STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1614

In re the Marriage of:
Greda Lynn, petitioner,
Appellant,

vs.

Tracey Joe McConnell,
Respondent.

Filed December 12, 2022
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-FA-17-826

Zachary P. Marsh, Marsh PLLC, Minneapolis, Minnesota (for appellant)

Tracey McConnell, Harvey, North Dakota (pro se respondent)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In an appeal of the district court's order granting respondent-father's motion to modify physical custody of son, appellant-mother argues the district court abused its discretion by (1) using a parenting-time expeditor's decision and statements in an evidentiary hearing and in its subsequent decision and (2) modifying physical custody

based on endangerment. Because any error in the district court's use of the parenting-time expeditor's decision and statements was harmless, and because the district court did not abuse its discretion when it determined mother's care created a significant degree of danger for son, we affirm.

FACTS

Appellant Greda Lynn (mother) and respondent Tracey McConnell (father) married in February 2016, and their son was born that September. In February 2017, mother petitioned the district court for dissolution of the marriage. Consistent with the parties' agreement, the district court awarded the parties joint legal custody and mother sole physical custody.[1] In June 2018, the district court dissolved the parties' marriage and set a parenting-time schedule. Father, who lives in Harvey, North Dakota, exercised parenting time every other weekend, either in Minnesota or North Dakota, and had extended time over holidays and during the summer. Mother lives in Minneapolis.

In February 2021, father moved to modify physical custody of four-year-old son based on endangerment and offered the following evidence: son's expulsion from daycare, son's statements about poisoning teachers, son bringing a knife to school, son's exposure to R-rated scary movies while in mother's care, mother locking son in the bathroom as punishment, and mother's efforts to conceal son's behavioral issues from father. Mother opposed custody modification, moved to discharge the parenting-time expeditor (PTE),

[1] The initial custody determination and the later modification motion challenged in this appeal were heard by a referee, who made recommendations adopted by the district court. We treat a referee's recommendations adopted by the district court as the district court's order. Minn. R. Civ. P. 52.01.

and moved to partially vacate the December 29, 2020 PTE decision that son be in full-time daycare. The district court determined that father presented a prima facie case of endangerment and set the motions for an evidentiary hearing.

In November 2021, after the evidentiary hearing, the district court issued a written decision finding father established a change of circumstances and that son was endangered in mother's care, "warranting reconsideration of custody and parenting time." The district court modified physical custody after determining that "the advantage of a change" in son's environment outweighed "the harm likely to be caused [to son] by a change in environment." The district court considered "the relevant factors set forth in Minn. Stat. § 518.17, subd. 1," and concluded that son's "best interests [were] not being served while in [mother's] care." The district court ordered that father have sole physical custody and designated father's home in Harvey as son's primary residence; joint legal custody of son remained unchanged. The district court also revised the parenting-time schedule by giving mother certain weekends, holidays, and 15-day periods over the summer.[2]

Mother appeals.[3]

DECISION

On appeal, mother raises two issues. First, she argues that the district court abused its discretion by referencing two exhibits in its modification order: the December 29, 2020

[2] In December 2021, the district court amended the custody-modification order; that amendment is not relevant to the issues in this appeal.

[3] Father did not file a brief with this court. Thus, the appeal is submitted for decision under Minn. R. Civ. App. P. 142.03 and is "determined on the merits."

PTE decision (exhibit 57), which, among other things, required mother to obtain full-time daycare when son was in her care; and PTE statements in an email about son's daycare (exhibit 58). Second, mother argues that the district court abused its discretion by modifying physical custody because the record does not establish either a significant degree of danger to son or that son's behavioral issues are attributable to mother.

I. Any error in the district court's use of the PTE decision and statements was harmless.

"The admission of evidence rests within the broad discretion of the trial court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017) (quoting *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997)). "An appealing party bears the burden of demonstrating that an evidentiary error resulted in prejudice." *Id.* at 842. "An evidentiary error is prejudicial if it might reasonably have influenced the fact-finder and changed the result of the proceeding." *Id.* "[T]he admission of evidence that is cumulative or is corroborated by other competent evidence will be deemed harmless." *George v. Est. of Baker*, 724 N.W.2d 1, 9 (Minn. 2006); *see* Minn. R. Civ. P. 61 (requiring courts to disregard harmless error); *Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (applying rule 61 in a child-custody appeal).

