

NO. A10-1790

State of Minnesota
In Court of Appeals

Shawn Michael Taylor,

Appellant,

vs.

Corey Elizabeth Rodewald,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

WALLING, BERG & DEBELE, P.A.
John DeWalt (#318942)
121 South Eighth Street
Suite 1100
Minneapolis, MN 55402
(612) 340-1150

Attorney for Respondent

Lawrence E. Nichols (#221363)
1971 Seneca Road
Suite A
Eagan, MN 55122
(651) 687-9853

Attorney for Appellant

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 CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE FACTS.....1

STANDARD OF REVIEW3

ARGUMENT3

 I. THE DISTRICT COURT’S DECISION IS SUPPORTED BY THE PLAIN
 LANGUAGE OF MINN. STAT. § 518.156 Subd.1 (2010).3

STANDARD OF REVIEW6

 II. IF MINN. STAT. § 518.156 Subd.1 (2010) IS FOUND TO BE
 AMBIGUOUS THE CANONS OF STATUTORY INTERPRETATION ALSO
 SUPPORT UPHOLDING THE DISTRICT COURT’S DECISION.6

CONCLUSION9

TABLE OF AUTHORITIES

CASES

<u>Am. Family Ins. Group v. Schroedl</u> , 616 N.W.2d 273 (Minn. 2000).....	6
<u>Beardsley v. Garcia</u> , 753 N.W.2d 735 (Minn. 2008).....	6
<u>C.I.R. v Brown</u> , 380 U.S. 563 (1965)	7
<u>Custody of the Child of Williams v. Carlson</u> , 701 N.W.2d 274 (Minn. Ct. App. 2005) 3, 4	
<u>State v. Al-Naseer</u> , 734 N.W.2d 679 (Minn. 2007)	6
<u>State v. Anderson</u> , 683 N.W.2d 818 (Minn. 2004); Minn. Stat § 645.16 (2010)	6, 7
<u>Turek v A.S.P. of Moorhead, Inc.</u> , 618 N.W.2d 609 (Minn. Ct. App. 2000), <i>review denied</i> (Minn. Jan. 26, 2001).....	3
<u>U.S. v Turner</u> , 50 F.Supp. 2d 687 (E.D. Mich. 1999)	8

STATUTES

Minn. Stat. § 518.11 (2010)	6, 8, 9
Minn. Stat. § 257.75 Subd.3 (2010).....	3, 5
Minn. Stat. § 518.005, Subd.1 (2010).....	8
Minn. Stat. § 518.156 (2010)	5, 6, 7, 8
Minn. Stat. § 518.156 Subd.1 (2010).....	3, 4, 6, 7, 9
Minn. Stats § 518.005 (2010).....	6, 8, 9
Minnesota Statute § 257.75 (2010).....	3, 5, 6, 9
Minnesota Statute § 518.11(a) (2010).....	3
Minnesota Statute § 518.156 Subd. 2 (2010).....	5

RULES

MGRP 303.03(a),(4) (2010)..... 4

Minnesota General Rule of Practice 303.03(a),(1) (2010) 4

MRGP 303.03 (2010)..... 5, 9

STATEMENT OF THE FACTS

During the years 2005 and 2006 Mr. Shawn Michael Taylor, (hereinafter “Appellant”), and Ms. Corey Elizabeth Rodewald, (hereinafter “Respondent”), were involved in a romantic relationship, and during that relationship Respondent became pregnant with the parties’ minor daughter. R.App.001. That daughter was born on November 10, 2006. R.App.001.

As a consequence of Appellant and Respondent being unmarried at the time of the birth of their daughter, private genetic testing was performed to determine Appellant’s paternity. R.App.001. That testing demonstrated a probability of Appellant’s paternity as being 99.9906%. R.App.001. Subsequent to the completion of the genetic testing the parties signed a Recognition of Parentage. R.App.001.

Following the end of their relationship Respondent sought the assistance of Goodhue County Family Services to help her initiate a custody, parenting time, and child support action against Appellant. A-12. Goodhue County Family Services was unable to initiate such an action because they were unable to effect service upon Appellant, despite their efforts to personally serve Appellant on eleven (11) separate occasions. A-13.

