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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1044**

In re the Marriage of:
Andrew Joseph Lee, petitioner,
Appellant,

vs.

Brittany Kaye Lee, n/k/a Brittany Kay Moore,
Respondent.

**Filed August 22, 2022
Affirmed
Segal, Chief Judge**

Ramsey County District Court
File No. 62-FA-14-1297

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Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Rodenberg, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this custody-modification dispute, appellant argues that the record does not support the district court's findings on the factors required for an endangerment-based modification of custody under Minn. Stat. § 518.18(d)(iv) (2020). We affirm.

FACTS

Appellant-father Andrew Joseph Lee and respondent-mother Brittany Kaye Moore were married in May 2011 and have one minor child (the child) born in 2012. The parties met and married in Texas but moved to Minnesota to live with father's parents just prior to the child's first birthday. In April 2014, mother took the child to visit her family in Texas. Father thought that mother and the child would be in Texas for two weeks, but mother called father to tell him that she and the child would not be returning to Minnesota. Mother subsequently filed for dissolution of the parties' marriage in Texas. Father then petitioned for dissolution of the parties' marriage in Minnesota. In June 2014, the district court in Minnesota determined that, for purposes of custody, Minnesota was the home state for the child under Minn. Stat. § 518D.201 (2012) and that the Minnesota courts therefore had jurisdiction over custody matters. The dissolution case proceeded in Minnesota and, up to the entry of judgment in the case, the parties observed a "month on/month off" parenting-time schedule.

Following a three-day trial, the district court entered a judgment and decree in November 2015, dissolving the parties' marriage. The district court determined that it was in the best interests of the child that father be granted sole physical custody of the child

subject to mother's parenting time. The district court's best-interests findings noted that the child had lived primarily with father and father's parents in the parents' home for almost three years, the child had a strong bond with her paternal relatives, and father's parents provided a strong support system for the child. The schedule established in the original custody order resulted in parenting time being split approximately 75%-25% between father and mother, with the child spending the majority of the school year with father in Minnesota and the majority of the summer with mother in Texas. The district court also granted the parties joint legal custody of the child. The parties subsequently entered into two binding mediated agreements that altered the parenting-time provisions and schedule slightly but did not modify custody.

In July 2020, mother filed a motion to modify custody and grant mother sole physical custody of the child on the grounds of endangerment under Minn. Stat. § 518.18(d)(iv). Mother also requested a modification of the parenting-time schedule so that she would have the child for the school year and father would have the child for the majority of the summer.

The evidence presented by mother in support of her motion included the fact that father was convicted of two crimes involving alcohol. In 2017, father was convicted of driving while impaired (DWI) and, in 2019, father was convicted of negligent storage of a loaded firearm. Father was under the influence of alcohol during the second offense and a young child (not the child in this case) was present with father at the time. In addition, in the fall of 2018, father moved with the child into the home of a girlfriend (now his wife) after dating her for two months. Following the move, the child's contact with her paternal

grandparents was significantly reduced and father began to require that he supervise all visits between the child and the grandparents. Mother also discovered that the child had accessed pornography on her iPad after father had removed the parental controls on the device, and that father had been aware of this but had not told mother about it. Finally, mother discovered that father had enrolled the child in therapy and then also changed child's therapist without notifying or consulting mother.

The district court determined that mother had alleged a prima facie case of endangerment and modified custody on a temporary basis. Following a five-day contested evidentiary hearing, the district court filed its findings of fact, conclusions of law, and order granting mother's motion and awarding mother sole physical custody of the child subject to father's parenting time. The district court determined that there had been a change in circumstances that resulted in endangerment to the child, and that it was in the best interests of the child that mother be awarded custody. Specifically, the district court found that, of the twelve statutory best-interests factors enumerated in Minn. Stat. § 518.17, subd. 1(a) (2020), nine of the factors favored awarding custody to mother, three were neutral, and none favored father maintaining sole physical custody. The district court granted mother's motion and awarded her sole physical custody of the child subject to father's parenting time. Father appeals.¹

¹ Mother initially filed a notice of related appeal, which she later voluntarily withdrew.

