

*This opinion is nonprecedential except as provided by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
A25-0580**

Carrie Lynn Hofmann, et al., petitioners,
Appellants,

vs.

Emily Catherine Johnson,
Respondent,

Brandon Michael Johnson,
Respondent.

**Filed December 22, 2025
Affirmed in part and remanded
Frisch, Chief Judge**

Crow Wing County District Court
File No. 18-FA-24-4101

Edward R. Shaw, Ed Shaw Law, Brainerd, Minnesota (for appellants)

Shawn C. Reinke, Victoria M.B. Taylor, Reinke Taylor, PLLC, St. Paul, Minnesota (for
respondent Emily Catherine Johnson)

Brandon Michael Johnson, St. Cloud, Minnesota (pro se respondent)

Considered and decided by Ross, Presiding Judge; Frisch, Chief Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Chief Judge

A person petitioning a district court for third-party custody of a child under Minn.
Stat. §§ 257C.01-.08 (2024) (chapter 257C), is entitled to an evidentiary hearing upon

submission of a valid petition and supporting affidavits setting forth a prima facie case for third-party custody of the child as either the child's de facto custodian or as an interested third party. Appellants challenge the dismissal of their petition for third-party custody without an evidentiary hearing, arguing that the district court abused its discretion by determining that their petition and supporting affidavits failed to set forth a prima facie case for third-party custody as either de facto custodians or interested third parties. We remand to the district court for it to exercise its discretion in determining whether appellants set forth a prima facie case in their petition and supporting affidavits for third-party custody as de facto custodians, which would entitle them to an evidentiary hearing on that basis. But we affirm the district court's determination that appellants failed to make a prima facie case for third-party custody as interested third parties and the district court's dismissal of this aspect of the petition without an evidentiary hearing.

FACTS

This matter relates to the custody of minor child T.M.J. (child).¹ Child was born in 2017. Appellants Carrie Lynn Hofmann and Nicholas Melvin Hofmann are not related to child but were chosen by respondent-mother Emily Catherine Johnson to care for child while mother was enrolled in treatment programs.

¹ Respondent Brandon Johnson is child's father. Respondent-father has neither custody of child nor parenting time. He is self-represented in this litigation and has not made an appearance in this appeal.

In August 2023, mother executed a delegation of parental authority (DOPA) to Carrie Hofmann.² The DOPA gave Carrie Hofmann “permission to care for and make decisions about [child],” including, but not limited to, the authority to authorize medical treatment for child; enroll child in school; and provide a home, care, and supervision of child. Mother intended the DOPA to cover the time she was enrolled in inpatient treatment. Child lived with appellants full-time at least since August 2023.

In November 2024, about a week before mother was scheduled to graduate from her treatment program, appellants petitioned the district court for sole legal custody and sole physical custody of child under chapter 257C. *See* Minn. Stat. §§ 257C.01-.05. Appellants did not expressly state in the petition whether they were seeking third-party custody of child under chapter 257C as de facto custodians or interested third parties. With the petition, appellants filed an ex parte motion asking the district court to award them temporary sole legal custody and temporary sole physical custody of child. The next day, the district court filed an order granting that motion. Following a later hearing, the district court vacated the temporary order. Appellants filed a second ex parte motion for temporary relief, which the district court denied in early December.

² In a DOPA, with exceptions not relevant here, a parent of a minor “may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor.” Minn. Stat. § 524.5-211(a) (2024). A DOPA is revocable and “is merely the execution of a power of attorney for a period not exceeding one year, rather than a divestment of the natural parent’s rights.” *In re Welfare of Child of T.C.M.*, 758 N.W.2d 340, 346-47 (Minn. App. 2008) (quotation omitted).

On December 9, mother filed an answer and counterpetition asking the district court to dismiss appellants' petition under Minn. Stat. § 257C.03, subd. 8. On December 11, without leave of the district court, appellants filed an amended third-party custody petition.

