

A04-2224

*State of Minnesota
In Supreme Court*

Gail Lewis-Miller,

Respondent,

v.

Christopher Ross,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF THE ISSUES

- I. Section 257C.03 establishes a two-step process for an interested-third-party-custody petitioner to develop a record to facilitate the trial court's consideration of the mandatory child-custody factors. Here, the Court of Appeals reversed the trial court's incorrect application of the statutory evidentiary standard, concluded that Lewis-Miller's petition satisfied her obligations to state and allege the petition components and establish them by competent evidence, and remanded the case for a hearing on the merits. Should this Court affirm the Court of Appeals' interpretation of the procedure established by section 257.03 and its reversal of the trial court's order dismissing Lewis-Miller's petition?

Trial Court's Ruling: The trial court dismissed the petition.

Court of Appeals' Ruling: The Court of Appeals reversed the trial court's incorrect application of the statutory evidentiary standard and remanded the matter for a hearing on the merits.

Authority:

In re Kayachith v. Athakhanh, 683 N.W.2d 325 (Minn. Ct. App. 2004)

- II. Section 257C.03 requires a petitioner seeking third-party custody to verify the statements and allegations in the petition and establish them by competent evidence. Here, the Court of Appeals concluded that Lewis-Miller's allegations, as verified by her and supported by competent evidence (consistent with the use of that term in other analogous contexts), are sufficient as a matter of law to meet the statutory standard. Should this Court affirm the Court of Appeals' interpretation of competent evidence under section 257C and its reversal of the trial court's order dismissing Lewis-Miller's petition?

Trial Court's Ruling: The trial court dismissed the petition.

Court of Appeals' Ruling: The Court of Appeals reversed the trial court's dismissal and determined the petition was supported by competence evidence.

Authority:

Minn. Stat. § 595.02; Minn. Stat. § 595.06; Minn. Stat. § 645.17;
Minn. R. Evid. 602

STATEMENT OF THE CASE

On December 16, 2003, Appellant Gail Lewis-Miller ("Lewis-Miller") commenced this child-custody action when she personally served Respondent Christopher H. Ross ("Ross") with her Summons and Petition. The parties appeared for an Initial Case Management Conference before the trial court, the Honorable George McGunnigle presiding, on February 23, 2004. The trial court ordered an Early Neutral Evaluation ("ENE") of the custody issues, appointed a Guardian ad Litem, and ordered Ross to refrain from the use of illegal drugs. The ENE was unsuccessful in resolving the custody dispute. On March 29, 2004, the trial court ordered a formal custody evaluation and scheduled an evidentiary hearing for August 26, 2004.

On July 30, 2004, the evaluator informed the trial court that she could not complete her custody evaluation because, based on Child Protection's involvement with Ross and the children, she believed a determination of Ross's fitness was necessary. The custody evaluator suggested that the trial court instruct Child Protection to evaluate Ross's fitness to parent the children. The evaluator then closed her file until the trial court could provide further direction. In response, the trial court cancelled the August 26, 2004 evidentiary hearing.

The custody evaluator's communication with the court alarmed Lewis-Miller, who brought a temporary motion for custody on August 26, 2004. The Guardian ad Litem did not appear, and the trial court continued the temporary-custody hearing to September 15, 2004. The Guardian ad Litem appeared at the September 15, 2004 hearing, at which

counsel for the parties argued the pending motions. On October 14, 2004, the trial court issued an order dismissing Lewis-Miller's entire petition for lack of standing.

Lewis-Miller appealed the trial court's decision to the Minnesota Court of Appeals. The Court of Appeals determined that Lewis-Miller had filed a viable petition to commence third-party custody proceedings and concluded that she was entitled to an evidentiary hearing to prove the allegations in her petition. The Court of Appeals accordingly reversed the trial court's order for dismissal and remanded this matter for an evidentiary hearing. Ross petitioned for, and this Court granted, review.

STATEMENT OF THE FACTS

Respondent Christopher Ross and his girlfriend, Debra Lewis, had a son, C.R., in 1994, and another son, M.R., in January 2003. (A.¹42 ¶ 2; A.43 ¶ 6.) Ross and Lewis never married. (A.43 ¶ 4; A.45 ¶ 12.) In October 2003, Lewis died four days after being diagnosed with advanced-stage breast cancer. (A.43 ¶ 4.) From her deathbed, she signed a witnessed statement asserting, "I want my sister Gayle Lewis-Miller and Christopher Ross to have joint physical and legal custody of my children [C.R.] and [M.R.]" (A.154.)

