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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-119**

Robert John Murphy, f/k/a Robert John Murphy Feder, petitioner,
Respondent,

vs.

Danica Susan Carlson,
Appellant.

**Filed November 28, 2011
Affirmed
Stauber, Judge**

Washington County District Court
File No. 82F604051057

Elizabeth B. Bowling, Elizabeth B. Bowling, P.L.L.C., Minneapolis, Minnesota (for respondent)

Glenn P. Bruder, Mitchell, Bruder & Johnson, Bloomington, Minnesota (for appellant)

Jill A. Idrizow, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Wright, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this custody-modification dispute, appellant-mother argues that (1) the record does not support the district court's finding that she coached the parties' child to make allegations of abuse against respondent-father which resulted in interference with

respondent-father's parenting time and (2) the district court erred in modifying custody where there was no evidence of endangerment of the child and where the district court failed to show that the modification served the child's best interests. We affirm.

FACTS

Danica Susan Carlson (appellant) and Robert John Murphy (respondent) began a relationship in 2002 but were never married. The parties have one child together, CCMC, who is the subject of this child-custody matter. CCMC was born in March 2004. In the years that followed, the parties engaged in a contentious custody battle. It was not until June 2007 that the parties entered into a final parenting plan which gave appellant primary physical custody of CCMC. Respondent was given visiting rights, with exchanges taking place at visitation centers. At that time, the district court also appointed a parenting-time expeditor.

On November 21, 2008, the parenting-time expeditor filed findings with the district court that appellant was willfully interfering with respondent's parenting time. As a result, in March 2009, respondent moved the district court to grant him sole physical custody of CCMC, and in May 2009, respondent renewed his motion for a change of custody, seeking immediate change of physical custody. Appellant filed a motion to dismiss respondent's custody-change motion. The district court appointed a guardian ad litem (GAL), and ordered an evidentiary hearing, which took place September 27–29, 2010. On January 11, 2011, the district court issued its findings of fact and order, which granted respondent sole legal and physical custody of CCMC and supervised parenting time for appellant. Appellant now challenges the district court's January 11, 2011 order.

DECISION

In reviewing a district court's decision on a motion to modify custody, this court examines "whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotation omitted). This court defers to the district court's evaluation of witness credibility and will set aside findings of fact only if they are clearly erroneous. *Id.*; *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (emphasizing that appellate courts do not reassess credibility determinations). Findings of fact are clearly erroneous if this court "is left with the definite and firm conviction that a mistake has been made." *Goldman*, 748 N.W.2d at 284 (quotation omitted). The party seeking modification has the burden of proving circumstances that justify modification. *Id.*

I. Willful interference with parenting time—coaching

Appellant first argues that the record does not support the district court's conclusion that appellant and her family willfully interfered with respondent's joint legal custody and parenting time since the entry of the June 2007 parenting plan. "Proof of an unwarranted denial of or interference with duly established parenting time may constitute contempt of court and may be sufficient cause for reversal of custody." Minn. Stat. § 518.175, subd. 6(e) (2010). The parties' June 2007 parenting plan included a notification to the parties that unwarranted denial or interference with parenting time or legal custody may constitute prima facie evidence of endangerment under Minn. Stat.

§ 518.18(d)(iv) (2010). The parenting plan specifically stated that this notification would apply whether appellant directly interferes or allows others to interfere.

As the district court aptly characterized it, the evidence presented at trial provided “direct proof . . . of a kind not often available in custody disputes, of an intent by [appellant] to persistently and willfully deny or interfere with [respondent’s] parenting time since entry of the parenting plan.” This direct proof came from a number of sources, which the district court highlighted in its thorough and complete findings supporting a custody change: the findings and order of the court-appointed parenting-time expeditor, the testimony of the Ramsey County lead child-abuse investigator, the testimony and written reports of the staff at the visitation center used by the parties for custody exchanges, video recordings of the custody exchanges, and the testimony of the GAL.

Central to appellant’s argument is her contention that there was no evidence to support the district court’s finding that respondent and her family “coached” or manipulated CCMC to make abuse allegations against respondent. Appellant argues that the conclusions of the lead investigator in particular were “based on untrustworthy information.” But contrary to appellant’s argument, the conclusions of the lead investigator were supported by information she gathered from her interview with CCMC, and discussions with the staff at the visitation center and other law enforcement officials who had worked on various aspects of the case. And the district court specifically found the testimony of the lead investigator to be credible. Further, the lead investigator was not the only one to express that CCMC was being coached by appellant and her family.

The Ramsey County Child Investigative Team, which consists of law-enforcement investigators, doctors, psychologists, county attorneys, child protection workers, and employees of the Midwest Children's Resource Center (MCRC), reviewed the various reports of the investigations of the child abuse allegations. Because the team felt that CCMC was being mentally and emotionally abused by appellant, the team made the following recommendations: (1) that the lead investigator conduct an interview of CCMC; (2) that CCMC be placed in emergency foster care; and (3) that respondent seek a restraining order against appellant and sole custody of CCMC. The lead investigator testified that neither appellant nor her parents would discuss the allegations with her, which raised "a red flag."

The executive director of the visitation center testified at trial in support of a written statement she submitted to the lead investigator, in which she noted that at one of the custody exchanges she overheard appellant tell CCMC to "remember to tell them that daddy touches you, . . . and daddy's going to do bad things to you. Daddy smokes in front of you, that he hits you and touches your pee-pee." Log notes from the staff at the visitation center contained statements that were made by CCMC on several different occasions: that appellant told him he had to "come to the lady's house and say, no, he didn't want to go see daddy ever again"; that "Mommy said if I say no to daddy that I will get new animals" and that "if [he didn't] say no then [he wouldn't] get the animals"; and that "mommy said last time I went with daddy she cried the whole time." The district court found that the testimony and observations of the staff at the visitation center were credible.

