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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1620**

In re the Marriage of:

Hillary Mercer Graves, petitioner,
Appellant,

vs.

Richard Charles Graves,
Respondent.

**Filed August 12, 2024
Affirmed
Ross, Judge
Dissenting, Reyes, Judge**

Rice County District Court
File No. 66-FA-18-2612

Kristin Berger Parker, Courtney L. Burks, Jones Day, Minneapolis, Minnesota (for appellant)

Marshall H. Tanick, Stephen M. Harris, Meyer Njus Tanick, PA, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

In this child-custody dispute, mother appeals from the district court's denial of her motion to modify the existing custody order, arguing that the court abused its discretion by finding that she failed to produce evidence of endangerment to justify the motion. Because the district court acted within its discretion by rejecting mother's motion based on her failure to introduce evidence sufficient to prove endangerment, we affirm.

FACTS

Appellant Hillary Mercer Graves (mother) and respondent Richard Charles Graves (father) divorced in 2018, agreeing to joint legal and physical custody of their now 15-year-old daughter and 10-year-old son. Father, who has a history of mental-health issues, began to struggle in the spring of 2020 and sent text messages and emails that troubled mother and father's brother. Mother successfully moved the district court for an *ex parte* order granting her emergency sole legal and physical custody of the children. The district court's 2020 order required father to maintain psychiatric care and to have only supervised parenting time until he demonstrated control over his disconcerting behavior.

The parties mediated the custody issue in 2021, agreeing that mother would continue with sole custody through July 1, 2022. They also agreed that father's parenting time would be limited, in that his time with their son would occur on one weeknight and every other weekend and with their daughter only when she was willing. Their agreement also designated that a consultant would decide parenting-time disputes and required father to remain medication compliant. The district court approved the stipulation by order, but the

parenting consultant soon suspended father's parenting time after determining that he was not taking his prescribed mental-health medication.

Mother moved the district court in November 2021 to modify custody by making permanent her role as sole legal and physical custodian. Father opposed the motion.

The district court held an evidentiary hearing that spanned six days. Much of the testimony concerned father's mental health. The evidence revealed that his first major mental-health event occurred in 1995 and included a suicide attempt. The next occurred in 2009 after the birth of the parties' daughter. Father's mental health remained stable until the divorce in 2018, and he treated his bipolar diagnosis with prescribed nontherapeutic doses of lithium.

Dr. Scott Fischer, a psychiatrist whom the district court appointed on the joint agreement of the parties to psychologically evaluate father, testified about father's mental health. Dr. Fischer confirmed father's prior diagnosis of bipolar disorder and recommended that he continue psychiatric treatment and medication.

Father contested the bipolar diagnosis and introduced the opinions of other professionals. Two doctors and father's therapist strongly disagreed with Dr. Fischer's diagnosis. Dr. Linda Marshall and Dr. Timothy Beyer questioned Dr. Fischer's methodology, and they concluded that father instead was suffering from PTSD. Dr. Beyer, who had become father's treating physician, maintained that Dr. Fischer's two-hour interview of father was inadequate to support Dr. Fischer's finding that father presented manic symptoms because behavior cannot be characterized as manic unless it occurs over an extended period. Dr. Marshall concurred with Dr. Beyer, testifying that father had been

misdiagnosed with bipolar disorder. Father's therapist, Susan Boyer, also testified that the bipolar-disorder diagnosis was inaccurate; she instead diagnosed father with PTSD based on traumatic events in his childhood. These witnesses added that father's adjusted treatment plan had improved his PTSD symptoms, that he was mentally healthy and medication compliant, and that they believed that he could follow court orders.

