This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1462

In re the Marriage of: Stephanie Joy Krishnan, f/k/a Beuning, petitioner,
Appellant,

vs.

Eric James Beuning,
Respondent.

Filed August 30, 2021
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Morrison County District Court
File No. 49-FA-16-840

Richard D. Crabb, Hill Crabb, LLC, Edina, Minnesota (for appellant)

Kristi D. Stanislawski, Lori L. Athmann, Jovanovich, Dege & Athmann, PA, St. Cloud, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this parenting dispute, appellant-mother challenges the district court's decision (1) denying her motion to change the child's school, (2) awarding respondent-father sole physical custody, (3) modifying custody without an evidentiary hearing, (4) declining to appoint a guardian ad litem, (5) modifying the child's primary residence, and

(6) modifying parenting time. We conclude the district court did not abuse its discretion by denying mother's motion to change the child's school and affirm this portion of the district court's order. But because the district court did not clearly analyze the motions related to custody, parenting time, and the child's residence, we reverse and remand these portions of the district court's order. We do not reach mother's arguments about the evidentiary hearing and appointment of a guardian ad litem because the district court will address these issues on remand, and determine whether it needs to conduct an evidentiary hearing and appoint a guardian ad litem. Thus, we affirm in part, reverse in part, and remand.

FACTS

The stipulated 2016 judgment dissolving the parties' marriage awarded them joint legal and joint physical custody of their minor child, and set an equal parenting-time schedule. The child was born in 2013 and attended school in the Sauk Rapids School District during the relevant time.

The judgment did not designate the child's primary physical residence, but did designate that the child was to attend the Sauk Rapids Schools. Mother originally lived in the Sauk Rapids School District and father lived in St. Cloud, within five miles of the child's school. Father bought his home to be close to the child's school. Father claims that because of his proximity to the school and his flexible work schedule, he was primarily responsible for scheduling and taking the child to doctor and dental appointments, school events, school conferences, and communicating with her teachers.

Mother remarried in 2018 and, in 2019, moved to a new home about 57 miles away from the child's current school and from father. Mother wanted the child to attend school in the Wayzata Public School District. Father objected to this proposed change. In November 2019, mother moved the district court to, among other things, change the child's school from the Sauk Rapids School District to the Wayzata Public School District; and modify the parenting-time schedule contingent on two events occurring: (1) the district court granting mother's motion to enroll the child in the Wayzata Public School District, and (2) father refusing to transport the child to her Wayzata school. Father opposed mother's motion and moved the district court to, among other things, award father primary care of the child during the school year, if the court modified the existing parenting-time schedule.

The district court held a hearing and later filed an order denying mother's motion to change the child's school, determining that granting mother's motion "would cause extreme strain on the [child's] relationship to both parties." The district court granted father's motion awarding him primary care of the child during the school year, which modified the parenting-time schedule.[1] The district court called father's motion a "[d]e facto motion for a change of custody." Mother moved for amended findings and sought appointment of a guardian ad litem (GAL). The district court denied mother's motions without a hearing. The district court filed an amended order, reiterating that it denied mother's motion to change the child's school. The district court also denied father's motion

[1] Father did not request to modify the existing joint legal and joint physical custody status.

to modify child support and maintained the 50-50 parenting-time schedule until the child returned to in-person learning.

Mother appeals.

DECISION

I. We affirm the district court's order denying mother's motion to change the child's school.

Mother challenges the district court order denying her motion to change the child's school. The stipulated judgment not only awards the parties joint legal custody but states that the parties agreed that "the child shall attend school in the Sauk Rapids School District unless the parties subsequently agree otherwise." Joint legal custody gives parents equal rights and responsibilities regarding educational decisions, including the decision about where a child should attend school. Minn. Stat. § 518.003, subd. 3(b) (2020); *see Novak v. Novak*, 446 N.W.2d 422, 424-25 (Minn. App. 1989) (noting that choice of child's school is a question of legal custody), *review denied* (Minn. Dec. 1, 1989). Courts resolve disagreements between joint legal custodians considering the best interests of the child. *Novak*, 446 N.W.2d at 424. The best interest of the child means all "relevant factors" to be "consider[ed] and evaluate[d]" by the court including twelve statutory factors. Minn. Stat. § 518.17, subd. 1(a)(1)-(12) (2020).

