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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0591
A24-0752**

In re the matter of:

Tiffany Dust f/k/a Tiffany Dust-Chlebik, petitioner,
Respondent,

vs.

Beau Kevin Wayne f/k/a Kevin Chlebik,
Appellant.

**Filed November 25, 2024
Affirmed in part and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-FA-15-1927

Tiffany Dust, Minnetonka, Minnesota (pro se respondent)

Beau K. Wayne, Chanhassen, Minnesota (pro se appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In these consolidated appeals, appellant-father challenges the district court's denial of his endangerment-based motion to modify custody and the district court's sua sponte order that father's parenting time be supervised until he satisfies certain conditions.

Because the district court did not err in denying father’s motion for custody modification, we affirm in part. But because the district court abused its discretion in modifying father’s parenting time, we remand for a hearing on that issue.

FACTS

Appellant Beau Kevin Wayne (father) and respondent Tiffany Dust (mother) were married in 2012 and are the parents of one child, DC, who was born that year. In 2015, father and mother divorced (the family-law case). Mother was awarded sole legal and sole physical custody of DC. DC has been diagnosed with several food allergies and has been treated at the same clinic for several years. As of March 7, 2023, father had court-ordered parenting time on Wednesday nights through Thursday mornings, as well as every other weekend from Friday evenings through Monday mornings. As of September 25, 2023, father also had parenting time on select holidays.

Father challenges two district court decisions regarding custody and parenting time. In file A24-0752, father appeals the district court’s March 8, 2024 order denying his endangerment-based motion to modify custody. In file A24-0591, father appeals the district court’s April 9, 2024 order requiring that father’s parenting time be supervised pending his compliance with certain conditions.

A24-0752

On January 23, 2024, father moved the district court to modify custody of DC, requesting joint legal and joint physical custody. Father requested a custody change in anticipation of an upcoming allergy appointment for DC, asserting that “the only way to accept [father’s] input” in DC’s allergy care “is to either have a release of information on

file, or a court order stating joint legal custody.” Father alleged that DC is in danger in mother’s care and that “[w]ithout court intervention [DC] is at both physical and emotional risk relating to the foods he is able to eat.” On February 12, 2024, the district court held an initial hearing on father’s motion, but it did not receive evidence at that hearing.¹

The district court denied father’s motion, reasoning that his endangerment claims were “too remote and hypothetical” and were based on mother “following the recommendations of the allergy doctors that [DC] has been seeing for many years.” The court noted that father’s concerns were raised with DC’s current allergy providers and that DC’s allergy doctors continue to test and update their diagnoses. The court

recognize[d] that [f]ather has difficulty communicating with the minor child’s current allergy care provider, but fundamentally that state of affairs is not something that can be repaired by [c]ourt order[—]and the [c]ourt also note[d] that taking the minor child to other medical care providers in order to simply dodge that issue would be a violation of the standing custody labels in this case.

A24-0591

On January 30, 2024, mother petitioned the district court for an order for protection (OFP) against father on DC’s behalf and a harassment restraining order (HRO) against father on her own behalf. That day, the district court granted an ex parte OFP and an ex

¹ A referee of the Fourth Judicial District Court presided over the hearing. Referees in the family court division “hear and report all matters within the jurisdiction of the district court judge, family court division, as may be directed to the referee by said judge,” and “recommend findings of fact, conclusions of law, temporary and interim orders, and final orders for judgment.” Minn. Stat. § 484.65, subd. 8 (2022). “All recommended orders and findings of a referee shall be subject to confirmation by said district court judge.” *Id.*, subd. 9 (2022).

parte HRO. According to the district court, “[t]he core allegations involving [DC] were an incident where [f]ather told [DC] he would ‘snap [DC’s] neck like a twig’ and another incident where [f]ather snapped a belt at [DC], though no contact was made.” The district court appointed a guardian ad litem in the OFP matter.

The district court held evidentiary hearings on mother’s OFP and HRO petitions, denied those petitions, and vacated the ex parte OFP and ex parte HRO. The district court denied mother’s OFP petition because she “did not prove by a preponderance of the evidence that [father] committed domestic abuse.” However, the district court issued an administrative order to address issues raised in the HRO and OFP cases, stating that they “were best suited for being addressed here in the parties’ family court file.” But the district court did not hold a hearing in the parties’ family-law case.² Instead, the district court relied on the guardian ad litem’s report in the OFP case, as well as the evidence presented at the OFP and HRO hearings, and ordered that father’s parenting time with DC be supervised on a temporary basis, that father complete a parenting course, that DC continue individual therapy, that DC and father begin family therapy before resuming father’s unsupervised parenting time, and that both mother and father sign a safe-harbor agreement for these therapists.