Others testified about the effects of father's mental-health behavior on the children. Mother testified that father sent his daughter a note with flowers in August 2021 stating falsely that his dog, whom the girl loves, "may have been killed by the Northfield Police." And she spoke about a video that showed father and their daughter shooting a Nerf gun at a whiteboard labeled either "white churches" or "white people's churches" while father spoke in the background that they "had plans" and they "definitely have a target." She also testified about an incident in which father told the girl that he had given her room at his house to refugees but that the girl could "sneak in through an unlocked window." Father's brother testified about troubling social-media posts. He testified that father had posted two videos with his son in which he taught the then six-year-old boy how to use an axe and how to burn gasoline from the garage floor. He testified about another video showing the boy picking up an electric hedge trimmer.

Mother also testified about father's conduct towards her. She testified that father had repeatedly made false accusations against her, including alleging that she had stolen Oxycontin from her workplace and that she was abusing the children. She recounted that several threatening messages led her to successfully petition for a harassment restraining

order (HRO) against father and that father violated the HRO several times—resulting in four misdemeanor convictions.

Witnesses familiar with the parties also testified. The Northfield YMCA CEO testified that father’s erratic behavior led the YMCA to require a behavior agreement for father and mother. Father rejected the attempt, inscribing the draft agreement with, “[Y]ou are nuts,” and the YMCA consequently removed the parties’ son from its summer camp. Mother testified that the removal left the child “tearful.” Northfield Middle School Assistant Principal Michael O’Keefe testified about the parties’ daughter’s individualized education plan. Father had strongly disagreed that the girl needed the plan and often contacted school staff to express his displeasure. Because of the nature of father’s communications, the school required that father communicate only through O’Keefe.

The district court heard testimony of a physical encounter between father and his daughter. Father slapped the then 11-year-old child in the face, giving her a bloody nose, while he was trying to put her to bed. Father immediately informed mother of the incident and then told his therapist. Father testified that he accidentally slapped the girl while trying to break up a fight between the children, while mother insisted that it was intentional.

Witnesses who supervised father’s parenting time also testified. Kathey Huisman, a supervised visitation coordinator, observed many parenting-time sessions and testified that father did not exhibit behavior that made her question his parenting ability. She found that father was appropriately responsive to the children while he spent time with them. Erin Janssens, father’s ex-girlfriend and fellow church member, also observed parenting time

between him and the children. She testified that father engaged in no physically threatening behavior and that she never saw any incidents that endangered the children.

The district court denied mother's motion to permanently modify custody, finding that she failed to present evidence rising to the level of endangerment. Mother appeals.

DECISION

Mother challenges the district court's order denying her motion to modify custody. We afford the district court broad discretion to determine custody. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). The district court acts within its discretion by finding facts supported by the evidence, applying the law properly, and issuing a logical and evidentially supported decision. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). On this standard, we hold that the district court acted within its broad discretion by denying mother's motion to modify custody.

Mother moved to modify the parties' court-adopted, custody agreement based on her allegation that the children are endangered. To modify custody based on endangerment, mother had to establish that the circumstances have changed since the existing custody order, that modifying custody is in the children's best interests, that "the children's present environment endangers their physical health, emotional health, or emotional development," and that the advantages of changing the children's environment outweigh the harm caused by the change. *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017); *see also* Minn. Stat. § 518.18(d)(iv) (2022). The district court addressed only the endangerment prong of the analysis, concluding that mother had failed to produce evidence that the children's present environment with father endangers them.

Mother argues that the district court abused its discretion by finding no evidence of endangerment, relying on two theories: first, the evidence presented proves endangerment, and second, evidence ignored by the district court proves endangerment. But we will not set a district court's finding of fact, including a finding that endangerment has not occurred, unless the finding is clearly erroneous. *See* Minn. R. Civ. P. 52.01. The term "endangerment" is imprecise and depends on each case's particular facts. *See Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008). To satisfy the endangerment element, the party seeking custody modification must show "a significant degree of danger." *Id.* (quotation omitted). Mother argues that the district court's fact-findings compel a finding of endangerment. She points to father's slapping his daughter's face, interfering with her education plan, handing their six-year-old son an axe to hack at a rope, burning gasoline off the garage floor with the boy nearby, and HRO violations. The district court observed that it could not find that the slap had been intentional because of the disputed or unclear testimony. And we cannot say that the district court's assessment of the other concerns is contrary to logic, particularly considering the supervised nature of father's parenting time and the substantial testimony strongly indicating that father had been misdiagnosed and that he engaged in the questionable behavior while he had not been properly treated for his actual mental-health issues. Although mother's cited incidents suggest a need for caution, they do not compel a finding of endangerment such that we can say that the district court's finding is clearly erroneous and therefore an abuse of its discretion.

