STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1707

In re the Matter of:
Emily M. Pederson, petitioner,
Respondent,

vs.

Scott H. Meyer,
Appellant.

Filed May 15, 2017
Affirmed
Kirk, Judge

Olmsted County District Court
File No. 55-FA-14-2050

Jenny L. Nelson, Nelson Peterson Law, Rochester, Minnesota (for respondent)

Scott H. Meyer, Gainesville, Florida (pro se appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Kirk, Judge.

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

KIRK, Judge

In this child-custody and parenting-time appeal, appellant father argues that the district court erred by (1) determining that he had not made a prima facie case for modification of custody based on endangerment; (2) failing to address his motion for a new trial; (3) reserving respondent mother's motion to find father a frivolous litigant; (4) failing

to address father's motion for a declaratory judgment; (5) denying father's motion for permission to obtain a passport for the child; and (6) declining to hold mother in contempt of court. We affirm.

FACTS

Appellant Scott H. Meyer and respondent Emily M. Pederson, who never married, are the parents of a minor child born in 2008. Pederson moved with the child to Iowa in 2010 and to Minnesota in 2012. Meyer currently lives in Florida. Since the child's birth, the parties have engaged in extensive litigation regarding custody of the child and parenting time. The Iowa courts had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act from February 2010 until March 31, 2015, when a Minnesota district court determined that Minnesota had jurisdiction.

Meyer's Motions for Modification of Custody and for a New Trial

In 2010, the parties agreed that they would have joint legal custody of the child and that Pederson would have sole physical custody, subject to Meyer's parenting time, and the Iowa district court filed an order reflecting the parties' agreement (the initial decree). In 2012, Pederson moved that the Iowa district court grant her sole legal custody of the child, and the court granted her motion. In March 2016, Meyer moved the Minnesota district court for sole legal and sole physical custody of the child. The district court denied Meyer's motion, concluding that Meyer had failed to meet his burden of alleging a prima facie case to modify custody.

Meyer subsequently moved for a new trial regarding the issues of modification of custody and modification of parenting time.[1] The district court denied Meyer's motion without holding a hearing, stating that Minn. R. Civ. P. 59.01, which governs motions for a new trial, was inapplicable.

Pederson's Motion to Find Meyer a Frivolous Litigant

In late June 2016, Pederson moved for, among other things, the district court to find Meyer a frivolous litigant. After holding a hearing, the district court reserved the motion, noting that most of Meyer's behavior occurred prior to the district court's recent modification of parenting time, where the district court imposed a "structured, detailed parenting time schedule" in place of the initial decree, which the district court stated contained "vague and confusing language" that had led to many disputes between the parties.

Meyer's Motion for Declaratory Judgment

In February 2016, Meyer moved for declaratory judgment, seeking clarification of his rights and responsibilities during his parenting time with the child. Meyer failed to schedule a hearing to correspond with the motion. In October 2016, Meyer sent a letter to the district court requesting a ruling on his motion. The district court issued a "judicial

[1] The district court addressed Meyer's motion to modify custody and Pederson's motion to modify parenting time in the same order. With regard to parenting time, the district court modified the existing parenting-time order and provided a detailed schedule of the parties' parenting time in an attempt to minimize future litigation. Meyer does not appeal the district court's modification of the parties' parenting time.

directive," stating that it had ruled on all motions that were presented at formal motion hearings and advising Meyer to follow the applicable rules in order to receive a ruling.

Meyer's Motion for a Passport for the Child

In March 2016, Meyer moved the district court to allow him to obtain a passport for the child. In September 2016, the district court denied Meyer's motion, noting that Meyer had no immediate international travel plans and that the parties were required to address the issue through their court-ordered alternative dispute resolution (ADR) process before bringing a motion to the court.

Meyer's Motion to Hold Pederson in Contempt

In June 2016, Meyer moved to have Pederson held in contempt. After holding a hearing, the district court denied the motion, reasoning that Meyer had no court-ordered right to the parenting time in dispute and that the parties' failure to engage in ADR was due to Meyer's unreasonable refusal to attend ADR unless Pederson agreed to submit the issue of custody to the ADR process.

Meyer appeals.

D E C I S I O N

I.

Meyer argues that the district court abused its discretion by denying his motion to modify custody. Meyer contends that the district court abused its discretion by determining that he had not made a prima facie case for modification based on endangerment.

