

*This opinion is nonprecedential except as provided by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
A25-1817**

In the Matter of the Welfare of the Children of:
A. K., Parent.

**Filed June 8, 2026
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-JV-21-4

Rhia Bornmann Spears, Spears Family Law, PLLC, Minneapolis, Minnesota (for appellant-father D. P.)

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Considered and decided by Ross, Presiding Judge; Worke, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the district court's order dismissing his petition to modify the permanent-child-custody order due to endangerment, arguing that the district court erred by (1) determining that appellant failed to show a change in circumstances, (2) not properly addressing appellant's petition to establish custody, (3) not conducting a best-interest analysis in denying modification of parental visitation, and (4) denying appellant's motion to remove the presiding judge for judicial bias. We affirm.

FACTS

Respondent-mother A.K. and appellant-father D.P. have two joint children, R.K.P. and G.K.P. A.K. and D.P. never married. D.P. filed a voluntary recognition of parentage for R.K.P. and G.K.P.¹

In September 2020, the district court adjudicated G.K.P. and R.K.P. as children in need of protective services (CHIPS). D.P. did not participate in the CHIPS proceedings and took no action in seeking custody of the children. In March 2021, the district court transferred permanent sole legal and permanent sole physical custody of R.K.P. and G.K.P. to their maternal grandparents, K.K. and C.K. (the grandparents), but deferred the transfer to determine eligibility for Northstar Kinship Assistance.²

¹ At the time of this appeal, R.K.P. is seven years old, and G.K.P. is six years old.

² Northstar Kinship Assistance is a state-administered program providing medical coverage and financial support associated with a relative's assumption of permanent legal and permanent physical custody of a child following child-protection proceedings. *See* Minn. Stat. § 142A.602, subds. 16-17 (2024); *see also* Minn. Stat. § 142A.605 (2024) (stating eligibility requirements for Northstar Kinship Assistance).

In October 2021, during the deferment period, D.P. moved the district court to change sole legal and sole physical custody to himself. D.P. told the district court he did not seek custody before his motion because he was in an unstable living situation. D.P. stated that his living situation was then stable. D.P. also expressed concerns about the children's care and well-being while with the grandparents.

The district court denied D.P.'s motion, determining that D.P. had not provided a legal reason to vacate the nine-month-old custody order.

In December 2021, the district court finalized the transfer of permanent custody to the grandparents. In its order, the district court granted the grandparents authority to determine the date, time, place, and circumstances for visitation, based on the best interests of the children. The district court stated that any motions to modify the order "must be brought in the [j]uvenile [c]ourt."

In April 2022, D.P. again moved the district court to modify visitation and parenting time, arguing that the grandparents' discretionary decisions were not in the children's best interests. After a hearing on the matter, the district court denied D.P.'s motion. The district court determined that it was in the children's best interests to continue granting the grandparents reasonable discretion regarding visitation.³

In October 2024, D.P. moved the district court for an emergency order to establish custody, grant him sole legal and sole physical custody, or modify visitation or parenting

³ D.P. appealed the district court's denial of his motion to modify visitation and parenting time. We affirmed. *See In re Welfare of Child. of A.K.*, No. A22-0958, 2022 WL 17574590, at *1-4 (Minn. App. Dec. 12, 2022).

time. D.P. submitted affidavits alleging several concerns about the children's well-being. The district court determined that the following allegations constitute a prima facie case for the relief D.P. sought, and therefore warranted an evidentiary hearing: (1) D.P. moved into stable housing and was currently married to a loving and supportive partner; (2) the children suffered physical injuries evidenced by scars, bumps, bruising, and dry and itchy skin; (3) the children suffered mental and emotional harm; and (4) the children require therapy, are acting out at school, are physically aggressive, and are wetting the bed.

The evidentiary hearing spanned more than five days. On the third day of the hearing, D.P.'s father, J.W., testified that he had concerns that his family was not going to be part of the children's lives while the children were in the grandparents' custody. J.W. stated, "They're my paternal grandkids. I know that you have adopted [A.K.] and raised [A.K.]; but biologically, those are my blood. There's not a drop of your blood in them."

