NO. A17-1730

State of Minnesota

In Supreme Court

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

BRIEF OF APPELLANT J.M.M.

ROBINS KAPLAN LLP
Katherine S. Barrett Wiik (#0351155)
Lisa L. Beane (#0395219)
Haynes J. Hansen (#0399102)
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
Tel: (612) 349-8500
Fax: (612) 339-4181
KBarrettWiik@RobinsKaplan.com
LBeane@RobinsKaplan.com
HHansen@RobinsKaplan.com

Attorneys for Appellant J.M.M.

BARNES & THORNBURG LLP
Michael P. Boulette (#0390962)
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
Tel: (612) 367-8785
mboulette@btlaw.com

JANSEN & PALMER, LLC
Jenneane Jansen (#236792)
4746 Elliot Avenue South
Minneapolis, MN 55407
Tel: (612) 823-9088
jenneane@jansenpalmer.com

Attorneys for Minnesota State Bar Association

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In re J.M.M., 890 N.W.2d 750 (Minn. App. 2017)

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Apposite Authorities

Minn. Stat. § 257.55, subd. 1(d)

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Apposite Authorities:

Minn. Stat. § 259.10

Statement of Case

J.M.M. seeks a decision from this Court stating the unremarkable proposition that as the sole legal parent to her children, she has the right to decide what her children's names should be, just as she alone has the right to make all other major life decisions for her children. A decision reversing and remanding with instructions that the district court promptly change these children's names to those names that J.M.M. requests closes no doors to a putative biological father attempting to establish a legal parent-child relationship in the future, should he choose to do so. Allowing J.M.M. to change her children's names without providing notice to any other putative parent is the only outcome consistent with Minnesota statutes as well as what justice requires.

Petitioner J.M.M. is the sole legal parent of her three minor children.[1] ADD.50. No other person has been adjudicated a parent to these children or appears on their birth certificates and no other person has executed a recognition of parentage or brought a paternity action. ADD.50. The children currently have the surname of J.M.M.'s former boyfriend D.G., despite the fact that J.M.M. and D.G. never married. ADD.60. J.M.M. escaped an abusive relationship with D.G. in 2013, relocated to Minnesota

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[1] Because the putative biological father of J.M.M.'s children has threatened to harm her and members of her family, and J.M.M. wishes to remain free from the abusive relationship that she has worked hard to escape, J.M.M. refers to herself and the putative biological father D.G. by initials only. J.M.M. respectfully requests that the Court do the same.

with her children, and has since rebuilt her life and graduated from college. *See* ADD. 57-59 at 21:22-23:3. As part of that abusive and controlling relationship, D.G. required J.M.M. to give the children his last name at birth, while at the same time forbidding her from putting his name on the birth certificates. ADD. 57-59. The children—who are now ages 9, 8, and 5—know J.M.M. as their only parent, do not know D.G., and do not understand why they have a different name from their mother. ADD.41; ADD.44-45 at 4:25-5:8.

In October 2015, J.M.M. filed name-change applications on behalf of each of her children, seeking to change each child's surname to match her own, since the children have no legal relationship with D.G. and he is not involved in their lives. J.M.M. sought assistance in filling out the applications from staff at the Hennepin County Self-Help Center, who informed J.M.M. that notice of the name-change applications to the putative biological father was not required if paternity had not been previously established. The district court, however, disagreed and concluded that notice to the putative biological father was required before the court could act on the name-change applications. ADD.36-39.

J.M.M. appealed that decision, and the court of appeals reversed in a published decision, concluding that the district court had applied the wrong legal standard to determine whether the putative biological father is a "parent" entitled to notice of the name-change applications under Minn. Stat. § 259.10. *In re J.M.M.*, 890 N.W.2d 750, 753-56 (Minn. App. 2017). The appellate court held that "Minn. Stat. § 259.10 does not require

an applicant-parent to provide notice of a name-change application filed on behalf of a minor child to a biological father who does not have a legally recognized parent-child relationship with the child." *Id.* at 756.

The court also concluded that a district court should look to the Minnesota Parentage Act to determine whether a legal parent-child relationship exists that requires notice of a name-change application. *Id.* at 754. The court explained that its decision was in "harmony" with the Adoption Act, which does not require notice to a putative father if the father is not named on the child's birth record, has not substantially supported the child, was not married to the natural mother on the record of birth, does not openly live with the child or the natural mother, has not been adjudicated the child's parent, has not filed a paternity action, and has not registered in the adoption registry. *Id.* at 755.

J.M.M.'s case was remanded back to district court. Since no other person had established a legal relationship with the children, J.M.M. presented herself along with her required witnesses and her children for a hearing before the district court, believing that her children's names would be changed at the hearing. Instead, the district court aggressively questioned J.M.M. at length about the details of her relationship with D.G. and the extent of D.G.'s contact with her children. *See generally* Doc. 42 May 15, 2017 Tr. at 3:14-35:22. The questioning became so intense and deeply personal that J.M.M. wished to have her children escorted outside the court chambers. The children left that day without their names having been changed.

