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NO. A08-1991

State of Minnesota
In Court of Appeals

Ramsey County and State of Wisconsin
on behalf of Yer Yang,

Appellants,

vs.

Yer Lee,

Respondent.

APPELLANTS' BRIEF AND APPENDIX

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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).

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STATEMENT OF ISSUES

1. Minnesota recognizes a marriage that is valid under the law of the foreign jurisdiction in which it took place unless the marriage violates Minnesota public policy. Similarly, the Conflict of Laws Act states that adoptions are governed by the law of the nationality of the parties. The parties were married and adopted a son according to laws of their Hmong nationality. Did the district court abuse its discretion by failing to recognize the cultural marriage and adoption?

The district court did not recognize the marriage and adoption and found that Respondent did not have to support Y.P.L.

Apposite Authorities:

Laikola v. Engineered Concrete,
277 N.W.2d 653 (Minn. 1979).

Ma v. Ma,
483 N.W.2d 732 (Minn. Ct. App. 1992).

Conflict of Laws Act,
B.E. 2481 (1938).

2. Minnesota recognizes equitable adoptions to protect a child's inheritance rights. Other jurisdictions have extended the doctrine of equitable adoption to protect a child's right to child support where there is evidence of an equitable adoption. The parties held the child out as their own, adopted him according to Hmong tradition, the child was recognized in the community as the parties' child, there was reliance on support of both parents, and harm would result without the father's support. Did the district court abuse its discretion by failing to extend the doctrine of equitable adoption to protect the child's right to child support in this case?

The district court did not extend the doctrine of equitable adoption to protect the child's right to child support in this case.

Apposite Authorities:

Johnson v. Johnson,
617 N.W.2d 92 (N.D. 2000).

Geramifar v. Geramifar,
688 A.2s 475 (Md. Ct. App. 1997).

In re Herrick's Estate
124 Minn. 85, 144 N.W. 455 (1913).

3. The public policy of Minnesota, as expressed in the family law cases and statutes requires protection of the best interests of children. The best interests of culturally adopted children are the same as the best interests of statutorily adopted children and are secured by requiring support by the adoptive parents even after a divorce. Did the district court fail to consider the best interests of the child by not requiring the child's adoptive father to pay child support, and in doing so, fail to recognize that family court is a court of equity?

The District Court did not require the adoptive father to pay child support.

Apposite Authorities:

Johnson v. Johnson,
617 N.W.2d 92 (N.D. 2000).

Geramifar v. Geramifar,
688 A.2d 475 (Md. Ct. App. 1997).

STATEMENT OF THE CASE AND FACTS

A. Background

Ramsey County is the appealing party in this matter. Ramsey County brought the underlying support action pursuant to the child support enforcement program established under Title IV-D of the Social Security Act. The federal government passed this act to facilitate the establishment and collection of child support. *See generally* 42 U.S.C.A. §§ 651-669b. The Social Security Act delegates to state agencies the daily operational aspects of the program. *Id.* at 652-653. State agencies may delegate many of these responsibilities to local agencies as long as the state agency is responsible and accountable for the operation of the IV-D program. 45 C.F.R. § 302.12(a)(2) and (3). In this case, Yer Yang opened a IV-D case in the State of Wisconsin. Because the Respondent lived in Minnesota, the State of Wisconsin requested that Minnesota establish a child support order against Respondent. Minnesota was then obligated to treat Yer Yang like any other applicant in the State of Minnesota and establish a support obligation. *See* 45 C.F.R. § 302.36; 45 C.F.R. § 303.7.

- 1. The parties were married, adopted a child, and were divorced according to Hmong culture.**

Yer Yang and Respondent Yee Lee are Hmong refugees who fled Laos and were married in a Hmong refugee camp in Thailand on June 23, 1993. (Trial Tr. Vol. I, 9, 23, Feb. 12, 2008.) As Refugees in Thailand, the couple could not avail

themselves of Thai law. (Pet. Memo of Law at 6) (citing the United Nations High Commission for Refugees Nov. 2006 report.) (App. 29.) The Thai government does not issue documents such as marriage and death certificates to Hmong refugees, who are considered illegal immigrants, and face constant risk of detention. (*Id.*) Therefore, the couple was married following their culture and according to Hmong traditions. (Trial Tr. Vol. III, 105-09, April 11, 2008.)

The parties were married for six years; they both wanted children but could not conceive. (Trial Tr. Vol. I, 25, 34, Feb. 12, 2008; Trial Tr. Vol. III, 34, April 11, 2008.) The couple made a mutual decision to adopt a child. (Trial Tr. Vol. I, 25, 35, Feb. 12, 2008.) At trial, Ms. Yang testified that the decision would have to be mutual as she could not have adopted a child without the support of her husband. (Trial Tr. Vol. I, 36, Feb. 12, 2008; Trial Tr. Vol. III, 43, April 11, 2008.)

In 1999, a Hmong woman from the refugee camp asked the couple to adopt her three-month-old grandson. (Trial Tr. Vol. I, 20, Feb. 12, 2008.) The grandmother explained that the infant was now an orphan since his mother died and his grandmother was too poor to care for him. (*Id.*) The couple accepted this baby as their own son. (*Id.*)

The baby was originally named Yang Lee. (Trial Tr. Vol. I, 19, Feb. 12, 2008). The couple changed his name to Yang Pao Lee. ("Y.P.L.") (*Id.*)

Respondent obtained a birth certificate for Y.P.L. (Trial Tr. Vol. I, 21-22, 37-40, Feb. 12, 2008; Trial Exh. 3.) The birth certificate indicates the “nationality” of the child, Ms. Yang, and Respondent as Hmong. (Trial Exh. 3.) Because of his fear of detection by the Royal Thai Government, Respondent used the parties’ aliases, Yer Lee and Mee Yang, in obtaining the birth certificate. (Trial Tr. Vol. I, 23, 37, 38, Feb. 12, 2008; Trial Tr. Vol. III, 65-66, April 11, 2008; Trial Exh. 3.)¹ The birth certificate indicates that Respondent obtained it from a monk, Vatana Preepunyo, at the Wat Tahm Krabok Temple. (Trial Exh. 3.) The exact circumstances surrounding the birth certificate are not known, however, because Ms. Yang was not with Respondent when he obtained the birth certificate, Respondent, who can read and speak Thai, denied all knowledge of the birth certificate at trial. (Trial Tr. Vol. I, 21, Feb. 12, 2008; Trial Tr. Vol. III, 12-14, April 11, 2008; Trial Exh. 3.) However, Ms. Yang testified that she cannot understand, read or write Thai, which is the language of the birth certificate. (Trial Tr. Vol. I, 29, Feb. 29, 2008; Trial Tr. Vol. III, 30-31, 67, April 11, 2008.)

