



NO. A10-1098

State of Minnesota  
**In Supreme Court**

OFFICE OF  
APPELLATE COURTS

NOV 18 2010

FILED

In re the Custody of: D.T.R.

Michael L. Richards,

*Respondent,*

vs.

Derek Reiter,

*Respondent,*

and

Lynette A. Marthe,

*Appellant.*

**BRIEF OF APPELLANT LYNETTE A. MARTHE**

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## Table of Contents

	<u>PAGE</u>
Table of Contents of Addendum & Appendix .....	ii
Table of Authorities.....	iii
Statement of Legal Issue .....	1
Statement of the Case.....	2
Statement of Facts .....	3
Summary of Argument.....	4
Argument .....	5
I.    Standard of Review .....	5
II.   Appellant Has Standing to Appeal.....	5
A.   Minnesota Common Law Provides Appellant With Standing to Appeal.....	6
B.   Appellant Has Standing to Appeal Under the Minnesota Parentage Act. ....	9
Conclusion .....	11

## Table of Contents of Addendum & Appendix

PAGE

### ADDENDUM

Amended Findings of Fact, Amended Conclusions of Law, Order for Amended Judgment and Amended Judgment dated April 23, 2010 .....	Add.1
Court of Appeals Order dated August 3, 2010 .....	Add.11
Minnesota Statute § 257.57 (2010).....	Add.14
Minnesota Statute § 257.60 (2010).....	Add.16

### APPENDIX

Petition for Custody dated August 11, 2008.....	A.1
Form 103A. Notice of Appeal (Court of Appeals) dated June 22, 2010.....	A.5
Court of Appeals Order dated July 9, 2010 .....	A.10
Appellant's Informal Memorandum Regarding Court of Appeal's Jurisdiction dated July 21, 2010 .....	A.14
Petition for Review of Decision of the Court of Appeals dated September 2, 2010 (without Appendix).....	A.18
Supreme Court Order granting review dated October 19, 2010 .....	A.24
<i>Nicholson v. Getchell</i> , No. C1-96-183, 1996 WL 523787 (Minn. Ct. App. Sept. 17, 1996) .....	A.25
<i>State v. D.E.A.</i> , No. A06-2426, 2007 WL 1816471 (Minn. Ct. App. June 26, 2007).....	A.30

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).

## Table of Authorities

PAGE

### MINNESOTA CASES

<i>City of St. Paul v. LaClair</i> , 479 N.W.2d 369 (Minn. 1992) .....	4, 5
<i>In re Custody of Child of Williams</i> , 701 N.W.2d 274 (Minn. Ct. App. 2005) .....	7
<i>Hanson v. Woolston</i> , 701 N.W.2d 257 (Minn. Ct. App. 2005).....	5
<i>Johnson v. Hunter</i> , 447 N.W.2d 871 (Minn. 1989) .....	6
<i>In re Lineban</i> , 557 N.W.2d 167 (Minn. 1996).....	5
<i>Mankato Aglime &amp; Rock Co. v. City of Mankato</i> , 434 N.W.2d 490 (Minn. Ct. App. 1989) .....	5
<i>Minn. State Bd. of Health v. City of Brainerd</i> , 241 N.W.2d 624 (Minn. 1976) .....	11
<i>Nicholson v. Getchell</i> , No. C1-96-183, 1996 WL 523787 (Minn. Ct. App. Sept. 17, 1996) .....	7
<i>Sooboo v. Johnson</i> , 731 N.W.2d 815 (Minn. 2007).....	9
<i>Spaeth v. Warren</i> , 478 N.W.2d 319 (Minn. Ct. App. 1991).....	7
<i>State v. D.E.A.</i> , No. A06-2426, 2007 WL 1816471 (Minn. Ct. App. June 26, 2007) .....	7
<i>State v. E.A.H.</i> , 75 N.W.2d 195 (Minn. 1956) .....	1, 4, 6, 7, 8
<i>State v. Sax</i> , 42 N.W.2d 680 (Minn. 1950) .....	1, 6, 7
<i>Sweep v. Sweep</i> , 358 N.W.2d 451 (Minn. Ct. App. 1984).....	4, 11
<i>Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health</i> , 257 N.W.2d 343 (Minn. 1977) .....	11
<i>In re Welfare of C.M.G.</i> , 516 N.W.2d 555 (Minn. Ct. App. 1994).....	4, 7

*Zentz v. Graber*, 760 N.W.2d 1 (Minn. Ct. App. 2009) .....7, 10

FEDERAL CASES

*Troxel v. Granville*, 530 U.S. 57 (2000)..... 9

STATUTES

Minn. Stat. §§ 257.51-257.74..... 4

Minn. Stat. § 257.55..... 11

Minn. Stat. § 257.57..... 1, 9, 10, 11

Minn. Stat. § 257.60..... 1, 2, 10, 11

## Statement of Legal Issue

Does a mother, a named party in a district court proceeding to determine parentage of her own child, have standing to appeal an adverse decision in that case?

