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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0749**

In re the Marriage of:
Jonathan Richardson Woolsey, petitioner,
Appellant,

vs.

Ruthanne A. Woolsey,
Respondent.

**Filed December 28, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-FA-14-4728
Carver County District Court
File No. 10-FA-20-119

Steven T. Hennek, Hennek Klaenhammer Law, PLLC, Roseville, Minnesota (for appellant)

J. Lee Novelli, Novelli Law Office, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-father challenges the denial of his motion to modify legal custody of the parties' child, arguing that the district court failed to (1) apply the parties' stipulated

standard for modification, (2) accept his allegations as true when considering whether he made a prima facie case, and (3) consider the entire record. We affirm.

FACTS

In July 2014, appellant Jonathan Richardson Woolsey (father) filed a petition for dissolution of his marriage to respondent Ruthanne A. Woolsey (mother). The parties have one child, who was four months old at the time of the filing.

A custody evaluation was completed in April 2015. The evaluator stated that the parties' relationship was "conflict ridden," and they are "unable to successfully communicate or resolve conflict." The evaluator concluded, "To expect that [the parties] will be able to successfully make decisions about [the child] together is unrealistic. In order to ensure that decisions are being made in a safe and productive way, [it is] recommend[ed] that [mother] be awarded sole legal custody"

In October 2015, the parties filed a stipulated custody and parenting-time agreement. Mother was granted sole physical and sole legal custody of the child. Father was granted parenting time. The parties also agreed, "The issue of legal custody may be reviewed by motion of [father] no earlier than January 1, 2020, and that review will be based upon the best interest standard set forth in Minn. Stat. [§] 518.17." If father did not file his motion by January 31, 2020, he waived his right to have his motion decided under the best-interests standard. The parties' agreement was incorporated into the judgment and decree.

In mid-2017, the parties agreed to expand father's parenting time, and the district court adopted the parties' agreement. About one year later, father again sought to expand

his parenting time. Although mother opposed father's request, the district court granted his motion and appointed a parenting-time expeditor (PTE). In January 2019, father moved to have the PTE removed, claiming that the parenting-time schedule left no vagueness to be resolved by the PTE. Mother opposed the motion, claiming that she and father "have been in conflict" over parenting time and do not effectively communicate. In April 2019, the district court denied father's motion, concluding that the PTE was necessary because the parties "interfere[d] with one another's parenting time" and "struggle to communicate and make parenting decisions together."

On January 28, 2020, father moved to modify legal custody of the child, requesting joint legal custody. Father claimed that pursuant to the judgment and decree, the parties "agreed that [he] would be allowed to file a motion to modify legal custody, under a de novo standard of review, and under the best interest factors pursuant to Minn. Stat. § 518.17." Father asserted that he and mother "agree on all of [the child]'s joint legal custody issues" and have been able "to largely agree and peacefully coexist." Father claimed that he and mother: agreed on medical and dental care for the child, where to enroll the child in school, and on the child's extracurricular activities and costs. Father claimed that the parties have similar religious backgrounds and attend church, amicably agreed on swaps in the parenting-time schedule, and collaborated for the child's birthday parties.

Mother opposed father's motion. Because of emergency orders restricting live hearings due to COVID-19, the district court determined that it was appropriate to order written submissions. The parties agreed.

On April 13, 2020, the district court determined that it could modify custody if facts have arisen since the original order that show a significant change in circumstances. The district court concluded that father failed to show a significant change in circumstances; thus, he failed to set forth a prima facie case for a change in custody. After the order was filed, venue was transferred from Hennepin County to Carver County. This appeal followed.

D E C I S I O N

Correct standard

Father first argues that the district court failed to apply the correct legal standard to his motion to modify legal custody because it did not limit its analysis exclusively to the child's best interests pursuant to the parties' stipulation. Mother claims that, although the parties agreed that father's modification motion would be reviewed under a best-interests standard, father failed to meet the threshold statutory requirement to even reach a best-interests analysis. The district court ruled that father failed to make a prima facie showing that would necessitate an evidentiary hearing. This court reviews a district court's denial of an evidentiary hearing on a motion to modify custody under Minn. Stat. § 518.18(d) (2018) for an abuse of discretion. *See Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981).

In *Nice-Petersen*, the supreme court stated that "the burden is upon the movant to establish satisfactorily on a preliminary basis that there has occurred a significant change of circumstances from the time when the original or amended custody order was issued." *Id.* In *Gibson v. Gibson*, this court noted that this changed-circumstance requirement

applied to motions to modify custody made under Minn. Stat. § 518.18(d)(i). 471 N.W.2d 384, 386 (Minn. App. 1991), *review denied* (Minn. Aug. 12, 1991). Caselaw, therefore, supports mother's position that a prerequisite to a district court's grant of a motion to modify custody is changed circumstances, even if the proposed modification is to be based on the child's best interests. Thus, the law actually precludes the district court from limiting its analysis exclusively to the child's best interests as father requested.

For example, in *Suess v. Suess*, the parties had a similar agreement, which stated, "the standard for modification of child custody herein shall be the best-interests standard found in Minn. Stat. § 518.17, to be applied to any future motion for change of physical and legal custody, rather than the standard that would otherwise apply." No. A11-129, 2011 WL 5829114, *1 (Minn. App. Nov. 21, 2011). This court stated that "the parties agreed to give effect to section 518.18(d)(i), and nothing in that section voids the requirement . . . that the moving party allege a prima facie case for modification in order to obtain an evidentiary hearing on the motion." *Id.* at *4.