In December 2003, Lewis-Miller filed a petition for sole legal and physical custody of the boys, arguing that Ross should not be granted custody of the children. (A.149-54.) Lewis-Miller's verified petition for custody alleged the requisite factors set

¹ Hereinafter, citations to "A.____" refer to Appellant's Appendix.

forth in Minnesota Statutes section 257C.03, subdivision 2(a). (A.149-54.) She alleged in her verified petition that the children were in physical and emotional danger. (A.151 ¶¶ 12-13.) Lewis-Miller specifically alleged that Ross was using drugs in the children's presence, he and the children had recently been evicted from their apartment due to Ross's drug use and were living at a homeless shelter, and Ross intended to relocate with the children out of state. (A.151 ¶13.) Ross filed an answer and counter-petition requesting that he be granted sole legal and physical custody of the boys. (A.155-66.)

In February 2004, the trial court ordered Hennepin County Family Court Services to perform an Early Neutral Evaluation, an evaluative process intended to resolve parenting-time disputes. (A.78 ¶ 1.) The court granted Ross temporary sole legal custody of the children subject to visitation by Lewis-Miller. (A.78 ¶ 3.) At the request of Lewis-Miller, the court also appointed a Guardian ad Litem to represent the children's interests, until a proper custody determination could be made. (A.79 ¶ 4; A.80-38.) The trial court also ordered Ross to refrain from the use of illegal drugs. (A.78 ¶ 3.)

At some point in February or March 2004, Hennepin County Child Protection Services opened a file on Ross based upon a referral from a social worker, who reported that Ross was not meeting the children's basic needs and was using drugs. (A.168.) In March, after the parties were unable to resolve their differences through the Early Neutral Evaluation process, the trial court ordered the Department of Court Services to perform a formal custody evaluation. (A.93-95.)

In July 2004, the custody evaluator learned that Ross's child-protection worker had closed Ross's case file after Ross refused to complete urinalysis testing and twice failed to appear for child-protection court hearings. (A.168.) The custody evaluator indicated that she was concerned that Ross had failed to cooperate with Child Protection and believed Ross's "fitness" as a parent needed assessment. (A.168-69.) Because a parenting-fitness evaluation would be necessary to complete the custody evaluation and the court authorizes only Child Protection Services to perform a fitness evaluation, the custody evaluator closed Ross's file and asked the court to order a fitness evaluation. (A.168-69.)

In August 2004, Lewis-Miller filed a motion for immediate temporary sole legal and physical custody of the children pursuant to Minnesota Statutes section 257C.03, which authorizes interested (non-parent) third parties to petition for custody. (A.32.) In the accompanying affidavit, Lewis-Miller alleged that the children continued to be endangered in Ross's care. (A.32 ¶ 3; A.33-40.) Lewis-Miller again indicated that she had been closely involved with the children during their lives. (A.36 ¶ 18.) Before M.R.'s birth, C.R. and his mother lived with Lewis-Miller for a time, and she frequently spent time with her sister and both children. (A.36 ¶ 18.) Lewis-Miller's affidavit further alleged that the best interests of the children would be best served by immediately transferring temporary custody to her. (A.36 ¶ 18.) In response to Lewis-Miller's

August 2004 motion for temporary relief, Ross brought a motion to dismiss the December 2003 petition for third-party custody. (A.50 ¶ 28; A.97.)

Also in August 2004, the Guardian ad Litem submitted her report, in which she found that the children have emotional bonds with both parties. (A.86.) The Guardian ad Litem also found that Ross admitted he had not complied with any of the several urinalyses ordered by child protection or court services. (A.87.) The Guardian ad Litem stated she had grave concerns about the welfare of the children in Ross's care. (A.117-22.) The Guardian ad Litem reported that she "cannot support [Ross] as the sole physical and legal custodian of the children at this time." (A.87.) She recommended that the court deny Ross's motion for permanent sole custody, that the court require him to submit to regular drug testing, and that the court require him to ensure that the older child attend school regularly. (A.88.)

At a preliminary hearing on Lewis-Miller's motion in early August 2004, Ross admitted to the court under oath that he was at that time using marijuana and crack cocaine. (A.100-02.) The trial court did not allow any other testimony, cross-examination, or introduction of other evidence, but ordered a chemical-dependency evaluation of Ross and continued the hearing for three weeks so that the Guardian ad Litem could appear. (A.97-131.)