Following the inability of Goodhue County Family Services to personally serve Appellant, Respondent hired her present counsel to help initiate her proceeding. A-13. Because a Recognition of Parentage form had been signed by both parties, Respondent’s counsel served Appellant with a motion on January 12, 2010 to determine custody, parenting time, and child support. R.App.001-R.App.003. On February 17, 2010, Respondent’s motion was heard and Appellant did not appear, either personally or

through counsel. A-14. Despite this non-appearance Appellant was aware of the hearing due to the service effectuated upon him by mail, and also by Appellant's communication with Respondent via text messages wherein Appellant informed Respondent that he was choosing not to appear at the hearing. A-13 and A-14.

At that hearing Respondent moved the Court for a finding of default judgment against Appellant, and that request was granted by the District Court with the request being contingent upon Respondent's submission of post-hearing documentation as it pertained to Appellant's known annual and monthly income. A-14. Those post-hearing submissions were subsequently provided to the District Court, and were also served upon Appellant. Appellant did not respond to those submissions. R.App.014.

On March 10, 2010, an Order establishing custody, parenting time, and child support was issued by the Goodhue County District Court. R.App.015-R.App.028. On, or about, April 9, 2010, Appellant brought a motion to vacate that Order claiming that the Goodhue County District Court did not have personal jurisdiction over Appellant to issue its Order, due to ineffective service. R.App.029. On, or about, May 13, 2010, Respondent brought a responsive Motion requesting that Appellant's request to vacate the March 10, 2010 Order be denied in its entirety. R.App.030-R.App.032.

On May 19, 2010, a hearing was held pursuant to both motions, oral arguments were heard, and the District Court set a briefing schedule for the parties to submit post-hearing arguments to address the legal issues presented. A-1-A-4. Both Appellant and Respondent submitted written arguments and on August 12, 2010 an Order was issued

denying Appellant's motion to vacate and upholding the previous Order of the District Court. A-1-A-4 This appeal followed.

STANDARD OF REVIEW

"Determination of whether service of process was proper is a question of law reviewed de novo." Turek v A.S.P. of Moorhead, Inc., 618 N.W.2d 609, 611, (Minn. Ct. App. 2000), *review denied* (Minn. Jan. 26, 2001).

ARGUMENT

I. THE DISTRICT COURT'S DECISION IS SUPPORTED BY THE PLAIN LANGUAGE OF MINN. STAT. § 518.156 Subd.1 (2010).

Minnesota Statute § 518.156 Subd.1 (2010), states in relevant part that a "child custody proceeding is commenced by a parent...when paternity has been recognized under section 257.75, by filing a petition or motion." This statute creates an exception to the general procedural rules due to the unique status that a Recognition of Parentage holds. Minnesota Statute § 518.11(a) (2010). Minnesota Statute § 257.75 (2010), titled Recognition of Parentage, states that once a Recognition of Parentage has been signed by the parties, "[a]n action to determine custody and parenting time may be commenced pursuant to Chapter 518 without an adjudication of parentage." Minn. Stat. § 257.75 Subd.3 (2010). The reason for this exception is due to the weight and gravity given to the presumption of parentage that occurs once a Recognition of Parentage is signed. As discussed in the case of the Custody of the Child of Williams v. Carlson, 701 N.W.2d 274, 279 (Minn. Ct. App. 2005), "[w]hen the mother and father of a child sign a recognition of parentage (ROP), they state an acknowledgment under oath that they are

the biological parents of the child and wish to be recognized as such.” Custody of the Child Williams v Carlson, also states that once a Recognition of Parentage is signed that, recognition has the force and effect of a Judgment or Order determining the existence of the parent and child relationship. Id. at 279. Thus, in a situation where a Recognition of Parentage has been signed by the parents, and there is no revocation of that Recognition of Parentage, and no presumed father or a competing Recognition of Parentage, a moving party has the option to initiate a custody, parenting time, and child support proceeding via petition or motion. Minn. Stat. § 518.156 Subd.1 (2010).

