**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-1730**

In the Matter of the Application of J. M. M.
o/b/o Minors for a Change of Name

**Filed June 4, 2018**
**Affirmed**
**Rodenberg, Judge**
**Dissenting, Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CV-15-18151

Katherine S. Barrett Wiik, Lisa L. Beane, Mohammadee Summra Shariff, Robins Kaplan LLP, Minneapolis, Minnesota (for appellant J.M.M.)

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Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge; and Rodenberg, Judge.

**U N P U B L I S H E D  O P I N I O N**

**RODENBERG**, Judge

Appellant J.M.M. challenges the district court's dismissal of her name-change petition for her two children, after remand. She argues that the district court erred in determining that the children's biological father is entitled to notice of appellant's name-change petition, that it improperly bestowed rights on the children's biological father who was avoiding responsibility for the children, and, in the alternative, that the district court erred in determining that notice to the father was practicable. We affirm.

## FACTS

Appellant J.M.M. has three children. She acknowledges that all three are the biological children of D.G. Appellant and D.G. have never married, nor has any court adjudicated the paternity of the children. Appellant and D.G. lived together for a number of years in various locations, during which time appellant gave birth to two of the children. Appellant gave birth to the third child after her relationship with D.G. ended. D.G. has not met the third child. He has had little or no contact with appellant and the children since the third child's birth in July 2013. Appellant testified that, despite his insistence that the children carry his last name,[1] D.G. refused to sign any of the children's birth records as their father as part of his effort to avoid child-support liability. D.G. has never paid appellant child support for the children. Appellant testified that, while she and D.G. were living together, D.G. threatened to harm her and the children if she ever attempted to collect child support from him or leave him. She further testified that D.G. once threatened to kidnap the children if she left him. D.G. did not sign a Recognition of Parentage concerning any of the children, and no court action to establish paternity was ever commenced.

Appellant petitioned the district court to change the last names of the three children from D.G.'s to her own. The district court informed appellant that she had to notify the children's biological father of the name-change petition. Appellant submitted an affidavit

[1] The district court noted that, after the third child was born, appellant called D.G. and informed him of the birth. D.G. asked if she had given the child his last name and appellant confirmed that she had given the child D.G.'s last name. There was no finding of, or record evidence to support, insistence by D.G. concerning the naming of the youngest child.

and a letter to the district court, requesting that the petition proceed without notice to the biological father because he had no legal relationship with the children and had previously threatened appellant and the children with violence if appellant sought child support from him, which rendered notice impracticable. After reviewing the submissions, the district court dismissed the matter without prejudice, concluding that appellant did not show a basis to forego the notice requirement under the name-change statute.

Appellant appealed the district court's determination that she was required to provide notice of the name change petition to her children's biological father. In a published opinion, *In re Application of J.M.M.* (*J.M.M. I*), we determined that Minnesota Statutes section 259.10, subdivision 1 (2016) "does not require an applicant-parent to provide notice of a name-change application filed on behalf of a minor child to a biological parent who does not have a legally recognized parent-child relationship with the child" under the Minnesota Parentage Act. 890 N.W.2d 750, 756 (Minn. App. 2017). We remanded with instructions that the district court determine whether D.G. "satisfies the criteria of the parentage act" for a parent-child relationship. *Id.*

On remand, the district court determined that D.G. has a legally recognized parent-child relationship with appellant's eldest two children and is therefore entitled to notice of the name-change petition and proceeding. The district court relied on Minnesota Statutes section 257.55, subdivision 1(d) (2016) to conclude that D.G. has a parent-child relationship with those two children because he is their acknowledged biological father and received them into his home and openly held them out as his own. It found that the two children lived in various homes with D.G., that D.G. "insisted" and "required" that the two

children bear his last name, that he cared for the children and arranged child care, that he financially contributed to raising the children while he lived with them, and that he took the children out publicly.