We address next mother's contention that the district court improperly omitted findings supported by the evidence. The endangerment element requires an analysis of the

children’s “present environment,” which we have defined as “the last judicially created environment.” *Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997). Mother contends that, by omitting evidence of endangerment established at the evidentiary hearing, the district court misinterpreted “present environment” by requiring the evidence to have occurred more recently than the baseline 2018 custody order. But our review of the record and the district court’s decision informs us that the district court implicitly considered the omitted evidence and found that it failed to rise to the level necessary to show endangerment. Mother is correct that the district court’s order did not reference certain incidents that witnesses discussed at trial. These include father’s sending his daughter the note falsely suggesting his dog had died, telling his daughter that he had given her room to refugees, posting a video with his daughter pointing Nerf guns at a whiteboard referencing “white churches,” refusing to sign the YMCA agreement, and permitting his son to handle an electric hedge trimmer.

We clarify why we are affirming the district court’s decision despite mother’s stated concerns. Our opinion does not call mother’s concerns into question, and the potential implications of the Nerf-gun incident is self-evidently alarming in nature. But again, the district court’s order recognizes that father’s mental health should improve under his proper mental-health diagnosis and exercises caution by requiring that his parenting time remain supervised for a period following the order. In doing so, it implicitly observed that the troubling incidents occurred before changes were made to father’s diagnosis. The district court emphasized, “[Father] has not followed court orders, but his medical providers have reassured the Court that there is no medical reason [he] will not follow future Court orders.”

And it explained, “With the issue of [father] remaining medication compliant resolved, [mother] did not submit evidence sufficient to show [that he] endangers the children’s physical health, emotional health, or their emotional and physical development.”

Our deferential standard of review on close calls in custody matters does not open the door for us to reweigh the evidence or to substitute our judgment for the district court’s. The district court heard, and was convinced by, testimony from medical professionals indicating that father’s troubling behavior will improve with the proper treatment. The district court is in the best position to evaluate the mental-health and behavioral testimony and to assess whether, now that father has been diagnosed with PTSD, his new treatment will mitigate the concerns that led to mother’s motion. We emphasize that the record demonstrates that the district court has continually exercised caution over this matter. It has continued to maintain mother’s temporary sole legal and physical custody over the children to allow for reunification therapy, and it has ordered that father’s parenting time remain supervised. The district court has demonstrated that it remains committed to protecting the children’s safety and making decisions focused on their best interests. And we add that our decision rests only on circumstances as they exist at the time of the district court’s order and that our opinion should not be read to discourage the parties from moving to modify custody if the circumstances change in a manner that undermines the basis of the district court’s decision or this court’s affirmance.

We are not persuaded to a different result by the dissenting opinion, which we believe rests on three errors of fact and two of law. As to fact, first, the dissent emphasizes father’s interference with the individualized education plan; yet the hearing testimony did

