

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0536**

In re the Marriage of:

Shawn Michael Filosi, petitioner,
Respondent,

vs.

Ryann Theresa Christensen,
Appellant.

**Filed April 10, 2023
Affirmed
Segal, Chief Judge**

Hennepin County District Court
File No. 27-FA-16-1336

Eric Richard, Eric Richard Law Office, Brooklyn Center, Minnesota (for respondent)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Lisa D. Hill, Jeffrey K. Priest, Priest Hill Law Firm, PLLC, Eagan, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Cleary,
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NONPRECEDENTIAL OPINION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-mother argues that the district court's order resulted in a de facto modification of custody when it changed the children's primary residence from mother's home to father's home and significantly increased father's parenting time to include 80% of school nights during the school year. She argues that this de facto modification was erroneous because the district court did not first find that father made a prima facie case of endangerment to modify custody; that her due-process rights were violated because the evidentiary hearing was noticed as a hearing to decide parenting time, not a modification of custody; and that the modification is not supported by the record because the basis for finding endangerment did not exist at the time of the evidentiary hearing and modification of custody is not in the children's best interests.¹ We affirm.

FACTS

Appellant Ryann Theresa Christensen (mother) and respondent Shawn Michael Filosi (father) married in 2012, and their twin girls were born the following year. In 2016, father petitioned for dissolution of the marriage and the court issued a stipulated dissolution order, judgment, and decree in March 2017 (the dissolution judgment). The dissolution judgment awarded the parties joint legal and joint physical custody and designated

¹ Father did not file a brief with this court. Thus, the appeal is submitted for decision under Minn. R. Civ. App. P. 142.03 and is "determined on the merits."

mother's home as the twins' primary residence. The parenting-time schedule granted mother ten overnights and father four overnights every 14 days.

In August 2018, father moved to modify the custody arrangement provided in the dissolution judgment, requesting that the district court double his parenting time, adjust child support, and designate his home as the twins' primary residence. He alleged that, while in mother's care, the twins suffered injuries and missed an excessive number of school days and medical appointments. Father also claimed that mother failed to pay daycare fees, was in relationships that raised concerns of domestic and substance abuse, exposed the twins to "persistent negative comments" about father's family, and was at risk of losing her housing.

Following unsuccessful mediation and the district court's order for a parenting-time evaluation, the parties eventually came to an agreement and the district court issued a stipulated temporary order in March 2019. The temporary order stated that mother had moved to Wisconsin but planned to return to Minnesota. It provided that the parties would continue to have joint legal and physical custody of the children, but increased father's parenting time to 15 out of 28 overnights. The temporary order included the parties' agreement that they would revisit the parenting-time schedule "once [m]other has confirmed that she will be returning to Minnesota to live and reports where she will be living."

Seven months later, father moved to modify the temporary order, requesting the authority to make mental-health, counseling, and medication decisions without having to consult with mother; further reduce mother's parenting time; and that the court order a

parenting-time and custody report. Father said that mother had moved back to Minnesota but lived 45 minutes from the twins' school, lacked employment, and had not communicated with the children's therapist for several months. He also believed that mother's boyfriend mistreated mother and the twins.

Father further alleged that mother was struggling with her health, and that she was hospitalized multiple times during her parenting time and did not inform him. He said that the twins' maternal grandfather had been picking up the twins from school and that they were spending much of their time at their grandfather's during mother's parenting time. Father also claimed that mother "abruptly pulled [the twins] off their medication" prescribed to treat certain behavioral and other conditions. He alleged that, as a result, "[b]oth girls had a marked increase in behaviors . . . that interfered with their ability to participate in school." Mother responded that father's motion amounted to a motion for a de facto custody modification and that he had not made the required prima facie showing of endangerment under Minn. Stat. § 518.18(d)(iv) (2022), to justify an evidentiary hearing.

