

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2003**

Jamil Aref Jabr, petitioner,  
Appellant,

vs.

Teena Marie Jabr,  
Respondent.

**Filed April 22, 2008  
Affirmed in part and reversed in part  
Ross, Judge**

Ramsey County District Court  
File No. F1-01-1586

Jamil Aref Jabr, 2134 Roblyn Avenue, St. Paul, MN 55104 (appellant pro se)

Mary F. Hastings, P.O. Box 14178, St. Paul, MN 55114 (for respondent)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson,  
Judge.

**UNPUBLISHED OPINION**

**ROSS**, Judge

Jamil Jabr brings this appeal arguing that the district court abused its discretion when it denied his motion to modify child custody based on child endangerment, granted need-based attorney fees to Teena Jabr, and continued his obligation to carry a \$250,000 life insurance policy which exceeds the amount needed to secure payment of child

support. Jamil Jabr also contends that the district court violated his constitutionally protected right to freedom of speech by prohibiting him from publishing “anything” about Teena Jabr or her family. We conclude that the district court did not abuse its discretion when it denied Jamil Jabr’s motion to modify custody, awarded Teena Jabr need-based attorney fees, ordered continuation of the \$250,000 life insurance obligation, and denied Jamil Jabr’s request for permission to disclose information covered by a 2002 protective order. But the later, 2007 protective order prohibiting the parties from publishing “anything” about Teena Jabr or her family is overbroad and violates Jamil Jabr’s rights protected by the First Amendment to the United States Constitution. We therefore affirm in part and reverse in part.

### **FACTS**

Jamil and Teena Jabr were married in January 2000, and their son, G.J., was born in November 2000. Teena Jabr also has a son from a previous marriage, G.W., who is eight years older than G.J. The parties separated in October 2001. In July 2002, the district court *sua sponte* ordered, “Neither party will use or allow any information obtained through the discovery process to be used outside of this legal proceeding without Court permission.”

The district court dissolved the marriage on March 14, 2003, by an order that gave the parties joint legal custody of G.J., with Teena Jabr having sole physical custody. The district court ordered Jamil Jabr to pay monthly child support in the amount of \$1,118.71. It also ordered Jamil Jabr to maintain a \$250,000 life insurance policy, naming Teena Jabr as the beneficiary, to secure the child-support obligation.

Jamil Jabr appealed, and we affirmed the custody determination and the protective order. *In re Marriage of Jabr*, No. A03-738, 2004 WL 77880 (Minn. App. Jan. 20, 2004), *review denied* (Minn. Mar. 30, 2004). We held that the district court did not abuse its discretion when it issued the protective order “[b]ecause of the large amount of sensitive documents, including medical and psychological information, obtained by both parties in the dissolution proceedings.” *Id.* at \*5. We emphasized that Jamil Jabr had the option of seeking the district court’s permission to use the information. *Id.*

In November 2004, Jamil Jabr moved the district court to vacate the protective order, or, alternatively, to permit him to discuss information obtained in the depositions of the custody evaluator, a psychological evaluator, and the coordinator for the guardian ad litem program. Jamil Jabr amended his motion in December 2004, requesting permission to disclose information obtained through the discovery process. Specifically, he sought to share the information “with his elected representatives and with members of the media.” The district court denied his motion.

In June 2005, Jamil Jabr moved the district court to modify custody. The court held a four-day evidentiary hearing in which Jamil Jabr alleged that G.J. was endangered by second-hand cigarette smoke; by his diet; by physical abuse because G.W. allegedly hits, punches, and kicks him; by emotional injury because of G.W.’s use of foul language and sexual mimicry; by Teena Jabr’s alleged failure to protect G.J. from this abuse; by the uncleanness of Teena Jabr’s home; by Teena Jabr’s failure to provide an intellectually stimulating environment for G.J.; and by the child’s exposure to Teena Jabr’s sister.

Teena Jabr testified and also presented testimony from G.J.'s pediatrician and G.W.'s counselor, in addition to other witnesses, contradicting these allegations. She denied that G.J. was exposed to cigarette smoke. She explained that she sought to improve G.J.'s nutrition. She explained G.J.'s relationship with G.W. to indicate normal interaction. She described G.W.'s behavioral and psychological problems as not harmful to G.J. And she discussed as nonthreatening the contact G.J. has with her sister and brother.

