STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1653

In the Marriage of:

Katherine Ann Reichert, f/k/a Katherine Ann Born, petitioner,
Appellant,

vs.

Matthew Alan Born,
Respondent,

County of Carver,
Intervenor.

Filed May 19, 2025
Affirmed
Schmidt, Judge

Carver County District Court
File No. 10-FA-22-193

Shirlene Perrin, Perrin Law Office, St. Paul, Minnesota (for appellant)

Matthew A. Born, Elko New Market, Minnesota (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant-mother Katherine Ann Reichert argues the district court abused its discretion when it denied her motion to modify custody without an evidentiary hearing.

Because the district court did not abuse its discretion in ruling that mother failed to allege a prima facie case to modify custody, we affirm.

FACTS

Reichert and respondent-father Matthew Alan Born were married in 2003. They have three children together. Reichert and Born filed their stipulated dissolution agreement in 2015, in which they agreed to joint legal and joint physical custody of their children. About four months later, the first motion to modify the agreement was filed, which led to years of litigation.[1] The last custody dispute ended with the district court denying both parties' motions for temporary sole legal and temporary sole physical custody.

In January 2024, their youngest child handed a teacher a concerning note related to the child's mental health. After this incident, Reichert and Born disagreed about the child's care. Reichert filed a motion to: modify custody by awarding her sole physical and legal custody, order Born to stop using child protection services as a tool for harassment, and modify child support. Alternatively, Reichert sought to change the parenting schedule. Reichert filed an affidavit in support of her motion. Reichert also filed a motion asking that Born be found in contempt for failing to obey a prior judgment.

Born opposed Reichert's motions. He also cross-motioned to request modification of the parenting schedule and a judgment to enforce payment from an earlier order.

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[1] As this court noted in a prior appeal involving these parties: "Since the issuance of the dissolution judgment, mother and father have had a highly contentious relationship and have struggled with cooperative co-parenting. They have appeared before the district court on numerous occasions and filed voluminous motions, affidavits, and other documents." *Reichert v. Born*, No. A21-0069, 2021 WL 3478425, at *1 (Minn. App. Aug. 9, 2021).

The district court held a non-evidentiary hearing on the motions. The court denied Reichert's custody and parenting time modification and contempt motions but granted Reichert's motion for an order requiring that neither party shall use Child Protection Services to harass each other. The district court denied Born's motion. Reichert appeals.[2]

DECISION

A district court must hold an evidentiary hearing on a motion to modify custody if the movant "makes a prima facie case for modification." *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). The district court ruled that Reichert's allegations supporting her motion to modify custody repeated her prior allegations or were too general to allow the court to modify custody. Accordingly, the court ruled Reichert failed to allege a prima facie case to modify custody and denied her motion without an evidentiary hearing.

We use a three-part process to review a district court's decision to deny, without an evidentiary hearing, a motion to modify custody:

> First, we 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. Second, we review for an abuse of discretion the district court's determination as to the existence of a prima facie case for the modification or restriction. Finally, we review de novo whether the district court properly determined the need for an evidentiary hearing.

[2] Born did not appeal the denial of his motion.

Boland v. Murtha, 800 N.W.2d 179, 185 (Minn. App. 2011).[3] Reichert challenges the district court's ruling that she failed to allege a prima facie case to modify custody.

A movant makes a prima facie case for relief "by alleging facts that, if true, would provide sufficient grounds for modification." *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022); *see also Tousignant v. St. Louis County*, 615 N.W.2d 53, 59 (Minn. 2000) (noting a prima facie case is "one that prevails in the absence of evidence invalidating it") (quotation omitted)). The allegations necessary to allege a prima facie case for relief depends on the relief the movant seeks. *See Braylock v. Jesson*, 819 N.W.2d 585, 590 n.2 (Minn. 2012) (noting that "prima facie case" is a term of art that "does not always carry the same meaning in every context[,]" but "may vary depending on the nature of the proceedings, the type of action involved, and the stage of the litigation"). But whatever relief is sought, a prima facie case is not alleged if the allegations are merely conclusory, "too vague to support a finding," or not "supported by any specific, credible evidence." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (quotations omitted).

Reichert based her motion to modify custody on allegations that the child was endangered because Born engaged in parental alienation. A prima facie case for an endangerment-based modification of custody requires the movant to allege:

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[3] Citing *Griese v. Kamp*, Reichert argues the standard of review for the prima facie showing is de novo. 666 N.W.2d 404 (Minn. App. 2003), *rev. denied* (Minn. Sept. 24, 2003). Reichert is incorrect. In *Griese*, we applied a de novo standard because the district court did not treat the allegations in the moving party's affidavit as true—i.e., *Griese* addressed the first step in the review process recited in *Boland*. *Id.* at 407. Our review of a district court's determination as to whether the moving party alleged a prima facie case to modify custody—i.e., the second step in the process recited in *Boland*—remains whether the court abused its discretion. *Boland*, 800 N.W.2d at 185.