DECISION

We review a district court's custody-modification decision for an abuse of discretion. *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). We will sustain factual findings unless they are clearly erroneous, *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985), and we defer to the district court's opportunity to assess witness credibility, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

To modify custody on the basis of child endangerment, the district court must find that four elements are established: "(1) the circumstances of the children or custodian have changed; (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." *Crowley v. Meyer*, 897 N.W.2d 288, 293-94 (Minn. 2017); *see also* Minn. Stat. § 518.18(d)(iv) (providing for the modification of custody based on endangerment). The party seeking modification of custody has the burden to show that all elements are met. *Crowley*, 897 N.W.2d at 293. Because father challenges the district court's findings regarding all four factors, we address each below.

I. Change in Circumstances

A change in circumstances under Minn. Stat. § 518.18(d) “must be significant and must have occurred since the original custody order; it cannot be a continuation of conditions existing prior to the order.” *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). “What constitutes changed circumstances for custody-modification purposes is determined on a case-by-case basis.” *Sharp*, 614 N.W.2d at 263 (quotation omitted). The party seeking modification of custody must show that the change in circumstances has had a direct effect on the child. *Peterson v. Peterson*, 365 N.W.2d 315, 318 (Minn. App. 1985), *rev. denied* (Minn. June 14, 1985).

Father argues that the district court clearly erred by finding that there had been a significant change in circumstances since the original custody order. The district court’s determination that there had been a significant change in circumstances was based on findings related to the following: (1) father’s criminal convictions, (2) the loss of familial support and changes in the child’s behavior, (3) a breakdown in father’s communication with mother evidenced by father’s failure to notify and discuss with mother his decision to send the child to therapy and then to change therapists, and (4) the fact that the child had searched sexually explicit material after father had removed the parental controls on her iPad and that father did not disclose this to mother. Father challenges, in isolation, the significance of each of the alleged changes. The district court, however, did not rely on any one changed circumstance as justification. The district court based its determination on “the totality of all the changes since the previous custody order.” And the record

supports that the totality of the changes since the original custody order is significant and had a direct effect on the child.

Father argues that the criminal convictions are not relevant to the question of changed circumstances because the child was not present during either of the offenses. The district court, however, identified elements of the offenses, focusing in particular on the 2019 offense, that are legitimate areas of concern. For example, the district court noted, with regard to the 2019 offense, that father had an alcohol concentration of 0.252 and had an unsecured firearm in the presence of his three-year-old stepson. The district court also made note of the fact that father “was charged with negligent storage of firearms and child endangerment due to his inappropriate handling of his firearms” and that, while father pleaded guilty to a lesser offense, that “does not excuse that a child, alcohol, and firearm were involved.”² Finally, the district court noted that father was, at the time of the hearing, still on probation and that both offenses involved the consumption of alcohol.

With regard to father’s change in residence, the district court commented that the initial decision to award sole physical custody to father was based in significant part on the familial support he and the child received from his parents and that, since the original custody order, the child had lost that support system. The district court noted that the

² The record contains the following additional details concerning the 2019 offense. Father was alone with his current wife’s three-year-old son at his family’s cabin when he became intoxicated. The neighbors observed that he was intoxicated, and they were apparently so concerned that they removed the stepson from father’s care and called the police. When police responded, they discovered an AR-15 rifle left out, unsecured, in the kitchen and a handgun in a holster in father’s vehicle. Father had other firearms, but they were properly stored in locked cases.

child's relationship with father's parents and the support his parents provided was referenced no fewer than 16 times in the original custody order awarding father sole physical custody. In addition, the record contains ample evidence that, at the time of the original custody order, father's parents were heavily involved in the child's life. Father and the child lived with his parents, his parents assisted with childcare, and the child attended the school where father's mother worked. The district court found that, since the original custody order, "[t]here has been a breakdown in [father's] relationship with his parents." Father moved out of his parents' house and now lives with his current wife, their joint child, and his wife's children from a previous relationship.