The Court of Appeals, on its own initiative, held she did not have standing to appeal, and dismissed her appeal.

### **Apposite authorities:**

*State v. E.A.H.*, 75 N.W.2d 195 (Minn. 1956).

*State v. Sax*, 42 N.W.2d 680 (Minn. 1950).

MINN. STAT. § 257.57. Determination of Father and Child Relationship; Who May Bring Action; When Action May Be Brought.

MINN. STAT. § 257.60. Parties.

## Statement of the Case

This case arises out of a paternity dispute in which the Respondent Michael Richards, a man who is the biological father of Appellant's minor son D.T.R., sued Appellant and her ex-husband, Derek Reiter, to establish paternity. The Minnesota Parentage Act required that Mr. Richards join Appellant as a party in the paternity action, MINN. STAT. § 257.60, and she was properly joined. Neither the parties nor the trial court questioned Appellant's standing in the proceeding.

In the district court proceeding, Appellant argued that Mr. Richards should be declared D.T.R.'s legal father; the district court ruled against her. *Add.8*. Appearing pro se, Appellant appealed that decision to the Court of Appeals. *A.5*.

On July 9, 2010, the Court of Appeals, on its own initiative, issued an Order directing the parties to file informal memoranda on whether Appellant has standing to appeal the dismissal of Mr. Richards' petition. *A.12*. Appellant filed a memorandum explaining why she has standing to challenge an adverse determination of her minor son's paternity. *A.14*. On August 3, 2010, the Court of Appeals concluded that Appellant does not have standing to appeal and issued an order dismissing her appeal, *Add.12-13*, even though Appellant is the mother of the minor child, was named as a party in the proceeding below, and has legally recognized interests in the parentage, care, custody, control and support of her son.

Appellant filed a timely Petition for Review of Decision of The Court of Appeals with this Court on September 2, 2010. *A.18*. This Court granted that Petition for Review on October 19, 2010. *A.24*.

Petitioner requests oral argument.

## Statement of Facts

Appellant is the mother of D.T.R., *Add.4*, a minor child born in 2004. *Add.2*. When D.T.R. was born, Appellant was married to Derek Reiter, *A.6*, and both believed that Mr. Reiter was D.T.R.'s father. *A.5*. Through genetic testing, Appellant later learned that Michael Richards is D.T.R.'s biological father. *A.2,3*. Mr. Richards petitioned the trial court to determine that he is the legal father of D.T.R. and named Appellant as a party. *A.1*. All parties stipulated that Mr. Richards is D.T.R.'s biological father. *Add.2*. Moreover, Appellant agreed that Mr. Richards should be declared D.T.R.'s legal father. *A.4*. The trial court nevertheless ruled that Derek Reiter is D.T.R.'s legal father in its Amended Findings of Fact, Amended Conclusions of Law, Order for Amended Judgment and Amended Judgment dated April 23, 2010. *Add.8*. The trial court therefore dismissed Mr. Richards' petition. *Id.*

Appellant appealed that adverse decision to the Court of Appeals. *A.5*. When the Court of Appeals, on its own initiative, directed the parties to file informal memoranda on whether Appellant has standing to appeal, Appellant explained how her interests were injured by the district court's order, including but not limited to the following:

Reiter has opposed the educational choices Marthe has chosen for D.T.R. Reiter has registered D.T.R. for activities, classes and events that overlap the parenting time of Marthe without consulting Marthe. Reiter has also violated the two hour "first right of refusal" for caring for D.T.R. option set out in the temporary order. Conversely, Richards has been openly communicative with Marthe about educational choices, sharing parenting time.

