

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0853**

In re the Matter of:
Brooks J. Waldron, petitioner,
Respondent,

vs.

Uneica Nicole Garrett,
Appellant.

**Filed January 9, 2023
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-FA-16-1681

Brooks J. Waldron, Minnetonka, Minnesota (pro se respondent)

Brian K. Lewis, Francis White Law, PLLC, Woodbury, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this custody-modification dispute, appellant-mother argues that the district court erred by denying her requested relief without holding an evidentiary hearing under an endangerment-based modification standard pursuant to Minn. Stat. § 518.18(d)(iv) (2022).

We affirm.

FACTS

Appellant-mother Uneica Nicole Garrett and respondent-father Brooks J. Waldron were never married and have one child together, born in August 2015. Beginning in 2015, the parties had a series of escalating arguments, and mother made statements that she was intending to harm herself and the child. In January 2017, an initial custody and parenting-time order established joint legal and joint physical custody of the child with an equal parenting-time schedule. In September 2018, an order for protection was issued against mother for threats she made against her own life and the life of the child. In February 2019, the district court awarded father sole legal and sole physical custody.

In January 2022, mother moved the district court for, among other things, sole legal and sole physical custody, an order for father to immunize the child against COVID-19, and an evidentiary hearing as to whether father endangered the child by failing to immunize against COVID-19. In support of her motion, mother submitted an affidavit, 46 pages of exhibits, and a memorandum.

On March 8, 2022, the parties made arguments and submitted documentary evidence.¹ The district court addressed the child's vaccination status directly with father by asking two questions:

Q: Well, let's just cut to the chase . . . Is [the child] vaccinated now?

A: He's not vaccinated, no.

Q: And what is your intent regarding the vaccination?

¹ We note that at the March 2022 hearing, no witness testimony was taken and the documentary evidence submitted by the parties consisted of affidavits and memorandums.

A: If I find that [the child] is in danger or I find some reason that he needs to be vaccinated, I will vaccinate him.

In April 2022, the district court denied mother's motions without an evidentiary hearing. This appeal followed.

DECISION

Mother argues that father's decision not to immunize the child from COVID-19 constitutes a "significant danger to the child and others," and the district court erred by denying her motion to modify custody for endangering the child. The district court noted that father, as the child's sole legal custodian, "has the ability to make these unilateral decisions." The district court determined that father was "within his authority to make that medical decision for the child as the sole legal custodian."

When considering a motion to modify custody based on child endangerment, the district court is required to make multiple determinations, each of which requires the application of a different standard of review. *Amarreh v. Amarreh*, 918 N.W.2d 228, 230 (Minn. App. 2018), *rev. denied* (Minn. Oct. 24, 2018). "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." *Id.* at 230-31 (quotation omitted). Second, we determine whether the district court abused its discretion when determining whether the moving party made a prima facie case for modification. *Id.* at 231. A movant "ma[kes] a prima facie case by alleging facts that, if true, would provide sufficient grounds for modification." *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn.

2022); *see Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (noting, in the context of addressing whether a party moving to modify custody made a prima facie case that would entitle the movant to an evidentiary hearing, that allegation that are conclusory, vague, or unsupported by specific evidence are insufficient to make a prima facie case). Third, “we review de novo whether the district court properly determined the need for an evidentiary hearing.” *Amarreh*, 918 N.W.2d at 231 (quotation omitted).

In her affidavit, mother alleged that father’s “refusal to vaccinate [the] child, particularly as an African-American, endangers [the] child by leaving him defenseless against [COVID-19].” Here, the district court properly treated mother’s affidavits as true while disregarding any contrary allegations from father’s affidavits. The district court noted that there is no dispute that the child is not vaccinated against COVID-19. The district court even stated that it agreed with mother “that it is best practice to ensure that a child is up-to-date with all vaccinations.”

We consider next whether mother made a prima facie showing that father’s vaccination decision constitutes child endangerment. To make an initial showing of child endangerment, mother, as the moving party, must allege a prima facie case to obtain an evidentiary hearing. *See Christensen v. Healey*, 913 N.W.2d 437, 440 (Minn. 2018). Generally, a prima facie case consists of allegations which, if true, would allow the district court to grant the movant the relief sought. *Amarreh*, 918 N.W.2d at 231. To make a prima facie showing, mother must allege that: (1) the circumstances of the child or father have changed; (2) modification is in the child’s best interests; (3) the present environment

endangers the child's physical or emotional health; and (4) the benefits the child receives because of the change outweigh any potential detriments. *Christensen*, 913 N.W.2d at 440.

The district court determined that mother had “not provided a factual basis to show that the present environment in the care and custody of [father] endangers the child.” The record shows that mother's child-endangerment claim is centered entirely on father's medical decision not to vaccinate the child.

Here, father has sole legal and sole physical custody of the child. As the child's legal custodian, father has the sole “right to determine the child's upbringing, including education, health care, and religious training.” *See* Minn. Stat. § 518.003, subd. 3(a) (2022). Father's decision not to vaccinate the child against COVID-19 is a health-care determination. *See id.* The district court noted that father, as the child's legal custodian, “has the authority to make unilateral medical, religious and educational decisions for the benefit of the child.”

For these reasons, mother failed to make a prima facie showing that father's medical decision endangered the child; therefore, mother was not entitled to an evidentiary hearing. Thus, the district court did not abuse its discretion by denying mother's custody-modification motion without holding an evidentiary hearing.

Affirmed.