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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-2018**

Richard Minder III,  
Respondent,

vs.

Jai Maria Negri,  
Appellant.

**Filed January 11, 2021  
Affirmed in part, reversed in part, and remanded  
Bryan, Judge**

Hennepin County District Court  
File No. 27-FA-07-806

Jeffrey A. Berg, Henningson & Snoxell, Ltd., Maple Grove, Minnesota (for respondent)

Kathryn M. Lammers, Heimerl & Lammers, LLC, Minnetonka, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Bryan, Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this custody and parenting time dispute, appellant-mother argues that the district court erred in three respects: (1) by awarding father permanent sole legal custody; (2) by denying mother's motion to modify the previous physical custody determination; and (3) by permanently restricting mother's parenting time. Because the record supports the district court's factual findings regarding the statutory best interests factors, we affirm the district court's legal custody decision. In addition, we affirm the district court's denial of

mother's motion to modify physical custody because the evidence supports the district court's factual findings that father's conduct did not endanger the children. Finally, because the district court restricted mother's parenting time without analyzing the required statutory provisions, we reverse the determination of parenting time and remand to the district court for further proceedings.

## **FACTS**

Appellant-mother Jai Negri and respondent-father Richard Minder III were never married and had two daughters together, M.I.N. (age 16) and A.M.N. (age 14). The parties followed an initial custody and parenting time order from 2007 until 2017, when father moved to modify custody and parenting time. Based on the parties' agreement in 2018, the district court modified the original order. In 2019, mother brought motions to modify custody and parenting time. Mother now appeals the denial of her requests. We first briefly address the procedural history in this case, before turning our attention to the evidence presented and findings made after the 2019 evidentiary hearing.

### **A. Procedural History**

In July 2007, the district court issued its initial custody order, awarding the parties joint legal custody and granting sole physical custody to mother. Mother enjoyed the majority of parenting time with the children in the ensuing years, although father's parenting time varied. Beginning in March 2014, father exercised regular parenting time during one overnight every other Saturday, two additional overnights during holiday parenting time, and two weeks of vacation parenting time.

In February 2017, father moved for temporary and permanent modification of the 2007 custody order, arguing that the children were endangered in mother's care and seeking sole legal and sole physical custody of the children. In an ex parte order and in the order following an initial hearing to address father's emergency motions, the district court awarded father temporary sole legal custody and temporary sole physical custody of the children. The district court also substantially restricted mother's parenting time on a temporary basis,<sup>1</sup> appointed a guardian ad litem, and ordered the parties to undergo a custody and parenting time evaluation. The temporary parenting time schedule permitted mother to exercise parenting time during one overnight every other Saturday. After a review hearing in April 2017, the district court expanded mother's parenting time to also include every other Friday night. For the duration of 2017, the district court held periodic review hearings, pending an evidentiary hearing to address father's 2017 motions to permanently modify custody and parenting time.

Prior to the scheduled evidentiary hearing on father's 2017 modification motions, the parties entered into a preliminary agreement on March 9, 2018. Based on this preliminary agreement, the district court struck the evidentiary hearing from the calendar, and the parties continued to finalize a stipulation to dispose of father's pending motions. In the preliminary agreement, the parties agreed to follow a two-phase parenting time schedule for the next six months, with a review hearing scheduled for September 2018 to address future interim expansion of mother's parenting time. During those six months,

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<sup>1</sup> Mother exercised the vast majority (approximately 85%) of parenting time prior to the district court's February 13, 2017 ex parte order.

mother's parenting time included unsupervised parenting time every Thursday evening and every other Saturday overnight. Prior to the scheduled six-month review hearing, mother moved the court to establish a permanent, 50/50 parenting time schedule. Shortly thereafter, the parties reached a final agreement, which included the appointment of a parenting consultant to address mother's request to establish a permanent 50/50 parenting time schedule.

