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In Supreme Court

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In re the Estate of Leonard Earl Jotham
a/k/a Leonard E. Jotham, a/k/a Leonard Jotham

**BRIEF, ADDENDUM AND APPENDIX
OF APPELLANT SANDRA BARNETT**

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STATEMENT OF THE ISSUE

MAY A SIBLING CHALLENGE THE ESTABLISHED PARENTAGE OF ANOTHER SIBLING IN A MINNESOTA INTESTACY PROCEEDING?

The District Court held in the negative; the Court of Appeals held in the affirmative.

- *In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222, 228 (Minn. Ct. App.), review denied, 2004 Minn. LEXIS 208 (Apr. 22, 2004).
- *Michael H. v. Gerald D.*, 491 U.S. 110, 119-20 (1989).
- *In re Trust Created by Agreement by Johnson*, 765 A.2d 746, 749 (N.J.), cert. denied, 534 U.S. 889 (2001).
- *In the Matter of Lamey*, 689 N.E.2d 1265 (Ind. Ct. App. 1997).
- Minnesota Parentage Act (Minn. Stat. §§ 257.51 through 257.74 (2004)).

STATEMENT OF THE CASE

On June 8, 2004 decedent Leonard Earl Jotham (“Leonard”), died intestate. A.1. Leonard’s second wife and then-spouse Selma Marie Jotham filed a Petition for Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Administrator in Crow Wing County District Court. A.1. The Petition identified Appellant Sandra Barnett, f/k/a Sandra Jotham (“Sandra”), age 57, and Respondent Diann Nelson, f/k/a Diann Jotham (“Diann”), age 62, as Leonard’s two children. A.2. Sandra and Diann were born to Leonard’s first wife, Margaret J. Daidone (“Margaret”). A.8.

Diann objected to the Petition and challenged the status of Sandra as Leonard’s daughter and heir. A.6. The matter was assigned to the Honorable John R. Leitner. Pursuant to Judge Leitner’s instructions, the parties prepared stipulated facts, and each submitted legal memoranda. A.8. With her memorandum, Diann sought to offer affidavit testimony to challenge the statutory presumption of the parent-child relationship that exists between Sandra and Leonard under the Minnesota Parentage Act (Minn. Stat. § 257.51 *et seq.*).¹ Respondent’s Brief in Court of Appeals at 2. Sandra responded that Diann had no standing to challenge her paternity, and that if Diann had standing, her challenge was untimely. *Id.* at 4-9. By Order filed February 4, 2005, the District Court concluded that, based upon the stipulated facts and the application of the Parentage Act, Diann could not present evidence to challenge Sandra’s parentage. A.10. It determined Sandra to be Leonard’s daughter and heir as a matter of law. A.11.

¹ For the Court’s convenience a copy of the Minnesota Parentage Act (Minn. Stat. §§ 257.51 through 257.74 (2004)) is attached as Appellant’s Addendum.

Diann appealed. A panel of the Court of Appeals (opinion by Willis, J.) reversed. A.15. The panel held that a sibling, in an intestacy proceeding, may offer evidence to rebut the presumption of paternity conclusively established under the Parentage Act, regardless of the standing requirements and the time limitations contained within that Act. *Id.*

Sandra filed a Petition for Further Review with this Court. Diann filed an opposition to the Petition.² By Order filed December 13, 2005, this Court granted Sandra's Petition.

STATEMENT OF FACTS

Leonard married Margaret in 1942. A.8. Diann was born during their marriage. *Id.* Leonard and Margaret were divorced in 1947. *Id.* Fewer than 280 days after the Judgment and Decree in the divorce, Sandra was born. *Id.* Sandra's birth certificate identifies her as "Sandra Jotham" and names Leonard as her father. *Id.* Sandra lived with Leonard for a portion of her childhood.³ Neither Leonard nor Margaret ever took any steps to challenge the judicial presumption of the parent-child relationship between Leonard and Sandra. A.13-A.14. Leonard never excluded Sandra from his estate by a will, and until his death he was her father from all legal perspectives.