G.J.'s pediatrician testified that G.J. appeared to be in generally good health and that his weight gain could be due merely to overeating rather than to poor nutrition choices. He testified that G.J. has mild asthma that may be aggravated if G.J. is exposed to cigarette smoke. He also testified that he saw no indication of abuse. G.W.'s counselor testified that he did not believe that G.W. endangered G.J. and that he is not a threat to G.J. He also stated that G.W.'s sexual mimicry had not recurred since he began treating G.W. in 2002.

The court received evidence that Midwest Children's Resource Center (MCRC) evaluated G.J. and reported on G.J.'s mental health and safety in Teena Jabr's home. MCRC found no evidence of sexual abuse and no significant mental health issues. MCRC opined that rough physical play between G.J. and G.W. was in a normal range. MCRC qualified G.W.'s sexual mimicry and concluded that G.J. did not "identify the 'humping' or rubbing behaviors as involving private parts."

The guardian ad litem also testified and presented her report. She recommended only that Teena Jabr separate G.J.'s and G.W.'s bedroom arrangement and that she assure

that there is no physical violence between the boys. The guardian also recommended that G.J. not be allowed around his uncle under certain conditions.

Jamil Jabr presented the testimony of a psychologist to support his endangerment claims. The psychologist had no therapeutic relationship with G.J. or G.W., but she opined that G.W. could be a danger to G.J. Jamil Jabr's friend testified that on one occasion he thought G.J. smelled like cigarette smoke after being with Teena Jabr. Jamil Jabr testified about his request to disclose protected information. He admitted publishing photographs of G.J. on the internet. He denied purposely publishing statements that Teena Jabr's family was "inbred and incestuous" and explained that they were included in a private repository on his website that was not accessible publically.

The district court concluded that G.J. was not endangered by his current environment, and it therefore denied Jamil Jabr's motion to modify custody. The court ordered Jamil Jabr to continue to carry the \$250,000 life insurance policy to secure his child-support obligation. It found that Jamil Jabr had published photographs of G.J. and derogatory statements about Teena Jabr and her family on the internet. The district court continued the protective order, but it stated more broadly that the parties "are forbidden to make derogatory statements about the other or any of either party's family in the presence of G.J. or to publish anything about [Teena Jabr] or her family." The court awarded Teena Jabr need-based attorney fees. Jamil Jabr appeals.

## DECISION

### I

Jamil Jabr challenges the district court's order denying his motion to modify custody. This court reviews an order denying custody modification for abuse of discretion. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). The district court abuses its discretion when its findings are clearly erroneous or when it improperly applies the law. *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). This court will determine a finding of fact to be clearly erroneous when, viewing the record in the light most favorable to the district court's findings and giving deference to the district court's credibility determinations, we have "the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

To modify a custody order, the district court must find "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." Minn. Stat. § 518.18(d) (2006). The facts supporting the change-in-circumstances finding must have occurred after the current order or have been unknown to the district court when it issued the order. *Id.* Jamil Jabr's motion for custody modification was based on alleged endangerment. To modify custody based on endangerment, the district court must find that the "present environment endangers the child's physical or emotional health or impairs the child's emotional development" and that the harm likely to be caused by the custody modification "is outweighed by the advantage of a change to the child." Minn. Stat. § 518.18(d)(iv).

The record supports the district court's finding of no endangerment. Despite claims of physical violence and inappropriate behavior between G.J. and G.W., the professionals who worked closely with G.J. and G.W. testified that G.J. showed no signs of physical or sexual abuse and that G.W. did not pose a threat to G.J. Jamil Jabr argues that "the district court simply chose to ignore [endangerment evidence]." Although Jabr cites to the record where it conflicts with the district court's factual findings, the record contains a great deal of testimonial evidence that supports the district court's findings. Viewing the record in the light most favorable to the district court's findings and deferring to the court's weighing of evidence, we are not persuaded that the district court's findings are mistaken.

Because the record supports both the district court's finding of no change in circumstances justifying a change of custody and its conclusion that G.J. is not endangered, it did not abuse its discretion by denying Jamil Jabr's motion to modify custody.