In the present case, due to the unsuccessful efforts of Goodhue County Family Services to initiate a proceeding via petition and personal service, Respondent instead, through counsel, exercised her right to initiate a proceeding by motion. A-13. Motions in Family Court are governed by Minnesota General Rule of Practice 303.03(a),(1) (2010) which states in relevant part that, “[n]o motion shall be heard unless the initial moving party pays any required motion filing fee, serves a copy of the filing documents on opposing counsel, and files the original with the court administrator at least 14 days prior to the hearing.” The rule continues by stating that, “[w]henever this rule requires documents to be filed with the court administrator within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following: (i) 3 days shall be added to the prescribed period; and (ii) filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period.” MGRP 303.03(a),(4) (2010).

In the present case it is undisputed that Appellant was served by mail on January 12, 2010. R.App.003. This provided Appellant twenty-seven (27) days notice prior to the hearing set for February 17, 2010. This is well in excess of the required seventeen (17) days notice that Appellant was entitled to receive pursuant to MRGP 303.03 (2010).

By using MRGP 303.03 (2010) to initiate her proceeding, Respondent also kept within the guiding strictures of other relevant ancillary Minnesota Statutes. Specifically, Minnesota Statute § 518.156 Subd. 2 (2010) states, “[w]ritten notice of a child custody or parenting time or visitation proceeding shall be given to the child’s parent, guardian, and custodian, who may appear and be heard and may file a responsive pleading.” Additionally, Minn. Stat. § 257.75 Subd.3 (2010) states that once a Recognition of Parentage has been signed, “[a]n action to determine custody and parenting time may be commenced pursuant to Chapter 518 without an adjudication of parentage.” Both Minn. Stat. § 518.156 (2010) and Minn. Stat. § 257.75 (2010) clearly reference each other and work together to create a procedural framework allowing a moving party to proceed via petition or motion, with a motion being subsequently governed by MRGP 303.03 (2010).

The statutory language contained within Minn. Stat. § 518.156 (2010) is plain and unambiguous on its face. There can be no dispute regarding the interpretation of the words “petition or motion”. Because Respondent provided proper notice, and because the statutory language in question is plain and clear on its face, the District Court’s upholding of the initial Order dated March 10, 2010 is appropriate, and should also be upheld by the present tribunal.

STANDARD OF REVIEW

Statutory interpretation is a question of law that an appellate court reviews de novo. State v. Al-Naseer, 734 N.W.2d 679, 683 (Minn. 2007).

II. IF MINN. STAT. § 518.156 Subd.1 (2010) IS FOUND TO BE AMBIGUOUS THE CANONS OF STATUTORY INTERPRETATION ALSO SUPPORT UPHOLDING THE DISTRICT COURT'S DECISION.

Appellant argues that Minn. Stats. §§ 518.005 (2010) and 518.11 (2010) control service in the present proceeding, and as such, the District Court's Order dated March 10, 2010 should be dismissed due to ineffective service. Should this tribunal choose to interpret a reading beyond the statutory language contained in 518.156 (2010) then an interpretation of that statutory language must occur.

Initially, it is clear that when interpreting a statute the statute itself must first be ambiguous. Am. Family Ins. Group v. Schroedl, 616 N.W.2d 273 (Minn. 2000). When a statute is plain and unambiguous on its face the interpreting court must apply the language of the statute as it is plainly written. State v. Anderson, 683 N.W.2d 818 (Minn. 2004); Minn. Stat § 645.16 (2010). When the language of a statute is plain and unambiguous it is assumed to manifest legislative intent and must be given effect. Beardsley v. Garcia, 753 N.W.2d 735 (Minn. 2008).

Minn. Stat. § 518.156 Subd.1 (2010) does not contain any ambiguity regarding how an initial proceeding can be brought. The statute in question plainly states that when a Recognition of Parentage has been signed pursuant to Minn. Stat. § 257.75 (2010) that a proceeding is commenced, "by filing a petition or motion". Minn. Stat. § 518.156 Subd.1 (2010). By providing the plain language of an "or" the statutory language and intent is

clear. If a Recognition of Parentage has been signed by a party the initial proceeding may be brought by either petition or motion. Nowhere is there ambiguity in the language of this text. Therefore the plain language of the statute must be applied. State v. Anderson, 683 N.W.2d 818 (Minn. 2004); Minn. Stat. § 645.16 (2010). When language is clear and ambiguous it must be held to mean what it plainly states. Graber v Peter Lametti Const. Co., 197 N.W.2d 443 (Minn. 1972).

