NOT DESIGNATED FOR PUBLICATION

No. 111,117

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

BRANDI CHRISPEN,
Appellant,

and

ANDREW CHRISPEN,
Appellee.

MEMORANDUM OPINION

Appeal from Saline District Court; PRESTON A. PRATT, judge. Opinion filed August 1, 2014. Affirmed.

Daniel C. Walter, of Ryan, Walter & McClymont, Chtd., of Norton, for appellant.

Rance E. Ames, of Hahn & Ames, P.A., of Phillipsburg, for appellee.

Before HILL, P.J., POWELL and STEGALL, JJ.

Per Curiam: In this case, the district court changed the residential placement of the parties' three minor children from their mother, Brandi Chrispen, to their father, Andrew Chrispen, even though the parties had an agreed parenting plan to the contrary. Brandi raises two points in this appeal. She argues that nothing had changed that would call for a change of placement. And, she contends the law bars the district court from considering evidence of several moves she had made with the children before the court approved the parenting plan adopted by the parties. Because Andrew had moved from Nebraska to Salina, Kansas, to be near the children, we hold that there was a material

continuing nature to make the terms of the initial decree unreasonable."'" *In re Marriage of Whipp*, 265 Kan. 500, 503, 962 P.2d 1058 (1998) (quoting 1 Elrod, Kansas Family Law Handbook § 13.043 [rev. ed. 1990]).

The court decided Andrew had presented sufficient evidence of a material change of circumstances to modify the parenting agreement. At the modification hearing, the district court heard evidence that Andrew had moved from Beatrice, Nebraska, to Salina, Kansas, where the children currently reside. Andrew and his girlfriend, Amanda, reside in a four-bedroom home in Salina. Andrew continues to work for Union Pacific Railroad.

Between 2010 and 2013, Brandi moved five times with the children. No testimony revealed that Andrew knew of Brandi's decision to move in with her boyfriend prior to signing the parenting plan. It appeared to the district court that Brandi waited until after the parties signed the parenting plan before moving to Bennington, Kansas, with her boyfriend. The evidence revealed an altercation between Brandi and her boyfriend where he threw her cell phone against a wall. Brandi and the children eventually moved to an apartment in Salina, Kansas. Brandi and her boyfriend maintain their relationship, and Brandi and the children continue to stay at her boyfriend's residence.

The district court found K.S.A. 2012 Supp. 23-3203(f) controlling—the "ability of each parent to respect and appreciate the bond between the child and the other parent, and to allow for a continuing relationship between the child and the other parent." The district court held, "[A]ll things being equal, [this factor is] where the balance tips."

The district court found that when Brandi had relocated on several occasions, she did not respect the bond between Andrew and the children. In fact, Brandi had moved the children away from Andrew. Furthermore, the district court found Andrew demonstrated his respect of the bond between Brandi and the children by moving to Salina, even though it will be more difficult for Andrew's commute to work.

In our view, there was a material change of circumstances of a substantial and continuing nature to support the district court's modification of the parenting agreement. The district court did not abuse its discretion by transferring primary residential custody to Andrew.

In her brief, Brandi incidentally argues the district court improperly considered facts already in existence when Brandi and Andrew agreed to the parenting plan. In other words, Brandi claims the doctrine of res judicata applies to an order concerning child custody. Because Andrew knew of Brandi's moves and relationships prior to signing the parenting agreement, Brandi contends these facts had been dealt with and should not be considered by the district court.

Brandi did not raise the issue of res judicata in the district court. Issues not raised before the district court generally cannot be raised on appeal. *Wolfe Electric, Inc. v. Duckworth*, 293 Kan. 375, 403, 266 P.3d 516 (2011). Additionally, Brandi failed to argue any of the exceptions to the general rule that a new legal theory may not be asserted for the first time on appeal. See *In re Estate of Broderick*, 286 Kan. 1071, 1082, 191 P.3d 284 (2008), *cert. denied* 555 U.S. 1178 (2009). Therefore, we will not consider the issue.

Affirmed.