

2

CASE NO. A11-1319

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Claire Holewa,

Appellant,

vs.

Joanna M. Christianson

Respondent,

Travis Henke

Respondent.

APPELLANT'S BRIEF AND APPENDIX

Robert A. Manson, #207792
Robert A. Manson, P.A.
4526 Highway 61
White Bear Lake, MN 55110
(651) 604-0711
Attorneys for Appellant

Virginia A. Marso, Esq.
2103 Frontage Road North,
Suite 25
Waite Park, MN 56387
(651) 310-4733
*Attorney for Respondent
Christianson*

Travis Henke *pro se*
171 Frederick Street
Foreston, MN 56330
Respondent

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

	Page
Table of Authorities	ii
Procedural History	iii
Legal Issues Presented	iv
Statement of Facts	1
Argument	2
Conclusion	6
Certificate of Acceptable Brief Length	7
Appendix Table Of Contents	8

TABLE OF AUTHORITIES

CASES:	Page
<u>Lewis-Miller v. Ross</u> , 710 N.W.2d 565, 568 (Minn. 2006)	2
<u>Joel v. Wellman</u> , 551 N.W.2d 729, 730 (Minn. App. 1996)	2
<u>O'Malley v. Ulland Bros.</u> , 549 N.W.2d 889, 892 (Minn. 1996)	2
<u>Tereault v. Palmer</u> , 413 N.W.2d 283, 286 (Minn. App. 1987) review denied (Minn. Dec. 18, 1987)	5
<u>State v. Losh</u> , 755 N.W.2d 736, 739 (Minn. 2008)	5
<u>Schroeder v. Schroeder</u> , 658 N.W.2d 909, 912 (Minn. App. 2003)	5
<u>Dead Lake Ass'n, Inc. v. Otter Tail County</u> , 695 N.W.2d 129, 134 (Minn. 2005) (quoting 1 David F. Herr & Roger S. Haydock, Minnesota Practice-Civil Rules Ann. § 12.17 (4th ed. 2002))	5
<u>Marzitelli v. City of Little Canada</u> , 582 N.W.2d 904, 907 (Minn. 1998)	5
<u>Metge v. Cent. Neighborhood Improvement Ass'n</u> , 649 N.W.2d 488, 499 (Minn. App. 2002)	6
STATUTES	
Minn. Stat. §257C.08, Subd. 2	2
Minn. Stat. §256.87	3
Minn. Stat. §518A.26, Subd. 20	3
Minn. Stat. §257.59	3
Minn. Stat. §257.75	4
Minn. Stat. §257.66 Subd. 3	4
Minn. Stat. §257.34	5

PROCEDURAL HISTORY

Craig P. Christianson and Joane M. Christianson brought a Petition in District Court against Claire Holewa and Travis Henke to establish grandparent visitation with [REDACTED]. This action was brought under Minn. Stat. §257C.08, Subd. 2. Craig P. Christianson was dismissed from the action and Joane M. Christianson continued the action. The trial court in Benton County issued an order, which granted grandparent visitation to Respondent Joane Christianson. This order was filed on March 8, 2011.

Appellant filed a motion for amended findings and motion to vacate the Court's order. This motion was filed April 11, 2011. The Appellant served 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 and addressed all issues.

The Court issued an order on May 18, 2011 that addressed various issues, including denying Appellant's motion to vacate the March 8, 2011 order granting Joane Christianson grandparent visitation. The trial court found that it had subject matter jurisdiction. This appeal followed.

LEGAL ISSUES PRESENTED

Whether the trial court erred in finding that it had subject matter jurisdiction to grant grandparent visitation where there was no proceedings for dissolution, custody, legal separation, annulment, or parentage existing.

The district court found that the execution of a Recognition of Parentage under Minn. Stat. §257.75 constituted a proceeding to support the award of grandparent visitation under Minn. Stat. §257C.08, Subd. 2 and it had subject matter jurisdiction to make such an award.