not establish that he interfered in any meaningful way but that he frequently expressed his displeasure to the school and mother. Second, because we are restrained to review the issues on appeal based only on the record before us as developed in the district court, it is not our prerogative to base a decision even in part on father's supposed statement about taking the children out of the state—an alleged statement occurring after the district court's order and not part of the district court's assessment. Third, our review on appeal rests on the facts as found by the district court unless they are clearly erroneous, and so our opinion cannot rest on our own characterization of the circumstances, our own recalculation of the evidence, or our own credibility determinations. The factual summary in this opinion therefore differs substantially from the dissent's. As to law, the dissent relies on no case that compelled the district court to find endangerment; the dissent's cited cases simply affirmed district court findings of endangerment when the district court was persuaded by the evidence that endangerment had in fact occurred or reversed the district court's denial of an evidentiary hearing when the moving party alleged a *prima facie* case of endangerment, two circumstances plainly and materially different from those involved in this case. And we disagree that the district court failed as a matter of law to base its decision on present events at the time of the trial. The trial included evidence credited by the district court that father's behavior will improve now that he has been properly diagnosed. It is therefore not at all against logic for the district court to find that the children's *present* environment does not endanger them. In sum, we are satisfied in this difficult case with challenging facts that we have afforded the appropriate deference to the district court.

Affirmed.

REYES, Judge (dissenting)

When conducting a child-endangerment analysis, a district court must (1) base its analysis on the children's *present environment* and (2) address *all relevant evidence* of endangerment. *Hassing v. Lancaster*, 570 N.W.2d 701, 702-04 (Minn. App. 1997). The district court's order in this case failed to do either. Instead, the district court exceeded the temporal limits of its analysis of the children's present environment by relying on the speculative future improvement in respondent Richard Charles Graves's (father) compliance with psychiatric treatment and court orders, rather than taking into account the impact his past pattern of conduct had on the children. Furthermore, the district court disregarded relevant evidence of current and past endangerment, including that father purportedly: locked his daughter out of the house, causing her to run away from home; sent flowers and a card to his daughter while falsely claiming that her dog may have been killed by police; and publicly exposed compromising details about his children online. These examples serve only as an illustrative subset of endangerment evidence presented at trial but omitted from the district court's analysis. Because each of these legal errors in the district court's analysis constitutes an abuse of discretion, I would reverse and remand for the district court to reconsider its endangerment finding and then analyze the remaining custody-modification-order factors. I therefore respectfully dissent.

In November 2018, the district court entered a judgment dissolving the marriage of father and appellant Hillary Mercer Graves (mother) and granting them joint legal and joint physical custody of their daughter, born in September 2008, and their son, born in November 2013. However, following the 2018 custody order, father engaged in a

continuous pattern of “concerning” behavior around mother and the children, leading the district court in 2020 to enter an ex parte order granting mother’s request for temporary sole legal custody and temporary sole physical custody of the children. The district court limited father’s parenting time to supervised visits and required that he undergo psychiatric treatment and take “all prescribed medications . . . to maintain his mental health.”

Father’s ongoing concerning behavior also led mother to obtain a harassment restraining order (HRO) against him, which the district court later extended for 50 years in April 2021. Father violated the HRO a short time later, leading to his arrest and causing the parties’ parenting consultant to suspend father’s parenting time in August 2021. The district court found that the parenting consultant withdrew due to father’s “uncooperative and disruptive conduct.” In November 2021, mother filed a motion with the district court to determine permanent modification of legal custody and physical custody of the children. The district court held an evidentiary hearing, during which both parties testified and called multiple witnesses, including family members, various community members, parenting consultants and assessors, and father’s mental-health professionals. Several witnesses described and corroborated father’s numerous actions that endangered the children. The majority of these incidents were not addressed by the district court’s order.

The district court denied mother’s motion to modify custody permanently after determining that she failed to present evidence showing endangerment.

The district court abused its discretion by failing to base its endangerment analysis on the children’s present environment and by disregarding relevant evidence of endangerment.

We will reverse a district court’s custody determination if it constitutes an abuse of discretion. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). A district court must set forth the basis of its decision in child-custody matters “with a high degree of particularity” to enable meaningful appellate review. *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976) (quotation omitted).

