FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
APRIL 28, 2022
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 88

Kelsie R. Eckroth, Plaintiff and Appellee

v.

Nathaniel Eckroth, Defendant and Appellant

and

State of North Dakota, Statutory Real Party in Interest

No. 20220007

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Cynthia M. Feland, Judge.

AFFIRMED.

Per Curiam.

Erin L. Melling, Hettinger, ND, for plaintiff and appellee; submitted on brief.

Laura C. Ringsak, Bismarck, ND, for defendant and appellant; submitted on brief.

Eckroth v. Eckroth
No. 20220007

Per Curiam.

[¶1] Nathaniel Eckroth appealed from an order denying his motion to modify primary residential responsibility of the child he has with Kelsie Eckroth and an order denying what he entitled a "motion for reconsideration," but which was in fact a motion for relief under N.D.R.Civ.P. 60(b). Nathaniel Eckroth argues the district court erred in concluding he failed to establish a prima facie case justifying a modification and the court abused its discretion by denying his motion for relief. We conclude the record is insufficient to establish a prima facie case that there has been a material change in circumstances and that modification is necessary to serve the child's best interests. *See Johnshoy v. Johnshoy*, 2021 ND 108, 961 N.W.2d 282 (holding party moving for modification of residential responsibility must show that there has been a material change in circumstances and that modification is in the child's best interests to establish a prima facie case, and it requires more than showing improvement in the moving party's situation). We also conclude the court did not abuse its discretion by denying the motion for relief. We summarily affirm under N.D.R.App.P. 35.1(a)(4) and (7).

[¶2] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte