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

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1342

In re the Marriage of:

Wynter Rose Isakson, f/k/a Wynter Rose Anderson, petitioner,
Appellant,

vs.

Derek Morris Anderson,
Respondent.

Filed August 23, 2021
Affirmed
Cochran, Judge

Becker County District Court
File No. 03-FA-15-2163

Nicole J. Tabbut, Pemberton Law, P.L.L.P., Detroit Lakes, Minnesota (for appellant)

Jessica L. Moen, Aaland Law Office, LTD., Fargo, North Dakota (for respondent)

Considered and decided by Segal, Presiding Chief Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-mother challenges the district court's order denying, without an evidentiary hearing, her motion to modify custody. We affirm.

FACTS

Appellant-mother Wynter Rose Isakson and respondent-father Derek Morris Anderson married in September 2011 and later had two children. In October 2015, the district court entered a stipulated judgment dissolving the parties' marriage. At that time, the parties' youngest child was one year old. The dissolution judgment awarded the parties joint legal and joint physical custody of the children. The judgment further awarded father parenting time every other weekend until the younger child reached age three. At that point, the judgment provided the parties would begin a week on/week off parenting-time schedule.

However, when the youngest child turned three, the parties did not switch to the week on/week off parenting-time schedule. Instead, father cared for the children on weekends and mother cared for the children during the week and alternating Sundays until the events giving rise to this case.

In March 2020, Governor Walz issued Emergency Executive Order 20-20 (EEO 20-20), which generally directed Minnesotans to stay at home due to the COVID-19 pandemic subject to limited exceptions. In April 2020, mother informed father that she would keep the children at her home until EEO 20-20 was lifted. Mother offered to make up for the lost parenting time with video conferencing while EEO 20-20 was in place and with compensatory parenting time once the order was lifted.

Later in April 2020, father moved the district court to hold mother in contempt because mother had "completely denied [father] his court ordered parenting time" and because mother "refused" to switch to the week on/week off parenting-time schedule set

by the dissolution judgment. Father also asked the district court to order the parties to follow the week on/week off schedule.

In a responsive filing, mother opposed father's motion. Mother also filed a countermotion asking the court to (1) suspend father's parenting time until EEO 20-20 was lifted and (2) either modify the parenting-time schedule in the existing dissolution judgment or appoint a custody evaluator to determine a different parenting-time schedule. At this point in the proceeding, mother did not seek modification of custody. Mother filed two affidavits in support of her position—an initial affidavit and a reply affidavit.

In his responsive memorandum, father argued that the district court should deny mother's countermotion. Father argued, in relevant part, that mother's motion to modify parenting time was actually a de facto motion to modify custody, and thus the more rigorous standard governing modification of custody under Minn. Stat. § 518.18(d) (2020)—and not the best-interests standard in Minn. Stat. § 518.175, subd. 5(b) (2020), governing parenting time—applied to mother's motion. Father also filed two affidavits—an initial affidavit and a reply affidavit.

In July 2020, the district court held a hearing on father's motion and mother's countermotion.[1] Father requested that the district court order the parties to comply with the week on/week off parenting-time schedule included in the dissolution order. Father also reiterated his argument that mother's motion to modify parenting time was a de facto

[1] The district court held an initial hearing in June 2020 that had to be rescheduled to July due to technical difficulties. At the initial hearing, the district court denied father's contempt motion with respect to mother retaining the children in response to EEO 20-20.

motion to modify custody, and he contended that mother had not met her burden to allege a prima facie case for modification. In response, mother argued for the first time that her affidavits established a prima facie case for a change in custody under section 518.18(d) based on either integration of the children into mother's family or endangerment of the children. She asserted that father had implicitly consented to the children being integrated into her home by waiting two-and-a-half years to enforce the week on/week off schedule. She also contended that her affidavits established a prima facie case of endangerment because father refused to transport the children to school. Mother argued that an evidentiary hearing was warranted for the district court to "consider whether these kids were integrated into [her] home." Father replied by denying that he agreed to forgo the week on/week off parenting-time schedule included in the dissolution order. He also maintained that he "is fully prepared and able" to assume the week on/week off schedule. The district court took the matter under advisement.

