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Case No. A17-1730

State of Minnesota
In Supreme Court

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

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STATEMENT OF THE ISSUES

1. Minnesota law requires "both parents" to receive notice of a proposed change in their child's name. Three children, M., D., and G. all carry the surname of D.G., their natural but unadjudicated father. D.G. lived with and supported M. and D. until the children moved to Minnesota with their mother. Before the children may be deprived of their natural father's surname, must D.G. receive notice?

District Court's Ruling: The district court initially found D.G. to be the parent of all three children under the plain language of Minn. Stat. § 259.10 and dismissed J.M.M's petition. On remand from the court of appeals, the district court applied Minnesota's Parentage Act and found D.G. qualifies as a presumptive parent of M. and D., but not G., and is entitled to notice accordingly.

Appellate Court's Ruling: The court of appeals held that D.G. is a "parent" under Minn. Stat. § 259.10 only if he has a parent-child relationship under the Parentage Act. The court of appeals affirmed the district court's findings that D.G. is a presumptive parent under the Parentage Act, and must therefore be notified of a name-change petition.

Most Apposite Authority:
Minn. Stat. § 259.10
Minn. Stat. § 259.21
Robinson v. Hansel, 302 Minn. 34, 223 N.W.2d 138 (1974)

2. Under Minnesota's Parentage Act, a man is a presumptive father if "he receives [a] child into his home and openly holds out the child" as his own. From their births until 2013, M. and D. resided with D.G. — their natural father — carried his surname, and D.G. contributed to their support. The district court held that D.G. was M. and D.'s presumptive father entitled

to notice of a name-change application. Was the district court's finding clearly erroneous?

District Court's Ruling: The district court found D.G. received M. and D. into his home, and held them out as his children. D.G. thus qualified as a presumptive parent under the Parentage Act.

Appellate Court's Ruling: The court of appeals affirmed the district court's determination that D.G. is a presumptive parent, having received M. and D. into his home and actively held them out as his children.

Most Apposite Authority: Minn. Stat. § 257.55, subd. 1

3. Minnesota law prohibits courts from changing a child's name without notice to "both parents," so long as such notice is "practicable." J.M.M. knew how to contact D.G. and had contacted D.G. since their separation, but expressed concerns for her safety based on allegations of past abuse and threats. The district court found that notice was practicable, finding that J.M.M.'s safety concerns could be addressed without depriving D.G. of his due-process right to notice. Was this finding clearly erroneous?

District Court's Ruling: The district court found that J.M.M. knew D.G.'s whereabouts and that it was practicable to provide D.G. with notice, as there were means to address her safety concerns.

Appellate Court's Ruling: The court of appeals affirmed the district court.

Most Apposite Authority: Minn. Stat. § 259.10

STATEMENT OF THE CASE & FACTS

The undersigned attorneys appointed by the Minnesota State Bar Association ("MSBA") agree with J.M.M.'s statement of the case, and her statement of facts is consistent with the portions of the record that she cited for support. The following statement of facts draws from portions of the record that J.M.M. opted not to highlight, and therefore it is not a complete recitation, but focuses on a few of the district court's factual findings.

J.M.M. appears to take issue with the extent of the district court's factual examination. (Appellant's Brief, 5 ("* * * [T]he 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.")). But the *ex parte* nature of this proceeding placed the district court in the unenviable position of having to feel out the absent party's possible arguments. And the evidence, one-sided as it was, nonetheless supported the district court's findings.[1]

[1] The undersigned attorneys wish to emphasize that they view their role as advocating for procedural fairness, and not any particular person involved in these proceedings. For the purposes of this brief, the undersigned accept J.M.M.'s testimony as truthful, and reflecting her sincere beliefs.

I. J.M.M.'s testimony supports the district court's finding that reasonable people could conclude that D.G. "held [M. and D.] out" as his children.

