STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1557

Michael David Blaeser,
Respondent,

vs.

Julie Ann Wolf,
Appellant.

Filed June 24, 2013
Affirmed
Larkin, Judge

Dakota County District Court
File No. 19-F5-02-011433

Michael D. Blaeser, South Saint Paul, Minnesota (pro se respondent)

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant-mother challenges the district court's decision to modify a prior custody order and award respondent-father sole legal custody of the children, arguing that the district court abused its discretion by (1) finding a substantial change in circumstances

based on events that were known at the time of the prior custody order, (2) basing findings and conclusions on evidence that was not presented at the evidentiary hearing, (3) failing to consider all of the required factors, and (4) reaching an inequitable result. We affirm.

FACTS

Appellant Julie Ann Wolf and respondent Michael David Blaeser are the parents of twin girls, born on December 1, 1999. The parties were never married. In 2002, the parties agreed to share joint physical custody and joint legal custody of the children. In 2004, Wolf accused Blaeser of sexually abusing the children. Wolf absconded with the children and withheld them from Blaeser for a period of nine days. After the children were returned to Blaeser, they were evaluated by private consultants who determined that no abuse had occurred. The children also had previously been seen by their pediatrician while in Wolf's care, and the pediatrician did not find physical signs of abuse.

The parties subsequently stipulated that Blaeser be awarded sole physical custody of the children. Wolf and Blaeser continued to share joint legal custody. The stipulation was adopted by the district court in an order dated November 6, 2006. The 2006 order provided that "[t]he parties shall confer and attempt to arrive at mutual decisions concerning the health, education, welfare, and upbringing of the children with a view to arriving at a harmonious policy to promote the children's best interests."

In 2011, Wolf moved to modify the custody order, requesting "custody of the parties' minor children."[1] In a responsive motion, Blaeser requested sole legal custody. After a hearing on the motions, the district court denied Wolf's motion and granted Blaeser's motion on a "temporary basis." The court authorized Wolf to obtain an evidentiary hearing on the legal-custody issue, but it ruled that the award of sole legal custody to Blaeser would become permanent if Wolf did not request a hearing. Wolf requested an evidentiary hearing, which was held on June 15, 2012. Several professionals who had worked with the family testified at the hearing, including a family therapist, a parenting consultant, and a professional counselor. Wolf and Blaeser also testified.

After the hearing, the district court found that "[t]he parties have been unable or unwilling to cooperate with one-another regarding the children's health, education or religious upbringing." Noting that the parties had used two parenting consultants, a custody evaluator, two mediators, and a family program without success, the district court found that "it is clear that the parties cannot communicate or cooperate" and that "[i]t is very unlikely that the parties will be able to communicate or cooperate in the future regarding raising their children." The district court concluded that there had been a substantial change in circumstances since the initial award of joint legal custody, that the parties' failure to communicate and cooperate endangered the children's well-being, and that an award of sole legal custody to Blaeser was in the children's best interest. The

[1] The district court construed Wolf's motion as one for sole physical and sole legal custody of the children.

court reasoned that because "joint legal custody has failed" and Wolf's motion for sole physical custody had been denied, "the only realistic option is to award sole legal custody to [Blaeser] who currently has sole physical custody." Noting that "[t]here is no evidence that the children are not doing well in [Blaeser's] care," the district court awarded Blaeser sole legal custody of both children. Wolf appeals the district court's custody determination.

D E C I S I O N

District courts have "broad discretion in determining custody matters," and "[a]ppellate 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." *Goldman v. Greenwood*, 748 N.W.2d 279, 281-82 (Minn. 2008) (quotations omitted).

I.

Wolf argues that "[t]he [d]istrict [c]ourt abused its discretion in finding a substantial change in circumstances since the prior order regarding legal custody in 2006." To modify a custody order, a district court must find that a significant change in circumstances has occurred since the previous custody order was issued. Minn. Stat. § 518.18(d) (2012); *Tarlan v. Sorensen*, 702 N.W.2d 915, 923 (Minn. App. 2005). A change in circumstances under section 518.18(d) must not be "a continuation of conditions existing prior to the order." *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). Whether a significant change in circumstances has occurred must be

determined on a case-by-case basis. *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000).

We first observe that Wolf's argument is somewhat disingenuous. Wolf initiated the current custody dispute when she moved for custody modification. In doing so, Wolf necessarily asserted that there had been a significant change in circumstances sufficient to justify *her* request for modification. *See* Minn. Stat. §§ 518.18(d) (stating that "the court shall not modify a prior custody order . . . unless it finds . . . that a change has occurred in the circumstances of the child or the parties"), .185 (2012) (stating that the party seeking "modification of a custody order shall submit . . . an affidavit setting forth facts supporting the requested . . . modification"). In fact, Wolf's supporting affidavit stated that "[t]his is not a case where [Blaeser] and I can share custody of our daughters," and that they had "tried it in the past, and all it does is lead to conflict and hearings in court." Wolf's assertions are consistent with the district court's findings in support of modification. Wolf nonetheless argues that the factors cited by the district court that support its conclusion that a change in circumstances existed—her allegations of sexual abuse, her withholding of the children from Blaeser, and "the inability of the parties to work together in any manner"—"existed and were known to the [c]ourt at the time of the [2006 order] and therefore are not a change in circumstances which allows modification in legal custody."