After J.W.'s testimony, the district court recessed, and the parties' attorneys met with the judge in chambers. The record lacks a transcript of the discussion that occurred in chambers. After the meeting, the hearing resumed. At the resumed hearing, nothing was placed on the record regarding the discussion that took place during the in-chambers meeting.

Between hearing days four and five, D.P. moved the district court to remove the presiding judge, asserting judicial bias. In her supporting affidavit, D.P.'s attorney asserted that, among other things, the presiding judge (1) was not impartial, (2) had an inappropriate outburst of anger during the proceedings, (3) barred relevant testimony that would support D.P.'s position, (4) called J.W. a "bigot" during the in-chambers meeting, and

(5) predetermined her ruling on the hearing by making comments that D.P. is failing to meet his burden of proof.

In response, the grandparents' attorney submitted her own affidavit opposing the judicial-bias assertion and providing her own account of the proceedings. Her affidavit stated that, during the in-chambers conversation, the presiding judge commented that J.W.'s testimony regarding "lack of having a 'blood' connection to the children . . . was problematic and bigoted." The grandparents' attorney further affirmed: "The [c]ourt's perspective on that issue is based in law, and does not show judicial bias or prejudice."

At the hearing on the removal matter, D.P. discussed the assertions of judicial bias but did not address anything further concerning the in-chambers conversation. No testimony or evidence was received regarding the in-chambers conversation.

The district court denied D.P.'s request for removal, determining that the information provided did not indicate bias. The district court acknowledged that the presiding judge made comments about the rules that would apply and D.P.'s burden of proof, and these comments could be interpreted as "meddling." However, the district court explained that the reasoning behind these comments was because D.P.'s attorney had "made some statements that may indicate unfamiliarity with this area of law So . . . the court was trying to help . . . in terms of what the law the [c]ourt believes would apply." The district court did not address the in-chambers conversation.

D.P. did not seek reconsideration of the district court's judicial-bias determination. *See* Minn. R. Gen. Prac. 115.11 (addressing reconsideration). Nor did D.P. refer the matter to the chief judge of the district court.

On the fifth day of the evidentiary hearing, A.K. and the grandparents moved the district court to dismiss D.P.'s petition based on "judgment as a matter of law," asserting that D.P. failed to show endangerment and a change in circumstances. The district court took the matter under advisement.

In September 2025, the district court granted the motion to dismiss D.P.'s petition. The district court concluded that D.P. had failed to show that the children are in danger, that the grandparents are negligent caretakers, or that there has been a change in circumstances warranting modification of the permanent-custody order. The district court also determined that D.P. failed to provide "evidence to support his claims, such that [there] is a genuine issue of material fact."

A.K. moved the district court to amend the order to reflect the correct procedural basis for her motion at the hearing. The district court filed an amended order stating that A.K. moved for "judgment as a matter of law under Minn. R. Juv. [Prot.] P. 14.04."

This appeal followed.

DECISION

D.P. argues that the district court erred by (1) dismissing his petition to modify the permanent-custody order, (2) denying his motion to establish custody, and (3) denying his motion to modify parental visitation. D.P. also argues that the district court erred by denying his motion to remove the presiding judge for judicial bias. Before we address the merits of the custody-intervention arguments, we first address the judicial-bias allegations.

Judicial Bias

D.P. argues that the district court erred by denying his removal motion for prejudice and judicial bias. After our thorough review of the record, we discern no evidence supporting any of the bias-related allegations argued by D.P.

We begin with D.P.'s assertion that, during the in-chambers discussion, the presiding judge characterized J.W.'s testimony as "bigoted." Standing in isolation, this claim is troubling. "[W]hen the evidence shows that a judge has such a high degree of favoritism or antagonism as to make fair judgment impossible or nearly so, that evidence will support a conclusion that the judge's adverse rulings were affected by bias or prejudice." *Inquiry into Dehen*, 26 N.W.3d 1, 30 (Minn. 2025). The common meaning of "bigot" is "[o]ne who is strongly partial to one's own group, religion, race, or politics and is intolerant of those who differ." *The American Heritage Dictionary of the English Language* 179 (5th ed. 2011). It would be an understatement to say the characterization of someone as a bigot is insulting. Such a statement could reflect a high degree of antagonism.