The parties signed the final stipulation in September 2018, and the court adopted the stipulation in an order dated October 1, 2018 (the 2018 Stipulated Order). The 2018 Stipulated Order disposed of father's pending motion to permanently modify physical custody. Pursuant to the 2018 Stipulated Order, father was awarded permanent sole physical custody. The 2018 Stipulated Order did not, however, reach a final disposition regarding father's motion to permanently modify legal custody or regarding father's motion to permanently modify the previously imposed parenting time schedule. Instead, the 2018 Stipulated Order expressly reserved a permanent determination of legal custody pending a review after one year. Likewise, the district court and the parties referred father's 2017 motion to permanently modify the parties' parenting time schedule and mother's subsequent request for an equal parenting time schedule to the parenting consultant.

On March 1, 2019, mother filed emergency motions requesting temporary joint legal custody, temporary sole physical custody, and a temporary suspension of father's

parenting time subject to the recommendations of a guardian ad litem.<sup>2</sup> In support of these motions, mother alleged that M.I.N. had been admitted to the hospital after cutting herself and expressing suicidal thoughts, and that she would not be safe if she returned to father's home. The district court agreed that M.I.N.'s situation constituted an emergency, but it denied mother's requested ex parte relief, and scheduled an expedited hearing on the emergency motions. Following this hearing, the district court denied mother's temporary requests, and scheduled an evidentiary hearing to consider the disputed issues of physical custody, legal custody, and parenting time.

The evidentiary hearing was held over the course of three separate days between May and July 2019. The district court construed mother's motion regarding legal custody as a request to conduct the contemplated one-year review, even though one year had not yet passed. Based on the parties' agreement in the 2018 Stipulated Order, the district court applied the best interests factors to determine permanent legal custody, but applied the custody modification requirements to mother's motion regarding physical custody. The district court also applied the best interests factors to mother's motion regarding parenting time without addressing the temporary nature of the parenting time provisions in the 2018 Stipulated Order.

In its November 8, 2019 order, the district court concluded that the best interests factors weighed in favor of awarding father permanent sole legal custody of both children.

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<sup>2</sup> Although Mother's emergency motions only related to one of the children, M.I.N., the district court construed these motions as relating to both children. The evidentiary hearing and the district court's order concerned the custody of and parenting time for both children.

The district court also concluded that mother had not met the statutory grounds of endangerment necessary for modification of physical custody. Finally, the district court concluded that the best interests factors weighed in favor of permanently restricting mother's parenting time for both children to four supervised parenting time sessions totaling 14 hours every two weeks.

**B. Evidence Presented and the District Court's Findings**

Mother challenges the district court's findings regarding the following five best interests factors: the preferences of the children, the mental health of mother and father, the ability of mother and father to provide ongoing care for the children, each party's ability to support the children's relationship with the other parent, and each party's ability to cooperate with the other parent in the rearing of their children. In addition, mother challenges the district court's findings regarding whether father's conduct endangers the health and well-being of the children.

First, the district court made findings regarding the preference of the children and concluded that this factor was neutral. The district court received evidence that, in February and March 2019, M.I.N. expressed a preference to live with mother rather than father. The district court also received into evidence a custody evaluation from September 2017, which included summaries of the evaluator's interviews with the children. The evaluator believed that the children could not express an independent, reliable preference because they had been continually exposed to mother's unfounded allegations of father's

abuse.<sup>3</sup> According to the evaluator, mother made such accusations to “nearly every healthcare provider the children have seen in recent years,” many times “in front of the children.” Even though the evaluation was more than two years old, the district court found it to be reliable in light of testimony and medical records documenting mother’s efforts in 2019 to influence the children’s perceptions and to disparage father. It therefore concluded that this factor was neutral because the children were “unable to express an independent and reliable preference regarding custody and parenting time.”

Second, the district court made findings regarding the parties’ mental health and concluded that this factor favored father’s positions. The district court credited findings from 2017 psychological evaluations of both parties. Father’s psychological evaluation ruled out a diagnosis of depressive disorder even though father had been previously diagnosed with post-traumatic stress disorder and major depressive disorder in a 2005 psychological evaluation.

Mother’s psychological evaluation yielded a diagnostic profile of adjustment disorder with mixed anxiety, depressed mood, and histrionic traits. The evaluator recommended that mother undergo dialectical behavioral therapy (DBT), which had been previously recommended, but never completed by mother.<sup>4</sup> Further, the evaluator

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<sup>3</sup> The district court explained that mother’s allegations “have permeated nearly every aspect of this case since its inception,” and that “[t]he record that exists over the last six years of litigation in this matter is filled with domestic abuse allegations by [mother] on behalf of the children against [father].” During her testimony at the evidentiary hearing, however, mother stated that she now no longer believes father abused the children.