² Diann's opposition contained no conditional request for review of additional issues.

³ Sandra disputes many of the factual allegations from the affidavits submitted by Diann that the Court of Appeals has ruled to be admissible. [See Appellant's Appendix in Court of Appeals at A.10-A.13.] However, there is no dispute that Sandra lived with Leonard for a portion of her childhood. [*Id.* at A.10.]

STANDARD OF REVIEW

Because this case involves statutory construction, this Court's review is de novo.

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 31, 1974 ("In re December 1974 Trust"), 674 N.W.2d 222, 228 (Minn. Ct. App.), *review denied*, 2004 Minn. LEXIS 208 (Apr. 22, 2004) (statutory construction is a question of law requiring de novo review).

ARGUMENT

I. SUMMARY OF THE ARGUMENT.

The parent-child relationship is a deeply personal one. It is created by, and a matter between, the parents and the child, and ought not be subject to interference by anyone—including a sibling. It is also well established that people ought not live their lives with uncertainty as to their parentage. Courts and lawmakers throughout the country for decades have recognized that permitting a parentage challenge by collateral heirs in the context of an intestacy proceeding “would be to strike a heavy blow at the sacredness of family ties, keep the honor of the wife and children in a condition of constant trepidation, and allow the foundation of society to be at all times exposed to tottering and upturning.” *Beard v. Vincent*, 141 So. 862, 864 (La. 1932) (citation omitted). In adopting the Uniform Parentage Act the Minnesota State Legislature upheld these principles by strictly limiting parentage challenges (a) to persons directly involved in the parent-child relationship, and (b) only during a limited period of time after the birth of a child.

In 1948 Sandra was born, and for over fifty years neither Leonard nor Margaret made any effort to disturb the parentage set forth on her birth certificate and presumed by law. Leonard chose not to create a will and transfer his property to persons other than those set forth in the law of Minnesota. Notwithstanding that Leonard never chose to challenge his parentage of Sandra, the Court of Appeals has decided that his other daughter may seek to defeat that long-recognized relationship in order to benefit at Sandra's expense. This result flies in the face of the Minnesota Parentage Act and the policies it implements.

II. DIANN IS BARRED FROM CHALLENGING SANDRA'S ESTABLISHED PARENTAGE.

A. Because the Purpose of Minnesota Parentage Act is to Preserve Family Integrity and Privacy, Challenges to Parent-Child Relationships Can Be Brought Only by Specified Persons and Only in Limited Circumstances.

The Minnesota Parentage Act is designed to promote the legitimacy of children, and to prevent persons apart from those directly involved in a parent-child relationship from destroying family integrity and privacy by challenging the parentage of a child born during or within 280 days of a marriage. *See Pierce v. Pierce*, 374 N.W.2d 450, 452 (Minn. Ct. App. 1985) (clear statutory purpose of the Minnesota Parentage Act is promoting legitimacy); Minn. Stat. § 257.52 (2004) (as used in the Parentage Act, "parent and child relationship" means the legal relationship between a child and the child's parents "to which the law confers or imposes rights, privileges, duties, and obligations").

The Minnesota Parentage Act makes no distinction between a child born during a marriage and a child born within 280 days of a marriage's termination—both are presumed

to be the biological child of the married couple. Minn. Stat. § 257.55, subd. (1) (2004). As a legal matter, therefore, a child born within 280 days of the termination of a marriage is one born during a marriage. Sandra, as with any other child born to a marriage, is legally presumed to be Leonard and Margaret's child.

In order to promote the policies of family stability and privacy, parentage statutes provide that actions to challenge the parentage of children born during or immediately after a marriage can be brought only by specified persons and only in limited circumstances. In upholding a state's standing requirements in its paternity act, the United States Supreme Court, through Justice Scalia, explained some of the important social policy considerations for imposing such limitations:

While §621 [California paternity statute] is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law. California declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during and born into, an existing marriage was begotten by someone other than the husband As the Court of Appeals phrased it "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family should not be impugned." Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would otherwise be destructive of family integrity and privacy.

