

*This opinion is nonprecedential except as provided by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
A25-0540**

In Re the Custody of NDF,

Bradley David Leonhart, petitioner,
Appellant,

vs.

Brittany Jean Flom,
Respondent.

**Filed January 26, 2026
Affirmed
Larson, Judge**

Wright County District Court
File No. 86-FA-24-3338

Kristen C. Bullock, Bullock Law, PLLC, St. Paul, Minnesota (for appellant)

Dawn M. Mondus, Law Office of Dawn Marie Mondus, Andover, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Bradley David Leonhart challenges a district-court decision to dismiss, without an evidentiary hearing, his petition for third-party visitation under Minn. Stat. § 257C.08, subd. 4 (2024). Specifically, Leonhart contends the district court improperly

dismissed his petition at the prima facie stage and impermissibly permitted respondent Brittany Jean Flom to file an untimely motion to dismiss. We affirm.

FACTS

Leonhart and Flom started their romantic relationship when Flom was pregnant with N.D.F. (the child).¹ Flom moved in with Leonhart two months after the child's birth, and the child resided with Leonhart until he was six years old. During that time, Flom admits Leonhart acted as a father figure toward the child.

In August 2023, the parties' relationship ended, and Flom and the child left the shared home. Since that time, Flom has not permitted Leonhart to have any contact with the child. At one point, Flom told Leonhart that he could have contact with the child if he participated in counseling. But after Leonhart participated in the requested counseling, Flom continued to disallow contact with the child.

In September 2024, Leonhart filed an amended petition for third-party visitation under Minn. Stat. § 257C.08, subd. 4.² Leonhart submitted two affidavits to support his petition. There, Leonhart described the "father-parent relationship" he had with the child, the "strong emotional ties" between the two, and stated that it was "in [the child's] best interest" to have visitation with Leonhart. But Leonhart admitted he had not had any contact with the child since August 2023.

¹ Leonhart is not the child's biological father, and the child's biological father is unknown.

² In June 2024, Leonhart filed a self-represented petition to establish third-party *custody*. Minn. Stat. §§ 257C.01-.08 (2022). After obtaining legal counsel, Leonhart requested permission to amend the petition to request third-party *visitation*, which the district court granted.

Seven days before a scheduled hearing, Flom filed a motion to dismiss. To support the motion, Flom submitted affidavits asserting that Leonhart having visitation rights would not be in the child’s best interests. Flom described a very different relationship between Leonhart and the child, indicating the two did not have an independent relationship. Flom also alleged safety concerns based on Leonhart’s “erratic behavior and unstable mental health.”

Despite Leonhart raising a timeliness challenge, the district court addressed Flom’s motion to dismiss. The district court determined Leonhart failed to allege a prima facie case for third-party visitation and granted Flom’s motion to dismiss.

Leonhart appeals.

DECISION

Broadly, Leonhart challenges two district court decisions. First, Leonhart argues the district court impermissibly decided Flom’s motion because it was untimely filed. Second, Leonhart asserts that—if the district court did appropriately decide the motion to dismiss—it made legal errors or otherwise abused its discretion when it granted said motion at the prima facie stage. We address each decision in turn.

I.

Leonhart first contends that Flom filed an untimely motion to dismiss, and, accordingly, the district court abused its discretion when it considered the motion. Specifically, Leonhart argues that, because Flom filed her motion to dismiss seven days

before the scheduled hearing, the district court violated Minn. Gen. R. Prac. 303.03(a).³ We assume without deciding that Flom’s motion was untimely and review the district court’s decision to relax the procedural rule for an abuse of discretion. *Lee v. Lee*, 749 N.W.2d 51, 62 (Minn. App. 2008) (stating “[i]t is within the district court’s discretion to rule on a motion despite respondent’s late filings”), *aff’d in part and rev’d in part on other grounds*, 775 N.W.2d 631 (Minn. 2009).

Here, we conclude the district court acted within its discretion when it considered Flom’s motion on the merits. The record shows that, despite the short timeline, the district court offered Leonhart the opportunity to respond to the motion. And while Leonhart argues he should have been allowed to conduct discovery before the district court decided the motion, he cites no authority to support that assertion. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”); *see also Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family law appeal), *rev. denied* (Minn. Oct. 24, 2001). Therefore, we fail to discern how additional time would have resulted in a different outcome in this case. *See Minn. R. Civ. P. 61* (stating we “must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties”).

³ Rule 303.03(a) requires a party to file an initial motion “at least 21 days before the hearing” and any motion raising new issues “at least 14 days before the hearing.”

Accordingly, we conclude the district court acted within its discretion when it considered Flom's motion to dismiss.

II.

Next, Leonhart challenges the district court's decision to dismiss his petition for third-party visitation at the prima facie stage. The third-party visitation statute provides:

If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child's minority. The court shall grant the petition if it finds that:

- (1) visitation rights would be in the best interests of the child;
- (2) the petitioner and child had established emotional ties creating a parent and child relationship; and
- (3) visitation rights would not interfere with the relationship between the custodial parent and the child.