The GAL testified that in her investigation, she reviewed a police report from November 2008 that alleged abuse of CCMC. The report stated that CCMC told the police reporter that “he had a bad dad.” CCMC told the reporter that father “squishes [his] butt like this, as [CCMC] grabbed his butt cheeks and squeezed them together.” CCMC also stated that his dad touches his “ding-dong” and spansks him. But later in the interview CCMC stated to the reporter, “You know why I told you about my bad dad? Because my mom told me if I told someone, I would get a reward.”

Appellant also contends that the willful interference conclusion is unwarranted because there was no expert support for the conclusion that CCMC was coached and appellant “unequivocally denied coaching” CCMC. But appellant cites to no authority that “expert support” or direct admissions are required to evidence coaching. And as previously discussed, many credible and well-qualified witnesses either testified or submitted documentation indicating their belief that CCMC was coached, manipulated, or encouraged by appellant or her parents to make up stories of abuse by respondent. Appellant’s denial that she coached CCMC runs contrary to the evidence presented by respondent at trial and constitutes a credibility issue. Appellate courts do not reassess credibility determinations. *Sefkow*, 427 N.W.2d at 210.

Appellant further argues that the fact that respondent “missed” eight weeks of visitation did not amount to willful interference with father’s parenting time. But this argument runs contrary to the evidence presented at the hearing. In 2008, the parenting-time expeditor investigated respondent’s complaints that appellant was interfering with his parenting time, and the expeditor’s findings from his investigation were filed with the

district court as an order. The expeditor found that appellant had willfully interfered with respondent's parenting time, and awarded respondent eight weekends of compensatory parenting time. Appellant did not move for amended findings or appeal the expeditor's order. The expeditor found that the eight weeks of missed parenting time experienced by respondent were the "direct result of allegations made against [respondent], and a member of his family, of sexual abuse of [CCMC]." According to the expeditor's findings, following an investigation of the sexual abuse allegations, the MCRC, the Ramsey County Sheriff's Office, and Ramsey County Child Protection all concluded that there was no evidence to corroborate the allegations of abuse. The compensatory visitation never occurred and respondent testified that continued interference by appellant and her family made the exercise of the compensatory visitation impossible.

II. Endangerment and harm caused by change of environment

Appellant next argues that the district court abused its discretion by modifying custody based on endangerment. Under Minnesota law, in order to modify custody, the district court must find, on the basis of facts that have arisen since the prior order or were unknown at the time of the prior order, that a change in circumstances of the child or the parties has occurred and modification is necessary to serve the child's best interests.

Minn. Stat. § 518.18(d) (2010). One ground for modifying a custody order is that "the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely caused by the change of environment is outweighed by the advantage of a change to the child." Minn. Stat. § 518.18(d)(iv). "The concept of endangerment is unusually imprecise." *Ross v. Ross*,

477 N.W.2d 753, 756 (Minn. App. 1991) (quotation omitted). “Endangerment requires a showing of a significant degree of danger, but the danger may be purely to emotional development.” *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997) (citation and quotation omitted); *see also Eckman v. Eckman*, 410 N.W.2d 385, 389 (Minn. App. 1987) (upholding modification based on child’s isolation in father’s home and preference for mother).

Appellant contends that there was “little, if any, testimony concerning [CCMC]’s emotional health and wellbeing,” and that there was a “fundamental inadequacy in the evidence furnished to the [district] court” regarding endangerment of CCMC. But this claim is contrary to the evidence presented at the hearing. Both the lead investigator and the executive director of the visitation center testified that CCMC was being emotionally harmed by appellant and her family. As the district court noted, because of the allegations of abuse, CCMC has been exposed to repeated intrusive interviews and physical examinations. He has undergone many potentially unnecessary medical procedures. And he has been taught to worry about appellant’s feelings while he is with respondent. Appellant has made it clear to CCMC that she thinks respondent’s family is not CCMC’s real family.

Appellant argues further that the court failed to balance the harm to CCMC from a custody change with the potential benefits to him. She points to the fact that respondent disagreed with her regarding the length of CCMC’s hair. Appellant evidently prefers CCMC to have longer hair, but respondent “repeatedly cut it” while CCMC visited him. Appellant argues that this shows that respondent is “uninterested” in mother’s concerns.

Appellant notes that awarding physical custody to respondent will not likely ease custody exchange difficulties. But aside from the hair issue, respondent testified at trial that he is willing to continue be flexible regarding communication with and parenting time for appellant.

In its order, the district court made detailed findings weighing the harm to CCMC that would result from a custody change along with the potential benefits. The district court specifically stated that it “does not take lightly the removal of [CCMC] from his mother, home and school,” but found that such removal is necessary in order for CCMC to have a close and healthy relationship with both of his parents. This finding is supported by the record. And the GAL, in her thorough report, concluded that it would be in CCMC’s best interests to transfer custody to respondent because CCMC is emotionally endangered in his current residence with appellant. The GAL also testified that she believes that respondent will encourage CCMC’s relationship with appellant, but that appellant has not and will not encourage CCMC’s relationship with respondent. The district court concluded that respondent’s “opportunities to have [a close] relationship [with CCMC] have been severely limited as a result of denial of parenting time and the constant stream of unsubstantiated accusations of abuse made against” respondent. The evidence at trial indicated this has been an ongoing problem since appellant obtained physical custody of CCMC. The district court did not abuse its discretion in concluding that such a pattern would not change while CCMC remained in appellant’s custody.

Affirmed.