Although Wolf's unsubstantiated allegations of sexual abuse and her withholding of the children from Blaeser were known to the district court and addressed in the 2006 order, the record shows that there has been a change in circumstances since 2006

concerning the parties' inability to work together. The parties agreed by stipulation in 2006 "to arrive at mutual decisions concerning the health, education, welfare, and upbringing of the children." The parties also agreed to use parenting consultant Karissa Richardson to resolve any disputes. Richardson testified at the hearing that she was appointed to the case in 2006 but was not asked to make any decisions until 2009. After working with the parties for several years, Richardson concluded that there was nothing the parties could agree upon and that she did not think "anything is going to help these parties communicate with each other." Richardson testified that she resigned from the case and that she recommended that the children see a counselor because she "was concerned about the effect on the children of the conflict and statements that were being made in front of them." Because the record shows that the parties unsuccessfully exhausted the parenting-consultant resource agreed upon in the 2006 stipulation, while the level of cooperation and communication between the parties continued to deteriorate, the district court did not err in finding a significant change of circumstances since the 2006 order. *See Coady v. ViRay*, 407 N.W.2d 710, 713 (Minn. App. 1987) (affirming the district court's finding that "an increase in conflict" between the parents constituted a change in circumstances).

II.

Wolf argues that the district court "improperly based its [f]indings of [f]act and [c]onclusions of [l]aw on evidence not presented." Specifically, Wolf argues that the district court made findings regarding her withholding of the children from Blaeser in

2004 and her unsubstantiated allegations of sexual abuse and that "[n]either of these events were presented to the court to consider at the hearing on June 15, 2012."

In this case, although evidence regarding the two incidents was not presented at the June 2012 hearing, it is undisputed that the parties previously stipulated to the occurrence of the events, and the district court adopted the parties' stipulation in its 2006 order. The crux of Wolf's argument, however, appears to be that those events "should not have been a basis for granting . . . Blaeser sole legal custody of the minor children in 2012 after an evidentiary hearing where those allegations were not even mentioned." But a review of the district court's memorandum of law shows that the court used the older incidents merely to provide context for its conclusions that the parties are "unable or unwilling to cooperate" and that "[i]t is very unlikely that the parties will be able to communicate or cooperate in the future regarding raising their children." *See* Minn. Stat. § 518.17, subd. 2(a) (2012) (stating that where joint legal custody is contemplated, "the court shall consider . . . the ability of parents to cooperate in the rearing of their children"). The district court explained that

> [w]hile [Wolf] recently has exhibited a greater willingness to engage in communication with [Blaeser] regarding the children, the parties have a history of significant conflict, fueled, in part, by false allegations against [Blaeser] by [Wolf] and [Wolf's] failure to comply with recommendations and directives of parenting consultants and other professionals involved in their lives.

Wolf provides no legal authority for the proposition that it is improper for the district court to take into account the entire documented case history when considering custody modification based on a purported change in circumstances. *See Loth v. Loth*,

227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (stating that "on appeal error is never presumed" and "the burden of showing error rests upon the one who relies upon it" (quotations omitted)); *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection). In fact, the district court's careful consideration of the animosity generated by the 2004 events ensured a meaningful determination regarding the parties' prospects for cooperation. *See Lucas v. Lucas*, 389 N.W.2d 744, 747 (Minn. App. 1986) (holding that the district court had the burden "to uncover reliable evidence to show the best interests of the children"). The district court was well within its discretion in considering those events, and we discern no error. *Cf. id*. (stating that it was "not within the broad discretion of the [district] court to unconditionally permit the removal [of children by their custodial parent to another state] without a . . . careful study of the circumstances of the parents and children").

III.

Wolf argues that "[t]he [c]ourt also erred when it did not consider all the necessary factors in making its [o]rder." "When the court grants a custody modification motion, specific findings showing that the court considered the factors listed under Minn. Stat. §§ 518.17-.18 are absolutely required." *Rogge v. Rogge*, 509 N.W.2d 163, 165 (Minn. App. 1993) (quotation omitted), *review denied* (Minn. Jan. 28, 1994).

Wolf argues that the district court did not consider "whether it would be detrimental to the child if one parent were to have sole authority over the child's

upbringing" under Minn. Stat. § 518.17, subd. 2(c) (2012). Wolf cites to hearing testimony and argues that if the district court had considered whether it would be detrimental to the children for Blaeser to have sole authority over their upbringing, "it would not have granted [him] sole legal custody." The record refutes that argument. The district court explicitly found that Blaeser had already made "unilateral decisions regarding the children's activities, education and religious training in disregard of [Wolf's] status as joint legal custodian," and that "[t]here is no evidence that the children are not doing well in [Blaeser's] care." We therefore reject Wolf's assignment of error.

IV.

Finally, Wolf argues that Blaeser "should not be rewarded for his failure to communicate." Wolf notes that the district court found that Blaeser "ignored [her] efforts, refused to respond to her communications, and has made unilateral decisions on the children's education and religious training." She asserts that the district court should not have "rewarded him with sole legal custody," that "[t]his is an inequitable result," and that the district court's conclusions are "entirely inequitable."

It is regrettable that the parties have not found a way to productively communicate and to make joint decisions regarding their children. But under the circumstances, in which both parents have contributed to the inability to cooperate, the district court did not err in concluding that the children's best interests are served by an award of sole legal custody to Blaeser, regardless of any inequity to Wolf. *See Schultz v. Schultz*, 266 Minn.

205, 208, 123 N.W.2d 118, 120-21 (1963) ("The welfare of the child is paramount and the rights of the parents must yield to that consideration.").

Affirmed.