A district court may modify a court-ordered custody arrangement if it finds: (1) a change in circumstances; (2) that modification is necessary to serve the child’s best interests; (3) that the “present environment endangers the child’s physical or emotional health or impairs the child’s emotional development”; and (4) that the benefits of the modification outweigh its detriment. Minn. Stat. § 518.18(d)(iv) (2022); *see also Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017). The district court must evaluate the totality of the children’s circumstances based on the “present environment,” which means the last “judicially approved environment.” *Taflin v. Taflin*, 366 N.W.2d 315, 321 (Minn. App. 1985). In other words, the district court must consider both the current conditions and “[t]he history of [the] child’s care” in the environment established in the last judicial order regarding permanent custody. *Hassing*, 570 N.W.2d at 703. In this case, the district court issued its last judicial order regarding permanent custody in November 2018.

“Endangerment” implies a “significant degree of danger” to the child’s physical or emotional state, *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000) (quotation omitted), *rev. denied* (Minn. Sept. 26, 2000), and is analyzed “based on the particular facts of each case,” *Lilleboe v. Lilleboe*, 453 N.W.2d 721, 724 (Minn. App. 1990). Even harm “purely to emotional development” can suffice for endangerment. *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). The endangerment analysis must include *all relevant evidence* showing significant harm to a child’s well-being, including evidence of conduct that is reasonably anticipated to have an adverse effect on the child’s well-being. *See Hassing*, 570 N.W.2d at 703; *Sharp*, 614 N.W.2d at 263-64. Importantly, a district court may not disregard relevant evidence in an endangerment analysis. *See Hassing*, 570 N.W.2d at 703-04.

Here, the district court misapplied the applicable law in two ways, both of which constitute an abuse of discretion. First, other than one incident in 2019, the district court erroneously analyzed only father’s conduct during supervised parenting time following the 2020 *ex parte* order, rather than considering the proper present environment first established by the November 2018 court custody order. *See Taflin*, 366 N.W.2d at 321. The district court’s order focuses on father’s conduct during his supervised parenting time, noting that “all indications from the notes provided by the parenting time supervisors is that [father’s] behavior during parenting time with his children was appropriate and normal.” This analysis fails to address relevant evidence that the district court is required to consider. *See Hassing*, 570 N.W.2d at 703-04.

The district court further misapplied the law by exceeding the timeframe of the children’s “present environment” when evaluating the risk of endangerment. Instead, the district court erroneously relied upon father’s speculative *future* compliance with psychiatric treatment and court orders. *Hassing*, 570 N.W.2d at 703 (noting that “present environment” encompasses environment “at the time of the modification” and “circumstances in *previous* years” (emphasis added)). The district court focused on father’s possible future compliance with district court orders and parenting-consultant orders, but ignored his conflicting past conduct, which is a relevant and necessary consideration in the endangerment analysis. *Id.* at 703 (courts must also analyze parent’s “history of [the] child’s care” when assessing whether maintaining “the present environment” will endanger child). Indeed, the district court itself found that father “has not followed court orders” during the relevant time period yet failed to address his lack of compliance in its analysis.

Second, the district court erroneously omitted substantial relevant evidence from its endangerment analysis. In its order, the district court identified only one incident that “rose to the level necessary to show endangerment” – that, in December 2019 and during both supervised parenting time and father’s purported compliance with his mental-health treatment, father slapped then-11-year-old daughter in the face so hard that she suffered a bloody nose. However, the district court disregarded that incident by stating that “neither party presented evidence showing any specific instance that rose to the level necessary to show endangerment.”

Although the district court addressed a second allegation that father endangered daughter's school performance because he disagreed and interfered with her individualized education plan (IEP), it erroneously dismissed that claim after noting that father's mental-health issues did not *cause* daughter to need an IEP,¹ without discussing the evidence that father interfered with the IEP *after* it was in place. Further, the district court then clearly erred by reiterating that "[t]here are no allegations of emotional abuse or physical harm that show endangerment" and that "there is no evidence showing [father] would prevent or harm the children's emotional, physical, or intellectual development."