"Appellate review of custody modification . . . cases is limited to considering 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) (quotations omitted). An appellate court reviews a district court's factual findings for clear error, deferring to the district court's opportunity to evaluate witness credibility. *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).

Minn. Stat. § 518.18(d) (2016) provides that a district court shall not modify a custody order unless it finds "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." In applying these standards, the district court must retain the custody arrangement unless one of a number of enumerated circumstances are met. Minn. Stat. § 518.18(d). The only circumstance that is relevant here is Minn. Stat. § 518.18(d)(iv), which provides for modification of custody if "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."

"A district court is required under section 518.18(d) to conduct an evidentiary hearing only if the party seeking to modify a custody order makes a prima facie case for modification." *Goldman*, 748 N.W.2d at 284. Deciding whether a party made a prima facie case is within the discretion of the district court. *Szarzynski v. Szarzynski*, 732

N.W.2d 285, 292 (Minn. App. 2007). In considering whether a party moving for modification of custody made a prima facie case, "the district court must accept the facts in the moving party's affidavits as true, disregard the contrary allegations in the nonmoving party's affidavits, and consider the allegations in the nonmoving party's affidavits only to the extent they explain or contextualize the allegations contained in the moving party's affidavits." *Boland v. Murtha*, 800 N.W.2d 179, 183 (Minn. App. 2011). "[T]he district court must bear in mind that the concept of endangerment is unusually imprecise and any threat of harm to a child might arguably constitute endangerment, but the legislature likely intended to demand a showing of a significant degree of danger." *Id.* at 186 (alterations omitted) (quotations omitted).

In his 85-page affidavit submitted in connection with his motion to modify custody, Meyer made many arguments regarding how the child is allegedly endangered in Pederson's home. We conclude that the district court did not abuse its discretion in determining that Meyer failed to allege a prima facie case for modification based on endangerment.

With regard to a number of Meyer's allegations, Meyer's own affidavit belies his contention that the allegations constitute a change in circumstances. Meyer argues that Pederson is an inflexible and controlling parent, but cites events occurring as early as 2009 in his affidavit. Similarly, Meyer's allegations of Pederson's lying and manipulative behavior span from 2008 to the present. Thus, there has been no change in circumstances since the previous custody orders.

The majority of Meyer's allegations regarding endangerment stem from his contention that Pederson is limiting his parenting time. With regard to these allegations, the district court correctly stated that "[t]he majority of [Meyer's] complaints concerning parenting time arise from the parties' inability to communicate when it comes to the child. Even the most simple of changes to the parenting time schedule are impossible to accomplish without a series of unpleasant text and email exchanges." The district court accurately noted that the communication issues surrounding parenting time are not new issues. Indeed, the Iowa district court noted the parties' severe communication issues in its 2012 modification order. That court decided to modify the parties' initial decree and award Pederson sole legal custody due to "the parties' inability to communicate appropriately and effectively on matters related to raising [the child.]"

Moreover, it is clear that many of Meyer's allegations of parental interference stem from the parties' disagreement regarding the correct interpretation of the initial decree. The initial decree, which is based on a transcript of the parties' agreement that was entered into the record on the day of trial, provided that Meyer would have ten overnights each month with the child and that the ten days would be the first ten days of the month unless the parties specifically agreed otherwise. The parenting-time order also stated:

> Provided further, that with respect to those ten days each month, the parties will endeavor to mutually agree upon the time but that [Meyer] may notify [Pederson] in writing or by electronic communication at least 30 days in advance of that particular month of his intention to exercise visitation other than the first ten days of the month, and if he so gives that election, that's when the [parenting] time will take place.

The parties have interpreted this language differently in the years following the initial decree, leading to many disputes between the parties. To the extent that the parenting-time conflicts that Meyer points to as interference by Pederson stem from differing interpretations of the initial decree, these conflicts are not a change in circumstances.

In his affidavit, Meyer argues that Pederson deprived him of parenting time by insisting that he bring the child to medical appointments and various activities during Meyer's parenting time. Meyer objects to Pederson denying his parenting-time requests that would require the child to miss additional school. Meyer also argues that Pederson unreasonably rejected his requests for additional parenting time when he or the child's siblings were in Minnesota.

"Denial of access to a parent and efforts to paint a parent in a poor light have the potential to endanger a child's emotional health or impair his emotional development." *Newstrand v. Arend*, 869 N.W.2d 681, 691 (Minn. App. 2015), *review denied* (Minn. Dec. 15, 2015). However, while a custodial parent's interference with a noncustodial parent's parenting time is relevant to modification of custody, it is not an independently sufficient basis to modify custody. *Szarzynski*, 732 N.W.2d at 293.