Should this tribunal choose to interpret the statute beyond this analysis, additional statutory interpretation also supports Respondent's interpretation of Minn. Stat. § 518.156 Subd.1 (2010) whereby an initial proceeding may be brought pursuant to a motion when a Recognition of Parentage has been signed. When there are several possible interpretations of a statute, and one interpretation would produce an unreasonable result, that unreasonable result is a basis for rejecting the interpretation in favor of another interpretation that would produce a reasonable result. C.I.R. v Brown, 380 U.S. 563 (1965).

In the present case Appellant asks this Court to adopt an interpretation of Minn. Stat. § 518.156 (2010) that ignores the plain language of that statute. Because Appellant's interpretation produces the unreasonable result of ignoring the plain language of Minn. Stat. § 518.156 (2010) that interpretation should be rejected. Respondent's interpretation of Minn. Stat. § 518.156 (2010) provides a reasonable interpretation by providing that when a Recognition of Parentage has been signed an initial proceeding may be brought by either petition or motion. This is a reasonable reading, and because of this Appellant's interpretation should be adopted.

Appellant's interpretation also ignores the plain language of Minn. Stat. § 518.005, Subd.1 (2010), which states that, "[u]nless otherwise specifically provided, the Rules of Civil Procedure for the district court apply to all proceedings under this Chapter." Plainly it is intended that Minn. Stat. § 518.005, Subd.1 (2010) sets forth a general rule that is to be followed unless a more specific rule is provided. In the present case Minn. Stat. § 518.156 (2010) provides a specific exception to the general rules contained within Minn. Stats. §§ 518.005; 518.11 (2010). By reading the statutory language contained within Minn. Stat. § 518.156 as an exception to the general provisions contained within Minn. Stat. § 518.11 (2010) Respondent's interpretation allows both statutes to exist together. This is contradicted by Appellant's proposed interpretation which asks this Court to completely ignore the plain language of Minn. Stat. § 518.156 (2010) and instead focus solely on the general precatory language contained within Minn. Stats. §§ 518.005; 518.11 (2010). Because Respondent's interpretation allows both statutes to exist together, Respondent's interpretation should properly be adopted.

Finally, statutory interpretations that emasculate a provision contained within the statute are not preferred interpretations. U.S. v Turner, 50 F.Supp. 2d 687 (E.D. Mich. 1999). To adopt Appellant's interpretations of Minn. Stat. § 518.156 (2010) to only allowing a custody, parenting time, and child support proceeding to be brought pursuant to petition, even when a Recognition of Parentage exists, would effectively invalidate, and emasculate, the specific provision contained within Minn. Stat. § 518.156 (2010) that states a proceeding may be brought by petition or motion.

CONCLUSION

The plain language of Minn. Stat. § 518.156 Subd.1 (2010) allows a party to commence a custody or parenting time proceeding by bringing a petition or motion when paternity has been recognized pursuant to Minn. Stat. § 257.75 (2010). In the present case it is undisputed that Appellant and Respondent both signed an effective Recognition of Parentage, and it is also undisputed that Appellant was provided notice in excess of what he was entitled to under MRGP 303.03 (2010). R.App.006 and R.App.003. As such, the District Court's Order dated May 13, 2010 was appropriately issued and should be upheld. Should further statutory interpretation be applied the reasonable interpretation of the statutory language in question, meaning the one that would not emasculate the statutory language, and would allow all statutes involved to co-exist cooperatively, is Respondent's interpretation. This being that Minn. Stat. § 518.156 Subd.1 (2010) creates a specific exception to the general provisions contained within Minn. Stats. §§ 518.005; 518.11 (2010) and allows an initial proceeding to be brought by petition or motion if a Recognition of Parentage has been signed. As such, it was appropriate for the District Court to uphold its March 10, 2010 Order, and it is appropriate for this tribunal to also uphold that interpretation.

Dated: 1-5-11

WALLING, BERG & DEBELS, P.A.



John DeWalt, (#318942)
121 South Eighth Street
Suite 1100
Minneapolis, MN 55402
(612) 340-1150
Attorney for Respondent