The district court also concluded that serving D.G. notice of the name-change petition is practicable. In reaching this conclusion, it found that appellant knows where D.G. lives. It acknowledged that appellant wanted to be excused from serving notice because of D.G.'s threats that he would harm appellant or her family if she "ever left him or tried to collect child support." It further found that appellant had obtained a "Family Violence Waiver"[2] from her obligation to pursue child support against D.G. The district court ordered that appellant notify D.G. of the petition, considering that the risk of violence to appellant did not render service impracticable. D.G. never physically harmed appellant or the children, and his threats involved the pursuit of child support or appellant leaving him; no threats concerned changing the children's last name. The district court found that there are other ways to adequately address appellant's safety concerns, such as having deputies at any court hearings or redacting appellant's contact information from court documents.

Appellant appeals from the district court's order that D.G. must be notified of appellant's petition to change the names of her eldest two children.

[2] The record indicates J.M.M. has applied for, and received, an exemption from the Minnesota Family Investment Program (MFIP) requirement that she must pursue child support from the noncustodial parent by reason of safety concerns resulting from D.G.'s threats of violence.

## D E C I S I O N

Appellant argues that the district court erred in determining that the children's biological father is entitled to notice of her petition to change her eldest two children's last name, that the district court improperly protected the rights of a biological father who is avoiding any responsibility for the children, and, in the alternative, that the district court erred in determining that notice to the father is practicable.[3]

### I. The district court did not err in concluding that D.G. is entitled to notice under Minnesota Statutes section 257.55, in light of *J.M.M. I*, because it applied the criteria set forth in Minnesota Statutes section 257.55 to determine that D.G. has a legally recognized parent-child relationship with appellant's children, and the record supports its factual findings.

#### A. The district court followed our remand instructions and applied Minnesota Statutes section 257.55 to determine that D.G. is a legal parent entitled to notice.

We first address appellant's argument that the district court erred in using Minnesota Statutes section 275.55 to determine that D.G. has a legally recognized parent-child relationship with appellant's children so as to be entitled to notice under the name-change statute, Minnesota Statutes section 259.10, subdivision 1.

Interpretation of the Minnesota Parentage Act is a question of law that appellate courts review de novo. *County of Dakota v. Blackwell*, 809 N.W.2d 226, 228 (Minn. App. 2011). "Misapplying the law is an abuse of discretion." *Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009). On remand from an appellate court, "a district court must abide by the appellate court's mandate strictly according to its terms and has no power to

[3] Appellant makes no argument on appeal that D.G. waived notice, and she made no such argument to the district court.

alter, amend, or modify the mandate." *State ex. rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. Of Cty. Comm'rs*, 799 N.W.2d 619, 631 (Minn. App. 2011) (quotation omitted). "But 'district courts are given broad discretion to determine how to proceed on remand, as they may act in any way not inconsistent with the remand instructions provided.'" *Id.* (quoting *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005)).

Minn. Stat. § 259.10, subd. 1, provides that "no minor child's name may be changed without both parents having notice of the pending application for change of name, whenever practicable, as determined by the court." In *J.M.M. I*, we held that, for the purposes of the name-change statute, "notice is required to be given to a biological father only if he has a parent-child relationship under the Minnesota Parentage Act." 890 N.W.2d at 756.

The Parentage Act defines the "parent and child relationship" as "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Minn. Stat. § 257.52 (2016). Minnesota Statutes section 257.54 (2016) provides that this legal relationship may be established by a biological father under Minnesota Statutes sections 257.51 to 257.75. Minnesota Statutes section 257.55 provides a procedure for establishing a presumption of paternity. Appellant agrees that section 257.55, subdivision 1(d), is the operative provision here; that subdivision provides that "[a] man is presumed to be the biological father of a child if[,] . . . while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child."

A presumption established under section 257.55 may be rebutted "in an appropriate action only by clear and convincing evidence." Minn. Stat. § 257.55, subd. 2 (2016).

The district court properly looked to Minnesota Statutes section 257.55 to determine whether D.G. is a parent entitled to notice under Minnesota Statutes section 259.10, subdivision 1.