## II

Jamil Jabr contests the requirement that he maintain the \$250,000 life insurance policy. We review the district court's continuation of the requirement for an abuse of discretion. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002). The district court may require an obligor to maintain life insurance to secure the payment of support in the event that one or both of the parents predeceases the child before emancipation. *Emerick ex rel. Howley v. Sanchez*, 547 N.W.2d 109, 112 (Minn. App 1996) (citation omitted); *see also* Minn. Stat. § 518A.71 (2006) ("In all cases when . . . support payments are ordered,

the court may require sufficient security to be given for the payment of them according to the terms of the order.”). Although a district court has wide discretion in specifying the terms of a child support order, it abuses its discretion when it sets, modifies, or refuses to modify support in a manner that is against logic and the facts. *Putz*, 645 N.W.2d at 347. Jamil Jabr contends that requiring life insurance at \$250,000 is an abuse of discretion because that amount exceeds his child-support obligation.

Monthly child support was set at \$1,118.71, or \$13,424.52 per year, in March 2003, when G.J. was two years old. The obligation will expire at the later date of either when G.J. turns 18 or graduates from high school, but no later than his twentieth birthday. The district court ordered Jamil Jabr to maintain the \$250,000 policy in 2003 to secure the maximum potential child-support obligation of approximately \$240,522.65. When the district court ordered that the life-insurance obligation continue in April 2007, the remaining maximum child-support obligation was approximately \$183,468, not including any future increases or cost-of-living adjustments. Although the \$250,000 life insurance policy exceeds the \$183,468 child-support obligation, Jamil Jabr did not move the district court to reduce the life-insurance obligation. The first time he raised the issue was in his motion for amended findings, and there he requested only that the court rescind its order entirely to state that he “shall no longer be required to maintain life insurance on his life naming [Teena Jabr] as the beneficiary.” We do not find that the denial of that motion, as presented to the district court, reflects an abuse of discretion.

### III

Jamil Jabr argues that the district court's 2007 order prohibiting him from publishing "anything" about Teena Jabr or her family violates his right to free speech under the First Amendment to the United States Constitution. The argument is persuasive. Whether the district court's order violates his Constitutional rights is a question of law that we review de novo. *McNamara v. Office of Strategic and Long Range Planning*, 628 N.W.2d 620, 628–29 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). This sort of prior restraint on speech carries "a heavy presumption against its constitutional validity." *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 435 (Minn. App. 1985). Additionally, content-based restrictions on speech face a strict scrutiny analysis and will survive only if they are necessary to serve a compelling state interest and are narrowly drawn to achieve that purpose. *Widmar v. Vincent*, 454 U.S. 263, 270, 102 S. Ct. 269, 274 (1981).

Meeting the best interests of a child generally constitutes a compelling state interest. *See LaChapelle v. Mitten*, 607 N.W.2d 151, 163 (Minn. App. 2000) (upholding infringement on a parent's right to travel on the basis that best interests of the child is a compelling state interest), *review denied* (Minn. May 16, 2000). Satisfying the best interests of a child has served as a compelling state interest supporting a narrowly tailored prior restraint of a parent's speech. *Geske v. Marcolina*, 642 N.W.2d 62, 70 (Minn. App. 2002). In *Geske*, the district court issued a permanent injunction restraining a father from "publishing the names (including first names) or images of the children on television, radio, in any print publication, on the Internet or through any other form of media" after

the father was featured in a television news story. *Id.* at 66. The broadcast consisted of an interview with the father, video footage of unopened presents addressed to the children by their first names, and a photograph of the children. *Id.* at 65–66. We upheld the injunction. *Id.* at 68. Protecting G.J.’s privacy is in his best interests and constitutes a compelling interest.

But despite the compelling interest of protecting G.J.’s privacy, the 2007 order is not narrowly tailored to serve that interest. The order prohibits publishing “anything” about Teena Jabr or her family, and this goes far beyond protecting the child’s interests. Teena Jabr offers no compelling interest to justify prohibiting Jamil Jabr from publishing information regarding her or other adult family members. We note that she is not without a remedy at law for some types of inappropriate disclosure. *See Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn. 1998) (recognizing causes of action for intrusion upon seclusion, appropriation, and publication of private facts); *James v. Warter*, 156 Minn. 247, 194 N.W. 754 (1923) (recognizing defamation as a cause of action). The 2007 protective order is an unconstitutional, overly broad, content-based restriction.