After holding a nonevidentiary hearing on December 16, at which the parties argued their respective positions, the district court issued an order dismissing appellants' third-party custody petition. The district court did not consider appellants' amended petition in reaching its decision, as it determined the original petition and supporting affidavits were controlling. It ruled that the petition did not meet the procedural requirements of Minn. Stat. § 257C.03, subd. 2, and otherwise failed to allege the jurisdictional basis for the petition, concluding that appellants failed to allege a prima facie case that they were child's de facto custodians under Minn. Stat. §§ 257C.01, subd. 2, .03, subd. 6, or interested third parties under Minn. Stat. §§ 257C.01, subd. 3, .03, subd. 7.

This appeal follows.

DECISION

Appellants seek reversal of the district court's dismissal of their third-party custody petition for sole legal custody and sole physical custody of child, arguing that the district court abused its discretion by determining that appellants' petition and supporting affidavits failed to allege facts which, if true, make a prima facie case for third-party custody as either de facto custodians or interested third parties. Mother argues that the district court correctly determined that the petition did not set forth a prima facie case for third-party custody on either basis.

Under chapter 257C, a person other than a child’s parent may petition a district court for third-party custody of that child as a “de facto custodian” or an “interested third party.” Minn. Stat. §§ 257C.01-05. In either circumstance, a petitioner must first file a petition which “state[s] and allege[s]” 15 statutory conditions, is verified, and contains “allegations established by competent evidence.” Minn. Stat. § 257C.03, subd. 2.

At issue in this appeal is the requirement that a petition state and allege “the petitioner or petitioners’ basis for jurisdiction under section 257C.01, subdivision 2 or 3.” *Id.*, subd. 2(a)(5). Subdivisions 2 and 3 of section 257C.01 refer to the statutory definitions of a “de facto custodian” and an “interested third party,” respectively. Thus, to satisfy the jurisdictional-basis requirement, a petition must set forth allegations that a petitioner fits the statutory definition for a de facto custodian or an interested third party. *See Pollard v. Crowghost*, 794 N.W.2d 373, 376 (Minn. App. 2011); *see also Kayachith v. Athakhanh*, 683 N.W.2d 325, 326 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004).

Third-party custody proceedings under chapter 257C occur in two stages. *Lewis-Miller v. Ross*, 710 N.W.2d 565, 569-70 (Minn. 2006). At the first stage, a petitioner must allege a prima facie case by submitting a valid petition and supporting affidavits containing factual allegations that meet the statutory requirements which, if true, would allow the district court to grant the petitioner third-party custody as a de facto custodian or an interested third party. *See id.* at 569; *see also Woolsey v. Woolsey*, 975 N.W.2d 502, 507 (Minn. 2022) (stating a party makes a prima facie case for relief by “alleging facts that, if true, would provide sufficient grounds for [the relief sought]”); *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). If a petitioner makes such a prima facie case for third-party custody, the district court must set an evidentiary hearing on the petition. *Lewis-Miller*, 710 N.W.2d at 569 (“[I]f the petition and affidavits alleged facts which, if proven, would satisfy the statutory criteria, the court would then schedule an evidentiary hearing.”); *Pollard*, 794 N.W.2d at 377 (“Because respondents needed only to allege facts that, if true, would establish that they were de facto custodians, the district court did not err in allowing respondents to proceed with their custody petition. Respondents were entitled to an evidentiary hearing.”). But if a petition and supporting affidavits fail to set forth a prima facie case, dismissal of the petition is warranted. *See* Minn. Stat. § 257C.03, subd. 8(a) (requiring district court to dismiss third-party custody petition if it finds that the petitioner does not satisfy the statutory criteria for obtaining custodial rights as a de facto custodian or interested third party); *Lewis-Miller*, 710 N.W.2d at 569 (stating that the district court has “discretion to dismiss a third-party custody petition without an evidentiary hearing if the petition and accompanying affidavits alleged facts which, if taken as true, would not be sufficient to satisfy” the statutory criteria for an interested third party); *Kayachith*, 683 N.W.2d at 327 (concluding third-party custody petition must be dismissed without an evidentiary hearing where petitioners failed to allege a substantial relationship with the child and therefore did not satisfy the statutory criteria for an interested third party).

