STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0492

In re the Marriage of:
Leann Rae Hinrichs, petitioner,
Appellant,

vs.

Christopher Lawrence Hinrichs,
Respondent,

Redwood County,
Intervenor.

Filed April 3, 2023
Affirmed
Bratvold, Judge

Redwood County District Court
File No. 64-FA-16-347

Michelle K. Olsen, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Christopher Frank, Frank Law Office, P.A., Willmar, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant-mother challenges the district court's decision to deny her motion to modify custody without affording her an evidentiary hearing. First, mother argues that the district court failed to address each of the four elements required for a prima facie case to modify custody due to endangerment. Second, mother argues the district court erred by denying her motion without an evidentiary hearing because the district court (a) did not accept the facts alleged in mother's affidavits as true and (b) erred in concluding that mother failed to allege a prima facie case supporting custody modification. Because we conclude the district court did not err in denying mother's motion without an evidentiary hearing, we affirm.

FACTS

Appellant Leann Rae Hinrichs (mother) and respondent Christopher Lawrence Hinrichs (father) married in July 2011. They are the parents of two children: A.H. (daughter), born in February 2014, and C.H. (son), born in August 2015. The district court dissolved the parties' marriage in August 2016.

After their divorce, the parties signed a written stipulation that provided for joint physical and joint legal custody of the children and "alternate weeks of parenting time." The parties' stipulation did not identify a primary residence for the children. The stipulation stated that before daughter started kindergarten, the parties would "confer regarding school enrollment" and "use the court process" if they could not agree on a school district. The

stipulation also stated that mother lived in Evan, and father lived in Morgan. The district approved the parties' stipulations in an April 2018 order.

Mother moved to Lake Crystal, and father continued to live in Morgan. In July 2019, mother moved to modify physical custody, arguing that daughter was starting kindergarten in the fall and needed "a primary residence in order to attend school." Mother asked the district court for "joint physical custody with primary physical custody and primary residence" in her favor. Mother's affidavit stated that she had "concerns about sexual abuse" of the children while they were in father's care. Father opposed, arguing that his home should be the children's primary residence. Father's affidavit denied that any abuse occurred in his home and claimed that mother "refuses to continue enrolling the joint children in any kind of mental health assistance during her visitation."

In an August 2019 order, the district court determined that "the parties shall retain joint legal custody and joint physical custody" of the children. The district court also determined that "father[']s home] shall be the primary residence of the children during the school year, and mother[']s home] during the summer months." The district court analyzed the best-interests factors in Minn. Stat. § 518.17, subd. 1(a) (2022),[1] and found that most factors were neutral and favored neither party. Still, the district court concluded that it was in the best interests of the children to reside primarily with father because "father has been

[1] Section 518.17, subdivision 1(a), was amended in 2022. The amendment is not relevant here. As a result, we cite the most recent version of Minn. Stat. § 518.17. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (recognizing that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

more active in regularly addressing the children's mental health needs" and has a more permanent living situation.[2] The district court's order did not address mother's allegations of "sexual abuse [of the children] in the Father's household" as stated in mother's affidavit supporting custody modification.

In August 2021, mother moved to modify parenting time, arguing the district court should make her home the children's primary residence during the school year. In her affidavit, mother averred that it was in the children's best interests to reside with her during the school year. Mother attested that the children "were sexually abused by a member of [father's] household," "have serious mental health and behavioral problems in [father's] care resulting from that trauma," and "do not exhibit" behavioral problems while in mother's care. Mother attested that the "children's behaviors have become worse rather than better over time since they began living with their father during the school year."

Father opposed mother's motion. Father's affidavit asserted that the sexual-abuse allegations were "old allegations" about incidents occurring "prior to [the August 2019] court order." Father also averred that therapy records "show that both children have made much improvement over the last two years."

In November 2021, the district court denied mother's motion. Though mother characterized her motion as one "to modify parenting time," the district court determined

[2] Mother requested that the district court permit her to move for reconsideration of either the entire August 2019 order or "the parenting time portion of the order." Mother suggested that parenting time "be closer to 50/50" and that her parenting time "be consistent with" her work schedule. Father opposed mother's request. The district court denied mother's request for reconsideration. Mother did not appeal the August 2019 order.

"the substantial change [in parenting time] requested by mother" amounted to "a restriction" of father's parenting time rather than a modification. Thus, the district court concluded that, to prevail on her motion, mother had to satisfy the standard for a motion to modify custody based on endangerment. In addressing that standard, the district court ruled that mother failed to adequately allege two out of the four required elements. Specifically, the district court concluded that mother did not adequately allege "a substantial change in circumstances measured in relation to the circumstances that existed at the time of the prior [August 2019] custody order," nor that "the children are presently in imminent danger of physical harm in Father's care." As a result, the district court declined to address the other two elements of the endangerment standard and denied mother's motion without granting her an evidentiary hearing.