In an August 2020 order, the district court denied both father's motion to hold mother in contempt and mother's countermotion, which it characterized as a motion to modify custody. The district court ruled that mother had "not made a prima facie showing of endangerment sufficient to grant [her] request to restrict parenting time," but it did not explicitly rule on mother's integration argument. Finally, the district court ordered the parties to begin the week on/week off parenting schedule included in the dissolution judgment beginning in the first week of September 2020. Mother now appeals the district court's denial of her countermotion without an evidentiary hearing.

DECISION

Mother does not challenge the district court's treatment of her countermotion as a motion to modify custody. Instead, she argues that the district court erred by denying her custody-modification motion without holding an evidentiary hearing to determine whether the children were integrated into her home within the meaning of Minn. Stat. § 518.18(d)(iii).

With exceptions not applicable here, modification of a joint-custody order is governed by the standards set forth in Minn. Stat. § 518.18(d). Minn. Stat. § 518.18(e) (2020). Section 518.18(d), in turn, provides that modification of a prior custody order is permitted only in specific circumstances. One such circumstance is integration of the child or children into the family of the moving party with the consent of the other party. Minn. Stat. § 518.18(d)(iii). The party seeking modification of a custody order must establish a prima facie case for modification to be entitled to an evidentiary hearing on the matter. *Christensen v. Healy*, 913 N.W.2d 437, 440 (Minn. 2018). To establish a prima facie case for modification based on integration, the moving party must allege that (1) the circumstances of the child or the parties have changed, (2) modification is necessary to serve the child's best interests, and (3) "the child has been integrated into the family of the petitioner with the consent of the other party." Minn. Stat. § 518.18; *see Downey v. Zwigart*, 378 N.W.2d 639, 642-43 (Minn. App. 1985) (applying section 518.18(d) to a custody-modification motion based on integration). If the moving party does not allege a prima facie case, the district court is required to deny the custody-

modification motion without an evidentiary hearing. *Nice-Petersen v. Nice-Petersen*, 310 N.W.2d 471, 472 (Minn. 1981).

In reviewing a district court's denial of a custody-modification motion without an evidentiary hearing, we review three discrete determinations. *Amarreh v. Amarreh*, 918 N.W.2d 228, 230 (Minn. App. 2018). First, we review de novo the district court's treatment of the parties' affidavits. *Id.* at 230-31. Second, we apply an abuse of discretion standard to the district court's determination of whether the moving party alleged a prima facie case for custody modification. *Id.* at 231. And third, we review de novo the district court's determination of whether an evidentiary hearing was necessary. *Id.* With this background in mind, we turn to mother's arguments on appeal.

Mother argues that the district court erred in two respects by denying her motion to modify custody without an evidentiary hearing. First, she argues that the "district court erred in its analysis of the parties' affidavits." Second, she argues that the district court's conclusion that she "failed to establish a prima facie case of integration was unsupported by the facts in the record and was an abuse of the district court's discretion." We address each argument in turn.

I. The district court properly considered the parties' affidavits.

When reviewing the affidavits of a party moving for custody modification, 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." *Amarreh*, 918 N.W.2d at 230 (quotation omitted).

Mother contends that the district court erred "to the extent it considered [father's] affidavits for anything but context." In making this argument, she notes that the district court's order denying her motion to modify custody states, in relevant part, "Assuming the allegations contained in the affidavits are true . . . ." Mother argues that, *if* "the district court was referring to all of the affidavits from each party," the district court erred.

To the extent that mother's argument asks this court to assume that the district court erred, her argument fails as a matter of law. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it." (quotation omitted)). Moreover, mother cites no allegation from father's affidavits that the district court accepted as true or relied on in its order denying her motion to modify custody. Thus, the most logical reading of the district court's order is that the "affidavits" to which the district court referred were mother's two affidavits, not both parties' affidavits. Accordingly, mother has not shown that the district court erred with respect to its treatment of the parties' affidavits.

II. The district court did not abuse its discretion by determining that mother had not alleged a prima facie case of integration.

