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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1940**

In the Matter of the Custody of the Minor Children of:  
Crystal Sue Riess, petitioner,  
Respondent,

vs.

Ross Harrison Navratil,  
Appellant.

**Filed July 2, 2012  
Reversed and remanded  
Wright, Judge**

Wabasha County District Court  
File No. 79-FA-10-251

Crysta L. Parkin, Southern Minnesota Regional Legal Services, Rochester, Minnesota  
(for respondent)

David W. VanDerHeyden, VanDerHeyden Law Office, P.A., Rochester, Minnesota (for  
appellant)

Considered and decided by Ross, Presiding Judge; Wright, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**WRIGHT**, Judge

Appellant-father challenges the denial, without an evidentiary hearing, of his motion to modify custody, arguing that the district court's analysis of the parties' affidavits is insufficient. Because the district court's decision and rationale are not susceptible of meaningful appellate review, we reverse and remand to the district court for particularized findings and a determination in accordance with our caselaw.

### FACTS

Appellant-father Ross Harrison Navratil and respondent-mother Crystal Sue Riess began dating in September 2003. In early 2009, the parties ended their romantic relationship. The parties have three children jointly: K.N. (eight years old), C.N. (six years old), and E.N. (three years old). On February 25, 2010, Riess moved the district court for sole legal and physical custody of the children. Following a hearing on March 29, the district court granted Riess temporary sole physical and legal custody of the children, subject to Navratil's parenting time. The matter proceeded to trial on September 10, and the district court modified Navratil's summer- and winter-vacation parenting time on September 14.

Approximately two weeks later, on September 29, one of Riess's neighbors allegedly sexually assaulted C.N. In her affidavit, Riess contends that C.N. went to the park with a neighbor boy and his father. Riess alleges that, during this outing, the father sexually assaulted C.N. Riess immediately called the police and Navratil after she learned of the sexual assault. The police requested a medical evaluation of C.N., and

Riess cooperated fully. Although the neighbor was not criminally charged, Riess obtained an Order for Protection and, in March 2011, moved with the children to a new residence.

On October 8, 2010, the district court issued a supplemental order, granting the parties joint legal custody of the children and establishing parenting time for holidays and birthdays.

Ten months later, on August 8, 2011, Navratil moved to modify custody, alleging child endangerment. In support of his motion, Navratil alleged by affidavit that Riess (1) inadequately supervises and cares for the children, (2) entrusts the children's care to unsuitable caregivers, and (3) maintains an unhealthy home environment. By affidavit, Riess countered Navratil's allegations. Without an evidentiary hearing, the district court denied Navratil's motion "in all respects," setting forth its rationale in a single phrase: "Based upon the arguments made and upon all the files, records and proceedings herein . . . ."

This appeal followed.

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

When, as here, a party moves to modify custody based on child endangerment, the district court must conduct an evidentiary hearing only if the party seeking modification makes a prima facie showing that (1) since the prior order, facts have arisen or become known to the district court that demonstrate a change in the child's or the parties' circumstances, (2) the modification is necessary to serve the child's best interests, (3) the child's present environment endangers the child's physical or emotional health or impairs

the child's emotional development, and (4) the benefits of the modification outweigh the likely detriments. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008); *see also* Minn. Stat. § 518.18(d)(iv) (2010) (vesting district court with continued jurisdiction to modify a custody order when specified circumstances exist).

When reviewing an order denying a motion to modify custody without an evidentiary hearing, we review “three discrete determinations.” *Boland v. Murtha*, 800 N.W.2d 179, 185 (Minn. App. 2011). We first review de novo “whether the district court properly treated the allegations in the moving party’s affidavits as true, disregarded the contrary allegations in the nonmoving party’s affidavits, and considered only the explanatory allegations in the nonmoving party’s affidavits.” *Id.* We next review for an abuse of discretion “the district court’s determination as to the existence of a prima facie case for the modification.” *Id.* Finally, because this determination is dispositive of whether an evidentiary hearing will occur, we review de novo “whether the district court properly determined the need for an evidentiary hearing.” *Id.* at 183, 185.

Navratil argues that the district court’s order is insufficient to enable meaningful appellate review. We agree. In *Boland*, we observed that the district court’s order did “not indicate, explicitly or implicitly,” whether it properly analyzed the parties’ affidavits. *Id.* at 185. The same is true here. Concluding in *Boland* that the district court’s order was insufficient to permit an appellate court to discern whether the district court correctly engaged in the three-part analysis, we remanded to the district court to perform the analysis expressly in a manner that is susceptible of meaningful appellate review. *Id.* at 186. Here, when the district court denied Navratil’s motion without an

elaboration of its rationale, it deprived us of the ability to perform meaningful appellate review. We, therefore, reverse and remand to the district court for an express analysis of the parties' affidavits with findings and an application of the law as mandated by our caselaw so as to render a decision susceptible of appellate review.<sup>1</sup>

**Reversed and remanded.**

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<sup>1</sup> In light of our decision, we do not reach Navratil's alternative argument that the affidavits submitted in support of his motion establish a prima facie case for custody modification.