The record shows and father admits that, while father lives near his parents, father has restricted his parents' contact with the child and insisted that he supervise any contact between the child and father's parents. Father's parents also testified to changes in the child's behavior since father moved and reduced contact between the child and her grandparents. The grandmother testified that the child demonstrated emotional distress and anger by going through the grandparents' house, knocking things down and crying, a behavior that the grandmother had never seen previously. She also testified that the child would show up at their house without proper clothing, such as wearing a skirt with no underwear or clothes that were too small. The grandmother noted in her testimony that the most recent contact between the grandparents and the child had been facilitated by mother, not father. And while father's parents testified in support of father having sole physical custody at the time of the original custody determination, they both testified in support of

mother being awarded sole physical custody of the child in the current proceeding, even though that would result in the child residing primarily in Texas.

Father argues that the child's "change in relationship with her paternal grandparents is the natural consequence of [father and the child] moving from [the grandparents'] home as contemplated" by the original custody order. But while father did indicate during the initial custody proceeding that he planned to eventually move out of his parents' home, it is clear that the district court nonetheless expected that the child would continue to have a close relationship with father's parents after the move. The original custody order states: "[Father] testified that he does plan to eventually move after the Court's decision is issued, but that he will stay in the neighborhood so [the child] is in familiar surroundings and able to see her paternal relatives on a regular basis." The district court found, however, that father had limited the child's contact with her paternal grandparents, which has directly affected the child's support system and has harmed the child.

The district court also made findings, supported by the record, that father failed to alert mother that the child had accessed sexually explicit material until a year later after mother discovered additional searches on the child's iPad. Another changed circumstance found by the district court is that father enrolled the child in therapy, provided an inaccurate medical history to the therapist, and then changed the child's therapist, all without notifying or consulting mother even though the parents had joint legal custody.

On this record, the district court did not err in determining that the totality of the changes amount to a significant change in circumstances.

II. Best Interests of the Child

“A child’s best interests are the fundamental focus of custody decisions.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 476 (Minn. App. 2000). The district court’s factual findings “regarding the best-interest factors are reviewed for clear error.” *Hansen v. Todnem*, 908 N.W.2d 592, 599 (Minn. 2018). The clear-error standard of review “does not permit an appellate court to weigh the evidence as if trying the matter *de novo*” or “to engage in fact-finding anew.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotations omitted). Rather, appellate courts “fairly consider[] all the evidence” and determine whether “the evidence reasonably supports the [district court’s] decision.” *Id.* at 222.

Minnesota statutes section 518.17, subdivision 1(a), provides that “[i]n evaluating the best interests of the child for purposes of determining issues of custody . . . the [district] court must consider and evaluate all relevant factors, including” the 12 factors enumerated in the statute. Here, the district court conducted a thorough best-interests analysis and determined that nine of the statutory factors favored mother, three were neutral, and none favored father. The district court therefore found that it was in the best interests of the child to modify custody.

Father challenges the district court’s findings regarding ten of the statutory best-interests factors and the overall determination that it was in the best interests of the child

to award mother sole physical custody.³ Many of father's challenges, however, ask this court to reweigh the evidence, a task we may not undertake under the clear-error standard of review. For example, father argues that the child did not have any behavioral issues after he and the child moved out of his parents' house. He argues that there is no evidence in the child's therapy records to suggest that the move caused any emotional issues and points out that, when the child was asked to draw a family picture, the child drew a picture of herself with father, her stepmother, and her stepsiblings holding hands.

The district court, however, credited other testimony in the record. Here, father's parents and mother's stepmother testified that they observed adverse behavioral changes following the move. Mother also testified that, after the child stopped seeing father's parents, she observed that the child "wasn't really like her—just her happy, bubbly self" and mother "could tell she was struggling with some stuff" and "having a hard time with some things." The district court's findings thus have support in the record.

Father also argues that the district court did not adequately credit his expert's testimony that the child's internet searches for sexually explicit material reflected a natural curiosity. But whether the child may have been curious about such material and whether such curiosity is natural was not the focus of the district court's findings. The court's focus was on the fact that father did not disclose this to mother and that father "should have taken more active steps to parent the child for her emotional well-being." In addition, the district

³ Father does not challenge the district court's findings that the child was too young to express a preference and that there were no allegations of domestic abuse, and that those factors were therefore neutral.

court found that father provided inconsistent testimony about how he responded when he initially made the discovery that the child had accessed the explicit material. This led the district court to reject his testimony concerning his response as not credible.

