This opinion is nonprecedential except as provided by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
A23-1591

In re the Marriage of:

Maria Bernice Dunn, petitioner,
Respondent,

vs.

Michael Wayne Dunn,
Appellant,

County of Anoka,
Intervenor.

Filed September 3, 2024
Affirmed
Bratvold, Judge

Anoka County District Court
File No. 02-FA-16-807

Terri A. Melcher, Fridley, Minnesota (for respondent)

Michael Wayne Dunn, Blaine, Minnesota (pro se appellant)

Considered and decided by Frisch, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal, appellant argues that the district court abused its discretion by denying his requests to move to modify custody and parenting time, among other related

issues. Appellant also contends that the district court abused its discretion by modifying child support. Because the district court did not abuse its discretion, we affirm.

FACTS

The district court dissolved the marriage of respondent Maria Bernice Dunn (mother) and appellant Michael Wayne Dunn (father) by a stipulated judgment and decree in July 2016 (2016 judgment), awarding mother sole legal and sole physical custody of the parties' joint child.[1] The 2016 judgment also provided for father's supervised parenting time based on stipulated findings that father "was struggling with mental health issues" due to "severe" post-traumatic stress disorder (PTSD) and "an explosive temper that at times [made father] physically violent."

The district court made three post-decree decisions that provide helpful context for understanding the parties' arguments about the order on appeal. First, after entry of the 2016 judgment, father, who was self-represented, filed several motions. The district court's August 2018 order required that "[a]ll future pro se court filings by [father] must be first approved by the court before accept[ance]."[2]

Second, the district court appointed a parenting consultant after the parties agreed to use a parenting consultant to ease conflicts that arose around parenting time. The relevant orders stated that (1) "[t]he parties agree to have the [parenting consultant] until the child's

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[1] Mother is now known as Maria Bernice Nguyen. Her name was changed by the 2016 judgment.

[2] We note that the district court's August 2018 order did not determine that father was a frivolous litigant.

emancipation or by other mutual agreement of the parties" and (2) the parenting consultant's "fees shall be the equal responsibility of" mother and father.

Third, in December 2019, the district court granted father unsupervised parenting time every other weekend and one weeknight every other week. The order also established a holiday and vacation parenting-time schedule.

Father's Motions

In May 2023, father moved to modify child support, requesting to decrease his obligation to zero dollars. Father argued that he no longer received Social Security disability benefits or derivative benefits for the child. After first scheduling the hearing for the child-support expedited process, the district court continued the motion hearing and scheduled it to be heard by the district court.

In mid-June 2023, father sought permission to move to (1) modify custody based on endangerment, (2) issue a subpoena to the child's health-care provider requiring "release of [the child's] records, therapy sessions notes, etc." to father, (3) award additional parenting time or "provide realistic outcomes that can bring about expanding parenting time in the reasonable future," (4) provide for "telephone or other electronic contact" between father and the child, and (5) find mother in "contempt of court" for taking the child on vacation during his "regular parenting time" with "less time than 30 days' notice" and without providing "an itinerary" and for "enroll[ing] the child" in mental-health services to "purposely and intentionally attempt[] to cause parental alienation between the minor child and [father]." In July 2023, father requested permission to move for the removal of the parenting consultant.

Mother's Motions

In July 2023, mother asked the district court to deny father's motions. Mother also moved for relief, asking the district court to (1) direct that father "not be allowed to file any motions until he pays the past due balance owed to" the parenting consultant and "pays a future retainer and receives a ruling from" the parenting consultant, (2) decrease father's parenting time to alternating weekends only, (3) authorize law enforcement to pick up the child from father's home "if he fails to deliver her to the exchange location within 15 minutes of the end of his parenting time," (4) direct "that neither party may remove the minor child from school for vacation parenting time without the written permission of the other parent," and (5) award mother $8,897 in conduct-based attorney fees.

