

*This opinion is nonprecedential except as provided by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
A23-1665**

In re the Marriage of:

Adetola Omolola Allen, petitioner,
Appellant,

vs.

Temitope Oluwaseyi Allen,
Respondent.

**Filed July 15, 2024
Affirmed
Bjorkman, Judge**

Washington County District Court
File No. 82-FA-16-3337

Jennifer J. Grembowski, Shaina N. Praska, Rogness & Field, P.A., Oakdale, Minnesota
(for appellant)

Temitope Oluwaseyi Allen, Cottage Grove, Minnesota (pro se respondent)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-mother challenges the denial of her motions to modify legal custody and child support. Because we discern no abuse of discretion by the district court, we affirm.

FACTS

Appellant-mother Adetola Omolola Allen and respondent-father Temitope Oluwaseyi Allen were married in 2010 and have two children, born in 2013 and 2014. The marriage was dissolved in September 2018. The dissolution judgment (judgment) awarded the parties joint legal and physical custody of the children; established a parenting-time schedule under which the children primarily resided with mother, and father had the children every Wednesday night, alternating weekends, and alternating holidays; and imposed on father a total monthly child-support obligation of \$1,338. The judgment noted past domestic abuse between the parties and the custody evaluator's recommendation that, despite the abuse and the children's exposure to it, the parties should have joint legal and physical custody.

Since the judgment was entered, the parties have engaged in extensive litigation, much of it at mother's initiative. Within two months of the judgment, mother moved to amend numerous findings of fact and legal conclusions to, in effect, give her sole legal and physical custody of the children. The next day, father also moved to amend certain portions of the judgment that would decrease his child-support obligation and increase his parenting time as the children aged. One month later, mother obtained an ex parte order for protection (OFP) against father and, following a January 2019 evidentiary hearing, the district court issued a two-year OFP in favor of mother and the children but did not alter custody. The OFP was amended a few months later to allow father unsupervised parenting time with the children.

In July 2019, the district court entered an amended judgment that did not alter the provisions related to parenting time, child support, or custody. Mother appealed the amended judgment, and this court affirmed. *Allen v. Allen*, No. A19-1367 (Minn. App. June 15, 2020), *rev. denied* (Minn. Aug. 25, 2020).

In January 2021, mother requested an extension of the OFP, citing a 2018 child-protective services maltreatment finding, a more recent incident where father allegedly used force to remove daughter from mother's vehicle, and the fact that daughter had stopped attending parenting time with father. The district court denied the OFP extension. That same month, father moved for equal parenting time; the district court denied his motion but ordered that father's weekend parenting time be increased to begin on Thursday instead of Friday. In May, mother obtained another ex parte OFP based on allegations of abuse against the children. The district court appointed a guardian ad litem (GAL) and set the matter on for an evidentiary hearing. On May 27, 2022, following the hearing, the district court denied mother's petition and vacated the ex parte OFP.

While the most recent OFP proceeding was pending, mother again moved the district court to award her sole legal custody of the children and restrict father's parenting time based on endangerment, and to modify child support. In support of her motion, mother focused on father's history of domestic abuse against her and the children and alleged that the abuse escalated since the 2018 dissolution. Father opposed the motion but acknowledged that mother made a prima facie showing of a change in circumstances to warrant an evidentiary hearing. The district court agreed that mother made this showing

based on evidence that father “assaulted the parties’ child, and . . . has not exercised parenting time.” And the court suspended father’s parenting time pending the hearing.

Following a three-day evidentiary hearing, the district court denied mother’s motions. In a detailed and thorough order, the district court determined, among other things, that mother had not demonstrated a change in circumstances. The district court found that “the parties’ conflict is not a new circumstance but is merely a continuation of ongoing problems.” And it found that because daughter has not seen father since December 2020 and son has not seen him since December 2021, father is not part of and therefore cannot endanger their present environment. Mother moved to amend the district court’s order, which the district court denied in all material respects.

Mother appeals.¹

DECISION

I. The district court did not abuse its discretion by denying mother’s motion to modify legal custody.

Legal custody is “the right to determine the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(a) (2022). It is distinct from physical custody, which involves “the routine daily care and control and the residence” of the children, which is not at issue in this appeal. *Id.*, subd. 3(c) (2022). In some circumstances, Minnesota law creates a rebuttable presumption that, if requested by

¹ Father did not file an appellate brief, instead filing a letter stating that he does not agree with mother’s arguments on appeal. In a February 26, 2024 special term order, this court ordered that the appeal will be determined on its merits pursuant to Minn. R. Civ. App. P. 142.03.

a parent, joint legal custody is in a child’s best interests. Minn. Stat. § 518.17, subd. 1(b)(9) (2022).

A district court has broad discretion to provide for the custody of the parties’ children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *see also Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (noting that “a district court needs great leeway in making a custody decision that serves a child’s best interests, in light of each child’s unique family circumstance”). This discretion extends to a district court’s decision whether to modify legal custody. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Accordingly, our review “is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law.” *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). In undertaking that review, we defer “to the district court’s opportunity to evaluate witness credibility” and will reverse only if we are “left with the definite and firm conviction that a mistake has been made.” *Goldman*, 748 N.W.2d at 284 (quotations omitted); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous).