We review a district court's determination of whether a party alleged a prima facie case for custody modification for an abuse of discretion. *Amarreh*, 918 N.W.2d at 231. A district court abuses its discretion if, among other things, it "misapplies the law[] or

resolves the matter in a manner that is contrary to logic and the facts on record." *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

Mother argues that the district court abused its discretion by determining that she "failed to establish a prima facie case of integration." She argues that she established a prima facie case of integration of the children into her home with father's consent based on her allegation that father consented to continue the weekend parenting-time schedule instead of switching to the week on/week off schedule as originally contemplated by the dissolution order. Although the district court did not explicitly rule on mother's integration argument, its silence, combined with its refusal to hold an evidentiary hearing, show that the district court implicitly concluded that mother had not alleged a prima facie case of integration. *See Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.*, 775 N.W.2d 168, 177-78 (Minn. App. 2009) ("Appellate courts cannot assume a district court erred by failing to address a motion, and silence on a motion is therefore treated as an implicit denial of the motion."), *review denied* (Minn. Jan. 27, 2010).

To establish a prima facie case of integration in support of her custody-modification motion, mother had to allege sufficient facts to show, among other factors, that the children were integrated into her home with father's consent. Minn. Stat. § 518.18(d)(iii). Generally, integration has been applied in cases where a child or children have been residing with the parent *who did not have* physical custody under the terms of the dissolution judgment. *See, e.g.*, *Pfeiffer v. Pfeiffer*, 364 N.W.2d 866, 868-69 (Minn. App. 1985) (concluding children were actually integrated into noncustodial parent's home with consent of custodial parent because parties lived together post-dissolution for

approximately one year before custodial parent moved away and noncustodial parent spent more time caring for children); *Downey*, 378 N.W.2d at 642 (concluding parent who had actual but not physical or legal custody of the child alleged prima facie case of integration where child lived with non-custodial parent for his entire life except for seven months).

Here, by contrast to *Downey* and *Pfeiffer*, mother and father were granted joint physical (and legal) custody under the terms of the agreed-upon dissolution judgment. And the judgment provided that the children would be living part-time with *both* families—mother's family and father's family. The allegations that mother now contends support a change in custody relate primarily to parenting time, which is not surprising given that mother's motion was originally framed as a motion to modify parenting time. In her affidavit, mother alleged that when the youngest child turned three years old and the parties were to switch to the week on/week off parenting-time schedule, father "was unwilling to pay for daycare for the girls during his week on and was unable to transport the girls to and from school." Thus, mother alleged, the parties agreed to continue "the current *parenting time* schedule where [father] has the girls every other weekend from Friday to Sunday and Friday to Saturday on the other weekends." (Emphasis added.) Mother further alleged that retaining the current parenting-time schedule was in the girls' best interests because it gave "them a 'home base' during the school year" and that "an abrupt change to the *parenting time schedule* would be confusing to the girls." (Emphasis added.) In her reply affidavit, mother alleged that she had "been the main caregiver for the last five years" and that she had "been the one to arrange their schooling and extracurricular activities." Mother concluded her reply affidavit by stating: "I believe the *parenting time schedule* that is

currently in practice is in the best interest of the girls. They are used to the schedule and routine and I believe it would be detrimental to the girls to abruptly change that." (Emphasis added.)

On this record, we discern no abuse of discretion by the district court's conclusion that mother failed to establish a prima facie case of integration needed to support a change in custody. First, as noted above, the allegations that mother relies on for her prima facie case relate mainly to the division of parenting time. Mother did not specifically allege that the children had been fully integrated into her home, and instead she only alleged that the parties failed to switch to the week on/week off parenting-time schedule as required by the dissolution judgment. Because the original dissolution judgment contemplated that the parties would split parenting time in the course of sharing physical custody, these allegations do not support a change in physical custody based on integration within the meaning of Minn. Stat. § 518.18(d)(iii).

Furthermore, mother cites no case law supporting the proposition that a change in the pattern of caretaking can constitute integration of the children into the home of the parent with whom the children spend more time *where* the parents have joint physical and joint legal custody under an existing dissolution judgment. Nor are we aware of any such precedent. Accordingly, mother has not shown that the district court abused its discretion by concluding that she failed to allege a prima facie case of integration within the meaning of Minn. Stat. § 518.18(d)(iii). And, because the district court did not abuse its discretion in that regard, we conclude that the district court properly denied mother's motion to modify custody on the basis of integration without conducting an evidentiary hearing. *See*

Nice-Petersen, 310 N.W.2d at 472 (requiring district court to deny custody-modification motion not supported by prima facie case).

Affirmed.