The couple welcomed Y.P.L. into their family with a traditional Hmong hand-tying ceremony and a feast. (Trial Tr. Vol. I, 49, Feb. 12, 2008; Trial Tr. Vol. III, 17, April 11, 2008.) Elders attended the ceremony and the ceremony was

¹ See also Trial Tr. Vol. II, 41, March 6, 2008 (describing why Hmong refugees did not use their real names); Pet. Tr. Memo at 1-6 (detailing background of Hmong refugees in Thailand) (App. 25-31.).

conducted according to Hmong tradition. (Trial Tr. Vol. III, 18, April 11, 2008.) At trial, Respondent testified that he did not agree to adopt Y.P.L. and did not form an attachment to him, but also testified that both parties adopted Y.P.L. and that there was a proper Hmong adoption ceremony. (Trial Tr. Vol. III, 12-22, 35-36, April 11, 2008.)

The family lived together for three years until the parties' divorce on June 29, 2002. (Trial Tr. Vol. I, 25-28, 51, Feb. 12, 2008; Trial Exh. 4.) To obtain the divorce, the parties went to "the main clan elder" of Respondent's family. (*Id.*) In addition to the name of that elder, the divorce decree contains several names including members of Respondent's family and two from Ms. Yang's family. (*Id.*; Trial Tr. Vol. III, 37-42, April 11, 2008.) The decree recognizes Respondent as Y.P.L.'s father as stated, "Mr. Yee Lee has forfeited everything that belongs to the family, including the child." (Trial Exh. 4.) Thus, the divorce decree grants custody of Y.P.L. to Ms. Yang but does not address child support. (*Id.*)

At trial Ms. Yang testified that the elders granted her custody because Respondent had a girlfriend, Mai Vang, and was no longer participating in his required duties as a husband and father. (Trial Tr. Vol. I, 28, Feb. 12, 2008.) Respondent testified that he had broken an agreement with the elders that he would take care of Y.P.L. and that is why Ms. Yang got custody of him, "Because [the

elders] wanted me to help her take care of [Y.P.L.]. I did not agree to that; . . . so that's why we had a divorce." (*Id.*)

Following the divorce, Respondent moved into Ms. Vang's home with her two children from a previous marriage. (Trial Tr. Vol. III, 28-30, 34, 41, April 11, 2008.) Respondent married Ms. Vang and adopted Ms. Vang's two children according to Hmong culture. (*Id.*) He testified that those children, though not his genetic children, are now part of his clan. (*Id.*)

When Respondent moved in with Ms. Vang, Y.P.L. cried because he missed his father. (Trial Tr. Vol. I, 43, 47-48, Feb. 12, 2008.) While in the refugee camp, Y.P.L. visited his father often and would sometimes spend the whole day with him. (*Id.*)

2. The parties arrived in the United States in 2004 and 2005.

In May of 2005, Ms. Yang and Y.P.L. came to the United States and settled in Wisconsin. (Trial Tr. Vol. I, 28-32, Feb. 12, 2008; Pet. Tr. Memo at 9.) (App. 33.) The only documentation the United States authorities required for Y.P.L. to enter this country were his birth certificate and the divorce decree of the parties. (Trial Tr. Vol. I, 22-23, Feb. 12, 2008.) Respondent had come to Minnesota a year earlier and settled in St. Paul with Ms. Vang and their two children. (Trial Tr. Vol. I, 33, Feb. 12, 2008; Pet. Tr. Memo at 9; Trial Tr. Vol. II, 75-97, March 6, 2008.) (App. 33.) Y.P.L. has not seen his father since coming to the United States. (Trial

Tr. Vol. I, 44, Feb. 12, 2008.) He tried to contact his father through his father's sister but could not reach him. (*Id.*) Respondent testified that he did not look for Y.P.L. since arriving in Minnesota, "Because this child is not my blood and because I was not in agreement, I have never searched for this child." (*Id.*)

Ms. Yang applied for and received public assistance in Wisconsin. (Trial Tr. Vol. I, 45, Feb. 12, 2008; Pet. Tr. Memo at 9.) (App. 33.) In the application Ms. Yang indicated that Respondent was Y.P.L.'s father. (*Id.*) This created an assignment under federal law for reimbursement of public assistance funds through pursuit of child support. (*Id.*) Because Respondent resides in Minnesota, Wisconsin requested that Ramsey County obtain an Order setting ongoing child support including medical support. (*Id.*) Ramsey County then initiated the underlying action. (*Id.*)

B. Procedure

1. The Trial

At trial, Steven Thao testified as a neutral third party, an elder in the Hmong community, and an expert on Hmong culture. (Trial Tr. Vol. II, 8, 23-67, March 6, 2008.) Mr. Thao testified that in Hmong culture a woman needs her husband's permission to adopt a child. (Trial Tr. Vol. II, 37, 52, March 6, 2008.)

Mr. Thao also testified that the traditional Hmong adoption ceremony includes a feast and hand-tying ceremony:

You have to prepare a feast. You have to call your extended families, your uncles, aunts, relatives, friends, everyone to come. You have to have strengths you know to tie, to tie the child. You have to give your blessing. You have to support the child. You have to tell the child's name to them.

(Trial Tr. Vol. II, 38, March 6, 2008.)

There was conflicting testimony offered from Respondent's current wife, Mai Vang, and his uncle, Mr. Xia Neng Lee. (Trial Tr. Vol. II, 75-97, 107-143, March 6, 2008.) At the close of Ms. Vang's testimony, the Child Support Magistrate concluded that much of what Ms. Vang testified to "would have been relayed to her by Mr. Lee" and he stated that he would "give less weight to her testimony." (Trial Tr. Vol. II, 103, March 6, 2008.)

