STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1166

In Re the Marriage of:

Danielle Elizabeth Dressel, petitioner,
Appellant,

vs.

Nathan David Dressel,
Respondent.

Filed April 28, 2025
Affirmed
Larkin, Judge

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

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Nathan D. Dressel, Hutchinson, Minnesota (pro se respondent)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant mother challenges the district court's denial of her motion for custody modification, arguing that the district court violated her right to due process by refusing to hold an evidentiary hearing on her motion. Because mother has not shown a due-process violation and mother was not otherwise entitled to an evidentiary hearing, we affirm.

FACTS

The marriage of appellant-mother Danielle Elizabeth Dressel and pro se respondent-father Nathan David Dressel was dissolved by stipulated judgment and decree in October 2020. The stipulated decree awarded the parties temporary joint legal custody and permanent joint physical custody of their two children: AUD, born in 2011, and BD, born in 2014. It also established a 50/50 parenting-time schedule. The decree included the parties' stipulation that the children would participate in therapy and that the parties would use a Parenting Consultant (PC) "to assist them with any custody and parenting time issues they [were] unable to resolve on their own."

In February 2021, the district court awarded father temporary sole legal custody and temporary sole physical custody, subject to mother's supervised parenting time, based on its determination that father made a prima facie showing that a substantial change of circumstances had occurred and that the children were endangered as a result. The district court ordered an evidentiary hearing to further address custody, and held that hearing over seven days in 2021.

After the evidentiary hearing, the district court awarded the parties joint legal custody, awarded father temporary sole physical custody for a period of one year, and awarded mother parenting time "as provided by the Parenting Consultant." The district court found that mother "needs more targeted therapy to address her behaviors that have negatively impacted the children" and that she "appears to be unwilling to acknowledge that she has participated in this behavior, which is a concern going forward." The district court scheduled a review hearing one year from the date of its order.

Both parties challenged the district court's custody determinations in an appeal to this court. *Dressel v. Dressel*, No. A22-0603, 2022 WL 17959504, at *1 (Minn. App. Dec. 27, 2022). We held that the district court did not abuse its discretion in making its custody determinations. *Id.*

In May 2023, mother moved to modify custody and parenting time, and to remove the PC. The district court held a hearing on mother's motion in May and a subsequent review hearing in July. In August, the district court denied mother's request to remove the PC. The district court ordered no change in custody or parenting time, but it provided that those issues could be reviewed at a hearing in October 2023, which was subsequently continued to November 15, 2023. The district court requested an update from the children's therapist regarding "the children's thoughts on their school, and their general situation during these contentious proceedings."

The night before the scheduled review hearing, the PC sent the parties and the district court a "decision letter" suspending mother's parenting time for 90 days, stating that "[m]other shall have no contact with the children in person, by telephone, by text, email, social media, or other electronic means, nor shall she cause any third-party to have contact with the children on her behalf." The PC's decision was a result of her conclusion that "[t]he current situation is the most concerning to date, in that [m]other has escalated her tactics to influence [AUD] by engaging her in deceptive behaviors to hide their communication from [f]ather."

The district court held the review hearing the next day. At that hearing, mother asked the district court to schedule an evidentiary hearing on the issue of permanent

physical custody at which the parties, the PC, and the therapist could testify. Father opposed that request and asked the district court to adopt the PC's recommendation to temporarily suspend mother's parenting time. The district court took the issue of whether to hold an evidentiary hearing under advisement, noting that the issue of permanent physical custody was still under advisement.

On November 17, 2023, the district court issued a temporary order that required mother to have no contact with the children for 30 days, instead of the 90-day period that the PC had imposed. The district court indicated it would review the no-contact order after 30 days. It also requested an update from the PC and the children's therapist "as to how the children are handling the no-contact period." On December 21, 2023, the district court filed an order indicating it had received an update from the parties, the therapist, and the PC, and the court ended the no-contact order effective the following day.

On February 13, 2024, the district court denied mother's request for an evidentiary hearing. It awarded mother and father permanent joint legal custody and awarded father permanent sole physical custody. Throughout its order, the district court noted information that it had received from the children's therapist and the PC.

Mother moved for amended findings, requesting that the district court amend its order to grant her previous request for an evidentiary hearing. She argued that "Due Process requires a meaningful hearing where [mother] has an opportunity to be heard and contest the evidence presented." The district court held a hearing on mother's motion and denied it, rejecting mother's assertion that the lack of a hearing resulted in a denial of due process.

Mother appeals.

DECISION

Mother contends that the district court erred by refusing to hold an evidentiary hearing on her motion for custody modification.

In family court proceedings, the general rule is that "[m]otions shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel except for contempt proceedings" or as otherwise provided in the rules. Minn. Gen. R. Prac. 303.03(d)(1). Minn. Gen. R. Prac. 303.03(d)(2) authorizes a motion for leave to present oral testimony at a hearing. But "[t]he prevailing practice in Minnesota courts is for the submission of evidence relating to motions by written submissions, with sworn testimony provided by affidavit, deposition, or other written submissions." Minn. Gen. R. Prac. 303.03 2012 advisory comm. cmt. "Whether to hold an evidentiary hearing on a motion generally is a discretionary decision of the district court, which we review for an abuse of discretion." *Thompson v. Thompson*, 739 N.W.2d 424, 430 (Minn. App. 2007).

Mother generally agrees that no procedural rule, statute, or precedent required the district court to hold an evidentiary hearing on her motion for custody modification. Mother instead relies on her constitutional right to due process of law.