J.M.M. testified that D.G. insisted that M. and D. have D.G.'s last name, claiming that D.G. would say, "these are G____s." (Transcript Dated 5/31/17, 71 ("[I]t was part of the isolation he was trying to do. It was his way of having me cut contact because he was like, well, you know, these are G____s. You should talk to G____s, not M____s."); 72 ("THE PETITIONER: * * * He'd use that like a derogatory thing toward me that I wasn't -- THE COURT: One of them. THE PETITIONER: Right. THE COURT: But the kids were -- THE PETITIONER: Right. THE COURT: -- one of them. THE PETITIONER: Right.")). J.M.M. described D.G. as practically coercing J.M.M. into changing M.'s birth certificate to have D.G.'s last name, rather than J.M.M.'s. (Add. 40; E.g., 5/15/17 Transcript, 21 ("I filled out M.'s [birth certificate] and I had M. [J.M.M.'s last name] first. And he got it back and had me change it to G. And then he came back later and checked with the nurses to make sure it stayed G."); 21 (same pattern with both older children); 22 ("After G. [youngest] was born in 2013, I called [D.G.] after I got out of the hospital and told him that G. had been born. The first thing he asked was if – he wanted to know G.'s full name to make sure that G. had his last name as well. And then after that he stopped talking. He and I stopped talking completely, and he never called for the kids.")). Accepting J.M.M.'s

testimony as true (and with due respect for her sincerely held beliefs about D.G.'s motives), this fact nonetheless shows that D.G. was highly invested in having the children be identified as "his."

J.M.M. described her own (presumably sincere) belief that D.G. did this solely as a means of isolating and controlling J.M.M., and not because D.G. wished to proudly proclaim that the children were his. (5/31/17 Transcript, 73 ("* * * it wasn't something that he was -- he wanted to make sure everyone knew they were his, it wasn't like that.")). Fair enough. But J.M.M.'s testimony in this regard was her *interpretation* of D.G.'s behavior, and the district court was not only free to interpret that behavior differently; it was, in fact, almost obligated to look beyond J.M.M.'s interpretation to the behavior itself, standing alone. This was because D.G. was not present to testify and be heard about his intentions (much less other conduct). In other words, even *if* J.M.M.'s interpretation of D.G.'s conduct could be supported after a contested hearing, J.M.M.'s testimony as to the *facts* can (and did) support a different interpretation.[2]

J.M.M. further testified, repeatedly, that outside observers could have reasonably concluded that J.M.M., D.G., and the children were "a family." (5/17/17 Transcript, 24; 31; 42; 43; 48; 49; 53; 61; 63).

[2] Put another way, if J.M.M.'s testimony was all that was presented in a summary-judgment motion, it would leave open a genuine issue of material fact regarding whether D.G. intended to hold M. and D. out as his children.

J.M.M. makes much of her claim that D.G. never, for example, introduced M. as "his daughter," or D. as "his son." (E.g., 5/31/17 Transcript, 23 ("I assume they thought so, but I don't — it wasn't something like anyone specifically stated like, Oh this is [D.G.'s] daughter.") But she nonetheless acknowledged repeatedly, and unhesitatingly — each time the district court inquired about how outside observers might have viewed J.M.M., D.G., and M. and D. together — that people could have understood that they were "a family." 5/17/17 Transcript, 24, ("THE COURT: I'm just picturing the three of you living there with the family friends and they're treating you guys like you're a family. THE PETITIONER: Yes."); 31 (D.G. had mentioned his "family" to his boss); 42 (parties appeared with M. in stroller "as though [they] were a family."); 43 ("THE COURT: * * * did it seem like M. was his kid? THE PETITIONER: I would think so."); 48 (J.M.M. agrees that it was "clear" to D.G.'s father and two half-sisters that M. and D. were D.G.'s kids); 49 (same); 53 (if court saw D.G., J.M.M. and children together, it would seem like they were a family); 61 (it would appear to child-care worker being interviewed by D.G. and J.M.M. that "these kids were his kids"); 63 (people who saw them at Walmart would conclude that kids were his)). Again, if (after a contested hearing) the evidence was the same, then perhaps speculation about what outside observers might have believed would be insufficient to support a finding in D.G.'s favor. But this was not a contested

hearing, and J.M.M.'s repeated and unflinching testimony that outside observers could reasonably see them as "a family" is tantamount to an admission. At the very least, this evidence supported the district court's finding that D.G. allowed others to labor under the belief that he was M.'s and D.'s "parent."