Minn. Stat. § 257C.08, subd. 4. We apply a three-step framework to decide whether a district court appropriately dismissed a petition for third-party visitation at the prima facie stage. *Boland v. Murtha*, 800 N.W.2d 179, 182-85 (Minn. App. 2011).

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.

Id. at 185. Leonhart raises four arguments on appeal. We address each argument in turn.

Leonhart first argues the district court failed to treat the allegations in his affidavits as true and disregard contrary allegations in Flom's affidavits. We are not persuaded.

Reviewing the order, the district court repeatedly acknowledged its obligation to take Leonhart's allegations as true. Further, the district court largely ignored Flom's allegations,⁴ indicating it disregarded that evidence. Moreover, the crux of the district court's decision was that Leonhart's affidavit, taken as true, largely rested "upon general assertions and not specific facts" to meet his prima facie burden. Therefore, we conclude the district court treated the parties' affidavits appropriately when it dismissed Leonhart's petition.

Second, Leonhart contends the district court legally erred when it applied caselaw interpreting the grandparent-visitation statute. *See* Minn. Stat. § 257C.08, subd. 1 (2024). Leonhart asserts this caselaw is inapplicable to the third-party-visitation statute because he stood "in the role of *in loco parentis*" with the child. But the record demonstrates the district court applied the three-part framework discussed in *Boland* to reach its decision to deny the petition. *See* 800 N.W.2d at 182-85; *see also* Minn. Stat. § 257C.08, subd. 4. Therefore, we are not persuaded the district court applied an incorrect legal framework in this case.

Leonhart argues third that the district court abused its discretion when it concluded he did not establish a prima facie case for third-party visitation. A party sets forth a prima

⁴ The district court acknowledged Flom's allegations when analyzing whether visitation would interfere with Flom's relationship with the child. But those allegations provided context to Leonhart's assertions regarding that element. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (stating "[w]hile the district court must take the moving party's allegations as true and disregard contrary allegations by others, the district court may consider allegations by others that . . . may put the moving party's allegations in an appropriate context").

facie case “by alleging facts that, if true, would provide sufficient grounds for” relief. *Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022). But a party cannot set forth a prima facie case with allegations that are conclusory, “too vague to support a finding,” or not “supported by any specific, credible evidence.” *Szarzynski*, 732 N.W.2d at 292 (quotations omitted).

As set forth above, to establish a prima facie case for third-party visitation, the petitioner must set forth a prima facie case on three factors, including that “visitation rights would not interfere with the relationship between the custodial parent and the child.” Minn. Stat. § 257C.08, subd. 4. Leonhart argues the district court abused its discretion when it concluded he did not set forth a prima facie case on this factor. We disagree.

In concluding Leonhart failed to set forth a prima facie case on the third factor, the district court explained that, even accepting Leonhart’s assertion as true, “he has still not demonstrated how allowing [his requested] weekend and/or holiday and vacation visits with the child would not interfere with Ms. Flom’s relationship with” the child. The district court further noted that Leonhart’s statement in his affidavit regarding the impact on Flom’s relationship with the child was a “general assertion[] and not specific facts showing why this factor ha[d] been met.” We agree with the district court that Leonhart relied on a conclusory statement lacking any factual detail to show that his proposed visitation schedule would not have an impact on Flom’s relationship with the child. *See Szarzynski*,

732 N.W.2d at 292. Accordingly, the district court did not abuse its discretion when it determined that Leonhart failed to set forth a prima facie case.⁵

Finally, Leonhart asserts the district court abused its discretion when it did not allow an evidentiary hearing before dismissing his petition. But a petitioner must set forth a prima facie case *before* a district court grants an evidentiary hearing. *See Kulla v. McNulty*, 472 N.W.2d 175, 180 (Minn. App. 1991), *rev. denied* (Minn. Aug. 29, 1991). And at the prima facie stage, the petitioner must allege facts that “would provide sufficient grounds for” relief. *See Woolsey*, 975 N.W.2d at 507 (Minn. 2022); *see also Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (“At the prima-facie-case stage of the proceeding, [a party seeking relief] need not *establish* anything. [A party seeking relief] need only make allegations which, if true, would allow the district court to grant the relief [the party] seeks.”), *rev. denied* (Minn. Oct. 24, 2018). Thus, additional discovery would not have cured the basis upon which the district court dismissed the petition.⁶

Affirmed.

⁵ Leonhart cites to *Gussert v. Walters* to support his argument that he provided sufficient evidence to be entitled to an evidentiary hearing. No. A18-0061, 2018 WL 6165297 (Minn. App. Nov. 26, 2018). We conclude that *Gussert* is factually distinguishable and therefore not persuasive in this case. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

⁶ We acknowledge that, taking Leonhart’s allegations as true, Flom may have prevented Leonhart from obtaining current information regarding the third factor. But we have consistently required a petitioner to allege facts that satisfy the third factor before allowing discovery or an evidentiary hearing. *See Smith v. Kessen*, 996 N.W.2d 581, 590 (Minn. App. 2023) (explaining that as the district court properly dismissed appellant grandfather’s petition for visitation for failure to establish a prima facie case, that the district court also properly dismissed his motion to compel discovery as “no claims or defenses remained” after the motion to dismiss was granted), *rev. denied* (Minn. Jan. 31, 2024).