The United States and Minnesota Constitutions provide that a person may not be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. "The due process protection provided under the Minnesota Constitution is identical to the due process guaranteed under the Constitution of the United States." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988).

Caselaw distinguishes between due-process claims based on procedural violations and due-process claims based on violations of substantive due-process rights. *See Boutin v. LaFleur*, 591 N.W.2d 711, 716-18 (Minn. 1999) (separately addressing due-process claims based on procedural violations and substantive rights). Substantive due process bars "certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them." *Id.* at 716 (quotation omitted). Procedural due process requires fair procedures when depriving an individual of life, liberty, or property. *See, e.g.*, *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). "Whether due process is required in a particular case is a question of law" reviewed de novo. *C.O. v. Doe*, 757 N.W.2d 343, 349 (Minn. 2008).

Mother's argument sounds in procedural due process. We normally apply the three-part test in *Mathews v. Eldridge* when analyzing a procedural due-process claim. 424 U.S. 319, 335 (1976); *see also In re Child of F.F.N.M.*, 999 N.W.2d 525, 542 (Minn. App. 2023) (applying the *Mathews* test in a parental-rights termination case), *rev. denied* (Minn. Jan. 5, 2024). The *Mathews* test considers:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. Mother does not rely on the *Mathews* test. Instead, she relies on two Minnesota Supreme Court cases from the 1970s as support for her due-process claim.

First, mother relies on *VanZee v. VanZee*, in which the Minnesota Supreme Court explained that "a trial judge must make available to counsel for the parties any report from the welfare department or a court agency in regard to custody matters, and that such report may be used as a basis for cross-examination of those who have written the report." 226 N.W.2d 865, 867 (Minn. 1974).

Second, mother relies on *Scheibe v. Scheibe*, in which the supreme court cited *VanZee* and stated:

> The rule with respect to *custody evaluation reports* is that, absent a waiver, an appellant in a custody case is entitled to a new hearing if it appears that the trial court based its custody decision in part upon such a report without first giving the parties an opportunity to cross-examine the author of the report *or to otherwise meet or answer adverse facts therein*.

241 N.W.2d 100, 100 (Minn. 1976) (emphasis added).

We note that in *VanZee* and *Scheibe*, the Minnesota Supreme Court did not cite or discuss due process as the basis for its decisions. *See, e.g.*, *VanZee*, 226 N.W.2d at 866-68; *Scheibe*, 241 N.W.2d at 100-01. And, the right to cross-examine the author of a custody evaluation is now provided by statute. *See* Minn. Stat. § 518.167, subds. 1, 3 (2024) (stating that in a custody proceeding, "the court may order an investigation and report concerning custodial arrangements for the child" and that "[a] party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing").

Mother concedes that the reports from the PC and therapist are not custody evaluations. Nonetheless, mother argues that if a PC and a therapist provide the district

court "custody-determining opinions," then "the [c]ourt must provide the parent with adequate means to determine the basis of those opinions." Mother further argues that she "had no means of challenging these unsubstantiated opinions without cross examining the reporters," and that "[t]his was a denial of due process." For the two reasons that follow, we disagree.

First, *VanZee* and *Scheibe* are inapplicable here because the reports of the PC and therapist are not akin to court-ordered custody evaluations, and the district court did not treat them as such. Indeed, the district court rejected mother's characterization of the PC's report as a custody evaluation and stated that the therapist's "updates did not form an opinion on custody nor recommend a certain custody arrangement."

Second, mother had an opportunity to address adverse facts contained in the reports that are at issue. The district court's order denying mother's motion to amend explained that it had

> held numerous hearings and received hundreds of pages in affidavits and memorandums in connection to [mother's] Motion to Modify Custody and Parenting time. The [c]ourt's [order granting father permanent sole physical custody] was the product of a careful consideration of all affidavits and memorandums received, and oral arguments heard, in connection to [mother's] request. [Mother] has had ample opportunity to argue her case. The [c]ourt finds [mother's] Due Process rights were not violated because the [c]ourt declined to award an evidentiary hearing.

The district court also noted, in its February 2024 order, that it had "all the information it need[ed] to decide the issues still before it." The district court recognized that mother wanted to "appeal" the PC's decision and to "remove" the PC from the case.

The district court explained that it had "carefully considered" mother's affidavit in support of her request to appeal the PC's decision, that the court had "read through the text messages [that mother] alleges were taken out of context," and that the "full picture does not change the [c]ourt's decision."

Finally, in denying mother's request for an evidentiary hearing, the district court explained:

> This matter has already had a seven-day evidentiary hearing before this [district court]. The [district court's] [temporary physical custody order], which ordered a review hearing approximately a year following the Order, was not an invitation to relitigate the issue of custody. Rather, the [district court] provided [mother] an opportunity to address her behaviors and show [the district court] that joint physical custody is in the best interest of the children. Having received hundreds of pages in affidavits from the parties, updates from the children's therapist, . . . and decision letters and updates from the [PC], the [district court] does not feel it necessary to hold an evidentiary hearing. The [district court] has ample information on this case; information sufficient for this [district court] to make an informed decision regarding permanent custody.

In sum, if the rule from *Scheibe* were to apply here, the record would show that mother had an opportunity to "otherwise meet or answer adverse facts" in the reports from the PC and that therapist. *Scheibe*, 241 N.W.2d at 100.

In conclusion, mother has not shown that she had a due-process right to cross-examine the PC and therapist at an evidentiary hearing on her custody motion, or that the district court otherwise erred by denying her request for an evidentiary hearing.

Affirmed.