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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

REPLY BRIEF OF APPELLANT J.M.M.

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The stakes in this case are remarkably one-sided. Whether J.M.M.'s children share her surname is incredibly important to her and to them. J.M.M. alone has the legal right to make every important decision for her children—where they will live and go to school, who will care for them when she cannot, what medical treatments they will receive, and so on. She also shoulders this significant responsibility alone. Her rights as the sole legal decision maker for her children requires a conclusion that she also has the right to change the children's names without seeking permission from their putative biological father, who by his own choice plays no other role in the children's lives. Any other conclusion would demean J.M.M.'s clear role as the head of her family.

J.M.M.'s two older children are grade-schoolers. While names matter at all stages of life, in elementary school, names are particularly salient. Children write their names at the top of every school paper. Their names adorn the decorations on classroom walls. Names label hallway hooks, desks, and book bins. Names are the key organizational means by which their daily life is ordered. Even more importantly, names are a powerful aspect of identity. Names are powerful and central to the dignity as well as the everyday lives of J.M.M. and her children. They wish, and should have the legal right, to share the same last name.

By contrast, the legal surnames of J.M.M.'s children are utterly irrelevant to whether their putative biological father has the ability to take the proactive steps in the future to create a legal relationship with

them. Minnesota law ensures, as it should, that unmarried biological fathers have legal avenues to obtain both the rights and responsibilities of legal parenthood. This is true regardless of what names their putative biological children hold. There is simply no harm to D.G. in allowing J.M.M., as the sole legal parent of these children, to proceed with changing their names without notice to him.

The Court was wise to request that the Minnesota State Bar Association appoint counsel to prepare a responsive brief.[1] Appellant's counsel appreciates the opportunity for a dialogue between advocates—and a reply brief—and thanks Appointed Counsel for their thoughtful pro bono service. Appointed Counsels' arguments, however, are off the mark. 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, and therefore to be entitled to notice of a name-change hearing. The responsive brief doubles down on the erroneous thinking of the two district court decisions and the second court of appeals opinion. The Court should decline to follow Appointed Counsels' recommended approaches to any of the key issues at play in this appeal.

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[1] Note that while the MSBA appointed counsel to prepare the brief, the brief does not appear to have been submitted on behalf of the MSBA or any of its sections.

Instead, this Court should interpret Minnesota's name-change statute to hold that an unmarried putative biological father must have an established legal parent-child relationship with his putative children in order to receive notice of a name-change hearing. This Court should make clear that an unmarried putative biological father is only entitled to notice of a name-change hearing if his paternity has been adjudicated by a court or the mother and father have executed a recognition of parentage. Adopting this standard would produce the unremarkable result—and one that comports with sound public policy—that only a person who is a legal parent to a child is entitled to notice of that child's name-change hearing, if notice is practicable.

This Court also should make clear that scenarios involving credible allegations of domestic violence can render notice of a name-change hearing impracticable under Minnesota's name-change statute. For all of these reasons, this Court should conclude that notice to the putative biological father of J.M.M.'s children 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 all three of her children's names.

I. An unmarried putative biological father who has not established a legal parent-child relationship is not a "parent" under the name-change statute entitled to notice of a pending name change.

In *J.M.M. I*, the court of appeals correctly reversed the district court's conclusion that D.G.'s mere status as the putative biological parent of J.M.M.'s children entitled him to notice of their pending name changes. *In*

re J.M.M. (J.M.M. I), 890 N.W.2d 750, 756 (Minn. App. 2017). In this appeal, MSBA-Appointed Counsel ("Appointed Counsel") seek to overturn the court of appeals' well-reasoned ruling in *J.M.M. I*. They advocate for an unsound plain language analysis that results in a strained, harsh, and impractical interpretation of the name-change statute in which any biological parent is entitled to notice of a pending name change, regardless of her or his legal or practical connection to the child. This approach is inconsistent with Minnesota statutes as well as the sound public policy that animates them.