The Hearing and the District Court's Order

At the July 13, 2023 hearing on the pending motions, the district court discussed, among other things, father's employment history as it related to his request to eliminate child support. Father claimed that he had not worked since 2016, and mother's attorney disagreed. The district court asked father to testify under oath that he had not worked since 2016, but father declined. The district court ordered father to submit his 2022 tax returns and any other tax documents related to his income by July 18, 2023. The district court also left the record open until July 25, 2023, for additional submissions, including proposed findings or arguments. Father filed documents related to his motions on July 14, 18, and 24, including his Social Security and Veterans' Affairs (VA) records, but did not submit his 2022 tax return or any other tax documents.

On August 18, 2023, the district court filed an order denying father's motion to eliminate child support and his requests to file motions. The order also prohibited father from filing motions, "absent those of a genuine emergency nature," until he (1) "pays the past due balance owed to the parenting consultant," (2) "pays a future retainer to the parenting consultant," (3) "provides a letter from the parenting consultant confirming that [father] has paid all past due balances as well as a future retainer," and (4) "receives a ruling on the disputed issue from the parenting consultant." The order denied mother's motion to modify parenting time and her request for law enforcement to pick up the child if father is late to a parenting-time exchange. The district court granted mother's motion to "confirm that neither party may remove the minor child from school for vacation parenting time without the written permission of the other parent," ordered father to pay child support based on the Minnesota Child Support Guidelines, and awarded mother conduct-based attorney fees of $3,000. Father appeals.

DECISION

Father argues that the district court erred by denying him permission to move to (1) modify custody and subpoena the child's medical records, (2) modify parenting time and allow for telephone and electronic contact with the child, (3) remove the parenting consultant, and (4) by denying his motion to eliminate child support. We consider father's four issues in turn.

I. The district court did not abuse its discretion by denying father's request to move to modify custody and denying his request to subpoena the child's health-care records as evidence of endangerment.

Father sought leave to move for modification of custody, arguing that mother had endangered the child by arranging for her to receive mental-health counseling. The district court ruled that father's proposed motion failed to allege a prima facie case to modify custody and denied father leave to file his motion. Father challenges the denial of his request and argues that the district court should have granted him an evidentiary hearing.

If a movant makes a prima facie case that, under Minn. Stat. § 518.18(d)(iv) (2022), a child's current custodial environment endangers the child's physical or mental health, the district court must hold an evidentiary hearing on the motion. *Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018). If, however, the movant fails to make a prima facie case to modify custody, the district court is "require[d] . . . to deny [the] motion." *Nice-Petersen v. Nice-Petersen,* 310 N.W.2d 471, 472 (Minn. 1981).

A movant makes a prima facie case to modify custody if the motion includes allegations that, if true, would allow for modification. *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022). To make a prima facie case for an endangerment-based modification of custody, the moving party must allege "(1) the circumstances of the children or custodian have changed; (2) modification would serve the children's best interests; (3) the children's present environment endangers their physical health, emotional health, or emotional development; and (4) the benefits of the change outweigh its detriments with respect to the children." *Christensen*, 913 N.W.2d at 440 (quotation omitted).

Appellate courts review a district court's decision to deny a motion to modify custody without an evidentiary hearing under an abuse-of-discretion standard. *Woolsey*, 975 N.W.2d at 506. "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." *Id*. (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). When reviewing a district court's determination of whether a movant alleged a prima facie case to modify custody, we are mindful that a movant does not allege prima facie case if the allegations are merely conclusory, are "too vague to support a finding of endangerment," or are "devoid of allegations supported by any specific, credible evidence." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (quotations omitted); *see Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (requiring the district court, when addressing a motion to intervene, to accept the movant's allegations unless they are "frivolous on their face").

