STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0508

In re the Marriage of:
Wakisha Nicole Fortwengler, n/k/a
Alexa Nicole Schultz, petitioner,
Appellant,

vs.

Chad Michael Fortwengler,
Respondent.

Filed March 20, 2017
Affirmed
Bjorkman, Judge

Brown County District Court
File No. 08-FA-07-1048

Robert A. Manson, Robert A. Manson, P.A., White Bear Lake, Minnesota (for appellant)

Tami L. Peterson, Saxton Peterson Law Firm, Mankato, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this custody-modification case, appellant-mother Wakisha Nicole Fortwengler challenges the grant of sole physical and legal custody of two children to respondent-father Chad Michael Fortwengler. And she challenges the district court's refusal to release the

children's therapy records and the award of less than 25% of the parenting time to her. We affirm.

FACTS

The parties were married in March 2003. They have a son, C.F., and a daughter, G.F., both born on January 25, 2005. The marriage was dissolved in January 2008 pursuant to a stipulation that provided the parties joint legal custody and gave mother sole physical custody of the children, subject to father's parenting time.

Since the dissolution, the relationship between the parties has been acrimonious. The parties have returned to court several times regarding parenting time and other issues. On June 28, 2013, the district court appointed a guardian ad litem (GAL) to evaluate and advocate for the children's best interests. A year later, the district court reappointed the GAL and directed her to monitor the impact of mother's relationships with men on the children because of an incident with a former boyfriend. The district court also ordered mother to give father the first opportunity to care for the children if she was unavailable to do so during her designated parenting time.

On June 15, 2015, father moved for sole physical and legal custody of the children, arguing mother had inflicted emotional harm on the children and may be trying to alienate them from him. Both contentions are based on assessments made by the children's mental-health therapist, Danielle Marie Fischer Marti.

The district court conducted an evidentiary hearing at which the parties, Marti, and the GAL testified. Marti explained that the children have participated in therapy since 2012. G.F. was initially diagnosed with adjustment disorder, and C.F. was treated for anger

and eating issues. But by July 2015, G.F.'s diagnosis had progressed to a more serious generalized anxiety disorder, and she was experiencing severe body-image issues and depression. C.F. was restricting his food intake, and there was a marked decline in his functioning. Both children reported feeling they have the "worst lives" because their parents are divorced. Marti opined that the children's mental health had significantly declined.

With respect to father's parental-alienation assertion, Marti testified that C.F. spoke positively about his relationship with father and wanted to spend more time with him until Marti advised mother of this development. Thereafter, mother stopped taking the children to therapy. When father resumed their sessions, C.F. told Marti that father had tried to choke him. The county investigated and found no substantiation for C.F.'s allegation. Marti found C.F.'s report was rehearsed and not credible. Marti opined that mother has alienated C.F. from father, and attempted to alienate G.F. from father. The GAL expressed similar concerns about mother coaching the children, and testified that C.F.'s emotional status has declined. Marti testified that she has no concerns about the children's safety with father but that mother's refusal to bring the children to therapy has had a significant negative impact on their emotional well-being. Father testified that mother has not permitted him to care for the children when she is unavailable, instead sending them to her family members contrary to the district court's order.

The district court granted father's motion, reasoning that the children's deteriorating mental health constituted changed circumstances and endangerment. The court order awards mother less than 25% of the parenting time. Mother appeals.

D E C I S I O N

I. The district court did not abuse its discretion by granting sole physical and legal custody of the children to father.

A district court has broad discretion to provide for the custody of children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984); *In re Best Interest of M.R.P.-C.*, 794 N.W.2d 373, 378 (Minn. App. 2011). 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." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). A district court's findings of fact will be sustained unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Pikula*, 374 N.W.2d at 710.

A court may modify an existing child-custody order when (1) there has been a change of circumstances; (2) modification is necessary to serve the children's best interests; (3) the children's present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the modification outweigh the detriments with respect to the children. Minn. Stat. § 518.18(d)(iv) (2016); *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (describing elements of prima facie case for modification). Mother contends that consideration of these four factors warrants reversal. We address each factor in turn.