In March 2020, in response to father's motion, the district court ordered a brief focused assessment (BFA) to address two questions: first, whether "the parenting time schedule affected the children and their education" and, second, whether there are "any domestic violence concerns in Mother's home." The district court also stated on the record, "I don't think I need as much input as a typical parenting time or custody evaluation would provide because I don't think that at this point . . . that a prima facie case for endangerment has been made."

Five months after ordering the BFA, the district court denied the parties' joint request to broaden the scope of the BFA to address the parties' chemical use, explaining:

Given the length of this proceeding, and the involvement of attorneys, the Court declines to further delay this matter and broaden the scope of the BFA. In the event this matter continues to a [hearing], the parties will have the opportunity to fully brief the Court on their concerns related to all matters of the children's safety and well being, including allegations of chemical abuse.

Following this denial, father filed a motion for the court to order a full custody evaluation or, in the alternative, an expanded BFA, and requested a parenting-time modification. Father's affidavit echoed many of his previous allegations and added that mother had been hospitalized and admitted to inpatient treatment for substance abuse. He claimed that mother had avoided communicating with him, "failed to get [the twins] to school over and over again," and repeatedly rescheduled hearings due to her alcoholism and related health issues.

In her responsive motion, mother admitted that she attended inpatient treatment for chemical dependency and stated that she suffers from pancreatitis that is exacerbated by alcohol use. However, mother argued that father's motion again sought to modify custody and that he had still not made a prima facie showing of endangerment. Mother said, "I am fully capable of parenting the children. I am abstinent from alcohol and other chemicals. I still have pancreatitis and will . . . continue to deal with that medical issue when I have symptoms." She therefore requested that father's motion be denied.

At the review hearing following these motions, the court again declined to expand the scope of the BFA and instead set the matter for an evidentiary hearing. The court explained:

The parties have been in front of me . . . going on two years, and I know there have been multiple continuances and . . . rescheduling and then the pandemic hit . . . I don't know that there has been a true sense of finality for the parties or the children, and I think it's in everyone's best interest to get to that stage.

The court noted that an evidentiary hearing would allow the parties to obtain information regarding mother's substance abuse in discovery. Mother again argued that father had not made a prima facie case of endangerment and that the hearing must thus be limited to parenting time. The court responded, "I have never said . . . that this is going on for a custody trial. The issue has been ongoing parenting time, and this has been an issue . . . for going on two years, and this needs to end." The resulting order for the hearing stated, "The trial issue is parenting time."

The evaluator who conducted the BFA issued his report in September 2020. The report advised that there was no evidence of any current concerns of domestic violence occurring in mother's home. The report stated that, while mother had a relationship with a male "ongoing at least into early 2020," that "was likely volatile and the [children] were likely exposed at a minimum to loud domestic disputes . . . if not outright violence," there was no evidence that the male currently resided at the home and mother stated that she had ended the relationship.

As to the second question of whether the parenting-time schedule affected the children and their education, the BFA evaluator concluded that “the children appear to actually be doing well by all accounts with the current parenting time schedule as both had reasonably good years academically and both are doing well in therapy too.” The evaluator noted that, “[b]y all objective measures, [father] has clearly become the primary parent.” The evaluator attributed this, in large measure, to mother’s health and sobriety struggles.

The evaluator reported that mother’s medical records show that mother “has had chronic struggles with alcohol issues, which have created significant medical complications, thus causing her to be absent from the children for significant periods of time.” While acknowledging that these issues were “perhaps not immediately germane to this BFA,” the evaluator referenced mother’s diagnoses of alcohol-induced pancreatitis, pseudocyst of the pancreas, alcohol abuse, and alcoholic hepatitis and anemia; and that mother “had been to the [emergency room] five times and hospitalized three times in the past year for the same recurrent issues.”

The two-day evidentiary hearing occurred in February and March 2021. The district court heard testimony from father, father’s current wife, the BFA evaluator, a drug and alcohol counselor who testified as an expert witness on behalf of mother, the twins’ maternal grandfather, and mother. These witnesses testified to the twins’ needs and the services they receive, the communication difficulties between mother and father, each parent’s involvement in the children’s lives, the results of the BFA, and mother’s medical and substance-abuse issues and treatment.

