

State of Minnesota
Court of Appeals

(Case No. A08-141)

Appeal of an Order
From the Ramsey County District Court
For the Second Judicial District
In the State of Minnesota

In Re the Matter of:

Raymond Curtis Zentz,

Respondent,

vs.

Cassandra Marie Graber,

Appellant.

Appellant's Reply Brief and
Response to Respondent's Motion

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Appellate Procedural & Briefing Posture

Appellant Cassandra Graber (hereinafter “Appellant”) submits her Reply Brief, including Appellant’s Response to Respondent’s Motion for Attorneys’ Fees (hereinafter “Motion”) and Appendix to Memorandum, pursuant to MINN. R. CIV. APP. P. 128.02, subd. 3 and 127.

Appellant served Appellant’s Brief upon Respondent Raymond C. Zentz (hereinafter “Respondent”) on March 13, 2008, via U.S. Mail, as well as filed such with this Court on the same date via courier delivery, pursuant to MINN. R. CIV. APP. P. 125.01-.04 and 128.02. *See* Appellant’s Reply Brief Ex. 1; *see also* Appellant’s filed Affidavit of Service of Appellant’s Brief, dated March 13, 2008.

Respondent served Respondent’s Brief in the above-entitled matter on Tuesday, April 15, 2008, via U.S. Mail. Respondent’s Brief was not timely filed or served, pursuant to MINN. R. CIV. APP. P. 125.01-.04, 126.01-.02, and 128.02.

Appellant now timely serves and submits her reply and responsive position to Respondent’s newly raised issues and “Motion” contained in Appellant’s tardy Response Brief, on or before end of business, Friday, April 25, 2008, as allowed pursuant to MINN. R. CIV. APP. P. 125.03 and 126.01, as well as MINN. R. CIV P. 6.01.

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Summary of Reply Brief & Motion Response Argument

Respondent has raised four new issues in his response: 1) Respondent's late submission of his Response Brief; 2) an incorrect interpretation of MINN. STAT. § 257.62 suggesting said section gives Respondent standing; 3) a demonstrated lack of understanding of the due process problems caused by Respondent's and the trial court's incorrect interpretation of the applicable law; and 4) an apparent motion for attorneys' fees under MINN. STAT. § 518.14.

Respondent was served with Appellant's Brief on March 13, 2008, but did not file his Response Brief until April 15, 2008, thirty-three (33) days after being served with Appellant's Brief. *See infra*. MINN. R. CIV. APP. P. 128.02, Subd. 2 reads: "A respondent who fails to file a brief either when originally due or upon expiration of an extension of time *shall not be entitled to oral argument without leave of the appellate court.*" (Emphasis added). Respondent has not provided "good cause" for an extension of time to file his Response Brief. *See* MINN. R. CIV. APP. P. 131.02. Therefore, Respondent is not entitled to oral argument.

Respondent unquestionably fails to understand the plain meaning of "standing" as he incorrectly argues MINN. STAT. § 257.62 grants authority and mandates genetic blood testing in the present case. MINN. STAT. § 257.57 defines "who may bring action" and "when action may be brought"; this section only references one other section (§ 257.55) relevant to the issue at bar, standing. Although raised as a new issue, that Appellant will address, *infra*, MINN. STAT. § 257.62 is irrelevant to this appeal. Respondent's argument invoking section 257.62 for his standing problem is non sequitur.

Appellant's plain language statutory interpretation that Respondent alone, as the initiating party, failed to notice and include at least two indispensable parties is undisputed. *See* MINN. STAT. § 257.60. The trial court even questioned Respondent's counsel as to his failure to implead the presumed father. Transcript of Proceedings, at lines 17-22, 11-15, pp. 2-3. Respondent's admitted failure in this regard by itself is fatal. *Id.*, at lines 6-18, p. 7. Nonetheless, the constitutional questions presented by Respondent's actions, and the subsequent inaction of the trial court to mandate impleading of all necessary parties, in the case at bar, require an immediate remand.

Respondent has drafted and apparently filed a motion for attorney's fees under MINN. STAT. § 518.14. *See* Respondent's Brief, pp. 25-26; *see also* Notice of Motion and Motion for Attorney's Fees, dated April 15, 2008. Respondent's request, framed as a motion for sanctions, is inappropriate because of his own admitted notice failures in initiating this action in conflict with applicable statutes and constitutional rights. Further, Respondent offers no proof of Appellant's motives, as proffered by Respondent; rather, he makes broad allegations in an attempt to detract from his own procedural mistakes. Respondent's motion for attorney's fees should be denied.