<sup>4</sup> Mother’s 2005 psychological evaluation, also admitted into the record, included conclusions that mother had clinically significant impairment in social, occupational, educational, relational, and parenting skills. The evaluator in 2005 diagnosed mother with

observed that although mother presented herself “as positively as possible,” mother’s “assertions were frequently contradicted in collateral documents.” The district court also considered testimony by mother’s therapist, Noureen Wallani. This district court discounted this testimony, finding that Ms. Wallani’s testimony rested only on mother’s self-reported beliefs, “which have been frequently inaccurate or misleading.” In her testimony, Ms. Wallani acknowledged that she had not reviewed the district court’s previous orders or the 2017 custody evaluation, which concluded that mother “engaged in what appears to be a deliberate manipulation of the facts across multiple providers.” In addition, the district court identified inconsistencies between statements that mother made to Ms. Wallani and statements that mother made to M.I.N.’s medical providers in February 2019.

Third, the district court made findings regarding the parties’ respective abilities to provide ongoing care for the children and concluded that this factor also favored father’s positions. The district court found that both parents were willing to care for the children. However, mother continued to use an “extreme consent-based parenting style,” which affected the healthy development of the children. For example, the district court cited A.M.N.’s refusal to allow blood draws and her removal of a feeding tube during her hospital stay in 2017 for an eating disorder. The district court also concluded that mother’s parenting style resulted in M.I.N. arriving late to school twenty separate times because she refused to take the bus. At the evidentiary hearing, mother testified that she does not use a

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a personality disorder with borderline features and recommended intensive DBT treatment. Mother never completed the recommended DBT.



consent-based parenting style, but the district court disbelieved mother's testimony, citing examples from 2017, 2018, and 2019. For instance, mother twice violated a 2019 order prohibiting her from communicating with M.I.N. through the use of a secondary or secret cell phone. The district court concluded that these actions "clearly violate the plain intent of the Court's order" and "undermine [father's] parenting decisions." Moreover, mother's testimony at the evidentiary hearing explaining her behavior "significantly diminishe[d] her credibility." The district court concluded that this factor favored father because mother's ongoing parenting style and "frequent tendency to ignore or violate Court orders" limit her ability to care for the children "in a way that is developmentally appropriate, healthy, and safe."

Fourth, the district court made findings regarding mother's attempts to impair father's relationship with the children. These findings relate to two best interests factors: the eleventh factor ("the disposition of each parent to support the child[ren]'s relationship with the other parent and to encourage and permit frequent and continuing contact between the child[ren] and the other parent") and the twelfth factor ("the willingness and ability of parents to cooperate in the rearing of their child[ren]; to maximize sharing information and minimize exposure of the child[ren] to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child[ren]"). Minn. Stat. § 518.17, subds. 1(a)(11), (12) (2018). The district court heavily emphasized the importance of these factors in its ultimate decision, repeatedly finding that mother sought to hinder father's relationship with the children by continually making unfounded allegations that father abused the children. The evidence presented included the following

statement from a 2016 child protection investigation report: “The Department is concerned that [A.M.N.] and [M.I.N.] are being emotionally abused and manipulated by their mother’s actions and derogatory comments about [father] in the children’s presence.” Similarly, the evidence included multiple examples in 2016 and 2017 of mother’s statements to medical providers that father caused A.M.N.’s anorexia. The custody evaluation in 2017 summarized mother’s behavior:

The information gathered during this evaluation indicates that [mother] has not only continued, but has also amplified, her campaign to disparage [father]. [Mother] has attempted to correlate the children’s physical and emotional issues with alleged abusive behavior on [father’s] part with nearly every healthcare provider the children have seen in recent years; many of these allegations have been in front of the children. Multiple CP investigations have found no evidence that [father] had engaged in emotionally or physically abusive behavior toward the children.

