:30 and requested to pull Azaylia from school early. Christopher objected because Azaylia had not reported vision problems to him and stated that pulling her from school early was unacceptable. After exchanging additional messages concerning their respective authority to

schedule medical appointments, Lori kept the appointment and took Azaylia to the vision doctor. The examination resulted in a prescription.

Christopher testified that he ensured Azaylia received appropriate medical, dental, and vision care but maintained that Lori routinely scheduled medical appointments without consulting him and later sought reimbursement for those expenses.

(f) Reports of Abuse

As it pertains to reports of abuse, Ashley Salinas, an initial assessment worker with DHHS, testified that between 2016 and 2025, DHHS received nine accepted intake reports concerning Azaylia, one alternative response, and five intakes that did not meet the definition of a report. Salinas first met with Azaylia in April 2022 and had three interactions with her during her investigations.

In November 2024, DHHS received an intake alleging domestic violence in Christopher's home as well as reports that Azaylia was not allowed to eat. The intake was determined to be unfounded. A second intake followed in June 2025 after Lori reported that Christopher physically abused Azaylia, causing bruising. During her interview regarding the report with Salinas, Azaylia reported that Christopher had "grabbed and spanked her." The incident arose after the parties discovered that Azaylia's glasses, which Christopher believed were at his residence, had remained at Lori's home. Lori photographed the glasses and sent the photograph to Christopher.

Christopher testified that he confronted Azaylia with the photograph and Azaylia responded by cursing at him. Christopher proceeded to "[roll] her onto her stomach on the couch and [spank] her two times with an open hand." Christopher denied utilizing excessive force.

Salinas testified that DHHS expressed no concern regarding "open-handed spanking over the clothes." Instead, Salinas identified concerns about Azaylia's recollection of events. According to Salinas, Lori's reports and Azaylia's accounts of the incident contained various inconsistencies. Salinas reported that these reporting inconsistencies had been an ongoing issue since 2022. During the interview regarding the glasses incident, Salinas asked Azaylia whether anyone had told her what to say. Azaylia immediately responded that people believed Lori tells her what to say but stated that Lori does not. Azaylia explained that Lori "just wants me protected."

Salinas further testified that Azaylia tended to align herself with whichever parent she was staying with, describing her as "team mom" while with Lori and "team dad" while with Christopher. Azaylia also described the "spanking" as "the only one in a long time" and reported that Christopher ordinarily disciplined her by grounding her. DHHS similarly determined that the intake was unfounded.

During the trial, Lori also claimed that there was a history of prior domestic violence in the home. Christopher's counsel objected to Lori's assertion of prior domestic violence and moved to strike the testimony. The district court sustained the objection. Lori argued that "domestic violence goes into the Nebraska Parenting Act and has to be considered." The court asserted that Lori would have to offer specific evidence rather than a generalized statement. Lori stated, "I can get the police report for it, but it was when I was pregnant with Azaylia. So it was a long time ago." The subject of domestic abuse also arose during Christopher's direct examination. Christopher testified that, outside of mediation, Lori told him that he would be "called in for domestic abuse and child neglect" while Azaylia was in his custody.

(g) Parties' Communications

There was also extensive evidence about the parties' communications with one another while coparenting. We have reviewed that evidence and do not recount the details here except to note that the parties' messages are collectively aggressive, repetitive, and uncooperative, as well as filled with derogatory language. The messages reflected repeated disagreements over exchange times and locations, parent-teacher conferences, holiday parenting time, medical appointments, and payment of medical expenses.

4. District Court's Order and Subsequent Motion for New Trial

On August 27, 2025, the district court dismissed Lori's complaint for failure to prove a material change in circumstances. The court found that Christopher had met his burden to prove a material change in circumstances insofar as Lori had continued to engage in high-conflict behavior, putting Azaylia at risk and undermining Christopher's parental authority. The court also found there was insufficient evidence to change physical custody and that Christopher's parenting plan was in Azaylia's best interests. As such, the court generally adopted Christopher's proposed parenting plan, which gave Christopher sole legal and physical custody of Azaylia. The plan provided, as relevant here, that Lori would have regular visitation with Azaylia on Wednesdays from 3:30 to 7:30 p.m. in Kearney. She was "100% responsible for transporting the child" if she "wishe[d] to transport the child out of Kearney . . . for her parenting time."