The district court must make detailed findings on each factor based on the evidence presented and "explain how each factor led to its conclusions and to the determination of custody and parenting time." *Id*., subd. 1(b)(1) (2020). We review the district court's balancing of the best-interests factors for an abuse of discretion. *Thornton v. Bosquez*, 933

N.W.2d 781, 794 (Minn. 2019). "[T]he [district] court abuse[s] 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) (quotation omitted). A finding of fact is clearly erroneous if "an appellate court is left with the definite and firm conviction that a mistake has been made." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). We also review the district court's decision in the light most favorable to the decision and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Here, the district court analyzed and made detailed findings addressing each factor. The district court determined that the second, third, fourth, fifth, eleventh, and twelfth factors were either irrelevant or neutral and favored neither parent. But the district court determined that the first, sixth, seventh, eighth, ninth, and tenth factors weighed in father's favor and against changing the child's school. Based on our careful review of the record, we conclude that the record supports the findings of fact the district court made on the best-interests factors that favor father. *See In re Civil Commitment of Kenney*, __ N.W.2d __, __, No. A20-1007, 2021 WL 3641450, at *5 (Minn. Aug. 18, 2021) (advising that an appellate court need not "go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court" and stating that an appellate court's "duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision" (citation and quotations omitted)).

The district court provided detailed findings supporting each of the twelve best-interests factors. Based on its analysis of the statutory factors, the district court determined it was in the best interests of the child to deny mother's motion to move the child's school. Because we defer to the district court's credibility determinations and because the record contains substantial evidence that supports the district court's findings, we conclude there is no clear error and the district court's order was not an abuse of discretion. We therefore affirm the district court order denying mother's request to change the child's school.[2]

II. We reverse and remand the district court's order relating to custody, parenting time, and the child's residence.

We next turn to the district court's order addressing custody, parenting time, and the child's residence. The district court denied mother's motion to change the child's school but stated that "[mother's] relocation has now forced a review of the parties' circumstances" as to the child. The district court stated, "[t]here is a de facto motion to modify physical custody." We do not know which motion the district court construed that way. There are multiple possibilities: (1) mother's parenting-time motion, which depended on granting the change of school;[3] (2) father's parenting-time schedule; (3) father's primary-care motion; or (4) some combination of the above.

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[2] In her November 2019 motion, mother also requested an order to "[m]odify the parenting time schedule if the Court orders the child to be enrolled [in the Wayzata Public School District] and [father] refuses to transport the child." Because we affirm the district court's decision *not* to order that the child be enrolled in the Wayzata Public School District, we need not address mother's contingent argument on this point.

[3] If this is what the district court intended, then on remand it should explain how that motion is before it, given that the district court denied the requested school change, which we affirm, and on which mother's parenting-time motion depended.

A motion to modify parenting time constitutes a de facto motion to modify custody when, under "the totality of the circumstances," "the proposed modification is a substantial change that would modify the parties' custodial arrangement." *In re Custody of M.J.H.*, 913 N.W.2d 437, 443 (Minn. 2018). "The factors considered [when assessing whether a modification of parenting time constitutes a de facto modification of physical custody] may include the apportionment of parenting time, the child's age, the child's school schedule, and the distance between the parties' homes, but these factors are not exhaustive." *Id*.

Here, the district court granted what it said was father's de facto motion to modify physical custody. While the district court stated, "the matter must be reviewed using the endangerment standard," it did not otherwise analyze the question of endangerment and, instead, simply considered the best-interests factors under Minn. Stat. § 518.17, subd. 1. For this reason, the district court's order appears to be internally inconsistent. It is not clear to us which motion the district court referred to when it concluded that "there is a de facto motion to modify physical custody." We do not know which motion or motions the district court intended to address: (1) mother's contingent motion to modify parenting time—which, because of the district court's resolution of the school question was not before it—or (2) what the district court said was father's de facto motion to modify custody, which the district court admitted required applying the endangerment standard that it does *not* appear to have applied. And our review of the record does not otherwise clarify this apparent inconsistency. *See, e.g.*, *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 296 (Minn. App. 2007) (noting internal inconsistency in the amount of attorney fees awarded, and,

based on that record, resolving the inconsistency in favor of the larger amount). Without more, we must remand for clarification.