The evidence before the district court also included medical records from M.I.N.’s hospital admission on February 20, 2019. These medical records indicate that mother and M.I.N. continued to allege that father neglected and mistreated the children. After one of the doctors reported his concerns about father to child protective services, another child protection investigation occurred. The district court received the report into evidence and received the testimony of the social worker who completed the 2019 investigation. This evidence showed that mother continued to disparage father to school officials and hospital employees in 2019. The social worker ultimately concluded that mother had influenced the children’s statements and did not credit them. Based on this evidence, the district court

found that mother “has repeatedly demonstrated that she has an inconsistent desire and no proven ability to co-parent with [father].”

Given its conclusions regarding these five factors as well as the other best interests factors, the district court awarded permanent sole legal custody to father. The district court also permanently restricted mother’s parenting time to 14 hours every two weeks and required supervision during all of mother’s parenting time indefinitely.

Finally, the district court concluded that the evidence presented did not show that the children were endangered while in father’s care. Mother claimed that the children faced a danger to their health and well-being when placed in father’s care because M.I.N.’s cutting and suicidal ideation occurred under a parenting time arrangement in which father exercised the vast majority of parenting time. Mother did not present corroborating evidence, however, for her conclusion that father’s conduct endangers the children, and the district court questioned mother’s inference regarding causation: “The specific causes of [M.I.N.’s] difficulties and the sources of her physical and emotional endangerment are, however, not as clearly determined as [mother’s] allegations attempt to portray. As addressed below, the ongoing condition of being put in what the appointed parenting consultant calls a ‘loyalty bind’ causes the children considerable emotional stress and, at times, places them in danger.” Further, the district court disbelieved mother’s testimony, finding that it was “riddled with inconsistencies and demonstrated fabrications” and that she had “engaged in a pattern of deceit and manipulation.” By contrast, the district court found that “multiple evaluations, Guardian ad Litem reports, police reports, and extensive medical and therapy records repeatedly support [father’s] recollection and descriptions of

events.” Therefore, the district court denied mother’s motion to modify the previous permanent sole physical custody award to father. Mother appeals.

## **DECISION**

Mother challenges three aspects of the district court’s order: (1) the award of permanent sole legal custody to father based on its best interests findings; (2) the denial of mother’s motion to modify the 2018 physical custody determination; and (3) the permanent restriction of mother’s parenting time.

### **I. Determination of Legal Custody**

Mother argues that the district court erred in making its factual findings regarding five of the best interests factors. Because the record supports these findings, we conclude that the district court did not clearly err in making these findings.

A district 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 and that the modification is necessary to serve the best interests of the child.” Minn. Stat. § 518.18(d) (2018). In applying these standards, the district court shall retain the existing custody arrangement unless the moving party establishes one or more of the following five bases:

- (i) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed . . . to apply the best interests standard in section 518.17 . . . ;
- (ii) both parties agree to the modification;
- (iii) the child has been integrated into the family of the petitioner with the consent of the other party;
- (iv) 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; or

(v) the court has denied a request of the primary custodial parent to move the residence of the child to another state, and the primary custodial parent has relocated to another state despite the court's order.

*Id.* Paragraph (d)(i) applies to the legal custody issue here because, in the 2018 Stipulated Order, the parties agreed to use the best interests standard from section 518.17 to review the temporary award of legal custody.

Section 518.17, subdivision 1(a), sets forth twelve factors that the district court must consider when evaluating the best interests of the children. We review the district court's custody determination under different standards, depending on the particular error asserted. *E.g.*, *Gibson v. Gibson*, 471 N.W.2d 384, 386 (Minn. App. 1991) (stating "[i]n determining the child's best interests, the [district] court weighs statutory criteria in light of findings on underlying facts, and the court's conclusions will reflect decisions on mixed questions of law and fact, 'ultimate' facts, and matters of law") (citing *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990)), *review denied* (Minn. Aug. 12, 1991).

Where a party raises a purely legal question, such as the interpretation of the custody statutes, we review the conclusion de novo. *See, e.g.*, *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018) (citing *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008)). Where a party contests the district court's weighing of factors or its ultimate decision regarding custody, we review the disputed conclusion for an abuse of discretion. *E.g.*, *Thornton v. Bosquez*, 933 N.W.2d 781, 794 (Minn. 2019); *Goldman*, 748 N.W.2d at 282 (Minn. 2008). We do not reweigh the best interests factors. *Vangsness v. Vangsness*, 607

N.W.2d 468, 477 (Minn. App. 2000) (holding that there is “scant if any room for an appellate court to question the [district] court’s balancing of best-interests considerations”).