Following the entry of the August 27, 2025, modification order, Lori pursued several post-judgment motions and enforcement proceedings. On September 3, Lori filed a motion for a new trial or to alter or amend. In that motion, Lori alleged numerous issues with the district court's order, including that it was inconsistent with evidence that she had presented showing "the prior order was based on false speculation against [her] mental health disability[,] constituting discrimination" in violation of Title II of the ADA and § 504 of the Rehabilitation Act. Lori also seemed to suggest that this alleged speculation had influenced the present order insofar as the court had allegedly agreed with Christopher's claim that she was "dysregulated."

At the hearing on her motion, Lori argued that Christopher had failed to meet his burden of proof to show that she was "dysregulated." Lori asserted that the questions in Christopher's interrogatories were "excessively disability-based pertaining to her mental health," and she was unable to present exculpatory evidence at the trial to show that she was "in no way dysregulated." Lori claimed it was "all very discriminatory against [her] . . . disability, [her] mental health. Everything about [her] mental health that has been presented is on the basis of [her] disability, not on the basis of [her] actual medical records." She also seemed to suggest Christopher's claim that she was "high conflict" reflected disability discrimination, and she argued that any claim she was dysregulated or high conflict, was disproven by the "VA letter," as well as other documents that may or may not be part of the record on appeal.

Lori further argued that the interrogatories revealed limitations on her ability to drive. Lori claimed that Christopher's parenting plan and the court order "went directly against that," "exploiting what [her] disability causes [her] hardship with." She claimed she "cannot physically comply with th[e] order."

Lori ultimately requested that the district court "reinstat[e] the original terms of the March, 2017, plan," modify the parenting plan to award her sole custody, and "require mutual public exchanges for all visitations."

The district court overruled Lori's motion for a new trial. The court stated that insofar as "there was no expert testimony to support" the claim that Lori was "dysregulated," the court construed the term "in the ordinary, lay-person meaning." The court then added that, in ruling against Lori and in favor of Christopher on the parties' respective complaints to modify, it did not "make a finding of dysregulation." Instead, it found that "this [was] a high-conflict case," and Lori had exhibited "high-conflict behavior."

As to Lori's visitation, the district court noted that the Wednesday night visitation had started when the parties both lived in Kearney, and Lori had later moved to Hastings. The court then opined that it was not in Azaylia's best interests to "run back and forth between Hastings and Kearney for a rather short visit." The court also said it was:

> . . . not aware of any application of the [ADA] as to how the parents structure their parenting time.
>
> And the Court's obligation would be to give people, disabled people, access to the courtroom. That's why we built elevators in the old courthouses and that's why we have hearing assistance for people that are hard of hearing and those accommodations; but I'm not aware of any case law that says we have to incorporate that into our parenting plans.

However, the district court also stated that while there was evidence Lori had a disability and it was painful for her to drive long distances, there was "really no evidence as to how that would affect [her] parenting time" or what her limitations were. The court noted evidence that Lori worked in Kearney.

Finally, the district court explained that residential exchanges reduced the risk that a parent and child would wait at a gas station, police station, or roadside location when the other parent failed to appear. It stated that "without evidence that there's domestic violence, the Court feels that exchange at the parties' residences promotes normalcy and is in the best interest of the minor."

After the district court overruled Lori's motion, she filed a notice of appeal, docketed as case No. A-25-807.

During the same period, both parties initiated contempt proceedings concerning compliance with the August 27, 2025, parenting plan. On September 10 and 12, Lori filed two separate motions for an order to show cause and motion for attorney sanctions. The district court denied those motions on September 15. On September 19, Christopher filed a motion for an order to show cause, alleging that Lori had violated the parenting plan by refusing to return Azaylia to his residence at the conclusion of her weekday parenting time. On September 25, Lori filed an application for an order to show cause concerning parenting time and requested an expedited custody hearing. Lori asserted that Christopher had denied telephone contact and parenting time, failed to communicate with her, and failed to inform her of significant matters involving Azaylia.

Following an October 2025 hearing on the parties' respective orders to show cause, the district court found both parties in contempt. The court found Lori in contempt for failing to return Azaylia to Christopher's care and Christopher in contempt for failing to inform Lori of a vaccination appointment, both contrary to the parenting plan.

On November 19, 2025, Lori filed an emergency motion to stay enforcement of the August 27, 2025, parenting plan and child support order pending appeal. She also requested referral to child support enforcement to investigate $28,796 in back-due/overpayment. On November 20, the district court denied that motion but clarified that nothing in its order prevented Lori from independently seeking an investigation or other involvement by child support enforcement. Lori subsequently filed another notice of appeal regarding the November 20 order, which was docketed as case No. A-25-932.