Similarly, in *In re the Custody of J.W.V.H.*, the parties stipulated that "[a]ny motion for modification of custody shall be determined by application of the best interests standard of Minn. Stat. § 518.17, rather than the endangerment standard of Minn. Stat. § 518.18." No. A10-1490, 2011 WL 4530437, *1 (Minn. App. Oct. 3, 2011), *review denied* (Minn. Dec. 13, 2011). Before recognizing the parties' stipulation, the district court concluded that the initial showing of a change in circumstances was made. *Id.* at *2.

In *In re Marriage of Hill v. Hill*, this court explained why parties cannot bypass the statutory requirements. No. C9-95-1670, 1996 WL 91676, *3 (Minn. App. Mar. 5, 1996).

This court stated that, despite the parties' agreement that modification of custody would be reviewed under the best-interests standard "and the requirements provided in Minn. Stat. § 518.18 are waived," the district court appropriately applied section 518.18 "because parents are not permitted to waive statutory requirements designed to preserve the stability of the child's environment." *Id.* at *1-2. This court stated that "in determining questions of custody the paramount issue remains the welfare and best interests of the children [and] [p]arties cannot enter into a stipulation which might not be in the best interests of the child." *Id.* at *3 (citations omitted).

Here, the district court determined that father failed to make a prima facie case to modify legal custody because he failed to allege the required changed circumstances. Because changed circumstances are required to modify custody under Minn. Stat. § 518.18(d)(i), a failure to allege the required changed circumstances is fatal to father's motion regardless of his allegations regarding the child's best interests. Thus, the district court applied the correct legal standard and appropriately denied father's motion.

Allegations accepted as true

Father next argues that the district court failed to accept his allegations as true in considering his motion. "A party seeking . . . modification of a custody order shall submit together with moving papers an affidavit setting forth facts supporting the . . . modification" Minn. Stat. § 518.185 (2018). The opposing party may also file an affidavit. *Id.* The district court must accept the facts in the moving party's affidavit as true, disregard contrary allegations in the nonmoving party's affidavit, and consider the allegations in the nonmoving party's affidavits only to the extent that they explain or

contextualize the allegations contained in the moving party's affidavit. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007). This court reviews de novo whether the district court properly treated the allegations in the parties' affidavits. *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011).

Here, the district court stated that father alleged that the parties agree on medical and dental care for the child, where she goes to school, and where she goes to church. The district court accepted these statements as facts, but stated that these facts did not allege a substantial change in circumstances. The district court further stated that father asserted that joint legal custody would help preserve and maintain his relationship with the child. The district court did not disregard father's assertion, rather, the district court stated that father's parenting time, which has expanded, will encourage the growth and development of his relationship with the child. Thus, the district court properly treated the assertions in father's affidavit as true, but determined that those facts did not show a change in circumstances that would support a change in custody.

Consideration of the entire record

Father also argues that the district court abused its discretion by failing to consider the entire record. Father asserts that, in its order, the district court notes each submission it considered, but "omits any mention" of father's memorandum of law filed on March 31, 2020, in which he explained the stipulated-to legal standard of review. He suggests that because the district court did not mention reviewing this submission, and the district court failed to include this legal argument in its order, it must not have reviewed the submission.

Father is correct in noting that the district court did not include the March 31 submission when it outlined the procedural history of the matter. The district court included several dates beginning with the filing of the judgment and decree and ending with father's filing on March 27, 2020. But there are several problems with father's inference that the district court did not consider the March 31 submission.

First, when the district court outlined the dates in the "[b]ackground and [p]rocedural [h]istory" section of its order, it did not state that these were the only submissions it considered. Rather, the district court stated that its decision was "[b]ased upon all the files, records, and the [c]ourt being fully advised in the premises." Thus, father is essentially asking us to conclude that the district court misrepresented what it considered in addressing his motion. This, we will not do.

Second, the district court stated that the matter was taken under advisement on April 1, 2020, and that the parties agreed that the "[c]ourt shall use the already submitted documents" in ruling on father's motion. Father's memorandum of law was submitted on March 31; thus, it was filed before the matter was taken under advisement, and the parties agreed that the district court would consider all submissions filed before April 1.

Third, father claims that by omitting reference to his March 31 memorandum, the district court did not consider the stipulated-to legal standard. But in a March 10 filing, father referenced the parties' stipulation, claiming that the parties "agreed that [he] would be allowed to file a motion to modify legal custody, under a de novo standard of review, and under the best interest factors pursuant to Minn. Stat. § 518.17." Thus, in a pre-March 31 filing, father referenced the best-interests standard of review.

Finally, in its order, the district court stated: “The parties [j]udgment and [d]ecree stipulated [father] would be able to file a motion to modify legal custody, under a de novo standard and under the best interest factors pursuant to Minn. Stat. § 518.17” Thus, the district court was aware of the stipulated-to standard of review. Based on this record, even though the March 31 memorandum is not specifically referenced in the district court’s order, we cannot conclude that the district court failed to consider all of the relevant submissions.

Venue

The parties disagree as to the proper venue if the matter is remanded. But because we affirm the district court’s order, we do not reach this issue.

Affirmed.