*A.16*. Despite the fact that Appellant is the mother of D.T.R., who is a minor, the Court of Appeals on August 3, 2010, concluded that Appellant does not have standing to appeal and issued an order dismissing her appeal. *Add.12-13*.

## Summary of Argument

Appellant has standing to appeal the district court's paternity determination.

"Standing to appeal is conferred when there is injury to a legally protected right." *City of St. Paul v. LaClair*, 479 N.W.2d 369, 371 (Minn. 1992) (citations omitted). Minnesota case law and the Minnesota Parentage Act ("MPA") both have recognized that a mother has a legally protected interest in the paternity determination of her minor child. Because the district court's adverse determination below injures Appellant's legally protected right, she has standing to appeal.

First, Minnesota case law unambiguously allows a mother to appeal an adverse paternity determination. In *State v. E.A.H.*, this Court expressly held that a mother has standing to appeal from a judgment of non-paternity. 75 N.W.2d 195, 200 (Minn. 1956). Minnesota courts have followed *E.A.H.* by repeatedly allowing mothers to appeal adverse paternity determinations. *See, e.g., In re Welfare of C.M.G.*, 516 N.W.2d 555, 557 (Minn. Ct. App. 1994) (mother appealed from a judgment establishing paternity in one presumed father rather than another).

Moreover, the MPA recognizes a mother's interest in the paternity of her child. *See* MINN. STAT. §§ 257.51-257.74. The MPA grants a mother standing to bring an action to determine the existence or nonexistence of a father-child relationship. *Add.14*. By giving a mother standing to bring an action, the MPA also gives a mother standing to appeal an adverse paternity determination. *Sweep v. Sweep*, 358 N.W.2d 451 (Minn. Ct. App. 1984). Moreover, when someone other than the mother brings such an action, the MPA even requires that a mother is joined as a "necessary" party. *Add.16*.

Even though *E.A.H.* grants a mother standing to appeal and the MPA expressly protects a mother's interest in participating in a paternity action, the Court of Appeals concluded that Appellant lacked standing to appeal the district court's adverse paternity ruling. *Add.12-13*. The Court of Appeals did not discuss the relevant Minnesota case law, did not recognize that the MPA grants Appellant standing to bring her own paternity action, and did not acknowledge that the MPA makes a mother a "necessary" party in a paternity dispute. The Court of Appeals thus erred and this Court should reverse the Court of Appeals' decision.

## Argument

### I. Standard of Review

Whether a party has standing to appeal is a question of law, which this Court reviews de novo. *See, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 261 (Minn. Ct. App. 2005).

### II. Appellant Has Standing to Appeal

Appellant has standing to appeal. "Standing to appeal is conferred when there is injury to a legally protected right." *City of St. Paul v. LaClair*, 479 N.W.2d 369, 371 (Minn. 1992) (citations omitted). Standing is "conferred either by statute or by status as an aggrieved party." *Id.* (citations omitted). "A person who is injuriously or adversely affected by a judgment when it operates on his rights of property or bears directly upon his personal interest is 'aggrieved' for the purposes of an appeal." *See Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989). For instance, this Court has recognized standing to appeal when a party is "adversely impacted by the district court's ruling." *In re Linehan*, 557 N.W.2d 167, 170 (Minn. 1996) (*judgment vacated on other grounds*).

Here, Appellant has standing to appeal under both Minnesota common and statutory law because both give her an interest in the paternity of her minor son, an interest which was adversely affected by the district court's ruling.

**A. Minnesota Common Law Provides Appellant With Standing to Appeal.**

This Court has long held that a mother has standing to appeal an adverse paternity determination. See *State v. E.A.H.*, 75 N.W.2d 195, 199-200 (Minn. 1956). In *E.A.H.*, a mother sought to establish paternity in the defendant, with whom she had carried on a relationship just prior to her marriage to another man. *Id.* at 197-98. When the defendant was adjudged not to be the father, the mother appealed. *Id.* The defendant argued that the mother lacked standing to appeal. *Id.* at 198. This Court disagreed, holding that the mother is an aggrieved party and thus has standing to appeal. *E.A.H.*, 75 N.W.2d at 200; see also *Johnson v. Hunter*, 447 N.W.2d 871, 875 (Minn. 1989) (citing *E.A.H.*'s holding that a "mother has standing to appeal judgment of nonpaternity. . .").

