STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1346

In re the Marriage of: Michaela Dojcinovic Bachmayer,
NKA Michaela Dojcinovic, petitioner,
Respondent,

vs.

Kyle Dalke Bachmayer,
Appellant.

Filed May 16, 2022
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-FA-18-4040

Susan A. Cragg, Lynn Klicker Uthe, Lynn Klicker Uthe, Ltd., Minnetonka, Minnesota (for respondent)

Kyle Bachmayer, Minneapolis, Minnesota (*pro se* appellant)

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this parenting dispute, appellant argues that the district court (1) should have found respondent to be in constructive civil contempt of court; (2) abused its discretion by denying, without an evidentiary hearing, his motion to modify custody; (3) should not have further restricted his parenting time without an evidentiary hearing; and (4) should have granted his motion to amend findings of fact. The district court properly dismissed

appellant's contempt motion and properly denied his custody-modification motion without an evidentiary hearing. And, because the district court's further restriction of appellant's parenting time without an evidentiary hearing was harmless and appellant failed to establish a basis for amended findings, we affirm.

FACTS

Appellant Kyle Dalke Bachmayer (father) and respondent Michaela Dojcinovic Bachmayer (mother) married in 2016 and together had a child in 2017. Mother began marriage dissolution proceedings in May 2018. In October of 2019, the district court issued its findings of fact, order for judgment, and judgment and decree (J&D) dissolving the parties' marriage. Mother was awarded sole legal and sole physical custody of the child, and father was awarded restricted parenting time of nine hours per week.

The district court restricted father's parenting time because it found that additional parenting time would "endanger [the child's] emotional health and impair his emotional development" and that "maximizing time between [the child] and [father] could be detrimental, while minimizing time could be beneficial." We affirmed the district court's restriction of father's parenting time. *Bachmayer v. Bachmayer*, No. A19-1929, 2020 WL 4434557, at *1 (Minn. App. Aug. 3, 2020).

Both parties filed postjudgment motions related to parenting time and custody. In June 2020, the district court granted father compensatory parenting time but did not specify the amount or a schedule.

In December 2020, mother moved the district court to allow her to relocate with the child to her native country of Slovakia and to require that father's parenting time be

supervised. Father filed a responsive motion seeking to modify custody by granting him sole legal and sole physical custody with equal parenting time, and an order holding mother in contempt for, in part, her failure to facilitate his compensatory parenting time. After a January 2021 hearing to consider the parties' motions, the district court limited father's in-person parenting time to supervised contact only and reduced his parenting time to one-half hour per week. In a March 2021 written order, the district court denied mother's relocation motion, ordered that father's weekly parenting time must be supervised and denied all of father's motions. In April 2021, father brought a motion for amended findings, which the district court denied. Father appeals.

DECISION

I. The district court acted within its discretion by denying father's contempt motion.

District courts may enforce parenting time orders by holding a party in contempt of court. Minn. Stat. § 518.175, subd. 6(h) (2020). Contempt is an extreme remedy that is to be exercised with caution. *Hampton v. Hampton*, 229 N.W.2d 139, 140-41 (Minn. 1975). A district court has broad discretion to hold a party in civil contempt when the party "has acted contumaciously, in bad faith, and out of disrespect for the judicial process." *Newstrand v. Arend*, 869 N.W.2d 681, 691 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Dec. 15, 2015). The purpose of a civil-contempt order is to end a party's ongoing failure to comply with a court order, not to punish a party for past failures. *See Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968). We review the district court's decision

to hold a party in civil contempt for an abuse of discretion. *See Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019).

The basis for father's contempt motion is that mother allegedly denied him the compensatory parenting time awarded to him by the district court in its June 2, 2020 order. The district court denied the contempt motion because, it concluded, father failed to allege a provision of the district court order with which mother failed to comply. *See Hopp*, 156 N.W.2d at 216 ("In exercising civil contempt powers in divorce cases, the only objective is to secure compliance with an order presumed to be reasonable."). This conclusion is supported by the record.