The district court issued its findings of fact and conclusions of law on September 3, 2017, refusing to allow the name change proceedings to continue without notice to D.G.. ADD.20. Despite J.M.M.'s uncontroverted testimony that D.G. has refused to assume any legal or financial responsibility for J.M.M.'s children and that he has threatened J.M.M.'s family if she brings a court action to make responsible for the children, the district court concluded that D.G. is presumed to have a parent-child relationship with the two older children and therefore is entitled to notice of their name-change applications. ADD.25-31. The district court decided that J.M.M. could change the name of her youngest child without providing notice, as the court acknowledge that D.G. had never even met the child. *Id*. J.M.M. again appealed, and a divided court of appeals affirmed over a dissent from Chief Judge Edward J. Cleary. *In re J.M.M.*, No. A17-1730, 2018 Minn. App. Unpub. LEXIS 478, at *1, *18 (Minn. App. June 4, 2018) (Cleary, C.J., dissenting), ADD.1, 18. This Court granted J.M.M.'s petition for further review.

Statement of Facts

In October 2015, J.M.M. filed name-change applications on behalf of each of her children, seeking to change each child's surname to match her own, since the children have no legal relationship with D.G. and he is not involved in their lives. *In re J. M. M.*, 890 N.W.2d at 752. J.M.M. sought assistance in filling out the applications from staff at the Hennepin County Self-Help Center, who informed J.M.M. that notice of the name-change applications to the biological father was not required if paternity had not been previously established. *Id*. at 752-53. The district court, however, disagreed and concluded that notice to the biological father was required before the court could act on the name-change applications. *Id.*

J.M.M. appealed that decision, and the court of appeals concluded that the district court had applied the wrong legal standard to determine whether the purported biological father is a legal parent entitled to notice of the name-change applications under Minn. Stat. § 259.10. *Id.* at 756. The court of appeals held that "Minn. Stat. § 259.10 does not require an applicant-parent to provide notice of a name-change application filed on behalf of a minor child to a biological father who does not have a legally recognized parent-child relationship with the child." *Id.* The court of appeals also concluded that a district court should look to the Parentage Act to determine whether a legal parent-child relationship exists that requires notice of a name-change application. *Id.* at 755.

On remand, the district court conducted hearings on May 15, 2017, and May 31, 2017, to determine whether D.G. is entitled to notice of the pending name-change applications. *See* ADD.45; ADD.67. At the start of the May 15 hearing, the district court allowed J.M.M.'s children, who were initially present, to be excused, and then engaged in a close examination of J.M.M. ADD.46-47. The court questioned J.M.M. at length during both hearings about the details of her relationship with D.G. and about the extent of D.G.'s contact with J.M.M.'s children.

J.M.M. testified that she and D.G. lived together in various locations in Wisconsin from September 2008 until April 2013. ADD. 47 at 7:17-22, ADD.48 at 10:1-4. J.M.M.'s two older children were born during the time she and D.G. were living together. ADD.45 at 5:2-8, ADD.48 at 10:17-24. Even though J.M.M. did not want her children to have D.G.'s name, D.G. insisted they be given his last name. ADD.215 ADD.59 (J.M.M. testifying that she wanted her surname on the birth certificates of the two oldest children).

At the birth of her second child, D.G. asked the nurses to surrender the naming form that J.M.M. had already completed and demanded, while standing over J.M.M., that the child have his name. ADD.58-59 at 20:17-21:25. J.M.M. testified about her son, "my intention was not to name him after [D.G.]. That was not what I wanted. That's what he wanted, and that was—he was going to do that no matter what." ADD.59. But D.G. refused to be identified as the father on either of the two older

children's birth certificates, and he refused to sign a recognition of parentage for either child. ADD.60 at 22:2-7.

During most of the time that J.M.M. and D.G. lived together with J.M.M.'s two older children, they lived with D.G.'s family friends or members of D.G.'s family. ADD.51-57; Doc. 43 May 31, 2017 Tr. at 6-24. J.M.M. testified that D.G. isolated her from her own family and friends. ADD.56 at 18:7-8. She also explained that she was the primary caregiver for the children, and her income was the primary source of financial support for the children. D.G. mostly refused to watch the children, and if he was responsible for their care, he expected J.M.M. to dress them and prepare any meals they would need while she was away from the children at work. ADD.66-68.

The district court also questioned J.M.M. at length about whether D.G. accompanied the children out in public and whether third parties who observed them together would have assumed they were a family. ADD.49-50, 63-64; ADD.70-79. Although J.M.M. agreed that it may have appeared to others that she, D.G., and the children were a family, she also testified that she had no way of knowing what bystanders might have thought. ADD.71-72, 76-79. J.M.M. specifically testified that D.G. never introduced the older two children, M. and D., as his daughter and son; instead, he referred to the children by solely by their names. ADD. 49-50 at 11:25-12:5, ADD. 63 at 25:20-22; ADD.70-72 at 22:25-24:3.

J.M.M. also testified that D.G. was controlling, emotionally abused and isolated J.M.M., and threatened to harm her family if she tried to

make him pay child support. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *1, *18, ADD.1, 18; ADD.40-42.

The district court issued its findings of fact and conclusions of law on September 3, 2017. ADD.20. Despite J.M.M.'s uncontroverted testimony that D.G. has refused to assume any legal or financial responsibility for J.M.M.'s children and that he has threatened J.M.M.'s family if she brings a court action to force him to take responsibility for the children, the district court concluded that D.G. is presumed to have a parent-child relationship with the two older children, and also that notice to him is "practicable." ADD.25-29. The district court ordered J.M.M. to provide notice to D.G. of the pending name-change applications before a hearing to change the names of the two older children can proceed.