In reaching that holding, the *E.A.H.* Court relied significantly on the Court's prior holding in *State v. Sax*, 42 N.W.2d 680, 682 (Minn. 1950), in which the Court recognized a mother's standing to appeal an adverse child support obligation. In *Sax* this Court held: "We take the view that [a mother] has a definite personal financial interest in the amount of the award for support, and therefore that she is an aggrieved party entitled to appeal. . . ." *Id.* at 682. The Court in *Sax* also noted that Minnesota is consistent with a majority of jurisdictions, which have long recognized that illegitimacy proceedings are "for the mother's benefit." *State v. Sax*, 42 N.W.2d 680, 683-84 (Minn. 1950). The Court explained a mother's right to appeal broadly: "[W]hen the statute on illegitimacy is read as a whole, it appears that

many other sections give the mother rights which can only be adequately protected by giving her a standing in court, including the right to appeal.” *Id.* at 686. In *E.A.H.*, this Court expanded its holding in *Sax*, explaining that, if a mother has “a direct interest in the amount of [a child support] award . . . [she also has] a direct interest in determining the primary question as to who is father of the child.” 75 N.W.2d at 199.

Since *E.A.H.*, Minnesota Courts of Appeals repeatedly have allowed mothers to exercise their right to appeal parentage decisions without challenging standing. *See, e.g., Zentz v. Graber*, 760 N.W.2d 1 (Minn. Ct. App. 2009) (mother appealing finding that individual was presumed father); *State v. D.E.A.*, No. A06-2426, 2007 WL 1816471 (Minn. Ct. App. June 26, 2007) (mother appealed paternity adjudication involving two presumptive fathers) *A.30*; *In re Custody of Child of Williams*, 701 N.W.2d 274 (Minn. Ct. App. 2005) (mother appealed adjudication of paternity and related orders); *In re Welfare of C.M.G.*, 516 N.W.2d 555, 557 (Minn. Ct. App. 1994) (mother appealed from a judgment establishing paternity in one presumed father rather than another); *Spaeth v. Warren*, 478 N.W.2d 319 (Minn. Ct. App. 1991) (mother appealed adjudication of paternity for biological father and not husband); *Nicholson v. Getchell*, No. C1-96-183, 1996 WL 523787 (Minn. Ct. App. Sept. 17, 1996) (mother appealed summary judgment in paternity suit, which was granted to father on *res judicata* grounds). *A.25*.

In this case, the Court of Appeals did not discuss those decisions or *E.A.H.* even though *E.A.H.* is directly on point. Here, as in *E.A.H.*, a mother claimed that someone with whom she had carried on a relationship outside of her marriage was the biological father of her child. Here, as in *E.A.H.*, the husband had believed he was the father of the

Appellant's child. Here, as in *E.A.H.*, blood tests indicate the husband was not the biological father. Nevertheless, as in *E.A.H.*, the district court determined that the person with whom the mother had carried on a relationship was not the legal father of the child. In both cases, the mother filed an appeal to challenge an adverse ruling of paternity. In *E.A.H.*, this Court found that the mother had standing to appeal. Here, as in *E.A.H.*, this Court should find that Appellant has standing to appeal the district court's adverse ruling.

The Respondent, however, has argued that Appellant does not have standing because Appellant does not have a pecuniary interest in a paternity determination. That argument fails for two reasons. First, in *E.A.H.* the Respondent made the same argument before this Court and this Court rejected it. In *E.A.H.*, as in this case, child support was not an issue on appeal. 75 N.W.2d at 199. The Court in *E.A.H.* nevertheless allowed the mother standing to appeal. The Court explained: "The respondent urges that the mother in the present situation does not have [] a 'personal financial interest' in the defendant's guilt or innocence as to be an aggrieved party entitled to appeal under s 605.09. This appears to us as a distinction without a significant difference." *Id.* Moreover, the Court noted that a mother's interest in paternity, in fact, is directly related to her pecuniary interest in child support:

Although the question of support for the child is not at the present time in issue, this fact does not remove from consideration the underlying pecuniary interest of the mother in the proceeding. If her secondary responsibility for support of the child gives her a direct interest in the amount of the award, as we held in the Sax case, the same reason gives her a direct interest in determining the primary question as to who is father of the child. The determination of guilt is a prerequisite to the order for support.

