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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1181**

In re the Marriage of:

Alberta Okrah Danso, petitioner,
Respondent,

vs.

Ransford Frimpong,
Appellant.

**Filed April 19, 2021
Affirmed
Gaïtas, Judge**

Scott County District Court
File No. 70-FA-14-1683

Alberta Okrah Danso-Boadi, Burnsville, Minnesota (self-represented respondent)

Ransford D. Frimpong, Savage, Minnesota (self-represented appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-father Ransford Frimpong challenges the district court's order denying, without an evidentiary hearing, his motion to modify child custody, arguing that he established a prima facie case for modification based on endangerment. He also argues

that the district court abused its discretion in increasing respondent-mother Alberta Okrah Danso's parenting time. We affirm.

FACTS

Father and mother, both self-represented in this appeal, married in December 2007 and became parents when child was born in October 2008. After separating in 2009, mother petitioned the district court to dissolve the marriage, and the divorce was finalized by a July 2010 judgment and decree. Under the decree, mother was granted sole legal and physical custody of child. Father was given "reasonable" parenting time: every Tuesday (8:00 a.m.) through Thursday (4:00 p.m.); every other Saturday (3:00 to 8:00 p.m.); and rotating holidays.

Months later, mother traveled to Ghana with child without advance notice, father's consent, or court authorization.¹ Father moved for permanent sole legal and permanent sole physical custody, claiming that mother's actions amounted to a change in circumstances and child endangerment, and caused child to suffer "severe emotional distress." The district court stayed father's motion to modify custody but awarded him temporary sole legal custody and temporary sole physical custody until mother's return.

¹ Both father and mother are originally from Ghana and have family there. Mother states that she traveled to Ghana with child because her uncle fell ill. Father insists that mother failed to obtain his consent before taking child outside of the country, even though mother had sole physical custody at the time. *See* Minn. Stat. § 518.003, subd. 3(a), (c) (2020). Still, the district court appropriately found that mother's unannounced travels deprived father of his assigned parenting time afforded to him by the July 2010 judgment and decree. *See generally* Minn. Stat. § 518.175, subd. 6 (2020) (establishing remedies for deprivation of parenting time). As a result, mother was criminally charged with depriving another of parental rights in violation of Minn. Stat. § 609.26, subd. 1(3) (2010).

The court also suspended mother's parenting time, ordered her to immediately return child to Minnesota, and granted father permission to retrieve child from Ghana if mother failed to comply.

Father eventually traveled to Ghana and returned to the United States with child in the summer of 2011.² Mother later returned and filed a motion in the district court to reestablish custody and parenting time. After lengthy litigation, the district court issued an order in September 2013 that modified the custodial arrangement to joint legal and joint physical custody shared between mother and father. The district court acknowledged that mother had unilaterally traveled to Ghana with child—an act that also resulted in mother's conviction for depriving father of parenting time—and accordingly found that permitting mother to maintain sole legal custody and sole physical custody posed a risk of future emotional harm or endangerment to child. But the district court also found that substantial involvement from both parents was in child's best interests and therefore awarded the parties joint legal custody and joint physical custody.

A few months after the district court's order, venue was transferred from Hennepin County to Scott County. Both parents later filed competing motions to modify parenting

² Although the district court considered and ruled on these facts in a 2013 custody-modification order, the parties still dispute the events surrounding father's trip to Ghana in this appeal. Because father has appealed from a 2020 order on requested custody and parenting-time modifications, the conflicting versions of what transpired in Ghana back in 2011 are not critical to the precise issues currently before us. Our focus here is limited to addressing whether the district court's 2020 order contains a prejudicial error that entitles father to a reversal and remand for further proceedings. In other words, our task is to examine whether the district court correctly denied father's motions and granted mother additional parenting time. Thus, we only consider the parties' travels to Ghana to the extent those facts relate to the district court's most recent decision in 2020.

time. In a May 2014 order, the district court found that increasing mother's parenting time was in child's best interests and granted mother one additional overnight each weekend that mother had child and one new overnight during the weeks that father had child for the weekend. This order remained in place for about six years.

Mother moved to modify parenting time in June 2020, seeking "more equalized" parenting time. Father also moved to modify parenting time. And, alleging endangerment, he moved for sole legal and sole physical custody of child. Father reasserted that mother endangered child by bringing him to Ghana in 2010. He claimed this event caused child to develop autism, a diagnosis that was made in July 2014. Father also alleged that mother "abused" child by preventing child from receiving county disability benefits, repeatedly feeding child hot dogs in spite of child's sensitivity to this food, and failing to treat child's "hairline bumps" with father's recommended product.

After a nonevidentiary hearing on these motions, the district court denied father's requested custody and parenting time modifications without granting an evidentiary hearing. The district court determined that father had failed to allege a prima facie case of endangerment, finding that the unauthorized trip to Ghana was addressed in 2013 and that father's other allegations did not constitute endangerment. Furthermore, the court granted mother's motion to modify parenting time because "slightly increasing" her parenting time was in child's best interests.

Father appeals.

