

A11-1319

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Claire Holewa

Appellant,

vs.

Joane M. Christianson,

Respondent,

Travis Henke,

Respondent.

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**RESPONDENT JOANE M. CHRISTIANSON'S BRIEF**

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## PROCEDURAL HISTORY

Respondent agrees with the procedural history in Appellant's Brief.

Craig P. Christianson (hereinafter "Craig") and Joane M. Christianson (hereinafter "Joane"), stepgrandfather and paternal grandmother, respectively, brought a Petition in District Court against Claire Holewa (hereinafter "Claire") and Travis Henke (hereinafter "Travis"), the biological parents of minor child, [REDACTED] (hereinafter [REDACTED]) to establish grandparent visitation under Minn. Stat. §257C.08, Subd. 2. Craig was dismissed from the action and Joane remained as a party. The trial court in Benton County issued an order granting grandparent visitation to Joane on March 8, 2011.

Appellant Claire filed a motion for amended findings and a motion to vacate the Court's order on April 11, 2011 and an amended motion on April 28, 2011, requesting the Court's order be vacated for lack of subject matter jurisdiction. The Court heard this motion on April 28, 2011, addressing all issues.

The Court issued its order on May 18, 2011, denying Appellant Claire's motion to vacate the March 8, 2011 order granting Joane grandparent visitation, finding that it had subject matter jurisdiction. This appeal followed.

Travis Henke was and is in default for want of an Answer.

**LEGAL ISSUE PRESENTED**

Whether the trial court was correct in finding that it had subject matter jurisdiction to grant grandparent visitation when Respondent petitioned under Minn. Stat. §257.C.08, Subd. 2 and when parentage had been determined by a Recognition of Parentage.

## STATEMENT OF FACTS

██████████, born August 2, 2007, is the joint minor child of Claire Holewa and Travis Henke. Ms. Holewa and Mr. Henke executed a valid Recognition of Parentage (ROP) form, signed by both parties on August 2, 2007. No one has ever challenged the validity of this ROP form, nor were there any presumptions for paternity which would have competed with this ROP form.

A child support action was brought by Benton County under Minn. Stat. §256.87 for establishment of child support. Findings of Fact, Conclusions of Law, and Order Establishing child Support and Order for Judgment and Judgment were filed June 10, 2009 (Appellant's Appendix A-1).

Joane Christianson is the child's paternal grandmother, and Craig Christianson the child's paternal step-grandfather. Joane Christianson and Craig Christianson have been involved in ██████████ life since his birth. On November 13, 2010, a falling out ensued between the child's parents and the Christiansons. The Christiansons subsequently brought an action for grandparent visitation under Minn. Stat. §257C.08, Subd. 2. Craig Christianson was later dismissed from the action, as he was not a grandparent by blood, and Joane Christianson continued the action.

An Order from the Benton County District Court, dated March 8, 2011 was issued granting Joane Christianson visitation with ██████████. This Order was filed on March 8, 2011 (Appellant's Appendix A-16).

Appellant filed a motion for amended findings and a motion to vacate the Court's Order on April 11, 2011 (Appellant's Appendix A-22). Respondent's responsive motion

was served on April 21, 2011 (Appellant's Appendix A-31). Appellant filed an amended motion on April 28, 2011 alleging that the Court did not have subject-matter jurisdiction (Appellant's Appendix A-39). Additional materials were also submitted to the Court by both Appellant (Appellant's Appendix A-61) and Respondent (Appellant's Appendix A-65).

The motion came before the Court on April 28, 2011 and the Court addressed all issues. The Court issued an order on May 18, 2011 denying Appellant's motion to vacate the court's March order granting Respondent visitation with [REDACTED] (Appellant's Appendix A-67). The Court found that it did have subject matter jurisdiction. The Court included a Memorandum with its Order (Appellant's Appendix A-68) and stated that "the proceeding for parentage and determination of parentage that form the basis for the present grandparent visitation matter was Mr. Henke and Ms. Holewa's execution of a Recognition of Parentage (ROP) form" (Appellant's Appendix A-70). The Court undertook the ambiguous language analysis for statutory construction under Minn. Stat. §645.16 in interpreting the visitation statute, Minn. Stat. §257C.08 (Appellant's Appendix A-71). This appeal followed.