In September 2004, court services submitted a chemical-dependency evaluation diagnosing Ross as chemically dependent and recommending that he abstain from illicit

drug use and complete outpatient drug treatment. (A.91-92.) The evaluation also indicated that Ross had not cooperated with any of the four requests for urinalysis testing. (A.91.) Neither party had the opportunity to question the Guardian ad Litem regarding her report or cross-examine her with respect to the trial court's questions. (A.99-131). The custody evaluation was not completed by the time of the September 2004 hearing at which counsel for both parties argued the pending motions. (A.4.)

On October 14, 2004, the trial court issued its Findings of Fact, Conclusions of Law, and Order, dismissing Lewis-Miller's petition for lack of standing. (A.9-21.) The trial court did this despite the Family Court Services evaluators' and the Guardian ad Litem's concerns regarding the children's welfare. These concerns corroborated Lewis-Miller's fears about Ross's endangerment of the children. The trial court further found that Lewis-Miller had not proven with clear and convincing evidence her interested third-party status, although the trial court failed to provide her with an evidentiary hearing at which to do so. (A.20.) The trial court's order was made without a fully developed record, a completed custody evaluation, exploration of the competently alleged facts, or any type of evidentiary hearing.

Lewis-Miller appealed the trial court's decisions to the Minnesota Court of Appeals. The Court of Appeals determined that under the proper interpretation of section 257C.03, Lewis-Miller presented sufficient evidence to pursue her petition for custody and that the trial court erred in failing to grant Lewis-Miller an evidentiary hearing to

prove the allegations in her petition. The Court of Appeals accordingly reversed the trial court's dismissal and remanded the case for an evidentiary hearing. This appeal followed.

SUMMARY OF THE ARGUMENT

Lewis-Miller sought custody of her nephews through a section 257C.03 interested-third-party petition. She alleged the requisite factors for bringing a third-party custody petition, and supported her allegations with competent evidence. The trial court, however, improperly interpreted section 257C.03 and dismissed Lewis-Miller's petition for lack of jurisdiction and failure to satisfy her ultimate burden of proof. The trial court terminated the petition process without giving Lewis-Miller the opportunity to present evidence and develop a complete record bearing on the factors that the court must consider in making a final determination on a custody petition under section 257C.03.

On appeal, the Minnesota Court of Appeals properly concluded that the trial court erred in requiring Lewis-Miller to satisfy her ultimate burden of proof at the petition stage of the proceedings. The Court of Appeals determined that section 257C.03 encompasses a two-stage process, a petition stage followed by an evidentiary stage, with different burdens of proof at each stage. At Lewis-Miller's stage of the proceedings – the petition stage – section 257C.03 requires only “competent evidence” to establish the allegations in the petition. Because the trial court dismissed Lewis-Miller's petition based upon its conclusion that she failed to satisfy the heightened burdens of proof that apply only at the evidentiary stage of the proceedings, and because Lewis-Miller

presented competent evidence in support of her petition, the Court of Appeals properly reversed the dismissal and remanded this case for an evidentiary hearing. This Court should affirm the Court of Appeals' decision in its entirety.

ARGUMENT

I. This Court Should Affirm The Court of Appeals' Interpretation Of The Procedure And Burdens Of Proof Provided Under Section 257C.03.

A. Standard Of Review.

The determination of whether the Court of Appeals properly concluded that section 257C.03 establishes a two-stage process with different burdens of proof at each stage presents a question of statutory construction. This Court reviews questions of statutory construction *de novo*. Am. Family Ins. Group v. Kiess, 697 N.W.2d 617, 619 (Minn. 2005).

B. The Court Of Appeals Correctly Determined That Section 257C.03 Encompasses Different Burdens Of Proof At Each Stage Of A Petition For Third-Party Custody.

Lewis-Miller's petition for custody satisfied the formal requisites of Minnesota Statutes section 257C.03. Despite this, the trial court truncated the statutorily mandated procedure and dismissed the petition both on its face and on the merits – all without a fair development of the record. Because Lewis-Miller's petition properly stated and alleged interested-third-party status, and she provided competent evidence in support of her allegations, the Court of Appeals correctly determined that section 257C.03 encompasses different burdens of proof at each stage of a petition for third-party custody. The Court

of Appeals also correctly remanded the case for the required evidentiary hearing on the merits.