Mother moved for "amended findings" on the November 2021 order. Mother argued that the district court should "review all four factors required under the endangerment standard"[3] and that the district court failed to take the statements in mother's affidavit as true. Father opposed mother's motion for "amended findings."

In February 2022, the district court denied mother's motion for "amended findings." The district court determined that custody modification requires "all four factors to be met before modification is warranted," and because the district court determined "two factors were unmet," it need "not analyze the remaining factors." The district court also determined

[3] We understand the "endangerment factors" or "factors" mentioned by mother to refer to the four elements of the prima facie case a movant must allege to obtain an evidentiary hearing on a motion for custody modification based on endangerment. This opinion will use the term "elements" when referring to the requirements of the prima facie case.

that it "appropriately considered [mother's] affidavit as well as the professional records attached to it for context." Mother appeals.

DECISION

It is undisputed that mother's motion "to modify parenting time" was, in fact, a motion to restrict father's parenting time. Under Minn. Stat. § 518.175, subd. 5(c)(1) (2022), the district court may restrict parenting time if it finds that "parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development." "In addressing a motion to restrict parenting time, the district court applies the analytical framework that was developed for evaluating a motion to modify custody." *Boland v. Murtha*, 800 N.W.2d 179, 182 (Minn. App. 2011).

When addressing a motion to modify custody, "the district court must first determine whether the party seeking to modify the custody arrangement has made a prima facie case by alleging facts that, if true, would provide sufficient grounds for modification." *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022). To make a prima facie case for custody modification based on endangerment, the moving party must allege four elements: "(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." *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018) (quotation omitted).

If the moving party alleges "a prima facie case [to modify custody], the district court must hold an evidentiary hearing on the motion." *Woolsey*, 975 N.W.2d at 507. If, however,

the moving party fails to allege a prima facie case to modify custody, the district court is "require[d] . . . to deny [the] motion for modification of a custody order." *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981). Thus, "[w]hether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007).

The district court denied mother's August 2021 motion without affording her an evidentiary hearing. To resolve the issues raised in mother's brief to this court, we first address a preliminary matter: whether the district court must analyze all four elements of a prima facie case before denying a motion to restrict parenting time. We then consider mother's several arguments supporting her claim that the district court erred by denying her motion without an evidentiary hearing.

I. The district court did not err in considering only two of the four elements of a prima facie case.

Mother argues that the district court "failed to properly address two of the four required factors" in determining whether she adequately alleged a prima facie case of endangerment. Father argues that the district court does "not need to go beyond an analysis of the failed factors." We review de novo whether the district court properly treated mother's allegations as true before denying her motion. *Amarreh v. Amarreh*, 918 N.W.2d 228, 230 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Oct. 24, 2018).

Caselaw shows that the four elements of a prima facie case for a motion to modify custody based on endangerment are conjunctive. *See Christensen*, 913 N.W.2d at 440 (using "and" when enumerating the four elements of a prima facie case). Because the

standard for analyzing a motion to restrict parenting time is the same as that for a motion to modify custody based on endangerment, *Boland*, 800 N.W.2d at 182, before obtaining an evidentiary hearing on a motion to restrict parenting time, the movant must adequately allege all four elements of that standard. Put differently, the district court must deny a motion to restrict parenting time when a movant fails to adequately allege even one of the four elements of a prima facie case.

Mother claims her position is supported by caselaw and cites *State ex rel. Gunderson v. Preuss*, 336 N.W.2d 546 (Minn. 1983), and *Goldman v. Greenwood*, 748 N.W.2d 279 (Minn. 2008). We are not persuaded. In *Gunderson*, the supreme court reversed a district court's order modifying custody because the district court addressed only one element of a prima facie case without discussing the other three elements of a prima facie case. 336 N.W.2d at 548. The supreme court reasoned that when a district court modifies custody, the statute requires findings that the movant proved all four elements of a motion to modify custody based on endangerment. *Id.*

But *Gunderson* is distinguishable because it involved the adequacy of the district court's findings of fact to support a modification of custody—a decision on the *merits* of the movant's motion. *Id.* Here, however, we are not reviewing the district court's decision on the merits of mother's motion. Rather, the question for this court is whether mother gets an evidentiary hearing on her motion. Because the four elements of a motion to modify custody based on endangerment are conjunctive, a movant's failure to allege any one element of a prima facie case is fatal. *See Christensen*, 913 N.W.2d at 440; *Nice-Petersen,*

310 N.W.2d at 472 (stating that if the movant fails to make a prima facie case to modify custody, the district court is required to deny the motion).