J.M.M. again appealed, and a divided court of appeals affirmed. The court of appeals concluded that a presumed biological father under Minn. Stat. § 257.55 has a legal parent-child relationship with a child "unless and until the presumption of paternity has been rebutted." *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *9, ADD.8. Consequently, the court of appeals affirmed the district court's conclusion that D.G. is a presumed father of J.M.M.'s two older children and concluded that as a putative biological father, D.G. is a parent entitled to notice of a pending name change. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *9-14, ADD.11-12. The court of appeals also affirmed the district court's conclusion that notice to D.G. is practicable because it can be "safely accomplished," despite J.M.M.'s allegations of domestic abuse and

uncontroverted testimony regarding D.G.'s threats of violence. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *16, ADD.13.

In dissent, Chief Judge Edward J. Cleary agreed with J.M.M. that a mere presumption of paternity is insufficient to entitle a putative parent to notice of a pending name change. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *21. (Cleary, C.J., dissenting), ADD.18. Chief Judge Cleary also concluded that J.M.M. had rebutted any presumption of paternity based on D.G.'s failure to support or take any legal role in the children's lives and his limited contact with them. *Id*. Lastly, Chief Judge Cleary explained that the district court should have found that notice to D.G. was not "practicable," based on the threats of violence D.G. has made towards J.M.M. and her family. *Id,* at *21-22 (Cleary, C.J., dissenting), ADD.18-19. Supporting his analysis, Chief Judge Cleary asserted that such "threats of domestic violence must be taken seriously." *Id,* at *22 (Cleary, C.J., dissenting), ADD.19.

Argument

I. Standard of review

The district court's interpretation of Minnesota statutes is a question of law that is reviewed de novo. *Thompson v. Schrimsher*, 906 N.W.2d 495, 498 (Minn. 2018).

The district court's application of the law to the facts of this case is reviewed for abuse of discretion. *Id.* at 500. "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted).

II. The district court erred by concluding that the putative biological father of J.M.M.'s children is a "parent" entitled to notice of a name-change hearing, despite having no legal relationship with the children.

In the first appeal, the court of appeals concluded that D.G. is a legal parent entitled to notice of the pending name-change applications for J.M.M.'s children only if he has a legally recognized relationship with the children under the Parentage Act, Minn. Stat. §§ 257.51-75. Under the Parentage Act, the parent-child relationship between a child and a biological father may be established under Minn. Stat. §§ 275.51-257.75. *See* Minn. Stat. § 257.54(b).

Because J.M.M. and D.G. neither married nor attempted to marry and never executed a recognition of parentage in accordance with Minn. Stat. § 257.75, the only provision of Minn. Stat. § 257.55 that could

arguably apply in this case is subdivision 1(d). Subdivision 1(d) 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*." Minn. Stat. § 257.55, subd. 1(d) (emphasis added). This presumption can be rebutted by clear and convincing evidence. Minn. Stat. § 257.55, subd. 2.

By determining that D.G. is entitled to notice of the pending name change, the district court erred in three ways. First, a mere presumed parent with no legal relationship with the child is not entitled to notice of a minor child's pending name change. Second, even if notice is owed to a mere presumed parent, the district court erred in determining that D.G. is a presumed parent because the evidence does not support the conclusion that he held M. and D. out as his biological children under any reasonable interpretation of the statute. Third, the district court failed to recognize that the presumption can be rebutted and that, based on the evidence in this record, any presumption of D.G.'s paternity is rebutted here by the many years that have passed, during which time D.G. has had no contact with the children and has done nothing whatsoever to care for, parent, or provide for the children.

A. When no other parent has established a legal relationship with a minor child, Minnesota law permits the sole legal parent of a minor child to change the name of that child without providing notice to any other person.

Minnesota law requires that notice of a pending name-change application on behalf of a minor be given to "both parents," if practicable.

Minn. Stat. § 259.10. The statute neither defines "parent" for purposes of this notice requirement nor provides guidance about the circumstances under which notice would be considered impracticable. In the first appeal, the court of appeals concluded that courts should look to the Parentage Act to determine who is a legal "parent" entitled to notice. *In re J. M. M.*, 890 N.W.2d at 756. In applying that decision, both the district court and the court of appeals erred by relying on a mere presumption, rather than a legal determination of paternity, to confer upon D.G. one of the many legal rights associated with being a legal parent.

1. Minnesota statutory law establishes that mere designation of presumed parent is insufficient to confer legal designation of "parent" and the rights that come with that designation.

In the first appeal, the court of appeals concluded that to determine whether a person is a "parent" entitled to notice of a minor's pending name change under Minn. Stat. § 259.10, district courts should look to the Parentage Act to determine whether that person is a legal parent. But on remand, and in the second appeal, the district court and the court of appeals erred in interpreting the Parentage Act. Specifically, the lower courts misunderstood the role of the presumptions outlined Minn. Stat. § 257.55, subd. 1, especially the role of the presumption established by subdivision 1(d). The lower courts concluded that if a person is a presumed parent, that putative parent automatically becomes a legally recognized parent for purposes of the name-change statute. But when viewed as a whole, Minnesota statutory law establishes that mere

presumption of parentage is insufficient to confer the rights and responsibilities associated with legal recognition of parentage. Instead, a presumed parent under subdivision 1(d) does not obtain status as a legal parent, and therefore is not entitled to notice of a name-change hearing, until either a recognition of parentage has been executed or a court has ordered an adjudication of parentage.