1. Minnesota Statutes Chapter 257C Governs Non-Parent Custody Petitions.

Minnesota Statutes chapter 257C governs non-parent custody proceedings. Section 257C.03, subdivision 2 requires a person seeking custody to initiate the process by filing a verified petition containing statements and allegations concerning fifteen categories of information. Minn. Stat. § 257C.03, subd. 2(a). This case turns, in particular, on the allegation required by section 257C.03, subdivision 2(a)(5). That provision requires the petitioner to identify the “basis for jurisdiction under section 257C.01, subdivision 2 or 3.” Minnesota Statutes section 257C.01 identifies two categories of persons who have jurisdiction to petition for custody under chapter 257C: de facto custodians and interested third parties. Minn. Stat. § 257C.01, subs. 2-3. This case involves an interested-third-party custody petition. A person petitioning for custody under chapter 257C must support all of the allegations required by section 257C.03, subdivision 2(a), including the jurisdictional allegation, with “competent evidence.” Minn. Stat. § 257C.03 subd. 2(b).

In addition to the petition requirements, chapter 257C imposes specific evidentiary burdens on a petitioner seeking custody as an “interested third party.” Section 257C.01, subdivision 3 defines “interested third party” as someone other than a de facto custodian who can ultimately prove at least one of the factors that establish interested third party

status under section 257C.03, subdivision 7(a). Section 257C.03, subdivision 7(a)

specifically provides:

- (a) To establish that an individual is an interested third party, the individual must:
 - (1) show by clear and convincing evidence that one of the following factors exists:
 - (i) the parent has abandoned, neglected, or otherwise exhibited disregard for the child's well-being to the extent the child will be harmed by living with the parent.
 - (ii) the placement of the child with the individual takes priority over preserving the day-to-day parent-child relationship because of the presence of physical or emotional danger to the child, or both; or
 - (iii) other extraordinary circumstances; and
 - (2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the interested third party.

In determining an interested third party's petition and considering the subdivision 7(a) factors, section 257C.03, subdivision 7(b) requires the trial court to consider eight enumerated categories of information concerning the involvement of the interested third party and the parent in the child's life. Section 257C.04, subdivision 1(a) identifies twelve separate factors for the court to consider in determining whether it is in the best interests of the child to be in the custody of the interested third party.

2. The Language Of The Statute, The Applicable Case Law, And The Practical Application Of The Statute Support A Two-Stage Process With A Lower Burden Of Proof At The Petition Stage.

Based upon the above statutory language, the Court of Appeals determined that section 257C.03, subdivision 7(b) establishes the following procedure. First, an individual seeking custody must file a petition stating or alleging the specified categories of information, including the jurisdictional basis for the petition – in this case, as an interested third party – and supporting those allegations with “competent evidence.” (A.5-6.) Next, the petitioner must show by clear and convincing evidence that she is an interested third party and prove by a preponderance of the evidence that granting her custody would be in the child’s best interests. (A.6.) Finally, the trial court must consider eight enumerated factors to determine whether the petitioner has met the burden and dismiss the petition if she has not. (Id.)

The Court of Appeals agreed with Lewis-Miller’s contention that the above process contemplates two separate stages: a preliminary showing that petitioner has alleged the fifteen categories of information required under section 257C.03, subdivisions 2(a-b), which, if sufficient, is followed by an evidentiary hearing to determine the ultimate merit of the allegations in the petition. (A.6.) At the preliminary stage, the petitioner must support the required allegations with “competent evidence.” At the evidentiary hearing stage, the petitioner must prove her allegations under the clear and convincing and preponderance of the evidence standards. (A.6-8.) This process provides Lewis-Miller with an evidentiary hearing to prove her interested-third-party claim and the

factual development that necessarily precedes such a hearing. Section 257C.03 entitles Lewis-Miller to such a hearing to prove by clear and convincing evidence that she is an interested third party, and that it is in the best interests of her nephews to grant custody to her.

Ross disagrees with the Court of Appeals' interpretation of the statute. He maintains that at the petition stage of the proceeding, chapter 257C requires an interested third-party petitioner to: (1) prove by clear and convincing evidence that she qualifies as an interested third party; and (2) prove by a preponderance of the evidence that it is in the best interests of the child to be in the custody of the third party. Under Ross's analysis, the statute does not entitle the petitioner to an evidentiary hearing to establish the allegations in the petition, but instead must prove the allegations, under the above standards, at the time the petitioner files the petition. Ross confuses the burden of proof applicable to a viable petition with the burden a petitioner must ultimately meet to prevail on the merits. The language of the statute, the applicable case law, and the practical application section 257C.03 show that the Court of Appeals' and Lewis-Miller's interpretation of the statute is correct and that Ross's interpretation is misplaced.

