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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0603**

In re the Marriage of:
Danielle Elizabeth Dressel, petitioner,
Respondent,

vs.

Nathan David Dressel,
Appellant.

**Filed December 27, 2022
Affirmed
Frisch, Judge**

Dakota County District Court
File No. 19AV-FA-19-2073

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for respondent/cross-appellant)

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Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant/cross-respondent father argues that the district court abused its discretion by denying his motion to modify legal custody and awarding him sole physical custody on a temporary basis. Respondent/cross-appellant mother argues that the district court abused

its discretion by granting father's motion to modify physical custody. Because the district court did not misapply the law, clearly err in its findings of fact, or resolve the matter in a manner that is against logic and the facts in the record, we affirm.

FACTS

Appellant/cross-respondent Nathan David Dressel (father) and respondent/cross-appellant Danielle Elizabeth Dressel (mother) are parents to two children: child 1 born in 2011 and child 2 born in 2014.

Divorce

In July 2019, mother petitioned for dissolution of her marriage from father. Soon after, mother obtained an order for protection (OFP) against father.¹

In February 2020, the district court ordered a custody evaluation. In the following months, mother made several reports to police alleging violations of the OFP and requesting welfare checks. Child protective services (CPS) also received allegations of physical and sexual abuse by father against child 1. CPS reported that the preponderance of the evidence did not support a finding of physical abuse, neglect, or threatened sexual injury, and that maltreatment had not been determined. During this time, CPS also declined to investigate six allegations against father of abuse, neglect, and sexual abuse of the children.

¹ This OFP is active until 2023.

In July, the custody evaluator released a report recommending that father have sole legal and sole physical custody and a “blackout” to mother’s parenting time for a minimum of ten weeks.

In October, the district court adopted the parties’ stipulated dissolution decree. The stipulated decree awarded mother and father joint physical custody, temporary joint legal custody, and equal parenting time. It also provided for the appointment of a parenting consultant who would make a permanent legal custody determination one year from the date of entry of the decree.

Custody Modification

In January 2021, father moved for emergency relief and requested temporary sole legal and sole physical custody, subject to mother’s supervised parenting time. Father brought this motion after CPS opened another investigation into allegations that father sexually abused child 1, causing father’s parenting-time with child 1 to be suspended. CPS reported that there was not a preponderance of the evidence to support a finding of sexual abuse. The district court denied emergency relief, but it scheduled a hearing on the motion.

In February 2021, the district court issued a temporary order awarding father temporary sole legal and sole physical custody, subject to mother’s supervised parenting time. In July, the district court increased mother’s parenting time but required the use of a professional supervisor.

In March 2021, a second custody evaluator was appointed. In October, the second custody evaluator recommended that father have sole physical custody, subject to mother’s unsupervised parenting time. The second custody evaluator also recommended that father

have sole legal custody, subject to the parenting consultant's directive to review after one year. In November, the parenting consultant recommended that the parties have joint legal custody.

The district court held a remote evidentiary hearing over seven days on father's motion for temporary sole legal and permanent sole physical custody, subject to mother's supervised parenting time. It heard testimony from a CPS worker, both custody evaluators, father, mother, and a person who testified to their theories of custody law. The district court awarded father and mother joint legal custody. It awarded father temporary sole physical custody for a period of one year, with a review hearing to be set a year from the date of the order.

Father and mother appeal.

DECISION

Father argues that the district court abused its discretion by denying his motion to modify legal custody and by awarding him sole physical custody on only a temporary basis. Mother argues that the district court abused its discretion by granting father's motion to modify physical custody.

A district court may modify custody of a child if the child's or the parties' circumstances have changed, if modification is necessary to serve the best interests of the child, and if one of five enumerated grounds for modification is present. Minn. Stat. § 518.18(d) (2022); *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022). One such ground is endangerment, which requires a determination that (1) the child's present environment endangers them and (2) the harm likely to be caused by a change of

environment is outweighed by the advantage of a change to the child. Minn. Stat. § 518.18(d)(iv).