The Parentage Act itself makes clear that the mere existence of a presumption of parentage under Minn. Stat. § 257.55, subd. 1, is insufficient to establish legal parentage. In fact, the statute says that "[a] man is presumed to be the biological father of a child if" he satisfies one of the criteria set forth in Minn. Stat. § 257.55, subd. 1. It does not say that the existence of a presumption is definitive. To the contrary, the Parentage Act also provides that "[t]he judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes." Minn. Stat. § 257.66, subd. 1. If a presumption of parenthood were the same as being a legally recognized parent, there would be no purpose to bringing an action to establish paternity under Minn. Stat. § 257.66, subd. 1.

Other Minnesota statutes confirm that the Legislature intended that, in order to be considered a legal parent, a putative father must do more than "receive[] the child into his home and openly hold[] out the child as his biological child" within the meaning of Minn. Stat. § 257.55, subd. 1(d). For example, the Juvenile Court Act, as amended in 2010, defines "parent" by reference to the Parentage Act and makes clear that a mere

presumption of parentage alone is insufficient to confer status as a legal parent. *See* Minn. Stat. § 260C.007, subd. 25. Specifically in regard to the presumption in subdivision 1(d), a presumed parent is not a legally recognized parent until "there is an adjudication of paternity" or the "father and mother have signed a recognition of parentage having the effect of an adjudication."[2] Minn. Stat. § 260C.007, subd. 25(b)(2)(ii). Accordingly, the Juvenile Court Act further demonstrates that a mere presumption of parentage is not conclusive for establishing a legal parent-child relationship sufficient to require notice of a name-change hearing.

Similarly, the Minnesota Adoption Act recognizes that action or recognition is required to obtain the rights associated with being a legal parent. *See* Minn. Stat. § 259.49, subd. 1 (setting out additional criteria for a putative parent to fulfill in order to be entitled to notice of a pending adoption). The court of appeals recognized as much in *J.M.M. I* when it stated that its decision was "in harmony" with the Adoption Act. 890 N.W.2d at 755. The court continued that that "it would be illogical to

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[2] The Juvenile Court Act provides that different criteria must be met if the person is presumed to be a parent under Minn. Stat. § 257.55, subd. 1(a)-(c). In those cases, a presumed parent is a legally recognized parent if "no action has been taken to declare the nonexistence of the father and child relationship." Minn. Stat. § 260C.007, subd. 25(b)(i). But the presumptions falling under Minn. Stat. § 257.55, subd. 1(a)-(c) all involve either a presence of or an attempt at marriage between the mother and the putative father. Other statutes recognize that there is a basis for distinguishing between the presumptions under Minn. Stat. § 257.55, subd. 1(a)-(c) and subdivision 1(d). *See* Minn. Stat. § 257.57.

require notice of a proposed name change to a father who would not be entitled even to notice of a pending adoption." *Id.* Even so, the court of appeals' second decision appears to endorse precisely that illogical outcome because D.G., who has neither taken action to assert paternity, nor obtained any legal recognition as a parent, would not be entitled to notice of a pending adoption under the Adoption Act.

In *Heidbreder v. Carton*, this Court discussed the meaning of legal fatherhood in the context of an adoption case. 645 N.W.2d 355, 372 (Minn. 2002). The Court noted that "the mere existence of a biological child connection between a child and a putative father does not confer due process protection on the putative father's parental interests." *Id*. (citations omitted). The Court further observed that "a putative father does not acquire a protected liberty interest in his child by merely failing to do anything to avoid his parental responsibilities. A putative father must affirmatively demonstrate a commitment to such responsibilities." *Id*. at 373, n. 12. Like the putative father in *Heidbreder*, the putative father in the instant case has failed to demonstrate a commitment to the responsibilities of fatherhood. To the contrary, he threatened violence should J.M.M. attempt to place any responsibilities of fatherhood upon him.

The decisions of the district court and court of appeals throw the statutory definition of "parent" into chaos and result in a scenario in which a person like D.G. could be considered a legal parent for purposes of the name-change statute, but not in applying the Juvenile Courts Act

or the Adoption Act. This Court should interpret the Parentage Act and the name-change statute in a manner that harmonizes the definition of legal "parent" in Minnesota law and acknowledges the critical distinction between a mere putative or presumed parent and a legally recognized parent. Only the latter holds the rights and responsibilities of legal parenthood, including notice of a name-change hearing.

2. D.G. has never been adjudicated the father of any of J.M.M.'s children and has instead actively avoided the responsibilities of parenthood.

The distinction between a presumed parent and a legally adjudicated parent is critical because Minn. Stat. § 259.10, subd. 1, requires notice only to parents, not presumed parents. Because the district court did not determine the existence of a parent-child relationship between D.G. and J.M.M.'s two older children, but instead determined only that a presumption of paternity exists, the district court erred by concluding that D.G. is a legal parent entitled to notice of the pending name-change applications.

D.G. has had every opportunity to assert that he is the father of J.M.M.'s children, and he has chosen not to do so because he wants to avoid the legal and financial responsibilities of parenthood. He is not married to J.M.M., and he refused to be listed on the children's birth certificates. ADD.40-42. He does not pay child support and he has threatened violence to avoid any obligation to do so. ADD.62.

In this case, there is even more reason than in *Heidbreder* to allow the name change without notice to the putative father because the putative father could still assert paternity in the future. In *Heidbreder*, the putative biological father was denied the ability to intervene in the adoption proceedings. As a result, his child was adopted, permanently foreclosing any possibility that he might establish a legal parent-child relationship.