Also at trial, Respondent argued that the adoption of Y.P.L. could not be valid in the United States because it was not verified by granting an IR-3 visa for the child by the United States Citizenship and Immigration Services. (Trial Tr. Vol. III, 100-101, April 11, 2008.)

At the close of the trial, the Child Support Magistrate stated his findings regarding the credibility of those who testified. (Trial Tr. Vol. III, 105-09, April 11, 2008.) The Magistrate found Mr. Thao to be a "credible expert on Hmong customs." (*Id.*) But he found the testimony of Respondent's current wife, Mai Vang, "had little value" and found her credibility questionable. (*Id.*) The Magistrate also found the testimony of Respondent's uncle, Xia Neng Lee was not

credible and “was filled with a sufficient number of contradictions in statements.” (*Id.*) The Magistrate found Ms. Yang “totally believable” but found the testimony of Respondent “of questionable believability.”

Based on the credibility of the witness testimony, the Child Support Magistrate found that “[t]he parties were culturally married under Hmong tradition” and lived together as “culturally married” husband and wife from 1993 to June 29th of 2002. (*Id.* at 106.) Regarding the adoption the Magistrate found “that there was a culturally valid adoption . . . there’s contradictory testimony regarding who was authorized to do that and how that happened . . . but it’s clear to me that [Y.P.L.] lived in the marital home and . . . there was a birth certificate.” (*Id.* at 107.) The Magistrate also found that there was a culturally valid divorce, noting that the contrary testimony of Respondent’s uncle “reached its . . . highest level of unbelievability” on that issue. (*Id.*)

The Magistrate also concluded that Ms. Yang would not have been able to obtain the birth certificate for Y.P.L. on her own, as Respondent argued. (*Id.* at 108.) In addition, the Magistrate accepted the alias of “Yer Lee” as indicated on the birth certificate, as Respondent in this case, “I’m going to conclude that the Yer Lee listed on the birth certificate is Yee Lee, the defendant in this proceeding.” (*Id.* at 109.)

2. The Child Support Magistrate's Order

After trial, the child support magistrate was left with the question of whether there was a father-child relationship between Respondent and Y.P.L. sufficient to create a duty for Respondent to support Y.P.L. The court requested briefing by the parties on two issues: (1) the effects of the cultural marriage, cultural adoption and cultural divorce of the parties on Respondent's duty to support the child; and (2) the effect of the birth certificate on Respondent's duty to support the child, if any. (Trial Tr. Vol. III, 102, April 11, 2008.).

The Magistrate found that Respondent has a duty to support the child and incorporated into its findings a memorandum addressing the validity of the parties' cultural marriage, adoption and divorce. (Order, July 1, 2008.) (App. 2, 5-8.) The existence of the marriage and divorce were relatively uncontested; rather, the court focused on the existence of the adoption, which the court concluded was a valid Hmong adoption. (*Id.*) Consequently, the Magistrate found that:

[I]t is clear that the child was viewed by the elders of the clan as the Defendant's child . . . Based upon the declaration of the Hmong elder in the divorce document, it is determined that a parent-child relationship was established that is sufficient to create a duty to support the child.

(Order, July 1, 2008.) (App. 2, 5-8.)

The Magistrate ordered the Defendant to pay ongoing support of \$290 and reserved insurance coverage and child care support. (*Id.*) Respondent brought a motion to review by a district court judge citing essentially that Respondent owes

no duty to support the child because he never legally adopted the child. (Resp. Mot. To Review, July 24, 2008.) (App. 16.)

3. The District Court's Order

The district court reviewed the Magistrate's order de novo. *Davis v. Davis*, 631, N.W.2d 822, (Minn. Ct. App. 2001.) The court adopted the Magistrate's findings that Ms. Yang and Respondent had a valid cultural marriage, adoption and divorce. (Order, Sept. 4, 2008.) (App. 53-55.) However, the district court did not recognize the Hmong cultural marriage and subsequent adoption as having any legal effect in Minnesota. (*Id.*) The district court further declined to extend the doctrines of "de facto adoption" or "equitable adoption" to child support cases. (*Id.*) Consequently, the district court granted Respondent's motion and found that Respondent has no duty to support the child. (*Id.*) The district court did not appear to take into consideration that family court is a court of equity.

This appeal follows.

SUMMARY OF ARGUMENT

This is a matter of first impression. The district court abused its discretion in this case because it failed to recognize the culturally valid Hmong adoption in a Thailand refugee camp as having legal effect in Minnesota. Furthermore, after finding that the cultural adoption was not recognized in Minnesota, the district court erred when it declined to extend the doctrines of de facto or equitable adoption to the specific facts in this case.

ARGUMENT

I. STANDARD OF REVIEW

A district court reviews the decision of a child support magistrate de novo. *Davis*, 631 N.W.2d at 825. The district court conducts its review in the light most favorable to the child support magistrate's findings and defers to the child support magistrate's determinations. *Vangness v. Vangness*, 607 N.W.2d 468, 472 (Minn. Ct. App. 2000) (establishing standard for reviewing district court); *see also*, *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. Ct. App. 2002) (establishing standard of review for CSM's decision is the same as for district court's decision).

The district court has broad discretion to provide for the support of children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). This Court will not alter a district court's support determination unless it abused its discretion by resolving the

matter contrary to logic or the facts on the record, or by improperly applying the law to the facts. *Id.*

When reviewing mixed questions of law and fact, this Court will correct erroneous applications of law but accord the district court discretion in its ultimate conclusions and review such conclusions under the abuse of discretion standard.

Rehn v. Fischley, 557 N.W.2d 328, 333 (Minn. 1997).

Particularly in cases of this kind, where the trial court is weighing statutory criteria in light of the found basic facts, the trial court's conclusions of law will include determination of mixed questions of law and fact, determination of 'ultimate' facts, and legal conclusions. In such a blend, the appellate court may correct erroneous applications of the law. As to the trial court's conclusions on the ultimate issues, mindful of the discretion accorded the trial court in the exercise of its equitable jurisdiction, the reviewing court reviews under an abuse of discretion standard.

Maxfield v. Maxfield, 452 N.W.2d 219, 221 (Minn. 1990). In addition, the applicability of equitable doctrines "turns on the facts of the case at bar" and this Court reviews the district court's decision to apply equitable doctrines for an abuse of discretion. *Evans v. Gov't Employees Ins. Co.*, 257 N.W.2d 689, 693 (Minn. 1977).