Legal custody and physical custody are not the same. Legal custody includes the “right to determine the child’s upbringing, including education, health care, and religious training.” Minn. Stat. § 518.003, subd. 3(a) (2022). Physical custody and residence means “the routine daily care and control and the residence of the child.” *Id.*, subd. 3(c) (2022).

We review a district court’s custody modification decision for an abuse of discretion. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey*, 975 N.W.2d at 506 (quotation omitted).

I. The district court did not abuse its discretion by declining to award father sole legal custody of the children.

Father argues that the district court abused its discretion by reinstating joint legal custody because the district court’s order, apart from its ultimate determination that the parties should have joint legal custody, supported a modification to award father sole legal custody. At oral argument, father agreed that he claims the district court abused its discretion because its ultimate determination was against logic and the facts in the record. Although the majority of the district court’s findings and conclusions weigh in favor of modification of legal custody, we disagree that this fact, by itself, means that the district court abused its discretion in not awarding father sole legal custody.

Minnesota law does not impose an affirmative requirement upon district courts to modify custody. Instead, Minn. Stat. § 518.18(d) prohibits a court from modifying custody in the absence of the necessary findings. Minn. Stat. § 518.18(d) (stating that a court “shall not” modify custody and “shall” retain the custody arrangement unless certain findings are made); Minn. Stat. § 645.44, subd. 16 (2022) (defining “shall” as mandatory). We decline to read the custody-modification statute to require a district court to modify custody if it makes findings that could support a modification. To read the statute as father asks is inherently inconsistent both with the district court’s discretion to resolve parenting matters and the extensive body of law affirmatively rejecting the imposition of black-letter or bright-line rules in matters that are discretionary with the district court.²

² See e.g., *Bender v. Bernhard*, 971 N.W.2d 257, 264-66 (Minn. 2022) (rejecting this court’s reading of prior caselaw to create a “bright-line” rule in the discretionary context of reopening a marriage dissolution-related judgment under Minn. Stat. § 518.145 (2020) in favor of preserving the discretion of the trial court); *Honke v. Honke*, 960 N.W.2d 261, 269 (Minn. 2021) (refusing to “create a bright-line rule regarding how a district court exercises its discretion in evaluating the financial resources” on a motion to amend or eliminate a spousal-maintenance award); *Christensen v. Healey*, 913 N.W.2d 437, 443 (Minn. 2018) (“[A] mathematical rule [that would automatically treat a request for equal parenting time as a request to modify physical custody would conflict] with the governing principle that a district court has broad discretion in determining custody and parenting time matters.”); *Curtis v. Curtis*, 887 N.W.2d 249, 253-54 (Minn. 2016) (rejecting, in a spousal-maintenance dispute, a proposed “bright-line rule” because that proposed rule would, among other things, be “inconsistent with a district court’s broad discretion, which allows it to determine what needs are reasonable, what amount of self-support is adequate, and what income the assets can provide”); *Maurer v. Maurer*, 623 N.W.2d 604, 606-07 (Minn. 2001) (rejecting a proposed bright-line rule that a district court, when valuing property, can consider tax consequences only when they are either required by dissolution or certain to occur within a short time thereafter, stating that “[s]uch a bright-line rule would leave little, if any, room for the exercise of discretion”); *Dobrin v. Dobrin*, 569 N.W.2d 199, 201 (Minn. 1997) (stating that “[w]e take this opportunity to remind counsel that each marital dissolution proceeding is unique and centers upon the individualized facts and circumstances of the parties and that, accordingly, it is unwise to view any marital

Even so, the district court made some findings in support of its determination that the parties maintain joint legal custody. It found that both mother and father can address their children's medical care and spiritual needs. It found that both mother and father are willing and able to provide ongoing care. The district court also noted, with qualification, that the second custody evaluator found that mother was more attuned to the children's likes and dislikes and that father consistently said that he knew that the children need their mother. These findings relate to mother's ability to determine the upbringing of the children and are supported by the record.