In this case, J.M.M. seeks only to assign to her children the legal names of her choosing. Regardless of their names, a putative father could seek to establish a legal relationship with the children down the line. Many years have passed, however, and D.G. has done nothing. Despite his inaction and past threats towards J.M.M., the effect of the lower courts' decision is to confer upon D.G. the rights of legal parenthood, and to dilute J.M.M.'s autonomy and rights as the sole legal parent, even though D.G. has taken no action on his own to secure those rights. That outcome is all the more unjust because D.G. has actively sought to avoid the responsibilities of legal parenthood by threatening J.M.M. with violence should she seek child support. Under the lower courts' decisions, D.G. has effectively been granted one of the many rights associated with legal parenthood, but has avoided any of the responsibilities.

The district court's and the court of appeal's erroneous interpretation of the law is not without consequence. The lower courts' decisions deny J.M.M. the full bundle of rights that come with her legal status as the sole legal parent to her children. They interfere with J.M.M.'s

right to make legal decisions in her children's best interests, and to honor their wishes to have her last name. This Court has stated that "a parent's right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right." *In re Welfare of the Child of R.D.L.*, 853 N.W.2d 127, 133 (Minn. 2014). J.M.M.'s ability to make those decisions on behalf of her children is now interrupted for the sake of a man who has no legally recognized parenting right and has used threats of violence to avoid a role in these children's lives.

Because Minnesota law provides that a presumed father is a legal parent under Minn. Stat. § 257.55, subd. 1(d), only if he has also been adjudicated the father in an appropriate court proceeding or executed a recognition of parentage, and D.G. has done neither of those things, the lower courts erred by concluding that D.G. is a parent entitled to notice of the pending name changes of J.M.M.'s children.

As no other person has an established legal parent-children relationship under Minnesota law, J.M.M. is not required to provide notice to anyone before proceeding to a name-change hearing.

B. Even if a presumed parent is entitled to notice of a pending name change, D.G. is not a presumed parent of M. and D. because he did not openly hold the children out as his own.

This Court can reverse and remand with instructions to the district court to promptly change the names of J.M.M.'s children because there are no other legal parents to these children. The Court need not reach the issue of whether D.G. has held these children out as his own. If the Court

chooses to reach the "holding out" question, however, then there is no reasonable basis upon this record to conclude that D.G. ever held J.M.M.'s children out as his own.

The district court concluded that D.G. held J.M.M.'s two older children, M. and D., out as his biological children without any analysis of what a person must do to "openly hold[] out" a child as his biological child within the meaning of Minn. Stat. § 257.55, subd. 1(d). Under any reasonable interpretation of the statute, the district court's factual findings do not support a conclusion that D.G. took any affirmative steps to "openly hold[] out" M. or D. as his biological children. The fact that D.G. did not disavow or disclaim that these children were his children does not constitute "holding out" under any reasonable interpretation of Minnesota law.

1. Courts should consider the totality of circumstances when evaluating if a man "openly holds out [a] child as his biological child."

No Minnesota appellate court has directly addressed what a man must do to "openly hold[] out [a] child as his biological child" within the meaning of Minn. Stat. § 257.55, subd. 1(d) to create a presumption of paternity based upon "holding out." In *Pierce v. Pierce*, 374 N.W.2d 450, 451 (Minn. App. 1985), the court of appeals affirmed a district court's conclusion that a man was not a presumed biological father of his wife's child born during a previous marriage because he had taken no action to assert paternity at the time of the child's birth, the child received child

support from his wife's ex-husband, regularly visited with the ex-husband, and continued to use the ex-husband's surname.

In *Spaeth v. Warren*, 478 N.W.2d 319, 322 (Minn. App. 1991), the court of appeals again affirmed the district court's conclusion that a man was not a presumed biological father under subdivision 1(d). In that case, the man had provided financial and emotional support for the child and encouraged the child to call him "Daddy." *Id.* But the man had not taken action to assert paternity, and the child did not use his surname. *Id.*

Unlike in *Spaeth*, here there is no evidence in the record that D.G. ever provided emotional support for these children. Any financial support D.G. provided was minimal and occurred many years ago. J.M.M. has been the sole source of support for these children for more than five years, and there is no evidence in the record that D.G. ever encouraged the children to refer to him as their father nor told anyone else that he was their father.

These cases, however, do not explain the meaning of the words "openly holds the child out as his biological child" or what a man must do to satisfy that statutory standard. Words and phrases in a statute are interpreted according to their plain and ordinary meanings. *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 705 (Minn. 2013). "A statute should be interpreted, whenever possible, to give effect to all of its provisions; 'no word, phrase, or sentence should be deemed superfluous, void, or insignificant.'" *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277

(Minn. 2000) (quoting *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

The term "hold out" means "to represent to be," Merriam-Webster's Collegiate Dictionary 592 (11th ed. 2014), or "[t]o represent (oneself or another) as having a certain legal status," Black's Law Dictionary 800 (9th ed. 2009). The word "openly" has a number of possible meanings, but the only one applicable here is to be "completely free from concealment: exposed to general view or knowledge." Merriam-Webster's Collegiate Dictionary 868 (11th ed. 2014). In order for "openly holds out" to mean something different from simply "holds out," the statute must require a man to represent himself as the biological father of the child widely or broadly, rather than only to his own family or a close group of associates.