In both appeals, the State filed a notice and waiver of participation, electing not to submit a brief in response. Christopher's trial counsel likewise filed a notice and waiver of participation, stating that she had not been retained for the appeal in case No. A-25-807. Christopher did not otherwise file a brief in either appeal. Lori remains self-represented for both appeals.

III. ASSIGNMENTS OF ERROR

Lori filed appeals in case Nos. A-25-807 and A-25-932. Because she filed the same brief with identical assignments of error in both appeals, and none of her assigned errors relate to the district court's denial of her motion for an emergency stay in case No. A-25-932, we address only the errors assigned in case No. A-25-807.

Lori assigns, reordered and consolidated, that the district court erred in (1) dismissing her complaint for modification and awarding Christopher sole custody, contrary to the child's best interests; (2) requiring proof of recent abuse before ordering safe parenting exchanges; (3) refusing to refer attorney misconduct to the Counsel for Discipline; (4) refusing to litigate fraud and bias evident in the underlying 2022 GAL report; and (5) imposing infeasible parenting plan conditions for a disabled parent and presuming she is unfit based on her disability.

IV. STANDARD OF REVIEW

Modification of a judgment or decree relating to child custody, visitation, or support is a matter entrusted to the discretion of the trial court, whose order is reviewed de novo on the record, and will be affirmed absent an abuse of discretion. *Jones v. Colgrove*, 319 Neb. 461, 24 N.W.3d 1 (2025).

V. ANALYSIS

1. Modification of Custody

Lori first assigns that the district court erred in awarding Christopher sole custody contrary to Azaylia's best interests. She does not specifically assign or argue that the court erred in finding that a material change in circumstances had occurred which affected Azaylia's best interests. Instead, she generally argues that the evidence was insufficient to support a finding that modification in favor of Christopher was in Azaylia's best interests.

Ordinarily, custody of a minor child will not be modified unless there has been a material change in circumstances showing either that the custodial parent is unfit or that the best interests of the child require such action. *Jones v. Jones*, 305 Neb. 615, 941 N.W.2d 501 (2020). Modifying a custody or parenting time order requires two steps of proof. *Lindblad v. Lindblad*, 309 Neb. 776, 962 N.W.2d 545 (2021). First, the party seeking modification must show by a preponderance of the evidence a material change in circumstances that has occurred after the entry

of the previous custody order and that affects the best interests of the child. *Id*. Second, the party seeking modification must prove that changing the child's custody or parenting time is in the child's best interests. *Id*.

Because Lori neither assigns nor argues that the district court erred in finding the occurrence of a material change in circumstances affecting Azaylia's best interests, we focus our analysis solely on the issue of whether the court erred in finding that a change in Azaylia's custody was in her best interests.

In considering a child's best interests, Neb. Rev. Stat. § 43-2923(6) (Reissue 2016) requires that the trial court consider certain factors, including (1) the relationship of the child to each parent prior to the commencement of the action; (2) the desires and wishes of a sufficiently mature child, if based on sound reasoning; (3) the general health, welfare, and social behavior of the child; (4) credible evidence of abuse inflicted on any family or household member; and (5) credible evidence of child abuse or neglect or domestic intimate partner abuse.

In addition to the "best interests" factors listed in § 43-2923, a court making a child custody determination may also consider matters such as the moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between child and parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and the parental capacity to provide physical care and satisfy the educational needs of the child. *Munsell v. Munsell*, 321 Neb. 363, 34 N.W.3d 413 (2026). Stability in the child's routine and minimalization of contact and conflict between the parents are also relevant considerations. *Id*. No single factor is determinative, and different factors may weigh more heavily in the court's analysis, depending on the evidence presented in each case. *Id*.

The district court found that this remained a high-conflict case and that both parties, at times, contributed to that conflict. The court noted that multiple child abuse and neglect reports had been made concerning Christopher's home, including reports initiated by the school based on Azaylia's statements. However, those allegations were determined to be unfounded, and the court pointed out that the school principal noted that Azaylia's report seemed coached. The court emphasized that unfounded allegations by Lori had been a concern in the prior custody proceedings.