Where a party disputes the factual findings regarding one or more of the statutory factors, we review the district court’s factual findings for clear error. *Thornton*, 933 N.W.2d at 790. A finding is clearly erroneous if the reviewing court is “left with the definite and firm conviction that a mistake has been made.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997) (quotation omitted). When determining whether the district court’s findings are clearly erroneous, we defer to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We do not reweigh the evidence, and underlying findings of fact based on conflicting evidence will be affirmed unless they are “manifestly and palpably contrary to the evidence as a whole.” *Kucera v. Kucera*, 146 N.W.2d 181, 183 (Minn. 1966).

Mother contests the district court’s factual findings regarding five of the statutory best interests factors: (1) the preferences of the children; (2) the mental health of mother and father; (3) the ability of mother and father to provide ongoing care for the children; (4) each party’s ability to support the children’s relationship with the other parent; (5) and each party’s ability to cooperate with the other parent in the rearing of their children. *See* Minn. Stat. § 518.17, subs. 1(a)(3), (5), (7), (11), (12).

Mother first disputes the district court’s factual determination that she influenced the children by making unfounded accusations that father abused them. This factual determination relates to three best interests factors. For example, the district court concluded that, due to mother’s influence, the children could not express an independent

and reliable preference. The district court also emphasized this behavior when concluding that mother had demonstrated inability to support the children's relationship with father and to cooperate with father in the rearing of their children. The district court's findings are supported by the record, which includes ample evidence that mother made unfounded accusations of abuse in front of the children. In the 2016 child protection investigation report, the child protective services agency concluded the following: "The Department is concerned that [A.M.N.] and [M.I.N.] are being emotionally abused and manipulated by their mother's actions and derogatory comments about [father] in the children's presence." Similarly, the evidence included multiple examples in 2016 and 2017 of mother's statements to medical providers that A.M.N.'s eating disorder resulted from father's poor parenting and abuse. The custody evaluator concluded that mother made such accusations to "nearly every healthcare provider the children have seen in recent years," many times "in front of the children."

Contrary to mother's arguments on appeal, the district court did not base its findings only on evidence from 2017. The district court also admitted medical records from M.I.N.'s hospital stay in February 2019. These medical records indicate that mother and M.I.N. continued to allege that father neglected and mistreated the children, and the social worker who completed the 2019 investigation testified that mother continued to disparage father to school officials and hospital employees in 2019. The 2019 evidence in particular caused the district court to disbelieve mother when she testified that she no longer believed that father abused the children and had stopped accusing him of this behavior. Based on this evidence, we conclude that the district court did not clearly err when it found that

mother made unfounded accusations of abuse against father or when it found that these accusations influenced the children's stated preferences.

Mother next challenges the district court findings that mother's mental health negatively affects the children's development. Mother primarily argues that the district court neglected to consider evidence that she had attended to her mental health, including testimony from her therapist, Ms. Wallani. In this regard, mother asks us to reweigh the evidence presented and reconcile conflicting evidence in a way that contradicts the district court's findings. We are satisfied that the record supports the district court's decision to discount Ms. Wallani's testimony. The district court observed that, unlike the custody evaluator and the psychological evaluator in 2017, Ms. Wallani's testimony rested only on mother's self-reported beliefs, and Ms. Wallani had not reviewed mother's previous custody evaluations. We are not left with "the definite and firm conviction that a mistake has been made" in the weight given to the conflicting evidence presented regarding mother's mental health. *See Olsen*, 562 N.W.2d at 800.