One aspect of J.M.M.'s testimony was especially revealing in this regard. She testified that D.G.'s friends razzed him for refusing to change M.'s and D.'s diapers. (*See* 5/31/17 Transcript, 27 ("Because I was always changing the diapers and they asked why he didn't change the diapers.")). J.M.M. denied that D.G. had ever explained his reticence by disclaiming parentage. (*Id.* ("THE COURT: And he didn't say anything like, Because I'm not the dad? THE PETITIONER: No, he just said, I've changed enough diapers. I don't need to change diapers.")). This testimony may reflect poorly on D.G., but it actually shows that outside observers understood that D.G. had parental obligations with respect to M. and D. In other words, these family friends did not see D.G. as a mere "volunteer," when it came to the children.

J.M.M.'s testimony further showed that the family's sole sources of housing derived from D.G. (*See, e.g.,* 5/17/17 Transcript, 13 (family lived with D.G.'s "family friends of his also in Milwaukee."); 14 (family moved in with D.G.'s dad); 17 (family lived with a different friend of D.G.'s in

Richfield); 5/31/17 Transcript, 16 (family lived with D.G.'s mother)). J.M.M. testified that D.G. had many different forms of employment (*E.g.*, 5/31/17 Transcript, 9 (sales); 11 (D.G. worked until 2:00 to 3:00 am). J.M.M. acknowledged that D.G. contributed financially to the children's care, though the amount that he could contribute was limited because of prior child-support obligations. (*See, e.g.,* 5/31/17 Transcript, 41 (stating that D.G. made about $100 every week after child support was removed)).

D.G. also ultimately arranged child care with his friend's niece or his own family members. (5/31/17 Transcript, 45). And he participated interviews when the family briefly hired a professional child-care worker. (5/31/17 Transcript, 61 ("THE COURT: Did D.G. go to all these interviews? THE PETITIONER: Yes. THE COURT: And there were about four of them? THE PETITIONER: Yes. THE COURT: So would it appear to the people being interviewed that these kids were his kids? THE PETITIONER: Yes.").

II. J.M.M.'s testimony supports the district court's finding that notice to D.G. was "practicable."

Below, J.M.M. argued that notice to D.G. was "impracticable," because D.G. had threatened harm to J.M.M. and/or her family. J.M.M. testified to her sincere belief that, if she gave notice to D.G. that she was initiating this name-change petition, then D.G. might follow through on these threats. (5/31/17 Transcript, 67).

The district court concluded that, hypothetically, notice could be considered "impracticable" due to a risk of domestic assault. (ADD. 29, ("Certainly there is a point at which service on the non-applicant parent is so dangerous that it becomes impracticable.")). The district court nonetheless found that such a risk was not presented *on these facts*. (*See id.*). The district court's factual finding was supported by J.M.M.'s testimony.

J.M.M. testified that D.G. had threatened to harm her or her family, or kidnap the children, if J.M.M. did one of two things: 1) tried to collect child support from him; or 2) left him. (ADD. 41; 5/31/17 Transcript, 67). But when the district court asked J.M.M. "Did [D.G.] ever threaten the children?" J.M.M. described D.G. as saying that the children would "get a whooping" if they didn't do something that he wanted. (5/31/17 Transcript, 67). J.M.M. did not describe any physical harm that D.G. had ever caused to her, her children, or her family members. (*See id.* at 65-68).

It is undisputed that J.M.M.'s name-change petition would not affect any child-support obligations that D.G. would have.[3] And, in fact, J.M.M. left

[3] J.M.M. hypothesizes that perhaps D.G. could become confused about the purpose of the name-change petition, and in his confusion become motivated to cause harm to J.M.M. or her family. (App. Br., 34). J.M.M. offers this argument to rebut the district court's conclusion that the court could engage in measures to protect J.M.M. This argument has no basis in fact and is too speculative to entertain.

D.G. in 2013, and went to live with her father, whose address was then known to D.G.; yet despite his prior threats, D.G. did not pursue J.M.M. or her family in retaliation for her having left him. (5/15/17 Transcript, 22.) No evidence was presented to suggest that D.G. has a violent criminal history.[4] Moreover, Wisconsin Circuit Court Records show that D.G. has been adjudicated the father of at least two other children (K.M.C. in 2009, and D.E.M. in 2004), and has had one child-support action brought against him with respect to two more children (A.M.G. and J.D.G. in 2004). Nothing in the record suggests that he retaliated against the mothers of those children, nor those women's families.

Unfortunately, one can never guarantee that a person will not follow through on a threat, and D.G. is by no means a model citizen. But his history, particularly his behavior since J.M.M. left him in 2013, suggests a relatively low likelihood that he would try to harm J.M.M. or her family if served with notice of the name-change petition.