The district court found that communication between the parties remained poor, and that Christopher had previously been held in contempt for using inappropriate language in text messages. Regarding Azaylia's medical care, the court found that Lori sought medical treatment for Azaylia over Christopher's objection, specifically for obtaining an eye examination. The district court noted that Azaylia received school based counseling from Ables-Athey, who testified that Azaylia was affected by her parents' differing parenting styles. Christopher had taken a parenting class and has otherwise been compliant with the counselor's recommendations.

The district court also considered testimony from McDowell, who had provided individual therapy to Lori since 2021. McDowell testified that she had no concerns about Azaylia's safety in Lori's home. Regarding Christopher's testimony, the district court noted Christopher testified that Lori threatens to report him for domestic abuse and that Azaylia claims she does not need to listen to Christopher's significant other. Finally, the district court found that the parties continued to dispute transportation, particularly regarding Wednesday parenting time.

Ultimately, the district court found that Lori had not met her burden of proof and dismissed her complaint, but that Christopher had met his burden by showing that Lori continued to engage in high-conflict behavior, which put Azaylia at risk and undermined Christopher's parental authority.

Lori argues that the district court failed to give proper weight to evidence concerning Christopher's parenting time, social isolation of the child, medical neglect, domestic violence history, lack of cooperation in coparenting, and instability. Lori's argument ignores the fact that the district court did not rule against her on her complaint to modify based on its conclusions regarding the child's best interests. Proof that changing the child custody or parenting time is in the child's best interests is actually the second step of proof in modifying a parenting time order. See § 43-2923(6). The first step requires the party seeking modification to show by a preponderance of the evidence a material change in circumstances that has occurred after the entry of the previous custody order and that affects the best interests of the child. See *Lindblad v. Lindblad*, 309 Neb. 776, 962 N.W.2d 545 (2021). It was this first step of proof that the district court found Lori had failed to meet.

Furthermore, the district court specifically found that the abuse allegations were unfounded. The court noted poor communication issues and difficulty with parenting time on Wednesdays. Much of the evidence in this case was in conflict, and we consider and give weight to the fact that the district court heard and observed the witnesses and accepted Christopher's version of the facts rather than Lori's. See *Mann v. Mann*, 316 Neb. 910, 7 N.W.3d 845 (2024). See, also, *Conley v. Conley*, 33 Neb. App. 98, 11 N.W.3d 671 (2024) (witness credibility and weight to be given to testimony is within province of trial court). Upon our de novo review, we find no abuse of discretion in the court's determination that it was in Azaylia's best interests to adopt Christopher's parenting plan which gave sole legal and physical custody to Christopher, subject to Lori's specified parenting time.

2. Proof of Alleged Abuse

Lori further assigns that the district court erred by "requiring [a] 'preponderance of the evidence' of recent abuse," before considering a neutral exchange location limitation. Lori claims that this requirement is inconsistent with § 43-2923, which does not specify a standard of proof, but instead "merely requires 'evidence of abuse.'" Brief for appellant at 27.

During the hearing on Lori's motion for a new trial or alternatively to alter or amend judgment, Lori requested that the district court modify the parenting plan to require public and neutral exchanges. The district court overruled Lori's motion for a new hearing.

Although § 43-2923 directs a court to consider credible evidence of abuse inflicted on any family or household member and credible evidence of child abuse or neglect or domestic intimate partner abuse when determining a child's best interests, requests to impose limitations on parenting time is governed by Neb. Rev. Stat. § 43-2932 (Reissue 2016). Under § 43-2932, a court shall impose limitations on the parenting plan that are reasonably calculated to protect the child from harm upon proof by a preponderance of the evidence of, among other things, domestic intimate partner abuse, child abuse, or neglect. Exchange of the child between parents in a protected setting is one of the relevant limits. See *Mann v. Mann, supra*. Thus, where a party seeks a protective limitation on a parenting plan, § 43-2932 controls.

The evidence at the modification hearing did not establish that Azaylia was subjected to domestic violence or child abuse while in Christopher's care. Although DHHS received multiple reports concerning Azaylia, the reports relevant to Christopher's household were determined to be unfounded. Pertaining to the June 2025 DHHS report, Salinas testified that DHHS had no concern with Christopher's admitted use of an open-handed spanking over the clothing. Rather, Salinas explained that the investigation raised concerns about inconsistencies in the reports and Azaylia's accounts. Lori likewise offered no specific evidence establishing her claimed history of domestic violence after the district court required more than a generalized allegation.