Mother also disagrees with the district court's findings regarding how her parenting style impairs her ability to provide ongoing care for the children.<sup>5</sup> Again, we conclude that

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<sup>5</sup> The legislature set forth two related factors regarding parents' abilities to care for their children, one focused on the history of providing care and one focused on providing care in the future. Minn. Stat. § 518.17, subd.1(a)(5), (6). Mother does not contest the findings related to the historical factor and only contests the district court's conclusions regarding the forward-looking factor. Considering one of these two factors apart from the other, however, is not always meaningful. For instance, the district court first concluded that mother previously exhibited problematic parenting behaviors that prohibited her from being able to care for the children in the past, such as an "extreme consent-based parenting style," and making unfounded accusations that father was abusing the children, many times in front of the children or directly to the children. In addition, the district court recounted



the record supports the district court's findings. The evidence that mother encouraged and defended A.M.N.'s refusal to allow blood draws and A.M.N.'s removal of a feeding tube while in the hospital supports the district court's findings that mother's "extreme consent-based parenting style" affects the healthy development of the children. In addition, mother's decision to provide M.I.N. a secret cell phone in violation of the district court's order in 2019 supports the district court's finding that mother's ongoing parenting style and "frequent tendency to ignore or violate Court orders" limit her ability to care for the children "in a way that is developmentally appropriate, healthy, and safe."

Finally, mother asserts that the district court clearly erred when it found that she interfered with and hindered father's relationship with the children. The district court relied on this finding when it weighed the eleventh and twelfth best interests factors. We conclude that the record supports the district court's finding. As noted above, reports and medical records from 2016, 2017, and 2019 received into evidence included documentation that mother disparaged father in front of the children by making unfounded accusations of father's child abuse. Mother's violation of the district court's order in 2019 also supports the finding that mother's conduct undermined father's relationship with the children. We

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examples of mother's past failures to comply with previous parenting time orders and mother's improper denial of father's parenting time, including incidents in January 2017 and August 2017 involving the police. The district court concluded that because mother continued to exhibit these same problematic parenting behaviors at the time of the evidentiary hearing, she had an impaired ability to provide care for the children in the future. We review the challenged findings in light of the uncontested historical findings made by the district court.

find no error in the district court’s determination that mother “has an inconsistent desire and no proven ability to co-parent with [father].”

The district court made 132 paragraphs of factual findings regarding the best interests factors and carefully considered the evidence presented. The record at the evidentiary hearing contains sufficient support for the disputed findings above, and we affirm the district court’s decision to grant father permanent sole legal custody.

## **II. Denial of Mother’s Motion to Modify Physical Custody**

Mother also appeals the denial of her motion to modify the 2018 permanent sole physical custody determination. Unlike legal custody, which the parties agreed to review in one year, the parties reached a definitive agreement regarding physical custody in 2018. The district court, therefore, correctly treated physical custody differently than legal custody, applying section 518.18(d)(iv) to the physical custody issue in this case and requiring mother to establish endangerment.

To modify permanent physical custody in the absence of an agreement or evidence of integration, the district court must determine, among other factors, that “the child[ren]’s present environment endangers the child[ren]’s physical or emotional health or impairs the child[ren]’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[ren].” Minn. Stat. § 518.18(d)(iv). The party requesting modification has the burden to show endangerment, and failure to do so results in denial of the modification motion. *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981); *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007).

Endangerment is not precisely defined, and not all evidence of harm establishes endangerment. *See Geibe v. Geibe*, 571 N.W.2d 774, 779 (Minn. App. 1997) (noting that a “single incident of borderline abuse” did not establish endangerment). Rather, the moving party must present evidence that the conduct of the custodial parent puts the child at a “significant degree of danger,” and that the child suffers actual adverse effects. *In re Weber*, 653 N.W.2d 804, 811 (Minn. App. 2002); *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). The existence of endangerment is a factual determination that this court reviews for clear error. *Sharp v. Bilbro*, 614 N.W.2d 260, 263-64 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000).

The district court concluded that the evidence presented did not show that father’s conduct endangered the children. We defer to the district court’s credibility determination regarding mother’s testimony. *See Sefkow*, 427 N.W.2d at 210. The district court found that mother’s testimony was “riddled with inconsistencies and demonstrated fabrications” and that she had “engaged in a pattern of deceit and manipulation.” In addition, while the children have both endured serious health crises, the record contains insufficient evidence to conclude that father’s conduct puts the children in danger. Thus, the district court did not clearly err in its findings regarding endangerment.

### **III. Restriction of Mother’s Parenting Time**

Mother also challenges the district court’s decision to restrict her parenting time. Because the 2018 Stipulated Order left open the establishment of a permanent parenting time schedule, we conclude that the district court failed to consider the statutory requirements when it restricted mother’s parenting time.