Father filed a notice of appeal in files A24-0752 and A24-0591, and we consolidated the appeals. Mother did not file a brief in either of the consolidated appeals.³

² The record indicates that the “matter came administratively” before the district court on 4/8/2024 and that “[n]o appearances were made.”

³ We ordered the consolidated appeals to be determined on the merits under Minn. R. Civ. App. P. 142.03.

DECISION

I.

We first address the appeal in file A24-0752, in which father challenges the district court's denial, without an evidentiary hearing, of father's endangerment-based motion to modify custody.

Under Minnesota law, a court shall not modify a prior custody order

unless it finds, upon the basis of facts . . . that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child.

Minn. Stat. § 518.18(d) (2022). The court shall retain the arrangement from the prior custody order unless, for example, “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.” *Id.* (d)(iv).

To obtain an evidentiary hearing on a motion to modify custody, the moving party must make a prima facie showing that there has been:

(1) a change in the circumstances of the child or custodian; (2) that a modification would serve the best interests of the child; (3) that the child’s present environment endangers [the child’s] physical or emotional health or emotional development; and (4) that the harm to the child likely to be caused by the change of environment is outweighed by the advantage of change.

Geibe v. Geibe, 571 N.W.2d 774, 778 (Minn. App. 1997).

The moving party must submit an affidavit setting forth facts supporting the requested modification. Minn. Stat. § 518.185 (2022). “[T]he court must accept the facts in the moving party’s affidavits as true, and the allegations do not need independent substantiation.” *Geibe*, 571 N.W.2d at 777; *see Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022) (stating, in a custody dispute, that a party moving to modify custody makes a prima facie case “by alleging facts that, if true, would provide sufficient grounds for modification”). “While the district court must take the moving party’s allegations as true and disregard contrary allegations by others, the district court may consider allegations by others that . . . may put the moving party’s allegations in an appropriate context.” *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007).

A movant does not allege a prima facie case if the allegations are merely conclusory, are “too vague to support a finding of endangerment,” or are “devoid of allegations supported by any specific, credible evidence.” *Id.* (quotations omitted); *see Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (requiring the district court, when addressing a motion to intervene, to accept the movant’s allegations unless they are “frivolous on their face”). “Whether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion.” *Szarzynski*, 732 N.W.2d at 292.

When we review an order that denies a custody-modification motion without an evidentiary hearing, we use a three-part process.

First, we review de novo whether the district court properly treated the allegations in the moving party’s affidavits as true, disregarded the contrary allegations in the nonmoving party’s affidavits, and considered only the explanatory allegations in the nonmoving party’s affidavits. Second, we review for an

abuse of discretion the district court's determination as to the existence of a prima facie case for the modification or restriction. Finally, we review de novo whether the district court properly determined the need for an evidentiary hearing.

Boland v. Murtha, 800 N.W.2d 179, 185 (Minn. App. 2011). Father challenges the district court's decisions at each step of that process. Father also complains that the district court erred by not appointing a guardian ad litem to represent the interests of the minor child. We address each issue in turn.

A.

Father contends that the district court did not treat his allegations as true and erroneously relied on contrary allegations. Again, we review this issue de novo. *Id.* at 184.

Father argues that the district court did not treat the following allegations as true: DC has never gone to a dentist, mother has denied father parenting time in accordance with the court-approved holiday schedule, mother misled the Washburn Center for Children regarding DC's PTSD diagnosis, DC was refused food in the school lunch line due to his allergy plan, and mother has failed to reintroduce foods into DC's diet at the recommendation of DC's allergist. Father also argues that the district court improperly relied upon mother's contrary allegations in determining that father could have a "two-way conversation" with DC's allergy clinic, questioning father's "statements regarding anything resembling a medical opinion," and repeatedly asking about allergic reactions other than anaphylaxis.

In its order denying father's motion to modify custody, the district court acknowledged that it "must take the moving party's allegations as true and disregard any

contrary allegations, instead considering the non-moving party's claims only to the extent that they either explain or contextualize the moving party's allegations." The order specifically notes father's assertion that mother refuses to share medical information with him and that she has not reintroduced foods into DC's diet, despite his allergist's recommendation.