II. THE ADOPTION WAS VALID.

The Minnesota Supreme Court has adopted a rule that states: "The validity of a marriage normally is determined by the law of the place where the marriage is contracted. If valid by that law, the marriage is valid everywhere unless it violates

a strong public policy of the domicile of the parties.” *Laikola v. Engineered Concrete*, 277 N.W.2d 653, 655-56 (Minn. 1979) (quoting *in re Estate of Kinkead*, 239 Minn. 37, 30, 57 N.W.2d 628, 631 (Minn. 1953)). In *Laikola*, the Court held that Minnesota may recognize a common-law marriage if the parties take up residence in a state where common-law marriage is valid. *Id.* Further, this Court extended this recognition to foreign marriages in *Ma v. Ma*, 483 N.W.2d 732 (Minn. Ct. App. 1992). In that case, appellant argued that the parties’ marriage was void because they were married by ceremony in China and had a Chinese marriage certificate with no ratification by Minnesota statutes. However, this Court found that Minnesota will recognize as valid such a foreign ceremonial marriage even when there are fewer procedural requirements for such marriage, so long as Minnesota’s recognition is not contrary to strong public policy.

In this case, the Magistrate acknowledged that there is no recognition under Minn. Stat. §§ 517 or 518 of cultural marriage *performed in Minnesota*. (Order, July 1, 2008) (emphasis added). (App. 6.) The Magistrate distinguished the cultural marriages performed in Minnesota to those performed in other countries and correctly applied the specific facts of this case to the general ideology that if a marriage is valid where performed, it is valid in Minnesota.

The district court declined to follow the Magistrate’s application of these facts by stating that “Hmong cultural marriages have never been recognized as

having any legal effect in Minnesota” and extended that line of reasoning to a Hmong cultural adoption. (Order, September 5, 2008.) (App. 53-54.) The district court did not specifically address the validity in Minnesota to a Hmong cultural marriage performed in a foreign country.

In this case, Ms. Yang and Respondent do not dispute that they were validly married in a Hmong cultural ceremony while refugees in Thailand. Moreover, the parties do not dispute that they were validly divorced according to Hmong cultural practices while refugees in Thailand. Furthermore, the child support magistrate and district court judge found there was a valid cultural marriage and cultural divorce. However, while Respondent agrees he was married to Ms. Yang and subsequently divorced Ms. Yang, Respondent now alleges there was not a valid adoption during the parties’ marriage. Given Respondent’s position that the parties had a valid marriage and valid divorce while refugees in Thailand, it seems unfair to permit him to argue that the parties did not have a valid adoption.

“With certain limitations, the status of adoption created under the laws of another state or nation by a court having jurisdiction to create it will be recognized by the courts of the forum state.” 2 C.J.S. *Adoption of Persons* § 139 (2008). One of Respondent’s arguments here is that the adoption was not culturally valid because of their refugee status in Thailand. While there are no laws in Thailand that specifically set out the process refugees must follow when marrying or

adopting a child, Thailand does have the Conflict of Laws Act B.E. 2481 (1938). (App. 61.) Section 19 states that “the conditions of marriage shall be governed by the law of nationality of each party.” *Id.* (App. 67.) Both Ms. Yang and Respondent are Hmong.

Section 35 states “if the adopter and the adopted have the same nationality, the adoption shall be governed by their law of nationality.” Conflict of Laws Act B.E. 2481 (1938) at 35. (App. 71.) The birth certificate of Y.P.L. lists his nationality as Hmong. Section 35 further states that “if the adopter and the adopted have different nationalities, the capacity and conditions for adoption shall be governed by the law of nationality of each party. However the effects of adoption of the adopter and the adopted shall be governed by the law of nationality of the adopter.” *Id.* (App. 71.) Because Ms. Yang, Respondent and child are Hmong, they are all governed by the laws of the Hmong.

At trial, the testimony of both Ms. Yang and the expert, Steven Thao, testified that the Hmong cultural adoption of Y.P.L. by Ms. Yang and Respondent was valid. The ceremonial hand-tying and feast legitimizing the adoption indeed occurred, although Respondent now says he did not agree. The Child Support Magistrate found that Respondent was not credible and, therefore, his testimony was given little weight.

Respondent argued on the last day of trial that the adoption could not be recognized in the United States because the child was admitted without an IR-3 visa. However, this requirement is for a *resident of this state* to bring a child adopted in a foreign country into the United States and is not applicable to these facts. Minn. Stat. § 259.60, subd. 1 (2007) (emphasis added).

Additional evidence to support that Ms. Yang and Respondent intended to adopt, and indeed did culturally adopt, Y.P.L. is demonstrated by the facts that they (a) changed his name, (b) performed the rituals necessary in the Hmong culture for adoption; and (c) obtained a birth certificate listing Ms. Yang and Respondent as the parents of Y.P.L. The couple lived for several years after the Hmong adoption ceremonies as parents of the minor child. It was not until the trial in this matter that Respondent brought up the validity of the adoption.

The district court abused its discretion when it failed to recognize a culturally valid adoption occurring outside the United States as legally valid in Minnesota. This decision is contrary to the laws and policy of Minnesota which impose a duty of parents to support their children.

III. IN THE ALTERNATIVE, EVEN IF THE ADOPTION IN THAILAND WAS NOT VALID, THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO EXTEND THE DOCTRINE OF EQUITABLE ADOPTION TO THIS CASE WHERE THE CHILD WAS HELD OUT AS THE COUPLE'S SON AND HAS NO REMEDY AGAINST HIS NATURAL PARENTS.

A. The Doctrine of Equitable Adoption

1. Equitable Adoption protects the rights of a "seemingly adopted" child.

Equitable adoption is also sometimes known as "adoption by estoppel," "virtual adoption," or "de facto adoption." *Geramifar v. Geramifar*, 688 A.2d 475, 499 (Md. Ct. App. 1997).

By whatever name it is known, the doctrine in general involves the notion that if an individual who is legally competent to adopt a child enters into a contract to do so, and if the contract is supported by consideration in the form of part performance that falls short of completion of statutory adoption, then a court, applying equitable principles, may accord to the child the status of a formally adopted child for certain limited purposes.

Id. at 500.

