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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1838**

In re the Marriage of:
Ebony Yolanda SternJohn,
Appellant,

vs.

Julius Royer John,
Respondent.

**Filed July 1, 2019
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-FA-14-785

Ebony Yolanda SternJohn, St. Paul, Minnesota (pro se appellant)

Robert A. Manson, White Bear Lake, Minnesota; and

Janelle Gates, Edina, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-mother challenges the order modifying legal and physical custody of the
parties' son based on endangerment, arguing that the district court abused its discretion by

awarding respondent-father sole custody based on erroneous findings regarding the statutory factors. We affirm.

FACTS

The marriage of appellant Eboni SternJohn and respondent Julius John was dissolved in 2016 after years of conflict. The parties were awarded joint legal and physical custody of their two teenaged daughters, M.G.S. and O.S.S., and their son, J.R.S., then age 10.¹ They were awarded equal parenting time.

Beginning immediately after the dissolution, mother refused to bring the children to father for his designated parenting time. She also contacted Hennepin County Child Protection Services, alleging that father physically and mentally abused J.R.S. and sexually abused O.S.S. The county investigated but declined to take further action.

In September, father moved the district court to (1) hold mother in civil contempt for interfering with his parenting time and (2) award him sole legal and physical custody of the children based on endangerment. The district court initially awarded father temporary physical custody of the children as compensatory parenting time. After a hearing, the district court determined that father made a prima facie case for custody modification, granted him temporary sole physical custody of the children, and scheduled a January 2017 hearing to (1) receive evidence regarding father's contempt motion, (2) review father's temporary parenting time, and (3) conduct a "pretrial" for an evidentiary hearing on father's custody-modification motion.

¹ The dissolution judgment also addresses two non-joint children born during the marriage.

In the meantime, Washington County Social Services received a report that father was abusing J.R.S. and O.S.S., and began an investigation. And mother filed a petition for an order for protection (OFP) seeking to prevent father from contacting the children; the district court granted an ex parte OFP and scheduled an evidentiary hearing.

Both matters were pending at the time of the January hearing on father's contempt and custody-modification motions. Mother admitted she did not permit father to exercise his parenting time, and the district court held mother in constructive contempt. But it continued the pretrial hearing on father's custody-modification motion because of the pending child-protection matter.

The OFP and child-protection matters lasted well into 2017, during which time father had no contact with the children. The child-protection matter closed in September 2017 based on a determination that any issues would be best addressed in this post-dissolution proceeding. And when the OFP proceeding finally came before the district court for an evidentiary hearing on December 27, 2017, mother dismissed her petition.

Father immediately renewed his custody-modification motion, asking for immediate temporary sole legal and physical custody of J.R.S. The district court appointed a guardian ad litem (GAL) and affirmed its prior grant of temporary sole physical custody to father.

On February 20, 2018, father picked J.R.S. up from school. J.R.S. was not wearing a coat, his hair was knotted, his glasses were broken, and his teeth were not cared for; he looked "abandoned." Father scheduled a well-child check-up for the following day. But the check-up was postponed when J.R.S.'s serious depression and suicidal ideation became

apparent. J.R.S. was admitted for inpatient psychiatric care. After two weeks, he returned home with father and began attending school in Woodbury, where he experienced marked academic improvement.

On March 18, the GAL submitted his report to the district court. After recounting the family's high-conflict history and the various collateral proceedings, the GAL opined that mother likely has encouraged the children to fear father and "engaged in . . . alienation efforts." The GAL noted that both parties love their children but that their conflict "has had a profound and negative impact on the children." While acknowledging that granting either party sole custody likely will "facilitate" alienation of the other parent, the GAL stated that the parties' demonstrated inability to co-parent created "serious doubts" about their ability to share custody.