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[4] The undersigned researched D.G.'s Wisconsin court records, which records are readily available on the Wisconsin Circuit Court's website (https://wcca.wicourts.gov/case.html), after a simple search on D.G.'s full name. On appeal, this court is allowed to take judicial notice of court records. *E.g., Eagan Econ. Dev. Auth. v. U-Haul Co.*, 787 N.W.2d 523, 530 (Minn. 2010). D.G.'s criminal history includes minor traffic violations and drug possession (cocaine), one misdemeanor battery in 2003, resisting an officer in 2001, and a felony conviction for robbery in 1996. All of these records, and D.G.'s civil court matters are publicly available on the Wisconsin Courts' webpage.

J.M.M.'s sincerely held beliefs require careful consideration, particularly in light of our long national history of turning a blind eye to domestic abuse and its systemic effects, as J.M.M. and amici properly emphasize. But those concerns must be weighed against D.G.'s interest in maintaining his familial connections with his children (and their interests in maintaining their connections to him). The district court's finding that notice was "practicable," is supported on this record.

ARGUMENT

A child's loss of her surname, "is in a real sense a change in status having significant societal implications." *Robinson v. Hansel*, 302 Minn. 34, 35–36, 223 N.W.2d 138, 140 (1974). Such a change is not merely superficial, but can "further weaken" or even "sever" the "link between father and child" that a shared name fosters. *Id.* As a result, this court has urged "great caution" in changing a child's surname, and held a surname should be changed "only where the evidence is clear and compelling that the substantial welfare of the child necessitates" the change. *Id.* Before any name change is granted, both parents must be given notice of the application. Minn. Stat. § 259.10 (2018).

When M. and D. were born, their natural father D.G. insisted they carry his last name, a name they still carry. After their parents' separation, that surname is one of the children's last remaining links to D.G. The

question before this court is not whether that link should be severed, but whether a court may sever the link without any notice to D.G. and therefore no opportunity for him to be heard. Minnesota Statute § 259.10 expressly prohibits such an outcome. Accordingly, the undersigned attorneys appointed by the MSBA take the position that D.G. must receive notice of the name-change applications for M. and D.[5] Whether the children's names are ultimately changed after D.G. is notified is a matter committed to the district court based upon the children's needs and best interests. *Application of Saxton*, 309 N.W.2d 298, 301 (Minn. 1981).

I. D.G. is a "parent" entitled to notice before the children are deprived of his surname.

Minnesota's name-change statute, Minn. Stat. § 259.10, precludes a court from considering an application to change a child's name "without both parents having notice of the pending application for change of name, whenever practicable, as determined by the court." Minn. Stat. § 259.10 (2018). Though the statute plainly requires notice to "both parents," it does not define the term "parent."

This court is thus charged with interpreting the term "parent" within the context of § 259.10, a task it performs *de novo. State v. Haywood*, 886

[5] Applying the court of appeals' earlier decision in this matter, the district court concluded D.G. was not entitled to notice of the change in G.'s name. That ruling has not been appealed.

N.W.2d 485, 488 (Minn. 2016). In so doing, this court defers to the district court's underlying findings of fact and assessments of credibility. Minn. R. Civ. P. 52.01; *Thompson o/b/o Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). Additionally, in construing the name-change statute, this court's review extends to all decisions below; it need not accept earlier, unreviewed decisions of the court of appeals. *Peterson v. BASF Corp.*, 675 N.W.2d 57, 66 (Minn. 2004), *cert. granted, judgment vacated,* 544 U.S. 1012, 125 S. Ct. 1968, 161 L. Ed. 2d 845 (2005) (holding "the law of the case doctrine does not generally bar a higher court from reviewing an earlier decision of a lower court."); *accord DeCook v. Rochester Int'l Airport Joint Zoning Bd.*, 796 N.W.2d 299, 305 n. 2 (Minn. 2011).