Father asked the court to grant him parenting time on all school nights and to require that neither parent be under the influence of substances during parenting time. He also requested that the court permanently designate his home as the twins' primary residence. Mother asked that the temporary order remain in place and that the schedule be revisited once she has achieved greater financial stability and a longer period of sobriety.

The district court issued its order—which is the subject of this appeal—in August 2021 (the August 2021 order). The order stated that the parties have continued joint legal and physical custody and provided a parenting-time schedule during the school year in which father has 18 overnights out of 28, including all Monday through Thursday overnights (except for one Monday overnight), and mother has the remaining 10 overnights in the 28-day cycle. During the summer months, the district court ordered equal parenting time, with alternating weeks. The order stated that the district court would entertain a motion from mother to expand her parenting time during the school year if mother moved closer to the children's school.²

With regard to the best-interests factors outlined in Minn. Stat. § 518.17, subd. 1(a) (2022), the district court determined that each factor either weighed in favor of father's proposed schedule or was neutral. The court further stated:

Under Minn. Stat. 518.175, subd. 5, this Court shall modify parenting time if it is in the child's best interests if modification would not change the children's primary residence. The Court finds that Father's proposed parenting time schedule would change the children's primary residence as it would have his

² The BFA evaluator opined that the 45-minute commute from mother's home to the children's school was not in the children's best interests, particularly the twin who had an Individualized Education Plan.

house as the children's "home base" during the school week and would have the children attend school very close to his home. Accordingly, Father has to meet a heightened endangerment standard for such a modification to be granted.

The district court found that the endangerment standard was met because "[m]other's substance abuse and chemical dependency rises to the level of a change in circumstances [which] has endangered the children." The court also found that "any harm to the children caused by changing parenting time is outweighed by the benefit of this change."

Mother filed a posthearing motion, arguing that the August 2021 order must be vacated because father had not made "the prerequisite and mandatory prima facie [showing] of endangerment to change primary residence," thus the burden of persuasion was unlawfully shifted from father. She also argued that she was denied due process because she was not notified prior to the hearing that its scope would extend beyond parenting time.

The district court denied mother's posthearing motion, stating that father had met his burden of establishing endangerment and that the court had applied the correct legal standard. The district court also determined that mother's due-process rights were not violated because the length of the litigation and history of the disputes about discovery relating to mother's chemical dependency and medical records show that mother was "well aware of the [hearing] topic."

DECISION

On appeal from the district court's August 2021 order granting father increased parenting time and designating father's home as the children's primary residence, mother argues that the order constitutes an improper de facto custody modification and that her due-process rights were violated because the district court repeatedly affirmed that the scope of the evidentiary hearing would be limited to parenting time. Mother also argues that the record fails to support the district court's findings that the children were endangered while in her care and that the de facto custody modification is in the children's best interests.

I. The district court's August 2021 order constitutes a de facto custody modification.

The August 2021 order states that mother and father "shall continue to share joint legal custody and joint physical custody" as was provided in the parties' dissolution judgment. Mother, however, asserts that the August 2021 order constitutes a de facto modification of custody because the district court transferred the twins' primary residence from mother to father. The order also decreased the number of overnights the children would spend with mother from the schedule provided in the dissolution judgment—20 overnights out of 28 nights (with mother having the children on a majority of school nights)—to mother having the children for only 10 out of every 28 nights during the school year, mostly on weekends.

The legal standard for a modification of custody "differs materially" from the standard for modification of an existing parenting-time order. *Bayer v. Bayer*, 979 N.W.2d

507, 510 (Minn. App. 2022). Before a district court can grant a motion to modify physical custody on the basis of endangerment, the 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 (Minn. 2017); *see also* Minn. Stat. § 518.18(d)(iv). In seeking a modification of parenting time, the party moving for the change need only demonstrate that the “modification would serve the best interests of the child” and “would not change the child’s primary residence.” Minn. Stat. § 518.175, subd. 5(b) (2022).