In J.M.M.'s first appeal, where she was appealing from a district court's decision that sounds remarkably similar to the approach advocated by Appointed Counsel, the court of appeals reversed. The appellate court correctly determined that "parent," as used in the name-change statute, is ambiguous and that other Minnesota statutes, primarily the Minnesota Parentage Act, provide the sound and appropriate law to look to for guidance as to the proper meaning of parent in the name-change statute. *J.M.M. I*, 890 N.W.2d at 754. As a result of this analysis, the court of appeals also correctly determined that a person's status as merely a putative biological parent does not entitle him to notice of a child's pending name change. *Id*. at 756.

A. "Parent" as used in the name-change statute is ambiguous.

Under the name-change statute, notice of a pending name change is due to "both parents," unless the district court determines that notice is

impracticable. Minn. Stat. § 259.10. In J.M.M.'s first appeal, the Minnesota Court of Appeals determined in a unanimous, published decision that "parent," as used in the name-change statute, was ambiguous and that it was necessary to look to other Minnesota statutes to define the term. *J.M.M. I*, 890 N.W.2d at 754. The court came to this conclusion, in part, by examining the dictionary definition of parent. *Id.*

In their brief, Appointed Counsel argue that, in fact, dictionary definitions render "parent" as used in the name-change statute unambiguous, and that the court of appeals erred in concluding otherwise. Resp. Br. at 15. Yet, as the court of appeals noted, "varied dictionary definitions alone do not resolve" a disputed statutory term. *J.M.M. I*, 890 N.W.2d at 754 (citing *Cocchiarella v. Driggs*, 884 N.W.2d 621, 625 (Minn. 2016)).

The dictionary definitions Appointed Counsel cites to this court are just that: varied—even contradictory at times. For example, Appointed Counsel first cites to the American Heritage Dictionary and Merriam-Webster to argue that "parent" most commonly refers to the act of producing offspring. Resp. Br. at 15 (citing American Heritage Dictionary, *Parent* (5th ed. 2018); Merriam-Webster.com, *Parent*, https://www.merriam-webster/dictionary/parent (last visited Jan. 9, 2019)). Yet, as Appointed Counsel partially acknowledges, these same sources provide varied and conflicting definitions. The American Heritage Dictionary also defines a parent as a "person who adopts a child" or a "person who raises a child." AHDictionary.com, *Parent*,

https://www.ahdictionary.com/word/search.html?q=parent (last visited Jan. 9, 2019). Merriam Webster also defines parent as a "person who brings up and cares for another." Merriam-Webster.com, *Parent*, https://www.merriam-webster.com/dictionary/parent (last visited Jan. 9, 2019).

The varying nature of the term parent is best illustrated by the multi-part definition in Black's Law Dictionary. Appointed Counsel quotes ***only part*** of that definition and states that a parent is "'[t]he lawful father or mother of someone,' which includes 'a child's natural mother and father.'" Resp. Br. at 16 (citing *Black's Law Dictionary* 1287 (10th ed. 2014)). The court of appeals in *J.M.M. I* quoted the same definition ***in full***:

> The lawful father or mother of someone • In ordinary usage, the term denotes more than responsibility for conception and birth. The term commonly includes (1) either the natural father or the natural mother of a child, (2) either the adoptive father or the adoptive mother of a child, (3) a child's putative blood parent who has expressly acknowledged paternity, and (4) an individual or agency whose status as guardian has been established by judicial decree. In law, parental status based on any criterion may be terminated by judicial decree. In other words, a person ceases to be a legal parent if that person's status as a parent has been terminated in a legal proceeding.

J.M.M. I, 890 N.W.2d at 754 (quoting Black's Law Dictionary 1287 (10th ed. 2014)). According to these dictionary definitions, the word "parent" can refer to individuals with a range of relationships to a child, including a biological parent or a person unrelated by blood who raises the child.

These definitions are varied, and at times contradictory, making them poor guides as to the intended definition of "parent" under the name-change statute.