Appellant requests the Court reject all of Respondent's arguments and motion requests, and rule in her favor on her appeal to reverse the district court's decision that Respondent has standing to bring his Complaint as drafted, plead and initiated in this matter. In the alternative, Appellant requests the Court remand the entire case back to the district court, instructing Respondent to implead all necessary parties, and ordering Respondent to pay all Guardian ad Litem fees for the minor child because of his failures.

**Reply & Response Argument with
Memorandum in Opposition to Respondent's Motion**

I. RESPONDENT'S RESPONSE BRIEF IS NOT TIMELY

“The Respondent shall serve and file a brief and appendix ... within 30 days after service of the brief of the appellant ...” MINN R. CIV. APP. P. 131.01, subd. 2. Further, “A respondent who fails to file a brief either when originally due or upon expiration of an extension of time *shall not be entitled to oral argument without leave of the court.*” MINN. R. CIV. APP. P. 128.02, subd. 2. (Emphasis added).

Here, it is an undisputed fact as admitted through Respondent's affidavit of service that Respondent's Brief was served upon Appellant and filed with the Court of Appeals *thirty-three (33) days* after being served with Appellant's Formal Brief, in direct violation of applicable appellate court rules. *Cf.* MINN. R. CIV. APP. P. 131.01, subd. 2 and Appellant's Affidavit of Service on Respondent/Plaintiff, dated March 13, 2008, with Respondent's Affidavit of Service by Mail, dated April 15, 2008. Appellant was not served with any motion or supporting affidavit for an extension or continuance, pursuant to MINN. R. CIV. APP. P. 127 or 131.02. Neither Appellant nor the Court has been provided “good cause” for the tardy service and filing of Respondent's Brief. *See* MINN. R. CIV. APP. P. 131.02.

Thus, under the applicable rules, Respondent is not entitled to oral argument, and Appellant is prepared to make uncontested oral argument at the time, date and place specified by the Clerk of Appellate Courts. *See* MINN. R. CIV. APP. P. 128.02, subd. 2.

II. THE ISSUE ON APPEAL: STANDING

The right to bring a paternity proceeding is a creation of the Minnesota Parentage Act (“MPA”), MINN. STAT. §§ 257.51-.74, which provides the exclusive bases for standing to bring an action to determine paternity. *See Morey v. Peppin*, 375 N.W.2d 19 (Minn.1985). Whether the trial court properly interpreted the parentage act is a question of law, which is reviewed without deference to the trial court’s conclusions. *See Wilson v. Speer*, 499 N.W.2d 850 (Minn.App.1993), *pet. for rev. granted* (Minn. July 19, 1993), *appeal withdrawn* (Aug. 16, 1993).

The issue of standing is whether an individual is entitled to have the court decide any other particular issue, and is therefore of paramount importance. *See Rukavina v Pawlenty*, 684 N.W.2d 525 (Minn.App.2004), *rev. denied* (Minn. Oct. 19, 2004), *citing Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205 (1975). This Court must first determine whether Respondent has standing in order to determine whether it has the authority to decide any other issues. *Id.* Respondent’s latest assertions do not address the issue on appeal (standing), admit statutory violations through the specious suggestion Appellant is responsible to name the indispensable parties, and are entirely lacking in any comprehension of the constitutional protections of due process.

Respondent cites MINN. STAT. § 257.62 to demand genetic blood testing to resolve the issue of standing. However, the court must first determine whether Respondent has standing to demand a genetic blood test, and therefore, whether the trial court has the power to order a blood test. Respondent cannot circumvent the standing requirements in sections 257.55 and 257.57 and demand action from a court in order to establish standing.

A. MINN. STAT. § 257.62 IS NON SEQUITUR.

MINN. STAT. § 257.62, a subsection of the MPA, is entitled “Blood and genetic testing.” The subsection provides that a court or public authority “may” require a child, mother or alleged father to submit to genetic blood tests, as well as additionally provides authority to require such testing “upon request of a party.” *Id.*, at subd. 1(a). The section limits the requests be made by “[a] mother or alleged father.” *Id.* The MPA consistently distinguishes between an “alleged father” and a man “alleging himself to be the father.” *See, e.g.*, MINN. STAT. § 257.57 subd. 2. This is an incredibly important distinction in the case at bar.