### **STANDARD OF REVIEW**

Questions of statutory construction are questions of law which the court reviews de novo. **Lee v. Fresenius Med. Care, Inc.**, 741 N.W.2d 117, 122 (Minn. 2007). Subject matter jurisdiction is a question which the court reviews de novo. **Johnson v. Murray**, 648 N.W.2d 664, 670 (Minn. 2002).

## LEGAL ARGUMENT

### THE TRIAL COURT WAS CORRECT IN FINDING THAT IT HAD SUBJECT MATTER JURISDICTION TO GRANT GRANDPARENT VISITATION WHEN THE MINOR CHILD'S PARENTS HAD EXECUTED A RECOGNITION OF PARENTAGE WHICH IS EQUAL IN WEIGHT AND EFFECT TO A LITIGATED JUDGMENT OF PARENTAGE.

Respondent Joane C. Christianson (hereinafter "Joane") brought her visitation petition under Minn. Stat. §257C.08, Subd. 2 which provides that:

"(a) In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after commencement of the proceeding, or at any time after completion of the proceedings, and continuing during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that: (1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application."

Joane filed her petition under the category of a completed "proceeding" for parentage based on the fact that the minor child's parents had signed and properly executed a Recognition of Parentage. It is clear that the statutory language of "proceedings for dissolution, custody, legal separation, annulment, or parentage" should be construed to include a validly executed Recognition of Parentage. Here, the parents never disputed paternity and there was never a competing presumption of paternity in existence. The fact that a valid Recognition of Parentage (ROP) exists is not disputed. After signing the ROP, there was nothing more these parents could have done regarding their determination of parentage; they had taken the proper statutory steps to acknowledge and legally recognize their parentage.

The Legislature enacted the Recognition of Parentage Statute, Minn. Stat. §257.75 Subd. 3, authorizing a ROP to act as an adjudication of paternity. Under this subdivision, a ROP “has the force and effect of a judgment or order determining the existence of the parent and child relationship under Minn. Stat. §257.66” [of the Parentage Act], and “if there are no competing presumptions of paternity, a judicial or administrative court may **not allow** further action to determine parentage regarding the signator of the recognition” (emphasis added).

Minn. Stat. §257.66 Subd. 1 mandates that “The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.” The legislature is very explicit when it makes a ROP, where no other presumption for paternity exists, with a judgment or order regarding parentage effective for all purposes.

The legislature explicitly gives the court jurisdiction over actions under The Parentage Act, Minn. Stat. §257.51 to §257.74, which includes Minn. Stat. §257.66, Judgment or Order. Again, Minn. Stat. §257.75, Subd. 3, states that a ROP “has the force and effect of a judgment or order determining the existence of the parent and child relationship under Minn. Stat. §257.66.” It is unreasonable to argue that a Recognition of Parentage cannot form the jurisdictional basis for a request for grandparent visitation under Minn. Stat. §257C.08, Subd. 2.

“All purposes” of a judgment or order determining parentage obviously would include creating a basis for bringing actions to resolve other issues such as custody, child support, grandparent visitation, etc. The ROP statute §257.75 Subd. 3 even says “The

recognition is: (1) a basis for bringing an action to award custody or parenting time to either parent, establishing a child support obligation...; (2) **determinative for all other purposes related to the existence of the parent and child relationship**; and (3) entitled to full faith and credit in other jurisdictions" (emphasis added). There are no precedential cases directly on point, but see In Re the Matter of: Corey Elizabeth Rodewald v. Shawn Michael Taylor, 797 N.W. 2d 729 (Minn. App. 2011) (holding that personal service was not necessary for initiating a child custody and support action against father, but that filing a motion and serving the father by mail was sufficient when there was in existence a valid ROP).

If a "judgment" is construed to exist via Minn. Stat. §257.75 regarding the issue of parentage when a ROP meeting the proper conditions exists, then it logically follows that the court should find that a "proceeding" for the determination of parentage has been completed. Because there is a judgment in existence, the "proceeding" requirement contemplated by the legislature in the grandparent visitation statute 257C.08 is satisfied. Thus, there exists a proper jurisdictional basis for granting standing to Grandparent Joane Christianson to petition for visitation.

