STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0090

In re the Marriage of:

Maria Rothen, petitioner,
Respondent,

vs.

Jason David Rothen,
Appellant.

Filed November 30, 2020
Affirmed
Smith, Tracy M., Judge

Fillmore County District Court
File No. 23-FA-14-914

Jocylyn Poehler, Law Offices of Southern Minnesota Regional Legal Services, Inc., Winona, Minnesota (for respondent)

Jason D. Rothen, Rushford, Minnesota (pro se appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Connolly, Judge.

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

SMITH, TRACY M., Judge

Appellant-father Jason David Rothen challenges the district court's denial of his motion to modify the terms of custody with respondent-mother Maria Rothen with respect to the parties' three youngest minor children. Father argues that the district court abused

its discretion by (1) misapplying the law, (2) making factual findings regarding abuse and neglect that are contrary to the record, (3) improperly disregarding the preference of one of the parties' children, (4) excluding certain evidence at the evidentiary hearing, and (5) exhibiting clear bias against him.[1] We affirm.

FACTS

Father and mother's marriage was dissolved by a stipulated judgment and decree in 2015. By agreement of the parties, the judgment and decree granted mother sole physical custody of the parties' four minor children. The parties were granted joint legal custody.

In 2018, father moved to modify custody for all four minor children based on child endangerment; he requested sole legal and sole physical custody. The parties then stipulated that father would have sole physical custody of their eldest minor child. As to the parties' remaining three minor children, the district court denied father's request for an evidentiary hearing and denied his motion to modify. On appeal of that decision, we concluded that, because father had made a prima facie showing to modify custody based on endangerment, he was entitled to an evidentiary hearing and remanded the case. *Rothen v. Rothen*, A18-1161, 2019 WL 664915, at *5 (Minn. App. Feb. 19, 2019). The district court held a five-day evidentiary hearing, at which it heard testimony from 17 witnesses

[1] Father also alleges in the fact section of his brief that his child-support payments are unjust. Father cites no caselaw in support of his contention, and he did not raise the issue of child support before the district court. For both reasons, we decline to consider the issue here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (explaining that appellate courts generally will not consider matters not argued to and considered by the district court); *Grigsby v. Grigsby*, 648 N.W.2d 716, 726 (Minn. App. 2002) (observing that arguments submitted without legal authority are forfeited).

and received over 50 exhibits. The district court thereafter rejected father's motion to modify, concluding that no endangerment existed and that a change in custody was not in the best interests of the three youngest minor children.

Father appeals.

D E C I S I O N

I. The district court did not abuse its discretion by denying modification of custody.

A district court has "broad discretion in determining custody matters." *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008) (quotation omitted). Appellate review of custody determinations is limited to whether the trial court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). On appeal, we will affirm custody determinations absent an abuse of discretion. *Englund v. Englund*, 352 N.W.2d 800, 802 (Minn. App. 1984).

Minnesota Statutes section 518.18 governs the modification of existing custody orders. *Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017). Under that statute, a district court may modify 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." Minn. Stat. § 518.18(d)(iv) (2018). To justify modification on the basis of endangerment, the moving party must allege and the district court must determine that "(1) the circumstances of the children or custodian have changed; (2) modification would

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 change outweigh its detriments with respect to the children." *Crowley*, 897 N.W.2d at 293.

Father broadly argues that the district court abused its discretion by denying modification of custody because its conclusion was not guided by law and was against the facts in the record. He asserts several sub-arguments in support of that contention, which we address in turn.

A. The district court did not misapply the law.

Father first argues that the district court committed legal error by not accepting as true the affidavits that he submitted in support of his motion and by weighing the evidence at the evidentiary hearing. He next argues that the district court erred by failing to apply the law that governs motions to modify custody.

Contrary to father's first argument, the district court was not required to accept father's evidence as true. Father misunderstands the two-stage process of custody-modification proceedings based on endangerment. At the first stage, the moving party must establish a prima facie case that satisfies the statutory requirements. *Crowley*, 897 N.W.2d. at 293. In determining whether a prima facie case is established, the district court must take the facts in the moving party's supporting affidavits as true and disregard any contrary allegations in the nonmoving party's supporting affidavits. *Boland v. Murtha*, 800 N.W.2d 179, 183 (Minn. App. 2011). If a prima facie case is established, as it was here, the matter moves to the second stage. At this second stage, the district court holds an evidentiary hearing to determine the truth of the allegations asserted in support of the necessary

statutory findings. *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981); *Matson v. Matson*, 638 N.W.2d 462, 467 (Minn. App. 2002). Here, the district court held an evidentiary hearing, found facts, and determined that the statutory standard for modification was not, in fact, met. It did not err, at this second stage of the custody modification proceeding, by declining to accept father's proffered affidavits as true or by weighing the evidence.