Father's argument is unavailing. First, mother has sole legal custody of the child. "Legal custody" includes the "right to determine the child's upbringing, including," among other things, "health care." Minn. Stat. § 518.003, subd. 3(a) (2022). Thus, mother has the sole right to decide the child's health care. Second, consistent with the record, the district court noted that, "given the high-conflict nature of the parties' relationship, . . . it is appropriate that the minor child be afforded the opportunity to participate in therapy." On this record, we conclude that the district court did not abuse its discretion in determining that father failed to allege a prima facie case of endangerment. Thus, even if the district

court had allowed father to file his proposed motion, it would have been required to deny that motion. *See Nice-Petersen,* 310 N.W.2d at 472.

Relatedly, father argues that the district court abused its discretion by denying his request to subpoena the child's health-care provider to compel production of the child's mental-health records. He argues that the mental-health records include statements "about [him] and [his] character" that show mother's attempts to "incite hate[] and prejudice about [him]" and to "alienat[e]" him from the child. Father appears to claim that, had these records been produced, they would support his claim that therapy endangered the child.

In denying father's request to subpoena child's health-care provider, the district court noted that the requested mental-health records "likely bear confidences pertaining to the minor child's feelings towards or interactions with" father and that releasing them to father "would have a chilling effect on the minor child's willingness to continue to confide in such mental health providers." The district court concluded that it was not "in the best interests of the minor child for the minor's therapy records to be disclosed to" father.

Accordingly, the district court did not abuse its discretion by denying father permission to subpoena the child's mental-health records and denying father permission to move for modification of custody based on endangerment.

II. The district court did not abuse its discretion by denying father's requests related to parenting time and granting mother's request related to removing the child from school.

"The district court has broad discretion in deciding parenting-time questions and will not be reversed absent an abuse of that discretion." *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017).

A. Father's Request to Modify Parenting Time

Father argues that the district court erred by denying him permission to move for an increase in his parenting time. The district court determined that father's request to increase parenting time was procedurally barred and rejected father's request on the merits. We address the district court's decision on the merits.

The district court determined that an increase in parenting time was not in the child's best interests given "on-going issues regarding the minor child's school attendance . . . while in [father's] care." *See* Minn. Stat. § 518.175, subd. 5(b) (2022) (providing that, "[i]f modification would serve the best interests of the child, the court shall modify . . . an order granting or denying parenting time"). When determining a child's best interests, a district court "must consider and evaluate all relevant factors." Minn. Stat. § 518.17, subd. 1(a) (2022).

Father's brief on appeal argues that the district court abused its discretion because the "age . . . of the minor at the . . . time of the hearing was seven years of age soon to be turning eight years of age" and "the best interest factors found by the State of Minnesota" supported his request to move to modify parenting time. Father's argument is unconvincing because the district court's analysis implicitly referred to two best-interests factors—"a child's physical, emotional, cultural, spiritual, and other needs" and "the willingness and ability of each parent to provide ongoing care for the child." *Id.*, subd. 1(a)(1), (7).

Father also argues that the "exhibits that were presented in relation[] to the minor's school attendance [were] not confirmed by the officials of the school the minor attends" and urges that the statements in the exhibits were inadmissible hearsay. Father fails to

specify to what evidence his argument refers. We assume that he objects to exhibit B, which was attached to mother's affidavit in support of her responsive motions. Exhibit B is a report of the child's school absences from September 2022 to June 2023.

Father did not make a hearsay objection to exhibit B during district court proceedings. As with most arguments first made on appeal, we do not consider hearsay objections raised for the first time on appeal. *Danielson v. Johnson*, 366 N.W.2d 309, 314 (Minn. App. 1985) (determining that because the appellant "never objected that [the statements] were inadmissible hearsay" in district court, the appellant "is barred from raising the objection for the first time on appeal"), *rev. denied* (Minn. June 24, 1985). Thus, we reject father's newly made objection to exhibit B.

Based on the district court's best-interests analysis, we conclude that the district court did not abuse its discretion by denying father's request to move to modify parenting time.

