STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0142

In re the Marriage of:
Alison Lee Henry, f/k/a Alison Lee Underthun,
f/k/a Alison Underthun-Meilahn, petitioner,
Respondent,

vs.

Peter Jason Meilahn,
Appellant.

Filed December 19, 2022
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-FA-15-3279

Thomas R. Witt, Fryberger Law Firm, Duluth, Minnesota (for respondent)

Andrew J. Laufers, Laufers Legal Services, Lake Elmo, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-father argues that the district court abused its discretion by granting respondent-mother's motion to relocate out of state with their children, and denying, without an evidentiary hearing, his motion to modify custody. We affirm.

FACTS

In May 2016, the district court filed the parties' dissolution judgment and decree. The district court awarded respondent-mother Alison Lee Henry[1] sole legal and sole physical custody of the parties' three children and appellant-father Peter Jason Meilahn reasonable parenting time.

The day after the judgment and decree was entered, mother notified father that she was relocating from Minneapolis (where both parties resided at the time) to Duluth with her significant other and the children. Father believed that it was not fair to relocate the children, and he moved for parenting-time assistance and to modify custody. In August 2016, the district court denied father's motion, concluding that there was no court order prohibiting mother from relocating within the state.

In August 2018, father moved to Duluth to be near the children. With the agreement of the parties, father exercised more parenting time than was directed by court order. And the eldest child moved in with father during November 2020.

[1] Respondent-mother f/k/a Alison Lee Underthun, f/k/a Alison Underthun-Meilahn.

On April 5, 2021, mother moved for permission to relocate with the two youngest children to Amery, Wisconsin, so that she could work as a communications manager at a greenhouse. Amery is approximately 2 ½ hours from Duluth. Father opposed mother's request. He was concerned that relocation was not in the children's best interests and was just to serve mother's desire to be with her new boyfriend, the owner of the greenhouse. Father asserted that mother's move to Duluth had been driven by her previous boyfriend, and he was worried that if her new relationship also failed, the instability would not be good for the children.

On July 19, 2021, the district court denied mother's relocation motion. It found that she "provided no specific, credible evidence as to how a relocation will enhance the general quality of life for her or the children." The district court was not convinced that mother could not find appropriate employment in Minnesota,[2] and it was concerned that mother's new boyfriend was the owner of the greenhouse, where she worked, and the home where she planned to reside. "The [district c]ourt share[d] [f]ather's concern that [m]other's move is based on her desire to be with her significant other" and that "the children are a secondary consideration in her decision to relocate."

Just nine days later, father moved for temporary sole legal and temporary sole physical custody, claiming that mother endangered the children by relocating to Amery on July 15, 2021, and by proposing that the parties' daughter go to boarding school. The same

[2] Mother has a master's degree in literature and has previously worked writing grants, as an adjunct professor, as a substitute teacher, and as a writing tutor.

day, mother again moved for permission to relocate to Amery. She acknowledged that she "is no longer living in Duluth," and stated that she had gotten married.

Following a hearing that addressed mother's request to relocate with the children, the district court granted mother's request to relocate to Amery.[3] The district court stated: "My main concern now is [mother]'s marriage, which, again, congratulations. . . . But I also feel like it's forcing my hand to figure out this motion to relocate." The district court concluded:

> I know it's hard, but I'm worried what would happen if both parents stayed in Duluth, and I'm worried about what happened if I said you couldn't move and then you're trying to get housing and [the youngest child is] going to a different school. I'm worried about what's going to happen if the move doesn't happen. I feel like when I'm weighing kind of a harm versus a benefit, that's where I'm landing.

The district court denied father's motion to modify custody, concluding that father failed to establish a prima facie case that the children were emotionally endangered in mother's care. This appeal followed.

DECISION

Relocation

Father argues that the district court abused its discretion by permitting mother to relocate with the children because the district court denied mother's first relocation motion,

[3]Although mother admitted that she had already moved from Duluth, she claimed that she would find a home near the Minnesota/Wisconsin border if the district court denied her permission to relocate to Amery. But this seems disingenuous because mother had already moved to Amery. She sent father an email in July 2021 stating that on July 15, she had changed her name and address to an address in Amery, Wisconsin.

and the only change since that denial was that mother got married and moved without the prior permission of the district court or father.

In reviewing the district court's relocation decision, this court considers "whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations omitted). This court will not interfere with a district court's factual findings unless they are clearly erroneous. *Id.* Findings of fact are clearly erroneous when this court is "left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted); *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing clear-error standard of review); *Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (applying *Kenney* in a family-law matter).

"The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree." Minn. Stat. § 518.175, subd. 3(a) (2022). In determining whether to grant a parent's request to relocate the child to another state, the district court must consider the best interests of the child, which include:

> (1) the nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life;
> (2) the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration special needs of the child;
> (3) the feasibility of preserving the relationship between the nonrelocating person and the child through suitable parenting

> time arrangements, considering the logistics and financial circumstances of the parties;
> (4) the child's preference, taking into consideration the age and maturity of the child;
> (5) whether there is an established pattern of conduct of the person seeking the relocation either to promote or thwart the relationship of the child and the nonrelocating person;
> (6) whether the relocation of the child will enhance the general quality of the life for both the custodial parent seeking the relocation and the child including, but not limited to, financial or emotional benefit or educational opportunity;
> (7) the reasons of each person for seeking or opposing the relocation; and
> (8) the effect on the safety and welfare of the child, or of the parent requesting to move the child's residence, of domestic abuse, as defined in section 518B.01.