Moving to a contextual analysis, Appointed Counsel also contends that the name-change statute's use of the term "both" requires that parent "at a minimum includes a child's natural father." In *J.M.M. I*, the court of appeals rejected this argument, reasoning that "[u]nder Minnesota law, not every child has two biological parents" and citing Minnesota law providing that sperm donors are not biological parents. 890 N.W.2d at 754 (citing Minn. Stat. § 257.56, subd. 2). The court of appeals continued, "Moreover, interpreting 'both parents' to mean biological parents would, in some circumstances, require notice to more than two parents (for example, when adoptive parents seek a name change)." *J.M.M. I*, 890 N.W.2d at 754. As the court of appeals correctly reasoned, the Legislature's use of the word "both" in the name-change statute does not require a conclusion that the plain meaning of "parent" in that statute is coextensive with "biological parents."

Appointed Counsel also argues that interpreting parent in the name-change statute to mean "natural parent" also "aligns" with this court's decision in *Robinson v. Hansel*, 223 N.W.2d 138, 140-41 (Minn. 1974). This citation is inapt, however. *Robinson* did not decide to whom notice of a pending name change was due; instead, it reversed a district court order granting a name change over the "natural father's" objection. *Id.* Issues not "raised or called to the attention of the court" are not precedential.

Chapman v. Dorsey, 41 N.W.2d 438, 443 (Minn. 1950). Further, the "natural father" in *Robinson*, who had been married to the child's mother at the time of the child's birth and therefore was a legal parent at the time of the name-change hearing, "exercised a substantial amount of visitation rights granted him by the divorce decree, demonstrating his effort to maintain a familial relationship" with the children. *Id.* at 141. The facts in *Robinson* provide a stark contrast to D.G., who has no relationship with J.M.M.'s children, legal or otherwise.

Accordingly, the meaning of the word "parent" in the context of the name-change statute is ambiguous, and a plain-meaning analysis does not provide a sufficient basis to conclude that a person is entitled to notice of a minor's pending name change merely because of his status as a biological father.[2]

B. The Minnesota Parentage Act is the appropriate statute to look to for guidance as to the meaning of parent.

Having concluded that the word parent is ambiguous as used in the name-change statute, the court of appeals in *J.M.M. I* turned to the Minnesota Parentage Act for guidance. *See State v. Thonesavanh*, 904

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[2] Appointed Counsel also appear to argue that their plain language analysis justifies designating D.G. a parent based on "his actions." Surely none of the dictionary definitions Appointed Counsel cite plainly justify deeming a man a "parent" who has not seen his children in five years, has threatened violence to avoid paying child support, and has refused to take part in the critical tasks of their upbringing, including supervising, dressing, or feeding them. ADD.66-68.

N.W.2d 432, 436 (Minn. 2016) (determining a statute is ambiguous and turning to canons of construction). It did not err in doing so.

Minnesota's name-change statute, Minn. Stat. § 259.10, subd. 1, does not define the term "parent." Minnesota courts "may borrow from other statutes' definitions of terms that are undefined in the statute at issue." *J.M.M. I*, 890 N.W.2d at 754 (citing *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 707 (Minn. 2013) (finding support for the court's interpretation of "community" in other statutes' definitions of the term)); *see also Dayton Hudson Corp. v. Johnson*, 528 N.W.2d 260, 262 (Minn. App. 1995) (adopting the definition of "person" in different statutes for the statute at issue).

The Legislature's purpose in including a notice provision relating to the name change for minors was clearly to ensure that persons with legal decision-making rights relating to those children are informed of a name-change hearing. This right is a right associated with legal parenthood—the name-change statute states that notice is due only to a parent—and so this current appeal is securely tethered to the question of who is entitled to the rights of legal parenthood.

The Minnesota Parentage Act is where, and how, the Legislature has defined legal parent-child relationships. As a result, the Parentage Act is the common sense place to look to determine what the Legislature meant when it used the term "parent" in the name-change statute. In addition, the Juvenile Court Act provides a means of understanding the Legislature's intent behind the Minnesota Parentage Act's parental

presumptions and how those presumptions operate in practice. *See* Minn. Stat. § 260C.007, subd. 25.