We review the question of whether a district court’s modification of parenting time constitutes a de facto modification of custody for an abuse of discretion, limiting our review “to determining whether the district court misapplied the law, or delivered a decision that is against logic and the facts on record.” *Bayer*, 979 N.W.2d at 512 (quotation omitted).

In analyzing whether an ordered change amounts to a de facto change in physical custody, we are to assess the impact of the change, not its label. *See, e.g., Ayers v. Ayers*, 508 N.W.2d 515, 520 (Minn. 1993) (concluding that mother’s motion to modify parenting time was a request to modify physical custody because, although the proposed modification would “leav[e] intact the ‘joint legal and joint physical’ denomination of the arrangement,” the modification would give father “virtually no custody during the school year”). The supreme court has also directed that we are to look at the totality of the circumstances,

considering such factors as “the apportionment of parenting time, the child’s age, the child’s school schedule, and the distance between the parties’ homes, but these factors are not exhaustive.” *Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018).

Here, the district court noted that father’s proposed parenting schedule would make father’s house “the children’s ‘home base’ during the school week” and that this would change the children’s primary residence. This fact, combined with other aspects of the record, prompted the district court to conclude—at least implicitly—that an order granting father such relief would cause a change in the children’s primary residence and physical custody. The district court provided in the August 2021 order that, “[a]ccordingly, Father has to meet a heightened endangerment standard for such a modification to be granted.” The district court then found that father met this heightened standard because “mother’s substance abuse and chemical dependency rises to the level of a change in circumstances and has endangered the children.”

Father argued in response to mother’s posthearing motion to the district court, however, that the August 2021 order did not modify custody because it more or less continued the parenting-time arrangement the parties had followed under the stipulated temporary order, which designated father’s home as the children’s primary residence. But because that order was a temporary order, we agree with mother that the correct point of comparison is the dissolution judgment, which was the most recent permanent order addressing custody and the children’s primary residence. *See Crowley*, 897 N.W.2d at 294 n.2 (stating that it is error to conclude “that a series of temporary custody orders can, over time, become a permanent custody modification” and that “[t]here is only one way to

modify a permanent custody order: furnish evidence on, and satisfy, the four factors set forth in section 518.18”). We therefore conclude that the district court’s August 2021 order resulted in a de facto modification of custody.

II. The district court erred in making a de facto custody modification without first finding that father presented a prima facie case of endangerment, but because mother has not demonstrated prejudice, we conclude that the error is harmless and does not require reversal.

Having concluded that the August 2021 order functionally modified custody, we will next address mother’s argument that the district court erred in holding a custody-modification evidentiary hearing because the district court had previously determined that father had failed to make out a prima facie case of endangerment. We will then address mother’s argument that her due-process rights were violated because the district court repeatedly advised mother that the hearing was being held to address parenting time, not a modification of custody. We review these issues de novo. *See Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (propriety of an evidentiary hearing), *rev. denied* (Minn. Oct. 24, 2018); *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008) (due process).

Absence of Prima Facie Case Determination

It is established law that when a motion is brought to modify custody, “the district court must first determine whether the party seeking to modify custody 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). If the district court concludes that the movant has established a prima facie case, the “court must hold an evidentiary

hearing on the motion, during which the parties may present evidence.” *Id.* at 508. But if the movant fails to make out a prima facie case, the district court is “require[d] . . . to deny [the] motion.” *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981); *see Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (citing this aspect of *Nice-Petersen*).