This subsection of the MPA is contained *after* explicitly entitled subsections dealing with issues of standing, presumptions and who and when an action may be brought by a child, mother or alleged father. *See id.*, at §§ 257.55 and 257.57; *see generally*, §§ 257.52-.61. To clarify, this subsection has no independent meaning until *after* some party actually has standing, as explicitly defined earlier in the MPA, and thus can invoke the authority of the law over another named party. Any reading of this section that provides a method to “bootstrap” standing is inconsistent with the other provisions of the statute and is unconstitutional. *See infra*.

Further, if this Court is to infer a grant of standing into MINN. STAT. § 257.62; which is plainly absent, Respondent is not of the class of people who would be granted standing. The statute empowers two entities and two individuals to request a blood test: the court, a public authority, the mother, or the *alleged father*. *Id.* Respondent is not alleged to be the father; he is *alleging himself* to be the father.

Allowing an individual to be the only one to allege himself to be a father to become an *alleged father* to thereby obtain standing is another of many attempts by Respondent to avoid the plain language statutory requirements of standing.

Finally, the statute allows for genetic blood tests of three parties: the mother, the child, and the alleged father. *Id.* The only way the genetic blood test has any meaning is if the alleged father and the child are both tested. However, in this case, the child is not a named party and the trial court has no personal jurisdiction over him to order his submission to a genetic blood test. This is Respondent's and the trial court's fatal failure, and not Appellant's. Thus, an unnamed party cannot be ordered to submit to genetic blood testing.

B. RESPONDENT'S AUTHORITY IS DISTINGUISHABLE.

Respondent cites one or two sentences of numerous cases to support very broad assertions of law. All are easily distinguishable from the case at bar.

Frieson v. Pahkala, 653 N.W.2d 199 (Minn.App.2002) is cited for the proposition district courts are to treat affidavits of moving parties as true. *Frieson* dealt exclusively with the issue of whether the court has the authority to compel genetic blood testing under MINN. STAT. § 257.62. 653 N.W.2d 199. The issue of standing was not disputed in *Frieson*. *Id.* In the case at bar, Appellant challenges whether the Court correctly determined that Respondent has standing under MINN. STAT. §§ 257.55 and 257.57. In *Frieson*, Appellant already had standing before bringing his motion to compel genetic blood testing. 653 N.W.2d 199. *Frieson* is distinguishable because the issue of standing must be resolved prior to presuming the affidavits of moving parties are true. *Id.*

Respondent seems to cite *In Re Tveten*, 402 N.W.2d 551 (Minn.1987), for the proposition that the statute in question bears a presumption of constitutionality. Amongst other issues, *Tveten* deals with the constitutionality of MINN. STAT. § 550.37, which governs property that is exempt in a bankruptcy filing and garnishment. See *Tveten*, 402 N.W.2d 551. *Tveten* actually states: “a duly enacted statute carries with it a presumption *in favor of its constitutionality.*” See *id.*, at 556, citing *Guilliams v Commissioner of Revenue*, 299 N.W.2d 138, 142 (Minn.1980) (emphasis added). The presumption is rebutted when the challenging party has demonstrated beyond a reasonable doubt that it violates a constitutional provision. See *id.*, at 556, citing *Contos v Herbst*, 278 N.W.2d 732, 736 (Minn.1979), *appeal dismissed sub. nom Prest v Herbst*, 444 U.S. 804, 100 S.Ct. 24, 62 L.Ed.2d 17 (1979). Appellant has addressed the constitutional problems presented by Respondent’s and the trial court’s actions and inactions, and Respondent has substantively failed to address those arguments. Further, Respondent fails to explain in any way whether Appellant has failed to rebut the presumption, or offer any support for its constitutionality.

Respondent cites *Murphy v. Meyers*, 560 N.W.2d 752 (Minn.App.1997) to support his assertion that public policy requires a determination of paternity. Appellant does not dispute this premise. *Murphy* does not deal with standing. *Id.* *Murphy* supports Appellant’s premise that before Respondent is allowed to proceed, the presumed father and the child must be named parties. In fact, *Murphy* states: “[a] child’s interests in an adjudication of paternity are ‘distinct and separate from those of both her mother and father.’” *Id.*, quoting *R.B. v. C.S.*, 536 N.W.2d 634 (Minn.App.1995).