In determining whether a petitioner has alleged a prima facie case for third-party custody, a district court accepts the allegations set forth in the petition and the moving party's affidavits as true and disregards contrary allegations, though a district court may consider allegations that explain or contextualize, but do not contradict, a petitioner's allegations. *See Boland v. Murtha*, 800 N.W.2d 179, 182-85 (Minn. App. 2011) (applying prima facie case analysis to motion to restrict parenting time). While a district court is required to accept as true the allegations of a moving party, a movant does not allege a prima facie case if the allegations are merely conclusory, too vague to support a finding necessary to grant relief, or unsupported by any specific, credible evidence. *See Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007); Minn. Stat. § 257C.03, subd. 2(b) (requiring allegations within a third-party custody petition to be “established by competent evidence”); *see also Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (stating, in the context of a motion to intervene, that the district court “must accept the allegations in the pleadings as true, unless they are frivolous on their face”).

We review the dismissal of a petition for third-party custody without an evidentiary hearing in three parts. We review (1) de novo whether the district court properly considered the allegations set forth in the petition and the parties' affidavits; (2) for an abuse of discretion the district court's determination as to the existence of a prima facie case for third-party custody; and (3) de novo whether an evidentiary hearing is required. *See Boland*, 800 N.W.2d at 185; *Stewart v. Doe*, No. A20-0754, 2021 WL 772548, at *3 (Minn.

App. Mar. 1, 2021) (applying *Boland* three-step framework for appellate review in a third-party-custody appeal).³

Against this backdrop, we consider whether the district court properly dismissed appellants' petition for third-party custody on each of the asserted alternative bases without holding an evidentiary hearing.

I. Because we are unable to discern whether the district court evaluated appellants' petition for third-party custody as de facto custodians under the correct legal framework, we remand to the district court to exercise its discretion.

Appellants seek reversal of the district court's dismissal of their petition for third-party custody as de facto custodians without an evidentiary hearing, arguing that the district court abused its discretion by concluding that they failed to allege the jurisdictional basis for their petition and make a prima facie case for third-party custody as child's de facto custodians. "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Smith v. Kessen*, 996 N.W.2d 581, 585 (Minn. App. 2023) (quoting *Woolsey*, 975 N.W.2d at 506), *rev. denied* (Minn. Jan. 31, 2024). Appellants assert that the allegations in the petition and supporting affidavits, taken as true, make a prima facie case that they are child's de facto custodians. They argue that the district court misapplied the law by not accepting their allegations to be true and by basing its decision solely on the existence of the DOPA. Because we cannot discern whether the

³ We cite nonprecedential authority for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

district court applied the correct legal standard to assess the adequacy of appellants' allegations at the prima facie case stage, we remand to the district court.

To be awarded third-party custody as de facto custodians, petitioners must: (1) show by "clear and convincing evidence" that they satisfy the provisions of section 257C.01, subdivision 2; and (2) "prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the de facto custodian[s]." Minn. Stat. § 257C.03, subd. 6(a). In relevant part, section 257C.01, subdivision 2, provides that a de facto custodian is

the primary caretaker for a child who has, within the 24 months immediately preceding the filing of the petition, resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of . . . one year or more, which need not be consecutive, if the child is three years of age or older.

Minn. Stat. § 257C.01, subd. 2(a)(2). And a "lack of demonstrated consistent participation" is the

refusal or neglect to comply with the duties imposed upon the parent by the parent-child relationship, including, but not limited to, providing the child necessary food, clothing, shelter, health care, education, creating a nurturing and consistent relationship, and other care and control necessary for the child's physical, mental, or emotional health and development.