> (1) circumstances have changed involving the child or custodial parent; (2) the modification would be in the best interests of the child; (3) the child's physical or emotional health or emotional development is endangered by his or her present environment; and (4) that harm associated with the proposed change in custody would be outweighed by the benefits of the change.

Id. at 291-92 (quotation omitted); *see* Minn. Stat. § 518.18(d)(iv) (2024) (allowing the third element of this test to be satisfied if "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"). Further, the movant must allege a "significant" change in circumstances that has occurred since custody was awarded or last modified. *See Geibe v. Geibe*, 571 N.W.2d 774, 778 (Minn. App. 1997). Appellate courts review a district court's ruling regarding whether a movant alleges a prima facie case to modify custody for an abuse of discretion. *Boland*, 800 N.W.2d at 185.

Reichert has not demonstrated that the district court abused its discretion in ruling that the allegations supporting her current motion had been previously raised or were too general to require an evidentiary hearing. Reichert contends that her allegations of false child protection reports, the youngest child's mental health events, and Born's refusal to follow medical advice for that child had not been previously raised to the district court. The record, however, shows that these issues had been previously raised to the district court. Reichert also has not shown how her current allegations constitute "significant[ly]" changed circumstances, as required by *Geibe*, rather than an allegation of the continuation of preexisting circumstances. 571 N.W.2d at 778.

Reichert also argues that the district court abused its discretion in ruling that her allegations were too general or conclusory. But Reichert's current allegations did not present specific facts to establish a significant degree of danger. Instead, the allegations of a lack of communication or calling Reichert by her first name (instead of a maternal title) amount to general co-parenting disagreements. Absent more, Reichert has not shown that the district court abused its discretion by ruling Reichert's allegations were too general.

Finally, Reichert contends that the district court improperly relied on *Geibe* as requiring a significant degree of danger. In *Geibe*, a stepmother[4] sought custody of the child of her deceased husband's former marriage, alleging the child's birth mother kept the child from her paternal relatives, verbally berated the child with insults, and physically assaulted the child. *Id.* at 776. The district court dismissed the petition without an evidentiary hearing because it determined the stepmother failed to state a prima facie case of endangerment. *Id.* at 777. In affirming the district court's dismissal, this court noted the general standard that: "Endangerment requires a showing of a significant degree of danger, but the danger may be purely to emotional development." *Id.* at 778 (quotation and citation omitted). Thus, the district court, here, appropriately relied upon *Geibe* in articulating the standard for endangerment.

Reichert attempts to distinguish *Geibe*, arguing that the emotional harm she alleged is different from the one incident of alleged abuse in *Geibe*. But *Geibe* involved more than

[4] Reichert asserts that *Geibe* is distinguishable because that case involved a stepparent, not a biological parent. *See* 571 N.W.2d at 778. But the standard for a prima facie case "is the same whether the moving party is a parent or non-parent." *Id.*

one incident and the allegations in *Geibe* of emotional harm and isolation from relatives, *id.* at 176, are comparable to Reichert's accusations of emotional harm and isolation.

Reichert also cites two cases for the proposition that contradictory, mitigating affidavits justify an evidentiary hearing. But when reviewing a district court's determination that a movant did not make a prima facie case to modify custody, this court reviews whether the district court "disregarded the contrary allegations in the nonmoving party's affidavits, and considered only the explanatory allegations in the nonmoving party's affidavits." *Boland*, 800 N.W.2d at 185. Thus, to the extent Reichert's argument is based on contrary allegations of the nonmoving party, we reject the argument. Moreover, the two cases that Reichert cites are distinguishable. In one case, this court reversed for an evidentiary hearing because the district court "already found a change in circumstances and modification is in the [children's] best interest." *Harkema v. Harkema*, 474 N.W.2d 10, 14 (Minn. App. 1991). In the other case, we reversed for an evidentiary hearing because the moving parties' affidavit had allegations that, if true, "establish[ed] a change of circumstances justifying an evidentiary hearing." *Larson v. Larson*, 400 N.W.2d 379, 381-82 (Minn. App. 1987). That there were conflicting affidavits in each case was not the reason we reversed and remanded for the district court to hold an evidentiary hearing. *See id.*; *Harkema*, 474 N.W.2d at 14.

Based on the parties' history of litigation and the district court's determination that Reichert's affidavit did not establish a change of circumstances, the court did not abuse its discretion by dismissing Reichert's motion without an evidentiary hearing.

Affirmed.