Our role on appeal is to determine whether “the evidence reasonably supports the [district court’s] decision.” *Id.* And here, the record supports the district court’s best-interests findings. As discussed above, father’s parents played a significant role in the child’s life prior to the breakdown in the relationship between father and his parents. As a result of this breakdown, the relationship and contact between the child and her grandparents has been severely strained to the point that father’s parents testified that they now believe it would be in the best interests of the child for the child to live primarily with mother in Texas. Mother and her stepmother similarly testified that father’s conduct has resulted in a diminished and strained relationship between the child and members of her extended family. This strain in relationships was highlighted in the district court’s best-interests findings related to many of the statutory factors.

Additionally, the district court found that father’s conduct demonstrated “a lack of willingness to co-parent, communicate respectfully, or work together.” The district court found that mother “is in the best position to encourage these relationships and frequent contact” and explicitly credited mother’s testimony that she intended to include father when making decisions regarding the minor child. These findings also have support in the record. There has plainly been a breakdown in communication, and father did not inform mother of either of his convictions or that he had discovered that the child had searched for

sexually explicit material. Father also made unilateral decisions regarding the child's participation in therapy without communicating with mother.

Father argues that the district court clearly erred in determining that both parties support the child's participation in therapy because "[t]he record shows [mother] has not followed through with meeting [the child's] mental health needs whereas [father] has." The record, however, includes sworn testimony from mother that she would ensure the child's continued participation in therapy. The record also indicates that, while the child was in father's custody from September 2019 through February 2020, she attended five individual therapy sessions. She attended four individual sessions while in mother's custody for a similar time period in the summer and fall of 2020. The child thus attended one more therapy session while in father's custody. This is not sufficient to persuade us that the district court clearly erred in finding that both parties support the child's participation in therapy.

The record similarly supports the district court's determination that father's chemical-health history weighed in favor of awarding custody to mother. As noted above, father has been convicted of two crimes involving alcohol, including the July 2019 offense in which he had an alcohol concentration of 0.252 with an unsecured AR-15 rifle while father was responsible for the care of his three-year-old stepson. As a result of the 2019 conviction, father was required to undergo a chemical-health assessment. And while father is correct that his chemical-health assessment states that he "does not meet criteria for alcohol use disorder," the evaluator nonetheless recommended that father attend eight group recovery sessions.

Father asserts that he continues to voluntarily attend a support group and is committed to his sobriety, but we cannot say that this renders the district court's finding clearly erroneous. And his assertion that the July 2019 "incident was an isolated incident" appears to ignore his 2017 DWI conviction. Finally, the district court is explicitly directed to consider each parent's "chemical-health issue[s]" when evaluating the best interests of the child. Minn. Stat. § 518.17, subd. 1(a)(5).

III. Endangerment

A party must show "a significant degree of danger" to satisfy the endangerment element. *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (quotation omitted). "The existence of endangerment must be determined on the particular facts of each case." *Sharp*, 614 N.W.2d at 263 (quotation omitted). And the danger does not need to involve physical harm, but rather may affect only a child's emotional development. *Geibe*, 571 N.W.2d at 778. This court has also observed that "[r]epeated, concrete efforts to prevent contact" between a child and relatives "could reasonably impact emotional health." *Id.* at 779-80.

The district court found "that the minor child's living arrangements does endanger her mental and emotional health and development" and that "[t]he totality of the changes [since the original custody order] amount to an adverse effect on the child such that there is a significant degree of danger to the child's emotional health." The district court noted that mother discovered that the child had searched for sexually explicit material while in the care of father, that father was dismissive of mother when she attempted to discuss her concerns over the search with him, that father was on probation, that the child exhibited

adverse behavioral issues after she and father moved, including “stress, anxiety, and anger,” and that “[t]he child needs the paternal grandparents’ support or proper/adequate support for her emotional health” but their support “no longer exists.”