The basis of the equitable adoption principle is that it would be inequitable and unjust to a child if its foster parent were allowed to disregard and escape from the obligations of an adoptive parent due to their failure to obtain a formal adoption agreement. *Thompson v. Moseley*, 125 S.W.2d 860, 863 (Mo. 1939). Equitable adoption is a remedy to "protect the interest of a person who was supposed to have been adopted as a child but whose adoptive parents failed to

undertake the legal steps necessary to formally accomplish the adoption.” *Gardner v. Hancock*, 924 S.W.2d 857, 858 (Mo. Ct. App. 1996).

Equitable adoption originally applied in disputes involving inheritance rights. *See, e.g., Ellison v. Thompson*, 242 S.E.2d 95, 96-97 (1978). To protect a child’s inheritance rights, the courts look to three elemental circumstances: (1) natural parents give their child to foster parents or to be placed with foster parents who agree to adopt the child; (2) the foster parents fail to formally adopt the child under adoption laws; and (3) injustice to the child resulting when the foster parents die intestate. *Id.*; *Johnson v. Johnson*, 617 N.W.2d 97, 101-02 (N.D. 2000) (discussing relocation of homeless and indigent children); Rebecca C. Bell, *Virtual Adoption: The Difficulty of Creating an Exception to the Statutory Scheme*, 29 *Stetson L. Rev.* 415, 416 (1999) (“Virtual adoption is an equitable doctrine created to protect the interests of a child whose foster parents agree to legally adopt but never complete all the steps to finalize the adoption); Beth Ann Yount, *Lankford v. Wright: Recognizing Equitable Adoption in North Carolina*, 76 *N.C. L. Rev.* 2446, 2447 (1998) (“For almost 100 years a majority of states have recognized equitable adoption as a solution to the injustice of declaring the seemingly adopted, yet not statutorily adopted, child a stranger to the foster parent's estate.”).

2. Minnesota recognizes equitable adoption to protect a child's right of inheritance.

Thirty-eight jurisdictions have considered equitable adoption; at least twenty-seven have recognized and applied the doctrine. *Lankford v. Wright*, 489 S.E.2d 604, 606 (1997); see also Bell, *Virtual Adoption, supra*, at 417 n.12 (listing jurisdictions that have not recognized equitable adoption). Minnesota is among those jurisdictions that recognize and apply equitable adoption to protect an equitably adopted child's inheritance rights. See e.g., *In re Rowe's Estate*, 269 Minn. 557, 132 N.W.2d 180 (1964); *In re Olson's Estate*, 244 Minn. 449, 70 N.W.2d 107 (1955); *In re Berge's Estate*, 234 Minn. 31, 47 N.W.2d 428 (1951). In recognizing equitable adoption, Minnesota courts look, on a case by case basis, to clear and convincing evidence, weighing testimony of disinterested witnesses, and facts showing that the adoptive parents held the adopted child out to be their own. *In re Herrick's Estate*, 124 Minn. 85, 88, 144 N.W. 455, 456 (1913).

The Minnesota Supreme Court has weighed these factors and granted inheritance rights despite the lack of a statute under which a legal adoption could have occurred and lack of "literal accuracy" in the facts. In *Herrick*, the district court found appellant was not entitled to a portion of her grandmother's estate because the court found that "appellant's mother was never adopted . . . nor taken into the Herrick home upon any agreement by decedent to adopt her; further, that when the mother was taken into the home Ohio had no statute under which her

adoption could have been accomplished, and she never was adopted.” *Id.* at 87, 144 N.W. at 456.

The Minnesota Supreme Court reversed that court based on its application of the doctrine of equitable adoption to the following facts. *Id.* at 92-93, 144 N.W. at 459. In 1854, a four-year-old child was taken in by a childless couple, the Herricks, in Ohio during a time when Ohio did not have an adoption statute. *Id.* at 87, 144 N.W. at 456. The Herricks raised the child as their own daughter in Ohio, then moved with the child to Minneapolis. *Id.* There was evidence that the Herricks “received this girl from her mother under an agreement to make her their child and heir, and, further, that shortly thereafter an instrument in writing, subsequently lost, was executed in Ohio to evidence the agreement.” *Id.* The court relied on “the testimony of disinterested witnesses” and noted that, “much that is detailed occurred upwards of half a century ago, so literal accuracy is not to be expected. Indeed, particularity in this regard might be a suspicious circumstance.”

In addition, the court considered other factors “tending strongly to establish appellant's hypothesis:”

Every act of all persons concerned in changing the custody of this child from her natural parents to the Herricks, their subsequent conduct towards her and her relatives, her change of name, their practical adoption of her, and recognition of contractual obligations in their respective wills—all these must be considered, and are not only consistent with appellant's theory, but inconsistent with any other. The acts referred to, coupled with the testimony concerning conversations, established the agreement as to adoption.

Id. ("Each case, however, must rest on its own facts.").

Similarly, in *In re Estate of Firle*, 197 Minn. 1, 265 N.W. 818 (1936), the Minnesota Supreme Court weighed several factors to determine that a "deserted child" was equitably adopted. In *Firle*, a couple raised a child whose parents had presumably died in the Hinckley fire. *Id.* 197 Minn. at 3-4, 265 N.W. at 819. While the Firls never formally adopted the child, they "continually referred to him as their son," announced to their friends that they had adopted him, and baptized him under the family name. *Id.* Based on these facts, the Minnesota Supreme Court held there was an agreement to adopt. *Id.*

3. A cultural adoption can result in equitable adoption to protect a child's right to inheritance.

In addition to the factors Minnesota and other jurisdictions weigh in protecting inheritance rights of children who were equitably adopted (implied contract, holding child out to be own child, testimony of disinterested witnesses), Alaska also weighs the validity of adoptions that are valid within a specific culture but were never validated by statute due to reliance on cultural norms and remoteness of the culture from areas where legal norms are in practice. An example of upholding such a cultural adoption is *Calista Corp. v. Mann*, 564 P.2d 53 (Alaska 1977). In *Calista*, the Alaska Supreme Court applied the equitable adoption doctrine to allow two native Alaskan women, who had been adopted in the culturally-accepted manner of their tribes, to receive shares of stock in their

parents' corporations. *Id.* at 62. In reaching this conclusion, the court placed substantial emphasis on cultural differences between the Anglo-American judicial system and the traditional Alaska Native practices. *Id.* at 61-62. The court stated:

One factor, which makes Alaska particularly unique in this regard, is the existence of various Native cultures which remain today much as they were prior to the infusion of Anglo-American culture. While from a sociological standpoint this diversity of lifestyles has added strength to the cultural mosaic which comprises the Alaska community, it has created problems in administering a unified justice system sensitive to the needs of the various cultures. As we noted in *Gregory v. State*, 550 P.2d 374, 379 n.5 (Alaska 1976):

'The Anglo-American system of justice differs substantially from the traditional Indian, Eskimo and Aleut systems, which predated Western cultures by hundreds of years. The cultural difficulties experienced by many of the Alaska Natives as the contemporary Anglo-American institutions reach out to the bush communities require that the State legal system use extreme care in cases of this nature.'