The language "openly holds out the child as his biological child" also must mean something different from "receives the child into his home," which appears in the same sentence. *See* Minn. Stat. § 257.55, subd. 1(d). Interpreting this sentence to mean that living together with a mother and her child is enough for a man to benefit from the presumption of paternity would render the clause "openly holds out the child as his biological child" meaningless. Consequently, the fact that a man has lived together with the child and the child's mother cannot alone support a presumption that the child is the man's biological child, even if that living arrangement causes others to *assume* that the child is his biological child.

Likewise, for a man to hold a child out as his *biological* child, something more than admitting an intimate or romantic relationship with the child's mother must be required. The man must affirmatively represent to others that he is the biological father of the child. In other words, a man who lives with a woman and her young children but consistently refers to the children as *her children* should not benefit from a presumption that he is the biological father. Similarly, a man who does not explain his relationship to the child but leaves it for others to guess has not satisfied the requirement to "openly hold[] out" the child as his biological child. Instead, the man must represent, by his words or actions, that the child is his biological child. D.G. did none of this.

In deciding whether a man's conduct satisfies the "openly holding out" standard, courts should consider the totality of the circumstances—that is, whether the man's conduct on the whole demonstrates that he has represented himself to others as the biological father of the child, not just as the romantic partner of the child's mother who bears some responsibility for caring for the child. Some relevant facts to consider in a totality of the circumstances analysis might include the length of time the man lived with the child; the man's efforts to communicate with the child during times when they did not live together; the extent to which the man provided for the child's physical, emotional, medical, and educational needs; whether and how often the man introduced the child to others as his son or daughter or identified himself as their father; and whether the man's extended family treated the child as a member of their

family. To the extent the man has expressly disclaimed paternity or sought to avoid adjudication of paternity, those facts should weigh against a presumption that he is the biological father.

2. The district court's factual findings do not establish that D.G. openly held J.M.M.'s children out as his biological children.

The district court's own factual findings do not support a conclusion that D.G. took any affirmative steps to "openly hold[] out" M. or D. as his biological children. The district court's analysis appears to consider the fact that D.G. provided some limited financial support for J.M.M.'s children while they lived together to be dispositive. In affirming the district court, the court of appeals focused on the district court's findings that D.G. occasionally arranged for childcare and housing for the older children many years ago. The only evidence in the record of affirmative representations D.G. made to third parties regarding his relationship to the children is J.M.M.'s testimony that D.G. introduced the children by their first names while out in public together and described them as J.M.M.'s children, but he *never* referred to the children as his daughter and son. This evidence suggests D.G. was working hard *not* to hold the children out as his own.

The district court's brief analysis relies on the idea that D.G. "held himself out" as M. and D.'s biological father because third parties encountered in public settings might have assumed that he, J.M.M., and the children were a family unit when they were out in public together.

This conclusion is based upon speculation about what unknown, unnamed third parties may have assumed when seeing the children out in public many years ago. What third parties may have assumed about D.G.'s relationship with the children is unknowable and inadmissible and an improper and wholly inadequate basis for the district court's conclusion that D.G. "held himself out" as the children's father.

The district court's questioning of J.M.M. during the May 31, 2017 hearing illustrates this misunderstanding. The court asked J.M.M. whether D.G. ever told other people that M. and D. *are not* his children, and J.M.M. testified that she did not believe D.G. had told anyone he *is not* their father. ADD.86-87. This testimony proves only that there is no evidence that D.G. *disavowed* or *disclaimed* that these children were his children. Critically, however, not is there any evidence in the record that D.G. ever publically *described* or *claimed* these children as his own. Notably, there is no evidence in the record that D.G. ever told anyone he is the children's father or that they are his children. The district court focused on the fact that D.G., J.M.M., and the children sometimes went out in public together and surmised that people who saw them must have believed that they were a family. Minnesota law requires more than this before a putative biological father obtains legal rights.

Although an express disavowal of paternity certainly would be evidence that the man did not "openly hold[] out" a child as his biological child, D.G.'s *failure to disavow paternity* has no bearing on the inquiry either way. To hold otherwise would flip the standard on its

head. Whatever affirmative steps a man must take to "openly hold[] out" a child as his biological child, the failure to expressly disavow paternity is not evidence to support a conclusion that the "holding out" standard is satisfied. Failure to disavow is not openly holding out.

Similarly, the court of appeals focused not on any of the district courts findings reflecting actions D.G. took to hold out the older children to the public as his own, but rather on the findings regarding the bare minimum steps D.G. took to care for the children. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *10-11, ADD.8-9. While it is true that such steps may contribute to a finding that a putative parent held out children as his own, the court of appeals' analysis failed to consider any actual action on the part of D.G. to actively introduce the children as his own. Accordingly, the court of appeals' analysis was incomplete, given the need for a totality of circumstances analysis.

Given the dearth of Minnesota legal authority on this topic, authority from other states has some persuasive value. The Texas Family Code previously contained the language "openly holds out the child as his biological child" that currently appears in the Minnesota Statutes. Tex. Fam. Code Ann. § 12.02(a)(5) (Vernon Supp. 1995). The Texas cases addressing that language affirmed conclusions that a man was a presumptive father under the statute where he had expressly referred to the children as his own or communicated to third parties that he was the father. *See, e.g.*, *R.W. v. Tex. Dep't of Protective & Regulatory Servs.*, 944 S.W.2d 437, 439 (Tex. App. 1997) (man told members of his family and

employees of Child Protective Services that child was his); *Yavapai-Apache Tribe v. Mejia*, 906 S.W.2d 152, 174-75 (Tex. App. 1995) (man represented to his family that two boys were his sons and boys were accepted into the man's family as his sons); *Matherson v. Pope*, 852 S.W.2d 285, 290 (Tex. App. 1993) (man referred to child as his son when speaking to others).