In interpreting any statute, courts endeavor to effectuate the intent of the legislature, reading the text as a whole and giving effect to all its provisions. *Rohmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012); Minn. Stat. § 645.16 (2018). Statutory construction begins with the language of the statute. *In re 2010 Gubernatorial Election*, 793 N.W.2d 256, 259 (Minn. 2010). Such language is read "according to [its] plain and ordinary meaning," *Christianson v. Henke*, 831 N.W.2d 532, 536–37 (Minn. 2013), and, "must be construed as a whole" and "understood…in light of [its] context." *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 527 (Minn. 2012). If the statute is unambiguous, the court does not — and cannot — look beyond the text. *In re*

2010 Gubernatorial Election, 793 N.W.2d at 259. However, where a statute is susceptible to more than one reasonable interpretation, the legislature has provided guidance as to how its intent should be ascertained. *In re Estate of Jotham*, 722 N.W.2d 447, 454 (Minn. 2006); Minn. Stat. § 645.16 (2018). Such guidance includes the laws upon the same or similar subjects, objects of the law, and the consequences of a particular interpretation. Minn. Stat. § 645.16 (2018).

As explained below, whether this court looks to the law's plain language, related statutes, or policy-based canons of construction, D.G. remains what J.M.M. acknowledges him to be — the children's father. Put differently, regardless of the means of interpretation one chooses, the result is the same — D.G. is a "parent." And as a "parent," D.G. is entitled to notice before his children lose the surname they share. Any other result carries constitutional implications. This matter should therefore be affirmed.

A. D.G. is a "parent" under the plain language of the name-change statute.

"The legislature defines a term only because it intends in some measure to depart from the ordinary sense of that term." *U. S. Jaycees v. McClure*, 305 N.W.2d 764, 766 (Minn. 1981). If a word is left undefined, the court presumes that the legislature intended "the literal, ordinary" meaning of a term. *Id.* Consequently, when interpreting an undefined word or phrase,

the courts begin by giving the phrase its "plain and ordinary meaning." *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018), *quoting State v. Hayes*, 826 N.W.2d 799, 803–804 (Minn. 2013); Minn. Stat. § 645.08 (2018). Plain meaning is determined by "look[ing] to the dictionary definitions of the words and apply[ing] them in the context of the statute." *Id.*. *quoting State v. Haywood*, 886 N.W.2d at 488, 886 N.W.2d 485, 488 (Minn. 2016). When the language of the statute is unambiguous, no further construction or interpretation is necessary or permitted, and the court does not ignore the letter of the law "under the pretext of pursuing its spirit." *Rohmiller*, 811 N.W.2d at 589; Minn. Stat. § 645.16 (2018). A statute is only ambiguous when "the statutory language is subject to more than one reasonable interpretation." *Prigge*, 907 N.W.2d at 638, *quoting State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012).

The American Heritage Dictionary provides several definitions of "parent," the most common based in biology: "1(a) …a male person whose sperm unites with an egg, resulting in the conception of a child or the birth of a child." American Heritage Dictionary, *Parent*, (5th ed. 2018). Merriam-Webster supplies a similar primary definition: "one that begets or brings forth offspring." Merriam-Webster.com, Parent, https://www.merriam-webster.com/dictionary/parent (last visited Dec. 31, 2018). Secondary definitions of "parent" expand from a focus on biology to the performative

aspects of care, including "a person who adopts a child" or "a person who raises a child." American Heritage Dictionary (5th ed. 2018). Black's Law Dictionary adopts a somewhat more technical meaning, "The lawful father or mother of someone," which includes "a child's natural mother and father." Black's Law Dictionary (10th ed. 2014). Under any of the above definitions, the common, plain, and ordinary meaning of "parent," includes, at a minimum, a child's natural parent. This is particularly true where the natural parent has participated in the child's life or support beyond the act of conception.

Defining "parent" to include, at a minimum, a child's natural father is also consistent with statute's use of the word "both." American Heritage Dictionary (5th ed. 2018) ("both" means "one and the other; relating to or being two in conjunction"); Merriam-Webster.com, Both, https://www.merriam-webster.com/dictionary/both (last visited Jan. 3, 2019) (adjectival form of "both" means "being the two; affecting or involving the one and the other.") Every child clearly has two biological or natural parents; though not every child will have two adjudicated parents. See *Schmidt ex rel. P.M.S.*, 818 N.W.2d at 527 (statutory terms must be understood in context).