Given that Meyer has parenting time with the child ten days per month, we cannot say that the district court abused its discretion in ruling that Pederson's insistence that Meyer take the child to medical appointments or the child's activities does not constitute a significant interference with his parenting time that would endanger the child. Likewise, Pederson's alleged refusal to allow Meyer to take the child across the country does not

constitute a significant change in circumstances endangering to the child, especially as Meyer does not allege that Pederson does not allow him to exercise his parenting time. Finally, Pederson did not interfere with Meyer's parenting time by refusing Meyer's requests for additional parenting time.

Meyer makes a few veiled allegations of sexual misconduct in Pederson's household. We conclude that the district court did not abuse its discretion in refusing to hold an evidentiary hearing on this basis. Meyer's allegations are conclusory and vague and therefore insufficient to support a finding of endangerment. *See Axford v. Axford*, 402 N.W.2d 143, 145 (Minn. App. 1987) (affirming denial of custody-modification motion without an evidentiary hearing where movant's affidavit "was devoid of allegations supported by any specific, credible evidence").

Meyer makes many other allegations related to a variety of issues, spanning from the child's personal hygiene to the child's relationship with Pederson's family. As the district court observed, Meyer's voluminous allegations reflect that he has objections with virtually every aspect of how the child is raised in Pederson's household. However, after a thorough review of the record, we agree with the district court that while Meyer's allegations show that the child is not being raised in the manner that Meyer believes is in the best interests of the child, they are not enough to show that the child is in "a significant degree of danger" based on Pederson's conduct and choices on behalf of the child. *See Boland*, 800 N.W.2d at 186. Therefore, we conclude that the district court did not abuse

its discretion in determining that Meyer failed to present a prima facie case for modification based on endangerment.

Meyer contends that the district court abused its discretion in ordering that he "be exclusively responsible for all transportation, accommodations, and other expenses for himself and the child when exercising parenting time." In 2010, the parties agreed that Meyer would be responsible for "[t]he cost of the transportation and the matter of accompanying [the child] for purposes of facilitating continuing contact" except for during April and December. Meyer has apparently never requested that the district court modify the share of transportation costs that he was responsible for paying, although he has stated that he incurs significant costs in connection with exercising parenting time with the child. Given that Meyer did not request a reduction of the transportation costs he was ordered to pay, Meyer appears to be the party seeking that the child travel nationally to visit Meyer's family and internationally to go on vacation, and the parties' complete inability to cooperate, the district court's allocation of the costs Meyer incurs in connection with his exercise of parenting time is not an abuse of discretion.

II.

Meyer argues that the district court abused its discretion by denying his motion for a new trial on the issues of custody and parenting time. However, proceedings regarding a party's motion to modify custody or parenting time are "special proceedings," under Minn. R. Civ. App. P. 103.03(g), not trials. *Huso v. Huso*, 465 N.W.2d 719, 720 (Minn. App. 1991). As such, a motion for a new trial in a custody or parenting-time modification

proceeding is "not authorized" and "unnecessary to preserve issues for appeal," and an order denying such a motion is not appealable. *Id.* at 721. The district court cannot have abused its discretion by denying an unauthorized motion.

III.

Meyer argues that the district court erred by reserving Pederson's motion to find Meyer a frivolous litigant. Meyer contends that the district court only had the authority to grant or deny Pederson's motion and could not reserve ruling on the motion.[2] Because Meyer points to no authority for his assertion that a district court cannot reserve ruling on an issue, we decline to address the issue. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address issue in absence of legal analysis or citation). Moreover, even if the district court erred by reserving the issue, Meyer can show no prejudice because he had the chance to respond to Pederson's motion and the district court did not make an adverse ruling against him. *See* Minn. R. Civ. P. 61 (stating that harmless error is disregarded).

IV.

Meyer argues that the district court erred by finding that his motion for declaratory relief was not properly before the court and contends that his motion was heard by the district court at a July 8, 2016 hearing.

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[2] Meyer also argues that he should not be found to be a frivolous litigant. Because the district court did not make a dispositive ruling on Pederson's motion, this argument is not relevant to this appeal. *See Jorgensen v. Knutson*, 662 N.W.2d 893, 904 (Minn. 2003) ("[Appellate court] review is limited to those issues decided by the lower court.").