Clearly, a child has an interest in a paternity matter. In the case at bar, the minor child at issue must be named a party, as mandated by statute. *See* MINN. STAT. § 257.60. When Respondent failed to do so in the present case, the Court was required to do so to invoke personal jurisdiction before ordering genetic blood testing, lest the child's constitutional rights are violated. *See Witso v Overby* 627 N.W.2d 63 (Minn.2001); *see also infra*.

Respondent cites *Thiele v. Stitch*, 425 N.W.2d 580 (Minn.1988) for the proposition that the Court of Appeals cannot address constitutional issues that were not raised at the trial court level. *Thiele* deals with a legal malpractice action involving ineffective service of process to timely commence the action. *Id.* The Court of Appeals considered a newly raised issue: an alternative accrual date for plaintiff's action. *Id.* The alternative accrual date issue was not raised at the trial court level. *Id.* Here, Appellant raised the constitutional issue and the issue of indispensable parties at the trial court level. Transcript of Proceedings, at lines 17-22, 11-22, 1-11, 11-25, 1-2 pp. 2-3, 6, 9-10. In fact, the Court raised those issues before counsel could even bring it to the Court's attention. *Id.*; *see also, supra*. After it was mentioned, counsel for both parties presented short oral argument on the very issues Appellant raises on appeal. *Id.*

Finally, Respondent cites *Weber v. Anderson*, 269 N.W.2d 892 (Minn.1978), for the proposition the MPA must be construed liberally to achieve its remedial and humanitarian purposes. This citation is curious, as the MPA was not effective until August 1, 1980, *approximately two years after* the case was decided at the Minnesota Supreme Court.

The statute in question in *Weber* dealt with a 1971 law governing the inheritance rights of illegitimate children. *Id.* *Weber* did not deal with the interpretation of the MPA, and is thus distinguishable. *Id.* In the case at bar, the issues are whether the trial court correctly determined if Respondent has standing to bring his paternity complaint, and the due process rights of the indispensable parties.

III. RESPONDENT & THE TRIAL COURT VIOLATED THE CONSTITUTIONAL RIGHTS OF APPELLANT & OTHERS.

The appellate courts may reverse, affirm or modify the judgment or order appealed from or take any other action as the interest of justice may require. On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment. They may review any other matter as the interest of justice may require. The scope of review afforded may be affected by whether proper steps have been taken to preserve issues for review on appeal.

MINN. R. CIV. APP. P. 103.04.

Respondent argues that Appellant may not raise any of her constitutional issues because they were not raised at the trial court level. This assertion is false, as the trial court itself raised these issues. *Supra.* Respondent relies on *Thiel*, 425 N.W.2d at 582, wholly ignoring the Minnesota Supreme Court decision in *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn.1982) and the appropriate application of MINN. R. CIV. APP. P. 103.04, when the trial court itself failed to rectify the constitutional problem before it.

The Minnesota Supreme Court in *Tischendorf* stated that when it is required in the interest of justice, and when the parties have had adequate briefing time, and when the issues were implied at the trial court level, an appellate court may under take a review of the issues. 321 N.W.2d at 410.

In the case at bar, the trial court noted the constitutional problems caused by Respondent's lack of inclusion of indispensable parties, yet did nothing to address the noted issues. The violations of applicable statutory requirements by Respondent are one thing, but the trial court's lack of addressing issues it noted is entirely another matter. *See supra, see also, infra.*

No person shall be deprived of life, liberty or property without due process of law. U.S. CONST. art. V. No State shall deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws. *Id.*, art. XIV. Further, “[t]he biological mother, each man presumed to be the father under section 257.55, and each man alleged to be the biological father, *shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be given an opportunity to be heard.*” MINN. STAT. § 257.60 (emphasis added).

Yet further, “the child shall be made a party whenever ... an action to declare the existence of the father and child relationship is brought by a man presumed to be the father under section 257.55, *or a man who alleges to be the father*, and the mother of the child denies the existence of the father and child relationship.” *Id.* at (3) (emphasis added); *see also, Witso*, 627 N.W.2d 63.

In the present case there are serious constitutional implications regarding the due process and potential equal protection rights of three individuals, two of whom are not named as parties to this action.

First, the minor child at issue must be made a party to the action before proceeding. *See Witso*, 627 N.W.2d 63. Allowing Respondent to assert rights against and compel the minor child to submit to civil proceedings and intrusive testing certainly violates the due process rights of the child.

