

*This opinion is nonprecedential except as provided by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
A22-0933**

In re the Marriage of:
Laura Marie Anderson, petitioner,
Respondent,

vs.

Joshua Christian Anderson,
Appellant.

**Filed April 24, 2023
Affirmed
Segal, Chief Judge**

Itasca County District Court
File No. 31-FA-13-2877

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Considered and decided by Reilly, Presiding Judge; Segal, Chief Judge; and Florey, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the district court's denial of his motion to modify custody, appellant-father argues that the district court erred in determining that he did not make out

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

a prima facie case to modify custody based on endangerment and erred in denying his requests for other types of custody-related relief. We affirm.

FACTS

Appellant Joshua Christian Anderson (father) and respondent Laura Marie Anderson (mother) married in July 2001 and separated in October 2012. At the time of their separation, the parties had four minor children, born between 2004 and 2009, and mother was pregnant with a fifth child. Mother obtained an order for protection (OFP) against father on behalf of herself and the children shortly after the separation. The district court in the OFP case found that father physically abused mother, verbally abused mother and the children, and scared the children with his behavior. The OFP provided temporary sole legal and physical custody of the children to mother and set a schedule for supervised parenting time with father.

In January 2015, the parties stipulated to termination of the OFP and establishment of a harassment restraining order against father on behalf of mother alone. That same month, the parties' marriage was dissolved pursuant to a stipulated partial judgment and decree, and the parties agreed to reserve all other issues for a later evidentiary hearing. Shortly thereafter, the guardian ad litem (GAL) assigned to the case determined that father's parenting time would no longer be supervised, but that exchanges of the children between the parents for visits would be facilitated by Wellstone Family Safety Program (WFSP).

The district court scheduled the evidentiary hearing on the remaining marriage-dissolution issues—mainly custody and parenting time—for May 2015. Following a

prehearing conference at which the GAL expressed concerns about father spanking the children, the district court issued an order prohibiting father from using physical discipline with the children. The week after that order, the GAL filed a letter with the court stating that one of the children reported additional physical discipline by father.

Prior to the scheduled evidentiary hearing, the parties came to an agreement, and the district court entered stipulated findings of fact, conclusions of law, order for judgment, and a judgment and decree on July 16, 2015 (stipulated order). The stipulated order awarded sole physical and sole legal custody of the children to mother.

The parenting-time schedule in the stipulated order provided father after-school visits twice per week and all-day visits on the second and fourth Saturdays and Sundays of each month. These visits were to be unsupervised, but the exchange of the children between the parents was to continue to be supervised by WFSP. This parenting-time schedule was conditioned on father not verbally abusing the children or physically punishing them. The order gave mother the discretion to limit father's parenting time to supervised visits if those conditions were violated. The stipulated order also required mother to encourage the children to call father several times per week and provided that father and the children would attend reunification therapy.

Four days after the district court entered the stipulated order, mother exercised her option to restrict father's parenting time to supervised visits after father used physical discipline on one of the children. For a few months, father refused to schedule any visits with the children because the visits were again to be supervised.

Between fall 2015 and fall 2017, father made several motions asking for increased parenting time and related relief. The district court entered a temporary order in October 2017 increasing father's parenting time to a schedule similar to that in the stipulated order but did not otherwise grant father's requests. However, at a scheduled hearing in spring 2018, the district court ordered an evidentiary hearing and appointed a GAL. Due to a series of continuances and motions by both parties, the evidentiary hearing did not occur until June 2019.

Following the spring 2018 hearing and before the 2019 evidentiary hearing, the children stopped attending visits with father. WFSP had a policy that they would not force a child to participate in a visit and, from 2015 through 2017, the children had refused to attend on multiple occasions, with some of the children refusing more frequently than others. However, the GAL reported that all five children had ceased visits and communication with father by the fall of 2018. Several children told the GAL that they did not want to see their father because they did not like visits with him or did not feel safe with him. The district court issued a temporary order requiring all the children to engage in trauma-focused individual therapy and placing the children's participation in reunification therapy and resumption of visitation with father at the discretion of each child's therapist.

