

No. A17-1730

**STATE OF MINNESOTA
IN THE SUPREME COURT**

FILED

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**OFFICE OF
APPELLATE COURTS**

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

**BRIEF OF AMICUS CURIAE
STANDPOINT AND THE BATTERED WOMEN'S JUSTICE PROJECT**

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INTERESTS OF AMICI

Standpoint is a private, non-profit organization which serves as a statewide agency providing legal consultation, training and resources to domestic and sexual violence and their advocates, attorneys, and law enforcement. Standpoint consults yearly with thousands of domestic and sexual violence victims, some of whom seek name changes for their children.¹

The Battered Women's Justice Project ("BWJP") is a national technical assistance center that provides training and resources for advocates, battered women, legal system personnel, policymakers, and others engaged in the justice system response to domestic violence. BWJP promotes systemic change within community organizations and governmental agencies engaged in the civil and criminal legal response to domestic violence in order to hold these institutions accountable for the safety and security of battered women and their children. BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers funded by the Department of Health and Human Services and other additional support since 1993. The BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S.

Department of Justice. In an effort to promote more safe and just results for women and their children, BWJP works at local, state, national and international

¹ Pursuant to Minn. R. Civ. P. 129.03, the amicus states (1) that no counsel for any party in this action authored this brief, in whole or in part, and (2) that no person or entity other than the amici curiae, their members, and their counsel made any monetary contribution to the preparation or submission of this brief.

levels to engage court systems to respond effectively to the needs of battered women and to fashion safe outcomes that hold batterers accountable. BWJP provides directed technical assistance on all aspects of domestic violence protection orders for communities across the country.

ARGUMENT

The court below held that a presumed father² is required to be given notice of the request to change the name of minor child. In addition, the court below denied the Appellant's motion to waive the requirement of notice even in light of serious domestic violence. The amici urge that this Court allow the district court to waive the requirement of notice to a parent when serious domestic or sexual violence is found.

I. DOMESTIC AND SEXUAL VIOLENCE ARE COMPELLING GOVERNMENTAL ISSUES

The occurrence of domestic and sexual violence in the United States is widespread and pervasive. According to the National Violence Against Women Survey, approximately 1.5 million women are raped and/or physically assaulted by an intimate partner in the United States annually.³ In 2001 alone, almost 700,000 violent crimes were committed against persons by their current or former intimate partners.⁴ In 2006, more than 37,000 women and children in Minnesota sought assistance from community advocacy programs for domestic violence.⁵ In 2017 at

² The amicus will use the term "presumed father" to refer to a man who has not established a legal parent and child relationship as required by Minn. Stat. § 257.54.

³ Tjaden, P. and N. Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, National Institute of Justice (July 2000).

⁴ Rennison, C.M., *Intimate Partner Violence 1993-2001*, Bureau of Justice Statistics Crime Data Brief 1 (February 2003).

⁵ Minnesota Coalition for Battered Women, *Domestic Violence in Minnesota*, <http://www.mcbw.org/dvfacts.htm> (accessed April 2, 2008).

least 19 women and 5 family members/friends were murdered in Minnesota in acts of domestic violence. ⁶

While domestic violence can be lethal, it involves an ongoing pattern of abuse and control by perpetrators. Indeed, “[i]t is vital to understand that battering is not a series of blow-ups. It is a process of delicate intimidation intended to coerce the victim to do the will of the victimizer.”⁷ Therefore domestic violence rarely ends when parties separate.⁸ Stalking behaviors escalate after separation and the incidents of stalking after separation occur frequently.⁹ Many studies even suggest that the termination of a relationship poses a significant increased risk of intimate partner violence and homicide.¹⁰

In addition, where children are involved, abusive parents often utilize legal proceedings to continue their campaign of abuse against their former partners.¹¹

⁶ Minnesota Coalition for Battered Women, *2017 Femicide Report*, http://docs.wixstatic.com/ugd/f4bdb8_f48e0bc907b34c218a916a56e648158d.pdf (accessed November 19, 2018).

⁷ Jones, Ann, *Next Time, She'll Be Dead: Battering and How to Stop It* 88 (1994).