But we have no transcript of the discussion that occurred in chambers. Nor do we have a record of D.P. objecting to the use of the term following the court's recess or any time after resuming the evidentiary hearing. D.P. did not raise or present testimony about the conversation at the judicial-bias hearing. Nor did D.P. request reconsideration or a hearing by the district court's chief judge, which may have provided more of a record of the conversation. *See* Minn. Gen. R. Prac. 106 (stating judicial-removal motions may be reconsidered by the chief judge of the district or their appointee).

Instead, we are left with a record restricted to two opposing affidavits; both attesting the term was used but presenting dueling narratives regarding the context and intent behind the district court's use of the term. Appellate courts do not find facts. *See In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 900-01 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). Further, an appellant has the burden of providing an adequate record from which we can review whether an error occurred. *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022). We cannot simply presume an error occurred. *Id.* Because we lack a record of the district court's comments, we cannot review those comments. And because we cannot review those comments, we cannot, even under a de novo standard of review, conclude that the district court erred by denying D.P.'s removal request. Accordingly, D.P.'s motion to remove the presiding judge as a result of the use of the term "bigoted" fails.

D.P. also asserts that the presiding judge was not impartial, had an inappropriate outburst of anger during the proceedings, and barred relevant testimony that would support D.P.'s change-in-custody motion. Again, the record here fails to support D.P.'s allegations of judicial bias. Disagreement with a district court's rulings or with the conduct of the proceedings is insufficient to require the removal of a presiding judge. *See Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986); *see also State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) ("The record reflects that the district court carefully considered motions made by both sides; and the court ruled in favor of appellant on some very important motions. Appellant was not denied his right to a fair trial before an impartial judge.").

Motion to Dismiss

D.P. argues that the district court abused its discretion by granting dismissal of his petition to modify the permanent-custody order. We review the district court’s decision to dismiss a motion to modify a permanent-custody order for an abuse of discretion. *See, e.g., In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 318-19 (Minn. App. 2015) (reviewing district court’s dismissal of amended permanency petition for abuse of discretion), *rev. denied* (Minn. July 21, 2015). “A district court abuses its discretion by making findings unsupported by the evidence or improperly applying the law, or delivering a decision that is against logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

A motion to modify an order transferring permanent legal and permanent physical custody must be filed in the juvenile court division.⁴ Minn. Stat. § 260C.101, subd. 1 (2024); Minn. R. Juv. Prot. P. 59.02; *In re Welfare of Child. of L.A.B.*, 30 N.W.3d 136, 142 (Minn. App. 2025). Within the juvenile court, “[a]ny party . . . may bring a motion to dismiss the petition upon . . . any other ground supported by law.” Minn. R. Juv. Prot. P. 14.04(d).

⁴ D.P. asserts that the district court applied different rules at different times, confusing which statutes and rules applied in the proceedings, violating his due process rights. Under our de novo review for identifying applicable law, *see In re Welfare of Child of T.M.A.*, 11 N.W.3d 346, 360 (Minn. App. 2024), we conclude this argument lacks merit. The district court adjudicated the children in need of protective services, the grandparents received permanent custody under juvenile-protection statutes, and the record shows court orders, court guidance, and letters from opposing counsel indicating this was a juvenile-protection matter within the juvenile court. There was no due process violation.

The juvenile-protection statutes neither require nor allow the juvenile-court division to utilize marital-dissolution statutes to determine child custody and visitation. *In re Welfare of Child of A.H.*, 879 N.W.2d 1, 6 (Minn. App. 2016). However, the “permanent legal and physical custody of a child may be modified using standards under [Minnesota Statutes] sections 518.18 [(2024)] and 518.185 [(2024)].” Minn. Stat. § 260C.521, subd. 2(a) (2024); *accord* Minn. R. Juv. Prot. P. 59.02.