The language of section 257C.03 supports the Court of Appeals' conclusion that the statute involves a two-stage process. Section 257C.03, subdivision 2(a) states that a petition for custody filed under this section must "state and allege" certain categories of information, including the jurisdictional basis for the petition. Although section 257C.03,

subdivision 7 requires the petitioner to ultimately prove the statements and allegations regarding the jurisdictional basis for the petition under the clear and convincing and preponderance of the evidence standards, there is no requirement that the petitioner meet these burdens at the time the petitioner files the petition. Instead, section 257C.03, subdivision 2, which specifically addresses the burdens for bringing a valid petition, requires only statements and allegations (supported by competent evidence) concerning the issues that the petitioner must ultimately prove to have a successful petition on the merits. This provision thus supports the Court of Appeals' conclusion that the petition stage of the proceeding involves a lower burden of proof.

Additionally, section 257C.03, subdivision 7(b) requires the trial court to consider eight fact-specific categories of information in assessing an interested third party's petition and considering the subdivision 7(a) interested-third-party factors. Implicit in this mandate is that upon the filing of a proper petition, the trial court must permit the development of a full record, including the presentation and cross-examination of the evidence. It would be impossible for the trial court to adequately assess all of the relevant factors under chapter 257C without the development of a full record. Here, the statute entitles Lewis-Miller to an evidentiary hearing and further fact development through testimony, cross-examination, and presentation of other evidence. The Court of Appeals' decision is therefore consistent with the various provisions of the statute.

The Court of Appeals' decision is also consistent with case law discussing section 257C.03. Before this case, Minnesota courts considered the proper interpretation of chapter 257C and the specific sections at issue here in only one prior published case: In re Kayachith, 683 N.W.2d 325 (Minn. Ct. App. 2004). In deciding Lewis-Miller's appeal, the Court of Appeals relied upon Kayachith to support its interpretation of section 257C.03.

Kayachith involved a custody dispute between paternal grandparents and maternal cousins of a child whose parents had died in a car accident. Id. at 325-26. The Court of Appeals held that the cousins lacked interested-third-party status to petition for custody because they had not alleged a substantial pre-petition relationship with the child and because they could not ultimately prove that one existed, as contemplated by section 257C.03, subdivision 2(a)(4) and subdivision 7. Id. at 327. The important distinction implicitly recognized in Kayachith is that section 257C.03 has two standards: one for the allegations of the petition (subdivision 2) and the other for the ultimate burden of proof (subdivision 7). The Court of Appeals in this case similarly recognized that distinction. Ross tellingly fails to even mention Kayachith in his appellate brief.

Finally, the Court of Appeals interpretation of section 257C.03 is the only practical interpretation of the statute. Ross maintains that an interested third party must satisfy the ultimate burdens of proof detailed under section 257C.03, subdivision 3 at the time of filing the petition. Under Ross's interpretation of the statute, it would be virtually

impossible for an interested third party to successfully file a petition for custody. At the time the petitioner files the petition, an interested third party has not yet had the benefit of discovery, cannot gather information using the court's subpoena power, does not have the right to question or cross-examine witnesses, and does not have the right to seek a court-appointed custody evaluator. Without these tools, it is difficult to envision any case where the petitioner could prove all of the factors under section 257C.03 subdivision 3 at the petition stage. This cannot be the result that the legislature intended in passing chapter 257C, particularly considering the fact that this chapter addresses cases where the well-being of a child is at issue.

The Court of Appeals' and Lewis-Miller's interpretation of section 257C.03 is practical because it permits a party to state and allege petition requisites and implement the court's powers and tools in developing the facts. The trial court can then make factual determinations as to whether a petitioner has proven interested-third-party status by clear and convincing evidence and whether a petitioner has proven by a preponderance of the evidence that granting third-party custody will serve the best interests of the children. Lewis-Miller's petition for custody satisfied the formal requisites of Minnesota Statutes section 257C.03. Despite this, the trial court dismissed the petition and refused to permit Lewis-Miller to fairly develop the record. Because Lewis-Miller's petition properly stated and alleged interested-third-party status, and she provided competent evidence in support of her allegations, the Court of Appeals correctly

determined that section 257C.03 encompasses different burdens of proof at each stage of a petition for third-party custody.

The Court of Appeals' and Lewis-Miller's interpretation of section 257C.03 is consistent with the language of the statute and the applicable case law, and provides the only practical interpretation of the statute. This Court should accordingly affirm the Court of Appeals construction of the statute.

C. Appellant's Challenges To The Court Of Appeals' Interpretation Of Section 257C.03 Are Not Persuasive.

Ross raises several arguments in an attempt to challenge the Court of Appeals' sound analysis of section 257C.03. These arguments are not persuasive.