Although the district court acknowledged several of mother's arguments, those arguments provided context for father's allegations. For example, the court noted mother's testimony that DC has been going to the same allergy specialist office for several years, that the doctor overseeing DC's allergy care has seen the report from the allergist father took DC to see, and that mother's position was to follow the recommendations of the providers DC has seen for years.

In sum, the record indicates the district court neither failed to treat father's allegations as true nor erroneously relied on contrary allegations in denying father's motion for modification of custody.

B.

Father contends that the district court erred by ruling that he did not establish a prima facie case of endangerment. We review this issue for an abuse of discretion. *See id.* at 185.

"Endangerment requires a showing of a significant degree of danger" *Geibe*, 571 N.W.2d at 778 (quotation omitted). "A finding of present endangerment must be based on the particular facts of each case." *Lilleboe v. Lilleboe*, 453 N.W.2d 721, 724 (Minn. App. 1990); *see Kimmel v. Kimmel*, 392 N.W.2d 904, 908 (Minn. App. 1986) (affirming

district court's endangerment finding and custody modification because "findings document a history of physical abuse, [the child's] poor school performance, behavioral problems, and lack of personal hygiene"), *rev. denied* (Minn. Oct. 29, 1986); *Clark v. Bullard*, 396 N.W.2d 41, 44-45 (Minn. App. 1986) (upholding district court's endangerment-based modification of custody because the child was harmed by denial of visitation with his father for six months and by being transferred between schools during the first part of the year); *Smith v. Smith*, 508 N.W.2d 222, 227 (Minn. App. 1993) (ruling that the mother's act of examining a fallen clock before examining the well-being of the child did not constitute endangerment).

"Normally . . . the conduct or circumstance of a parent . . . does not establish danger to the welfare of children without evidence of actual adverse effects." *Dabill v. Dabill*, 514 N.W.2d 590, 595-96 (Minn. App. 1994). "[T]o establish danger to a child's welfare, a parent's conduct must be shown to result in an actual adverse effect on the child." *In re Weber*, 653 N.W.2d 804, 811 (Minn. App. 2002).

The concept of "endangerment" is unusually imprecise. In fact, endangerment is not a quantitative but a qualitative standard. Any threat of harm to a child might arguably constitute endangerment. On the other hand, we agree . . . that according to the usage of this concept in the context of child custody, the legislature likely intended to demand a showing of a significant degree of danger.

Ross v. Ross, 477 N.W.2d 753, 756 (Minn. App. 1991).

Father argues that he alleged a prima facie case of endangerment because he asserted "that without court intervention [DC] is at both physical and emotional risk relating to the foods he is able to eat." Father also asserted that during periods when DC spent no time

with him, DC's "list of allergens grew to include so many foods on the list that a healthy diet was simply not possible." He asserted that DC's growth was stunted because of DC's allergy list and that DC's height and weight were at the median on growth charts as a result of father providing him with a healthy diet. Father claimed that "[DC]'s lengthy allergy list perfectly illustrates the danger of [mother] having total authority" and that "[t]he less time [DC] is with [father], the more time [DC] eats a substandard diet that has over the years excluded wheat, soy, egg, tree nuts, shellfish, apples, bananas, carrots, chocolate, and more."

The district court concluded that father's "claims of endangerment here are too remote and hypothetical to support [f]ather's motion," reasoning that "[t]he core fact underlying [f]ather's claims is that [m]other is following the recommendations of the allergy doctors that the minor child has been seeing for many years." As the district court noted, father's own evidence demonstrated that DC's current allergist re-evaluates and updates DC's allergy list, and mother testified that the current allergist is aware of father's concerns and of the report from the competing allergist.

In sum, father's assertions raised a difference of medical opinion regarding the child's allergy treatment. But father's competing medical opinion was not ignored by mother—she shared it with the child's physician. And there is no specific, credible evidence that the child is endangered under his current physician's care. *See Axford v. Axford*, 402 N.W.2d 143, 145 (Minn. App. 1987) (stating that the district court may deny an evidentiary hearing if an affidavit is "devoid of allegations supported by any specific,

credible evidence”). Father simply has not alleged a significant degree of danger, which is necessary to make a prima facie case of endangerment.

On this record, the district court did not abuse its discretion in determining that father did not make a prima facie case of endangerment.

C.

Father contends that the district court abused its discretion by denying his motion without an evidentiary hearing. The issue of “[w]hether a party makes a prima facie case to modify custody is dispositive of whether an evidentiary hearing will occur on the motion.” *Szarzynski*, 732 N.W.2d at 292. Because the court did not abuse its discretion in ruling that father failed to establish a prima facie case of endangerment, the district court did not err by determining that there was no need for an evidentiary hearing.