Id., subd. 2(c). A district court must consider the following factors in determining a parent's lack of demonstrated consistent participation:

- (1) the intent of the parent or parents in placing the child with the de facto custodian;
- (2) the amount of involvement the parent had with the child during the parent's absence;
- (3) the facts and circumstances of the parent's absence;

(4) the parent's refusal to comply with conditions for retaining custody set forth in previous court orders;

(5) whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence; and

(6) whether a sibling of the child is already in the petitioner's care.

Minn. Stat. § 257C.03, subd. 6(b).

Therefore, petitioners seeking custody under chapter 257C as de facto custodians set forth the jurisdictional basis for a petition by alleging that they satisfy the statutory definition for de facto custodians under Minn. Stat. § 257C.01, subd. 2. Minn. Stat. § 257C.03, subd. 2(a)(5); *Pollard*, 794 N.W.2d at 376. And if a petition and supporting affidavits allege facts which, if proven, would establish that petitioners satisfy the statutory requirements for third-party custody as de facto custodians under Minn. Stat. § 257C.03, subd. 6, petitioners are entitled to an evidentiary hearing. *Pollard*, 794 N.W.2d at 376-77.

The district court concluded in its order dismissing appellants' petition that appellants failed to allege a prima facie case that they are de facto custodians and referred to the statutory criteria set forth in Minn. Stat. § 257C.01, subd. 2. But we are unable to determine from the order whether the district court applied the correct legal standard to assess the sufficiency of appellants' allegations. The order does not indicate whether the district court treated the allegations set forth in appellants' petition and affidavits to be true, disregarded contrary allegations, and considered only explanatory allegations. And specifically, we cannot discern whether the district court treated as true the allegations that appellants "have been financially supporting the minor child, enrolled him in school and sports, and have ensured he has received proper medical care for the past four (4) years,"

that mother has “not been active in the minor child’s life on a regular basis in the past four (4) years,” and that

[o]ther than brief times [mother] has come to get [child] out of spite just to return him, he has always been in our home. . . . Other than weekend passes from treatment, [mother] has not seen [child] in over 6 months and has not had anything more than sporadic calls and visits. In the last 6 months [mother] has made more of an effort to call [child] multiple times a week, but that is due to her being in treatment and them pushing her to have a relationship with [child].

The district court’s order does not explain why these allegations, if true, are insufficient to make a *prima facie* case that appellants satisfy at least the parts of the statutory definition of a *de facto* custodian relevant to these allegations. Nor does the order otherwise evaluate these allegations.

Instead, the district court’s order suggests that the district court may have denied appellants relief based on factors related to the underlying merits of the case, rather than the inadequacy of appellants’ allegations. Specifically, the district court’s order suggests that one reason for the dismissal of the petition was because mother’s execution of a DOPA “indicate[d] her intent to continue to be actively involved in her child’s life”; and allowing appellants to become *de facto* custodians of a child living with them pursuant to a DOPA would violate mother’s constitutionally protected right to the care, custody, and control of their child, as discussed in *Troxel v. Granville*, 530 U.S. 57 (2000), and *SooHoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007).⁴ While the circumstances surrounding mother’s placement

⁴ The district court also appears to have misapplied *Troxel* and *SooHoo* as related to a parent’s right to the care, custody, and control of a child. Neither opinion stands for the

of child with appellants pursuant to a DOPA may be relevant to determining whether appellants are, in fact, child's de facto custodians, *see* Minn. Stat. § 257C.03, subd. 6(b)(1)-(3), it is premature for the district court to consider mother's intent related to the DOPA at the prima facie case stage, where the district court must determine only whether appellants' allegations, if true, would allow it to award them third-party custody as child's de facto custodians.