*Id.*

Although a pecuniary interest is enough to establish standing, a mother's interest in the paternity decision extends far beyond the financial benefits associated with child support. Minnesota law recognizes that a parent's right "to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right." *Sooboo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

Here, Appellant has a legally recognized interest in the correct determination of parentage for her minor son because she has a legally recognized interest in her son's care, custody, control and support. This parentage action will result in a lifetime of shared duties between Appellant and her son's legal father, including financial, medical, educational, and moral responsibility and therefore directly impacts Appellant's rights. As Appellant explained to the Court of Appeals, the district court's decision "eliminate[d] the option of a reasonable co-parenting relationship with [her son's biological father]." *A.16*. The Court of Appeals' decision directly undermines Appellant's rights in this respect. The Court of Appeals' decision should be reversed to allow Appellant to assert her legal rights on appeal.

**B. Appellant Has Standing to Appeal Under the Minnesota Parentage Act.**

The MPA provides further evidence that Appellant has standing to appeal because the MPA repeatedly recognizes a mother's interest in a paternity action. First, Minnesota Statute § 257.57 of the MPA explicitly grants a mother standing to file an action to establish the paternity or the non-existence of paternity of her child. *Add.14*. Minnesota Statute § 257.57 provides in relevant part:

**Minn. Stat. § 257.57. Determination of father and child relationship; Who may bring action; When action may be brought**

Subdivision 1. **Actions under section 257.55, subdivision 1, paragraph (a), (b), or (c).** A child, the child's biological mother, or a man presumed to be the child's father under section 257.55, subdivision 1, paragraph (a), (b), or (c) may bring an action:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under Section 257.55, subdivision 1, paragraph (a), (b), or (c); or

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under section 257.55, subdivision 1, paragraph (a), (b), or (c). . . .

*Id.*

The MPA even makes a mother a "necessary" party in such paternity proceeding. *Cf. Zentz v. Graber*, 760 N.W.2d 1, 4 n.1 (Minn. Ct. App. 2009). Section 257.60 provides, in relevant part:

**Minn. Stat. § 257.60. Parties.**

. . . The biological mother, each man presumed to be the father under section 257.55, and each man alleged to be the biological father, shall be made parties [to a proceeding to determine paternity under the MPA].

*Add.16.* Moreover, if the mother is not within the court's jurisdiction, the mother nevertheless "shall be given notice of the action. . . and shall be given an opportunity to be heard." *Id.*

Moreover, the MPA does not limit Appellant's interest to financial support. Instead, Section 257.57 addresses a number of actions which a mother may bring to establish the *nonexistence* of a father-child relationship. If Appellant's only interest were in establishing paternity in a father, she would not have standing to assert the absence of paternity as well.

Here, the underlying case before the Court of Appeals raises issues under MINN. STAT. § 257.55. Section 257.57 therefore explicitly grants Appellant standing to bring an action to establish the existence or nonexistence of paternity under the MPA and § 257.60 requires Appellant to be joined in the action brought below. Importantly, Appellant's right to bring a paternity action under MINN. STAT. § 257.55 gives Appellant the corresponding right to appeal an adverse ruling in such an action. As the Minnesota Court of Appeals in *Sweep v. Sweep*, 358 N.W.2d 451 (Minn. Ct. App. 1984) explained: "It is fundamental that parties to an action who are aggrieved by the decision of the trial court have the right to seek review." *Id.* at 453. The Court of Appeals failed to recognize Appellant's right under the MPA and thus erred in dismissing Appellant's appeal for lack of standing.

### Conclusion

Finding that Appellant has standing is consistent with the underlying purpose of the standing doctrine, which is "to guarantee that there is a sufficient case or controversy between the parties so that the issue is properly and competently presented to the court." *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977) (quoting *Minn. State Bd. of Health v. City of Brainerd*, 241 N.W.2d 624, 628 (Minn. 1976)). Here, there should be no question a mother has a "sufficient controversy" with a man she asserts was improperly found to be her child's legal father in the district court's paternity proceeding. The Court of Appeals decision to deny Appellant standing to appeal the adverse ruling in this case thus is erroneous and contrary to the standing doctrine. This Court therefore should recognize Appellant's standing to appeal the district court's paternity determination and reverse the Court of Appeal's decision.

Dated: November 18, 2010

Respectfully submitted,

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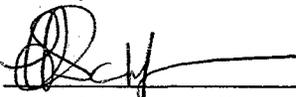
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**CERTIFICATE OF BRIEF LENGTH**

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