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NO. A10-1098

State of Minnesota

In Supreme Court

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

Michael L. Richards,

Respondent,

vs.

Derek Reiter,

Respondent,

and

Lynette A. Marthe,

Appellant.

REPLY BRIEF OF APPELLANT LYNETTE A. MARTHE

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Argument

In its August 3, 2010, Order, the Court of Appeals erred when it held that Appellant does not have standing to appeal the district court's adverse determination of her minor son's parentage. Both the Minnesota Parentage Act ("MPA") and the common law recognize that Appellant has a legally protected interest in her son's paternity and grant her standing to appeal an adverse judgment. While Respondent nevertheless attempts to argue that Appellant lacks standing under the Minnesota Parentage Act and common law, his arguments fail for the reasons discussed below.

I. The MPA Provides Appellant With Standing to Appeal.

First, Respondent cannot refute the fact that the Minnesota Parentage Act explicitly grants a mother standing to bring an action to determine the existence or nonexistence of a father-child relationship, *Add.14*, and even requires that a mother is joined as a necessary party when someone other than the mother brings such an action, *Add.16*. Instead, Respondent argues, without any citations, that Appellant cannot have standing to appeal because the father-child relationship is independent from the mother-child relationship under Minn. Stat. § 257.52. (Respondent's Br. at 6.) This contention is wrong because this Court has held that a decision establishing the father-child relationship under the MPA directly impacts the mother-child relationship. As this Court explained in *State v. E.A.H.*: "It is through the paternity statute that the financial responsibility of providing for the child is lifted from the mother or the state, if need be, and placed upon the father." *State v. E.A.H.*, 75 N.W.2d 195, 199-200 (Minn. 1956). Moreover, 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).

Respondent also argues that Appellant lacks standing under the MPA because the district court did not adjudicate child support, parenting time, or custody. But Respondent cannot cite to a single provision in the MPA that limits a mother's standing to appeal to cases in which the district court adjudicates both paternity and child support, parenting time, or custody. There is no such provision. In fact, this Court rejected this very argument in *E.A.H.* In *E.A.H*, child support, parenting time, and custody were not before the Court. This Court nevertheless found that the mother had standing to appeal because the Court concluded the paternity decision directly impacted her 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." *E.A.H.*, 75 N.W.2d at 199. The Court further explained: 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." *Id.* As in *E.A.H.*, the district court's order in this case directly impacts Appellant's interests in the care, custody, control and support of her minor child.

Unable to respond to Appellant's actual arguments under the MPA, Respondent creates a straw person argument, claiming that the Appellant is arguing improperly the "best interests" of the child standard under the MPA. But Appellant does not argue for application of the "best interests" of the child standard, nor does her argument rely on it. Instead, Appellant is representing her own interests and properly has argued that the district

court's decision adversely impacts her rights as a mother. That the best interests of the child are also being protected does not diminish this fact. The MPA therefore provides Appellant with standing to appeal the district court's adverse decision.

II. The Case Law Unambiguously Provides Appellant With Standing to Appeal.

Like the MPA, Minnesota common law also gives Appellant standing to appeal the district court's adverse paternity determination. For instance, in *State v. E.A.H.*, this Court expressly held that a mother has standing to appeal from a judgment of non-paternity. *E.A.H.*, 75 N.W.2d at 200. While Respondent attempts to distinguish Minnesota case law, he has no legal basis to do so.

Respondent first attempts to distinguish this Court's decision in *E.A.H.* by claiming the Court in *E.A.H.* only granted a mother standing to appeal because the adverse paternity judgment resulted in no father for the minor child and no child support for the mother. That argument fails because the Court in *E.A.H.* did not so limit its ruling. In fact, Minnesota courts have consistently followed *E.A.H.* by repeatedly allowing mothers to appeal paternity decisions, including in cases in which the Court adjudicates one of the parties to be the father of a minor child. *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, Respondent misunderstands the facts in *E.A.H.* Contrary to Respondent's assertions, *E.A.H.* involved a paternity dispute with *two* men, the appellant's husband and the defendant, a man with whom the mother had a relationship outside of her marriage. The Court affirmed the trial court's finding that defendant was not the father of

the minor child. But the Court also noted that appellant's husband's name was on the child's birth certificate and that the appellant and her husband were raising the child as their own. *E.A.H.*, 75 N.W.2d at 198. The Court further recognized the presumption that appellant's husband was the child's father because the minor child was born during their marriage. *Id.* at 200-01. Thus, Respondent has no support for his factual assertion that the decision in *E.A.H.* resulted in no father and no child support and thus cannot claim such facts as a basis for distinguishing *E.A.H.* from this case.

In addition to *E.A.H.*, Respondent attempts to distinguish all the other Minnesota cases that Appellant relies upon by arguing that each of them allows a mother standing only when the Court decides both paternity <u>and</u> custody, parenting time, or child support. (Respondent's Br. at 9). However, Minnesota courts have not limited a mother's standing to appeal to cases in which both paternity and custody, parenting time, or child support are litigated together. As discussed above, this Court rejected that argument in *E.A.H.* In short, Respondent cannot point to a single case that *requires* a district court to determine both paternity and custody, parenting time, or child support in order for a mother to have standing to appeal. That is not the law. Instead, the law recognizes that Appellant in this case has standing to appeal because the district court's paternity determination adversely impacts her interests in the care, custody and control of her minor child.

It would certainly be an odd anomaly in Minnesota law to create an isolated exception—applicable only to mothers in paternity actions—to the general rule that a party to a district court action who is aggrieved by a adverse decision has standing to appeal to the

court of appeals as a matter of right. There is no reason for the Court to reverse its decision in *E.A.H.* and create such an exception here.

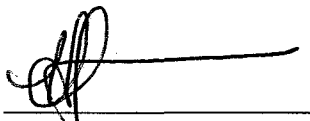
Conclusion

For all of the reasons set forth above, this Court should recognize Appellant's standing to appeal the district court's paternity determination and reverse the Court of Appeals' decision dismissing her appeal.

Dated: December 29, 2010.

Respectfully submitted,

MASLON EDELMAN BORMAN & BRAND, LLP

By 

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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 1,220 words. This brief was prepared using Microsoft® Office Word 2003.

Dated: December 29, 2010.

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