Mother correctly notes that the district court decided, in response to father’s February 2020 motion, that father had not made out a prima facie case for custody modification on the ground of endangerment under Minn. Stat. § 518.18(d)(iv), the ground upon which father based his motion. And, while father also made a subsequent motion in September 2020 to modify custody or parenting time, the district court denied the custody-modification motion and set the matter on for an evidentiary hearing on parenting time alone. Based on the evidence presented at the hearing, however, the district court determined that endangerment had occurred. The district court thus erred by failing to make a finding that father had made out a prima facie case of endangerment *before* proceeding with an evidentiary hearing that resulted in a custody modification. We are mindful of—and sympathetic to—the fact that issues related to child custody and parenting time are dynamic and that the focus of the district court was on bringing finality and certainty to the parties and the children because of the many delays that had occurred in the case, in part because of the COVID-19 pandemic. But the district court nevertheless failed to follow the two-step prima facie case procedure prescribed by the supreme court.

Mother maintains that this procedural error is grounds for reversal. Mother’s argument, however, ignores that a reversal of an order is only proper when that error is

found to have affected a party's "substantial rights." Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Mother claims in connection with her due-process argument that she was harmed because she "was not fully apprised of the stakes" at the evidentiary hearing. However, she addresses neither how the error impacted her litigation strategy nor what additional evidence she might have introduced at the hearing.

At the evidentiary hearing, mother presented evidence concerning her alcohol issues, which was the basis for the district court's endangerment finding. For example, mother testified at the hearing that she has been sober since July 4, 2020, and, quoting from her brief, "that the majority of her drinking [prior to that] was outside the presence of the children" and "that she never drove the children when she was under the influence of alcohol." In addition, mother provided testimony at the hearing from a licensed alcohol and drug counselor about mother's treatment and sobriety. The counselor offered the expert opinion that mother is at "very low" risk for relapse. Mother's counsel also got father to admit at the hearing both that father had no evidence that mother had ever driven while under the influence, and that the children were not endangered when in their grandfather's care. It thus appears that, despite the district court's error, mother put on evidence on the issue of endangerment and cross-examined father on that point. Absent more, mother has not demonstrated prejudice caused by the error.

Mother cites to *Crowley* as supporting her argument for reversal. *Crowley*, however, is distinguishable. The supreme court in *Crowley* reversed the district court's order modifying custody based on several errors, including that the district court erred by: (1) imposing the burden of persuasion on the parent opposing the change, not on the parent

seeking the change; (2) modifying custody without holding an evidentiary hearing; and (3) failing to make each of the factual findings required by Minn. Stat. § 518.18. 897 N.W.2d at 294. None of those errors are present here. Instead, we have only the district court’s error in failing to determine—before proceeding with an evidentiary hearing—that a prima facie case of endangerment had been made out by father.³ Thus, *Crowley* does not require reversal here and we conclude that the error was harmless.

Due-Process Violation

We next evaluate mother’s argument that the district court violated her due-process rights because “all indications from the court were that the [hearing] was solely to determine parenting time,” thus she lacked sufficient notice when the district court modified custody after the hearing.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner.” *In re P.T.*, 657 N.W.2d 577, 586 (Minn. App. 2003) (quotation omitted), *rev. denied* (Minn. Apr. 15, 2003). “Due process requires reasonable notice, a timely opportunity for a hearing, the right to counsel, the opportunity to present evidence, the right to an impartial decision-maker, and the right to a reasonable decision based solely on the record.” *D.F.*, 752 N.W.2d at 97. And “[a]lthough the amount of process due in a particular case varies with the unique circumstances of that case,

³ To the extent that mother argues that the district court improperly imposed the burden of persuasion on her instead of father, the findings in the August 2021 order undermine that argument.

prejudice as a result of the alleged violation is an essential component of the due process analysis.” *Id.* (quotation omitted).

Mother contends that caselaw supports her argument that “[w]hen a court combines different issues in a hearing and is unclear about what it is doing, that violates due process.” *See, e.g., Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001) (determining that a district court’s midhearing “decision to combine reopening [of the dissolution judgment] and property division proceedings into one evidentiary hearing” violated due process when that combination “confused burdens of proof and thereby prejudiced appellant”), *rev. denied* (Minn. Feb. 21, 2001). As we note above, mother is correct that the district court repeatedly advised mother that the evidentiary hearing would be limited to the issue of parenting time. We agree this is troubling.