The Parentage Act provides a number of avenues under which a putative biological father who is not married to the biological mother can establish a legal parent-child relationship. *See* Minn. Stat. § 257.57; Minn. Stat. § 257.75. It is undisputed that none of these actions have occurred regarding D.G. He does not have a legal parent-child relationship with J.M.M.'s children under the Parentage Act.

Appointed Counsel makes a number of arguments to distract from this simple application of the Parentage Act to definitively answer the notice question against any requirement of notice to D.G. First, Appointed Counsel asserts that the name-change statute does not share a similar purpose with the Parentage Act and point to this Court's language in *In re Palmer*, stating that "[c]hild support is the major concern under the Parentage Act."[3] *Id.* But Appointed Counsel points to no authority establishing that child support was the *only* concern of the Parentage Act. In fact, the Parentage Act itself belies that contention; a father may bring a suit to establish paternity under its provisions regardless of whether he does so in order to pay child support. Minn. Stat. § 257.57, subd. 1.

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[3] Appointed Counsel misquotes *In re Palmer* by stating "child support is the primary purpose of the Parentage Act." Resp. Br. at 24.

Appointed Counsel also argues that the Minnesota Adoption Act is the proper statute to take guidance from in defining parent in the name-change statute. Resp. Br. at 20-21. As the court of appeals acknowledged in *J.M.M. I*, that statute defines parent to mean "the natural or adoptive parent of a child." 890 N.W.2d at 755 (citing Minn. Stat. § 259.21, subd. 3). But the court of appeals went on to note that its decision was "in harmony" with the Adoption Act because under the provisions of that law:

> A natural father is not entitled to notice of a hearing on a petition to adopt a child if the father has not been named on the child's birth record, has not substantially supported the child, was not married to the natural mother on the birth record, does not openly live with the child or the natural mother on the birth record, has not been adjudicated the child's parent, has not signed a declaration or recognition of parentage, has not filed a paternity action, and has not registered for the adoption registry.

Id. (citing Minn. Stat. § 259.49, subd. 1).

Moreover, the court of appeals correctly observed that if parent "for the purposes of the name-change act included a biological father who does not have a parent-child relationship as defined in the Parentage Act, that father would have greater notice rights under the name-change act than under the adoption act." *J.M.M. I*, 890 N.W.2d at 755. The court of appeals continued, "It would be illogical to require notice of a proposed name change to a father who would not be entitled even to notice of a pending adoption." *Id.* In light of that analysis, Appointed Counsels'

argument that the Court should look to the Adoption Act for a definition of "parent" is unavailing.

Lastly, Appointed Counsel makes much of the fact that the Legislature revised the name-change law at the same time as it passed the adoption law.[4] Resp. Br. at 20-21. This point actually cuts in Appellant's favor. In enacting the Parentage Act, the Legislature defined the parent and child relationship, how such a relationship is established, and also circumstances in which a presumption of paternity can be created, among other things. This Court can presume that the Legislature was aware of its previously enacted name-change statute when adopting the Parentage Act. And after adopting the Parentage Act, the Legislature did not revisit the name-change statute to include presumed parents in the notice provision. Given this, it is reasonable for this Court to conclude that the Legislature intended that the Parentage Act would be used to define the term "parent" in the name-change statute.

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[4] Appointed Counsel also contends that because the Parentage Act was enacted after the name-change statute, it cannot be used to interpret the name-change statute. Resp. Br. at 23. But in support of this point, Appointed Counsel cite no more than dicta, *see State v. Mckown*, 475 N.W.2d 63, 66 (Minn. 1991), and this perspective ignores the fundamental ways that significant legislation can change critical terms. *See Morey v. Peppin*, 375 N.W.2d 19, 22-23 (Minn. 1985) (recognizing that the Parentage Act altered the common law understanding of parental rights).

C. A presumption of paternity under the Parentage Act is insufficient to establish that a person is a "parent" entitled to notice of a minor's pending name change.