1. There is No Inconsistency Between The Court Of Appeals' Decision and The Legislative History Of The Statute.

Ross argues that the Court of Appeals' interpretation of section 257C.03 is inconsistent with the legislative history of the statute because floor remarks by the bill's Senate sponsor indicate that the legislature intended the statute to create a higher burden of proof at the petition stage. (Ross's Br. at 14.) Ross specifically maintains that the Court of Appeals' conclusion that a petitioner need only support her allegations with competent evidence at the petition stage is contrary to this intended higher standard. (Id. at 15.)

The Legislature enacted chapter 257C in 2002 to address requests for custody and visitation made by certain non-parents. (A.142-43.) Before the enactment of this chapter, Minnesota Statutes section 518.156 and the standards set forth under common

law primarily governed petitions for custody made by third parties. Under the pre-chapter 257C version of section 518.156, a “person other than a parent, where a . . . dissolution or legal separation has been entered or where none is sought by filing a petition or motion seeking custody or visitation of the child in the county where the child is permanently resident [sic] or where the child is found or where an earlier order for custody of the child has been entered” could commence a custody action. Minn. Stat. § 518.156, Historical and Statutory Notes 2002 Legislation.² Under the applicable case law, a trial court could grant custody to a third party upon a showing of “extraordinary circumstances” indicating that the best interests of the child would be served by granting custody to the third party. In re Custody of N.A.K., 649 N.W.2d 166, 174-177 (Minn. 2002).

The pre-chapter 257C framework for third-party-custody petitions did not identify any detailed requirements for filing a petition for custody. As the proponents of chapter 257C desired, the enactment of section 257C.03 raised the standards for bringing third-party-custody petitions. Now, petitioners must allege and support with competent evidence fifteen separate categories of information in order to file the petition with the court. Minn. Stat. § 257C.03, subd. 2. The Court of Appeals’ decision in this case does not eliminate that requirement. Instead, the court’s decision simply clarifies the burden

² The Legislature amended Section 518.156 at the time they adopted chapter 257C to eliminate reference to non-parent petitions for custody. Minn. Stat. § 518.156, Historical and Statutory Notes 2002 Legislation.

of proof that applies at the petition stage. Thus, Ross's argument that the Court of Appeals' interpretation of section 257C.03 somehow defeats the Legislature's goal of increasing the standards for bringing third-party-custody petitions fails. The requirements for filing a petition are higher now than they were before the enactment of chapter 257C. The Court of Appeals' decision in this case does not change that fact.

2. The Court Of Appeals' Interpretation Of The Statute Does Not Create An Unreasonably Low Burden.

Ross next argues that the "burden now established by the Court of Appeals is so low that it is difficult to imagine anyone who will be unable to persuade a court to order a hearing." (Ross's Br. at 16.) This argument is simply untrue. Under the language of section 257C.03, and the Court of Appeals' interpretation of this provision, persons petitioning for third-party custody must file a verified petition alleging specific information concerning the background of the parties, the child, and the petitioner's pre-petition relationship with that child. The petitioner must support these allegations with competent evidence. Minn. Stat. § 257C.03, subd. 2. The burdens for filing a petition for third-party custody are stringent. There is no basis for concluding that the Court of Appeals' interpretation of section 257C.03 would result in an influx of mere strangers petitioning for custody of another person's child.

Ross further argues that the standards for filing a third-party-custody petition must be higher because custody hearings are difficult for children. Petitions for third-party custody involve situations where the parent has abandoned, neglected, or otherwise

exhibited disregard for the child's well-being, has presented physical or emotional danger to the child, or has created other extraordinary circumstances that warrant removal of the child from the custodial parent's care. Minn. Stat. § 257C.03, subd. 7(a). If this Court adopts the evidentiary burdens that Ross proposes at the petition stage of the proceedings, children in extreme physical or emotional danger may fall through the cracks because the standard for filing a petition for third-party custody is too high. The risks of prematurely dismissing a petition where a child is in harm's way far outweigh the burdens associated with an evidentiary hearing.

3. Ross's Proposal Of A Two-Tier System With Heightened Burdens At Both Stages Is Illogical.

Finally, Ross proposes that if this Court adopts a two-stage process under chapter 257C, the standard for meeting the ultimate burden of proof should apply at both stages. (Ross's Br. at 18.) This argument defeats the purpose of a two-stage process. If the petitioner satisfies the heightened evidentiary standards at the petition stage, then the evidentiary stage would be duplicative. If the petitioner does not satisfy the heightened evidentiary standards at the petition stage, then there would be no opportunity for an evidentiary hearing. Thus, if a petitioner must meet her ultimate burden of proof at the petition stage, as Ross suggests, then there is no need for an evidentiary stage. Ross's modified two-stage proposal is an illusion that this Court must reject.

