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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1206**

In re the Marriage of: Samuel Thomas Shea Greenwood, petitioner,
Respondent,

vs.

Kari Ann Greenwood,
Appellant.

**Filed June 25, 2018
Affirmed
Florey, Judge**

Isanti County District Court
File No. 30-FA-08-46

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Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant-mother challenges the district court's order modifying custody, arguing that the district court applied an incorrect standard, made erroneous findings, erred in determining that it is in the children's best interests to modify custody, and failed to balance the harms posed by a modification of custody. We affirm.

FACTS

Appellant-mother Kari Ann Greenwood and respondent-father Samuel Thomas Shea Greenwood have three minor children together, an 11-year-old son and two 16-year-old sons. In 2008, mother and father divorced. The parties agreed to joint legal and joint physical custody and equal parenting time. In 2011, the district court issued a parenting-time schedule allocating each parent two weeknights and alternating weekends with the children.

In June 2016, father moved for sole legal and physical custody of the children. Father included an affidavit alleging that mother had used cocaine and marijuana and that the children had witnessed erratic and intoxicated behavior by mother and her boyfriend, T.R. The district court awarded father temporary sole legal and physical custody and ordered chemical testing of mother and restrictions on the children's contact with T.R. A hair sample was collected from mother on July 1, 2016, and tested positive for marijuana and cocaine.

An evidentiary hearing was held in April 2017. Mother and father testified, as well as T.R. and T.R.'s mother. The district court found that mother and T.R. used drugs together after T.R. relapsed from a period of sobriety. The district court found that mother told father that T.R. had threatened her safety to the point she had to leave her home due to threats escalating into violence and that T.R. becomes paranoid and violent when using drugs. The district court found that the youngest son witnessed arguments and an incident of domestic violence between T.R. and mother. The district court found that this caused the youngest son to be fearful of T.R., and he does not wish to spend time with mother

when T.R. is present. The district court found that the older sons refuse to spend time with mother because of her relationship with T.R.

The district court concluded that it was in the best interests of the children to modify custody, citing the danger posed to the children by mother's relationship with T.R. The district court awarded father sole physical custody and awarded the parties joint legal custody, with father having the final decision-making authority in the event of a disagreement. Mother was awarded parenting time with the older sons "as she can arrange with them" and parenting time with the youngest son one day per week and every other weekend.

Mother appeals.

DECISION

"District courts have broad discretion on matters of custody and parenting time." *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). On appeal, "[o]ur review is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Id.* (quotation omitted). We defer to the district court's findings of fact unless they are clearly erroneous, and we defer to the district court's credibility assessments. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). A finding of fact is clearly erroneous if we are "left with the definite and firm conviction that a mistake has been made." *Medvedovski v. Medvedovski*, 903 N.W.2d 646, 649 (Minn. App. 2017) (quotation omitted).

Before modifying custody, a district court must find that the statutory requirements set forth in Minn. Stat. § 518.18 (2016) are satisfied. *See Crowley v. Meyer*, 897 N.W.2d

288, 294 (Minn. 2017) (indicating that specific findings on the factors within section 518.18 confirms compliance with the statute). A district court may modify a prior custody order if it finds that (1) the circumstances of the child or the parties have changed; (2) modification is necessary to serve the best interests of the child; (3) the child’s present environment “endangers the child’s physical or emotional health or impairs the child’s emotional development”; and (4) the harm likely to be caused by the modification is outweighed by its advantages to the child. Minn. Stat. § 518.18(d)(iv); *State ex rel. Gunderson v. Preuss*, 336 N.W.2d 546, 547-48 (Minn. 1983). The party seeking a custody modification bears the burden of establishing these factors, and the district court must make specific findings addressing each. *Crowley*, 897 N.W.2d at 294. It is reversible error if the district court fails to make specific findings under Minn. Stat. § 518.18(d). *See id.* (reversing and remanding where district court “failed to make each of the factual findings required by section 518.18”); *Gunderson*, 336 N.W.2d at 547-48 (reversing and remanding a modification order that only made a best-interests determination).

Mother argues that the district court only applied the best-interests factors in its modification order and that “[t]his is not the appropriate standard and, even if it was, it was not properly applied.” The district court’s order explicitly addressed the best-interests factors listed in Minn. Stat. § 518.17 (2016), but did not separately address the other elements of Minn. Stat. § 518.18. However, remand for additional findings is not necessary when a district court otherwise made “substantially sufficient” findings to support modification under the statute. *Grein v. Grein*, 364 N.W.2d 383, 386-87 (Minn. 1985). In

this case, the district court’s findings, as included within the best-interests analysis, are sufficient to support the modification under Minn. Stat. § 518.18(d)(iv).

A. Change in circumstances

To warrant custody modification, the change in circumstances must have occurred since the original custody order; “it cannot be a continuation of conditions existing prior to the order.” *Spanier v. Spanier*, 852 N.W.2d 284, 288 (Minn. App. 2014) (quotation omitted). The district court acknowledged that mother and father had previously coparented and communicated “fairly well,” but things changed when mother moved in with T.R. The district court found that mother’s relationship with her children has suffered because of her relationship with T.R. The older sons do not want to spend time with mother, and the youngest son will only spend time with her if T.R. is not present. These findings are sufficient to constitute an implicit finding of a change in circumstances since the original custody order was established.