Michael H. v. Gerald D., 491 U.S. 110, 119-20 (1989) (citation omitted); *see also In re December 1974 Trust*, 674 N.W.2d at 232 (citing *Michael H.* with approval in rejecting third-party parentage challenges).

To foster the best interests of children, and to preserve familial relationships and privacy interests, these statutory limitations for challenging the parent-child relationship are absolute. The presumption of legitimacy for a child born during or immediately after a marriage is conclusive and irrefutable unless the person challenging the presumption meets the statutory requirements to do so. *See Michael H.*, 491 U.S. at 120-21; *In re December 1974 Trust*, 674 N.W.2d at 232.

B. The Standing and Timeliness Provisions of the Minnesota Parentage Act Bar Diann's Parentage Challenge.

The Minnesota State Legislature established strict procedural limitations regarding challenges to the parent-child relationships protected by the Parentage Act. These procedural limitations bar Diann's challenge of Sandra's parentage, as she is neither a person with standing to make such a challenge nor is her challenge timely.

1. Standing.

The Parentage Act specifically limits standing to challenge the presumed parentage of a child born to a marriage to three persons: the child; the child's biological mother, or the man presumed to be the father. Minn. Stat. § 257.57, subd. 1 (2004); *In re December 1974 Trust*, 674 N.W.2d at 231 (presumption of parentage may be rebutted "only by the child, the mother, or the presumptive father"); *Markert v. Behm*, 394 N.W.2d 239, 242 (Minn. Ct. App. 1986) (statute confers standing "only" to those persons specified). There is no exception for a sibling such as Diann. *In re December 1974 Trust*, 674 N.W.2d at 231 ("The parentage act's standing requirements contain no exceptions."). Diann has no standing to challenge Sandra's parentage.

2. Timeliness.

Even if Diann had standing to challenge her sister's parentage, her efforts to do so are time barred. In Minnesota, "[p]aternity and nonpaternity actions receive distinct treatment," as actions "to establish paternity can be brought at any time, while actions to declare the non-existence of the parent-child relationship are subject to various statutes of limitations [established by the Parentage Act]." *Dorman v. Steffan*, 666 N.W.2d 409, 412 (Minn. Ct. App. 2003). This Court has confirmed that "the right to establish family relations is 'inherent and inalienable,'" and that the "establishment of the parent-child relationship is the most fundamental right a child possesses to be equated in importance with personal liberty and the most basic constitutional rights." *Johnson v. Hunter*, 447 N.W.2d 871, 876 (Minn. 1989) (citations omitted).

There is no similar support in the law for persons such as Diann seeking to defeat or "disestablish" such relationships. The public policy supporting the strict statutes of limitations on paternity challenges—fully applicable to this case—was explained in *Clay v. Clay*, 397 N.W.2d 571, 577 n.3 (Minn. Ct. App. 1987):

[P]ublic policy is served when a party must within three years after a child's birth bring an action to declare non-parentage, when parentage has been presumed by law because of a marriage or attempted marriage, and such a declaration of non-parentage would deprive a child of legal and social benefits previously enjoyed.

The absolute time limit for a challenge with respect to parentage of a child born during or within 280 days of a marriage is three years after the birth of the child without

regard to discovery of facts questioning parentage.⁴ Minn. Stat. § 257.57, subd. 1(b) (2004) (action must be brought “in no event later than three years after the child’s birth”) (emphasis added); see also *Pierce v. Pierce*, 374 N.W.2d 450, 452 (Minn. Ct. App. 1985) (“The three-year statute of limitations is absolute in that it bars action *even if* the presumed father obtains knowledge of the illegitimacy after the running of the statute”) (emphasis in original); *In re December 1974 Trust*, 674 N.W.2d at 231 (even if scientific evidence exists to exclude biological paternity, “the three year statute of limitations contained in the Minnesota Parentage Act is an absolute bar to an action to declare the father-child relationship non-existent”) (quoting *DeGrande v. Demby*, 529 N.W.2d 340, 343-44 (Minn. Ct. App. 1995)). Even for those with standing to challenge Sandra’s parentage, the time to do so passed many years ago.