In its order, the district court recognized that the referrals of child abuse/neglect concerning Christopher's home were "generally determined to be unfounded," and viewed those allegations with concern in light of similar issues in the prior proceedings. On this record, the district court did not err in rejecting Lori's abuse allegations.

Accordingly, the district court did not err in requiring proof by a preponderance of the evidence before imposing the requested limitation on the parenting plan.

3. Attorney Misconduct

Lori next assigns that the district court erred in "refusing to refer documented attorney misconduct to the Counsel for Discipline," which she claims created "gaps in attorney accountability" that denied her due process and equal protection. Brief for appellant at 29-30. She argues that the district court declined to act because disciplinary matters fall within the Counsel for Discipline's authority, while the Counsel for Discipline allegedly would not investigate without a court referral, leaving her without a means to obtain review.

Prior to the parties' complaints for modification, Lori filed a motion for an order to show cause on attorney misconduct in which she asked the court to "review" several instances of alleged misconduct by Christopher's counsel. The district court concluded that it lacked jurisdiction over Lori's motion because attorney misconduct is within the Supreme Court's exclusive jurisdiction under Neb. Ct. R. §§ 3-1201 to 3-1204. Lori claims that the court erred because the Counsel for Discipline subsequently "refuse[d] to investigate absent [a] referral" from the district court. Brief for appellant at 29. Lori's claim is refuted by the record.

A letter from the Counsel for Discipline to Lori is part of the transcript in case No. A-25-932. That letter shows the Counsel for Discipline investigated Lori's grievances but ultimately concluded she had "not alleged sufficient facts that would give rise to a violation of the Nebraska Rules of Professional Conduct." The Counsel for Discipline then stated:

> The matters of which you complained are more properly the subject of objections made by you or your attorneys in either the state cases or the federal bankruptcy case. If objections are made, and any of the courts involved agrees, the court may take appropriate corrective action, including referral of the matter to [the] office [of Counsel for Discipline] for further investigation. Short of that, [the] office will not get involved in any pending litigation.

Our thorough review of the record shows that Lori did not object during the proceedings on the ground that Christopher's attorney had engaged in misconduct, nor did she otherwise ask

the district court to address or remedy the alleged misconduct when it occurred. Instead, she raised those allegations later in her motion seeking an order to show cause and attorney sanctions.

Based on our de novo review, we cannot find the district court erred in concluding that it lacked jurisdiction over Lori's motion.

4. GAL Motion

Lori further argues that the district court erred in allowing GAL conduct exceeding her role, which "facilitat[ed] disputed evidence and disability concerns in violation of due process, equal protection and best interests." Brief for appellant at 33. Lori contends that the 2022 custody order "lacks finality, as extrinsic fraud and evidence suppression pierce res judicata." *Id*. She asserts that the order relied on the GAL's work and Angel-Trejo's testimony concerning Lori's mental health and its alleged effect on Azaylia, even though Angel-Trejo did not treat Lori, and the GAL allegedly exceeded her role and improperly coordinated with Angel-Trejo and Christopher. Lori contends that the GAL report was withheld or not part of the record in the prior appeal, preventing this court from reviewing the alleged misconduct. She therefore maintains that the resulting fraud defeats the preclusive effects of the 2022 judgment. We disagree.

The GAL report concerns the 2022 custody proceedings, which were appealed and affirmed. Any claim that the district court erred in excluding or failing to consider the report should have been raised on Lori's appeal from the 2022 modification order. Claim preclusion, also known as res judicata, bars litigation not only of those matters actually litigated, but also of matters which could have been litigated in the former proceeding. See *State v. Marrs*, 295 Neb. 399, 888 N.W.2d 721 (2016). Furthermore, a subsequent modification proceeding is limited to whether a material change in circumstances occurred after the custody order. See *Lindblad v. Lindblad*, 309 Neb. 776, 962 N.W.2d 545 (2021). Issues determined in the prior custody order are deemed preclusive in the absence of proof of new facts and circumstances. See *id*.

The same is true to the extent that Lori challenges Angel-Trejo's testimony underlying the 2022 custody order. Any challenge to that testimony likewise concerned matters litigated in prior proceedings. During the present modification proceedings, the district court expressly advised Lori that it would not relitigate matters decided in the prior custody proceeding.

