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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1937**

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

vs.

Ross Harrison Navratil,
Appellant.

**Filed July 22, 2013
Affirmed
Ross, Judge**

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

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

Ross Harrison Navratil, Rochester, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Kirk,
Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

A father appeals after remand challenging the district court's refusal to modify a child-custody order. Ross Navratil argues that the district court erred by failing to accept his allegations as true, by finding that he failed to make a prima facie case for custody

modification, and by refusing to conduct an evidentiary hearing. Because Navratil failed to make a prima facie case to warrant a custody modification, we affirm.

FACTS

Ross Navratil and Crystal Riess were in a romantic relationship from September 2003 until early 2009. They had three children together. Riess moved the district court to appoint her as sole legal and physical custodian of their children. The district court granted Riess temporary sole custody, subject to Navratil's parenting time. The custody issues went to trial and the district court ordered Navratil's parenting time to include every other weekend with additional time during summer and winter school break.

One of the parties' children, C.N., was soon allegedly sexually assaulted by Riess's neighbor. Riess claimed that C.N. reported being inappropriately touched after she returned from visiting a park with a neighbor boy and his father. Riess immediately contacted both the police and Navratil. The neighbor was not criminally charged, but Riess did obtain an order for protection against him and moved to a new home.

The district court entered a supplemental custody order granting the parties joint legal custody and establishing a parenting-time schedule for holidays. The record does not indicate whether the district court knew of or considered the alleged assault when it made this ruling.

After ten months, Navratil moved to modify the custody order, alleging child endangerment. He asserted by affidavit that Riess inadequately supervises and cares for the children, entrusts the children to unsuitable caregivers, and maintains an unhealthy

home environment. The district court tersely denied Navratil's motion "in all respects," and he appealed to this court.

We reversed and remanded the case to the district court to provide findings and an analysis. *Riess v. Navratil*, No. A11-1940, 2012 WL 2505844, at *1 (Minn. App. July 2, 2012). The district court followed the remand instructions and issued an order denying Navratil's motion to modify custody without an evidentiary hearing. This order included eleven points that addressed Navratil's primary allegations. This appeal follows.

DECISION

Navratil challenges the custody decision. Our review of custody-modification orders is limited to considering 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). We set aside the district court's findings of fact only if they are clearly erroneous. *Id.* Findings of fact are clearly erroneous when we are "left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted).

Navratil contends that the district court erred by failing to accept his allegations as true, by finding that he failed to make a prima facie case for custody modification, and by refusing to conduct an evidentiary hearing. We examine three "discrete determinations" when reviewing an order denying a motion to modify custody without an evidentiary hearing. *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 nonmoving party's contrary allegations, and considered

only the explanatory allegations in the nonmoving party's affidavits." *Id.* Second, we review for an abuse of discretion the district court's determination as to whether a prima facie case exists for the modification or restriction. *Id.* Third, "we review de novo whether the district court properly determined the need for an evidentiary hearing." *Id.*

The district court does not appear to have treated the moving party's allegations as true. Its memorandum tends to understate parts of Navratil's allegations. But we conclude that the district court's misconstructions are not dispositive because Navratil has not made a prima facie case for custody modification, even when we view his allegations in the light most favorable to him.

A prima facie case for endangerment includes four elements: (1) that a change in the circumstances of the child or custodian has occurred since the disposition of the court's last order; (2) that modification would serve the child's best interest; (3) that the child's present environment endangers her physical or emotional health or development; and (4) that the harm to the child caused by the change of environment is outweighed by the benefits of the change. Minn. Stat. § 518.18(d)(iv) (2010); *Goldman*, 748 N.W.2d at 284. Endangerment requires a showing of a "significant degree of danger." *Ross v. Ross*, 477 N.W.2d 753, 756 (Minn. App. 1991). We review the district court's determination of whether a prima facie case for the modification exists for an abuse of discretion. *Boland*, 800 N.W.2d at 186.

The district court was silent on whether the modification would serve the children's best interests and whether the harm of the modification would be outweighed by the benefit, but it did specifically find that Navratil's allegations do not indicate

endangerment or a change of circumstances. See Minn. Stat. § 518.18(d)(iv). Navratil broadly argues on appeal that he presented adequate facts proving endangerment. But he fails to explain how each element was met. A careful examination demonstrates that all the factors have not been met. Navratil's affidavits assert that the alleged sexual assault of C.N. constitutes a change in circumstances and that C.N. is still troubled from this event. "A change in circumstances must be significant and must have occurred since the original custody order." *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). The "significant change of circumstances" must endanger the child's physical or emotional health or development. *Nice-Peterson v. Nice-Peterson*, 310 N.W.2d 471, 472 (Minn. 1981). The district court found that Navratil's evidence does not establish that an assault actually occurred and, more importantly, it demonstrates that Riess responded appropriately. Riess contacted police and Navratil promptly, she obtained an order for protection, she arranged for C.N.'s therapy, and she moved away from the alleged offender's neighborhood. No evidence suggests that Riess was negligent, causing the alleged touching, and it shows instead that she responded appropriately to protect the parties' children.

Navratil also argues that a change of circumstances exists because Riess has moved four times in the past two years and the children have been to three different schools in that time. The district court found that this alone did not endanger the children or prove a change of circumstances, especially because "there is evidence . . . that the last move was to get away from the neighbor the mother thought might have abused her daughter." Although frequent changes of home and school may sometimes negatively

affect children, Navratil has not presented evidence or argument sufficient to call into question the district court's conclusion that Riess's moves have not endangered the children's physical or emotional health or development.

We hold that the district court did not abuse its discretion by finding that Navratil failed to present a prima facie case for endangerment. The district court therefore acted within its discretion when it did not conduct an evidentiary hearing.

Affirmed.