⁴ The statute provides that, if the parents are divorced and the presumed father does not know of the birth of the child, the challenge is not barred until the earlier of one year after the child reaches the age of majority or the father knows or reasonably should have known of the birth of the child. Minn. Stat. § 257.57, subd. 1. Even if the facts were that Leonard never knew of Sandra’s birth (which, of course, he did, given that she lived with him as a child and shared his name), any challenge to Sandra’s parentage would have had to have been made more than thirty years ago.

C. **Permitting Diann's Challenge to Sandra's Parentage Would Be in Direct Conflict With Established Law in Minnesota and Throughout the United States.**

Diann should not be allowed to make an impermissible end-run around Minnesota's statutory limitations to parentage challenges by objecting to parentage in an intestacy proceeding. To do so would contravene the strong public policy underlying Minnesota law. *See In re December 1974 Trust*, 674 N.W.2d at 232 (state legislature has limited who may challenge parentage and when such challenges must be made by the provisions of the Parentage Act).

Courts in numerous other jurisdictions uniformly have recognized the pitfalls of parentage challenges by persons not directly involved in the parent-child relationship, and have, therefore, precluded such challenges, whether made in the context of heirship or other proceedings. *See, e.g., Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (sister of decedent precluded in property dispute from attacking parentage of decedent's son, once presumption of legitimacy had become conclusive); *Beard v. Vincent*, 141 So. 862, 863-64 (La. 1932) (collateral heirs of intestate decedent barred from challenging parentage of child born during marriage); *Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (collateral kindred of trust settlor had no right to challenge parentage of settlor's legitimate child in an effort to exclude the child as a trust beneficiary); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. Sup. Ct. 1967) (wrongful-death defendant precluded from challenging the paternity of victim's child); *Byrd v. Travelers Ins. Co.*, 275 S.W.2d 861, 863-64 (Tex. Civ. App. 1955) (parents of deceased could not challenge paternity of the deceased's son in order to obtain worker's compensation benefits); *In re Paternity of*

Vainio, 943 P.2d 1282, 1285 (Mont. 1997) (siblings lacked standing to file a petition challenging the paternity of their sister); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock as part of a wrongful-death action); *M.H.E. v. B.E.*, 864 So. 2d 351, 354 (Ala. Civ. App. 2002) (mother of decedent had no standing to file a petition challenging the parentage of decedent's child born during decedent's marriage in order to curtail child-support payments to the child); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock as part of a compensation dispute).

One such decision with strikingly similar facts to the present case is *In the Matter of Lamey*, 689 N.E.2d 1265 (Ind. Ct. App. 1997). In *Lamey*, a decedent's brother sought an order requiring the decedent's child to submit to blood testing based on an Indiana statute permitting petitions to determine heirs. *Id.* at 1267. As with Sandra, the child was presumed to be the child of the decedent by statute. The *Lamey* court refused to allow the blood tests, and instead held that the presumption of paternity that arose from the Indiana paternity statute barred any challenge by the uncle. *Id.* at 1268-69. The court held that the uncle had no standing to attempt to defeat paternity, and stated that "Uncle is attempting to do what Decedent himself would be precluded from doing if he were still alive"—exactly what is happening here. *Id.* at 1269.

The *Lamey* court further rejected the uncle's claim that he was only seeking to determine heirship, as opposed to bringing an action to determine paternity:

Uncle asserts that he is not bound by the above-mentioned statutorily imposed limitations because he is not bringing an action to determine paternity, but is merely seeking to determine heirship. . . . As mentioned above, in the present case there is no practical difference between these two types of actions. Moreover, the laws of this state do not expressly authorize a third party, who is *not* asserting paternity in the child, to petition the court for a mandatory determination of a child's paternity, under the guise of an "heirship" challenge, when the child was born into an intact marriage. We decline Uncle's invitation to judicially create such a law.