As to father's second argument, he asserts that the district court failed to apply the four-part statutory standard under Minn. Stat. § 518.18(d)(iv). It is true that the district court's order is organized primarily around the children's best interests and that it evaluates their best interests according to the factors set forth in Minn. Stat. § 518.17. But the children's best interests are one part of the four-part standard under Minn. Stat. § 518.18(d)(iv), *see Crowley*, 897 N.W.2d at 293, and, even within its analysis of the best-interest factors, the district court made findings relevant to all four parts of that statutory test. Moreover, the district court's order also properly describes the legal standard for modification based on endangerment, citing both Minn. Stat. § 518.18(d)(iv) and leading caselaw (specifically, *Nice-Petersen*, 310 N.W.2d 471), and expressly finds that the evidence does not establish the existence of abuse or neglect or a change of circumstances that would support a change in custody and that modification of custody is not in the children's best interests. Thus, the district court applied the correct law in making its determination.

B. The district court's factual findings of no abuse or neglect are supported by the record.

Father argues that the district court abused its discretion by making factual findings regarding the abuse and neglect that are not supported by the record.

We review a district court's factual findings for clear error. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). Additionally, we defer to a district court's evaluation of witness credibility. *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019). The district court is in the best position to weigh the evidence and determine witness credibility, and we do not reweigh evidence on appeal. *See In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

The district court's findings of facts and conclusions of law span 12 single-spaced pages. Father argues that the district court erred by determining that mother testified credibly and by not finding that she engaged in abuse or in medical or dental neglect of the children. The district court consistently found mother's testimony as to abuse and neglect credible compared with the veracity of the children in reporting incidents. It concluded that there were no issues of chemical dependency, medical or dental neglect, or abuse necessitating a change in custody. These findings are supported by the record. Mother repeatedly testified before the court that she was neither abusing nor neglecting the children; she refuted each specific allegation made by father, and she explained others. The guardian ad litem (GAL) testified that she found no evidence of endangerment and had no

concerns regarding mother's parenting. Moreover, both the mother's testimony and the GAL's report support the district court's finding that father engaged in manipulation of the children, undermining the reliability of their accounts. We defer to the credibility determinations of the district court and discern no clear error in its determination that abuse and neglect were not established.

C. The district court did not improperly disregard preference of one of the minor children.

Father contends that the district court improperly disregarded the preference of one of the three children, M.E.R., to live with him.

A district court may consider the preference of a minor child in determining the best interests of a child with respect to custody. *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). But it should rely on the child's preference "when the court is convinced that it is not the product of manipulation by the non-custodial parent." *Roehrdanz v. Roehrdanz*, 438 N.W.2d 687, 691 (Minn. App. 1989). Additionally, "[w]hile Minnesota courts have sometimes endorsed an older child's custody preference, those cases have predominantly involved the preference to remain in the present arrangement or to return to a previous long-term custodial arrangement." *In re Weber*, 653 N.W.2d 804, 811-12 (Minn. App. 2002).

The district court found that the parties, including father as the non-custodial parent, manipulated M.E.R. and that M.E.R.'s expression of preference was not reliable. It specifically found that the veracity of the minor children was suspect due to father's involvement and that father's actions were "used to manipulate the minor children's current

circumstances." Additionally, the district court noted that, on the last day of the evidentiary hearing, mother testified that M.E.R. had decided that she now wished to remain living with mother.

The district court's findings are supported by the record. M.E.R. was 11 years old when she wrote affidavits in support of father's motion to modify custody and was 12 years old by the conclusion of the evidentiary hearing. In her testimony and report, the GAL stated that the children are manipulated by their parents and that they have given her conflicting accounts of events. Mother testified that M.E.R. ultimately expressed a wish to live with her. The record supports the district court's determination that M.E.R.'s purported custodial choice was not reliable. The district court did not abuse its discretion by not following M.E.R.'s expressed preference to live with her father.