B. Best interests of the children

Mother argues that the district court clearly erred in finding that the best interests of the children favor modification.¹ She challenges many of the district court’s findings within the best-interests analysis, arguing that the record supports the following findings in lieu of the district court’s findings: (1) the children did not express a preference in custody; (2) the change in the relationships and parenting time between mother and the

¹ Mother cited and analyzed an earlier version of Minn. Stat. § 518.17. In 2015, the Minnesota legislature amended the best-interests factors. See 2015 Minn. Laws ch. 30, art. 1, § 3, at 271-72. The district court considered and applied the current version of the statute.

older sons was the fault of father, who permitted them to ignore the parenting schedule; (3) the youngest son has a close bond with T.R.; (4) mother's return to the school district solved any concerns the older sons may have had with visiting her; (5) father had no concerns about mother and T.R.'s current chemical health; (6) father has a history of drug use; (7) father wanted the district court "to reinstate [mother's] rights"; (8) none of the children witnessed domestic abuse because no abuse occurred; and (9) mother is able to maintain a healthy relationship with her children while maintaining a separate relationship with T.R.

Before modifying custody, the district court must find that a modification is necessary to serve the children's best interests. Minn. Stat. § 518.18(d). In assessing the children's best interests, the district court is required to consider and evaluate all relevant factors. Minn. Stat. § 518.17, subd. 1(a). The "law leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000). A party challenging the district court's findings of fact on the best-interests factors "must show that despite viewing [the] evidence in the light most favorable to the [district] court's findings . . . , the record still requires the definite and firm conviction that a mistake was made." *Id.* at 474. "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.*

The record contains sufficient evidence to support the district court's findings and its determination that it is in the children's best interests to modify custody. Both mother and father acknowledged that the older sons had not been attending mother's parenting

time and that her relationship with T.R. was a source of tension between the sons and mother. Likewise, the record includes testimony that the youngest son witnessed a verbal and physical altercation between mother and T.R. and that afterward he did not wish to see T.R. and appeared frightened of him. Father testified that he did not believe that mother was presently using drugs, but he believed his children had been in danger in mother's care when she was in a relationship with T.R. While the evidence in this case may have supported findings contrary to those made by the district court, we are not left with a definite and firm conviction that a mistake was made.

C. Endangerment

"A finding of present endangerment must be based on the particular facts of each case." *Lilleboe v. Lilleboe*, 453 N.W.2d 721, 724 (Minn. App. 1990). The concept of endangerment is "unusually imprecise." *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (quotation omitted). But it includes "a significant degree of danger" to emotional health or development. Minn. Stat. § 518.18(d)(iv); *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). "[I]n order to establish danger to a child's welfare, a parent's conduct must be shown to result in an actual adverse effect on the child." *In re Weber*, 653 N.W.2d 804, 811 (Minn. App. 2002). "Fear of the custodial parent and her spouse is . . . a recognized sign of present endangerment." *Lilleboe*, 453 N.W.2d at 724. The modification statute does not require a parent to wait until harm has actually occurred, if the environment creates a serious risk of harm. *See Sharp v. Bilbro*, 614 N.W.2d 260, 263-64 (Minn. App. 2000) (upholding modification where the child *would* be harmed if left in mother's care), *review denied* (Minn. Sept. 26, 2000).

The district court found that mother's relationship with T.R. "does not provide the children with a safe and healthy environment." The district court found that mother and T.R. have chemical-health issues that "affect the safety of [mother's] children" and mother is not "able to provide healthy ongoing care for the children." The district court found that mother's relationship with T.R. "makes for an unhealthy ongoing relationship between the minor children and [mother]" and "[a]ny time the children would spend with [mother] should she include [T.R.] would not benefit [the children] but would be a detriment." The district court's findings substantially support a conclusion that mother's environment endangers the children's physical or emotional health.

Mother argues that the endangerment requirement was not satisfied because there was no evidence of domestic abuse, as defined by Minnesota's Domestic Abuse Act. *See* Minn. Stat. § 518B.01, subd. 2(a) (2016) (defining domestic abuse as, among other things, physical harm or bodily injury or infliction of fear of imminent physical harm or bodily injury). Mother cites no authority requiring a finding of domestic abuse to prove endangerment, and Minn. Stat. § 518.18(d)(iv) does not require one. Regardless, the district court found that the youngest son witnessed violence between T.R. and mother, and the record is sufficient to support that finding.

D. Balance of the harm and advantages

Mother argues that the district court erred by suggesting that the harm likely to be caused by a change in custody is outweighed by the advantages to the children.

The district court did not specifically address this factor. However, the district court found that father "provides a healthy environment for the minor children, while it is tenuous

that the environment and time spent with [mother] is beneficial.” The district court also found that “[t]he children at this time are benefited from maximizing their time with [father] and limiting their time with [mother] when [T.R.] is present.” These findings substantially support a conclusion that the benefits of modification outweigh the detriments, and the record supports such findings. *See Eckman v. Eckman*, 410 N.W.2d 385, 389 (Minn. App. 1987) (holding that the district court did not reversibly err in failing to make a specific finding on this statutory factor because the “balancing test in this particular case is implicit in both the court’s findings regarding [the child’s] best interests and endangerment of his emotional health and development”). Mother and T.R. each testified about their interests in moving the relationship forward, perhaps to marriage, and that T.R. was living with mother during the hearing. This is in direct conflict with the children’s expressed desire to avoid a relationship with T.R.

We caution district courts against filing orders modifying custody which include only their analysis of the best-interests factors. The failure to make findings on all factors under Minn. Stat. § 518.18(d), will ordinarily require reversal. But because the district court’s findings in this case are sufficient to support modification under Minn. Stat. § 518.18(d)(iv), we conclude that the district court did not abuse its discretion by modifying custody.

Affirmed.