Following the June 2019 evidentiary hearing, the district court entered a stipulated order memorializing the parties' agreed-upon terms and issued an order resolving the remaining disputed issues (collectively, the 2019 order). Like the previous temporary

order, the 2019 order stated that the individual therapists and the reunification therapist would determine when the children were ready to resume visits with father.

By May 2020, visits had not resumed, and father moved to compel parenting time or to appoint a parenting-time expeditor, alleging that mother was “actively trying to alienate the Children from [him].” The district court denied father’s motion, stating:

The argument advanced by Father’s motion and the accompanying affidavit is essentially that parenting time should be ordered because he is ready to have parenting time with the children. However, the evidence in the record . . . is that none of the children are ready for parenting time with Father, per the recommendations of their individual therapists [T]he [2019 order] is working as it was designed Father now seeks to change the terms of the order because the children are progressing slower than he would like and he is not getting the result that he wanted out of the stipulated order. The mere fact that Father is displeased with the events that have occurred since entry of the [2019 order] is not a proper basis for changing the order.

Visits between father and the children had still not resumed as of December 2021, at which point father moved for modification of custody, alleging that the children were endangered due to mother’s alienation of them from father. Father also moved for the court to award him compensatory parenting time under Minn. Stat. § 518.175, subd. 6 (2022); appoint a parental-alienation expert and a GAL; order the children to attend an intensive reunification program with him, during which time father would have sole legal and sole physical custody and the children would have no contact with mother; order mother to complete a psychological evaluation; and order a change in venue. At the time of this motion, the children were 17, 15, 14, 12, and 8 years old.

The district court denied father's motion to modify custody, determining that father had not made out a prima facie showing sufficient to obtain an evidentiary hearing. The court also denied the remainder of father's requested relief.

DECISION

Father contends on appeal that the district court erred in denying, without an evidentiary hearing, his motion to modify custody based on mother's alleged endangerment of the children. He also argues that the district court should have granted his motions for compensatory parenting time, appointments of both a GAL and a parental-alienation expert, a psychological evaluation of mother, intensive reunification programming for him and the children, and a change in venue. We address first father's challenge to the district court's denial of his custody-modification motion without an evidentiary hearing and then address father's other challenges to the order.

I. The district court did not err in denying father's motion to modify custody without an evidentiary hearing.

Father argues that the district court erred by declining to hold an evidentiary hearing based on his motion for custody modification because he sufficiently alleged a prima facie case to modify custody based on endangerment. In particular, he claims that the district court erred by "fail[ing] to properly treat the allegations in [his] affidavits as true and [by] disregard[ing] the contrary allegations" in mother's affidavits.

To establish a prima facie case for custody modification based on child endangerment, the movant must set forth allegations that 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). A movant “ma[kes out] 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 a party establishes a prima facie case, the district court must hold an evidentiary hearing at which evidence may be presented on each factor.” *Crowley*, 897 N.W.2d at 293-94. 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*).

In reviewing the denial of a motion to modify custody without an evidentiary hearing, this court first considers “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), *rev. denied* (Minn. Oct. 24, 2018). This court then reviews for an abuse of discretion the district court’s determination as to whether a prima facie case for modification exists. *Id.* at 231. Finally, this court reviews de novo whether the district court properly denied an evidentiary hearing. *Id.*

Here, father’s allegations in support of his motion focused on his denial that he had ever abused mother or the children. Father claimed that mother had fabricated stories of abuse by father and used the stories to alienate the children from him. He maintained that the mental-health issues of the children served as evidence of the harm caused by mother’s alienation of the children from him. Father further contended that mother denied him pictures of the children and phone calls with them and that she kept information from him about the children’s medical care and schooling. Father stated that the children had not seen him because they had not sufficiently progressed in individual therapy. He claimed this lack of progress was likely because the children are not “being given the proper treatment since their therapy is based on false information provided by [mother].”

The district court determined that father sufficiently alleged the first element of a *prima facie* case for custody modification based on endangerment—that a change in circumstances had occurred. The court cited the significant mental-health concerns of two of the children, which father described in his affidavit, along with “numerous changes in parenting time since entry of the prior custody order, as the children’s time with Father has gone from unsupervised to supervised and ultimately to no contact for several years.” The district court determined, however, that father either failed to address or insufficiently alleged the remaining three elements of a *prima facie* case for a custody modification based on endangerment.