D. The district court's evidentiary rulings were not an abuse of discretion.

Father asserts that the district court improperly excluded crucial evidence at the evidentiary hearing.

We review a district court's evidentiary rulings for an abuse of discretion. *Goldman*, 748 N.W.2d at 281-82. A district court may exclude evidence on the basis of materiality, lack of foundation, remoteness, relevancy, or evidence which is cumulative. *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted).

At the evidentiary hearing, father listed 39 recordings that he had made that he wanted admitted into evidence. The district court excluded a number of them. Significantly, much of this excluded evidence was cumulative. Exhibits 50, 54, 55, 57, 64, and 74 are all recordings that father made; although the district court excluded them, it took testimony

from father as to the contents of the recordings. Exhibits 150 and 151 are a video and a photo taken by minor child M.E.R., and, although these exhibits were also excluded, M.E.R. testified as to their contents at the hearing. The district court told father that M.E.R. could testify "from what she personally observed regarding the incident" at issue in the exhibits. The district court, for over two pages of transcript, then proceeded to ask M.E.R. about what occurred in the recordings.

Exhibits 13 to 15 are the report cards of the parties' eldest child; they were properly excluded as irrelevant since custody of that child was not at issue in the evidentiary hearing. Exhibit 157 is a letter from a school superintendent, offered to show that father, contrary to mother's allegations, did not enroll one of the minor children in a new school district without her permission. It was objected to and excluded on grounds of hearsay, and the district court properly explained to father that, because the letter's author was not there to testify or sit for cross-examination, it would not be admitted. Exhibit 79 is a recording of a conversation father had with nursing supervisor G.M., offered to show that father was not allowed to make a medical appointment for one of the minor children. The district court properly excluded it on the same grounds.

Father also argues the district court improperly stopped him from "prov[ing] [mother] was lying" on the ground that he was being argumentative. For example, the district court sustained an objection when mother was on the stand and father, who was representing himself, asked her if she considered her testimony to be "a falsification" based on information that he suggested in his questions. Father was given ample opportunity to

cross-examine mother and to submit other testimony and evidence. We discern no abuse of discretion in the district court's ending father's argumentative lines of questioning.

E. The district court's decision was not the result of judicial bias.

Father argues that the district court judge, in declining to consider many of his exhibits and in finding certain witnesses either credible or not credible, exhibited bias throughout the proceeding. He also argues that the district court was biased when it failed to modify custody.

When reviewing a claim that a judge was partial against a party, we presume the judge "discharged his or her judicial duties properly." *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013) (quoting *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998)). "[A]dverse rulings are not a basis for imputing bias to a judge." *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 236-37 (Minn. App. 2005).

The record and the order contain no evidence that the trial judge did not meet his obligation of impartiality. The district court's credibility and evidentiary determinations do not demonstrate bias. As to its decision, the district court made clear in its findings that both parties have contributed to their inability to co-parent and that proceedings were contentious due to the actions of both parties. Father identifies no valid basis to conclude that the district court's custody determination was preordained. The decisions made by the district court do not overcome the presumption that the district court judge discharged his duties properly.[2]

[2] On father's earlier appeal from the district court's denial of an evidentiary hearing, he also argued the district court judge was biased against him. *Rothen*, 2019 WL 664915, at

II. Father's challenge to the district court's order regarding psychological counseling and parenting classes fails.

In its order denying modification, the district court also imposed a number of obligations on the parents, ordering that "[t]he parents and stepparent participate in parenting classes and consider having psychological evaluations that include information from collateral sources, and all recommendations shall be followed."

Father argues that court-ordered parenting classes and a psychological evaluation would create an undue financial burden on him and therefore is erroneous. Father cites no legal authority in support of this argument, *see Grigsby*, 648 N.W.2d at 726 (concluding that arguments submitted without legal authority are waived), and this court has repeatedly held that "pro se litigants are generally held to the same standards as attorneys." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Additionally, father did not make this argument to the district court, and it is therefore not properly before us on appeal. *See, e.g.*, *Thiele*, 425 N.W.2d at 582 (stating that appellate courts generally will not consider matters not argued to and considered by the district court). In any event, we note that the district court order requires the parties to "consider" having psychological evaluations and, as to the required parenting classes, father makes no persuasive argument that affordable parenting classes are unavailable to him.

Affirmed.

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*5 n.3. We rejected the argument there, too, because father's accusations were based on the district court's rulings against him. *Id.*