Id. (emphasis in original).

Finally, the *Lamey* court explained that to allow the uncle's action would be contrary to the "long held public policy against the disestablishment of paternity" and would "abrogate our public policy of promoting family harmony." *Id.* at 1270.

The Florida Supreme Court dealt with a similar situation in *Theis v. City of Miami*, 564 So. 2d 117 (Fla. 1990), where it determined that public policy precludes the government, as an employer, from challenging parentage of a child born during a lawful marriage for purposes of determining entitlement to workers' compensation benefits:

In keeping with the basic purpose of workers' compensation legislation and the public policy favoring the legitimization of children, we can find no logical basis for distinguishing a child who is recognized by law as a legitimate child from a biological child in determining entitlement to workers' compensation death benefits.

Id. at 119. *See also Johnson Controls, Inc. v. Forrester*, 704 N.E.2d 1082, 1085 (Ind. Ct. App. 1999) (to allow a wrongful-death action defendant to challenge the paternity of a child born into an intact marriage "would open the door for a paternity challenge in every wrongful death case where the decedent is survived by a dependant child. The public policy of this state promoting family harmony will not allow such attacks.").

III. THE COURT OF APPEALS ERRED BY DETERMINING THAT DIANN'S PARENTAGE CHALLENGE WAS NOT BARRED BY THE PARENTAGE ACT'S STANDING AND TIMELINESS REQUIREMENTS.

In permitting Diann to challenge Sandra's parentage, the Court of Appeals ignored the standing and timeliness limitations imposed by the Parentage Act, as well as the Parentage Act's fundamental purpose of promoting family harmony and stability. It ruled that (a) Diann was not precluded by the Parentage Act's standing requirements because her challenge to the parent-child relationship between Sandra and Leonard was not brought under the Parentage Act, and (b) Minnesota law permits interested persons in probate proceedings to seek to rebut the presumption of the parent-child relationship, notwithstanding the limitations period within the Parentage Act. Neither of these rulings withstands scrutiny.

A. Subdivision 2 of Section 257.55 of the Parentage Act Creates an Evidentiary Standard, Not an Open Door for Third-Party Parentage Challenges.

Subdivision 1 of Section 257.55 identifies the various circumstances that create a presumption of fatherhood. Subdivision 2 then explains that the presumption "may be rebutted in an appropriate action only by clear and convincing evidence." Relying upon Subdivision 2, the Court of Appeals concluded that the Parentage Act does not preclude Diann (or indeed anyone) from challenging a deceased father's paternity of his child in a probate action. The Court of Appeals concluded that an "appropriate action" is not limited to one brought under the Parentage Act, and that the standing requirements in that Act (regarding who may challenge paternity) have no application to actions not expressly brought under the Act. A.21-A.22. The Court of Appeals thus sanctioned a parentage

challenge in a probate proceeding without regard to the standing and time limitations of the Parentage Act.

The interpretation that Court of Appeals gave to the language of section 257.55, subd. 2 was flatly rejected in *P.G. v. G.H.*, 857 So. 2d 823 (Ala. Civ. App. 2002). In *P.G.*, a putative father sought a determination relating to the parentage of a child born to an intact marriage between another man and a woman. The trial court ruled that the putative father, P.G., had standing to attempt to rebut the existing presumption of parentage based upon the “appropriate action” language of the Alabama Parentage Act identical to section 257.55, subd. 2 of the Minnesota Act (both acts are based upon the Uniform Parentage Act of 1973). The Alabama appellate court reversed and dismissed P.G.’s action for lack of standing, as it held that the “appropriate action” language of the comparable Alabama statute did not expand the class of persons with standing set forth in the Parentage Act, but only addressed the evidentiary standard in actions specifically authorized by the Act’s standing provisions:

The trial court based its decision in favor of G.H. on Ala. Code 1975, § 26-17-5(b), which states, in pertinent part, that “[a] presumption of paternity under [§ 26-17-5(a)] may be rebutted in an *appropriate action* only by clear and convincing evidence.” (Emphasis added.) **The purpose of § 26-17-5(b) is to set out an evidentiary standard; that section applies “in an appropriate action” and does not expand the substantive rules of standing set forth in § 26-17-6(a).**

P.G., 857 So. 2d at 828 (emphasis added).⁵ The *P.G.* court’s rationale should be followed here, as it defies logic that the State Legislature would establish strict standing

⁵ Section 26-17-6(a) of the Alabama Code is largely identical to Minn. Stat. § 257.57, subd. 1(a).

provisions in the Parentage Act (§ 257.57, subd. 1), only to render such provisions meaningless by permitting anyone to mount a parentage challenges in actions not brought directly under the Act.

The obvious goal of Diann's objection is to defeat Sandra's established parentage in order to obtain more monetary gain for herself. The Court of Appeals erred because in such cases, courts recognize the litigation for what it is—a parentage challenge—regardless of the label or statutory scheme used by the party pursuing the challenge.⁶

For example, in *In re December 1974 Trust*, a separate panel of the Court of Appeals rejected a parentage challenge brought by trustees under a Minnesota statute permitting trustees to seek judicial instructions regarding trust management:

We agree with [the trustees'] contention that [they] have standing to request trust clarification pursuant to Minn. Stat. § 501B.16. But section 501B.16 does not thereby confer standing upon the trustees to challenge the [children's] paternity by bringing a collateral attack of a preexisting adjudication of parentage made consistent with applicable parentage laws.

In re December 1974 Trust, 674 N.W.2d at 228. It rejected the trustees' contention that they were only seeking trust clarification and instructions, and instead confirmed that the "kernel of the trustees' petition" was an attempted challenge of paternity, without which the petition would contain no practical request for relief. *In re December 1974 Trust*, 674 N.W.2d at 228⁷; see also *In the Matter of Lamey*, 689 N.E.2d at 1269 (where an action to

⁶ This is true whether the litigation is brought under Chapter 257 or some other statute.

⁷ Citing the United States Supreme Court decision in *Michael H. (supra)*, the Court of Appeals in *In re December 1974 Trust* ruled that "[g]iven the clear statements of policy expressed by the parentage act, we cannot conclude that the legislative intent embodied in that act would be furthered were we to permit third-party challenges to prior adjudications of paternity." 674 N.W.2d at 232.

identify heirs will necessarily require an action to determine paternity, “there is no practical difference between these two type of actions”). Here, the “kernel” of Diann’s objection is her affirmative challenge to Sandra’s parentage. Absent a determination that Sandra is not Leonard’s child, Diann’s objection to the intestacy petition is meaningless.

All the decisions cited *supra* at 10-12 recognize that permitting parentage challenges by persons not directly involved in the parent-child relationship in actions not brought under the Parentage Act would open a Pandora’s Box. Wrongful-death actions, claims under government entitlement programs, and estate / gift-tax disputes provide ample incentive for third parties to challenge established parent-child relationships that family members take for granted. It is also easy to picture the Probate Court clogged with cases featuring suspicions by siblings or remote contingent heirs that an individual was not “really” the child of a decedent, testator or trust settlor if the Parentage Act’s standing limitations can be ignored. In many cases (such as this one), courts will be forced to order the exhumation of corpses to sustain or refute the suspicions. In other cases, heirs with a right to inherit will be forced to compromise their right, either because they cannot afford the legal expense involved or wish to spare themselves and their family the pain of a prolonged inquiry. In virtually all cases, the challenge will rupture the family and potentially deprive the individuals in question of legal and social benefits to which they are entitled—results which the Parentage Act is specifically designed to prevent. *See, e.g., In re December 1974 Trust*, 674 N.W.2d at 232; *Clay v. Clay*, 397 N.W.2d at 577.