In June, the district court conducted an evidentiary hearing on father's motion to modify custody of J.R.S.² The court received testimony from both parents, the GAL, and participants in the Washington County child-protection matter, and received numerous exhibits regarding J.R.S.'s education and medical care and the child-protection and OFP matters. After weighing all the evidence, finding father consistently credible, and rejecting much of mother's testimony, the district court identified substantial changes in J.R.S.'s educational progress, physical condition, and mental health. And the court found that mother had alienated J.R.S. from father. The district court determined that mother's parenting shortcomings and her alienation efforts endanger J.R.S. and that it is in his best

² The parties agreed to share joint legal and physical custody of O.S.S., who will turn 18 in August 2019.

interests to grant father sole physical and legal custody. The district court modified custody accordingly and temporarily suspended mother's parenting time while she participates in therapy. Mother appeals.

D E C I S I O N

A district court has broad discretion in custody matters. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008). Our review of a custody modification is limited to “whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Id.* at 284 (quotation omitted). We defer to the district court's credibility determinations and will not disturb factual findings unless they are clearly erroneous. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). A finding is not clearly erroneous merely because the record might support a different finding; the party challenging the finding must show that the record, viewed in the light most favorable to the finding, requires the definite and firm conviction that a mistake was made. *Id.* at 474.

A district court may modify custody if (1) the circumstances of the children or custodian have changed since the prior order; (2) modification would serve the children's best interests; (3) the children's present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the change outweigh its detriments with respect to the children. Minn. Stat. § 518.18(d)(iv) (2018); *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018).

Mother challenges all four aspects of the district court’s decision to modify custody.³ We address each in turn.

Changed Circumstances

To warrant custody modification, a change in circumstances must be “significant” and 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). In determining whether there has been such a change in circumstances, the district court should consider “unwarranted denial of, or interference with, a duly established parenting time schedule.” Minn. Stat. § 518.18(d) (2018); *see also Amarreh v. Amarreh*, 918 N.W.2d 228, 232 (Minn. App. 2018) (observing that such interference may justify modifying custody), *review denied* (Minn. Oct. 24, 2018).

The record amply supports the district court’s findings regarding the significant changes in J.R.S.’s circumstances while in mother’s care. First, J.R.S.’s educational progress has deteriorated since the dissolution. It is well-documented and essentially undisputed that between the dissolution in July 2016 and father taking J.R.S. into his care in February 2018, J.R.S. was “struggling academically,” receiving mostly failing or low passing grades. Mother contends these circumstances are not changed because J.R.S. had educational concerns at the time of the dissolution. We disagree. The dissolution judgment

³ Mother also contends the district court erred by temporarily suspending her parenting time. She waived any challenge to this decision by failing to present any argument or cite any supporting authority. *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007). Moreover, any such challenge is unavailing because the record supporting endangerment-based custody modification likewise supports the suspension under even the most exacting standard for modifying parenting time. *See* Minn. Stat. § 518.175, subd. 5(c) (2018).

highlights academic struggles the parties' teenaged daughters experienced, attributing them to the loss of father's "key role" in academic support when the parties separated; there is no indication that J.R.S. had academic challenges at that time. Given the difference father made with respect to the older children's academic progress, it may be unsurprising that J.R.S.'s academic progress would likewise suffer during the approximately 18 months in which father was largely excluded from his life. But his academic decline is nonetheless a change in circumstances. Moreover, the record evidence that J.R.S.'s academic situation "drastically improved" when he returned to father's care is consistent with the finding that J.R.S.'s educational circumstances changed for the worse during the period when he was solely in mother's care. The district court did not clearly err by finding that J.R.S.'s educational circumstances have changed.

Second, J.R.S.'s mental health deteriorated dramatically in mother's care. At the time of the dissolution, J.R.S. was not exhibiting any significant mental-health issues.⁴ Shortly thereafter, J.R.S. began to experience persistent severe depression and suicidal ideation. Mother was aware of these issues, in part because the school notified her in 2016 that J.R.S. threatened to harm himself. Mother failed to address this serious condition through consistent mental-health care—taking J.R.S. to only four counseling sessions, citing insurance and billing issues that the district court found not credible. As a result, J.R.S.'s mental health was so unstable by February 2018 that he required two weeks of

⁴ The district court contemplated that the parties' high-conflict relationship might impact the children but did not find any current mental-health issues.

inpatient psychiatric care. The district court did not clearly err by finding that J.R.S.'s circumstances changed with respect to his mental health.

