

*This opinion is nonprecedential except as provided by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
A24-1391**

In the Marriage of:

Maren Ilsa Moseng, petitioner,
Respondent,

vs.

Keith Dwain Moseng,
Appellant.

**Filed July 21, 2025
Affirmed
Bjorkman, Judge**

Yellow Medicine County District Court
File No. 87-FA-19-169

Jason C. Brown, Barna, Guzy & Steffen, Ltd., Coon Rapids, Minnesota (for respondent)

Shirlene Perrin, Perrin Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant-father challenges the district court's order modifying physical custody of the parties' child and ordering him to reimburse respondent-mother for certain parenting expenses. He argues that the district court abused its discretion by (1) awarding mother

sole physical custody of the child based on a finding that father's parenting environment endangers the child because the court looked to stale information and overstated the danger of certain conduct, and (2) requiring him to reimburse mother for expenses related to the child's Xbox. We affirm.

FACTS

Appellant Keith Dwain Moseng (father) and respondent Maren Ilsa Moseng (mother) have one joint minor child, who was born in October 2010, during their marriage. Their marriage was dissolved in 2019, and they were awarded joint legal and joint physical custody of the child and equal parenting time. The dissolution judgment also assigned them equal responsibility for paying "necessary fees and costs" for the child.

In March 2023, mother moved for sole physical custody, alleging that custody should be modified because the child is endangered in father's care. In supporting affidavits, she averred, in relevant part, that father (1) "has transported [the child] after consuming alcohol sufficient to cause intoxication on numerous occasions"; (2) was involved in an "alcohol-related accident" in April 2020, and pleaded guilty to driving while impaired (DWI); (3) has driven the child after taking more than his prescribed dosage of clonazepam; (4) often leaves the child unsupervised for extended periods of time, sometimes up to 12 hours; and (5) while on vacation, drove with the child at speeds hovering around 90 miles per hour. She also presented an affidavit from father's former fiancée, who lived with him June 2022 to March 2023 and averred, in relevant part, that (1) she regularly saw loaded firearms unlocked and accessible in father's vehicle and house; (2) father took prescribed morphine daily and took prescribed oxycodone and

clonazepam regularly, and he should not drive or do his work as a nurse while on those medications; (3) father often consumes alcohol to the point of intoxication and “made a habit of drinking and driving”; and (4) on multiple occasions she saw vials of fentanyl in his vehicle or with his clothing in the house and saw used syringes and alcohol wipes in the container where he kept his medications.

In addition to her custody-modification motion, mother also sought reimbursement for father’s half of expenses for the child. She submitted an itemized list of expenses.

The district court determined that mother presented a *prima facie* case for custody modification and scheduled an evidentiary hearing. At the three-day hearing in October and November 2023, mother and father testified, as did father’s former fiancée, various friends and family, and father’s physician. Mother and father’s former fiancée testified consistent with their affidavits. Father’s brother and brother-in-law described a family funeral in early 2020 at which they saw father drink alcohol to the point of intoxication and then attempt to drive off with the child before family intervened. The brother-in-law also testified about an incident that occurred before the funeral in which he saw father drive with the child after drinking to the point of intoxication. In his testimony, father acknowledged his 2020 car accident and resulting DWI guilty plea. But he disputed others’ testimony about his drinking and opiate use and other conduct, though he ultimately acknowledged driving with the child after drinking in 2020 and not being honest about it in the affidavit he submitted in opposition to mother’s motion.

After making express credibility determinations as to each witness, including substantially crediting mother’s testimony and substantially discrediting father’s, the

district court made findings about father's conduct in the years since entry of the dissolution judgment:

(1) Father has operated a motor vehicle, with the minor child present, while under the influence of alcohol; (2) Father sustained serious injuries in a car crash that occurred while he was under the influence of alcohol; (3) Father suffers from chronic pain as a result of injuries suffered in the car crash; (4) Father consumes opiates on a daily basis; (5) Father routinely consumes alcohol while taking said opiates; (6) Father has left the minor child alone, or in the care of a third party, for extended periods of time; and (7) Father has exposed the minor child to drugs, paraphernalia, vials of fentanyl, and syringes; and (8) has stored a loaded firearm in the presence of a child.