Our decision in *J.M.M. I* functions here as both binding precedent and law of the case. *See Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994) (the doctrine of law of the case "applies where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings"). In *J.M.M. I*, we held that the district court erred in determining that D.G. was entitled to notice of the name-change petition "based upon the sole fact that he is the biological father." 890 N.W.2d at 756. We reversed and remanded, with direction that the district court on remand "consider and determine whether the biological father satisfies the criteria of the parentage act" to determine whether D.G. has a legal parent-child relationship entitling him to notice of appellant's petition. *Id.* Appellant agrees that D.G. is the biological father of all three children. She argues, and we agreed in *J.M.M. I*, that this biological fact, without more, does not entitle D.G. to notice of the name-change petition. The question for the district court on remand after *J.M.M. I* was to determine whether a legal parent-child relationship exists between D.G. and any or all of the children.

Minnesota Statutes section 257.55, subdivision 1, provides for a number of situations in which "a man is presumed to be the biological father of a child." Minnesota Statutes section 257.55, subdivision 2, provides that a presumption under section 257.55

may be rebutted by "clear and convincing evidence." Read together, this means that a presumed biological father is also presumed to have a parent-child relationship with a child (and is therefore, under *J.M.M. I*, entitled to notice of a name-change petition) unless and until the presumption of paternity has been rebutted.

### B. The district court properly applied Minnesota Statutes section 257.55, subdivision 1(d), to determine that D.G. is entitled to notice under Minnesota Statutes section 259.10.

Appellant next argues that, even if the district court properly looked to Minnesota Statutes section 257.55, subdivision 1(d), to determine whether D.G. is a parent entitled to notice, it incorrectly determined that D.G. satisfies subdivision 1(d). She contends that the district court failed to interpret what "openly holds out" means under the statute, and that the record evidence does not support the district court's conclusion that D.G. satisfied Minnesota Statutes section 257.55, subdivision 1(d).

As stated, we review the district court's application of the law for abuse of discretion. *Bauerly*, 765 N.W.2d at 110. We review findings of fact for clear error. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). When reviewing factual findings, we view the evidence in the light most favorable to the district court's findings; "[t]hat the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The district court made extensive factual findings that D.G. received appellant's eldest two children into various homes in which he, appellant, and the children lived. It found that he openly held the eldest two children out as his own. These findings are

supported by the record. The district court thoroughly questioned appellant about D.G. and appellant's child care and living arrangements and found that D.G. insisted the children have his last name, that he received the eldest child into seven different homes and the middle child into three, that he "inconvenienced his friends and family" so that he, appellant, and the children could have a place to live, that he cared for or was responsible for caring for both children, that he arranged child care for both children, and that he financially contributed to raising both children, among other findings. These findings are supported by appellant's statements under oath. Even though the record indicates that some of D.G.'s actions indicate belligerent avoidance of financial responsibility for the children after he and appellant separated, that the district court could have reached a different conclusion than it did does not make its findings defective. *Vangsness*, 607 N.W.2d at 474.[4]

Although the district court did not expressly interpret what it means for a man to receive a child into his home and openly hold the child out as his own pursuant to Minnesota Statutes section 257.55, subdivision 1(d), appellant has not shown that the district court applied the provision in a way that conflicts with previous reported cases. In *Pierce v. Pierce*, we affirmed a district court's finding that a man did not openly hold a

[4] Appellant challenges a number of individual factual findings by the district court as not supported by the record: that appellant's eldest two children were D.G.'s first children, that D.G. "named" the second eldest child and not appellant, and that it appeared to third parties that the eldest two children were D.G.'s. Although there may be some merit to these arguments, these factual findings do not appear to us to have influenced the result reached by the district court. Harmless error is to be ignored. Minn. R. Civ. P. 61.

child out as his "natural"[5] child. 374 N.W.2d 450, 451-52 (Minn. App. 1985), *review denied* (Minn. Nov. 4, 1985). We reached this conclusion by relying on facts that the father "took no action to claim paternity at the time of [the child's] birth, nor when her mother was being divorced from the statutorily presumed father." *Id.* at 451. Further, the father acknowledged that the child was a child "of his wife's former marriage" and the child did not use the father's surname. *Id.* at 451-52.