STATEMENT OF FACTS

Claire Holewa and Travis Henke have one child, [REDACTED], born August 2, 2007. Ms. Holewa and Mr. Henke signed a Recognition of Parentage on August 2, 2007. Ms. Holewa received Medical Assistance and child care assistance through the State of Minnesota (A - 1)

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

After an alleged dispute, Craig P. Christianson and Joane M. Christianson brought a Petition in District Court against Claire Holewa and Travis Henke to establish grandparent visitation with [REDACTED]. This action was brought under Minn. Stat. §257C.08, Subd. 2. Craig P. Christianson was dismissed from the action and Joane M. Christianson continued the action. The trial court in Benton County issued an order, which granted grandparent visitation to Respondent Joane Christianson. This order was filed on March 8, 2011 (A - 16).

Appellant filed a motion for amended findings and motion to vacate the Court's order. This motion was filed April 11, 2011 (A - 22). Respondent Christianson filed a Responsive Motion on April 21, 2011 (A - 31). The Appellant served an amended motion on April 28, 2011 requesting the Court's order be vacated for lack of subject matter jurisdiction (A - 39). Supplemental materials were provided to the Court by Appellant's counsel (A - 61) and Respondent's counsel (A - 65)The Court heard this motion on April 28, 2011 and addressed all issues.

The Court issued an order on May 18, 2011 that addressed various issues, including denying Appellant's motion to vacate the March 8, 2011 order granting Joane Christianson grandparent visitation (A - 67). The trial court found that it had subject matter jurisdiction. This appeal followed.

STANDARD OF REVIEW

The interpretation and construction of statutes are questions of law that this court reviews de novo. Lewis-Miller v. Ross, 710 N.W.2d 565, 568 (Minn. 2006). Standing addresses the existence of a cause of action, and it is a legal issue that a reviewing court may determine when the facts are undisputed. Joel v. Wellman, 551 N.W.2d 729, 730 (Minn. App. 1996). Applying a statute to the undisputed facts of a case is a question of law, and the district court's decision is not binding on a reviewing court. O'Malley v. Ulland Bros., 549 N.W.2d 889, 892 (Minn. 1996).

LEGAL ARGUMENT

THE TRIAL COURT ERRED IN FINDING THAT IT HAD SUBJECT MATTER JURISDICTION TO GRANT GRANDPARENT VISITATION WHEN THERE WAS NO PROCEEDING FOR DISSOLUTION, CUSTODY, LEGAL SEPARATION, ANNULMENT, OR PARENTAGE COMMENCED.

The statute that Respondent proceeded under was Minn. Stat. §257C.08, Subd. 2 which provides that (a) In all proceedings for dissolution, custody, legal separation, annulment, or parentage, after the 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.

Thus, for the district court to have subject-matter jurisdiction to grant a statutory petition for grandparent visitation, a proceeding for "dissolution, custody, legal separation, annulment, or parentage" must exist or have existed at the time their petition was brought.

In the present case, the only action that had been brought was the action to establish child support in the expedited process. This was brought pursuant to Minn. Stat. §256.87. It did not determine custody or parenting time. This was brought in the expedited process before a child support magistrate.

It is clear that the action under Minn. Stat. §256.87 for establishment of child support is not a proceeding for parentage. The legislature has differentiated between an action under Minn. Stat. §256.87 and a proceeding for parentage. In the definitions for Minn. Stat. 518A, specifically Minn. Stat. §518A.26, Subd. 20. **Support money; child support.** "Support money" or "child support" means an amount for basic support, child care support, and medical support pursuant to: (1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding; (2) a contribution by parents ordered under section 256.87; or (3) support ordered under chapter 518B or 518C. The legislature in this definition clearly considers an action for contribution under section 256.87 as different from a parentage proceeding. The two are clearly not synonymous.

Minn. Stat. §257.59 under the Parentage Act provides that the district court has jurisdiction over an action brought under sections 257.51 to 257.74. This action may be joined

with an action for dissolution, annulment, legal separation, custody under chapter 518, or reciprocal enforcement of support. This proceeding would be under the parentage act to establish the parent child relationship. It is noted that the list of sections stops short of Minn. Stat. §257.75 covering Recognitions of Parentage. A judgment or order resulting from an action under the Parentage Act to establish the parent child relationship is governed by Minn. Stat. §257.66 Subd. 3, which provides "The judgment or order shall contain provisions concerning the duty of support, the custody of the child, the name of the child, the Social Security number of the mother, father, and child, if known at the time of adjudication, parenting time with the child...."