B. Father's Request for Telephone or Electronic Communication with the Child

Father argues that, "[j]ust as both parties adhere to parenting time exchanges, both parties can adhere to reasonable access and telephone or other electronic contact." The record reflects that these parties currently communicate about the child and parenting-time exchanges using Our Family Wizard,[3] not by email or telephone.

[3] Our Family Wizard is "a court-ordered communication website." *Winkowski v. Winkowski*, 989 N.W.2d 302, 306 (Minn. 2023).

The district court denied father's request to move for telephone or electronic contact with the child because an Order for Protection (OFP) prevents father from having any contact with mother. The district court noted that the OFP expires in September 2024. The district court did "not find that it is practical or appropriate for [mother] to be required to facilitate electronic contact between the minor child and [father] during [mother's] parenting time." The district court also noted that the child, who was seven years old at the time of the motion hearing, was not "of sufficient age to be tasked with and held responsible for maintaining her own electronic device that might facilitate such direct contact." The district also court found that "such contact—given the history between the parties—would be disruptive during [mother's] parenting time."

Father contends that the district court abused its discretion by considering the OFP in denying telephone or electronic communication with the child. We disagree. The district court appropriately considered the terms of the OFP and the age of the child in evaluating father's request. Thus, the district court did not abuse its discretion by denying father's request for telephone or electronic communication with the child.

C. Mother's Request for District Court to Confirm That the Parties Need Permission to Remove the Child from School for Vacation

Father asks this court to reverse or vacate the district court's decision to "confirm that neither party may remove the minor child from school for vacation parenting time without the written permission of the other parent." Father argues that this "creates a new obstacle now for either parent to access personal time with the minor child for a period of vacation time."

Father's argument is unpersuasive for three reasons. First, the district court found, based on mother's affidavit, that father "failed to take the minor child's education seriously and frequently removes the minor child from school without a valid reason or due to a planned vacation." While father's brief to this court denies these findings, appellate courts defer to a district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).Second, during the district court proceedings, father claimed that mother took the child on vacation without timely notifying him and even asked for leave to move to hold mother in contempt for this reason.[4] Third, given that mother has sole legal custody of the child, she has the sole ability to decide the child's education. *See* Minn. Stat. § 518.003, subd. 3(a). The district court, therefore, did not abuse its discretion by requiring both parents to have written permission from the other parent before removing the child from school for vacation.

III. The district court did not abuse its discretion by denying father's request to remove the parenting consultant.

Father argues that the district court abused its discretion by refusing to remove the parenting consultant. Although parenting consultants are not referenced in any Minnesota statutes, parents often use parenting consultants by agreement and ask the district court to appoint a consultant, as happened here. *See Szarzynski*, 732 N.W.2d at 293. A district court

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[4] In the conclusion section of his brief to this court, father briefly challenges the district court's failure to hold mother in contempt. Father cites no legal authority and makes no argument; no prejudicial error is obvious. Thus, we decline to consider the contempt issue. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (determining that "an assignment of error . . . not supported by any argument or authorities is waived unless prejudicial error is obvious on mere inspection").

may remove a parenting consultant for good cause. *Id.* The district court noted that father has "repeatedly sought to remove the parenting consultant." The district court reasoned that father had agreed to use a parenting consultant and to retain her until the child emancipates and, on these grounds, denied his request to remove her.

We conclude that the district court implicitly determined that father failed to show good cause to remove the parenting consultant. While father claims that the consultant was disbarred and charged with fraud, father did not provide any evidence to support these assertions. Nor did father contend that these claims, if proved, relate to the consultant's services as a parenting consultant. Accordingly, the district court did not abuse its discretion by denying father's request to remove the parenting consultant.[5]

IV. The district court did not abuse its discretion by denying father's request to eliminate child support and granting mother's motion to set child support as required by statute.

Father argues that the district court abused its discretion by denying his motion to modify child support. Appellate courts generally review orders modifying child support for an abuse of discretion. *Haefele v. Haefele*, 837 N.W.2d 703, 708 (Minn. 2013).