Although the *J.M.M. I* court correctly concluded that Minnesota courts should look to the Parentage Act to determine who qualifies as a "parent" entitled to notice of a minor's pending name change under the name-change statute, the *J.M.M. II* court misinterpreted the function of the presumptions under Minn. Stat. § 257.55, subd. 1. In *J.M.M. II*, the court of appeals incorrectly concluded that a person who satisfies one of the presumptions under Minn. Stat. § 257.55, subd. 1, automatically becomes a legally recognized parent for purposes of the name-change statute. *In re J.M.M. (J.M.M. II)*, No. A17-1730, 2018 Minn. App. Unpub. LEXIS 478, at *6-9 (Minn. App. June 4, 2018). 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 section 257.55, 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 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. The presumptions in section 257.55, subdivision 1, function only to confer standing to participate in a paternity action. *See* Minn. Stat. § 257.57 (explaining who may bring an action to establish legal paternity); Minn. Stat. § 257.60 (explaining that each man presumed to be the father of a child under section 257.55 must be made a party to a paternity action).

The Parentage Act also makes clear that while in some instances, the execution of a Recognition of Parentage by a biological mother and putative biological father "has the force and effect of a judgment or order determining the existence of the parent and child relationship" between the man and the child, in other instances, such as where the putative parents are minors or where two men execute a Recognition of Parentage relating to the same child, the execution of the Recognition only creates a presumption of paternity. *See* Minn. Stat. § 257.75, subd. 3 & subd. 8. This demonstrates that the Legislature expressly did not intend a mere presumption of paternity to equate to legal fatherhood. The second court of appeals decision is in direct tension with this clear Legislature intent, because the court of appeals concluded that D.G., as a mere presumed

parent,[5] had a legal parent-child relationship and was thus entitled to notice.

In other words, a person who is presumed to be the biological father of a child under section 257.55, subdivision 1, cannot automatically be considered a legal parent. More is required to establish a legal parent-child relationship. And because the name-change statute does not require notice to a "presumed parent," it is improper for a Minnesota court to conclude that a person is a parent entitled to notice of a minor's pending name change based solely on an analysis that the person satisfies one of the presumptions under section 257.55, subdivision 1. That is precisely what the district court and *J.M.M. II* court did here, and that conclusion should be reversed.[6]

D. The cases from other jurisdictions on which Appointed Counsel relies do not support a conclusion that Minnesota law should require notice of a name-change hearing to a mere putative biological father who has no legal parental rights.

Appointed Counsel argues that notice is due to D.G. in order to advance the policy goal of providing the district court with "information relevant" to its analysis of the child's best interest in the name-change

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[5] J.M.M. strongly disputes that D.G. meets the standard for a presumed parent. *See* App. Br. at 20-30.

[6] Even if that analysis were correct, D.G.'s conduct does not satisfy the presumption of paternity in section 257.55, subdivision 1(d), as a matter of law, and the contrary conclusions of the lower courts should be reversed, as explained in Appellant's opening brief. *See* App. Br. at 14-18.

petition. Resp. Br. at 26-31. In doing so, Appointed Counsel asks this court to rewrite Minnesota's name-change law to favor their particular policy goals. But Minnesota's name-change statute strikes a balance between collecting relevant information and preserving a parent's rights to make decisions on her children's behalf free from undue influence or burden. D.G. does not have a sufficient parent-child relationship with the children to warrant notice or interference with the decisions J.M.M. makes for her children. The extra-jurisdictional cases to which Appointed Counsel cites do nothing to undermine the balance that Minnesota law has struck.

Appointed Counsel's first inapt citation is *Hardy v. Hardy*, 306 A.2d 244, 245-48 (Md. 1973). In *Hardy*, the court analyzed a requirement that notice of a pending name change be *published* and not merely provided to the child's parents. *Id.* at 246. Accordingly, Maryland's law involved no analysis about who was entitled to notice—the general public was entitled to notice. *Id.* Appointed Counsel point out that *Hardy* held that the policy reason behind Maryland's notice requirement was to obtain relevant information about the child's best interests in consideration of the name change. Resp. Br. at 27. But Minnesota has struck a different balance, instead requiring notice only to those with legal rights over the child.