Id., subd. 3(b) (2022). When no domestic abuse has occurred, as is the case here, the parent seeking relocation carries the burden of proof that relocation is in the child's best interests. *Id.*, subd. 3(c) (2022).

Father claims that mother did not prove that relocation is in the children's best interests. While father's argument has force and is supported by several of the district court's best-interests findings this does not establish an abuse of discretion.

In considering the best-interests factors, the district court first evaluated the children's relationship with father and other significant persons and found that the children have a healthy relationship with father and that relocation "made it more difficult for [f]ather to . . . maintain a positive relationship with [the children]." The district court also found that the parties' daughter will not be able to see the friends she has in Duluth when she has parenting time with mother.

Second, in considering the impact relocation will have on the children's physical, educational, and emotional development, the district court found that "[m]other has already chosen to uproot [the youngest child] from Duluth in his formative years in order to pursue her new relationship [and] with any move from one community to another this will have an impact on [his] physical, educational, and emotional development." But the district court found that it is preferable for the child to be in Amery to begin school and make friends.

Third, in considering the feasibility of preserving the relationship between father and the children, the district court found that relocation will require the children to spend multiple hours in the car for parenting-time exchanges and will limit father's weekday parenting time. But the district court found that these circumstances would still exist if mother moved to the Wisconsin/Minnesota border. The court also found that mother had additional financial resources to transport the children because of her new relationship and job. Fourth, in considering the children's preference, the district court stated that the record is "unclear."

Fifth, regarding whether mother promotes or thwarts the children's relationships with father, the district court found that mother's decision to relocate is not to interfere with father's parenting time but is motivated by her desire to be with her spouse. Sixth, in considering whether relocation will enhance mother's and the children's general quality of life, the district court found that it would "be fulfilling for mother." It also found that the youngest child would have "more opportunities and enriching experiences if he lives in Amery[] rather than an apartment on the Minnesota/Wisconsin border due to the additional

support and resources" that mother and her new husband could provide. But the district court expressed concern, as it had before, that "[m]other's employment and housing" depend "on her [relatively new] relationship." Finally, the district court found that mother's reasons for relocating were to be with her spouse and to continue her new job. The court was "still concerned that the children [were] a secondary consideration in [mother's] decision to relocate."

The record supports these findings. The findings on each factor analyzed individually do not strongly support relocation. And mother previously relocated for a romantic relationship and joint business venture that ended in mother closing the business, filing for bankruptcy, and ending the relationship. The record also shows that the district court likely believed that mother manipulated the situation so she could relocate where and when she desired. As the district court noted, mother did not disclose her new relationship in her first request to relocate. And mother apparently relocated with the children before the district court denied her first request to do so. Father provided documentation that mother changed her address to an Amery address on July 15, but the district court did not file its order denying mother's request to relocate until July 19.

Nevertheless, the decision to grant a relocation request is within a district court's discretion. Here, the district court was familiar with the constant state of conflict between the parties. The district court stated that in granting the request, it was weighing "a harm versus a benefit." The district court concluded:

> If [m]other were required to reside in Minnesota, she and [the youngest child] would spend time most days traveling to and from Amery, Wisconsin[,] with little benefit to [f]ather's

> relationship with the children. It is in the best interests of the children that [m]other be permitted to move to Amery, Wisconsin[,] so that the children can build community there. The children will continue to have the stability of parenting time with [f]ather in Duluth where they are already familiar with the community and have established friendships.

Based on the district court's experience with these parties and its thoughtful contemplation, we cannot say that it abused its discretion by granting mother's request to relocate with the children.

Custody modification

Father also argues that the district court inappropriately denied, without an evidentiary hearing, his motion to modify custody based on child endangerment.

To establish a prima facie case for a motion to modify custody based on child endangerment, the movant has the burden to show: "(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 (Minn. 2017); *see also* Minn. Stat. § 518.18(d)(iv) (2022) (providing for custody modification based on endangerment).

In reviewing the denial, without an evidentiary hearing, of a motion to modify custody, we first consider "de novo whether the district court properly treated the allegations in the [movant]'s affidavits as true, disregarded the contrary allegations in the [opponent]'s affidavits, and considered only the explanatory allegations in the [opponent]'s

affidavits." *Amarreh v. Amarreh*, 918 N.W.2d 228, 230-31 (Minn. App. 2018) (quotation omitted). We then review the district court's determination as to whether a prima facie case for modification exists for an abuse of discretion. *Id.* at 231. Lasty, we review de novo whether the district court properly denied an evidentiary hearing. *Id.*

Here, father argues that because the district court failed to state that it reviewed his allegations, there is no way of knowing whether the district court considered them as true. Taking the allegations as true, father claims that he established a prima facie case that mother endangered the children by forcing them to move to Amery.

The district court ruled that father failed to establish a prima facie case that the children are emotionally endangered in mother's care. The district court stated: "The children may be struggling with [m]other's decision to pursue her [new] relationship . . . and move from Duluth, but [m]other's choice to make these changes does not rise to the level of endangerment."

The district court did not abuse its discretion by denying father's motion because he did not show that mother's relocation endangered the children. Like the district court stated, the children likely will struggle leaving the community with which they are familiar and their friends, but families with children relocate and that does not present issues with emotional endangerment. *See Eckman v. Eckman*, 410 N.W.2d 385, 389 (Minn. App. 1987) (stating that endangerment may be purely to emotional development); *but see Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991) (stating that movant alleging endangerment must show a "significant degree of danger").

Affirmed.