II. Because This Court Must Interpret “Competent Evidence” Under Section 257C.03, subd. 2(b) Consistently With The Minnesota Rules of Evidence And Minnesota Statutes On Competency And Capacity of Witnesses, Lewis-Miller Presented Competent Evidence.

Ross next argues, for the first time in this appeal, that Lewis-Miller did not present “competent evidence” in support of her petition, requiring reversal of the Court of Appeals’ decision in this regard. Ross relies upon an overly stringent definition of “competent evidence” to support this argument. Using a reasonable standard for competent evidence, Lewis-Miller clearly met the petition requirements under section 257C.03, subdivision 2. This Court should accordingly affirm the Court of Appeals’ reversal and remand of the trial court’s decision.

A. Standard Of Review.

The meaning of “competent evidence” in section 257C.03, subd. 2(b) presents a question of statutory construction. Because the Court of Appeals did not address the factual findings of the trial court but interpreted the term “competent evidence” in concluding that Lewis-Miller’s allegations were sufficient, the definition of “competent evidence” raises a question of statutory construction. This Court reviews questions of statutory construction *de novo*. Kiess, 697 N.W.2d at 619.

B. Lewis-Miller Presented Competent Evidence As Required By Section 257C.03.

1. The Term “Competent Evidence” In Section 257C.03, subd. 2(b) Is Ambiguous.

Section 257C.03, subd. 2(b) provides that a petition for third-party custody under section 257C “must be verified by the petitioner . . . and allegations established by competent evidence.” Section 257C does not define the term “competent evidence.” As such, “competent evidence” is an ambiguous term in section 257C.03 subject to a court’s interpretation. A court’s goal in cases involving statutory interpretation is to ascertain and effectuate the intention of the legislature in drafting the statute. Minn. Stat. § 645.16 (2004). In ascertaining the legislature’s intent, courts may be guided by several presumptions. Minn. Stat. § 645.17 (2004). Courts should presume that the Legislature “intends the entire statute to be effective and certain” and “does not intend a result that is absurd, impossible of execution, or unreasonable.” Id.

2. Using Admissible Evidence As The Standard For Competent Evidence Under Section 257C.03, subd. 2(b) Fails To Effectuate Legislative Intent Because Such A Reading Creates A Third-Party-Custody Process That Is Ineffective And Unreasonable.

Ross cites authority for the position that, in some contexts, courts and legislatures define competent evidence as admissible evidence.³ In the third-party-custody context, however, if competent evidence equates to admissible evidence, the third-party-custody process is ineffective and unreasonable.

Under the process Ross advances, where competent evidence under section 257C.03 equates to admissible evidence, the statute would force the parties and the court to engage in a burdensome evidentiary evaluation at the outset of the case. A respondent would need to immediately object to the admissibility of allegations in the petition. Minn. R. Evid. 103(a)(1), 402. The statute would then force the parties to litigate the admissibility of the allegations and the trial court to rule on the admissibility of the allegations based only on the information in the petition and outside of the context of an evidentiary hearing. Because it is impossible for a petitioner to fully develop all of the admissible evidence of her case at the commencement of the proceeding, equating competent evidence to admissible evidence renders the third-party-custody statute

³ Nearly all of the authorities that Ross cites in support of his interpretation of competent evidence misstate or misrepresent the language and context of the cited authorities. For instance, Ross erroneously relies on State v. Iverson, 664 N.W.2d 346 (Minn. 2003) for the proposition that “[c]ompetent evidence is, at the very least, evidence that would be admissible in a court of law.” (Ross’s Br. at 20.) Iverson does not address evidentiary issues and does not contain either of the words “competent” or “admissible.”

ineffectual. Therefore, the Legislature could not have intended that competent evidence be equivalent to admissible evidence.⁴

3. This Court Must Interpret Competent Evidence Under Section 257C.03, subd. 2(b) Consistently With The Minnesota Rules Of Evidence And Minnesota Statutes Regarding Competency And Capacity Of Witnesses.