This case is distinguishable from *Pierce*. D.G. did take action at the birth of the two older children to ensure that their birth certificates used D.G.'s last name, despite not permitting himself to be listed as the father on the birth records. The district court made extensive factual findings concerning these actions, and the record supports the findings.

In *Spaeth v. Warren*, we affirmed a district court's conclusion that a man did not have a parent-child relationship under Minnesota Statutes section 257.55, subdivision 1(d), and we stated that the section "must be construed liberally, to achieve its remedial and humanitarian purposes." 478 N.W.2d 319, 322 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. Jan. 30, 1992). There, we concluded that the man, although receiving the child into his home, had not "held [the child] out" as his biological child. *Id.* Despite the child referring to the man as "daddy" and the man's provision of financial and emotional support to the child, the district court found that he had "taken no action to assert paternity at any time," and the child did not use the man's last name. *Id.* We also noted that the man's decision to adopt the child rather than pursue a paternity adjudication "shows

[5] Subdivision 1(d) has since been amended to replace "natural" with "biological."

he did not hold himself out to be [the] biological father" and concluded that the man could not be the presumed father under subdivision 1(d).

This case is also distinguishable from *Spaeth*. Appellant's children all have D.G.'s last name, which is something on which D.G. insisted. And nothing in the record indicates that D.G. denied paternity; instead, the record reveals that D.G. refused to sign the birth records as part of an ongoing attempt to avoid child support. The district court did not apply Minnesota Statutes section 257.55, subdivision 1(d), in a way that is inconsistent with previous reported cases applying that provision.

Finally, appellant argues that, even if we determine that the record supports a presumption of paternity under Minnesota Statutes section 257.55, subdivision 1(d), the district court erroneously failed to recognize that appellant rebutted the presumption. Minnesota Statutes section 257.55, subdivision 2, provides that a presumption of paternity may be rebutted in an "appropriate action only by clear and convincing evidence." Appellant argues that D.G.'s failure to take "any legal or financial responsibility for the children" and to "communicate with them in any way" constitutes clear and convincing evidence that rebuts any presumption of paternity under Minnesota Statutes section 257.55.

The district court concluded on remand that D.G. satisfied the conditions of Minnesota Statutes section 257.55, subdivision 1(d), and is a legal "parent" entitled to notice of a pending name-change petition for appellant's two eldest children. This conclusion is not inconsistent with our remand instructions in *J.M.M. I*. Although paternity has not been formally adjudicated under Minnesota Statutes section 257.57 (2016), the district court implicitly found that the presumption that D.G. is the biological father of

appellant's eldest two children has not been rebutted under Minnesota Statutes section 257.55, subdivision 2. Absent the presumption being rebutted, we must conclude that D.G. also has a presumptive parent-child relationship with appellant's eldest two children. And, in context, this makes sense. Appellant not only did not rebut the presumption that D.G. is the biological father of her children—she expressly acknowledges that he is the biological father.

## II. The district court did not err in concluding that notice to D.G. is practicable under Minnesota Statutes section 259.10, subdivision 1.

Appellant argues that the district court erred in concluding notice to D.G. is practicable. We interpret Minnesota Statutes section 259.10, subdivision 1, de novo. *See Blackwell*, 809 N.W.2d at 228. We review the district court's application of the provision for abuse of discretion. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010). We must give "words and phrases [in a statute] their plain and ordinary meaning." *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014). When a statute is "susceptible to only one reasonable interpretation," we must apply its plain meaning. *Id.*

Notice of a name-change petition shall be given to both parents "whenever practicable, as determined by the court." Minn. Stat. § 259.10, subd. 1. "Practicable" is defined as "reasonably capable of being accomplished." *Black's Law Dictionary* 1361 (10th ed. 2014). Similarly, "practicable" has a plain-language definition to like effect: "capable of being effected, done or put into practice; feasible." *The American Heritage Dictionary* 1421 (3rd ed. 1992). The language of Minnesota Statutes section 259.10,

subdivision 1, is not ambiguous. Notice is required when it is feasible or capable of being accomplished.