Finally, the record amply supports the district court's finding that mother has not only interfered with father's parenting time but worked since the dissolution to alienate J.R.S. from father. When father obtained a judicial remedy for mother's refusal to bring J.R.S. to scheduled parenting-time transfers, she employed other tactics. She first prompted a child-protection investigation, thereby depriving father access to the children. The abuse allegations were clouded by indications that mother coached the children to report abuse and were never substantiated. Mother next sought an OFP on behalf of the children, thereby depriving father of access to the children from December 2016 until December 2017, again without ever substantiating any of the underlying allegations. As the GAL observed, mother used these proceedings and her position as the children's sole caretaker to "stoke[]" the children's fear of father, "exacerbating the rift that exists between the children and [father]." Even after father obtained temporary custody and obtained mental-health care for J.R.S., mother's contact with J.R.S. led to reversals in J.R.S.'s receptiveness toward father. The district court did not clearly err by finding that mother's extreme interference and alienation constitute changed circumstances.

In sum, the record demonstrates that J.R.S.'s circumstances changed substantially during the time he was in mother's sole care.

Best Interests

When determining custody issues, a district court must consider and evaluate all factors relevant to the child's best interests, including the child's physical health, mental

health, and educational needs, and each parent's willingness and ability to meet those needs. Minn. Stat. § 518.17, subd. 1(a) (2018).

In more than 40 pages of factual findings, the district court carefully considered J.R.S.'s best interests. The district court noted that neither parent is blameless in their ongoing conflict, which has a detrimental effect on the children, but that placing J.R.S. in father's custody best serves his interests. In particular, father is best suited to support J.R.S.'s mental and physical health and academic success, as demonstrated by father's historical role in facilitating the children's education, the shortfalls in those areas while mother prevented father's access to J.R.S., and the improvement in J.R.S.'s mental and physical care and academic standing once in father's custody. And the district court observed that, while neither party is particularly supportive of the other's relationship with J.R.S., father is better suited to support J.R.S.'s relationship with mother than the other way around, as demonstrated by mother's extensive alienation efforts. The record supports these findings and the district court's assessment that an award of sole custody to father is in J.R.S.'s best interests.

Endangerment

Endangerment is an "unusually imprecise" concept. *Goldman*, 748 N.W.2d at 285 (quotation omitted). It encompasses danger to emotional health or development, Minn. Stat. § 518.18(d)(iv), such as risk of harm flowing from emotional abuse, including parental alienation. *See Amarreh*, 918 N.W.2d at 232.

Mother does not directly dispute that the troubling circumstances in J.R.S.'s life since the dissolution present a danger to his mental and physical well-being. Instead, she

reiterates her contention that it is father, not she, who endangers the children. The district court rejected this contention as not credible, and we defer to that credibility determination. *Vangness*, 607 N.W.2d at 472. Moreover, the ample evidence noted above demonstrates not only that J.R.S.’s circumstances changed while he was in mother’s care, but also that the changes were detrimental, endangering his physical, mental, and emotional well-being and academic prospects.

Benefits and Detriments

Stability in custody generally is in a child’s best interests. *In re Weber*, 653 N.W.2d 804, 811 (Minn. App. 2002). But when the status quo is more harmful than beneficial, a change is warranted. *Tarlan v. Sorensen*, 702 N.W.2d 915, 924 (Minn. App. 2005). A finding that a child’s current environment endangers him can implicitly support a determination that the benefits of changing that environment outweigh the detriments of a transition. *See Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997) (observing that “balance of harms” may be implicit in other factors).

The district court found significant detriments to granting either parent sole custody, primarily because neither parent is inclined to support the other’s relationship with J.R.S. But the district court found that J.R.S. is more likely to receive time with both parents if he is in father’s care. And more importantly, J.R.S. is more likely to receive the necessary support for his basic needs—physical, mental health, and education—if he is in father’s custody. The record supports the district court’s finding that the benefits of awarding father sole custody outweigh the detriments of the transition.

In sum, because the record supports the district court's findings with respect to all four custody-modification factors, it did not abuse its discretion by awarding father sole legal and physical custody of J.R.S.

Affirmed.