STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0789

Lee Charles Bloomquist, petitioner,
Respondent,

vs.

Jennifer Lynn Kimlinger,
Appellant.

Filed April 16, 2018
Affirmed
Bjorkman, Judge

Anoka County District Court
File No. 02-FA-12-2448

Amy L. Senn, Amy L. Senn, P.A., Bayport, Minnesota (for respondent)

Douglas G. Sauter, Lindsay K. Fischbach, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this child-custody dispute, appellant-mother challenges district court orders requiring the child to change schools and awarding sole legal custody to respondent-father. We affirm.

FACTS

Appellant Jennifer Lynn Kimlinger and respondent Lee Charles Bloomquist are the parents of J.L.K., born in March 2006. Father was adjudicated the child's father in 2011. During the pendency of that matter, mother accused father of improper contact with the child and filed multiple police reports and civil actions, none of which were substantiated. A psychological assessment of mother revealed that she tends to be rigid and judgmental, and suggested that she would have difficulty sharing parenting responsibilities. Father was also assessed and determined to function normally. The district court granted the parties joint legal and physical custody of the child. To help the parties work together, the district court ordered a parenting coach for mother, a parenting consultant for both parties, and scheduling assistance.

Father moved to modify custody in October 2014, seeking a school change for the child and requesting sole legal custody. Mother objected, insisting that the child continue attending a private, church-affiliated school where mother had strong ties and led the parent-teacher association. At the evidentiary hearing, father testified that the parties continually disagreed about school issues, such as homework, school activities, and uniforms, with mother often attempting to exclude father's involvement. Father described

one instance when mother attempted to make contact with him and the child during a church service, "causing a scene" that required clergy and law-enforcement intervention. The district court also received evidence regarding the parenting consultant's inability to reduce mother's excessive influence at school, father's eventual decision to stay away from the school to avoid contact with mother, and the child's "withdrawn" state after encountering mother at school during father's on-duty parenting days. Based on this evidence, the district court found that it was not in the child's best interests to remain at the school. The May 4, 2015 order directs the child to attend public school the following year and states that father established a prima facie case for custody modification, warranting an evidentiary hearing.

The three-day evidentiary hearing occurred in January 2016. In a comprehensive 43-page order, the district court granted father sole legal custody of the child. In summary, the court determined:

> Overwhelming evidence was presented to the Court showcasing the parties' intense conflict and their continual battle over the education, medical and religious decisions for [the child]. The present joint legal custody arrangement creates an environment of instability so that [the child] is caught in a tug-of-war between her parents that endangers her emotional development.

Mother appeals.

D E C I S I O N

A district court may modify a prior custody order based on endangerment if it finds that (1) the circumstances of the child or the parties have changed, (2) modification is necessary to serve the best interests of the child, (3) the child's present environment

"endangers the child's physical or emotional health or impairs the child's emotional development," and (4) the harm likely to be caused by the modification is outweighed by its advantages to the child. Minn. Stat. § 518.18(d)(iv) (2016). The party seeking a custody modification bears the burden of establishing these factors, and the district court must make specific findings addressing each. *Crowley v. Meyer*, 897 N.W.2d 288, 293-94 (Minn. 2017). Our review of custody determinations "is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Hansen v. Todnem*, ___ N.W.2d ___, ___, 2018 WL 1321370, at *2 (Minn. Mar. 14, 2018) (quotation omitted).

Mother challenges both the modification of legal custody and the order requiring the child to change schools. She particularly asserts that the district court abused its discretion by ordering the school change without considering the child's best interests. We address each custody decision in turn.

I. Modification of Legal Custody

In deciding to modify legal custody, the district court made detailed findings in four areas: parental conflicts regarding the child's schooling, medical care, and religious upbringing, and the parents' overall inability to co-parent. The record is replete with references to mother's unrelenting efforts to exclude or limit father's access to the child in these areas. On two occasions, both of which occurred in public (a church and a doctor's office) and in the presence of the child, law enforcement or security had to be called to quell the parties' confrontations. On each occasion, mother initiated the dispute in violation of either a court order or a parenting consultant's directive. The district court

found that all four areas of conflict endangered J.L.K.'s emotional health. The findings are supported by a voluminous record.

Mother asserts that the district court abused its discretion in modifying legal custody because (1) there was not a demonstrated change of circumstances between the initial 2012 custody order and the 2016 custody-modification order, (2) the evidence of endangerment to the child was insufficient, (3) any harm to the child was not outweighed by the advantage of a custody change, and (4) a change of custody is not in the child's best interests. We disagree.

First, a comparison of the 2012 custody order with the 2016 custody-modification order demonstrates that the district court was initially cautiously optimistic that the parties could co-parent. But their conflicts escalated and became entrenched, making them unable to do so and causing endangerment to the child. In the custody-modification order, the district court stated that at the time of the 2012 order "the Court hoped, rather than knew, that the parties would be able to develop a better co-parenting relationship." In that order, the court expressed "grave concerns" about whether mother would relinquish her control and allow father to co-parent; unfortunately, by 2016, these concerns were vindicated. *Cf. Hecker v. Hecker*, 568 N.W.2d 705, 709-10 & n.3 (Minn. 1997) (stating, in the context of a motion to modify spousal maintenance, that the frustration of an assumption underlying the existing award can constitute the change in circumstances necessary to allow modification of that award).