As to the district court’s ruling that father failed to make out a *prima facie* case on the remaining three factors, father devotes much of his argument to contesting the district court’s determination on the third factor—that the children’s present environment

endangers them. On this factor, the district court determined that father’s “conclusory statements that the children are having these issues because Mother is engaging in parental alienation” did not “demonstrate[] a nexus between the children’s struggles and Mother’s parenting.” Generally, allegations that are conclusory in nature are insufficient to make out a prima facie case. *See Szarzynski*, 732 N.W.2d at 292.

But, even assuming without deciding that father sufficiently alleged the endangerment factor, father is still not entitled to reversal because he did not sufficiently allege the remaining two elements of a prima facie case—that modification is in the children’s best interests and that the advantages of the change would outweigh the detriment to the children. *Crowley*, 897 N.W.2d at 293; *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 476 (Minn. App. 2000) (“A child’s best interests are the fundamental focus of custody decisions.”).

Father argues, however, that he was not required to make out all four elements of a prima facie case. He asserts that this court’s opinion in *Amarreh* “creat[ed] an automatic path to an evidentiary hearing for a parent who alleges parental alienation, because parental alienation is (simply put) abuse.” *See Amarreh*, 918 N.W.2d at 232. We disagree.

In *Amarreh*, this court held that an evidentiary hearing was required where the father’s allegations of parental alienation amounted to what would be endangerment if, on the particular facts of the case, those allegations were true. *Id.* But our holding did not create an automatic route to an evidentiary hearing where parental alienation is alleged. *Amarreh* was reversed and remanded for a hearing based on the father’s allegations of parental alienation only because “the district court did not rule on, and mother [did] not

challenge, the other factors required for an endangerment-based custody modification.” *Id.* at 232 n.2. The father in *Amarreh* thus satisfied the other elements “for the purposes of holding an evidentiary hearing as a matter of law.” *Id.* Our holding in *Amarreh* did not in any way alter the burden on the movant to make out each of the four elements of a prima facie case for custody modification as a prerequisite to obtaining an evidentiary hearing. Father thus had to set forth specific allegations on each of the prima facie case elements.

In this case, father failed to set forth specific allegations regarding the second and fourth factors—whether a modification of custody is in the children’s best interests and that the benefits of the change would outweigh its detriments. On best interests, father simply asserted that parental alienation has negative consequences for children in general and that he believes he would be a better parent to the children. Father failed to address any of the individual best-interests factors set out in the statute. *See* Minn. Stat. § 518.17, subd. 1(a) (2022) (setting out the factors to be considered in evaluating a child’s best interests for purposes of determining issues of custody and parenting time).

Father next argues that the district court erred with regard to the best-interests factors because the district court failed to make its own findings of fact on the best interests of the children. Father’s argument is mistaken. The only issue to be resolved at this stage of the proceedings was whether father made out a prima facie case. *Szarzynski*, 732 N.W.2d at 292 (stating that “[w]hether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion”). Because the district court determined that father’s allegations were not sufficient to make out a prima facie case, it would have been improper for the district court to make its own independent

findings of fact on best interests at this stage of the proceedings. *See Nice-Petersen*, 310 N.W.2d at 472.

As to weighing the benefits compared to the detriment to the children of granting father custody, father generally asserted that he loved his children and, as stated in his brief, that “he wanted to be there for them.” He also repeated his assertion that mother was alienating the children against him and that this constitutes abuse. As the district court recognized, these general assertions fall short of the legal standard. For example, father failed to address how moving the children to his home, which is in a different community from the children’s current residence, might impact them. He also failed to address the fact that the children’s therapists have recommended against allowing father any parenting time with the children, let alone custody, and that the children had not even seen him for several years.¹ This is not to say that a movant’s burden at the prima facie case stage is to persuade, but the movant must “alleg[e] facts that, if true, would provide sufficient grounds for modification.” *Woolsey*, 975 N.W.2d at 507. Father failed to do that in this case.