Giving strength to this argument is the fact that Subd. 3(3) of Minn. Stat. §257.75 specifies that "The recognition is... entitled to full faith and credit in other jurisdictions." Therefore, if a Minnesota ROP is in existence and one parent moves out of state, then the distant state must give the Minnesota Recognition of Parentage the same weight and effect as a litigated judgment of paternity. The legislature must have intended that this same weight and effect be respected and followed by Minnesota's own courts.

Therefore, a litigated judgment addressing parentage and a ROP meeting the criteria of Minn. Stat. §257.75 Subd. 3 should both serve as a basis for a request of grandparent visitation under Minn. Stat. §257C.08.

It is indicative of the legislature's intent that they used the word "proceedings" rather than "court action" and "determination of parentage" rather than "judgment or adjudication of parentage." The legislature could have been more exclusive had it wanted to be. As the Benton County Court points out in the Memorandum accompanying its May 18, 2011 Order acknowledging proper subject-matter jurisdiction, Black's Law Dictionary defines "proceeding" as including "[a]ny procedural means for seeking redress from a tribunal or agency" (Appellant's Appendix A-71). If the court interprets the word "proceedings" in Minn. Stat. 257C.08 so strictly as to mean "court proceedings" or only litigated determinations of parentage and not a broader application of "proceedings," as in this context, to include other types of non-court proceedings or constructively accomplished "court proceedings" created through compliance with Minn. Stat. 257.75, then the purposes of both Minn. Stat. §257.75 and Minn. Stat. §257C.08 are thwarted.

The purpose of Minn. Stat. §257.75 is to provide unmarried parents with a determination of parentage equal in force and effect alternative to litigating. If the Court adopts Appellant's reasoning, grandparents or other specified interested third persons under the statute could not petition for visitation based on the unlitigated determination of parentage. A ROP would not have the same force and effect as a "litigated" judgment, despite the legislature's statutory language mandates. *See **Beardsley v. Garcia**, 753*

N.W. 2d 735, 737 (Minn. 2008) (rejecting the argument that the court did not have statutory authority to grant a father visitation with “the minor children of the parties” via a petition for the order of protection because he was not an adjudicated father, stating that a ROP is equal to such a judgment).

According to Minn. Stat. §645.16, when interpreting statutes, the objective is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. §645.17 states that “In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; (2) the legislature intends the entire statute to be effective and certain;... (5) the legislature intends to favor the public interest as against any private interest.”

The Minnesota Supreme Court has pointed out that “we are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” **Am. Family Ins. Grp. v. Schroedl**, (616 N.W.2d 273, 277 (Minn. 2000) (quoting **Amaral v. St. Cloud Hosp.**, 598 N.W.2d 379, 384 (Minn. 1999)). Therefore, it is clear that Minn. Stat. §257.75 must be taken into account when interpreting the meaning of §257C.08. By reading “proceedings” in Minn. Stat. §257C.08 to be inclusive of a valid ROP form determination of parentage, we avoid a conflict with Minn. Stat. §257.75 subd. 3, Effect of Recognition. Not creating conflicts between statutes is the directive of the Supreme Court. When the words of a law are not explicit, for example, here when the statute is not clear on its face as to the breadth and type(s) of

“proceedings” intended to be included in Minn. Stat. §257C.08, the intention of the legislature may be ascertained by considering, among other matters:

- "(1) the occasion and the necessity for the law;
- (2) circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object obtained;
- (5) the former law;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute."

Minn. Stat. §645.16 (2010).

Therefore, the court is supposed to consider the potential consequences of the different interpretations of “proceedings.” In addition to thwarting the purposes of Minn. Stat. §257.75 and Minn. Stat. §257C.08, as discussed above, an exclusive interpretation of the word “proceedings” in Minn. Stat. §257C.08, would create the unreasonable result of creating two classes of grandparents. The classes would be based on whether or not their children felt the need to litigate parentage or were able to admit and legally recognize parentage without litigating it. One class would have standing to pursue visitation rights with their grandchildren and one would not. This would raise equal protection concerns. Clearly this cannot be the legislature’s intent.