If this Court reads the phrase “competent evidence” in section 257C.03 consistently with the Minnesota Rules of Evidence and Minnesota Statutes on competency and capacity of witnesses, the third-party-custody process permits reasonable notice and development of the case before assessing evidence for admissibility. A verified third-party-custody petition under section 257C.03 sets forth the written testimony of the petitioner. Because a petitioner is testifying to the court through the verified petition, the petitioner must comply with the competency requirements of the Minnesota Rules of Evidence and the witness-competency and capacity statutes. Every person of “sufficient understanding” with “personal knowledge of the matter” is competent to testify. Minn. Stat. § 595.02, subd. 1 (2004); Minn. R. Evid. 602. An infant or “person apparently of weak intellect” may not have the capacity to testify. Minn. Stat.

⁴ It is notable that the term “competent evidence” is used only one other place in any Minnesota family-law statutes. Minnesota Statutes section 518.10 addressing the requisites of a petition for dissolution of marriage provides that “[t]he petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.” The identical language in 257C.03, subd. 2(b) suggests that the legislature did not intend “competent evidence” to equate with admissible evidence or any other heightened standard as there is no support for the position that admissible evidence is required at the petition stage of a marriage-dissolution process.

§ 595.06 (2004). Thus, under Rule 602 and sections 595.02 and 595.06, any adult not of weak intellect with sufficient understanding and personal knowledge of the matter is competent to testify in a civil proceeding.

If this Court reads the phrase “competent evidence” in section 257C.03 consistently with competency of witness testimony under the Minnesota Rules of Evidence and the witness-competency and capacity statutes, the third-party-custody process is workable. The process works because it is based on the personal knowledge of a witness who has no complete testimonial infirmities. The petition notifies the opposing party of the nature of the custody action. The parties are then permitted to implement the court powers of discovery, subpoenaing, compelling evidence, and cross-examination of witnesses. This process enables the court to fully evaluate the admissibility of the evidence and consider the case on its merits. It is certain that the Legislature intended the third-party-custody statute to be operable and provide for successful third-party-custody actions in specified situations. Reading “competent evidence” consistently with the Minnesota Rules of Evidence and competency and capacity statutes permits such a workable third-party-custody process.

Lewis-Miller presented competent evidence in support of her petition. Lewis-Miller’s verified third-party-custody petition sets forth the written testimony of Lewis-Miller. Because she is an adult not of weak intellect with sufficient understanding and personal knowledge of the matter, Lewis-Miller is competent to testify through her

petition in this civil proceeding. In fact, Lewis-Miller provided extensive evidence beyond the competent evidence of her petition, including sworn affidavits and exhibits. Therefore, as the Court of Appeals concluded, the statute entitles Lewis-Miller to an evidentiary hearing.

C. Even If Admissible Evidence Is The Standard For Competent Evidence, Lewis-Miller Presented Competent Evidence.

Even if competent evidence equates to admissible evidence, the trial court should not have dismissed Lewis-Miller's petition. Under Ross's approach, Ross needed to object to the admissibility of Lewis-Miller's evidence and the trial court needed to assess the admissibility of each piece of Lewis-Miller's evidence. This process did not occur. Thus, all of the evidence that Lewis-Miller submitted in support of her petition is presumptively admissible. Minn. R. Evid. 103(a)(1), 402.

Had Ross objected to the admissibility of Lewis-Miller's evidence, her petition nonetheless satisfies the admissibility requirement that Ross proposes. While Lewis-Miller's evidence is far too extensive to analyze piece by piece in this brief, many of the allegations in Lewis-Miller's petition and subsequent affidavits, as well as corroborating evidence from court-appointed participants, are admissible. In particular, the trial court would likely admit the professional opinion testimony and reports, including the chemical-dependency evaluation of Ross, the child-protection report, and the Guardian ad Litem report as exceptions to the Minn. R. Evid. 802 exclusion of hearsay. Additionally, Ross himself admitted to using marijuana and crack cocaine. The trial court has not

conducted an adequate admissibility assessment of the evidence, but such an assessment would lead to admission of much of Lewis-Miller's evidence and the conclusion that Lewis-Miller submitted competent evidence in support of her petition, even under Ross's heightened standard.

CONCLUSION

This Court should affirm the Court of Appeals' interpretation of section 257C.03. The Court of Appeals' decision is consistent with the language of the statute and the relevant case law and provides the only practical interpretation of the provisions at issue. This Court should also affirm the Court of Appeals' remand of this matter for evidentiary hearing. The trial court erroneously dismissed the matter at the petition stage. Because Lewis-Miller supported her petition with competent evidence, the statute entitles her to an evidentiary hearing and the opportunity to fairly develop a record. Lewis-Miller will then have the opportunity to prove by clear and convincing evidence that she is an interested third party and that it is in her nephews' best interests to grant their custody to her.

DATED: October 28, 2005

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