Moreover, while Lori later filed an application and motion seeking to enter and dispute the GAL report, she did not renew the issue at the subsequent modification hearing in July 2025. An appellate court will not consider an argument or theory raised for the first time on appeal. *Saylor v. State*, 315 Neb. 285, 995 N.W.2d 192 (2023). Thus, when an issue is raised for the first time in an appellate court, it will be disregarded inasmuch as a lower court cannot commit error in resolving an issue never presented and submitted to it for disposition. *Id*. Accordingly, any challenge based on the GAL report was not preserved for appellate review.

5. Disability

Lori also assigns that the district court erred by imposing parenting plan conditions that were "infeasible for a disabled parent," in violation of Title II of the ADA and § 504 of the Rehabilitation Act. She specifically contends that the Wednesday parenting time provision was infeasible because it disregarded her asserted inability to drive more than three hours a day. Lori

relatedly argues the district court erred in presuming that she was an unfit parent because of her disability without making an individualized finding that her disability harmed Azaylia.

(a) Parenting Plan Conditions

First, Lori's argument that the district court erred by entering an infeasible condition for a disabled parent is refuted by the record. The modified parenting plan did not require Lori to drive more than three hours per day. Rather, the parenting plan provided for Wednesday parenting time in Kearney and stated that "[i]f [Lori] wishes to transport the child out of Kearney, Nebraska for her parenting time, she will be 100% responsible for transporting the child to and from school and/or [Christopher's] residence for pick up and drop off."

Nor does the record establish that Lori was medically restricted from driving more than three hours in a day. It is incumbent on the party appealing to present a record that supports the errors assigned; absent such a record, as a general rule, the decision of the lower court as to those errors will be affirmed. *Czech v. Allen*, 318 Neb. 904, 21 N.W.3d 1 (2025). Lori's brief cites only Christopher's testimony that Kearney and Hastings were one hour apart and her post-trial motion for an order to show cause and motion for attorney sanctions, wherein she alleged an "ADA [v]iolation." While admitted interrogatories reference testimony from prior proceedings that Lori "cannot drive more than three hours in a day without suffering severe joint flare ups," that testimony appears to have been given at the trial prior to the 2022 order modifying that parties' parenting plan and is not part of the record on appeal here.

Testimony offered at trial established that long drives caused Lori's hips to "flare up" and extended periods in a vehicle caused her pain. As the district court noted, however, that testimony did not establish how her condition affected her ability to exercise parenting time. The evidence showed that Lori regularly commuted from Hasting to Kearney for work, undermining her claim that travel required for parenting time was "infeasible."

Accordingly, Lori has not demonstrated that the district court imposed parenting plan conditions that failed to accommodate her asserted disability.

(b) Individualized Determination

Lori next argues that the district court presumed she was an unfit parent because of her disability without making an individualized finding of harm. She asserts that the district court relied on stereotypes and assumptions about disability. The record likewise refutes this claim.

The Legislature has declared in Neb. Rev. Stat. § 42-364.18 (Cum. Supp. 2018) that individuals with disabilities "continue to face unfair, preconceived, and unnecessary societal biases as well as antiquated attitudes regarding their ability to successfully parent their children." In Neb. Rev. Stat. § 42-364(2) (Cum. Supp. 2018), the Legislature declared that "no presumption shall exist that either parent is more fit or suitable than the other" based on either "the sex or [the] disability of the parent." The Supreme Court has held that there is no presumption that a disabled parent is unfit, that a disabled parent has forfeited parental rights, or that exceptional circumstances exist involving serious physical or psychological harm to the child or a substantial likelihood of such harm because a parent is disabled. See *In re Interest of A.A.*, 307 Neb. 817, 951 N.W.2d 144 (2020), *supplemented by* 308 Neb. 749, 957 N.W.2d 138 (2021).

However, in denying Lori's motion for a new trial, the district court expressly stated it did not rule in Christopher's favor because Lori was "dysregulated," nor did it rely on any other mention of a disability. Rather, the court explained it modified the parenting plan because Lori had "continued to engage in high conflict behavior." The record contains ample evidence supporting the conclusion that Lori initiated or escalated conflicts with Christopher. The record supports that finding of fact, and an appellate court does not substitute alternate findings for supported factual findings. An appellate court will not substitute its factual findings for those of the lower court where competent evidence supports those findings. See *In re Guardianship of Eliza W.*, 304 Neb. 995, 938 N.W.2d 307 (2020).

Thus, Lori has not shown that the district court presumed she was an unfit parent because of her disability or failed to make an individualized finding.

VI. CONCLUSION

For the reasons stated above, we affirm the district court's orders in case Nos. A-25-807 and A-25-932.

AFFIRMED.