**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-4**

In re the Marriage of:

Annette Marie Kochevar
n/k/a Annette Marie Kochevar-White, petitioner,
Appellant,

vs.

Troy Anthony Kochevar,
Respondent.

**Filed September 14, 2010**
**Affirmed**
**Kalitowski, Judge**

Le Sueur County District Court
File No. 40-F2-01-000011

Mark E. Betters, Mankato, Minnesota (for appellant)

Marla M. Zack, Ryan Magnus, New Prague, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Collins, Judge.*

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

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

**KALITOWSKI**, Judge

Appellant Annette Marie Kochevar n/k/a Annette Marie Kochevar-White challenges the district court's order granting respondent Troy Anthony Kochevar's motion to modify a prior custody order. Appellant argues that the district court erred by modifying custody without finding that a significant change in circumstances had occurred. We affirm.

## D E C I S I O N

In May 2001, the parties entered into a marital-termination agreement providing that the parties were to share joint legal custody of their two-year-old daughter, A.K., and that appellant would have primary physical custody of A.K. In June 2001, the district court dissolved the parties' marriage and adopted the terms of the marital-termination agreement. In his August 2008 motion, respondent requested temporary sole legal and physical custody of A.K. pending final custody recommendations. Following an evidentiary hearing, the district court granted sole legal and physical custody of A.K. to respondent on the ground that "[A.K.]'s present environment impairs her emotional development and a modification or change is necessary" under Minn. Stat. § 518.18(d)(iv) (2008).

Appellant argues that the district court erred by modifying custody without finding that there was a significant change in circumstances. We disagree.

> Appellate review of custody modification . . . is limited to considering whether the [district] court abused its discretion by making findings unsupported by the evidence or

> by improperly applying the law. Appellate court[s] 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. Findings of fact are clearly erroneous where an appellate court is left with the definite and firm conviction that a mistake has been made.

*Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (quotations and citations omitted).

Respondent argues that the scope of review is limited because appellant failed to move for amended findings or a new trial following issuance of the judgment and decree. But because a custody-modification proceeding is a "special proceeding" under Minn. R. Civ. App. P. 103.03(g), a motion for a new trial is unnecessary to preserve issues for appeal and denial of such a motion is not appealable. *Huso v. Huso*, 465 N.W.2d 719, 720-21 (Minn. App. 1991). *Wenndt v. Wenndt*, cited by respondent, was decided before the *Huso* court's holding that a motion for a new trial is not authorized in a custody-modification proceeding. *See Wenndt*, 398 N.W.2d 7 (Minn. App. 1986). Furthermore, while motions for amended findings are not improper in modification proceedings, such a motion is not necessary to preserve issues for appeal. Minn. R. Civ. P. 52.01 (providing that requests for finding are not necessary for purposes of review); *Hughes v. Hughley*, 569 N.W.2d 534, 536 (Minn. App. 1997) ("[M]otions for amended findings . . . are not improper in post-decree modification proceedings."). Therefore, we review the district court's custody-modification order for an abuse of discretion.

Minn. Stat. § 518.18(d) (2008) provides, in pertinent part, that a district court may modify a prior custody order if it finds that: (1) a change has occurred in the

circumstances of the child or her custodian; (2) modification is necessary to serve the best interests of the child; (3) the child's present environment endangers her physical or emotional health or impairs her emotional development; and (4) the harm likely to be caused by a change in environment is outweighed by the advantage of a change in environment to the child. *See State ex rel. Gunderson v. Preuss*, 336 N.W.2d 546, 548 (Minn. 1983) (discussing custody-modification analysis set forth in section 518.18(d)). In granting a motion to modify a custody order, the district court must make specific findings of fact indicating that the court considered the statutory factors set forth in Minn. Stat. § 518.18 (2008). *Abbott v. Abbott*, 481 N.W.2d 864, 867 (Minn. App. 1992).

A district court determines what constitutes a change in circumstances "on a case-by-case basis." *Sharp v. Bilbro*, 614 N.W.2d 260, 263 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. Sept. 26, 2000). "A change in circumstances must be significant and must have occurred since the original custody order; it cannot be a continuation of conditions existing prior to the order." *Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997).

Appellant argues that the district court erred by failing to make a specific finding that a significant change in circumstances has occurred since the original custody order was issued. We disagree. The district court's finding that a significant change has occurred is implicit in its detailed findings on endangerment. *See Eckman v. Eckman*, 410 N.W.2d 385, 389 (Minn. App. 1987) (providing that the district court's failure to make a specific finding regarding the balancing of harms was not reversible error when the balancing test was implicit in the district court's findings on the child's best interests

and endangerment); *see also Prahl v. Prahl*, 627 N.W.2d 698, 703 (Minn. App. 2001) ("We may treat statutory factors as addressed when they are implicit in the findings . . . .").

Here, the district court made a number of findings regarding events that have occurred since the parties' original June 2001 custody order. The district court found that appellant failed to encourage a strong relationship between respondent and A.K. Specifically, the district court found that appellant consistently denied respondent's requests for additional parenting time and violated a court order providing respondent with the right of first refusal to care for A.K. *See Myhervold v. Myhervold*, 271 N.W.2d 837, 838 (Minn. 1978) (providing that there was a significant change in circumstances where the parties experienced numerous visitation problems since the dissolution). The district court also found that appellant decided to enroll A.K. in a different school without consulting respondent and that appellant involved A.K. in keeping this information from respondent. Additionally, the district court found credible expert testimony by A.K.'s therapist that appellant lacked appropriate generational boundaries, and, as a result, A.K. had delayed social skills, lacked the ability to regulate strong emotions, and had begun to assume hopelessness in certain situations. Lastly, the district court found that "the parents are no longer able to communicate" regarding A.K.'s care.

Because it is implicit in the district court's findings and conclusions that these factors were not present or apparent when the parties stipulated to the original custody arrangement in June 2001, they constitute a change in circumstances under section 518.18(d). *See Geibe*, 571 N.W.2d at 779 (providing that a party's keeping the children

from the in-laws constituted a change in circumstances when there was no claim that the party did so before the original custody order).

In sum, the district court's finding of a significant change in circumstances is implicit in its findings regarding endangerment. And because the finding of changed circumstances is supported by evidence in the record and is not clearly erroneous, we conclude that the district court did not abuse its discretion by modifying the June 2001 custody order to award respondent full legal and physical custody of A.K.

**Affirmed.**