Father correctly observes that the district court made numerous findings, as well as the requisite conclusions of law, that would *also* support a decision to award father sole legal custody. We view the sheer volume of findings made by the district court as a reflection of a thorough and thoughtful review of the evidence presented to the district court. But the fact that the district court could have reached the conclusion that modification of legal custody was appropriate in this case, and that such a decision may not have been an abuse of discretion, does not mean that the district court's decision *not* to modify custody amounts to an abuse of discretion. *Cf. Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) ("That the record might support findings other than those made by the trial court does not show that the court's findings are defective."). The district court has broad discretion in making custody determinations. *Matson v. Matson*,

dissolution decision as enunciating an immutable rule of law applicable in any other proceeding").

638 N.W.2d 462, 465 (Minn. App. 2002). And we are unaware of any authority standing for the proposition that a district court’s ultimate decision not to modify custody is against logic and the facts in the record when the district court makes some findings consistent with its decision. Because the district court made some findings consistent with its ultimate determination, we cannot say that the district court’s decision not to modify legal custody was against logic and the facts in the record.

II. The district court did not abuse its discretion by awarding father temporary sole physical custody.

The parties next argue that the district court abused its discretion in modifying physical custody. Mother argues, in a related appeal, that the district court abused its discretion by modifying physical custody. Father separately argues that the district court abused its discretion by modifying physical custody on a temporary, rather than permanent, basis. We address each argument in turn.

Decision to Modify

Mother argues that the district court abused its discretion by modifying physical custody. Specifically, she argues that (1) the parties stipulated to joint physical custody shortly before father moved for modification and that decree’s award of joint physical custody should be enforced, (2) the district court erroneously determined that a change in circumstances supported modification, and (3) the district court erroneously determined that endangerment supported modification.

“Whether the district court correctly applied the law is a legal question, which we review de novo.” *In re Welfare of Child. of M.A.H.*, 839 N.W.2d 730, 746 (Minn. App.

2013). But we review factual findings that underlie a custody decision for clear error. *Ayers v. Ayers*, 508 N.W.2d 515, 518 (Minn. 1993); Minn. R. Civ. P. 52.01. Findings “are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). In determining whether findings are clearly erroneous, we view the record in a light most favorable to the findings and defer to the district court’s credibility determinations. *Vangsness*, 607 N.W.2d at 472. We will not reweigh the evidence or engage in fact-finding. *Kenney*, 963 N.W.2d at 221-22.

First, we are not persuaded that the timing of father’s motion to modify custody is a relevant consideration in this case. It is true that the stipulated dissolution decree was in place for only a few months before father moved to modify custody. But in that short period of time, mother’s actions propelled father to seek a review of the parties’ stipulated custody arrangement. The timing of father’s motion to modify custody after those events is immaterial to the modification determination.

Second, the district court properly determined that the events that occurred after the entry of the stipulated decree constituted a change in circumstances. The district court found that three specific incidents following the execution of the decree showed a change in circumstances: mother’s attempt to remove the children’s therapist, new sexual abuse allegations against father, and father’s loss of parenting time as a result of those allegations. These findings are supported by the record, and therefore we see no abuse of discretion by the district court in its determination that a change in circumstances had occurred.

Mother points to the fact that father agreed to joint physical custody knowing that it was contrary to the first custody evaluator's recommendation that father have sole physical custody and anticipating that there would be friction in the future. But mother's continued objectionable behavior after entry of the decree cannot negate the existence of a change in circumstances because then mother would benefit from engaging in such objectionable behavior before the decree. We have previously declined to entertain such a position. *See Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000) (“[W]e decline to endorse a position that would encourage custodial parents to interfere or to continue to interfere with visitation in an attempt to prevail in a later custody dispute.”), *rev. denied* (Minn. Sept. 26, 2000). Any similarity between mother's concerning behavior before and after the decree does not support her assertion that there was no change in circumstances.