Here, the district court determined that notice to D.G. was reasonably capable of being accomplished. Appellant knows where D.G. lives and is able to serve him. The district court did not abuse its discretion in finding that giving D.G. notice is a thing that can be accomplished. It is practicable.

Moreover, and even if "practicable" is considered to incorporate an element of the petitioning party's safety, the district court explicitly and carefully considered whether notice can be given to D.G. in a way that safeguards appellant from harm. Noting that D.G. "has never physically harmed [appellant] or the children," that appellant "is not pursuing [D.G.] for child support," and that appellant knows how to contact D.G., and did contact him after the third child was born, the district court determined that serving D.G. with notice of this proceeding is not "so dangerous that it becomes impracticable." The district court found that measures such as redacting court documents to eliminate appellant's contact information and "ensuring deputies are present at the hearing" can be implemented to ensure appellant's safety. We think the district court is best positioned to determine whether and how litigants in the district court can be protected there. The district court did not abuse its discretion in finding that giving notice to D.G. is a thing that can be accomplished, and that it can be safely accomplished.

We do not reach this result lightly, and we acknowledge the important policy arguments made by both appellant and by Standpoint in its amicus brief that domestic-abuse victims may place themselves and their children in danger if they are required to

notify their abusers of a pending name-change petition. The plain and unambiguous language of Minnesota Statutes section 259.10, subdivision 1, requires that notice be given if it is "practicable." "It is the duty of this court to apply the law as written by the legislature," and we cannot disregard the plain language of a statute. *Int'l Bhd. Of Elec. Workers, Local No. 292 v. City of St. Cloud*, 765 N.W.2d 64, 68 (Minn. 2009).

Appellant makes a final public-policy argument that we should "be reluctant to bestow rights on an alleged father who is actively shirking parental responsibilities." In *J.M.M. I*, we stated:

> A putative father who fails to accept some measure of responsibility for the child's future does not have a protected interest in the preservation of the parent-child relationship. A father with no protected interest in preservation of the parent-child relationship is unlikely to have any due-process interest in a name-change application.

890 N.W.2d at 755 (quotation and citation omitted). Here, however, the district court determined, and the record supports, that there exists more than merely a "biological connection" between appellant's eldest two children and their biological father. *See Heidbreder v. Carton*, 645 N.W.2d 355, 372 (Minn. 2002) (stating that a biological connection "does not confer due process protection on [a] putative father's parental interests"). Under Minnesota Statutes section 257.55, subdivision 1(d), as a presumptive biological father, D.G. has a parent-child relationship under the Minnesota Parentage Act which entitles D.G. to notice under the name-change statute where, as here, such notice is

practicable.[6] It is not for us to ignore the law in the name of a policy we might prefer. *Int'l Bhd. of Elec. Workers*, 765 N.W.2d at 68.

**Affirmed.**

[6] We express no opinion concerning whether the children's names should be changed. This appeal concerns only whether D.G. is entitled to notice of the name-change petition.

**CLEARY**, Chief Judge (dissenting)

I respectfully dissent from the majority's affirmance of the district court's determinations that D.G. is a parent entitled to notice under Minn. Stat. § 259.10 (2016) and that notice to D.G. is practicable under Minn. Stat. § 259.10, subd. 1.

J.M.M. is the sole legal parent of and decision-maker for her three minor children. No other person is named on any of the three birth certificates and no one has come forward at any time to execute a recognition of parentage or adult paternity.

From late 2008 to early 2013, D.G. and J.M.M. lived together at various locations in Wisconsin, until a pregnant J.M.M. moved back to Minnesota with her two minor children. Although D.G. is the father of all three children, he has never met the third child and has not had contact with J.M.M. or any of the three children in the ensuing five years.