#### IV

We also address Jamil Jabr’s challenge to the district court’s May 2005 denial of his motion to vacate the earlier, 2002 protective order, and its denial of his motion for permission to publicize information obtained in the depositions of the custody evaluator, psychological evaluator, and coordinator of the guardian ad litem program. Although the initial order of a prior restraint is viewed with a “heavy presumption against its constitutional validity,” district courts generally have discretion to determine whether to

modify a protective order. *Schmidt*, 360 N.W.2d at 435; *State ex. rel. Humphrey v. Philip Morris Inc.*, 606 N.W.2d 676, 687 (Minn. App. 2000), *review denied* (Minn. Apr. 25, 2000). And although Jamil Jabr previously challenged the 2002 protective order on appeal to this court, he failed to raise any constitutional challenge at that time. *Jabr*, 2004 WL 77880 at \*5. When considering whether to modify a protective order, the district court considers a variety of factors, including “the nature of the protective order, the parties’ reliance on it, the ability to gain access to the information in other ways, the need to avoid repetitive discovery, the nature of the material for which protection is sought, the need for continued secrecy, and the public interest involved.” *Philip Morris*, 606 N.W.2d at 688.

The district court applied those factors here. It concluded that the court-appointed evaluators did not rely on the order when they gave depositions and that this factor favored Jamil Jabr’s motion. It found factors that weighed against the motion, such as the need for a broad protective order because the case was “fraught with bitter disagreement”; that Jamil Jabr has access to the information and is restricted simply in how he may use it; that he had filed no other lawsuits that would require the information; that the material included the “most intimate and personal details of the lives of members of a family and moreover, the lives of minor children”; and that the personal nature of the material and continuing nature of the controversy required continued protection. The district court also questioned whether there is any public interest in the specific deposition testimony, even though it acknowledged generally “that the public has a

vested interest in ensuring that court personnel perform their jobs in a professional manner.”

Because the district court balanced the relevant factors when it considered Jamil Jabr’s motion for permission to use information obtained in discovery, it did not abuse its discretion when it denied the motion.

## V

Finally, we address Jamil Jabr’s challenge to the district court’s order requiring Jamil Jabr to pay Teena Jabr’s attorney’s fees. The district court generally has broad discretion to grant attorney fees, and this court will not reverse its decision absent a clear abuse of discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 24 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). But the district court must grant need-based attorney fees if it finds that the fees are necessary to a party’s good-faith claim, the party from whom fees are sought has the means to pay them, and the party seeking the fees does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2006). The district court must make specific findings on these statutory factors. *In re Marriage of Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). But lack of specific findings on the statutory factors is not fatal to an award when review of the order reasonably implies that the district court considered the relevant factors and when the district court was familiar with the case and had access to the financial records. *Gully v. Gully*, 599 N.W.2d 814, 825-26 (Minn. 1999).

The district court found that Jamil is financially able to pay attorney fees and that Teena Jabr’s net monthly income ranges only between \$750 and \$800 per month, in

addition to child support. The court was familiar with the parties, and the order reasonably implies that it considered the relevant factors in determining the motion for attorney's fees. The district court did not abuse its discretion when it granted need-based attorney's fees.

Jamil Jabr also argues that the motion for need-based attorney's fees was untimely. A motion must be filed at least 14 days before the scheduled hearing. Minn. R. Gen. Pract. 303.03(a)(1). If a party fails to comply, the court may cancel the hearing. Minn. R. Gen. Pract. 303.03(b); *see* Minn. R. Gen. Pract. 115.11, 1997 advisory comm. cmt. (“[P]ermissive language is included to make it clear the court retains the discretion to hear matters even if the rules have been ignored.”). Teena Jabr filed the motion for attorney's fees on October 27, 2006, and the hearing was scheduled for November 8. This resulted in eight days' notice. Although this did not conform to the rule, the district court acted within its discretion by considering the motion.

Jamil Jabr also asserts that the district court engaged in *ex parte* communications when it granted Teena Jabr's attorney permission to file an additional untimely pleading after Jamil Jabr filed his February 2, 2007, responsive pleading. The challenging party bears the burden to demonstrate that the *ex parte* communication resulted in prejudice. *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 363 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). Jamil Jabr fails to meet this burden.

The district court's findings indicate that its clerk received phone calls about a request to file an extension on the motion for fees and that the clerk “told both parties the extension was approved by the undersigned.” Jamil Jabr challenges the accuracy of this

finding and asserts that he was not informed of the substance of the ex parte communication. He cites the May 18, 2007, affidavit of his attorney, which states that the clerk told her that permission to file a response to Jamil Jabr's responsive pleadings had not been granted and that she may proceed with a motion to strike. These complained-of communications did not go to the merits of any issue before the court, and Jamil Jabr has not demonstrated prejudicial error.

**Affirmed in part and reversed in part.**