A. The district court did not clearly err in finding there has been a significant change in circumstances since the prior order.

"A change in circumstances must be significant and must have occurred since the original custody order; it cannot be a continuation of conditions existing prior to the order." *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). A "prior order" refers to either

an original custody order or a subsequent order modifying custody. *Spanier v. Spanier*, 852 N.W.2d 284, 288 (Minn. App. 2014). It does not include orders that only modify parenting time. *Id.*

Mother first argues that the district court erred by treating the 2008 dissolution judgment as the starting point for its changed-circumstances analysis. She urges us to instead focus on a March 2013 order. But the March 2013 and other intervening orders addressed parenting time and other issues. None of them modified custody. Accordingly, the district court's focus on the 2008 judgment was proper.

Mother next contends that the district court's findings of fact are not supported by the record. We disagree. The district court found that the children's mental health has significantly deteriorated since 2008. The record supports this finding. Mother stopped taking the children to therapy in the fall of 2014, when Marti told mother C.F.'s relationship with father was improving. Marti testified that the children's mental health has significantly deteriorated, and that mother is to blame. This change alone is significant enough to warrant custody modification.

The district court also considered mother's history of interfering with father's parenting time and her actions that damaged father's relationship with the children. Since 2008, the children have made two unsubstantiated reports of abuse by father. Both Marti and the GAL testified that mother coached the children to make false allegations and has otherwise tried to alienate the children from father. And when Marti reported to mother that C.F.'s relationship with father seemed to be improving, mother questioned Marti's findings and stopped taking the children to therapy. Additionally, when mother was

unavailable, she did not bring the children to father as she was supposed to, but instead took them to her other family members.

Other supported findings further demonstrate that circumstances have significantly changed. Since 2008, mother has gone from working full-time to being unemployed. While father lacked stable housing at the time of the dissolution, he now has a stable home in the same school district where the children have always resided. He is married to a teacher. In contrast, mother has changed the children's residence from living with her boyfriend, to living with her own mother after that romantic relationship ended. And mother has been arrested for shoplifting, and has engaged in risky behaviors, including drug use.

In sum, the circumstances changed between 2008 and 2015, and the changes have significantly affected the children's mental health. They have gone from not needing mental-health treatment in 2008 to starting therapy in 2012, and now exhibiting serious mental-health issues despite ongoing treatment. The record amply supports the district court's finding that there has been a significant change in circumstances.

B. The district court did not clearly err in finding that granting father sole custody serves the children's best interests.

The best interests of the children is the focus of a custody determination. Minn. Stat. § 518.175, subd. 1(a) (2016). In determining best interests, courts must consider "all relevant factors, including:"

> (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, 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. . . 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)(1)-(12) (2016).

Mother acknowledges that the district court considered the requisite best-interests factors, but argues that many of the court's findings are not supported by the evidence and

are based on alleged conduct by mother "that does not affect her relationship with the children." Our review of a district court's best-interests findings does not require us to discuss the evidence in detail. Rather, our "duty is performed when we consider all the evidence . . . and determine that it reasonably supports the findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (quotation omitted). Accordingly, we focus our analysis on mother's main assertion that the evidence does not show that her conduct contributed to the children's mental-health problems.

First, mother argues that the evidence does not support the district court's determination that she interfered with the children's therapy in a way that adversely affected their mental health. We disagree. Marti testified that mother stopped taking the children to therapy as soon as Marti reported C.F.'s positive feelings about father. The district court found that "[m]other's unwillingness to seek help while, according to her, the children were having significant difficulties with parenting time did not serve their best interests. It does not seem likely that [m]other would seek assistance for the children if they were to remain in her primary care." Father, on the other hand, supported the children and addressed their mental-health concerns by taking them to therapy. Both Marti and the GAL testified that mother was alienating the children from father, as they noticed the children making comments about their father that appeared coached. The district court found Marti and the GAL were credible. We do not second guess the district court's credibility determinations. *Id.* at 472.