Father argues that the district court erred “in finding [the child’s] mental and emotional health and development were endangered in [his] care,” pointing to the fact that there is no evidence that the child’s grades dropped and that her therapy notes ascribe her stress and anxiety to various factors. But as previously noted, father’s parents, mother, and mother’s stepmother all testified to negative changes in the child’s behavior following the child’s move and reduction in contact with father’s parents. Thus, there is evidence to support the district court’s finding that the child exhibited behavior suggesting an adverse effect on her emotional health and well-being.

It is also significant that the district court noted that, as a result of father’s most recent criminal conviction, he was required to “relinquish all firearms.” Father provided a document to the effect that all his firearms were removed and were being stored at his parents’ house. The district court noted, however, that father’s parents testified that they did not have any of father’s firearms in their possession. The district court also noted that father’s wife testified that she brought the firearms to her mother’s house. The district court then stated that it was discrediting the testimony of both father and his wife regarding the storage of firearms because of their inconsistent statements. The district court’s credibility finding thus leaves open the question of whether father, in fact, complied with this condition of his probation.

The district court's findings about the breakdown in communication between father and mother provide another factor concerning the well-being of the child. The district court was concerned that father provided an inaccurate medical history to the child's therapist, which could impact the child's receipt of proper mental-health services, and failed to consult with mother when making decisions regarding the child's mental-health treatment. Father's unwillingness to cooperate and consult with mother when making important parenting decisions could also impact the child's emotional development.

Finally, there is evidence to suggest that father and his new wife have made negative remarks about mother and impeded the child's relationship with mother's extended family. For example, father's mother testified that the child would become upset when father and his new wife would speak poorly about mother. She testified that there were days when she would pick the child up from school, notice that the child was "very sad," and that, when she asked the child what was wrong, the child "would tell [her] things like, 'Daddy and [his new wife] were talking mean about Mommy and said that she was a bad person.'" Attempting to diminish the relationship between the child and other parent or preventing contact between the child and relatives can support a finding of endangerment. *See Amarreh v. Amarreh*, 918 N.W.2d 228, 231-32 (Minn. App. 2018), *rev. denied* (Minn. Oct. 24, 2018); *Geibe*, 571 N.W.2d at 779-80. Accordingly, the record as a whole supports the district court's determination that the child's emotional health and well-being were endangered in father's custody.

IV. Balance of Harms

Finally, to modify custody the district court must find that “the benefits of the change outweigh its detriments with respect to the child[.]” *Crowley*, 897 N.W.2d at 293. This factor “may sometimes be implicit in the other factors.” *Geibe*, 571 N.W.2d at 778.

Here, the district court found that the harm caused by the change in custody would be the reduction in time spent with father, but that this was outweighed by the benefits of more appropriate supervision, reduction in anxiety and stress for the child, and continuation of support from all grandparents. The district court again noted that the “child had a support system that no longer exists” and that she is “experiencing stress, anxiety, and anger” due to the change in her support system.

Father challenges the district court’s determination, noting that Minnesota law establishes a presumption that stability in custody is in the best interests of the child. *Weber v. W.P.W.*, 653 N.W.2d 804, 811 (Minn. App. 2002). He also points out that, while the district court determined that “a change in custody does not interrupt the child’s education and mental health services,” the record suggests that a change here would result in the child changing school districts and needing to find a new therapist.

We conclude, however, that the record supports the district court’s ultimate determination that the harms caused by a change in custody are outweighed by the advantages. Here, it is clear from the record that the child’s change in relationship with father’s parents was of particular significance to the district court. The district court found that a change in custody would result in the advantage of encouraging a strong relationship between the child and her paternal grandparents and the restoration of a support system

that the child had lost. The district court also determined that mother was more likely to communicate and cooperate with father to ensure that both parents were involved in decisions regarding the child, which was another primary concern for the district court. Additionally, the child had been participating in distance learning due to the COVID-19 pandemic and father had already changed the child's therapist at least once. This may help lessen the degree of harm caused by a change in custody. The record therefore supports the district court's determination that the advantages of modifying custody outweigh the potential harms caused by modification.

Because we discern no clear error in the district court's findings of fact and the findings support the district court's determinations as to all four custody-modification factors, we affirm the district court's order granting mother's motion to modify custody.

Affirmed.