In addition to the obvious cultural differences which are present in Alaska, we have observed that there is a unique relation between bush and metropolitan areas in Alaska and have stated that this factor is an appropriate one for consideration when examining the application of the laws to citizens of the bush areas.

Id. at 61 (quotations and citations omitted).

After weighing the evidence of the cultural adoption, the Alaska Supreme Court held that equitable adoption is an appropriate way to avoid hardship "created in part by the diversity of cultures found within this jurisdiction." *Id.*

4. The doctrine of equitable adoption protects a child's right to child support where there was reliance on support and harm would result without support.

In addition to the jurisdictions, including Minnesota, that apply the doctrine of equitable estoppel to protect inheritance rights, some jurisdictions also extend the doctrine of equitable adoption to protect a child's right to child support. *See e.g., Johnson v. Johnson*, 617 N.W.2d 97 (N.D. 2000). In that context, the doctrine of equitable adoption protects a child's right to support where there is reasonable, foreseeable reliance on a promise to adopt a child and harm to the child will result if that promise is not kept. *Frye v. Frye*, 738 P.2d 505, 506 (Nev. 1987); *see also Fenn v. Fenn*, 847 P.2d 129 (Ariz. 1993) (recognizing equitably adopted child's right to child support).

In *Frye v. Frye*, 738 P.2d at 506, when the parties married, husband initiated proceedings to adopt wife's eighteen-month-old daughter. Husband secured the termination of the natural father's parental rights, knowing that this would leave the child without a father. *Id.* Wife joined in the petition to terminate based on husband's promise to adopt the child. *Id.* The marriage deteriorated before the adoption was accomplished. *Id.* Under Nevada law, the termination of the father's parental rights left the child without recourse against her natural father for support. *Id.* In the divorce proceeding, the trial court imposed a child support obligation on

husband, and the Supreme Court of Nevada affirmed based on a theory of equitable adoption. *Id.* at 506-07.

Similarly, the Supreme Court of North Dakota has applied equitable adoption to a case where adoption was initiated but not completed. *Johnson*, 617 N.W.2d 97. In *Johnson*, grandparents, Madonna and Antonyio, obtained a temporary order of custody of their three-month-old granddaughter, Jessica, and planned to care for her until Jessica's mother returned from Kentucky. *Id.* at 100. Jessica's mother never returned and the Johnson's raised her as their own:

[Jessica] called them her mother and father and they called her their daughter. Antonyio listed Jessica as his dependent on his federal tax returns. The Air Force listed Jessica as Antonyio's dependent daughter on his transfer orders and for medical benefits, placing her under his social security number. Though Jessica's birth certificate identified her last name as Clayton, the Johnsons consistently called her Jessica Johnson. Jessica was baptized in Antonyio's family's church in Georgia, where both Antonyio and Madonna pledged to love and nurture Jessica, and to continue to take care of her.

Id. at 100. The grandparents initiated adoption proceedings and obtained consents from Jessica's natural parents; but as a military couple, the grandparents were transferred before completion of the adoption. *Id.*

When the grandparents divorced, Madonna sought child support under a theory of equitable adoption. *Id.* at 101. The district court concluded that North Dakota does not recognize equitable adoption and denied child support. *Id.* The Supreme Court of North Dakota reversed. *Id.* at 109-10. The court first looked to

instances in which North Dakota courts had recognized equitable adoption to protect a child's inheritance rights. *Id.* at 101-02 (noting the historical significance of the "placing out" of homeless children from urban areas in the east to western United states).

After establishing North Dakota's long history of recognizing equitable adoption in the inheritance setting, the Supreme Court of North Dakota considered several cases of other jurisdictions that extended equitable adoption to the child support setting. *Id.* at 104-05. The court relied heavily on *Geramifar v. Geramifar*, 688 A.2d 475, 478-79 (weighing the best interests of the child and extending equitable adoption to the child support context for the first time in Maryland). *Id.* at 104. The court concluded that the state's public policy supports application of the doctrine of equitable estoppel in the child support context. *Id.* at 104-05.

The court, noting that equitable adoption, applies in limited circumstances only, and that a contract to adopt "does not, in and of itself, create the status of parent and child," listed the following factors to consider in determining whether equitable adoption had occurred in a particular case:

The inquiry includes whether there exist indicia of a true parent-child relationship between the child and the alleged equitable parent. . . . representations by the alleged equitable parents to the child that she was their natural child; representations to the child that she had been adopted; holding the child out to the community as their child; baptizing the child as their daughter in the family's church; claiming

the child as a dependent on income tax returns; having the child use the alleged equitable parent's last name; referring to the alleged equitable parents as mom and dad; signing cards and letters to the child "Love, Dad"; incomplete efforts to adopt the child and the natural parents' consent to the adoption of the child. . . . distant relationship with the natural parents.

Id. at 109. Holding that those factors were present in the Johnson's case, the court reversed the trial court judgment and remanded for a determination of child support. *Id.* at 110.

In a lengthy dissent, the *Johnson* majority is criticized because Jessica's parents were still "available" to support Jessica and the record was "devoid of any indications that support was sought through [her] natural parents." *Id.* at 119-20 (Vande Walle, J., dissenting). The dissent distinguished the *Johnson* facts from the facts in *Geramifar*, because in *Geramifar* the child was left without a remedy: "[e]nforcement of an obligation such as that recognized in *Geramifar* is much more palpable considering that a child has been taken from his native country, has been brought to a new land, and can no longer seek support from his natural parents." *Id.*

As highlighted by the *Johnson* dissent, the facts in *Johnson* were mostly distinguishable from *Geramifar* because in *Geramifar* the child had been removed from his home country of Iran, which left him unable to pursue support from his birth father. *Geramifar*, 688 A.2d 477-78. The *Geramifar* court stated that the case was a "textbook example of an equitable adoption" in which neither adoptive

parent was a biological parent of a child obtained from Iran. *Id.* The court held that “[i]n its role as *parens patriae*, it is the duty of a court to consider the child's best interest. In the case at hand, it is obviously not in [the child's] best interest to relieve appellee from his obligation to support him. Rather, it is in [the child's] best interest to be supported by those who were permitted to bring him to the United States from the Republic of Iran, after promising the Republic of Iran to support and care for him.” *Id.*

B. This Court Should Extend Equitable Adoption to Protect Y.P.L.'s Right to Support From Respondent Because the Parties Held Y.P.L. Out As Their Own Son, There Was a Cultural Adoption, There Was Reliance on Support, and Harm Would Result Without Support.

If this Court finds that the adoption in Thailand was not valid in this case, the county respectfully requests that this Court look to the general principles of equitable adoption that Minnesota and other jurisdictions applied in protecting a child's inheritance rights and extend those rights to protect Y.P.L.'s right to support from Respondent.

1. Under Minnesota's doctrine of equitable adoption, Ms. Yang and Respondent equitably adopted Y.P.L.

In recognizing equitable adoption, Minnesota courts have looked primarily to the putative adoptive parents' behavior to determine whether those parents held the child out as their own. *See e.g., Herrick*, 124 Minn. at 88, 144 N.W. at 456.

Behavior that signifies that a couple has equitably adopted a child includes changing the child's name, baptizing the child, and referring to the child as their own in the community. *Id.*; *Firle*, 197 Minn. at 3-4, 265 N.W. at 819.

Here, the parties mutually agreed to adopt a child. (Trial Tr. Vol. I, 21-22, 36-38, Feb. 12, 2008.) They obtained the birth certificate for Y.P.L. and had a ceremony to welcome Y.P.L. into their family and the community. (Trial Tr. Vol. I, 25, 35, Feb. 12, 2008; Trial Tr. Vol. III, 12-22, 35-36, April 11, 2008; Trial Exh. 3.) The parties held Y.P.L. out in the community as their own child, changed his name, and Y.P.L. was recognized by elders of the community as part of Ms. Yang and Respondent's family. (Trial Tr. Vol. I, 21-22, 49, Feb. 12, 2008; Trial Tr. Vol. III, 12-22, 35-36, April 11, 2008; Trial Exh. 4.) The way the parties held Y.P.L. out as their own son is very much the same as the families held out their equitably adopted children in *Herrick* and *Firle*.

Also, similar to *Herrick*, where there was no adoption statute in the state of the child's birth, here there was no adoption statute the parties could follow. The parties' status as refugees prevented them from availing themselves of Thai adoption law. (Trial Tr. Vol. I, 23, 37, 38, Feb. 12, 2008; Trial Tr. Vol. III, 65-66, April 11, 2008.) There was simply no way for Ms. Yang and Respondent to "legally" adopt Y.P.L. Because they followed the ceremonial adoption procedure

according to their Hmong nationality, however, there was a valid cultural adoption in this case.

2. The extraordinary circumstances of Yer Yang and Respondent weigh in favor of finding an equitable adoption.

Similar to cases, such as *Herrick*, from the early years of this country before couples could avail themselves of established adoption law, there are modern-day instances, such as this case, in which a couple may not be able to avail themselves of adoption law because of extraordinary circumstances. In such cases, courts should look at the circumstances and reasons why adoption law was not followed in determining whether to find a cultural adoption created an equitable adoption.

There appears to be only one case in the United States where a court has examined the extraordinary circumstances of Hmong refugees in Thailand and determined whether Hmong cultural practices resulted in a legally recognizable relationship. That case is *Xiong ex rel. Edmondson v Xiong*, 648 N.W.2d 900, 902 (Wis.App.2002). In *Xiong*, a Hmong couple married according to the Hmong tradition in Laos in 1975, shortly after the husband ended his relationship working as a scout for the C.I.A. *Id.* The husband and his new wife fled to Thailand, where they lived in a refugee camp for five years before arriving in the United States. *Id.* When entering Thailand, the Xionsgs were not required to present any documentation related to their marriage because “they know exactly all the Hmong

people are refugee[s] and they will not have any information.” *Id.* The Wisconsin Court of Appeals held the Hmong cultural marriage to be a valid marriage because the husband could have been killed if the couple followed Laotian law. In finding that the traditional Hmong marriage created a legal husband and wife relationship, the Wisconsin Court of Appeals noted that while the marriage ceremony may not have occurred in accordance with the requirements of the Laotian or Thai governments, the couple was unable to obtain the authorization provided to other citizens of Laos or Thailand due to their status as Hmong and as refugees.

In this case, Ms. Yang and Respondent were Hmong refugees living in Thailand who wanted to adopt an orphan child. As refugees in Thailand and like the couple in *Xiong*, Ms. Yang and Respondent did not have rights under Thai law or access to Thai courts. Thus, when Ms. Yang and Respondent decided to adopt Y.P.L. following the traditional customs and traditions of the Hmong, they were not trying to avoid following a formal adoption process or obtaining appropriate authorization. Rather, Ms. Yang and Respondent were following the only method of adoption available to them. By doing a cultural adoption, Ms. Yang and Respondent meant to have Y.P.L. publicly and formally recognized as their son. Given that Ms. Yang and the Respondent as Hmong were unable to avail themselves of established adoption law because of their unfortunate circumstances as Hmong refugees in Thailand, the fact that Ms. Yang and Respondent met the

Hmong cultural requirements for an adoption, and the fact that Respondent promised to care for this child, an adoption of Y.P.L. according to the Hmong tradition should be found to have resulted in a legally recognizable parent-child relationship between Y.P.L. and Respondent.

3. Minnesota should follow other jurisdictions that extend the doctrine of equitable adoption to child support.

Jurisdictions that extend equitable adoption to protect a child's right to support look to whether there was a true parent-child relationship, whether there was reliance on support for the child; and whether harm would result if the child did not receive support. *See e.g., Johnson*, 617 N.W.2d at 100.