The court also found that father drove under the influence of alcohol and opiates, and that he drove with the child at speeds around 90 miles per hour without credible justification.

The district court determined that these actions by father "over the last several years, taken collectively, have endangered the minor child's physical and emotional health." The court highlighted three examples: (1) father driving under the influence of alcohol with the child in the vehicle, (2) father bringing home and leaving empty vials of fentanyl and used syringes around the house, and (3) father storing a loaded firearm in the child's presence. It also found that these circumstances reflect a change since the dissolution judgment and that modification would serve the child's best interests. Accordingly, the court granted mother's motion, awarding her sole physical custody of the child and ordering father to reimburse mother for expenses totaling \$3,548.41.

Father appeals.

DECISION

I. The district court did not abuse its discretion by awarding mother sole physical custody based on a finding that child is endangered in father's care.

A court may modify an existing child-custody order if (1) there has been a change of circumstances; (2) modification is necessary to serve the child's best interests; (3) the child's present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the modification outweigh the detriments with respect to the child. Minn. Stat. § 518.18(d)(iv) (2024). A district court has "broad discretion" when determining custody matters. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008). Our review of custody determinations "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Id.* at 281-82 (quotation omitted). We will not disturb a district court's factual findings, including a finding that a child is endangered, unless they are clearly erroneous, and we defer to the district court's credibility determinations. *Id.* at 284; *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000).

Father challenges only the district court's finding that the child is endangered in his care. Father contends the court premised this determination on three sources of danger to the child while in his care—driving with the child while under the influence of alcohol, leaving fentanyl vials and syringes around, and leaving loaded firearms unsecured in his home and vehicle—and disputes the validity of each as a basis for finding endangerment. This argument does not persuade us to reverse for two reasons.

First, father understates the district court’s findings and reasoning. The court highlighted those three types of conduct as evidence of endangerment, expressly identifying them as “example[s].” And it stated that it found endangerment based on father’s “actions over the last several years, taken collectively.” This means that its endangerment finding encompasses other conduct that it found father to have engaged in during that time, such as routinely consuming both opiates and alcohol, including while caring for the child; leaving the child alone for extended periods of time; and driving with the child at very high rates of speed. Father does not dispute the district court’s findings that he engaged in these actions or that they endangered the child.

Second, the record defeats father’s challenges to the three identified examples of endangerment. We address each in turn.

Driving with the Child while Intoxicated

Father asserts error in the district court’s consideration of him driving with the child while under the influence of alcohol. He contends there was only one such incident—in 2020—and that this incident is “too old to constitute present endangerment” in 2023. We disagree.

A finding of endangerment must be based on the child’s “present” environment. Minn. Stat. § 518.18(d)(iv). This means the environment in existence “at the time of the modification.” *Hassing v. Lancaster*, 570 N.W.2d 701, 703 (Minn. App. 1997). But consideration of the child’s present environment encompasses the child’s circumstances since the last custody order because “[t]he history of a child’s care is a relevant consideration in addressing the child’s current circumstances . . . [and] may indicate what

can be presently expected.” *Id.* A history of dangerous circumstances is relevant if it “demonstrate[s] that [the child] remain[s] in a presently dangerous situation.” *Id.* That is the case here.