DECISION

I. The district court properly denied father's motion to modify custody without an evidentiary hearing.

Father first argues that the district court abused its discretion in rejecting his motion for modification without ordering an evidentiary hearing. We are unpersuaded.

Minnesota statutes section 518.18 (2020) governs custody modification, allowing a district court to modify custody only under limited circumstances. One of those circumstances is endangerment. Modification is allowed if “the child’s present environment endangers the child’s physical or emotional health or impairs the child’s emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.” Minn. Stat. § 518.18(d)(iv).

A party seeking modification on the basis of endangerment must first make a prima facie showing of endangerment. *See Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017). To make a prima facie showing of endangerment, the movant must allege: (1) a change of circumstances; (2) modification is in the child’s best interests; (3) the child’s “present environment endangers their physical health, emotional health, or emotional development;” and (4) the benefits of modification outweigh any detriments. *In re Custody of M.J.H.*, 913 N.W.2d 437, 440 (Minn. 2018). In reviewing a district court’s determination regarding whether a party seeking to modify custody made a prima facie case to do so, it is important to remember that “[a]t the prima-facie-case stage of the proceeding, [the moving party] need not *establish* anything. [The moving party] need only make allegations which, if true, would allow the district court to grant the relief he seeks.”

Amarreh v. Amarreh, 918 N.W.2d 228, 231 (Minn. App. 2018), *review denied* (Minn. Oct. 24, 2018). Thus, if the movant’s submissions do not allege facts, which, if true, would allow the district court to grant the relief sought, no evidentiary hearing is required. *See id.* at 230. Conversely, if the movant does allege facts that would allow the district court to grant the relief sought, the district court must hold an evidentiary hearing to determine whether those allegations are, in fact, true. *M.J.H.*, 913 N.W.2d at 440.

Our appellate review of a district court’s decision to deny an endangerment-based motion to modify custody without an evidentiary hearing is threefold. *Amarreh*, 918 N.W.2d at 230-31 (citing *Boland v. Murtha*, 800 N.W.2d 179, 183-85 (Minn. App. 2011)). First, we review de novo whether the district court accepted as true the allegations in the moving party’s submissions. *Id.* at 230. Second, we review for an abuse of discretion the district court’s determination that the moving party’s allegations failed to make a prima facie case for the relief sought. *Id.* at 231. And third, we review de novo whether the district court properly declined to hold an evidentiary hearing. *Id.*; *see Geibe v. Geibe*, 571 N.W.2d 774, 777 (Minn. App. 1997) (explaining that “the court must hold an evidentiary hearing to determine the truth of the allegations” if the movant’s asserted facts establish a prima facie case for custody modification).

Father initially argues that, in considering whether there was endangerment, the district court failed to accept as true the allegations in his affidavit and supporting documents. Specifically, father notes that the district court did not accept his assertions that child experienced a substantial life change when he was diagnosed with autism in 2014; that mother intentionally fed child hot dogs although they made child ill; that mother

neglects child by not using father's recommended product to treat child's hairline bumps; and that mother attempted to "block" child's county disability benefits. But in denying father's motion, the district court recited these allegations and explicitly stated: "The Court has reviewed Father's allegations and *accepted them as true* for purposes of this motion." (Emphasis added.) Moreover, the district court's subsequent analysis assumed the truth of father's allegations but still determined the allegations were insufficient to establish endangerment. We therefore conclude, applying de novo review, that the district court properly accepted the truth of father's allegations and supporting documents.³

Father also contends that the district court abused its discretion in concluding that his allegations and supporting documents failed to show a prima facie case of endangerment. A district court abuses its discretion if, among other things, it "misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

"The concept of endangerment is unusually imprecise, but a party must demonstrate a *significant degree* of danger to satisfy the endangerment element of section 518.18(d)(iv)." *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (emphasis

³ Father also suggests that the district court made insufficient findings to permit "meaningful appellate review." We disagree. When assessing whether a party seeking to modify custody alleged a prima facie case, the district court must accept the moving party's allegations as true. *Amarreh*, 918 N.W.2d at 230. Therefore, at the prima-facie-case stage of the proceeding, the district court does not find facts. Further, here, the district court determined that father's allegations "do not establish a prima facie case of endangerment." In conjunction with its consideration of father's specific claims, the district court's order provides adequate detail for appellate review.

added) (quotations omitted); *see Amarreh*, 918 N.W.2d at 231 (explaining that particular facts in each case will determine whether endangerment exists).

Observing that a movant's allegations must demonstrate a significant degree of danger, the district court determined that father did not assert facts showing a *prima facie* case of endangerment. The district court noted that mother's act of taking child to Ghana occurred long ago and was previously addressed by a court order that removed mother's sole legal and physical custody. Moreover, the district court concluded that father's other allegations—that mother fed child hot dogs and did not use father's preferred skin product—did not “rise to the level of endangerment required for modification of custody.” Upon thorough examination of father's allegations and supporting documents, we see no abuse of discretion.