Because father failed to carry his burden as the movant, the district court did not err in denying an evidentiary hearing on father’s motion.

II. The district court did not err in denying father’s other motions.

We next turn to father’s challenge to the district court’s denial of his remaining requests for relief, including the district court’s denial of father’s request for compensatory parenting time; appointment of a GAL and a parental-alienation expert; change in venue;

¹ In this regard, we note that the older children had expressed their preference not to see father.

a psychological examination of mother; and for the children to attend an intensive reunification program with him. We briefly address each below.

A. Compensatory Parenting Time

In his motion to modify custody, father moved for remedies “pursuant to Minn. Stat. § 518.175, subd. 6, including but not limited to, a reversal of custody.” Under this statutory subdivision, a district court “may provide compensatory parenting time when a substantial amount of court-ordered parenting time has been made unavailable to one parent” and “shall provide” a compensatory remedy if there has been “a repeated and intentional denial of or interference with court-ordered parenting time.” Minn. Stat. § 518.175, subd. 6(a), (b). Generally, “[t]he district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion. Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record.” *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotations and citation omitted).

The district court denied father’s request for compensatory parenting time because “[a]ll of the remedies available under the statute are predicated upon one parent interfering with the other parent’s court-ordered parenting time. Father functionally has no court-ordered parenting time under the current stipulated order, so the Court finds that the § 518.175, subd. 6, remedies are not available to him.”

Father disputes the district court’s finding that father does not have court-ordered parenting time under the stipulated order, contending that the 2019 order provides that father receive two phone calls from the children each week and that mother is interfering

with these calls. However, even construing this portion of the 2019 order as providing father parenting time, the court's decision that father is not entitled to a compensatory remedy is supported by information provided in mother's affidavit. Mother asserted that she has repeatedly given the children "the option of calling [father], but after months of . . . refusal, [she] resorted to providing a phone . . . with [father's] number on it . . . kept in a convenient location [which] they can use . . . to call their dad whenever they want." Mother attached a log listing the children's calls and refusals, which shows that the children made calls in 2019 but have refused since March 2020. Given this context for the phone calls and the provision of the 2019 order placing resumption of visits at the discretion of the children's therapists, the district court did not abuse its discretion when it denied father's request for compensatory parenting time.

B. Appointment of a GAL

Father also argues that the district court erred in denying his request for appointment of a GAL. He cites Minn. Stat. § 518.165, subd. 2 (2022), which requires the appointment of a GAL in all proceedings for child custody, marriage dissolution, or legal separation in which custody or parenting time is an issue if the court has reason to believe that the minor child is a victim of domestic child abuse. Father states that this statutory subsection applies because he alleged that mother caused mental injury to the children and harmed their emotional well-being. We are not persuaded.

The district court denied father's motion for appointment of a GAL on the basis that the court had already determined that father did not make out a *prima facie* case of endangerment and did not otherwise have reason to believe that any of the children were

victims of abuse or neglect. When a district court does not have reason to believe that abuse or neglect is occurring, then the appointment of a GAL is permissive under Minn. Stat. § 518.165, subd. 1 (2022). This court reviews a district court’s decision regarding a permissive appointment of a GAL for an abuse of discretion. *See Reed v. Albaaj*, 723 N.W.2d 50, 59 (Minn. App. 2006).

Here, the district court noted that there was no need to appoint a GAL because it was “denying the request for an evidentiary hearing, so there are no further proceedings for which the services of a GAL would be helpful.” The court thus considered father’s request and did not misapply the law or rely on factors not supported in the record when it declined to appoint a GAL.

C. Appointment of Parental-Alienation Expert, Psychological Examination of Mother, Change in Venue, and Intensive Reunification Program

Father’s final arguments—that the district court should have granted his motions for appointment of a parental-alienation expert, a change in venue, a psychological examination of mother, and an order for the children to participate in intensive reunification programming with him—are inadequately briefed because they lack support or legal analysis (or both). Therefore, those questions are not properly before this court, and we decline to address them. *See State, Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal).

Affirmed.