Defining "parent" to encompass a natural parent also aligns with this court's prior decisions. In *Robinson*, this court held that "a change in surname, so that a child no longer bears his father's name…obviously is of

inherent concern to the *natural father*, so that he should have standing to object," and reversed a lower court's name-change order. *Id.* at 140 (emphasis added). Despite the mother in *Robinson* retaining sole custody of the children, the court expressed concern that the children would be deprived of the surname of their "natural father," an action which "could further weaken, if not sever," the father-child bond. *Id.*

Appellant does not dispute that D.G. is M. and D.'s natural father, and D.G. is therefore a "parent" applying the plain and ordinary meaning of the word to the facts as found by the district court. In addition to basic biology, both children have carried D.G.'s surname since birth per his demands. (Add. 26-27.) And until the parents separated, D.G. lived with M. and D., cared for them while J.M.M. worked, arranged childcare, secured housing, and contributed his earnings to their support. (*Id.*) Biology, as well as D.G.'s actions, make him a "parent" under the ordinary meaning of the term. The statute thus requires J.M.M. to notify D.G. of the proposed name change. Minn. Stat. § 259.10 (2018).

Appellant may object that advances in science and increased diversity in family forms inject fresh ambiguity into the word "parent" — ambiguities the legislature could not have foreseen when it required notification to "both parents" nearly 70 years ago. Act of April 20, 1951, ch. 535§ 1, 1951 Minn. Laws 803 (adding the parent-notification requirement to Minn. Stat. §

259.10). Without question, a focus solely on biological parentage does not capture all of the nuances of parenthood as they exist in the 21st Century. *See generally* Douglas NeJaime, *The Nature of Parenthood*, 126 Yale L.J. 2260 (2017). Likewise, the "demographic changes of the past century make it difficult to speak of an average American family." *Troxel v. Granville*, 530 U.S. 57, 63, 120 S. Ct. 2054, 2059, 147 L. Ed. 2d 49 (2000). "Parent," like so many other terms, has been changed "by the remarkable advances of science." *State v. Olson*, 435 N.W.2d 530, 535 (Minn. 1989).

But whatever new issues reproductive technology or changing family forms may insert into the question of defining "parent," they are not present here. Instead, "the words of the law *in their application to [the] existing situation* are clear and free from all ambiguity." Minn. Stat. § 645.16 (2018) (emphasis added). D.G is a natural father who contributed not just his genes, but his surname, and (for a time) his support and his care. Under any definition of the word, D.G. is a "parent." Whether others, not within the statute's plain meaning, should also enjoy the title of "parent" does not create ambiguity, but presents a question for "the legislature, with its broad based representation, its committee hearings, and its floor debates." *Olson*, 435 N.W.2d at 535.

B. Related laws support treating D.G. as a "parent" under the name-change statute.

Even if the court finds some ambiguity in Minn. Stat. § 259.10's use of "parent," the outcome is the same. D.G. should receive notice, for any ambiguity in the name-change statute can be resolved in reference to the definition of "parent" employed elsewhere in chapter 259, as part of the Adoption Act.

"Where statutory language is ambiguous, [the court] can look to the legislative history of an enactment or to other related statutes." *Depositors Ins. Co. v. Dollansky*, 919 N.W.2d 684, 688 (Minn. 2018); *see also* Minn. Stat. § 645.16(5) (2018) (directing courts to look to laws upon similar subjects). In looking to other statutes, the court may employ the doctrine of *in pari materia* to construe as a whole "two statutes with a common purpose and subject matter," and thus give meaning to ambiguous statutory terms. *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999). Beyond looking to a shared purpose and subject matter, this court has also sought to harmonize "two acts passed, approved, and effective the same day," *Halverson v. Elsberg*, 202 Minn. 232, 233, 277 N.W. 535, 535 (1938); *see also Ausman v. Hoffmann*, 208 Minn. 13, 17, 292 N.W. 421, 423 (1940) (applying the rule in *Halverson*). Thus, in interpreting statutes together, this court attempts to fit the ambiguous statute into "the statutes in force at the time of its enactment."

State v. Bolsinger, 221 Minn. 154, 162, 21 N.W.2d 480, 486 (1946) *overruled on other grounds by State v. Engle*, 743 N.W.2d 592, 595 (Minn. 2008). Reading the name-change statute *in pari materia* with other portions of chapter 259 enacted at the same time provides a workable definition of "parent," grounded solidly in the statutory text. Such a definition includes D.G. as the children's "natural parent." Minn. Stat. § 259.21, subd. 3 (2018). He should therefore receive notice.