In his motion papers seeking custody modification, father alleges that mother endangered child by taking him to Ghana, which according to father, caused child's autism. But the endangerment standard “is concerned with whether the child's *present environment* endangers the child[.]” *Goldman*, 748 N.W.2d at 285 (citing Minn. Stat. § 518.18(d)(iv)). Father's allegation, involving events that occurred six to ten years ago, does not concern child's present environment. Moreover, father's conclusory claim that mother caused child's autism is wholly unsupported by the records father submitted to the district court with his motion. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (affirming the denial, without an evidentiary hearing, of a motion to modify custody where the allegations of endangerment were conclusory); *Weber*, 653 N.W.2d at 811 (affirming the denial, without an evidentiary hearing, of a motion to modify custody where the motion

was “devoid of allegations supported by any specific, credible evidence” (quotation omitted)). The records here do not suggest that mother’s past actions caused child’s autism, contrary to father’s characterization of these documents.

Similarly, although father asserts that child is allergic to hot dogs and submitted a medical report to the district court in support of this claim, the medical report says nothing of the sort. It does not mention hot dogs or allergies, and specifically states: “At this point we do not have a definitive cause for [child’s] vomiting.” Again, father’s conclusory allegation that mother endangered child’s health by disregarding a food allergy is undermined by father’s own motion papers. *Szarzynski*, 732 N.W.2d at 292; *Weber*, 653 N.W.2d at 811.

Father’s remaining factual assertions—that mother did not treat child’s “hairline bumps” with father’s preferred product and that mother attempted to block child’s disability benefits in 2014—do not allege significant present danger. These allegations are likewise insufficient to make a prima facie showing of endangerment.

In sum, father’s motion and supporting documents fail to allege that child was presently endangered. Endangerment is a necessary element of a prima facie case to modify custody under section 518.18(d)(iv). Because we affirm the district court’s determination that father failed to allege endangerment here, we need not address the other elements of a prima facie case to modify custody. We conclude that the district court acted within its discretion in determining that father failed to allege a prima facie case to modify custody based on endangerment. *See Goldman*, 748 N.W.2d at 285; *Amarreh*, 918 N.W.2d at 231.

Finally, we consider de novo whether the district court properly denied an evidentiary hearing. *See Boland*, 800 N.W.2d at 185. Where the affidavits accompanying a motion to modify custody based on endangerment do not allege a prima facie case of endangerment, a district court does not abuse its discretion in denying an evidentiary hearing. *Weber*, 653 N.W.2d at 811; *see Goldman*, 748 N.W.2d at 285-86. The district court therefore properly denied father’s motion without an evidentiary hearing.

II. The district court did not abuse its discretion by ordering a “slight expansion” of mother’s parenting time.

Father also challenges the district court’s order increasing mother’s parenting time. The district court did not grant mother’s full request for additional parenting time, but recognized that a “slight expansion” of parenting time would be in child’s best interests. Accordingly, the district court increased mother’s parenting time to include one additional overnight each weekend that mother has child and one new overnight during the weeks that father has child for the weekend. We see no error.

The district court is obligated to modify parenting time when a modification “would serve the best interests of the child.” Minn. Stat. § 518.175, subd. 5(b) (2020); *see* Minn. Stat. § 518.17, subd. 1 (2020) (“best interests” factors). But the district court has broad discretion when determining whether modification is in the child’s best interests, and its decision will not be reversed absent an abuse of that discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017). “Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record.” *Id.* (quotation omitted).

Here, mother requested “3 extra overnights every 14 days” in her motion to modify parenting time. The district court carefully considered mother’s request and noted that mother was seeking a “significant expansion.” But the court also stated that it had considered the statutory best interests factors, Minn. Stat. § 518.17, subd. 1, and determined that a “slight expansion” of mother’s parenting time was in child’s best interests “given [child’s] age,” and that such expansion “is unlikely to impact the stability [child] has obtained with Father’s home as his primary residence.”

Father contends that the district court misapplied the law on parenting time and should have restricted mother’s parenting time rather than expanding it. He also suggests that mother’s motion was a “de facto motion to modify physical custody” and that the district court erred when it failed to evaluate section 518.18(d)(iv) in expanding mother’s parenting time.

Father’s arguments are without merit. Mother brought a motion to increase her parenting time, and father’s appeal was taken from the district court’s grant of that motion; the issue of *restricting* mother’s parenting time therefore is not properly before us. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider matters not argued to and considered by the district court). We are likewise unconvinced that mother’s motion constitutes a de facto motion to modify custody. A de facto motion to modify custody arises when, under “the totality of the circumstances,” the proposed modification involves “a substantial change” to the existing custodial arrangement. *M.J.H.*, 913 N.W.2d at 443. Here, mother asked the district court for additional parenting time, and she was granted only a “slight expansion.” Furthermore, the district court did not apply the wrong statute

as father claims; the court applied Minnesota Statutes section 518.17, subdivision 1, and section 518.175, subdivision 5(b), which are the proper authorities for addressing a motion to increase parenting time.

Our review of the record reveals no abuse of discretion. The district court properly exercised its discretion by expanding mother's parenting time to serve child's best interests.

Affirmed.