Doe v. Roe, 219 S.E.2d 700, 700 (Ga. 1975), is similarly inapposite. There, the district court temporarily granted an injunction under its discretionary powers to prevent a mother from registering her child in

school under a new name. *Id.* The mother argued that her current husband was the child's father, while the mother's former husband argued he was the father. *Id.* The Georgia Supreme Court reasoned that the district court did not abuse its discretion by granting the injunction in part because the Georgia Supreme Court determined that notice would be due to the former husband of a pending name change. *Id.* But the Georgia Supreme Court provided no analysis regarding who is a parent entitled to notice. As discussed, under Minnesota law, a mere remote claim of parentage does not entitle a person to notice, and *Doe* does nothing to clarify under Minnesota law who is entitled to notice. Further *Doe* also makes no mention of any concerns with presenting as much information as possible for the court to review in a pending legal name change; there was no pending legal name change at issue in the case. *Id.*

Appointed Counsel also cites *P v. Department of Health*, another foreign case that is factually distinguishable. 107 N.Y.S.2d 586, 588 (N.Y. Supp. Ct. 1951). There, a child's mother was institutionalized. The child's alleged father, P, who was formerly married to the mother, petitioned to change the child's name. *Id.* The record in the case revealed that the child was born in 1945, while the mother was married to another man, H, whose name appeared on the child's birth certificate. *Id.* The court held that notice was due to H, but did so in large part because of the fact that H's name was on the birth certificate and because he was married to the mother at the time of the child's birth and conception. *Id.* at 590.

In contrast, D.G. has never been married to J.M.M., and he refused to be listed on these children's birth certificates, because he wished to avoid being financially responsible for them. Moreover, *P* viewed the issue in the case as whether H, based on his connections to the child, was entitled to notice. *Id.* at 590-91. The court did not ground its decision in the need for the court to have as much information as possible before it to make a decision as to the name change. *Id.*

Lastly, Appointed Counsel asks this court to look to decisions in which courts read a notice requirement into a statute. Resp. Br. at 28. *See Hamman v. Cty. Court of Cty. of Jefferson*, 753 P.2d 743, 748 (Colo. 1988); *In re Harris*, 236 S.E.2d 426, 428 (W. Va. 1977). But these decisions are similarly inapt because the Minnesota name-change statute *does* require notice to parents. The issue here is who has a significant enough relationship, and Appellant contends, an existing legal relationship with the children, to be entitled to notice. The cases to which Appointed Counsel cite do not resolve that question.

E. *Heidbreder* makes clear that concluding that D.G. is not entitled to notice is constitutional.

Appointed Counsel further argues that failure to provide D.G. with notice of the pending name change "may leave the name-change statute constitutionally infirm." Resp. Br. at 32. But this argument runs head-on into this Court's ruling in *Heidbreder v. Carton*, 645 N.W.2d 355, 372-74 (Minn. 2002). There, this Court held that a putative biological father does not have constitutionally protected liberty interests in his putative

biological children if he does not have a sufficient parent-child relationship. *Id.* at 372. And in *Heidbreder*, where the birth mother was seeking to place the child for adoption, and the putative biological father had only missed the deadline for the adoption registry by one day, the Court's decision had the effect of precluding that putative father from establishing a legal parent-child relationship in the future. *Id.* at 366, 377. That is not the case here, where the legal names of J.M.M.'s children will have no such impact upon whether a putative biological father can seek parenting rights. Here, there is no evidence that D.G. has satisfied the criteria for developing a constitutionally protected child-parent relationship. Accordingly, allowing J.M.M. to change her children's names does not impact his rights, because as a result of his own choices, he has no rights. To the contrary, depriving J.M.M. the entire bundle of rights as the sole legal parent to her children by preventing her from being able to change her children's names threatens her rights as their parent.

II. If the Court concludes that D.G. would otherwise be entitled to notice of the name-change hearing, his history of threats of violence against J.M.M. and her family make notice to him impracticable within the meaning of Minn. Stat. § 259.10.