To the extent the district court determined that appellants failed to allege a prima facie case that they are de facto custodians *solely* because child resided with them pursuant to a DOPA, the district court abused its discretion in making that determination. However, the district court's order is unclear as to whether the DOPA was the sole basis to deny relief, rather than because appellants' allegations otherwise were inadequate to make a

proposition that a DOPA precludes a district court from ruling that the person with whom a child lives is that child's de facto custodian under chapter 257C. We have reasoned that the statutory requirements set forth in chapter 257C incorporate the constitutionally required deference to a parent's right to the care, custody, and control of their child discussed in *Troxel* and *SooHoo*. *See Ramirez v. Luna*, 830 N.W.2d 163, 168 (Minn. App. 2013). And, unlike other situations, we are not aware of any authority providing that placement pursuant to a DOPA precludes an award of custody to a de facto custodian under chapter 257C. *See* Minn. Stat. § 257C.01, subd. 2(d) (excluding an individual from being a de facto custodian where the child was placed in the individual's care: "(1) through a custody consent decree under section 257C.07; (2) through a court order or voluntary placement agreement under chapter 260C; or (3) for adoption under chapter 259"); *see also Ewald v. Nedrebo*, 999 N.W.2d 546, 550-51 (Minn. App. 2023) (stating we will not "rewrite a statute under the guise of statutory interpretation" nor "add language that the legislature did not include" (quotation omitted)), *rev. denied* (Minn. Feb. 28, 2024). Thus, that a child is residing with someone other than the child's parent pursuant to a DOPA does not preclude a district court from ruling that person to be the child's de facto custodian under Minn. Stat. § 257C.01, subd. 2. Accordingly, a district court abuses its discretion by misapplying the law where it concludes that a petitioner has failed to allege a prima facie case that they are a child's de facto custodian solely because the child resided with a petitioner via a DOPA.

prima facie case that they were child's de facto custodians. We therefore remand to the district court because we are unable to discern whether the district court evaluated appellants' petition under the correct legal framework. *See Boland*, 800 N.W.2d at 186 (remanding when district court's order was "insufficient" to allow us to discern whether the district court used the proper legal analysis in determining whether the moving party made a prima facie case for parenting-time restriction).

On remand, the district court must evaluate whether appellants' petition and supporting affidavits set forth factual allegations that, if true, satisfy the statutory requirements for third-party custody as child's de facto custodians. The district court must accept as true the allegations in appellants' petition and their supporting affidavits, "ideally stating that it has done so." *See id.* The district court must examine the affidavits submitted by mother in opposition, distinguishing allegations that contradict appellants' allegations from those that explain or contextualize them—"ideally, identifying those statements that are contradictory and those that are explanatory." *See id.* The district court must disregard contrary assertions, but it may consider explanatory statements contextualizing the allegations set forth in appellants' petition and supporting affidavits. *See id.* The district court must then exercise its discretion to determine whether the petition and supporting affidavits make a prima facie case that appellants satisfy the statutory requirements for third-party custody as child's de facto custodians.⁵ Finally, if the district court concludes

⁵ We express no opinion as to whether appellants have in fact alleged a prima facie case for third-party custody as de facto custodians. *See Boland*, 800 N.W.2d at 186 (taking no position on whether mother had set forth a prima facie case of endangerment when

that appellants have alleged a prima facie case for third-party custody of child as de facto custodians, the district court must order an evidentiary hearing.⁶ *See id.*

We recognize the passage of time since the filing of the initial petition and the potential for changed circumstances. The district court may, in its discretion, reopen the record or otherwise conduct appropriate proceedings given the circumstances of the case and the best interests of child.

II. The district court acted within its discretion by determining appellants failed to allege a prima facie case that they are interested third parties.

Appellants also challenge the dismissal of their petition for third-party custody as interested third parties. The district court dismissed appellants' petition on this alternative basis because of its conclusion that appellants "have not alleged any facts that would support one of" the child-endangerment factors under Minn. Stat. § 257C.03, subd. 7(a)(1), and thus failed to make a prima facie case that they are interested third parties. We agree with the district court.

remanding for district court to reevaluate the parties' affidavits and to exercise its discretion to determine whether mother established a prima facie case for restricting father's parenting time).