A child-custody order shall be modified for endangerment only if (1) there has been a change in circumstances, (2) modification would be in the best interest of the child, (3) the existing arrangements endanger the child, and (4) the harm associated with the proposed custody change outweighs the benefits of the change. Minn. Stat. § 518.18(d)(iv) (2024); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 291–92 (Minn. App. 2007). Under section 518.18(d) (2024), the district court must first determine whether the party seeking modification of custody has asserted a prima facie case “by alleging facts that, if true, would provide sufficient grounds for modification.” *Woolsey*, 975 N.W.2d at 507. If the movant alleges a prima facie case, the district court must hold an evidentiary hearing “during which the parties may present evidence on each factor.” *Id.* at 508.

D.P. asserts that it was inconsistent for the district court to state he alleged a prima facie case to modify the permanent-custody order and state he had not proven the elements necessary to modify the order after the evidentiary hearing. This assertion conflates the prima facie burden of *alleging* the facts necessary to *obtain* an evidentiary hearing with the substantive burden of *proving* the existence of those facts *at* the evidentiary hearing to *obtain* the relief sought. The prima facie requirement is a

gatekeeping mechanism, ensuring that the district court will not hold an evidentiary hearing on allegations that, even if true, would still not support a grant of the relief sought. *See Tarlan v. Sorensen*, 702 N.W.2d 915, 921 (Minn. App. 2005) (stating district court can deny motion to modify custody without an evidentiary hearing if moving party fails to make prima facie case); *see also Amarreh v. Amarreh*, 918 N.W.2d 228, 231 (Minn. App. 2018) (stating that, “[a]t the prima-facie-case stage of the proceeding, [the movant] need not *establish* anything. [The movant] need only make allegations which, if true, would allow the district court to grant the relief he seeks.”); *cf. Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (requiring the district court, when addressing a motion to intervene, to accept the movant’s allegations unless they are “frivolous on their face”); *see generally Tousignant v. St. Louis County*, 615 N.W.2d 53, 59 (Minn. 2000) (stating that a prima facie case is “one that prevails in the absence of evidence invalidating it” (quotation omitted)). If the movant alleges a prima facie case, that party must still prove the elements at the evidentiary hearing. *See Woolsey*, 975 N.W.2d at 508. There was no inconsistency by the district court to require D.P. to prove his allegations true.

D.P. claims that the district court’s determination that he failed to prove a change in circumstances and child endangerment disregarded the evidence and record. We disagree. The record shows multiple medical documents stating the children are healthy and “negative for [skin] rash.” The record also shows a November 2024 affidavit from a Ramsey County social worker assigned to conduct a “child welfare assessment” of the children under the grandparents’ care, that states: “[b]ased on my assessment, I was unable to substantiate any claims of endangerment to the children in their current environment.

There is no need for child protection involvement at this time.” While there was contradictory evidence, we provide considerable deference to the district court’s decisions because the district court “has the opportunity to see the parties as well as their witnesses, hear their testimony, observe their actions, and weigh the evidence in the light of those factors.” *In re Booth*, 91 N.W.2d 921, 924 (Minn. 1958) (quotation omitted). The district court did not abuse its discretion by determining that D.P. failed to show a change of circumstances and child endangerment. Nor did the district court abuse its discretion by dismissing D.P.’s custody-modification motion.

D.P. also argues that the district court erred by concluding that there was no genuine issue of material fact. For purposes of this appeal, we assume the district court’s reference to the lack of a genuine issue of material fact was a reference to the no-genuine-issue-of-material-fact standard used in civil proceedings, rather than a generic statement that the facts relevant to this case were undisputed by these parties. We also assume that the district court did, in fact, err by applying the no-genuine-issue-of-material-fact standard in this juvenile-protection matter. *See* Minn. R. Civ. P. 50.01(a), 56.01 (referring to genuine issues of material facts for purposes of JMOL and summary judgment, respectively); Minn. R. Juv. Prot. P. 3.01 (stating, generally, the civil rules do not apply to juvenile matters).