D.G. did not openly hold J.M.M.'s two older children out as his biological children when they lived together. D.G. did not introduce the children to others as his daughter and son. ADD.49-50 at 11:25-12:5, ADD.63 at 25:20-22; ADD.70-72 at 22:25-24:3. Instead, he would say phrases like "this is my girlfriend and this is M," referring only to the children by their first names. ADD.50 at 12:2.

Even when they all moved into a family friend's house, D.G. declined to introduce or describe the children as his own. ADD.60-61 at 22:25-23:13. Accordingly, D.G. left the relationship between himself and the children ambiguous, which is consistent with his pattern of refusal to accept any legal or financial responsibility for the children. As Chief Judge Cleary recognized in dissent, even if third parties did assume the older children were D.G.'s biological children, "[w]hat others may assume as to D.G.'s relationship to the children is of limited probative value." *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS at *20 (Cleary, C.J., dissenting), ADD.17. In other words, subdivision 1(d) places the burden of holding children out as one's own on the putative parent. By intentionally leaving his relationship to the children ambiguous, D.G. failed to carry that burden under any standard.

"To hold himself out as the father of these children, D.G. needed to claim the special legal status of a biological father." *Id.* D.G. did not claim that status. Instead, he refused to perform even the most basic caregiving duties, and he threatened J.M.M. and her family if she attempted to establish a legal parent-child relationship between D.G. and the children. ADD.41; ADD.66-68.

On this record, D.G. did not hold himself out as the father of J.M.M.'s two older children as a matter of law, and the lower courts' conclusion that he is entitled to a presumption of paternity as to those two children should be reversed.

C. Even if the Court concludes that the record supports a presumption of paternity, the clear and convincing evidence of D.G.'s lack of any relationship with the children since 2013 rebuts the presumption.

The district court also erred by failing to recognize that Minn. Stat. § 257.55, subd. 1(d), gives rise only to a *presumption* of paternity and by failing to consider whether clear and convincing evidence rebuts any presumption. Minn. Stat. § 257.55, subd. 2. Even if this Court concludes that D.G.'s refusal to expressly disclaim paternity of the children when out with them in public constitutes "openly holding them out" (which it should not), then it should conclude that the record evidence here rebuts any presumption of a legal parent-child relationship by clear and convincing evidence.

Any presumption of parentage is rebutted by the fact that D.G. does not have a relationship with the children, nor does he apparently wish to. D.G. has not seen any of the children since 2013 and has never even met the youngest child, who is now five. ADD.45. He has consistently refused to take any legal or financial responsibility for the children. ADD. 60, 62-63. He does not communicate with them in any way. ADD.40-41. To the contrary, he threatened J.M.M. and her family if she ever tried to force him to pay child support or otherwise take legal responsibility for the children. ADD.41. This is clear and convincing evidence sufficient to rebut any presumption of a legal parent-child relationship between D.G. and J.M.M.'s two older children.

III. Even if D.G. would otherwise be entitled to notice of the pending name changes, his threats of violence against J.M.M. and her family made notice to D.G. impracticable within the meaning of Minn. Stat. § 259.10.

Minn. Stat. § 259.10 acknowledges that notice of a pending application to change the name of a minor is not always possible or advisable and states that notice must be given "whenever practicable, as determined by the court." Minn. Stat. § 259.10, subd. 1. The district court concluded that notice to D.G. is practicable in this case because J.M.M. knows where D.G. lives,[3] despite the fact that D.G. has made threats of

[3] J.M.M. does not in fact know where D.G. is living now. She has not communicated with him in years.

violence against J.M.M. and her family if she ever left him or tried to collect child support. ADD.29.

It is not reasonable to require notice when the record contains evidence of explicit threats made by the person to whom notice would otherwise be required against the individual required to give such notice. Where, as here, there is evidence in the record of a history of threatened domestic violence from the putative "parent," notice of the pending name change is not practicable as a matter of law.

A. Notice to D.G. is impracticable based on his threats of violence against J.M.M. and her family.

The district court abused its discretion by concluding that J.M.M.'s safety concerns are not sufficiently serious to render notice to D.G. impracticable. The district court recognized that there is "a point at which service on the non-applicant parent is so dangerous that it becomes impracticable." ADD.29. But despite the evidence that D.G. has threatened the lives of J.M.M. and her family, as well as abused her during their relationship, the district court found that requiring notice in this case is not sufficiently dangerous to meet that standard. *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *15-16, ADD.13; ADD.29.

As Chief Judge Cleary's dissent explained, "threats of domestic violence must be taken seriously." *In re J.M.M.*, 2018 Minn. App. Unpub. LEXIS 478, at *22 (Cleary, C.J., dissenting), ADD.18. Although there is no standard for determining "practicability" of notice in this context, threats of violence against immediate family members and the threatened

resumption of harassment and domestic abuse are sufficient to render notice impracticable. Especially where, as here, the relief sought can be reversed relatively easily through a subsequent name change proceeding (as opposed to, for example, the adoption of these children, which could be accomplished without seeking a waiver of any notice requirement).