Mother argues that the district court abused its discretion by denying her motion to modify legal custody based on child endangerment. To prevail on such a motion, a party must establish that (1) the circumstances of the child or custodian have changed since the prior order; (2) modification would serve the child’s best interests; (3) the child’s present environment endangers their physical or emotional health or development; and (4) the benefits of the change outweigh the detriments. Minn. Stat. § 518.18(d)(iv) (2022). Under this statute, the “prior order” is “either an original order granting custody or a subsequent

order modifying custody, and does not include orders that modify parenting time only.” *Spanier v. Spanier*, 852 N.W.2d 284, 289 (Minn. App. 2014). The change in circumstances since the prior order must be “significant.” *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981). And “there must be a real change and not a continuation of ongoing problems.” *Spanier*, 852 N.W.2d at 288 (quotation omitted). If a party seeking custody modification fails to establish any one of these four elements, courts need not address the remaining elements. *See Goldman*, 748 N.W.2d at 285 (concluding that erroneous reasoning as to one element was harmless because modification motion failed on others). That is the situation here.

Mother asserts that the relevant time frame for assessing whether circumstances have changed is the period between September 14, 2018, when the original dissolution judgment was entered, and December 19, 2022, when the evidentiary hearing on her motion took place. The district court agreed, as do we. But mother contends that the district court clearly erred by finding that the circumstances did not change during that period of time. She specifically points to changes in father’s exercise of parenting time and the children’s willingness to engage with him. This argument is unavailing.

The record demonstrates that the domestic violence underlying the purported changed circumstances—including violence directed toward and observed by the children—has occurred since at least 2015, three years before the dissolution judgment. Indeed, the district court appointed a custody evaluator in that proceeding to assess this and other aspects of the parties’ circumstances. The custody evaluator opined that joint legal and physical custody served the children’s best interests despite the domestic violence

within the family. Since the 2018 dissolution, mother has repeatedly raised the issue of domestic violence in motions to amend custody and in separate OFP proceedings. In short, the record supports the district court's finding that "the current allegations . . . are a continuation of ongoing problems or conditions or are problems that were resolved by prior court orders."

And while mother argues that the district court erred by failing to make change-of-circumstance findings dating back to September 2018 and abused its discretion by failing to make factual findings on the other custody-modification elements, the district court was not required to make such findings. The district court made findings regarding domestic violence in the judgment and in numerous subsequent orders. In other words, the district court has repeatedly considered and made findings regarding evidence mother now relies on to demonstrate "changed circumstances." The district court did not need to reiterate its previous factual determinations in order to find that mother's current allegations constitute ongoing problems or problems the court addressed in prior orders. Because mother did not meet her burden of showing changed circumstances, we need not consider the other custody-modification elements. *Cf. Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (ruling, in the context of a motion to modify maintenance, that a movant's failure to show the statutorily required change of circumstances was fatal to the motion, and hence that "it [was] not necessary for the trial court to make findings regarding any other factors addressed in the statute").

II. The district court did not abuse its discretion by denying mother’s motion to modify child support.

A district court may modify child support if there has been a substantial change in circumstances that makes the terms of the current support order unreasonable or unfair. Minn. Stat. § 518A.39, subd. 2 (2022). A party seeking to modify child support “has the burden of demonstrating both a substantial change in circumstances and the unfairness and unreasonableness of the order because of the change.” *Rose v. Rose*, 765 N.W.2d 142, 145 (Minn. App. 2009). It is presumed that a substantial change in circumstances has occurred, and the current order is unreasonable or unfair if “the application of the child support guidelines in [Minn. Stat. § 518A.35 (2022)], to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$75 per month higher or lower than the current support order.” Minn. Stat. § 518A.39, subd. 2(b)(1); *see also Palmquist v. Devens*, 907 N.W.2d 204, 206 (Minn. App. 2017). We review a district court’s decision whether to modify child support for an abuse of discretion. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017).

Mother contends that the district court erred by failing to make more specific findings on each party’s income and the insurance and other costs associated with caring for the children. She argues that she provided evidence that supports increasing father’s monthly support obligation from \$1,469 to \$1,878 and that the district court clearly erred by declining to do so. Mother also asserts that the district court’s legal analysis is flawed because it considered the changes to father’s “net” child-support obligation, which includes the \$136 father pays to cover medical, dental, and vision insurance for the children, rather

than the “basic” child-support obligation as required by Minn. Stat. § 518A.39, subd. 2(b)(1). Neither argument persuades us to reverse.

Relying solely on mother’s assessment of the parties’ current respective incomes (which the parties disputed), the court found that “[f]ather’s total support obligation would rise only slightly to \$1,584.00 per month.”² Under Minn. Stat. § 518A.39, subd. 2(b)(1), mother is required to demonstrate a change of at least 20% of the basic support obligation for child support to be modified. But because \$1,584 is not 20% higher than the current support order of \$1,469, the district court determined that the statutory presumption of changed circumstances under Minn. Stat. § 518A.39, subd. 2(b), did not apply. The district court also ruled that mother has otherwise failed to meet her burden of demonstrating that the current support order is unreasonable or unfair. And any error occasioned by the district court’s analysis of father’s net child-support obligation rather than his basic obligation is harmless. Minn. R. Civ. P. 61 (requiring reviewing courts to disregard harmless error); *see also Sinda v. Sinda*, 949 N.W.2d 170, 176-77 (Minn. App. 2020) (stating that the district court improperly calculated wife’s income, but the error was harmless because husband still could not prove he was prejudiced by his support obligation to wife). Subtracting the \$136 in insurance costs from the income numbers mother supplied does not result in a 20% change.

² This calculation is based on father not having overnights with the children. The district court acknowledged this situation could change—and father’s support obligation could decrease—following the court-authorized reunification therapy.

Based on our careful review of the record, we discern no error in the district court's analysis. Because mother did not demonstrate that the current support order is unreasonable or unfair, the district court did not abuse its discretion by declining to modify father's child-support obligation.

Affirmed.