⁶ Mother asserts there are additional procedural deficiencies in appellants' petition that support the district court's decision to dismiss the petition. While the district court's order summarily indicates that the petition "fails to meet the procedural requirements of Minnesota Statutes Section 257C.03, Subd. 2," it is unclear whether the basis of the district court's order relates to the DOPA, as set forth herein, or some other basis. Because we are remanding to the district court for the application of the correct legal framework, the district court must also on remand consider and address the other bases for dismissal of the petition to enable meaningful appellate review. *See, e.g., In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 811-12 (Minn. App. 2014) (reversing and remanding district court's order because the order did not contain sufficient information to enable meaningful appellate review).

A district court may award petitioners third-party custody as interested third parties if petitioners establish: (1) by clear and convincing evidence that one of three child-endangerment factors in Minn. Stat. § 257C.03, subd. 7(a)(1) is met; (2) by a preponderance of the evidence that placement with petitioners is in the best interests of the child; and (3) by clear and convincing evidence that petitioners have not been convicted of a crime listed in Minn. Stat. § 518.179 (2024) (collectively, “subdivision 7(a) requirements”). Minn. Stat. § 257C.03, subd. 7(a). The three child-endangerment factors are:

- (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child’s well-being to the extent that the child will be harmed by living with the parent;
- (ii) placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
- (iii) other extraordinary circumstances [exist].

Id., subd. 7(a)(1). And while Minn. Stat. § 257C.01, subd. 3, provides that an “interested third party” is an individual who can prove that “at least one of the factors in section 257C.03, subdivision 7, paragraph (a), is met,” we read this requirement to mean that petitioners seeking custody under chapter 257C as interested third parties set forth the jurisdictional basis for a petition by alleging that at least one *child-endangerment factor* is met, in addition to the other subdivision 7(a) requirements. *See Stewart*, 2021 WL 772548, at *2 (interpreting Minn. Stat. § 257C.01, subd. 3, “to require that at least one child-endangerment *factor* must be met, in addition to the other subdivision 7(a) requirements, in order to meet the jurisdictional requirement of section 257C.03, subdivision 2(a)(5)”);

see also Lewis-Miller, 710 N.W.2d at 568-69 (“Dismissal of the petition is mandated if the petitioner fails to establish an endangerment factor” (citing Minn. Stat. § 257C.03, subd. 8(a))). Petitioners are entitled to an evidentiary hearing if their petition and supporting affidavits allege facts which, if proven, satisfy the subdivision 7(a) requirements, including the presence of at least one child-endangerment factor. *Lewis-Miller*, 710 N.W.2d at 570.

The district court determined that appellants’ petition and supporting affidavits did not contain any factual allegations that would establish the existence of one of the child-endangerment factors. Thus, it concluded that appellants failed to allege a prima facie case for third-party custody as interested third parties. Appellants do not identify any allegations in their original petition and supporting affidavits that, if true, establish one of the child-endangerment factors.⁷ Because appellants failed to do so, we conclude the district court acted within its discretion in determining that appellants failed to allege a

⁷ Appellants assert that allegations set forth in their *amended* petition and supporting affidavits satisfy their burden. But the district court did not consider the amended petition, which appellants filed after mother submitted her responsive pleading, and less than seven days before the hearing scheduled on the petition, without obtaining the district court’s permission. *See* Minn. R. Civ. P. 15.01 (addressing when pleadings can be amended); Minn. Gen. R. Prac. 303.03 (addressing motion practice timing). On appeal, appellants do not challenge the district court’s decision to consider only their original petition and supporting affidavits. *See Anderson v. Comm’r of Health*, 811 N.W.2d 162, 166 (Minn. App. 2012) (“[I]ssues not raised or argued in appellant’s brief cannot be raised in a reply brief.” (quotation omitted)), *rev. denied* (Minn. Apr. 17, 2012); *see also Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“[A]ssignment 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.”). We therefore review the district court’s determinations based on the allegations set forth in appellants’ original submissions.

prima facie case that they are interested third parties under chapter 257C, and thus it did not err in dismissing appellants' petition for third-party custody on this basis without holding an evidentiary hearing.

Affirmed in part and remanded.