Third, the district court did not abuse its discretion in determining that the children were endangered. Endangerment is determined from the particular facts of each case. *Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (quotation omitted). “[A] sustained course of conduct by one parent designed to diminish a child's relationship with the other parent is unacceptable and may be grounds for denying or modifying custody.” *Id.* at 231-32 (quotation omitted); *see also Chafin v. Rude*, 391 N.W.2d 882, 887 (Minn. App. 1986) (affirming a custody modification where the district court determined parent's conduct that “undermined and deterred” the child's relationship with the other supported modification based on endangerment). And risk of potential harm to a child can constitute endangerment. *See Sharp*, 614 N.W.2d at 263-64 (finding of endangerment was supported by the record when evidence showed a risk of future harm). The record does not support

mother's characterization that others agreed that her decision to report sexual-abuse allegations was reasonable.³ The record shows that the second custody evaluator and father agreed that reporting an allegation of sexual abuse would be reasonable *if* the disclosure by the child was made voluntarily or the details were properly elicited. While the district court acknowledged the testimony from the second custody evaluator, the district court also noted that "facts should not be read in a vacuum" and that the same expert testified that the circumstances were such that father was reasonably justified in his distrust of mother.

The district court found that there was "a pattern of conduct from [mother] intended to diminish the parental role of [father]" and that mother pressured the children and coached child 1 to align with her beliefs, which resulted in false allegations of abuse and messaging that the children were unsafe with father. The district court also found that mother did not acknowledge her problematic behavior and that experts indicated that the harm would continue without a change in that behavior. These findings are supported by the record. We see no abuse of discretion by the district court in its finding of endangerment.

Moreover, we are not persuaded by mother's argument that the district court did not make a fully informed or accurate custody assessment by making that custody assessment when mother's parenting time was temporarily reduced. The district court specifically noted in its findings the testimony from the second custody evaluator acknowledging that the conditions under which they observed mother were out of the ordinary and could have

³ We note that mother makes this assertion with respect to whether there was a change in circumstances, but what she asserts are reasonable actions is not germane to whether there was a change in circumstances.

accounted for some of mother's demeanor. Even with these considerations, the district court nevertheless found that a change in circumstances occurred and that the children were endangered. These findings are supported by the record.

Because the district court did not abuse its discretion by determining there was a change of circumstances and that the children were endangered, we see no abuse of discretion in its decision to award father sole physical custody.

Temporary Basis

Father argues that the district court still abused its discretion in awarding him sole physical custody because it did so on a temporary basis. We disagree.

Minn. Stat. § 518.18 (2022) has been interpreted as a directive to courts to favor stability in custody arrangements. *Woolsey*, 975 N.W.2d at 510. We also disfavor the imposition of temporary custody decisions with indeterminate reservation of jurisdiction to review because it can allow a district court to modify custody without making the requisite statutory findings. *See Kennedy v. Kennedy*, 403 N.W.2d 892, 899 (Minn. App. 1987) (modifying a temporary grant of custody to require permanency or reconsideration within a specified time frame). But we do not view the district court's decision as presenting similar concerns in this case.

The district court's order set forth a specific timeline for review of the custody decision to occur one year from the date of its order. The district court's order affords mother an opportunity to change her behavior and to show that she is capable of having physical custody of the children. We note that the district court is in the best position to determine whether mother has the capacity for change and whether affording mother an

additional opportunity to accomplish change is in the best interests of the children. The district court specifically justified its decision by noting that both parents are capable of providing care to the children and that mother is more attuned to the children's likes and dislikes. And the district court's decision is consistent with father's stated belief that the children needed their mother, and he did not want to take them away from her. While the district court discussed mother's problematic behavior and the risk that such behavior would continue without intervention, it chose to address these concerns by ordering mother to take steps to remedy her behavior and awarding father temporary sole physical custody. Overall, the district court's order reflects a thoughtful, thorough review of the evidence and balances the multilayered considerations present in this case. We discern no abuse of discretion in this decision.

Affirmed.