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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1540**

In re the Marriage of: Sheila Lorraine Janiksela,  
n/k/a Sheila Lorraine Steffen, petitioner,  
Respondent,

vs.

Corey Lee Janiksela,  
Appellant.

**Filed February 5, 2008  
Affirmed  
Peterson, Judge**

Beltrami County District Court  
File No. 04-F4-02-001352

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Considered and decided by Willis, Presiding Judge; Toussaint, Chief Judge; and  
Peterson, Judge.

**UNPUBLISHED OPINION**

**PETERSON, Judge**

This appeal is from an order that denies a motion for an evidentiary hearing  
regarding a modification of legal and physical custody. We affirm.

## FACTS

In November 2002, appellant-father Corey Lee Janiksela and respondent-mother Sheila Lorraine Janiksela signed a marital termination agreement (MTA) in which they agreed to joint legal and joint physical custody of their son G.M.J., who was born May 9, 1993. Under the MTA, G.M.J. would reside with mother approximately two-thirds of the time and with father about one-third of the time. The district court adopted the parties' MTA and incorporated it into the judgment dissolving the parties' marriage.

In July 2007, father brought a motion in the district court requesting an evidentiary hearing regarding a change of legal and physical custody. Father submitted an affidavit alleging that (1) mother did not properly supervise G.M.J.; (2) G.M.J.'s grades were falling; (3) mother had a drinking problem; (4) mother did not manage her finances well; and (5) mother's lifestyle negatively affected G.M.J.'s health because she smokes, drinks, and lets him stay up late. Mother's mother submitted an affidavit on father's behalf that contained similar allegations and asserted that father should have custody of G.M.J. One of mother's adult daughters, Chasity Elbinger, also submitted an affidavit that alleged many of the same problems and that mother does not feed G.M.J. healthy food.

Mother submitted a responsive affidavit in which she denied many of the allegations. One of mother's adult daughters, Janae Savoie, G.M.J., and several of mother's friends also submitted affidavits. Father filed several affidavits in reply. In his reply to mother's affidavit, father stated:

[Mother] is right about the fact that her lifestyle hasn't changed in the last 6 years. She still can't manage money, she still has problems keeping a job and paying her bills, and

she doesn't drink any more than she did 6 years ago. But then again she doesn't drink any less either.

Father also stated that the parties smoked while they were married and that mother smoked in the house during the marriage.

The district court found that father did not make a threshold showing of a significant change in circumstances and denied father's motion for an evidentiary hearing. This appeal followed.

## **D E C I S I O N**

Father argues that the district court abused its discretion when it denied him an evidentiary hearing.

If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

...

(iv) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and 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) (2006). A moving party must submit an affidavit reciting the facts supporting the party's motion to modify custody. Minn. Stat. § 518.185 (2006).

A party seeking an endangerment-based modification of custody must establish four elements to make a prima facie case for modification: (1) circumstances have changed involving the child or custodial parent; (2) the modification would be in the best interests of the child; (3) the child's physical or emotional health or emotional development is endangered by his or her present environment; and (4) that harm associated with the proposed change in custody would be outweighed by the benefits of the change.

*Szarzynski v. Szarzynski*, 732 N.W.2d 285, 291-92 (Minn. App. 2007) (quotation omitted). "In deciding whether a party makes a prima facie case to modify custody, 'the court must accept the facts in the moving party's affidavits as true, and the allegations do not need independent substantiation.'" *Id.* at 292 (quoting *Geibe v. Geibe*, 571 N.W.2d 774, 777 (Minn. App. 1997)). "While the district court must take the moving party's allegations as true and disregard contrary allegations by others, the district court may consider allegations by others that are not contrary to the allegations of the moving party and which may put the moving party's allegations in an appropriate context." *Id.* The district court's determination whether a prima facie case of endangerment exists is reviewed for an abuse of discretion. *Id.* If the moving party establishes a prima facie case, the district court must hold an evidentiary hearing. *Id.*

"A change in circumstances must be significant and must have occurred since the original custody order; it cannot be a continuation of conditions existing prior to the order." *Geibe*, 571 N.W.2d at 778. The alleged change can also be based on facts that were unknown to the court at the time of the prior order. *Wenndt v. Wenndt*, 398 N.W.2d

7, 10 (Minn. App. 1986). Father did not assert to the district court or in his brief on appeal that any of the allegations in his affidavit included facts that were unknown to the district court at the time of the prior order. At oral argument, father argued that his request was based on facts unknown to the district court. Because father did not raise this issue in the district court, it is waived. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

The district court ruled that father did not sufficiently allege a significant change in circumstances. Although father makes serious allegations about G.M.J.'s current conditions, the allegations do not indicate when the conditions arose. Because the parties' dissolution judgment does not include any findings about the circumstances surrounding G.M.J.'s custody when the parties divorced and father has not alleged the circumstances that existed at the time of the dissolution, father's allegations do not describe how the circumstances have changed. *Cf. Maschoff v. Leiding*, 696 N.W.2d 834, 840 (Minn. App. 2005) (noting importance, in child-support-modification context, of including in stipulated orders a description of the circumstances existing at the time of the stipulated order). Furthermore, in his own reply affidavit, father agreed that mother's drinking, smoking, and overall lifestyle have not changed in the last six years.

Father alleges that, in February 2007, G.M.J. had some incomplete grades and his grades began to falter. But father does not indicate how much the grades have changed. G.M.J.'s report card was submitted, and while some of his grades fluctuated, they did not significantly change. *See Geibe*, 571 N.W.2d at 778 (requiring a significant change in circumstances). Father also alleges that the contract for deed for mother's house was

canceled and that she is being evicted. But father admits that mother lacked fiscal responsibility during the marriage, and he has not alleged how or whether mother and G.M.J.'s housing conditions have changed.

At oral argument, father asserted that, although he acknowledged in his affidavit that mother had not changed in the past six years, G.M.J. has gotten older and mother's alleged problems—even if they have not significantly changed—have a greater negative effect on G.M.J. because he is an adolescent. But this specific condition was not alleged in any of father's affidavits or argued to the district court, and the claim that it constitutes a significant change in circumstances may not be raised for the first time on appeal. *Thiele*, 425 N.W.2d at 582. Furthermore, even if we consider G.M.J.'s increased age in light of father's affidavit, the most that it establishes is a continuation of ongoing problems. *See Roehrdanz v. Roehrdanz*, 438 N.W.2d 687, 690 (Minn. App. 1989) (stating that a “change of circumstances must be a real change and not a continuation of ongoing problems”), *review denied* (Minn. June 21, 1989). We also note that if increased age, by itself, constituted a significant change in circumstances, the mere passage of time would bring about a significant change in circumstances in virtually every custody situation. Based on our review of the allegations presented to the district court, we conclude that the district court did not abuse its discretion when it determined that father did not allege a prima facie case of endangerment and, therefore, denied father's motion for an evidentiary hearing.

**Affirmed.**