Second, as to evidence of endangerment to the child, the record shows that mother took extreme measures to exclude father from the child's life. And her will to do so was

unaffected by assistance or directives from outside sources—including court orders and professional recommendations—that she should co-parent with father.[1] "The endangerment standard requires a significant degree of danger, which includes danger purely to emotional and psychological development." *Tarlan v. Sorensen*, 702 N.W.2d 915, 922 (Minn. App. 2005) (quotation omitted).

We reject mother's suggestion that endangerment occurs only after a child has suffered actual harm; exposure to serious potential harm also constitutes endangerment. *See Black's Law Dictionary* 644 (10th ed. 2014) (defining "endangerment" as "[t]he act or an instance of putting someone or something in danger; exposure to peril or harm"); *see also Tarlan*, 702 N.W.2d at 922 (including "a significant degree of danger" to a child's emotional well-being as endangerment (quotation omitted)). In a similar factual scenario, this court, relying on a social worker's statement of concern "about what has happened to the child's emotional health" due to the denial of visitation, found endangerment based on the possibility that the deprivation "significantly increase[d]" the risk of "problems" to the child "later on." *Meier v. Connelly*, 378 N.W.2d 812, 816 (Minn. App. 1985); *see Grein v. Grein*, 364 N.W.2d 383, 385-86 (Minn. 1985) (affirming custody modification when one parent persistently interfered with other parent's on-duty time and when parent's "continued suspicious and accusatory nature . . . may have an adverse effect on the child

[1] In discussing the effect that a change of custody would have on mother, the district court commented that it was not sure "what restrictions, short of terminating [father's] legal and physical custodial rights, would quell [mother's] anxiety or fear about her lack of control."

and his relationship with [the other parent]"). We affirm the district court's determination that this record sufficiently demonstrates endangerment to the child.

Third, when balancing harms occasioned by custody modification, the district court found that granting father sole legal custody would diminish the parents' conflict over the child's religious education, promote the child's treatment by medical professionals, and maintain parental neutrality with regard to the child's school. The district court also envisioned a "change in dynamic" in between the parents that would "be positive" for the child. The evidence and findings support the district court's determination, and mother's specific challenges to the evidentiary support for these findings are not borne out by the record.[2]

Finally, mother challenges the district court's best-interests determination, focusing on the court's failure to consider how the change in school would affect the child. Mother points to an isolated statement in the district court's memorandum of law attached to its school-change order that the court did "not believe that [the child] will in any way be negatively affected by [the school] change" as proof that the court did not consider the child's best interests. We are not persuaded. Viewed in context, the statement was not determinative and merely constituted an oblique reference to the child's best interests. Further, the statement was included in the school-change order and was not among the numerous findings of fact supporting the district court's custody-modification decision. In

[2] For instance, mother challenges the district court's finding that father would be more likely to allow the child to attend religious services with mother. This finding is supported by evidence that father has been willing to take the child to attend services at mother's church even on his on-duty parenting days.

its school-change order, the district court determined that the parents were in conflict over which school the child should attend, mother's volunteering increased conflict between the parents, father's exclusion from participation at the child's school created an imbalance in the parents' input in the child's education, the school location was the site of "tense quarrels" in front of the child, mother volunteered at the school even after the district court directed her not to do so, the school sided with mother in interpreting directives about whether mother could volunteer at school, the child was "withdrawn after spending time with her mother at school on [father's] on-duty days," mother refused to use any "collateral resources" for the child that were unconnected to the school, father avoided school to avoid conflicts with mother, and the "lack of equal involvement by both parents with [the child's] school is not in [the child's] best interests."

In the custody-modification order, the district court's findings reviewed the history of the school conflict in greater detail and found that the child's attendance at the private school remained a continuous source of "exceedingly high conflict" between the parents and that the child was "placed . . . in the center" of those conflicts. The district court noted examples of mother's lack of support for the school change, including that she only reluctantly ensured that the child was available for the "new student meet and greet" after intervention from a parenting consultant and the child's therapist. The district court's determinations with regard to the school conflict and its endangering effect on the child are fully supported by the record.

Finally, the overall record supports the district court's assessment that modification of legal custody is in the child's best interests. While mother acknowledges the district

court analyzed the proper best-interests factors, she argues that the court ignored the fact that both parents "are functional and loving parents." Mother's characterization of the parties may be true. But, to the child's detriment, the parties have not demonstrated that they can serve as functional and loving parents together. We note the district court has been involved with this family since 2011. And we defer to the court's assessments regarding the credibility of the parties. Based on our careful review, we conclude that the record and findings support the district court's best-interests determination. *See Tarlan*, 702 N.W.2d at 924 ("If a child's emotional well-being is endangered, her best interests are clearly not being met.").

II. School Change

A parent who has "legal custody" of a child has "the right to determine the child's upbringing, including *education*, health care, and religious training." Minn. Stat. § 518.003, subd. 3(a) (2016) (emphasis added). Because we affirm the district court's grant of sole legal custody to father, the school-change issue is moot. *See Enright v. Lehmann*, 735 N.W.2d 326, 330 (Minn. 2007) ("An issue is moot if a court is unable to grant effectual relief."); *Mattson v. Mattson*, 903 N.W.2d 233, 242 (Minn. App. 2017) ("When an event occurs which makes a decision on the merits unnecessary, an appeal is moot."), *review denied* (Minn. Dec. 27, 2018). Accordingly, we decline to separately address whether the district court abused its discretion in issuing the interim order requiring the child to change schools.

Affirmed.