The expedited child support order does not address parenting time or custody and therefore is distinguishable from a parentage action under the Parentage Act. The expedited process is not a proceeding for parentage and therefore does not fall within the parameters of Minn. Stat. 257C.08 and does not provide a way for Respondent Christianson to have brought her Petition for grandparent visitation

The trial court's finding that a Recognition of Parentage under Minn. Stat. §257.75 is a proceeding stretches the definition of proceeding to justify granting grandparent visitation and is not consistent with the clear language of the statute. 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. The statute clearly provides that the ability to request grandparent visitation arises "after **"commencement"** of the proceeding, or at any time after **"completion"** of the proceeding", not merely by the signing of a document as the trial court would argue. It is clear that the legislature envisioned one of the enumerated actions being brought in district court. If signing a Recognition of Parentage were sufficient the legislature would

have enumerated it and the statute would not reference "commencement" and "completion" of a proceeding.

The trial court's reference to timing of the enactment of Minn. Stat. §257.75 as having been brought after the grandparent statute overlooks the fact that there was a Declaration of Parentage in effect under Minn. Stat. §257.34 that was not referenced in the statute. If the legislature wished to dispense with the requirement of a proceeding, it could do so by legislation or amendment. It is not up to the trial court or this court to extend the statute beyond its clear language. "The task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn. App. 1987) review denied (Minn. Dec. 18, 1987).

The trial court requires subject matter jurisdiction to issue an order. "Subject-matter-jurisdiction is a court's power to hear and determine cases that are presented to the court." State v. Losh, 755 N.W.2d 736, 739 (Minn. 2008). Unlike personal jurisdiction, a court cannot acquire Subject-matter-jurisdiction "either by waiver or consent." Schroeder v. Schroeder, 658 N.W.2d 909, 912 (Minn. App. 2003). Because subject-matter-jurisdiction is a fundamental question that determines the right of a court to adjudicate a particular matter, "it may not be conferred on the court by agreement of the parties nor by their waiver of the right to object." Dead Lake Ass'n, Inc. v. Otter Tail County, 695 N.W.2d 129, 134 (Minn. 2005) (quoting 1 David F. Herr & Roger S. Haydock, Minnesota Practice-Civil Rules Ann. § 12.17 (4th ed. 2002)). Further, lack of subject-matter-jurisdiction may be raised at any time by the parties or sua sponte by the court, and cannot be waived by the parties. Marzitelli v. City of Little Canada, 582 N.W.2d 904, 907 (Minn. 1998). A lack of Subject-matter-jurisdiction may be raised at any time, even for the first time on appeal. Metge v. Cent. Neighborhood Improvement Ass'n, 649

N.W.2d 488, 499 (Minn. App. 2002). Any order issued without subject matter jurisdiction is void.

CONCLUSION

It is clear that the trial court lacked subject matter jurisdiction to grant grandparent visitation to Respondent Christianson where there was only an action under Minn. Stat. §256.87 in existence at the time of the filing of the grandparent visitation petition and no proceedings for dissolution, custody, legal separation, annulment, or parentage existed. The trial court's decision must be reversed with directions to vacate the Court's order of March 8, 2011 and dismissing the action.

Dated: August 22, 2011



Robert A. Manson, Esq. 207792
4526 Highway 61 North
White Bear Lake, MN 55110
(651) 604-0711

Certificate of Acceptable Brief Length

Pursuant to Minnesota RCAP 132.01 Subd. 3

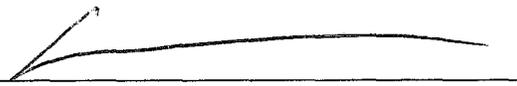
I, Robert A. Manson, hereby certify that the Appellant's Brief in:

APPELLATE COURT CASE NUMBER: A11-1319

1. Complies with the length limits established by the Minnesota Court of Appeals and promulgated in Minnesota Rule of Civil Appellate Procedure 132.01 Subd. 3,
2. Has fewer than 45 pages of text, exclusive of pages containing the table of contents, tables of citations, any addendum containing statutes, rules, regulations, etc., and any appendix,
3. Is printed in 13 point Times New Roman, True-Type (Western) proportional typeface,
4. Contains no more than 14,000 words, and
5. Was prepared using MicroSoft Word 2000 (version 9.0.3821 SR1).

IN WITNESS WHEREOF, I have hereunto set my hand.

Dated: August 22, 2011


Robert A. Manson 207792