Generally, PTE statements are not discoverable or admissible evidence. Section 518.1751 of the Minnesota Statutes provides that "[s]tatements made and documents produced as part of the parenting time expeditor process which are not otherwise

discoverable are not subject to discovery or other disclosure and *are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment*." Minn. Stat. § 518.1751, subd. 4a(a) (2020) (emphasis added). Section 518.1751 also provides for the confidentiality of "[n]otes, records, and recollections of parenting time expeditors" and prohibits their disclosure.[4] *Id.*, subd. 4a(c). One notable exception provides that any party *may* disclose a PTE decision to the district court when a party does not comply with the PTE decision so that the district court may "enforce, modify, or vacate" the PTE decision. *Id.*, subd. 3(d) (2020).

At the evidentiary hearing, mother objected to the admission of exhibit 57 even though she acknowledged that her motion sought to partially vacate the December 29, 2020 PTE decision that son be in full-time daycare, which is set out in exhibit 57. Mother asked the district court to exclude the parties' "confidential statements" from exhibit 57. The district court overruled mother's objection and admitted exhibit 57, stating that exhibit 57 was relevant to its consideration of mother's motion.

Mother objected to the admission of exhibit 58 on the same grounds as exhibit 57, arguing the PTE statements "are not admissible unless they are being used to challenge the enforcement or vacate the [PTE] decision." The district court agreed with mother and excluded exhibit 58 "under 518.1751 as notes or correspondence in the context of the PTE

[4] Some other exceptions are noted but not relevant here. Section 518.1751 prohibits disclosure of PTE documents "*unless*: (1) all parties and the expeditor agree in writing to the disclosure; or (2) disclosure is required by law or other applicable professional codes . . . [or (3)] after a hearing the court determines that the notes or records should be reviewed in camera." Minn. Stat. § 518.1751, subd. 4a(c) (2020) (emphasis added).

process and being confidential therein." We address in turn mother's arguments about the district court's use of each exhibit.

A. Exhibit 57

On appeal, mother argues that "[w]hile the district court may receive a PTE's decision for purposes of enforcing, modifying, or vacating the decision," the district court "misapplied the PTE confidentiality statute," Minn. Stat. § 518.1751 (2020), by admitting exhibit 57 and using it for the "purposes of modifying the physical custody arrangement."

The record appears to support mother's argument. In its factual findings and determinations in support of custody modification, the district court referred to exhibit 57 in three ways. First, when discussing son's daycare expulsion, the district court cited the PTE statements in exhibit 57 that "it [is] very alarming that [mother] is having adults watch [son] that cannot use societal norms as guidelines, nor the pleas of a 4-year-old not to expose him to R rated scary movies" and that the movies "harmed [son] and had a detrimental effect on him, so much so that he has now been kicked out of daycare."

Second, when considering whether mother had concealed information about son's daycare expulsion from father, the district court cited the PTE statements in exhibit 57 that "[mother] stated [son] was kicked out of his daycare due to his behavior. [Mother] informed me that she was told verbally and [father] provided documentation otherwise. It is clear from [mother]'s statements and [father]'s documentation that [mother] was not being forthcoming."

Third, when discussing the parties' dispute over son's placement in full-time daycare, the district court cited the PTE statements in exhibit 57 that

> [t]he court ordered that [son] be in full-time daycare. [Father] opposes [son] staying at home with [mother] . . . . There have been extraordinary circumstances eliminating [son's prior daycare]. There is a need to arrive at a suitable solution for [son] during his mother's workday and for a full-time daycare provider.

Thus, the record supports mother's claim that the district court used exhibit 57's PTE decision to discuss facts related to father's endangerment motion and did not limit its review of exhibit 57 to resolving mother's motion to vacate the PTE decision about the full-time-daycare requirement.

Still, mother's argument fails because she does not show the district court's use of exhibit 57 "materially affected the result." *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997). The PTE statements are "cumulative" evidence and are "corroborated by other competent evidence" in this record. *George*, 724 N.W.2d at 9. That son was exposed to R-rated scary movies is fully supported by testimony from son's former child-care provider and by mother's own testimony. Mother's concealment of son's expulsion from daycare is also corroborated by other evidence in the record: in exhibit 69, mother told father's attorney "there was no sole/specific behavior cited" for son's expulsion even though mother testified that the daycare provided reasons for son's expulsion. As explained below, the district court cited other grounds for modifying physical custody, such as mother locking son "in rooms or a car for purposes of punishment," mother's tendency to deflect her responsibility for son's behavioral issues,

and son's "more prominent" struggles in mother's care. Because mother cannot show that the district court's use of the PTE statements in exhibit 57 affected the outcome of the custody proceeding, any error was harmless.