As to the four and one-half years J.M.M. and D.G. lived together, D.G.:

- Refused to sign any of the children's birth records as their father or execute any recognition of parentage acknowledging paternity;
- Refused to pay for, or be responsible for, child support;
- Threatened to harm J.M.M. if she ever attempted to collect child support from him; and
- Threatened to kidnap or harm the children and harm J.M.M. if she ever left him.

For the past several years, J.M.M. understandably has sought to change the last names of her children from D.G.'s to her own. She argues that Minn. Stat. § 257.55, subd. 1(d) (2016), properly interpreted, does not result in D.G. being entitled to notice of the pending name change request and that, in any case, notice to D.G. is not practicable, given his threats of violence toward J.M.M. and her family. I agree.

The majority acknowledges that being the biological father of the children does not give D.G. the right to notice of the name-change petition "without more." In other words, it is not enough for D.G. to have fathered the children to raise this presumption; he must have a legally recognized relationship with them. Under these circumstances, the operative provision of the Minnesota Parentage Act is Minn. Stat. § 257.55, subd. 1(d), which provides that he must have openly held out the children as his biological children to qualify as a "presumed . . . biological father."

The majority further acknowledges that the district court did not analyze or interpret what "openly hold[ing] out" these children as his biological children means.

Having these children carry his surname, perhaps for mere reasons of vanity, without any legal or financial commitment to these children, cannot sufficiently qualify D.G. as a presumed biological father under the statute. Instead, the district court gave great weight to both D.G.'s sporadic financial support over these four and one-half years, and the speculative presumption of others as to a relationship between D.G. and the children, in finding that D.G. openly held these children out as his biological children. However, providing some financial support does not satisfy the statutory standard where other factors weigh against a presumption of paternity, *Spaeth v. Warren*, 478 N.W.2d 319, 322 (Minn. App. 1991), *review denied* (Minn. Jan. 30, 1992), and there is no evidence that D.G. ever told others that he is the father of the children. What others may assume as to D.G.'s relationship to the children is of limited probative value. To hold himself out as the father of these children, D.G. needed to claim the special legal status of a biological father. *See*

*Black's Law Dictionary* 849 (10th ed. 2014) (defining the phrase "hold out" as "to represent (oneself or another) as having a certain legal status").

D.G. could have held himself out as a parent by acknowledging paternity and making a financial commitment to these children during these four plus years. He did not do so. He is not entitled to a presumption under Minn. Stat. § 257.55, subd. 1(d).

The presumptions found in section 257.55 "are not conclusive of paternity" and merely establish "paternity in the eyes of the law and the community until something more is done either to attack the presumption or to establish by action a father who will be viewed as conclusive in the eyes of the law." *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994). Any presumption that may exist is rebutted by D.G.'s failure to have any contact with the two oldest children over the past five years (as noted earlier, he has never met the third child he fathered with J.M.M.) as well as by his ongoing refusal to acknowledge these children as his own legally and to take financial responsibility for them over the past nine years, since the first child was born. *See* Minn. Stat. § 257.55, subd. 2 (2016) (any presumption of paternity may be rebutted by "clear and convincing evidence").

That should end the inquiry, but in addition to finding that a presumption existed and that the presumption was not rebutted, the district court also found that notice was "practicable" in this case since J.M.M. knows where D.G. lives. In so doing, the district court dismissed J.M.M.'s safety concerns despite her testimony concerning threats of violence made by D.G. toward her and her family. Based on these threats of domestic violence, J.M.M. obtained a family-violence waiver from the Minnesota Family

Investment Program relieving her from seeking child support from D.G. This is further proof that the threat is ongoing.

The district court concluded that the threat to J.M.M. and her family was remote because D.G. had limited his threats of physical violence in the past to J.M.M.'s pursuit of child support and to J.M.M. leaving him. The district court surmised that D.G. would not act on these threats when it came to changing the names of his biological children. But threats of domestic violence must be taken seriously, and the district court should have concluded that notice to D.G. was not practicable under section 259.10, given the threats he made toward J.M.M. and her family.

I would remand this case with instructions to the district court to schedule a hearing for a name change for the three minor children without notice to D.G. as to the pending applications of all three children.