If unmarried parents were allowed to keep grandparents or third party interested persons, out of court simply by signing ROPs and never adjudicating parentage, this would not be in the best interest of the children involved and would allow the ROP statute to be used as an impermeable shield by parents who wanted to keep grandparents and other interested parties from having a chance to present their interests and the

interests of the minor children to the court. It would also be arbitrary if some unmarried parents evaded balancing of their interests with the interest of the children and grandparents based on whether they resolved parentage through a ROP or through litigating parentage, even if it was not the parents' intent. Those classifications, as stated above would create an application of the law that is very unfair and has nothing to do with the best interests of the children, which is the main purpose the legislature contemplated in enacting Minn. Stat. §257C.08.

The Supreme Court in **Soofoo v. Johnson**, 731 N.W. 2d 815, 822 (Minn. 2007) addresses the purpose and role of visitation statutes and states:

“[The] state, in its role as *parens patriae*, has a compelling interest in promoting relationships among those in recognized family units (for example, the relationship between a child and someone in loco parentis to that child) in order to protect the general welfare of the children.” **Soofoo** supra.

Again, the language of Subd. 2 (a) states “the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, legal separation, annulment, or determination of parentage during minority if it finds that: (1) visitation rights would be in the **best interests of the child**; and (2) such visitation would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and child prior to the application” (emphasis added).

Appellant states that “It is clear that the subdivision under which the Respondent proceeded envisions a vehicle for the request rather than just granting a blanket right to the grandparent for visitation.” Yet, by creating the statute in the first place, the

legislature surely envisioned a vehicle through which grandparents and a limited group of other specified persons may request of the court that they be able to have visitation with the children involved. Interpreting Minn. Stat. §257C.08 to include ROP determinations of parentage as giving effective standing to the intended group does not automatically grant their petitions, as Appellant implies. It just gets them in the door so that the interests at stake can be heard and this, as Appellant seems to recognize, is exactly the legislature's intent as discussed above.

Appellant spends a considerable amount of time in her brief on the fact that the only action that had been brought in court was an action to establish child support in the expedited process pursuant to Minn. Stat. §256.87. This fact only lends support to the argument that a ROP serves as a jurisdictional basis for bringing a petition for all purposes for which an adjudication for parentage could serve as such a jurisdictional basis. Respondent Joane did not bring her petition for visitation based on the child support action, but on the fact that there had already been a completed determination of parentage based on the ROP. Therefore, Appellant's discussion of the child support action is not very relevant. It is obvious that this action to establish child support was not a proceeding for parentage because the issue of parentage had already been determined and from that determination, the court ordered Travis Henke to pay child support for [REDACTED]. If the ROP did not have the same weight and effect as an adjudicated determination of parentage, then the child support action brought in the expedited process could not have been decided without first adjudicating parentage, which the judgment in that action clearly demonstrated the court did not have to do.

Appellant refers to the execution of a ROP as “just a mere signing of a document.” The statute states that parents must “in a writing signed by both of them before a notary public and filed with the state registrar of vital statistics, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents. The recognition must be in the form prepared by the commissioner of human services...” Minn. Stat. §257.75 Subd.1. Appellant is attempting to trivialize ROP forms, for which the legislature created a special statute that clearly gives ROP forms great weight and authority and deference when there is no other competing presumption. By enacting Minn. Stat. §257.75, the legislature contemplated an easier and less costly alternative for unmarried parents to establish paternity than through litigation. If not, they would not have created the option in the first place or they would have made it much more difficult to execute. It is not up the trial court to decide what effect to give a valid ROP when the statute is explicit as to its weight and effect.

### **CONCLUSION**

The district court has subject-matter jurisdiction to grant Respondent’s Petition for visitation, based on the fact that the parents of the minor child executed a valid Recognition of Parentage under Minn. Stat. §257.75. This is the only reasonable interpretation of the statute when both Minn. Stat. §257C.08 and Minn. Stat. §257.75 are taken into account in their entirety and when read together. These are the people the statute intended to allow before the court because they have a very strong potential of being important to the upbringing and best interest of the children. It does not make sense to create two classes of grandparent standing based on whether the parents

determined parentage through a ROP or through an adjudication of parentage, especially when the explicit language of Minn. Stat. §257.75 Subd. 3 mandates that ROPs are to be treated as the equivalent of a judgment or order regarding the parent and child relationship.

Dated: September 20, 2011.

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