This Court has recognized the "unique legal needs of victims of domestic violence" as well as "the critical need to assure that domestic abuse victims receive both civil and criminal legal relief." *State v. Robinson*, 718 N.W.2d 400, 405 (Minn. 2006). J.M.M.'s testimony in this case described a clear pattern of domestic violence by D.G. during the course of their relationship, including his efforts to isolate her from her friends and family and his intimidation tactics to coerce her into giving her child his name. *See* Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. Davis L. Rev. 1107, 1116 (2009) (recognizing isolation and intimidation as forms of domestic violence). J.M.M. should not be required to wait for D.G. to make good on his threats of violence before the Minnesota courts believe that he is too dangerous to be provided notice of a name-change hearing.

D.G.'s threats were sufficiently serious for J.M.M. to obtain a family-violence waiver from the Minnesota Family Investment Program in Hennepin County. ADD.91 at ¶¶43-44. This means that despite receiving some forms of public assistance while she was finishing her college degree, J.M.M. did not have to seek child support from D.G. given his history of domestic violence. The existence of these waivers is a clear

recognition of the dangers victims of domestic violence face if they are required to reinitiate contact with their abusers in order to pursue paternity or children support. The public interest is served by eliminating opportunities for perpetrators of domestic abuse to re-establish contact with their victims whenever possible, to prevent them from starting a new cycle of abuse. The lower courts also should have taken D.G.'s threats seriously and concluded that even if he is a parent entitled to notice under Minn. Stat. § 259.10, giving D.G. notice of the pending name-change applications is impracticable because it risks reinitiating D.G.'s threatening pattern of conduct against J.M.M. from which J.M.M. has worked so hard to break away.

B. The danger posed to J.M.M. and to third persons mandated waiver of the notice requirement.

Even if the Court concludes that notice is practicable in this case, the notice requirement should be considered waived based on D.G.'s threats of violence against J.M.M. and her family. The additional security measures proposed by the district court are inadequate. Based on the evidence before the district court, the individuals whose safety was most directly threatened are J.M.M.'s parents, and the district court offered no mechanism to protect J.M.M.'s family. In J.M.M.'s affidavit, which is part of the district court record, she stated, "[T]he man who shares my children's last name has threatened to hurt me and to kill my family if he were ever pursued for child support." ADD.41 J.M.M.'s parents would receive no additional protection if J.M.M. were to provide notice of the

pending name-change applications to a man who has threatened their lives. The district court would thus require J.M.M.—in order to do what she firmly believes to be in the best interest of her children—to gamble her parents' lives on the hope that this was an idle threat. Forcing such a choice on J.M.M. is an abuse of discretion because it would resolve the matter "against logic and the facts in the record." *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018).

In addition to the threat to J.M.M.'s family that went unaddressed by the district court, the realities of our interconnected world and of the experience of domestic violence victims should have made it clear to the district court that simply protecting J.M.M. during the hearing and redacting her address would not prevent a dedicated effort at harassment or violence. It also assumes that D.G. would understand he was simply being given notice of a name-change hearing, rather than a hearing designed to determine he could have legal responsibilities relating to these children, which is what he repeatedly threatened violence to avoid. D.G. is a self-described "career criminal" whom J.M.M. worked hard to escape. ADD.41. It is unreasonable to believe that if he chose to use notice of the name-change hearing as an opportunity to seek out J.M.M. and re-establish contact with her, he would be dissuaded by redacted contact information. J.M.M.'s affidavit details her fear of D.G. and her desire that she and her children avoid any contact with him. ADD.40-42. The district court, despite having this affidavit in the record, would require J.M.M. to proactively seek out and initiate contact with her former abuser. D.G. has

not demonstrated any interest in the children. To the contrary, he has threatened violence if J.M.M. took any steps to establish paternity or put any child support obligations upon him. ADD.41.

The district court's refusal to waive a notice requirement under these circumstances is an abuse of discretion that interrupts J.M.M.'s protected rights to make decisions in her children's best interests. It also forces her to choose between her own safety and the safety of her family on the one hand and the best interests of her children, who wish to share their mother's surname, on the other. Forcing such a choice on J.M.M. in this case was a clear abuse of discretion that should be reversed.

Conclusion

J.M.M., who is the sole legal parent of and decision maker for the children, seeks to change the children's surnames to match her own—a change that is consistent with the children's wishes. The district court and court of appeals erred by concluding that a mere presumption of paternity under the Parentage Act is sufficient to establish legal parenthood. This Court should make clear that a person is a legal "parent" within the meaning of section 257.55, subdivision 1(d) of the Parentage Act and other Minnesota statutes that refer to it only if paternity has also been adjudicated by a court or the mother and father have executed a recognition of parentage.

The lower courts further erred by concluding that D.G. is a presumptive parent and, even assuming D.G. is a presumptive parent, by

determining that mere presumptive parents are entitled to notice of a pending name change. Even if D.G. is entitled to notice of the name-change applications, the notice requirement should be excused in this case based on D.G.'s threats of violence against J.M.M. and her family.

For all of these reasons, this Court should conclude that notice to D.G. is not required as a matter of law and remand with instructions for the district court to promptly schedule a hearing at which J.M.M. can change her children's names.

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Respectfully submitted,

By: */s/ Katherine S. Barrett Wiik*

Katherine S. Barrett Wiik (#0351155)
Lisa L. Beane (#0395219)
Haynes J. Hansen (#0399102)
ROBINS KAPLAN LLP
2800 LaSalle Plaza, Suite 2800
Minneapolis, MN 55402–2015
Tel: 612–349–8500
Fax: 612–339–4181

Attorneys for Appellant J.M.M.