Contrary to the district court's finding, the evidence shows that father did interfere with his daughter's education, specifically, her IEP, even though her IEP had greatly improved her reading and allowed her to be removed from the special-education reading class. See *Kimmel v. Kimmel*, 392 N.W.2d 904, 909 (Minn. App. 1986) (affirming finding that parent's behavior endangered child based in part on "[s]chool records show[ing] that [the child] has progressed significantly since placement with his father"), *rev. denied* (Minn. Oct. 29, 1986).²

As to the third and fourth incidents that were both videotaped by father, one of son chopping a rope with an axe and another of son standing close to burning gasoline, the

¹ Daughter had been placed on an IEP after being diagnosed with learning disorders that impacted her ability to read and write. Nevertheless, the district court's analysis misses the point that father interfered with an IEP that had greatly improved her reading to the point that she no longer required a special-education reading class.

² See also *Omtvedt v. Jansen*, No. A14-0418, 2015 WL 134015, at *5 (Minn. App. Jan. 12, 2015) (parent's interference with child's educational stability endangered minor's "emotional and psychological development"). *Omtvedt* is a nonprecedential opinion and we cite it only for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

district court identified them in its findings of fact but wholly failed to analyze them to determine whether they constituted child endangerment.

Although the district court gave a limited acknowledgment of these four incidents, it completely disregarded the majority of the relevant evidence presented at the evidentiary hearing concerning whether father's conduct endangers the children, including allegations that father:

- Locked daughter out of the house during supervised parenting time, leading her to fear him to the point that she ran away. Mother testified that daughter did not feel safe after the incident and asked mother to pick her up. *See Lilleboe*, 453 N.W.2d at 724 (“Fear of the custodial parent . . . is also a recognized sign of present endangerment”); *Harkema v. Harkema*, 474 N.W.2d 10, 14 (Minn. App. 1991) (concluding district court abused its discretion by determining that affidavits expressing children's fear of custodial parent did not indicate possibility of endangerment). Since this incident, now-15-year-old daughter has refused parenting time with father. *See Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991) (holding that “[t]he choice of an older teenage child is an overwhelming consideration in [] deciding whether [she] is endangered by preserving the custodial placement [she] opposes”).
- Created and posted videos of his then-six-year-old son picking up an electric hedge trimmer. Both mother and father's brother testified that they were concerned about the son's safety based on this video and the other two videotaped incidents involving son.

- Engaged in such erratic behavior at a YMCA that the CEO asked father to sign a behavior agreement. Father responded by signing the agreement “UR Nuts.” Father also sent excessive communications to YMCA staff, resulting in the YMCA removing son from its summer camp. Mother testified that son loved the YMCA camp and was “tearful,” “confused,” “worried,” and “appeared really sad” after being removed from the program.
- Sent flowers and a card to his daughter that falsely told her that her beloved dog “may have been killed by the Northfield police.” Mother testified that daughter was dismayed and confused by the flowers and card.
- Sent a text message to his daughter telling her that he was giving her room to a refugee but that she could still sneak into the house “through an unlocked window.” Mother testified that, in response to the text, daughter was “worried about her stuff, the belongings she had [in the room],” and “confus[ed] about why he would do [that].”
- Used money set aside in a joint account intended for the children’s benefit to finance his personal expenses, including to obtain bail money. *See Taflin*, 366 N.W.2d at 320 (finding sufficient showing of emotional endangerment when, among other factors, custodial parent had used child-support money for their own needs).
- Publicly exposed details about the children online and posted content that potentially compromised their safety. The evidence showed that father posted excessive amounts of personal information, including videos of son and daughter, their names, and addresses, on social media. One video showed father with daughter

shooting a nerf gun at a whiteboard labeled either “white churches” or “white people’s churches,” as father narrated that they “had plans” and “definitely have a target.”