Yet, even assuming without deciding that this could be characterized as a due-process violation, mother fails to demonstrate that she has suffered prejudice as a result. Here, mother was obviously aware that father was going to present evidence related to mother’s substance-abuse history. And mother, in fact, presented evidence on that issue to rebut father’s allegations, including testimony from an expert witness on substance abuse. With no showing of prejudice, we decline to reverse the August 2021 order based on mother’s due-process argument.

III. The district court did not clearly err in finding that the children had been endangered and that a change in primary residence was in the children’s best interests.

Finally, we address mother’s argument that the record does not support the district court’s finding that the children were endangered or that the de facto modification is in the

children’s best interests. We review a district court’s custody-modification decision for 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*, 975 N.W.2d at 506 (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 defer to the district court’s assessment of witness credibility, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Endangerment

Mother challenges the district court’s endangerment determination, arguing that she had achieved sobriety by the time of the evidentiary hearing and that the district court thus erroneously relied “on circumstances that occurred in the past and had been resolved by the time of trial.” She further contends that, even when those circumstances existed, the children were not endangered.

To modify custody based on the child-endangerment element of Minn. Stat. § 518.18(d)(iv), the party seeking modification must show that “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.” “The existence of endangerment must be determined on the particular facts of each case.” *Sharp*, 614 N.W.2d at 263 (quotation omitted). “[A] party must demonstrate a significant degree of danger to satisfy

the endangerment element.” *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (quotation omitted). The danger need not involve physical harm, but also includes negative effects on a child’s emotional development. *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997).

Here, the district court found that mother’s “substance abuse and chemical dependency . . . ha[d] endangered the children.” The court explained:

There have been frequent periods of time where Mother was hospitalized and unable to care for [the children]. These periods of unavailability endangered the children’s emotional health and were destabilizing for them. Furthermore, given the severity of Mother’s chemical dependency, the Court finds it highly unlikely that she was able to abstain from alcohol when the children were having parenting time with her. In light of the children’s special needs, Mother’s chemical dependency endangered the children’s physical safety as well.

Mother contends that this finding is erroneous because each of her hospitalizations occurred before she entered treatment and became sober. She states that, by the second hearing date, she had been sober for eight months and her substance-abuse expert testified that mother is not currently “compromised in her parenting based on any substance use concern.” But, as the district court noted in its order on mother’s posthearing motion, “while [mother] was sober through trial, her sobriety is relatively new.” The district court explained that the action “was initiated in November 2018 when her addiction was a serious concern for the children.”

Mother cites several cases, including nonprecedential cases, to support her argument that a finding of endangerment must focus on the present circumstances and may not be based on issues that have been addressed by the time of the hearing or potential future risks.

Mother, however, places too fine a point on the holding in these cases. Her eight months of sobriety is relatively brief compared to the remoteness in time of the events relied on in the nonprecedential cases that mother cites. *See Danso v. Frimpong*, No. A20-1181, 2021 WL 1522488, at *4 (Minn. App. Apr. 19, 2021) (affirming district court’s finding that endangerment was not present where the alleged events occurred six to ten years ago); *Korthof v. Korthof*, No. C3-02-2110, 2003 WL 21694516, at *4 (Minn. App. July 22, 2003) (affirming district court’s finding that endangerment was not present where the alleged visitation issue had been resolved approximately two years earlier).

Further, substance abuse—compared to an issue like a visitation schedule—is more difficult to characterize as “resolved.” And the district court based its finding of present endangerment on credibility determinations regarding mother’s ability to maintain sobriety. The district court, for example, discredited mother’s testimony that mother did not drink alcohol when the children were in her care. The district court also noted that, “During these proceedings, Mother has attempted to downplay the extent of her drinking.” In addition, the district court found that “Father credibly testified to seeing Mother intoxicated at a school open house and another time at a psychiatry appointment” prior to entering treatment. Given the relative recency of mother’s sobriety and the district court’s credibility assessments, the district court did not err by considering mother’s history of substance abuse in its findings of present endangerment.