The district court's June 2 order required the parties to "cooperate in arranging for compensatory parenting time for Father" to recoup parenting time lost due to the COVID-19 pandemic.[1] However, the order specified neither an amount of compensatory parenting time for father nor when the compensatory parenting time was to occur. In an affidavit, mother stated that she "ensured that [father] could exercise all of his compensatory parenting time (66 hours) that he was unable to exercise due to COVID-19 in a timely manner." Because father failed to allege that mother was in noncompliance with the district court's order, we discern no abuse of discretion in the district court's denial of father's contempt motion. *Id.*

[1] The district had ordered parenting time exchanges be supervised by a third-party organization, which closed temporarily during the COVID-19 pandemic.

II. The district court properly denied father's motion to modify custody.

We review three discrete determinations when reviewing an order denying, without an evidentiary hearing, a motion to modify custody based on child endangerment. *Amarreh v. Amarreh*, 918 N.W.2d 228, 230 (Minn. App. 2018), *rev. denied* (Minn. Oct. 24, 2018). "First, we review de novo whether the district court properly treated the allegations in the moving party's affidavits as true, disregarded the contrary allegations in the nonmoving party's affidavits, and considered only the explanatory allegations in the nonmoving party's affidavits." *Id.* at 230-31 (quoting *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011)). Second, we determine whether the district court abused its discretion when determining whether the moving party made a *prima facie* case for modification or restriction. *Id.* at 231. Third, "we review de novo whether the district court properly determined the need for an evidentiary hearing." *Id.*

To make an initial showing of child endangerment, father, as the moving party, must allege a *prima facie* case to obtain an evidentiary hearing. *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018). Generally, a *prima facie* case is allegations which, if true, would allow the district court to grant the movant the relief sought. *Amarreh*, 918 N.W.2d at 231; *see Tousignant v. St. Louis County*, 615 N.W.2d 53, 59 (Minn. 2000) (stating that a *prima facie* case is "one that prevails in the absence of evidence invalidating it" (quotation omitted)). Thus, to make a *prima facie* case to modify custody, father must allege that (1) the circumstances of the child or custodial parent have changed since the prior custody order, (2) modifying custody would serve the child's best interests, (3) the child is endangered either physically or emotionally by the present arrangement, and (4) the

benefits of modification outweigh the detriments to the child. *Christensen*, 913 N.W.2d at 440; *see also* Minn. Stat. § 518.18(d)(iv) (2020).

First, as to our *de novo* review of whether the district court properly considered father's affidavits as true, it did. The district court did accept them as true and concluded that the allegations in father's affidavits related to compensatory parenting time. The few remaining allegations do not allege that the child is endangered either physically or emotionally.

Second, as to the determination that father did not make an adequate *prima facie* case, the district court acted within its discretion. Father must allege that the current custody arrangement endangers the child's physical or emotional health or impairs the child's emotional development. Minn. Stat. § 518.18(d)(iv). Endangerment is "unusually imprecise," and the statute demands "a showing of a significant degree of danger." *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000) (quotation omitted), *rev. denied* (Sept. 26, 2000). Generally, whether endangerment exists is "based on the particular facts of each case," including any allegations of physical or emotional abuse. *Lilleboe v. Lilleboe*, 453 N.W.2d 721, 724 (Minn. App. 1990).

As noted above, father's affidavits do not allege that the child is endangered either physically or emotionally. *See also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (citing *Smith v. Smith*, 508 N.W.2d 222, 227-28 (Minn. App. 1993) (affirming the denial of custody modification without an evidentiary hearing when the moving party's allegations were "too vague to support a finding of endangerment"); *Axford v. Axford*, 402 N.W.2d 143, 144-45 (Minn. App. 1987) (stating that an evidentiary hearing was not

necessary where the affidavit supporting the motion to change custody "was devoid of allegations supported by any specific, credible evidence")). Thus, the record supports the district court's endangerment determination.

In sum, the district court did not err when it denied, without an evidentiary hearing, father's motion to modify custody. *Amarreh*, 918 N.W.2d at 231.

III. Any error by modifying father's supervised parenting time without an evidentiary hearing was harmless.

Father next argues that the district court erred as a matter of law by denying, without an evidentiary hearing, his motion to modify parenting time.