Because certain questions may arise on remand, and because it is in the interests of judicial economy to do so, we will make certain observations about modification of custody and parenting time. *See J.E.B. v. Danks*, 785 N.W.2d 741, 751 (Minn. 2010) (addressing certain matters "to provide guidance on remand"); *In re Estate of Vittorio*, 546 N.W.2d 751, 756 (Minn. App. 1996) (addressing a question "in the interest of judicial economy" "[b]ecause this issue will arise on remand").

Generally, to obtain an evidentiary hearing on an endangerment-based motion *to modify custody*, the moving party must first make a prima facie case for that modification. *See Crowley v. Meyer*, 897 N.W.2d 288, 293-94 (Minn. 2017). To do so, the movant must allege: (1) a change of circumstances; (2) that modification is in the child's best interests; (3) that the child's "present environment endangers their physical health, emotional health, or emotional development"; and (4) that the benefits of modification outweigh any detriments. *M.J.H.*, 913 N.W.2d at 440. "The concept of endangerment is unusually imprecise, but a party must demonstrate a significant degree of danger to satisfy the endangerment element of [the statute]." *Goldman*, 748 N.W.2d at 285 (quotations omitted).

By contrast, a district court shall *modify parenting time* when a modification "would serve the best interests of the child." Minn. Stat. § 518.175, subd. 5(b) (2020); *see* Minn. Stat. § 518.17, subd. 1 (articulating best-interest factors). Further, because the district court determined that father's motion to modify parenting time was a de facto motion to modify

custody, the district court must also determine whether father's proposal constitutes "a substantial change" to the existing arrangement. *M.J.H.*, 913 N.W.2d at 443.

Here, father seeks primary care of the child during the school year, and offered the following proposed modification to the existing parenting-time schedule:

> [Mother would] have one overnight visit during the week; and three out of five weekends. This would best serve [the child] as she will not be required to unnecessarily get up and commute 57 miles to school in the morning. The weekends [mother] would have [the child] would be based on her work schedule. [Mother] would also have access to additional parenting time during school release days . . . so long as it fits with [her] work schedule. This would reduce [her] parenting time to approximately 37% during the school year. During the summer months, parenting time would return to 50/50, with alternating weekends.

The judgment and decree awarded the parties joint legal custody and joint physical custody of the child. It did not designate the child's primary physical residence. On remand, the district court may consider whether this proposal, if it were granted, would make a substantial change in the existing custodial arrangement. We note that the district court declined to change the child's school in part because doing so would have a "substantial impact" on father's daily care and control of the child during the school week and his time with the child "will go from 50 percent to less than 14 percent during the school year." On remand, the district court may evaluate whether a reduction in mother's parenting time from 50 percent to 37 percent during the school year constitutes a substantial change to her daily care and control of the child. *See Hansen v. Todnem*, 908 N.W.2d 592, 597 (Minn. 2018) (eliminating the previously recognized common-law distinction between

substantial and insubstantial modifications of parenting time and requiring court to make adequate findings).

III. We do not reach the remaining issues.

Mother argues the district court abused its discretion by declining to appoint a GAL. *See* Minn. Stat. § 518.165, subd. 2 (2020) (requiring appointment of GAL in custody proceedings involving abuse or neglect to represent child's interests and advise court). Mother also argues the district court erred by failing to hold an evidentiary hearing. *See Lutzi v. Lutzi*, 485 N.W.2d 311, 316 (Minn. App. 1992) (instructing that a parent requesting modification of a custody arrangement "is entitled to an evidentiary hearing upon showing a prima facie case for the requested modification"). Because we reverse and remand the district court's decision related to custody, parenting time, and the child's residence, we do not reach these issues. But once the district court resolves the uncertainty and inconsistency by identifying which motions it is considering and whether it is required to make endangerment findings, then it must determine whether the respective affidavits allege facts sufficient to require a hearing and appointment of a GAL.

Affirmed in part, reversed in part, and remanded.