The law has recognized Sandra as Leonard’s daughter for her entire life, and has conferred upon her the rights and obligations as his child. Allowing Diann, a collateral

heir, to challenge Sandra's status as Leonard's daughter would be in direct conflict with Minnesota law and social policy. Such a challenge should not be permitted.

B. Contrary to an Attempt to *Establish* Parentage, Diann's Challenge to Sandra's Parentage is Subject to the Parentage Act's Time Limitations, Even if She Had Standing.

The Court of Appeals cited this Court's decision in *In re Estate of Palmer*, 658 N.W.2d 197, 200 (Minn. 2003) as support for its ruling that Diann's challenge to Sandra's parentage was not barred by the limitations period of the Parentage Act. The *Palmer* decision, however, is inapplicable to the facts here. At issue in *Palmer* was whether a child with standing, and seeking to **establish** his parentage, was necessarily bound by the time limitations of the Parentage Act.

In *Palmer*, this Court merely held that evidence could be offered to establish the parent-child relationship, regardless of the Parentage Act's time restrictions. *Palmer*, 658 N.W.2d at 200. In reaching its decision, this Court relied upon the New Jersey Supreme Court's decision in *Wingate v. Ryan*, 693 A.2d 457 (N.J. 1997). As with *Palmer*, the *Wingate* case also concerned a putative heir's attempt to establish paternity after the time limit for establishing paternity under the New Jersey Parentage Act had expired. *Palmer*, 658 N.W.2d at 199-200. The New Jersey Supreme Court determined that the parentage act's time limit did not bar a child seeking to **establish** a parent-child relationship. *Wingate*, 693 A.2d at 463-64.

The situation here is the diametrical opposite of *Palmer* and *Wingate*. Here, an outsider to the parent-child relationship conclusively presumed under the Minnesota Parentage Act is seeking to **defeat** that parent-child relationship. This very issue was

directly addressed by the New Jersey Supreme Court in *In re Trust Created by Agreement by Johnson*, 765 A.2d 746, 749 (N.J.), *cert. denied*, 534 U.S. 889 (2001). In *Johnson*, the New Jersey Supreme Court expressly limited its decision in *Wingate* to cases of a child seeking to **establish** parentage. *Johnson*, 765 A.2d at 755.

In *Johnson*, siblings⁸ sought to collaterally challenge their sister's established parentage in the context of a trust proceeding. The siblings—just as Diann did here—based their argument on *Wingate* and certain legislative enactments, including a provision in the New Jersey Probate Code that the parent-child relationship “may be established . . . regardless of the time limitations set forth in [the Parentage Act].” *Id.* at 754 (emphasis added). (Compare to Section 524.2-114(2) of Minnesota Probate Code, using the same permissive language.) In foreclosing the siblings' and other family members' efforts, the New Jersey Supreme Court refused to broaden its earlier decision in *Wingate* to cases in which parentage is challenged:

Because those amendments [in the New Jersey Probate Code] authorize a potential heir of a decedent to contest a will or a trust in the context of a probate proceeding, the Appellate Division here reasoned that third parties in a like proceeding may collaterally attack an adjudication of parentage made in an earlier divorce action. **We reject that reasoning. We interpret *Wingate* and the amendatory enactments more narrowly to apply principally to parties seeking to establish or confirm their parentage, as opposed to those seeking to defeat the established parentage of others.**

Id. at 754-55 (emphasis added). The New Jersey Supreme Court further confirmed that the Parentage Act “essentially forecloses a third-party attack on [the sister's] parentage.”

Id. at 755.

⁸ The siblings were joined in their efforts by certain other family members.