Here, in addition to the evidence outlined above regarding the parties holding Y.P.L. out as their own son, there is evidence of a true parent-child relationship. There was testimony that Y.P.L. cried and missed his father when his father left the family's home, that even after Respondent left, Y.P.L. spent days with him before coming to the United States, and that Y.P.L. had tried to contact his father since coming here. (Trial Tr. Vol. I, 43, 47-48, April 11, 200; Trial Tr. Vol. III, 28-30, 35-36, 34,41, April 11, 2008.) In addition Ms. Yang testified that she would not and could not have adopted Y.P.L. without Respondent's support. Indeed testimony of an expert on Hmong culture indicated that in the Hmong culture it is extremely rare for a woman to adopt a child on her own. (Trial Tr.

Vol. II, 8, 37, 52, March 6, 2008.) Ms. Yang had no intention of supporting Y.P.L. on her own. The parties adopted Y.P.L. together and they should support him together.

Just as in *Johnson*, where there were representations to the child and community that the child was the daughter of her grandparents, here the parties presented Y.P.L. as their own child and the community welcomed Y.P.L. with a cultural adoption ceremony. In addition, this is exactly the type of case the *Johnson* dissent contemplated as a "more palpable" extension of equitable adoption. The *Johnson* dissent repeatedly criticized the majority opinion because in that case the child's birth parents were still available and, the dissent argued, the child should have sought support from them. It is difficult to imagine a case in which birth parents could be less available: Y.P.L.'s mother died, there is no evidence of his birth father, and Y.P.L. was born in a Hmong refugee camp in Thailand. Here Y.P.L. has absolutely no remedy against his birth parents.

Harm will result from Respondent's failure to uphold his end of the bargain. Y.P.L. will not have the financial support of Respondent, which his family greatly needs as his mother is a low wage earner. Y.P.L. and his mother may be forced to continue to rely on public assistance to meet Y.P.L.'s basic needs, as is currently the situation. This is a case that meets all of the criteria for an equitable adoption. Thus, if this Court finds that there was not a valid adoption in Thailand, the County

respectfully requests that it extend the established doctrine of equitable adoption to protect Y.P.L.'s right to support from Respondent.

IV. PUBLIC POLICY AND THE BEST INTERESTS OF THE CHILD SUPPORT MINNESOTA COURTS' EXTENSION OF EQUITABLE ADOPTION TO ENSURE THE SUPPORT OF A CHILD.

Courts that hold that an equitably adopted child is entitled to support from his or her adoptive parent look to the best interest of the equitably adopted child. *See e.g., Geramifar*, 688 A.2d at 502-03 (“The law and policy of this State is that the child's best interest is of paramount importance and cannot be altered by the parties.”); *Frye*, 738 P.2d at 506 (holding that equity cannot allow a result that “would be to the detriment of an innocent child”).

The court in *Johnson* concluded that the public policy of North Dakota, expressed through both its statutes and case law, required protection of the welfare and best interests of children. *Johnson*, 617 N.W.2d at 109. The court found that applying the doctrine of equitable adoption to impose a child support obligation, when the circumstances of the case require it, fully comports with this public policy. *Id.* at 104-05. (Holding that the state child support guidelines did not preclude the imposition of a child support obligation on one who has equitably adopted a child).

Minnesota has similar public policy of protecting the best interests of its children, particularly that the “best interests of adopted persons are met...[and] that

the laws and practices governing adoption recognize the diversity of Minnesota's population and diverse needs of persons affected by adoptions." Minn. Stat. § 259.60, subd. 1. The protection of those best interests applies equally whether the child is biological or adopted. Furthermore, given that courts may do equity in family law unless there is a question of pure law, the protection of a child's best interests should apply to equitably adopted as well as statutorily adopted children. *See Karypsis v. Karypsis*, 458 N.W.2d 129, 131 (Minn. Ct. App. 1990), *review denied*, Sept. 14, 1990. To hold that an equitably adopted child has a right to collect from a parent's estate once that parent is dead, but has no right to collect support while that parent is alive is absurd. Given that Minnesota recognizes equitable adoptions as creating a parent and child relationship for inheritance purposes, Minnesota should recognize equitable adoptions as creating a parent and child relationship in order that family courts may protect the best interests of children and treat orphaned children in an equitable manner.

This analysis is consistent with the basis of the equitable relief that "equity regards substance, not form," *In re Will of Pendergrass*, 112 S.E.2d 562, 566 (1960), and "will not allow technicalities of procedure to defeat that which is eminently right and just." *Id.* at 746, 112 S.E.2d at 568. What is eminently right and just in this case is to protect the best interests of Y.P.L. His best interests are served by holding both people, who adopted him, responsible for his support.

If there was neither a legal nor an equitable adoption here then there is no legal basis for holding either parent accountable for his support. Obviously that leaves Y.P.L. parentless resulting in more harm; yet how could an adoption apply to one parent but not the other when there is evidence that both parents adopted the child?

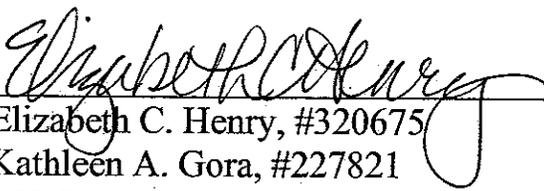
CONCLUSION

The district court abused its discretion in this case. First the court abused its discretion by failing to recognize as valid in Minnesota the Hmong cultural adoption occurring outside the United States. Second the court abused its discretion in failing to alternatively extend the doctrines of de facto or equitable adoption to the facts of this case. Without any of these remedies, the child is left without the support of his parents. Both alternatives are consistent with public policy and the laws of the State of Minnesota for parental support of minor children.

Respectfully submitted,

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RAMSEY COUNTY ATTORNEY

DATED: December 22, 2008

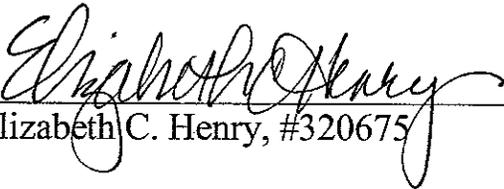
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced using the following font:
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Respectfully submitted,

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