In *Goldman*, the supreme court affirmed the district court's denial of a custody-modification motion without an evidentiary hearing. 748 N.W.2d at 286. The supreme court discussed each of the four elements of a prima facie case for custody modification based on endangerment. *Id.* at 284-86. The supreme court did not suggest that the district court needed to address all four elements. *Id.* Rather, the supreme court concluded that the district court erred in its analysis of the first element and that this error was harmless because the moving party "failed to make a prima facie case of [the] other" three elements. *Id.* at 285.

We conclude that the district court did not need to analyze all four elements before ruling that mother's motion to restrict father's parenting time failed to allege a prima facie case. Because the district court ruled that mother failed to allege two of the four elements, it did not err in denying her motion without analyzing the remaining two elements.

II. The district court did not err in denying mother's motion without an evidentiary hearing.

When an appellant challenges the district court's denial, without an evidentiary hearing, of their motion to restrict parenting time, we review three discrete determinations by the district court. *Amarreh*, 918 N.W.2d at 230. "First, we review de novo whether the district court properly treated the allegations in the moving party's affidavits as true, disregarded the contrary allegations in the nonmoving party's affidavits, and considered only the explanatory allegations in the nonmoving party's affidavits." *Id.* at 230-31

(quotation omitted). Second, we review the district court's determination on the existence of a prima facie case for an abuse of discretion. *Id.* at 231. Third, "we review de novo whether the district court properly determined the need for an evidentiary hearing." *Id.* (quotation omitted).

A. The district court did not err in its analysis of mother's affidavits or by considering evidence from other sources.

Mother argues that the district court "failed to properly disregard the affidavits that contradicted Mother's affidavits and find everything stated in Mother's affidavits as true." Mother claims the district court must presume that the children are "continuing to suffer from emotional harm by being in Father's home" and that their circumstances have "become worse." Father argues that "Mother's own filings of the children's therapy records as part of her affidavit refute much of her own affidavit." Father also claims that the behaviors described by mother "have existed . . . since before the August 30, 2019 Order and that [the children's] symptoms have lessened in severity."

The party seeking to restrict parenting time "shall submit together with moving papers an affidavit setting forth facts supporting the requested order or modification." Minn. Stat. § 518.185 (2022); *see Boland*, 800 N.W.2d at 182 (applying Minn. Stat. § 518.185 to a motion to restrict parenting time). Although the district court "must accept the facts in the moving party's affidavits as true, and the allegations do not need independent substantiation," the district court "may consider evidence from sources other than the moving party's affidavits in making its [prima facie case] determination." *Geibe v. Geibe*, 571 N.W.2d 774, 777 (Minn. App. 1997); *see also Boland*, 800 N.W.2d at 183

n.2 (stating that affidavits of the moving and the nonmoving party refer not just "to the affidavits signed by the parties themselves, but to all affidavits submitted by a party in support of or in opposition to a motion"); *Krogstad v. Krogstad*, 388 N.W.2d 376, 383 (Minn. App. 1986) (affirming the denial of a custody-modification motion where the district court relied in part on a court-services study before determining appellant failed to make a prima facie case).

In support of her motion to restrict parenting time, mother submitted confidential child-protection records from Southwest Health and Human Services (SWHHS) and therapy records, both of which she referenced in her affidavit. The district court's order denying mother's motion acknowledged that it "must assume [mother's] allegations are true." The district court determined, however, that allegations in mother's affidavits were "not support[ed]" by the therapy and SWHHS records that mother submitted.

The district court determined that mother's affidavits included "selective[]" allegations about the children's sexual abuse. The district court noted that the SWHHS records from 2018 described the children's accounts of abuse—alleging "events that have occurred at Mother's home by Mother's acquaintance, by a step-brother, or by unknown individuals/things." The district court also noted that SWHHS had "investigated and evaluated" the children's reports of abuse, and "[n]one of the reports were substantiated."

The district court ruled that "the submitted therapy records do not support" mother's allegation that "both children's therapists agree that the children experience[d] a serious trauma due to sexual abuse in their father's home, and that the trauma is creating ongoing problems." The district court stated that "[n]either therapist has directly opined that the

children experienced sexual abuse in Father's home," nor did the therapists' records assert that the children face ongoing sexual-abuse trauma.

The district court may consider evidence other than the moving party's affidavits before determining whether the moving party has alleged a prima facie case of endangerment. *Geibe*, 571 N.W.2d at 777. Thus, the district court did not err when it considered mother's affidavits in the context of the therapy and child-protection records that she submitted and cited in her affidavit.