Second, mother contends that the district court erroneously discounted the children's abuse allegations against father. But the county investigated both reports and

found no substantiation. The district court expressly credited the testimony of the GAL, Marti, and the Brown County Family Services' family facilitator that there were no safety concerns with father. We do not disregard a district court's credibility determinations. *Id.*

Mother's other challenges to the best-interests findings are unpersuasive as they essentially ask this court to make factual findings. It is not our role to reweigh evidence or make findings of fact. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also Rutz v. Rutz*, 644 N.W.2d 489, 493 (Minn. App. 2002) (stating that appellate courts cannot "engage in a redetermination of facts but defer to the district court's credibility determinations and to findings that are supported by the record"), *review denied* (Minn. July 16, 2002). The district court evaluated each of the best-interests factors and concluded that it is in the children's best interests for father to have sole legal and physical custody. Because the district court's findings are supported by record evidence and because mother does not cite any legal error, we will not disturb the district court's best-interests determination.

C. The district court did not clearly err in finding that the children's present environment endangers their health and development.

Although the concept of endangerment is imprecise, this custody-modification factor requires the parent seeking modification to demonstrate the children face a significant degree of danger. *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). "[T]he endangerment element of Minn. Stat. § 518.18(d)(iv) is concerned with whether the child's *present environment* endangers the child's physical or emotional health or impairs

the child's emotional development, not whether the child may be endangered by future events." *Goldman*, 748 N.W.2d at 285 (quotation and citation omitted).

Mother does not challenge the district court's finding that the children are endangered because their mental health has significantly deteriorated; she contends that the danger is not related to her actions. This argument is unavailing. According to Marti, while the children's mental health has significantly declined, mother has not sought help for the children and has purposely chosen not to take the children to their scheduled therapy appointments. Marti opined that the children's mental health will continue to decline if they are left in mother's care. Mother's interference with the children's necessary mental-health care and efforts to undermine their relationship with father impair their ability to make progress and compromise their emotional development. On this record, we discern no clear error in the district court's finding that leaving the children in mother's custody will endanger them.

D. The district court did not clearly err in finding that the benefit to the children of a change in custody would outweigh the harm.

Mother argues that the children would struggle in their father's care because they would argue with father about food, the children dislike father's wife, and father dislikes mother. But the record supports the district court's determination that the benefit to the children of a change in custody would outweigh the harm. The court noted that the change will be traumatic for C.F. in the short term because he is very loyal to mother, but that it will strongly benefit him in the long term. And Marti opined that, while there will be a period of transition, it is not too late to reverse the children's deteriorating mental health

and that father is more likely to support their treatment. Accordingly, the district court's determination that providing father sole legal and physical custody would provide long-term benefit to the children is not clearly erroneous.

II. Mother forfeited her remaining arguments.

The district court did not give the parties access to the children's therapy records in connection with the custody-modification motion because Marti advised that disclosure—particularly to mother—would adversely affect the children's therapeutic relationship with Marti. Mother contends that she was unfairly prejudiced by this lack of access, even though Marti testified at the evidentiary hearing and both parties had a chance to cross-examine her. And mother baldly asserts that the district court erred in finding Marti's testimony credible. Mother cites no caselaw and has not sufficiently explained her prejudice argument to permit meaningful review. We decline to consider issues that are not adequately briefed. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is [forfeited] and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *In re Estate of Rutt*, 824 N.W.2d 641, 648 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Jan. 29, 2013). We have carefully considered the circumstances and we see no obvious error.

Finally, mother contends that the district court erred in awarding her less than 25% of parenting time. Minn. Stat. § 518.175, subd. 1(g) (2016). But she neither raised this issue in the district court nor briefed her argument sufficiently in this court to permit meaningful review. We do not consider issues raised for the first time on appeal. *Hagen*

v. Schirmers, 783 N.W.2d 212, 219 (Minn. App. 2010) (stating that "[b]ecause [an] aspect of the parenting-time issue was never argued to the district court or sufficiently raised in [the party's] principal brief to us, we consider the issue waived").

In sum, the district court made the requisite custody-modification findings and the record supports them. On this record, we conclude that the district court did not abuse its discretion in granting father sole legal and physical custody of the children.

Affirmed.