D.

Father contends that the district court erred by not appointing a guardian ad litem to represent the interests of the minor child in his custody-modification proceeding. Father argues that the district court should have appointed a guardian ad litem to “investigate father’s allegations of mother’s neglect.” Father cites the district court’s January 30, 2024 finding that both parties were “making emergency filings alleging harassment, abuse, child endangerment, and failure to follow court orders.” But father did not raise this issue in his motion for custody modification or at the February 12 hearing on that motion, even though the district court stated, “With respect to the order for protection that is on behalf of your child, I will be issuing an order for a guardian” and appointed a guardian ad litem in the OFP case.

“A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the [district] court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Because father did not request appointment of a guardian ad litem in the custody-modification proceeding in district court, we do not address that issue.

II.

We next address father’s appeal in file A24-0591, in which he challenges the district court’s administrative order modifying his court-ordered parenting time in the parties’ family-law case. Father contends that (1) the district court changed his parenting time sua sponte, misapplied the law, and abused its discretion, (2) the district court prejudiced his rights when it did not return to the unsupervised parenting time provided for in the parties’ family-law case, (3) the district court’s order was barred by res judicata, and (4) the reunification-therapy issue was barred by collateral estoppel.

“The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of that discretion.” *Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009). “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 (quotation omitted).

Parenting time determinations are governed by Minn. Stat. § 518.175 (2022), which provides:

In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court

shall, upon the request of either parent, grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.

Minn. Stat. § 518.175, subd. 1(a). Minn. Stat. § 518.17 (2022) provides that, in evaluating the best interests of the child for parenting-time purposes, the district court “must consider and evaluate all relevant factors” including twelve statutory factors:

(1) a child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child’s needs and development;

(2) any special medical, mental health, developmental disability, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

(4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents’ or either parent’s household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs;

(5) any physical, mental, or chemical health issue of a parent that affects the child’s safety or developmental needs;

(6) the history and nature of each parent’s participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child’s ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child’s well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child’s life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a). In addition, “[t]he court must make detailed findings on each of the factors . . . based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time.” *Id.*, subd. 1(b)(1).

The district court cited Minn. Stat. § 518.175 and Minn. Stat. § 518.131 in its administrative order modifying father's parenting time and stated that “[f]ather reverting back to unsupervised parenting time would endanger the child's physical/emotional health or impair the child's emotional development.” See Minn. Stat. §§ 518.175, subd. 1(a) (generally governing parenting time “during the minority of the child”), .131, subds. 1, 5 (governing temporary orders in “a proceeding brought for custody, dissolution, or legal separation” and providing that such orders may remain in effect until “entry of a final decree of dissolution or legal separation”) (2022). In doing so, the district court heavily relied on the guardian ad litem's report in the OFP proceeding.

Although the district court denied mother's requests for an OFP and an HRO, it noted that the issues raised in those proceedings “were best suited for being addressed . . . in the parties' family court file.” Then, the district court modified father's parenting time in the family-law case without holding a hearing or otherwise providing

father an opportunity to address the modification. Father complains that “[t]he district court made no reference to any authority . . . permitting the district court [to] change parenting time on its own motion.”

The statute that governs modification of a parenting-time order states: “If modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time, if the modification would not change the child’s primary residence.” Minn. Stat. § 518.175, subd. 5(b). “Consideration of a child’s best interest includes a child’s changing developmental needs.” *Id.* Although the statute does not expressly authorize a district court to raise the issue of modification of parenting time sua sponte, we discern no obvious reason why a judge who is familiar with a family’s current circumstances as a result of presiding over a related hearing cannot raise the possibility of modification, so long as the district court provides notice and an opportunity to be heard. We note that the supreme court has allowed the district court to raise issues on its own in other contexts, so long as it provides notice and an opportunity to be heard. *See Weitzel v. State*, 883 N.W.2d 553, 554 (Minn. 2016) (providing that if the state fails to raise certain time limits as an affirmative defense in a postconviction proceeding, the postconviction court has discretion to raise those limits on its own motion, but “the postconviction court must give the parties notice and afford them an opportunity to be heard”).

Thus, we cannot say that the district court in this case erred by raising the parenting-time issue on its own motion. However, the district court should not have modified the order granting father unsupervised parenting-time in the parties’ family-law case without

first giving father an opportunity to be heard in that case. And, for the reason that follows, the OFP hearing regarding the child was not an adequate substitute.