The district court has broad discretion to decide parenting-time questions. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). A district court abuses its discretion by making findings of fact that are unsupported by the record, by misapplying the law, or by resolving the discretionary question in a manner that is contrary to logic and the facts in the record. *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022).

This case presents an unusual posture because the issue on appeal is whether the district court erred by *further* restricting father's parenting time without an evidentiary hearing.[2] However, even if we assume the district court erred by failing to hold an

[2] The parties argue that the district court was required to hold an evidentiary hearing to modify parenting time, citing caselaw distinguishing between significant and insignificant modifications. *See Matson v. Matson*, 638 N.W.2d 462, 468 (Minn. App. 2002) (reversing, in part, because the district court "significantly" reduced mother's parenting time without an evidentiary hearing). We note that the supreme court recently held, when determining whether the district court must make findings to support significant changes to parenting time, that the "common-law distinction between 'significant' modifications and 'insignificant changes or clarifications' . . . is unsupported by the text of the parenting-time statutes." *Hansen v. Todnem*, 908 N.W.2d 592, 597 (Minn. 2018).

evidentiary hearing, as father contends, that error is harmless. To obtain relief, an appellant must show that the district court erred, that the appellant was prejudiced by that error, and that the prejudice to the appealing party was substantial. Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (applying rule 61 in a family law appeal); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (noting that appellate courts will not reverse a district court if it reached an affirmable result for the wrong reasons). Father fails to show how the absence of an evidentiary hearing substantially prejudiced him. *See Hecker v. Hecker*, 543 N.W.2d 678, 681 (Minn. App. 1996) (affirming the district court because, even assuming error, that error would be "nonprejudical"), *aff'd*, 568 N.W.2d 705 (Minn. 1997).

Father submitted approximately 600 pages comprised of affidavits and additional documents. Mother also submitted more than 200 pages comprised of affidavits and additional documents, all of which the district court considered. Additionally, the district court was intimately familiar with the claims made by the parties as it presided over this case through all proceedings from the J&D to the most recent order which we now review. Father, therefore, was not prejudiced by the lack of an evidentiary hearing, and any error in failing to conduct an evidentiary hearing was harmless.

IV. The district court acted within its discretion by denying father's motion to amend findings.

We review a district court's denial of a motion to amend findings for an abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *rev. denied* (Minn. Nov. 14, 2006). Pursuant to Minn. R. Civ. P. 52.02, a party may move the district court to

amend its findings or make additional findings, and amend the judgment accordingly. To properly move to amend findings, the movant must "both identify the alleged defect in the challenged findings *and* explain *why* the challenged findings are defective." *Lewis v. Lewis*, 572 N.W.2d, 313, 315 (Minn. App. 1997), *rev. denied* (Minn. Feb. 19, 1998).[3] On appeal, we defer to the district court's balancing of conflicting evidence. *See Nielsen v. City of Saint Paul*, 88 N.W.2d 853, 864 (Minn. 1958) ("To justify the reversal of a refusal to make amended findings, it is not enough to show that there was evidence to justify the proposed amended findings had they been made."); *Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001) (stating that appellate courts defer to the district court's credibility determinations), *rev. denied* (Minn. Feb. 21 2001).

Father's motion does not identify which findings he wants amended or which evidence supports his proposed changes. Instead, father's motion broadly states that he wants the district court to remove "every suggestion" that he endangered the child or behaved inappropriately, to apologize to him for "character defamation[]," and find that mother endangered the child and "has chronically and unreasonably failed to comply with court-ordered parenting time." Father bears the burden both to prove that the initial findings are erroneous and "explain why the proposed findings are appropriate," based on

[3] *Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168 (Minn. 2000), overruled *Lewis* in part, but *Lewis* remains good law for the necessary components of a motion for amended findings. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.*, 673 N.W.2d 169, 178 n.1 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004).

the record evidence. *Lewis*, 572 N.W.2d at 315. Because he fails to meet that burden, the district court acted within its discretion when it denied his motion to amend findings.

Affirmed.