⁸ Fleury R.E., C.M. Sullivan, D.I. Bybee, *When Ending the Relationship Does Not End the Violence: Women's Experiences of Violence by Former Partners*, *Violence Against Women*, Vol. 6 No. 12, Dec. 2000, Sage.

⁹ Mechanic, M., T.L. Weaver, and P.A. Resick, *Intimate Partner Violence and Stalking Behavior: Exploration of Patterns and Correlates in a Sample of Acutely Battered Women*, *Violence & Victims*, Vol. 15 No. 1, 2000, Springer.

¹⁰ See *Baker v. Baker*, 494 N.W.2d 282, 286 n.4 (Minn. 1992) ("Extensive research on domestic abuse supports the assertion that the risk of danger increases once the victim makes the choice or attempts to leave the abusive relationship."); Tjaden, P., and N. Thoennes, *Extent, Nature & Consequences of Intimate Partner Violence*, National Institute of Justice (July 2000); Walker Wilson, Molly J., *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 *Am. J. Crim. L.* 291 (Summer 2005).

¹¹ Scott, K.L., Crooks, C.V., Francis, K.J., & Kelly, T. *Caring Dads: Program*

The reality is that children often remain the bridge that keep abusers connected to the victim long after they have physically separated. In light of this reality, it is very common for abusive parents to use children as instruments of ongoing coercive control over the victim, even after separation, exposing the children to and involving them in violence, conflict and stress.¹²

In addition to the fear, intimidation, and terror experienced by the victims of domestic and sexual violence, domestic and sexual violence also disrupts and damages its victims' and their children's financial lives as well. In a 2004 survey of identity theft victims, 16% reported that they were also victims of domestic harassment and abuse from the perpetrator.¹³ Yearly about 204,000 victims experienced identity theft at the hands of their abusers and over half of all domestic violence victims had financial accounts opened or closed in their name by their abuser.¹⁴ In 82% of cases where a child is a victim of identity theft, one of the parents is the perpetrator.¹⁵

The Minnesota Supreme Court has found “[t]here is little question that the

Description and Directions (2002). Panel presented at the Victimization of Child and Youth Conference, Portsmouth, NH, August 2002.

¹² Bancroft, L., & Silverman, J.C., *The Batterer as Parent: Addressing the Impact of Domestic Violence* (Sage Publications, 2000).

¹³ Identity Theft Resource Center, *Identity Theft: The Aftermath 2004*, 19, (Sept., 2005).

¹⁴ Katrina Baum, Shannan Catalano & Michael Rand, *National Crime Victimization Survey: Stalking Victimization in the United States*, Bureau of Justice Statistics Special Report, Jan. 2009, at 7.

¹⁵ Identity Theft Resource Center, *Identity Theft: The Aftermath 2004*, 19, (Sept., 2005).

prevention of domestic violence and the protection of the health and safety of domestic-abuse victims and members of their household and family are significant government interests.”¹⁶ Therefore safety should be a consideration when this court decides on the definition of “parent” for the purposes of the name change statute and when considering if notification of a “parent” is always required.

II. NOTIFICATION SHOULD BE WAIVED, AS ALLOWED BY STATUTE, IN CASES OF SERIOUS DOMESTIC AND SEXUAL VIOLENCE.

It is not surprising that some domestic violence victims will seek to change their name and the names of their children in an attempt to start a new life free from violence. However, Minnesota Statute requires notification of both parents of an application of a name of a minor, when practicable.¹⁷ In cases of domestic violence, notification of an abusive parent could very well put the petitioner and the children in serious, possibly lethal, danger.

The concern about notification to an abuser is so significant that when Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) was passed in 1996, Congress includes a “good cause” exception for domestic and sexual violence victims to allow them to not cooperate with the child enforcement

¹⁶ *T.C.B. v. Bergstrom (In re Rew)*, 845 N.W.2d 764, 779 (Minn. 2014). *Also see Baker v. Baker*, 494 N.W.2d 282, 288 (Minn. 1992).