A. Notice is not "practicable" when giving notice would be unreasonably dangerous.

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 definition of "practicable" on which Appointed Counsel relies makes clear that practicability implies an element of reasonableness. *See* Resp. Br. at 52 (according to Black's Law Dictionary, "practicable" means "***reasonably*** capable of being accomplished; feasible" (emphasis added)). Appointed Counsel's analysis reads out that reasonableness element and suggests that if it is physically possible to give notice, notice must be given. But that clearly is not what "practicable" means. Instead, consistent with the argument from J.M.M.'s opening brief, "practicable" leaves open the possibility that an action, although *technically* capable of being accomplished, is not *reasonably* capable of being accomplished. Nothing about this argument would require the Court to read the additional word "advisable" into the statute, as Appointed Counsel claim.

One scenario in which it is unreasonable, and therefore impracticable, to require notice of a minor's name-change hearing to a non-applicant parent is where the non-applicant parent has demonstrated that he poses a danger to the applicant parent or the minor child.

B. Even if D.G. had a right to notice and giving notice were practicable, he has waived any right to notice by his threatening conduct.

Contrary to Appointed Counsel's assertion, J.M.M. did raise this waiver argument in the court of appeals. App. Br. to Minn. App. at 23 ("Even if the Court concludes that notice is practicable in this case, the

notice requirement should be waived based on D.G.'s threats of violence against J.M.M. and her family.").

D.G.'s threats against J.M.M. and her family should have been sufficient for the district court and court of appeals to conclude as a matter of law that D.G. waived any right to notice to which he otherwise might have been entitled. Appointed Counsels' argument to the contrary ignores the realities of domestic violence. Appointed Counsel make much of the fact that D.G. has not contacted J.M.M. recently and has not traveled to Minnesota to stalk or harass her. But that is precisely the outcome we should be seeking for domestic abuse victims who extricate themselves from dangerous relationships. As explained by amici curiae Standpoint and the Battered Women's Justice Project, "Notification poses a real threat because avenues for contact and harassment are created each time the victim [is] forced to engage with the abusive person in a legal proceeding." Amicus Br. at 10-11.

J.M.M. has credibly testified about D.G.'s violent and controlling behavior, including his threats that he would kidnap the children and kill J.M.M.'s family if she tried to hold him financially responsible for the children, and how she worked hard to escape him and regain control over her own life. ADD.40-42, 57-59. Hennepin County has deemed these threats so credible and serious that they excused her from seeking support from D.G. ADD.91. Despite this compelling evidence of J.M.M.'s reasonable fear of D.G., three Minnesota courts have concluded that it is

practicable for J.M.M. to provide notice to D.G. before she can proceed to change her children's names.

Requiring J.M.M. to give notice of the pending name-change applications to D.G. would create an opportunity for him to re-engage with her in a threatening way, which she has long worked hard to avoid. To exercise her right as the sole legal parent of her children to change their names, J.M.M. should not be required to gamble her family's safety on the hope that D.G. will ascertain the difference between requesting a hearing to change the children's names and seeking to hold him legally and financially responsible for the children. Forcing such a choice on J.M.M. was a clear abuse of discretion and should be reversed.

Conclusion

The lower courts' decisions have withheld from J.M.M. a key legal right as the sole legal parent to her children, by preventing her from changing her oldest two children's names without providing notice to her controlling and abusive ex-boyfriend. This Court can correct that injustice by interpreting Minnesota's name-change statute, Minn. Stat. § 259.10, subd. 1, to require notice to *legal parents* of a minor child, unless impracticable. Interpreting the name-change statute in this manner is consistent with the Minnesota Parentage Act, which defines the legal parent-child relationship and how an unmarried, putative biological father such as D.G. can create a legal parent-child relationship. D.G. has taken no such steps, but rather he has chosen to remain a legal stranger to

J.M.M.'s children. Allowing the name change to occur closes no doors to D.G. creating a legal parent-child relationship in the future.

J.M.M. should be allowed to exercise her full rights as the sole legal parent to her children, and her family should be afforded the dignity they deserve to live with the shared names of their choosing. This Court should reverse and remand with instructions to the district court to schedule a name-change hearing, with the express instruction that because J.M.M. is the sole legal parent to her children, she need not provide notice to any other person prior to changing her children's names.

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Respectfully submitted,

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