Second, the presumed father has neither been named nor noticed, as required by MINN. STAT. § 257.60. Allowing Respondent to assert rights against the only presumed father without even providing him notice certainly violates the due process rights of the presumed father.

Third, Appellant's due process rights are violated by being required to submit to genetic blood testing when the issue of Respondent's standing is not resolved. Realize, Respondent has of yet failed to establish anything other than he is a *self-alleging* father. There are material facts in dispute, though Respondent only relies upon assumptions of his assertion's validity. To allow assumptions of the validity of mere assertions of an individual who is not the presumed father potentially violates Appellant's due process rights. To allow Respondent to obtain genetic blood testing, without establishing standing and without following the statutory requirements of notice and pleading for indispensable parties, definitely violates Appellant's constitutional rights.

Instead of responding to Appellant's constitutional argument, Respondent's brief is replete with heart-string arguments based on emotion rather than law. Furthermore, Respondent took longer than allowed by the Rules to respond to Appellant's Brief. Respondent had more than adequate time to contemplate and brief the constitutional issues which were presented both directly and impliedly at oral arguments, as well as in

the subsequent brief on standing for the trial court. This Court should not allow the Respondent to deny constitutional questions, which must be answered in the interest of justice, on the basis that Appellant may have addressed or touched on constitutional issues but did not do so in such a way as to couch the issue in the exact language the Respondent might desire.

In ignorance of the constitutional requirements, Respondent argues that the Court must grant a request for genetic blood testing to *anyone* who requests it and files an affidavit supporting the request. This argument demonstrates Respondent's complete lack of understanding of Appellant's argument. In fact, this argument illustrates the exact problem Appellant previously argued: various sections of the MPA allow a person to circumvent the standing requirements laid out in the statute, obtain an order for genetic blood testing based entirely on mere unsubstantiated assertions, in order to establish standing.

Almost every other state in the country has realized and rectified this constitutional due process problem. Every state in the country has a statute or chapter devoted to paternity proceedings. Fourteen states, including Minnesota, have adopted the MPA. The remaining thirty-six states have abandoned the MPA and enacted their own statutes dealing with paternity and standing. In fact, a number of states deny standing *entirely* to men who allege themselves fathers of children born out of wedlock.¹

¹ These states give standing, in a limited, varying set of circumstances, to "the alleged father." These statutes do not refer to or give standing to a man "alleging himself to be the father," as Minnesota statutes state. *See, e.g., Georgia; see also Iowa, see also Kentucky, see also Nebraska.*

The language of the MPA allows for a constitutional interpretation of the aforementioned sections, which do not violate the constitutional due process rights of a mother. However, in this case, both Respondent and the trial court have read the statute so as to deprive Appellant of the statutorily defined procedural due process. Therefore, this Court must reverse the trial court's determination that Respondent has standing to demand an order of genetic blood testing without first establishing his own standing.

IV. RESPONDENT'S REQUEST FOR ATTORNEYS FEES

"A party seeking attorneys' fees on appeal shall submit such a request by motion under Rule 127. ... All motions for fees must include sufficient documentation to enable the appellate court to determine the appropriate amount of fees." MINN. R. CIV. APP. P. 139.06. Rule 127 states "[u]nless another form is prescribed by these rules, an application for an order or other relief shall be made by serving and filing a written motion for the order or relief." MINN. R. CIV. APP. P. 127.

Except as provided in section 518A.735, in a proceeding under this chapter or chapter 518A, the court shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

- (1) that the fees are necessary for the good-faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
- (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and
- (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Nothing in this section or section 518A.735 precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against

a party who unreasonably contributes to the length or expense of the proceeding.

MINN. STAT. § 518.14.

While it appears Respondent has met the requirements of MINN. R. CIV. APP. P. 139.06, he has failed to meet the requirements of the very statute under which he moves: section 518.14. While Respondent has submitted an affidavit of attorneys' fees and supplemental documentation, he nonetheless fails to provide the Court with any way to determine whether Appellant has the means to pay the fees, costs, and disbursements, and whether Respondent himself indeed does not have the financial means to pay them. *See supra*.

In fact, Respondent filed a verified Complaint and Financial Affidavit earlier with the trial court specifically stating he earns \$4,525.00 gross income per month, with no monthly child support obligation. *See* Plaintiffs Amended Financial Affidavit For Child Support, dated November 8, 2007. This equals \$54,300.00 in gross income per year. *Id.*, at Attachment 1. Respondent admits he does not know Appellant's gross income. *See* verified Complaint, at ¶ 10. Clearly, Respondent is not a man of meager means.