B. Exhibit 58

Mother also claims that the district court erred by using exhibit 58 in its custody-modification order despite sustaining mother's objection to exhibit 58. The district court's order referred to the PTE statements about full-time daycare in exhibit 58:

> In this instance, I interpret the 7/13/2020 court order to be the court has determined that [son] should be in full-time daycare . . . . [Mother] wants to keep [son] at home and allow him to attend work with her. You are at an impasse, [mother] is not following the court order as interpreted by this PTE, and there is a much larger issue that needs addressing that only a judge can decide.

The record supports mother's claim that after the district court excluded exhibit 58 under Minn. Stat. § 518.1751, it erred by using the exhibit in its findings for custody modification.

But mother again fails to show prejudice. The district court does not mention the parties' dispute about full-time daycare in its findings of endangerment. Rather, the district court's order discussed the daycare dispute as relevant background to highlight that "the parties' relationship is highly conflicted" and to determine son's best interests in modifying physical custody. On appeal, mother does not challenge the district court's analysis of son's best interests or its conclusion that modification of custody is in son's best interests. Thus, any error in the district court's use of exhibit 58 was harmless.

II. The district court did not abuse its discretion by modifying physical custody based on son's endangerment while in mother's care.

Mother challenges the district court's determination of endangerment by arguing that the record does establishes neither "a significant degree of danger" nor that mother was responsible for son's "concerning behaviors."[5] In modifying custody based on endangerment, the district court must find "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)(iv) (2020). A party "must demonstrate a significant degree of danger to satisfy the endangerment element." *Goldman*, 748 N.W.2d at 285 (quotation omitted).

"District courts have broad discretion in determining custody matters." *Id.* at 282 (quotation omitted). "Appellate review of custody determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Id.* at 281-82 (quotation omitted). An appellate court will "set aside a district court's findings of fact only if clearly erroneous, giving deference to the district court's opportunity to evaluate witness credibility." *Id.* at 284; *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (discussing clear-error standard of review).

[5] We note that mother's brief to this court does not challenge the district court's determinations regarding a change in circumstances and son's best interests.

In her brief to this court, mother acknowledges "allowing [son] to watch one R-rated movie and utilizing the bathroom as a timeout location." Mother denies locking son in an unattended car but argues that even if she did, these incidents do not establish a significant degree of danger. Mother claims that "there is nothing inherently dangerous" about placing son in the bathroom for a timeout or locking son in the car. Mother asserts that, at most, these are "single incident[s] of borderline abuse or neglect" that do not prove endangerment.

Mother's brief also concedes son's "behavioral issues," including son "stating he would bring a knife to his childcare center and would poison his teachers." But mother claims that son's "concerning behaviors" are not attributable to her conduct. Instead, she argues that son's behaviors "stem from the deep-rooted parental conflict for which both parties bear significant responsibility."

For two reasons, we reject mother's arguments about the significance of the degree of danger and about mother's role. First, the district court made detailed findings of endangerment that go well beyond "single incident[s]" of abuse or neglect. The district court also made specific findings about mother's role, determining that mother "deliberate[ly]" exposed son to "highly inappropriate movies," which son "repeatedly imitated with alarming results," and that mother locked son "in rooms or a car for purposes of punishment," which "likely exacerbated [son's] behavioral issues." The district court determined that son's behavioral issues "originat[e] from time[s] when he is in [mother's] care" and that mother "deflected her own role and responsibility for [son]'s disturbing behavior." The district court also found that mother engaged in a "significant amount of

deflection and minimization . . . to keep others from knowing about [son]'s expulsion" from daycare. The district court found "a significant contrast" in son's time with father, during which son "behaves age-appropriately," "[gets] along with other kids," and "is enjoyed by his childcare providers."

Second, mother's argument essentially asks us to second-guess the district court's determinations, which we will not do. "It is not [the appellate] court's duty to weigh all of the evidence and come to an independent conclusion . . . ." *Gustafson v. Gustafson*, 376 N.W.2d 290, 293 (Minn. App. 1985); *see Kenney*, 963 N.W.2d at 221-22 (discussing this point in detail). Nor will an appellate court reevaluate the district court's credibility determinations. *Goldman*, 748 N.W.2d at 284; *Kenney*, 963 N.W.2d at 222. The district court stated that its finding of endangerment resulted from "weighing the credibility of each party's position and testimony." For example, the district court found that mother's credibility was "lacking" because her testimony was "wandering, evasive, and prone to vast over-explanation" and contradicted by other evidence.

Because the district court's determinations are supported by record evidence, we conclude that the district court did not abuse its discretion in modifying physical custody based on endangerment.

Affirmed.