B. The district court did not abuse its discretion in ruling that mother failed to allege a prima facie case.

Mother's argument focuses on the district court's analysis of the first element of a prima facie case. Mother acknowledges that the allegations of sexual abuse and the children's need for therapy predate the August 2019 custody order, but mother argues that a change in circumstances occurred because "the [children's] worsening behavior is new." Father argues that "Mother's own submissions are contradictory" because mother claims "the [children's] behavior has changed," but her submissions suggest that the children's behavior has not worsened since the August 2019 order.

To sufficiently allege a prima facie case for the first element of endangerment, the party seeking to restrict parenting time must allege "that there has occurred a significant change of circumstances from the time when the original or amended custody order was issued." *Nice-Petersen*, 310 N.W.2d at 472; *see Lutzi v. Lutzi*, 485 N.W.2d 311, 316-17 (Minn. App. 1992) (applying the *Nice-Peterson* framework to a motion to restrict parenting time). The change in circumstances "cannot be a continuation of conditions existing prior

to the [original custody] order." *Geibe*, 571 N.W.2d at 778. Caselaw establishes that some allegations are insufficient to support a prima facie case, such as allegations not "supported by any specific, credible evidence." *Szarzynski*, 732 N.W.2d at 292 (quotation omitted).[4]

The district court reasoned that a change in circumstances "is measured in relation to the circumstances that existed at the time of the prior custody order," citing Minn. Stat. § 518.18(d) (2018) and *Roehrdanz v. Roehrdanz*, 438 N.W.2d 687 (Minn. App. 1989), *rev. denied* (Minn. June 21, 1989). The district court determined that mother focused "on [incidents that] occurred prior to the [August 2019] custody order" and thus failed to allege a change in circumstances.

Mother makes two arguments, which we discuss in turn. First, mother contends that the district court "improperly" relied on *Roehrdanz* because in that case, the moving party argued that the court's modification order itself was a change of circumstances. But mother mistakenly emphasizes that the facts in *Roehrdanz* differ from the facts in this case. Though it is true that the facts are different, the district court cited *Roehrdanz* because it instructs a district court to consider the prior custody order before determining whether a moving party has alleged a change in circumstances. Thus, the district court did not err by considering *Roehrdanz*.

Second, mother argues that her affidavit alleged that the children's behavior has "become significantly worse over the course of a couple years" and that "[n]one of these

[4] Other deficient allegations are "conclusory" or "too vague." *Szarzynski*, 732 N.W.2d at 292. And allegations that "are frivolous on their face" will not support a prima facie case of endangerment. *Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021).

behaviors were shown prior to the [2019] judicial order and objectively should be considered a change of circumstances." As detailed above, the district court determined that mother's claims were contradicted by the therapy and SWHHS records she submitted.

The record supports the district court's determination. For example, mother's affidavit asserted that son's therapy records show his "emotional and behavior[al] problems are becoming worse . . . while in his father's primary care." Son's 2020 therapy records specify, however, that his "symptoms have lessened in frequency, but still continue and are intense around times of transitions" between the parties' households.

Mother's affidavit also asserted that "[t]he records show that [the children] do not experience significant emotional or behavioral issues when they are with [her]." The district court determined, however, that the 2020 therapy records "indicate [mother] told the professionals otherwise." Indeed, son's 2020 therapy records reflect that mother stated son's "behaviors during transitions make[] their visits difficult." Also, daughter's therapy records from 2020 state that "she has made steady improvement in her emotions and behaviors that appears to be linked to a decrease in transitions between her mom and dad's homes."

In short, mother's allegations are contradicted by the records she submitted; thus, they are not "supported by any specific, credible evidence" and are insufficient to support a prima facie case. *Szarzynski*, 732 N.W.2d at 292 (quotation omitted). We conclude that the district court did not err when it determined that mother failed to allege that the children's behavior had worsened in father's care and therefore also did not err when it concluded that mother failed to adequately allege a change in circumstances to support the

first element of a prima facie case.[5] Thus, the district court did not abuse its discretion when it determined mother failed to allege a prima facie case to restrict father's parenting time based on endangerment.

C. The district court did not err by denying an evidentiary hearing.

Whether a moving party alleges a prima facie case to modify custody resolves whether an evidentiary hearing will occur on the motion. *Id.* Because we conclude that the district court did not abuse its discretion in ruling that mother failed to allege a prima facie case, we also conclude that the district court did not err in denying an evidentiary hearing on mother's motion to restrict parenting time.

Affirmed.

[5] The district court also determined that mother failed to adequately allege the third element of a prima facie case because she did not allege the children were endangered in father's care. While we need not consider the district court's analysis of the third element to affirm, we note that the SWHHS records, as described above, show that the children alleged sexual abuse occurred in mother's home as well as in father's care. The record also reflects that sexual abuse was not substantiated by a follow-up investigation. Therefore, if we were to consider the third element of a prima facie case for custody modification based on endangerment, we would conclude that the record supports the district court's determination.