This Court in *Palmer* adopted the New Jersey Supreme Court's reasoning in *Wingate* for cases in which a party seeks to establish a parent-child relationship. It should follow the same New Jersey Supreme Court's later sound reasoning in refusing to extend *Wingate* to third-party efforts to defeat established parent-child relationships. Such a result is consistent with the public policy of establishing and maintaining parent-child relationships, free from attack by persons not directly involved in such relationships. The *Johnson* court reaffirmed this policy in its decision, as it explained that "The [New Jersey Parentage] Act's language and history make it clear that the main thrust of the statute is to foster, not thwart, the parent-child relationship." *Johnson*, 765 A.2d at 754; compare *In re December 1974 Trust*, 674 N.W.2d at 232 (overriding social policy of the Minnesota Parentage Act mandates that the integrity of the family unit should not be impugned). The decisions in *Johnson* and *In re December 1974 Trust* are directly applicable to this case and should be followed as good law and sound public policy.

In addition to *Palmer*, the Court of Appeals invoked the principle that "the right to deny paternity defensively, [when] asserted to rebut a presumption of paternity . . . is not subject to time limitations." A.20 (quoting *In re State of Georgia ex rel. Brooks v. Braswell*, 474 N.W.2d 346, 349 (Minn. 1991)). Contrary to the Court of Appeals' ruling, however, Diann's objection was not a *defensive* denial of parentage.

Indeed, there is nothing "defensive" about Diann's objection. No action was brought against her as a defendant, much less sought to impose a legal duty upon her based upon an allegation that she was Sandra's parent. A denial of paternity is defensive

only when asserted by the presumed father of the child in an action seeking to enforce a legal duty that exists by reason of the parentage at issue. *See Braswell*, 474 N.W.2d at 350 (right to deny paternity, whether asserted to rebut the presumption of paternity or to defend against an allegation of paternity, may be exercised “by the defendant in any action in which it is alleged that he is the child’s father”); *cf. Reynolds v. Reynolds*, 458 N.W.2d 103, 104-05 (Minn. 1990) (explaining that the ability of a presumed father to raise a defense of non-paternity in a divorce action—in which the wife sought child support after the expiration of the three-year statute of limitations period in the Parentage Act—is a specific application of the principle that since a statute of limitations may only be used as a shield, not a sword, such a statute does not bar a party from raising a “*pure defense*”) (original emphasis).

The Court of Appeals also cited the Minnesota Probate Code § 524.2-114(2) and *Estate of Martignacco*, 689 N.W.2d 262 (Minn. Ct. App. 2004) in support of allowing Diann to challenge Sandra’s established parentage beyond the limitations period established by the Parentage Act. Neither the permissive language of § 524.2-114(2) nor the *Martignacco* case supports the Court of Appeals’ decision. Section 524.2-114(2) specifically references efforts to **establish** a parent-child relationship—it makes no reference to efforts to **defeat** such a relationship:

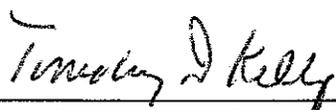
In cases not covered by clause (1) [pertaining to adoption], a person is the child of the person’s parents regardless of the marital status of the parents and the parent and child relationship *may be established* under the Parentage Act.

(Emphasis added.) Consistent with Section 524.2-114(2), in *Martignacco* a child was permitted to offer evidence to establish his relationship with a parent. *Martignacco*, 689 N.W.2d at 267-68. Nothing in the Probate Code or the relevant case law supports the Court of Appeals' conclusion that the phrase "may be established" Section 524.2-114(2) opens the door to a third-party, time-barred challenge to **defeat** parentage conclusively established by the Minnesota Parentage Act. The *Johnson* case confirmed that the language in New Jersey's Probate Code (which is similar to the language in Minnesota Statutes § 524.2-114(2)) does not permit parentage challenges beyond the scope of New Jersey's Parentage Act. *Johnson*, 765 A.2d at 754-55. There is no sound legal or policy basis to support a contrary result here.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that this Court reverse the Court of Appeals' decision and reinstate the district court's decision.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).