- Made serious false allegations of child abuse against mother. *See Sharp*, 614 N.W.2d at 263-64 (concluding that mother’s false reports of abuse was probative evidence of endangerment).
- Stated that, if he obtains joint custody of the children, he will be “changing his name and moving himself and [his] children to a location where they will not be found, notwithstanding that daughter has explicitly stated her fear of father and does not want any contact with him. This disturbing statement was corroborated by both mother and father’s own father. *See Johnson-Smolak v. Fink*, 703 N.W.2d 588, 591 (Minn. App. 2005) (endangerment can include likely future harm to child’s physical or emotional well-being); *see also Sharp*, 614 N.W.2d at 263-264.

Evidence at the hearing also demonstrated that, in addition to father’s past pattern of disturbing conduct, at least some of father’s concerning behavior will be ongoing – a relevant circumstance which the district court did not address. *See Sharp*, 614 N.W.2d at 263-64 (noting that endangerment analysis properly includes evidence of conduct *reasonably anticipated* to adversely impact children’s well-being); *Amarreh v. Amarreh*, 918 N.W.2d 228, 231-32 (Minn. App. 2018) (concluding that district court abused its discretion by dismissing father’s endangerment-based custody-modification motion without evidentiary hearing when father alleged that mother substantially interfered with father’s relationship with his children). Further, the district court noted that the evidence

shows that father has shown an extensive history of disobeying court orders, including the HRO mother obtained against him. Several parenting consultants also provided testimony lamenting father's uncooperative behavior and noncompliance with their orders. The district court further found that the testimony showed that it was father, not mother, who was "uncooperative and disruptive" to the point that the parties have been unable to keep a consistent parenting consultant. *See Zander v. Zander*, 720 N.W.2d 360 (Minn. App. 2006) (stating that parents' inability to "communicate and cooperate" is relevant in custody determinations), *rev. denied* (Minn. Nov. 14, 2006).

Furthermore, the district court's order reflects that it did not implicitly consider this probative evidence of endangerment as suggested by the majority. The district court explicitly stated that "[t]here are *no allegations* of emotional abuse or physical harm that show endangerment." (Emphasis added). This finding is refuted by the record. Not only are there allegations that father's conduct endangered the children, but many of those incidents are corroborated by witness testimony or independent evidence. The district court's omission of any reference to the incidents described above therefore constitutes reversible error. *See Sharp*, 614 N.W.2d at 263-64.

Aside from the district court's failure to reconcile vast amounts of evidence demonstrating father's endangerment of the children, it also completely omits a discussion and analysis of the *harm to the children*. *See* Minn. Stat. § 518.18(d) (2022) (requiring district court to consider "best interests of the child[ren]" when making custody modification determination). Instead, the district court's order erroneously focuses primarily on father's potential continued future compliance with psychiatric treatment,

medication, and court and parenting consultant orders. The district court therefore misapplied the law by disregarding relevant evidence of endangerment to the children. *See Hassing*, 570 N.W.2d at 702.

While a district court must determine whether a party's conduct rises to the level of endangerment, its discretion is not unlimited. *See Harkema*, 474 N.W.2d at 14; *Taflin*, 366 N.W.2d at 321 (concluding district court abused its discretion by denying motion to modify custody without evidentiary hearing when father's affidavit made prima facie showing of endangerment); *Dabill v. Dabill*, 514 N.W.2d 590, 597 (Minn. App. 1994) (reversing district court's child-custody modification when evidence did not show endangerment). A district court abuses its discretion when the record reflects that it erred by disregarding relevant evidence of endangerment to the children and failing to address a parent's history of care. *See Rosenfeld*, 249 N.W.2d at 171 (requiring "basis for the court's decision be set forth with a high degree of particularity" to enable meaningful appellate review). Here, the district court's order disregarded several disconcerting examples of endangerment and explicitly stated that, beyond one instance of child endangerment, "[t]here are no allegations of emotional abuse or physical harm that show endangerment." The district court further erred by relying on father's projected improvement rather than his past pattern of conduct to evaluate the children's "present environment." I would therefore reverse and remand for the district court to reconsider its endangerment finding and then analyze the remaining custody-modification-order factors.