Father admits that he drove with the child in his vehicle while impaired in 2020. Nothing in the record suggests that the child’s environment in 2023, at the time of the modification motion, had changed. Most glaringly, when discussing the 2020 incident, father did not acknowledge that he has chemical-health issues or describe past or then-current efforts to address them. Rather, he downplayed his past behavior and denied having a problem. Indeed, father’s April 2023 affidavit in opposition to mother’s motion denies that he drove with the child while impaired, but during the evidentiary hearing he admitted doing so. Additionally, the district court made several findings pointing to the continued relevance of the 2020 incident. It found that father takes opiates daily and mixes them with alcohol and “routinely” does so while caring for the child. It also found that father has continued to drive while under the influence of alcohol. Ample evidence supports these findings, including father’s own testimony and that of his former fiancée. Given this record, we discern no error by the district court in considering father’s driving while intoxicated—including with the child—as indicative of endangerment.

Fentanyl Vials and Syringes

Father contends the fentanyl vials and syringes in his home and vehicle posed no danger to the child because they were empty. He implicitly acknowledges that bringing unprescribed controlled substances and associated paraphernalia into the child’s environment is dangerous but suggests that the danger evaporates if they no longer contain

the controlled substances. He cites no authority for this proposition. And mother persuasively notes that Minnesota law recognizes the dangers presented by even residual amounts of controlled substances and drug paraphernalia. *See State v. Benniefield*, 678 N.W.2d 42, 47 (Minn. 2004) (recognizing that criminalizing drug possession in school zones serves to protect children from “abandoned drugs or discarded drug paraphernalia”). Father has not demonstrated error in the district court’s reliance on the regular presence of empty fentanyl vials and syringes in the child’s environment in finding endangerment.

Loaded, Unsecured Firearms

Father appears to accept the district court’s finding that he keeps loaded, unsecured firearms in his vehicle and home but argues that this does not endanger the child because (1) the child has been trained in the safe use of firearms, and (2) the “firearm incidents were too remote in time.” This argument is unavailing in both respects.

Regarding his first assertion, father cites no authority for the proposition that a child trained in the use of firearms is not endangered by having loaded and unsecured firearms in their environment. To the contrary, as the district court noted, Minnesota law criminalizes leaving a loaded firearm unsecured in a place where the person storing it knows or reasonably should know “that a child is likely to gain access” to it. Minn. Stat. § 609.666, subd. 2 (2024). There is no exception for a child trained in gun safety. *See id.*

Father’s staleness claim fares no better. In essence, he seeks to diminish his former fiancée’s testimony about seeing loaded, unsecured firearms in his home and vehicle because she stopped living with him in March 2023. He suggests that an inspection of his home in September 2023, which found no unsecured firearms, better reflects the

circumstances existing at the time of the evidentiary hearing that October and November. But the circumstances in father's home during his former fiancée's residence, up until the same month that mother filed her motion, are not too remote to be relevant. *See Hassing*, 570 N.W.2d at 703 (describing child's present environment as that in existence "at the time of the modification"). And his emphasis on the more recent inspection is not persuasive because, as the district court observed, he requested that inspection and was able to secure the firearms in a safe before the inspection took place.

In sum, given the numerous and substantial examples of endangering conduct by father, the district court did not clearly err by finding that the child is endangered in father's care. As such, father has not demonstrated that the district court abused its discretion by modifying physical custody.

II. Father did not preserve a challenge to the Xbox expenses.

Father challenges only a subset of the district court's expense-reimbursement order: \$328.68 in expenses related to the child's Xbox. But he did not do so in the district court. He did not contend that the Xbox expenses are not "necessary fees and costs" for the child. To the contrary, he affirmatively represented to the court that he considered at least some Xbox expenses to be reasonable by including them in his proposed list of reasonable expenses.¹ It is well established that failure to raise an issue before the district court constitutes forfeiture of the issue on appeal. *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn.

¹ Father's sole challenge to mother's reimbursement request was that she owed him roughly the same amount that she was seeking, if not more, and that the parties' competing expense-reimbursement claims were "a wash."

App. 2022) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). On this record, father has not preserved a challenge to the portion of the reimbursement order related to the Xbox expenses.

Affirmed.