STATE OF MINNESOTA
IN COURT OF APPEALS
A11-823

In re the Matter of:

Scott Brady Rose,
Appellant,

vs.

Lisa Magdalen Hahne,
Respondent.

Filed January 23, 2012
Affirmed
Kalitowski, Judge

Scott County District Court
File No. 70-FA-02-1458

Julie K. Seymour, Seymour Family Law, Lakeville, Minnesota (for appellant)

Lisa Magdalen Hahne, Plymouth, Minnesota (pro se respondent)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

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

KALITOWSKI, Judge

Appellant Scott Brady Rose challenges the district court's denial of his motion to modify custody of B.H.R., his child with respondent Lisa Magdalen Hahne, by granting him sole permanent physical custody. Appellant argues that because the district court's

finding that B.H.R. is not endangered in respondent's physical custody is not supported by the record, the district court abused its discretion by denying his motion. We affirm.

D E C I S I O N

In reviewing a district court's decision whether to modify custody, this court examines "whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). The district court is in the best position to evaluate the credibility of witnesses, and this court will set aside findings of fact only if they are clearly erroneous. *Id.* "Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

A custody award may not be modified unless the court finds, on the basis of facts that have arisen since the prior order or 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) (2010). A change in circumstances must be significant. *Roehrdanz v. Roehrdanz*, 438 N.W.2d 687, 690 (Minn. App. 1989), *review denied* (Minn. June 21, 1989). Moreover, even if the court makes both findings in section 518.18(d), the court may not modify the existing custody order unless it also finds one of five grounds for modification. Minn. Stat. § 518.18(d)(i)-(v) (listing five grounds for modification).

Here, appellant contends that the applicable ground for modification is section 518.18(d)(iv), which provides that "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." Minn. Stat. § 518.18(d)(iv). But "[i]f the present custody order poses no danger for the child's health or emotional development, modification is unwarranted." *Sullivan v. Allen*, 419 N.W.2d 822, 825 (Minn. App. 1988).

Endangerment finding

Appellant argues that the district court's finding that B.H.R. is not presently endangered is not supported by the evidence. We disagree. Although "[t]he concept of 'endangerment' is unusually imprecise," a party must show "a significant degree of danger" to satisfy the endangerment standard. *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). The danger may be either to the child's health, or may relate solely to the child's emotional development. *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997).

Appellant filed his motion to modify custody after several incidents involving K.A. and V.A., B.H.R.'s half-siblings. The record indicates that B.H.R.'s half-brother, V.A., threatened B.H.R. with a knife on two separate occasions. Appellant also presented evidence that respondent had several physical altercations with B.H.R.'s half-sister, K.A., that required police intervention. The district court awarded temporary physical custody of B.H.R. to appellant based on this evidence. But the record indicates that prior to trial, K.A. and V.A. were removed to their biological father's home. And the district court found that although the knife incidents involving V.A. constituted endangerment, B.H.R.

will no longer be endangered in respondent's care now that K.A. and V.A. have been removed from respondent's home.

Appellant argues that the district court's finding is clearly erroneous because the incidents involving B.H.R.'s half-siblings demonstrate that respondent lacks parenting skills and is unable to resolve conflicts without calling the police. He claims that these parenting defects place B.H.R. at risk of emotional harm. But appellant presented no expert testimony to buttress this claim and the record supports the district court's finding that B.H.R. has not engaged in escalating or destructive behavior demonstrative of emotional harm that would rise to the level of endangerment.

The evidence shows that respondent appropriately sought out services at school and in the community when B.H.R. began exhibiting minor behavioral problems. Moreover, the concerns raised by the guardian ad litem regarding respondent's parenting skills largely reflect respondent's difficulty managing K.A. and V.A.'s special needs, which include ADHD, oppositional and defiant behaviors, and depression. There was no indication in the record that B.H.R. presents similar needs, and several witnesses testified that respondent has a more positive relationship with B.H.R. than with K.A. or V.A.

We conclude that the district court did not err in rejecting appellant's argument that respondent will continue to have difficulty establishing appropriate structure and discipline for B.H.R. now that K.A. and V.A. no longer reside with respondent. In addition, by delaying B.H.R.'s return to respondent's home until after the school year and ordering respondent to engage in parenting classes, the district court appropriately gave respondent time to further develop her parenting skills before B.H.R. returns to her care.

On this record, we conclude that the district court's finding that B.H.R. is not presently endangered is not clearly erroneous.

Future endangerment

Appellant also argues that the district court abused its discretion by denying his motion to modify custody because B.H.R. is "sure to suffer additional harm" in the future if left in respondent's care. But "the endangerment element of section [] 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). And because we conclude that the district court properly determined that B.H.R. is not presently endangered, the district court had no discretion to grant appellant's motion. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) ("[L]ack of endangerment is fatal to [an endangerment-based] motion to modify custody.").

Affirmed.