Minnesota Rule of General Practice 303.01(b) provides that in family court "[a]ll motions shall be accompanied by either an order to show cause . . . or by a notice of motion which shall state, with particularity, the date, time, and place of the hearing." Meyer failed to schedule his motion for declaratory judgment to be heard at the July 8, 2016 hearing where his contempt motion was heard. Though Meyer's affidavit of e-filing and service states that he served an amended notice of motion scheduling for a number of motions, including the declaratory-judgment motion, the amended notice of motion scheduling only lists the contempt motion.

Meyer notes that he briefly referred to his motion for declaratory judgment at the July 8 hearing. The fact that Meyer briefly referred to the motion for declaratory judgment at that hearing does not necessarily mean it was heard at that time or that it was properly presented to the district court. Indeed, Pederson's attorney did not make any argument at the July 8 hearing regarding Meyer's declaratory-judgment motion. Given the record, we conclude that the district court did not err by determining that Meyer's motion was not properly before it.

V.

Meyer argues that the district court erred by denying his motion for permission to obtain a passport for the child. However, the district court correctly noted that it had previously ordered the parties to engage in mediation before bringing a motion before the court. Because the parties did not attempt to resolve the passport dispute through ADR

before Meyer moved for an order granting him permission to obtain a passport for the child, we conclude that the district court did not err by denying his motion.

VI.

Meyer argues that the district court abused its discretion by declining to hold Pederson in contempt for interfering with Meyer's parenting time and not agreeing to attend ADR. We disagree.

The district court has broad discretion to hold a party in civil contempt, and we review the district court's decision for an abuse of discretion. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). In order to hold an individual in contempt, the district court must find that the individual "acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Newstrand*, 869 N.W.2d at 692 (quotations omitted). The purpose of holding a party in contempt is to secure compliance with a court order, not to punish a party for failing to perform in the past. *Id.*

First, Meyer contends that the district court should have held Pederson in contempt for unreasonably denying him parenting time on two occasions. As stated above, the initial decree provided that Meyer would have ten overnights each month with the child and that Meyer would notify Pederson of his intention to exercise visitation other than the first ten days of the month.

In late October 2015, Meyer informed Pederson that he wanted to exercise parenting time from December 26, 2015, to January 3, 2016. Pederson stated that the child would

not be available until December 28, 2015, due to the fact that she had made previous plans for the child. In early April 2016, Meyer asked to exercise parenting time with the child during the last weekend of April so that the child could attend a family event. Pederson agreed that Meyer could exercise parenting time and pick up the child on that Saturday. Meyer asked to exercise parenting time starting on Friday instead of Saturday, but Pederson refused the request.

In declining to hold Pederson in contempt, the district court reasoned that Meyer had no court-ordered right to the parenting time that he requested, that Pederson had made some concessions to Meyer's requests, and that Pederson had plans with the child prior to Meyer's request for parenting time.

We conclude that the district court did not abuse its discretion by declining to hold Pederson in contempt. The disputes regarding parenting time that Meyer refer to arose due to disagreements regarding the initial decree, which was described by the district court as "ambiguous and the subject of much litigation." Because Meyer had no court-ordered right to the parenting time, the ambiguous initial decree has been replaced, and the purpose of contempt is to secure a party's compliance with a court order, the district court did not abuse its discretion in declining to hold Pederson in contempt for depriving him of parenting time.

Meyer also argues that the district court should have held Pederson in contempt for failing to comply with the ADR requirement, alleging that she refused to attend ADR unless custody was excluded as an issue to mediate. In declining to hold Pederson in

contempt, the district court reasoned that it was Meyer who was unwilling to attend mediation unless Pederson agreed to submit the issues of legal and physical custody to the process.

Evidently, Meyer's position is that the language in the district court order providing that "[a]ny future claim or controversy under this order regarding custody, parenting time or any other issue which cannot be resolved between the parties through direct communication, shall be promptly submitted to an alternative dispute resolution process" requires that all issues, even those previously determined by the district court, be submitted to ADR whenever the parties have a dispute on any issue. As the district court stated, it is not Pederson's failure to agree to submit the district court's custody determination to ADR that is unreasonable; rather, it is Meyer's demand that all issues be submitted to ADR that is unreasonable. We conclude that the district court did not abuse its discretion by declining to find Pederson in contempt.

Affirmed.