Although the district court relied on evidence presented at the OFP and HRO hearings and father participated in those hearings, the focus on the child's best interests in those contexts was much more limited than it would have been at a hearing to determine parenting time in the family-law context. Indeed, "[c]ompliance with the [statutory] requirements for particularized 'best interests' findings is not required when making temporary custody determinations under the Domestic Abuse Act."⁴ *Baker v. Baker*, 494 N.W.2d 282, 282-83 (Minn. 1992); see Minn. Stat. § 518B.01, subd. 6(a)(4) (2022) (providing that an OFP may establish "temporary parenting time" and may "condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of" children).

As the *Baker* court noted, hearings in an OFP proceeding are generally expedited and such expedited proceedings provide

wholly inadequate time for the parties to prepare testimony and other evidence in support of a best interests analysis, or for county personnel to conduct custody evaluations to assist the court.

⁴Although *Baker* has been superseded by statute, the statutory changes are not inconsistent with *Baker*. See Minn. Stat. § 518B.01, subd. 6(a)(4) (stating that "the court may consider particular best interest factors that are found to be relevant" and "[f]indings under section 257.025, 518.17, or 518.175 are not required with respect to the particular best interest factors not considered by the court") (2022).

494 N.W.2d at 290. Thus, the supreme court held that “[b]ecause the application of a . . . ‘best interests’ analysis [requirement] is impossible to execute in the context of a hearing on a domestic abuse order for protection, . . . it does not apply here.”⁵ *Id.*

Again, when modifying parenting time in the context of a family-law proceeding, the district court must analyze all of the statutory best-interests factors; but the district court is not required to do so when temporarily modifying child custody or parenting time in the context of an OFP proceeding.⁶ *See Baker*, 494 N.W.2d at 289-90. Although an allegation of domestic violence towards a child is highly relevant when conducting a best-interests analysis in a family-law context, all of the best-interests factors must be considered, especially in a case in which the district court *did not find* domestic abuse.

To be clear, the district court acted within its discretion in concluding that although it had not found domestic abuse justifying an OFP on DC’s behalf, it would be appropriate to further address the issues raised at the OFP and HRO hearings in the context of the parties’ family-law case. But we are not aware of any authority that allowed the district court to modify the father’s parenting time in the family-law case without first giving the father an opportunity to be heard in that context. The district court abused its discretion by doing so.

⁵ Although the OFP statute has been modified since *Baker* was decided, the current version continues to require expedited hearings. *See, e.g.*, Minn. Stat. § 518B.01, subds. 5(a) (requiring “a hearing which shall be held not later than 14 days”), (c) (stating, “a hearing must be held within seven days”), (d) (stating, “the hearing shall be held within ten days”), (e) (“Unless otherwise agreed by the parties and approved by the court, [a] continuance shall be for no more than five days.”) (2022).

⁶ For that reason, the district court’s reliance on the guardian ad litem’s report in the OFP proceeding to modify father’s parenting-time order in the family-law case was problematic.

In conclusion, because the district court did not err in denying father’s request for custody modification, we affirm in part. But we remand for a hearing in the parties’ family-law case—with notice and an opportunity to be heard—at which the district court shall reconsider its parenting-time modification after analyzing the best-interest factors.⁷ The district court shall promptly schedule a hearing on remand for this purpose, without the need for a motion from either party. The hearing on remand will be limited to the parenting-time issue in this appeal, unless the district court authorizes consideration of additional issues under the authorities governing motion practice in the family-law context. The district court retains discretion to appoint a guardian ad litem in the proceeding on remand.

Finally, because the parenting-time determination must be based on DC’s best interests and we cannot assess the child’s best interests on appeal, and because it is possible that the district court will continue its order for supervised visitation after analyzing the statutory best-interests factors, we do not disturb the district court’s order for supervised parenting time pending the hearing on remand.

Affirmed in part and remanded.

⁷ For this reason, we do not address father’s res judicata and collateral estoppel arguments except to note that “the availability and application of res judicata and collateral estoppel in family matters is limited.” *Maschoff v. Leiding*, 696 N.W.2d 834, 838 (Minn. App. 2005); see *Loo v. Loo*, 520 N.W.2d 740, 743-44, 744 n.1 (Minn. 1994) (discussing applicability of law of the case, res judicata, and collateral estoppel in family cases).