[5] Father also argues that the district court erred by requiring him to pay the parenting consultant before filing motions. The district court ordered that father may not request to file motions—other than those "of a genuine emergency nature"—until he pays the parenting consultant the past balance due along with a retainer for future charges. The district court noted that it had ordered father to pay the parenting consultant's outstanding balance, but father failed to comply with the court's order. Father argues that this limit is unreasonable and should be vacated. We disagree. Mother and father stipulated to using a parenting consultant and agreed they would each pay half of the fees. Accordingly, the district court's requirement that father pay the outstanding balance plus a retainer merely enforces and elaborates on what father has agreed to do and was not an abuse of discretion.

A district court may modify child support under Minn. Stat. § 518A.39, subd. 2 (2022), if there has been a substantial change in circumstances that renders the current order unreasonable or unfair. Here, the district court determined that there was a substantial change in circumstances that made modification appropriate because father "no longer receives social security benefits and the minor child therefore no longer receives derivative social security benefits." Because the modification standard was met, the district court made findings about the parties' incomes. Based on these findings, the district court granted mother's motion and ordered that father pay child support based on the Minnesota Child Support Guidelines.

Father makes three arguments. First, father argues that, because it is "a common process" for "the social security administration to review someone for disability periodically" to determine whether "they can return to work," the district court improperly placed the burden on him to show "what was currently taking place with [his] social security disability benefits and why there was a stop loss for the derivative payment." Caselaw is clear that the "moving party has the burden of proof in support-modification proceedings." *Bormann v. Bormann*, 644 N.W.2d 478, 481 (Minn. App. 2002). Accordingly, the district court did not err by requesting that father explain the status of his Social Security benefits. We note that the district court accepted father's explanation that the disability benefits had been terminated and agreed with father that this was a substantial change in circumstances that warranted modification of support.

Second, father argues that the district court erred by offering to place father under oath during the hearing and appears to contend that it should have sworn him in at the start

of the hearing. Father contends that the district court's procedure was improper under Minn. R. Evid. 603 and Minn. R. Gen. Prac. 364.09. Father's argument lacks merit. Minnesota Rule of Evidence 603 provides that a witness must give testimony under oath or affirmation, stating that, "[b]efore testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation." Minnesota Rule of General Practice 364.09, subdivision 1, indicates that parties "may present evidence, rebuttal testimony, and argument with respect to the issues." Here, the district court followed rule 603 by offering to place father under oath or affirmation before he testified about his income. And the district court allowed father to argue his position, consistent with Minn. R. Gen. Prac. 364.09.

Third, father appears to contend that the district court clearly erred when it determined his income and granted mother's motion. But father provided no tax documents, even though the district court ordered him to do so, and declined to testify about his income at the hearing. "On appeal, a party cannot complain about a district court's failure to rule in [their] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow [it] to fully address the question." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). Thus, father cannot complain about the district court's failure to consider evidence he did not produce.[6]

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[6] Father also argues that the district court failed to notify him that all motions would be addressed at the July 2023 hearing. Mother argues that father "cannot claim surprise when the court hears his motions on the assigned hearing date." We conclude that, even if father

We note that the district court calculated father's income in part based on information about his VA benefits, which father filed with the district court. The district court also considered mother's income as reported in her affidavit and the current parenting-time schedule. Based on the record evidence, the district court found that father had 36% of annual parenting-time overnights and 48% of the parental income for determining child support. Based on the Minnesota Child Support Guidelines, the district court ordered father to pay $362 in monthly basic support and $32 in monthly medical support. Because the district court ordered child support in an amount consistent with the Minnesota Child Support Guidelines as applied to the facts here, we determine that the district court did not abuse its discretion.

Affirmed.

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was not aware that the district court would hear all of the pending requests and motions on the hearing date, his substantial rights were not affected. *See* Minn. R. Civ. P. 61. The district court allowed the parties to submit additional materials and argument after the hearing.