When modifying a previously imposed parenting time schedule, the district court must make findings to justify reductions that constitute a “restriction” of parenting time:

Mother is correct that findings are required for a restriction of parenting time. Under Minn. Stat. § 518.175, subd. 5 (2008), a district court “may not restrict parenting time unless it finds that: (1) parenting time is likely to endanger the child’s physical or emotional health or impair the child’s emotional development; or (2) the parent has chronically and unreasonably failed to comply with court-ordered parenting time.”

*Dahl v. Dahl*, 765 N.W.2d 118, 123 (Minn. App. 2009); *see also* Minn. Stat. § 518.175, subd. 1(b) (2018); *Hagen v. Schirmers*, 783 N.W.2d 212, 218 (Minn. App. 2010) (noting that “a ‘restriction’ requires a finding of endangerment or noncompliance with court orders”). While not all reductions in parenting time constitute restrictions, a restriction “can occur when a change to parenting time is substantial.” *Boland v. Murtha*, 800 N.W.2d 179, 182 n.1 (Minn. App. 2011) (quotation omitted).

In addition, “[i]n the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child.” Minn. Stat. § 518.175, subd. 1(g) (2018). As we have previously stated, “*Dahl* directs district courts to demonstrate an awareness and application of the 25% presumption when the issue is appropriately raised and the court awards less than 25% parenting time.” *Hagen*, 783 N.W.2d at 217. When the presumption applies, a district court commits reversible error when it fails to analyze the applicability of the presumption:

Section 518.175, subdivision 1[(g)], is a legislatively imposed benchmark for parenting time. As such, the provision would be stripped of its purpose if appellate courts could, after the fact, calculate parenting time in a light most favorable to the

decision and supply findings as a basis to conclude that the presumption, if considered, would have been overcome. *See Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986) (stating, in child-support context, that “[w]hile the record may support a trial court’s decision, it is nevertheless inadequate if that record fails to reveal that the trial court actually considered the appropriate factors”). Here, the record does not indicate the district court considered the 25% presumption. The failure to consider the issue is error. Therefore, we hold, as this court did in *Dahl*, that the district court erred by not considering or addressing subdivision 1[(g)].

*Id.* at 218.

The requirements of section 518.175, subdivisions 1(b) and 1(g), apply in this case. Prior to father’s 2017 motion to modify parenting time, mother exercised the vast majority (approximately 85%) of parenting time. As a result of father’s emergency motion, the district court substantially restricted mother’s parenting time on a temporary basis, appointed a guardian ad litem, and ordered the parties to undergo a custody and parenting time evaluation. The parties’ preliminary agreement in March 2018 included a temporary, six-month parenting time arrangement, which permitted mother to gradually increase her parenting time. The parties then agreed to refer the issue of a permanent parenting time schedule to a parenting consultant as part of the 2018 Stipulated Order. When mother filed her 2019 parenting time motion, the district court had not yet established a permanent parenting time schedule. In other words, the parties operated under a temporary, *pendente lite* parenting time schedule from the district court’s ex parte order on February 13, 2017, through the district court’s parenting time order on November 8, 2019.

As mother’s affidavits and pretrial pleadings make clear, mother first requested that the district court suspend father’s parenting time. In the alternative, mother requested an

equal parenting time schedule. And, in an alternative to that position, mother requested at least 25% parenting time pursuant to the subdivision 1(g). The district court denied each of these requests and instead, permitted mother to exercise supervised parenting time for 14 hours every two weeks. This decision represents a substantial reduction of mother's previously ordered parenting time from approximately 85% to less than 1%.

We conclude that this reduction constitutes a restriction under subdivision 1(b) and falls below the 25% threshold stated in subdivision 1(g). We follow the disposition in *Dahl* and *Hagen*, reverse the decision to restrict mother's parenting time, and remand the determination of a permanent parenting time schedule to the district court for further proceedings. The district court may, at its discretion, reopen the record, require new parenting time evaluations, or impose other requirements on the parties, if it deems such actions necessary to fully analyze and apply subdivisions 1(b) and 1(g).

**Affirmed in part, reversed in part, and remanded.**