¹⁷ Minn. Stat. § 259.10, subd. 1.

process.¹⁸ In Minnesota, if a caregiver receives government benefits such as Minnesota Family Investment Program (MFIP) a, “[c]aregivers with children must help pursue child...support unless they have good cause for not cooperating.”¹⁹ Good Cause exists when a child is conceived from a sexual assault, cooperating with seeking child support will result in physical or emotion harm to the child or the child’s caregiver.²⁰ This option was waiving the requirements that the State seek child support on behalf of government benefit recipients is because simply seeking child support can “increase the harm for the victim of domestic [and sexual] violence by alerting her abuser to her location; bring the victim and abuser into near proximity during courtroom proceedings; and/or angering an abuser by automatic procedures such as wage withholding or a driver’s license suspension.”²¹

Notification poses a real threat because avenues for contact and harassment are created each time the victim was forced to engage with the abusive person in a

¹⁸ Stieglitz, Ali & Johnson, Amy, *Making Child Support Safe: Coordinating Child Support and Public Assistance Agencies in Their Response to Domestic Violence*, 1-2 (May 2001); 42 USCS § 602(a)(7)(iii)

¹⁹ Minnesota Department of Human Services, *Child Support Good Cause* (available at http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=cm_00122106) (last accessed May 16, 2016)

²⁰ *Id.*

²¹ Stieglitz, Ali & Johnson, Amy, *Making Child Support Safe: Coordinating Child Support and Public Assistance Agencies in Their Response to Domestic Violence*, 1-2 (May 2001)

legal proceeding.²² For those victims who had taken steps to hide their location, another opportunity for the abuser to discover their identifying information is created each time the victim engaged with the abuser in a legal proceeding.²³

The issue of whether notice must be given to a parent when there is an application to change the name of a minor child has not been addressed by this court or by many other courts. New York seems to be the only state that has case law on point. However this case law is very illuminative. *In Re Doe*, a mother applied to change the name of her minor daughter.²⁴ She requested, among other things, for the requirement that notice to the other parent of the application for a name change be waived.²⁵ Doe alleged that the father of the child was very abusive.²⁶ That he had threaten to kill her on a number of occasions and stated he has a long criminal history.²⁷ Doe was very concerned her abuser would find out about the request for a name change of her minor child and that would put the family's safety in jeopardy.²⁸

The New York court found that while New York Statute requires

²² See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women; An Analysis of State Statutes and Case Law*, 21 Hofstra L.Rev. 801, 1099 (1993).

²³ See Janice Roehl, Chris O'Sullivan, Daniel Webster, & Jacquelyn Campbell, *Intimate Partner Violence Risk Assessment Validation Study*. Final Report. 11.25 (May 2005) (unpublished report) (on file with National Criminal Justice Reference Service).

²⁴ 3 Misc. 3d 648 (Civ Ct, NY County 2003).

²⁵ *Id.* at 649.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

notification of an application to change the name of a minor child be given to a parent²⁹ and that the statute does not contain any provision allowing for waiver of that notification, that giving notice to the father would be “impossible”.³⁰ The court went on to find that “provid[ing] the father notice...would be so unacceptably dangerous as to render notice irresponsible.”³¹

An understanding of the dynamics of domestic violence demonstrate that legal proceedings can be life threatening, but yet, sometimes, certain legal proceedings must be pursued to protect a child’s current and future physical, emotional and financial state. Therefore, there must be times when notice is not practical. Minnesota should follow New York’s lead in finding that there are times when notice to a parent of an application of the name change of minor would create such a dangerous situation that it would render the notice impractical.

CONCLUSION

For these reasons, Amici Standpoint and the Battered Women’s Justice Project urge this Court to find that the district court has, at its discretion, the ability to waive the notification requirement of the other parent in cases of serious

²⁹ New York’s statute requires notice unless the other parent is deceased or the other parent “cannot be located with due diligence”. NY CLS Civ R § 62. New York’s requirement of “due diligence” is similar to Minnesota’s requirement of practicality of notice. Minn. Stat. § 259.10, subd. 1.

³⁰ *Id.* at 654.

³¹ *Id.*

domestic and sexual violence by finding that notification is simply not practical.

NOTICE IS HEREBY GIVEN TO ALL PARTIES.

Dated this 26th day of November 2018

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