However, this analysis was the final two paragraphs in the 14-page order. Most of the rest of the order analyzed whether D.P. met his burden of proof. Generally, appellate courts do not remand if, on remand, the district court will reach the same result it has already reached. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985). Here, if we were

to remand, we are convinced that the result would be the same. Remand is inappropriate for this nominal error.

Motion to Establish Custody

D.P. argues that the district court erred by denying his motion to establish custody. We review a district court's application of relevant statutes and procedure de novo. *In re Welfare of Child. of L.K.*, 32 N.W.3d 163, 183 (Minn. 2026).

Minnesota Statutes sections 518.0011 to 518.68 apply to marital-dissolution proceedings. *See* Minn. Stat. § 518.0011 (2024). Section 257.541 applies to custody rights between the parents of children born outside the marriage. *See* Minn. Stat. § 257.541 (2024). Conversely, sections 260C.503 to 260C.521 (2024) govern permanency proceedings. *L.K.*, 32 N.W.3d at 185 n.20.

Here, D.P. asserts that the district court was required to determine his custody of the children under section 518.156. Before the CHIPS petition, A.K. was the sole legal and sole physical custodian of the children. Minn. Stat. § 257.75, subd. 3(a) (2024). D.P. could have commenced custody proceedings before the CHIPS petition. *See id.* Yet, he did not. D.P. also had the opportunity to be an intervening party in the juvenile-protection matter. Minn. R. Juv. Prot. P. 34.01, subd. 3. He chose not to take that opportunity. The district court permanently transferred A.K.'s sole legal and sole physical custody to the grandparents. The matter is no longer a family-law matter; it is a juvenile-protection matter. Minn Stat. § 260C.101, subd. 1 (2024); Minn. R. Juv. Prot. P. 24.01, subd. 2, 3.

The statutes D.P. cites are not applicable. The district court did not err by denying D.P.’s motion for a custody determination.⁵

Modifying Parental Visitation

D.P. claims that the district court erred by denying his motion to modify parental visitation within the permanent-custody order. D.P. asserts that the district court failed to conduct its required best-interest-of-the-child analysis before denying modification. We will not reverse a district court’s decision regarding modifying parental visitation in a post-permanency proceeding absent an abuse of discretion. *See L.A.B.*, 30 N.W.3d at 142 (reviewing district court’s modification of parenting time in juvenile-protection matter for an abuse of discretion).

Modifications to orders granting a relative the permanent custody of a child are governed by Minnesota Statutes section 260C.521, subdivision 2 (2024). As stated before, this statute directs that the standards for modification are found within sections 518.18 and 518.185. Minn. Stat. § 260C.521, subd. 2(a). Because D.P. seeks modification of parental visitation established within the permanent-custody order, section 518.18 applies. *See A.H.* 879 N.W.2d at 6 (“The juvenile protection statute does not give the juvenile court authority to award, much less modify, visitation under Minn. Stat. § 518.175, although it may apply

⁵ We acknowledge that D.P. loves and cares for his children. But our role is to review whether the district court erred, not make policy decisions. We must apply the law plainly. *See* Minn. Stat. § 645.16 (2024) (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”); *see also Buntje v. Buntje*, 511 N.W.2d 479, 482 (Minn. App. 1994) (acknowledging a father’s persuasive policy arguments but ultimately upholding explicit statutory language).

the standards of Minn. Stat. §§ 518.18, .185.” (quotation omitted)). As previously stated, to modify an order under section 518.18, the district court *must* find a change in circumstances. Minn. Stat. § 518.18(d).

Here, the district court determined that D.P. failed to establish a change in circumstances. This failure was terminal to D.P.’s motion to modify the order. Thus, the district court did not err by denying modification of parental visitation without conducting a best-interest analysis.

Affirmed.