To the contrary of his baseless assertions, nothing in the record suggests Appellant has any malicious intent, as there are no findings of fact to support such. Further, and contrary to the inaccurate assertions of Respondent, the record beginning at the trial court level explicitly details the very concerns Appellant raises on appeal: notice and standing. These concerns were even brought up by the Court *sua sponte*. Transcript of Proceedings, at lines 17-24, 1-25, 1-25, 1-24, 1-11, pp. 2-6.

To proceed without notice to the only presumed father, much less serve and appropriately provide the opportunity to be heard, unquestionably violates the known constitutional rights of these individuals (the minor child and presumptive father) and removes any chance for substantive or procedural due process concerning Respondent's assertions.

Appellant's appeal stands on solid legal ground based upon Respondent's and the trial court's failures to appropriately notice indispensable parties with known due process rights. *See* MINN. R. CIV. P. 19; *see also, supra*. These issues must be addressed before the case continues. Subsequently, an award of attorney's fees under a 'good faith' assertion of his rights, after he alone failed to include the minor child or the presumed father in his action, combined with the lack of any proof Appellant has the means to pay such an award to him, is assuredly inappropriate. *See* MINN. STAT. 518.14, Subd. 1.

V. CONCLUSION

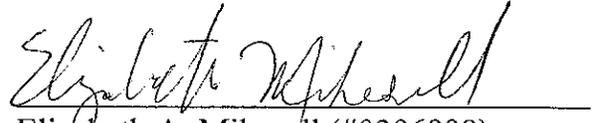
Respondent has failed to address the primary issue on appeal, standing. There are serious questions whether Respondent has standing, and if he does, whether the statute(s) that give him standing are even constitutional as he and the trial court have interpreted and applied them.

Respondent filed his Response Brief with the Court of Appeals late; therefore, he is not entitled to oral argument. Respondent further mis-states and ignores Appellant's entire constitutional argument, and argues that despite case law and statutes requiring he name the child's presumptive father and the child as parties to the action, his utter failure to do so is not fatal. Finally, Respondent argues he should be granted attorney's fees to

sanction Appellant for filing her appeal with improper motives. All of these arguments fail. The Court should reverse the trial court's determination that Respondent has standing and clarify the constitutional problems with the MPA.

Respectfully submitted, this 25th day of April, 2008:

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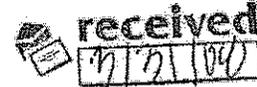


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Re: *In Re the Matter of: Raymond Curtis Zentz v. Cassandra Marie Graber*
Court of Appeals File No. A-08-141

Dear Ms. Mikesell:

This will acknowledge receipt of your brief mailed March 13, 2008, by which you advise this office of a challenge to the constitutionality of Minn. Stat. § 257.57, subd. 2(1) in the above-entitled appeal. The Attorney General has decided not to intervene at this time, but reserves the right to do so should the matter be further appealed.

Very truly yours,

JOHN S. GARRY
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cc: Clerk of Appellate Courts

AG: #1980821-v1

received
4/16/08

Re: Case No. A08-141 Minnesota Court of Appeals

STATE OF MINNESOTA

SS.

AFFIDAVIT OF SERVICE BY MAIL

COUNTY OF RAMSEY

RE: In Re the Matter of: Raymond Curtis Zentz; Respondent and Cassandra Marie Graber; Appellant.

Kim Hedin, City of St. Paul, County of Ramsey and State of Minnesota, being duly sworn on oath, says that on the 15th day of April, 2008 (s)he served 2 (two) copies of Respondent's Brief and Appendix on following named attorneys for various parties to this action by placing a true and correct copy thereof in an envelope addressed as follows deposited in the **U.S. Mail**:

BOCK & BATTINA, LLP
Elizabeth A. Mikesell, Esq.
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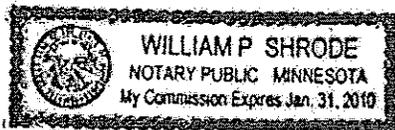
(Signed) Kim Hedin
Kim Hedin

Subscribed and sworn to before me
this 15th day of April, 2008

W. P. Shrode

Notary Public

(Seal)



Briefs filed with Clerk of Court on:

April 15, 2008