Mother next argues that, even if the district court could properly consider her substance abuse, there is no evidence that the children were in danger or otherwise adversely affected when she was actively using. *See Weber v. W.P.W.*, 653 N.W.2d 804,

811 (Minn. App. 2002) (“[I]n order to establish danger to a child’s welfare, a parent’s conduct must be shown to result in an actual adverse effect on the child.”).

The district court’s finding regarding the danger to and adverse effect on the twins also relies on credibility assessments, to which this court defers. *Sefkow*, 427 N.W.2d at 210. For example, as noted above, the district court credited father’s testimony that mother was intoxicated at events for the twins. And, though mother testified that she mostly drank when the children were not in her care, the district court did not credit this testimony. The court found: “Mother’s multiple hospitalizations, serious medical issues, and eventual time in rehab suggest that her alcoholism has not been just severe but even life threatening at times” and, “given the severity of Mother’s chemical dependency, the Court finds it highly unlikely that she was able to abstain from alcohol when the children were having parenting time with her.” The district court determined: “It is also clear that Mother’s hospitalizations negatively impacted the children as she was unable to care for them during these periods of time.” Thus, it appears that the district court did not credit mother’s allegations that the children were not impacted negatively by her alcoholism or significant periods away from them because of her hospitalizations and treatment needs.

Mother further argues that, though she was unable to care for the children while hospitalized, “she made arrangements for the children to be cared for by her parents or a neighbor.” Mother states that the children were not endangered in this alternative care. However, this court has stated that the “present environment” of Minn. Stat. § 518.18(d)(iv) refers “to the last judicially created environment, not an alternate care arrangement.” *Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997). Thus, when a parent has

been granted custody by the court, endangerment is measured based on their care, even where the children are safely cared for by grandparents. *Bjerke v. Wilcox*, 401 N.W.2d 97, 100-01 (Minn. App. 1987).

Here, while mother’s father provided significant assistance during and apart from mother’s hospitalizations, the record demonstrates that mother herself was unable to care for the children on multiple occasions due to her substance abuse and health issues—mother was hospitalized eight times in under two years for alcohol-induced acute pancreatitis, alcohol abuse, alcoholic hepatitis, anemia, and diabetes, and she attended inpatient substance-abuse treatment. Thus, the district court did not err in finding that the twins’ present environment with mother endangered their mental health and development.

Best Interests

Mother also argues that the best-interests factors do not support modification. “A child’s best interests are the fundamental focus of custody decisions.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 476 (Minn. App. 2000). We review for clear error the district court’s factual findings on the best-interests factors. *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 made specific findings on all factors. The court determined that 6 of the 12 factors weighed in favor of father’s proposed changes and that the remaining factors were neutral. The court therefore found that it was in the twins’ best interests to modify custody.

Mother does not challenge the findings underlying any specific factor but argues that the overall best-interests findings are erroneous because they rely on mother’s past alcohol use, which is not related to the children’s current best interests. However, as analyzed above, the district court did not err in considering mother’s substance-abuse history in its custody-modification decision. We note that the district court also relied on mother’s current sobriety in its analysis of the best-interests factors, finding that “[w]hen Mother is maintaining her sobriety, she is able to meet all of the children’s needs and follow through consistently with her parenting time,” thus rendering at least one of the factors neutral.

Further, the district court’s findings consider a variety of factors that are supported in the record. For example, the district court discussed the twins’ physical and emotional needs, which require medication, consistent therapy and medical appointments, and an Individualized Education Plan at school for one of the twins. As the court noted, father has been “the most consistent figure in addressing the children’s special needs” both at home and in accessing services. And while mother has been involved with the twins’ treatment, her involvement diminished during periods when she has struggled with alcoholism and related medical issues.

Therefore, the district court's endangerment and best-interests findings are not clearly erroneous.

Affirmed.