1. "Parent" should be interpreted in light of definitions contained elsewhere in chapter 259.

In giving meaning to the term "parent" as used in Minn. Stat. § 259.10, the court should turn to Minnesota's Adoption Act, also contained in chapter 259. The Adoption Act shares with the name-change statute the common subject and purpose of changing children's legal status. *Robinson*, 223 N.W.2d at 140. In addition, the timing of amendments to both the name-change statute and the Adoption Act provide compelling support for reading Minn. Stat. § 259.10 and the Adoption Act together. The legislature added both Minn. Stat. § 259.10's parental-notice requirement and the Adoption Act's definition of "parent" in 1951. Act of April 20, 1951, ch. 535 § 1, 1951 Minn. Laws 803 (amendments to Minn. Stat. § 259.10); Act of April 19, 1951, ch. 508 § 1, 1951 Minn. Laws 769 (enacting the Adoption Act). Indeed, the two laws were enacted only a day apart. *Id.* The Adoption Act's definition of

"parent" was approved on April 19, 1951, and the name-change statute's requirement "that no minor child's name may be changed without both of his parents having notice" received approval the following day. *Id.* A particular legislature's enactment of two statutes in the same chapter on similar subjects within a day of one another provides strong evidence of the legislature's intent. *Halverson*, 202 Minn. at 233, 277 N.W. at 535.

Reading sections 259.10 and 259.21 *in pari materia* suggests that D.G. should have notice of the name-change petition. Section 259.21 of the Adoption Act, defines "parent" as "the natural or adoptive parent of a child." Minn. Stat. § 259.21, subd. 3 (2018). This court, in turn, has interpreted "natural parent" to "unmistakably includ[e] the acknowledged father of an illegitimate child," as well as "the putative father of an illegitimate child." *In re Shady*, 264 Minn. 222, 228, 118 N.W.2d 449, 453 (1962) (interpreting identical language in both Minn. Stat. § 259.21, subd. 3 and Minn. Stat. § 260.015, subd. 11); *In re Zink*, 264 Minn. 500, 506, 119 N.W.2d 731, 735 (1963) (same). Here, there is no doubt D.G. is the children's biological father. J.M.M. acknowledges as much. The statute thus requires that he receive notice.

2. Definitions of "parent" in the Parentage Act and Juvenile Court Act should not be read *in pari materia* with the name-change statute.

Rather than turning to the definition of "parent" in the Adoption Act, the appellate court previously relied on Minnesota's Parentage Act, and specifically its definition of the "parent-child relationship." *Matter of J.M.M.*, 890 N.W.2d 750, 754 (Minn. App. 2017). By contrast, Appellant directs this court back to the definition of "parent" in section 260C.007 of the Juvenile Court Act for an even more pinched definition. (App. Br. at 16.) Neither act provides an appropriate lens for interpreting "parent" in Minn. Stat. § 259.10.

Generally, the Parentage Act provides "the exclusive bases for standing to bring an action to determine paternity." *Witso v. Overby*, 627 N.W.2d 63, 65–66 (Minn. 2001). The court of appeals thus held the act "a logical place to look to determine the meaning of 'parent,'" in Minn. Stat. § 259.10 (2018). *Matter of J.M.M.*, 890 N.W.2d at 754. However, the Parentage Act is not the sole basis for defining "parent," and this court has held that other statutes may provide different definitions of "parent" for purposes other than establishing paternity. *In re Estate of Palmer*, 658 N.W.2d 197, 200 (Minn. 2003) (observing that differing definitions in the Parentage Act and probate code related to their divergent purposes). Thus, not every instance of the word "parent" under Minnesota law must refer to a parent-child relationship created under the Parentage Act. Minn. Stat. § 257.52 (2018). The court of

appeals conclusion to the contrary was in error.

Moreover, this court has been skeptical of interpreting "the earlier of two statutes in light of the later" *State v. McKown*, 475 N.W.2d 63, 66 (Minn. 1991). As discussed above, the legislature enacted Minn. Stat. § 259.10's parental-notice requirement in 1951. Act of April 20, 1951, ch. 535 § 1; 1951 Minn. Laws 803. The Parentage Act did not appear until nearly thirty years later, in 1980. An Act of April 23, 1980, ch. 589, §§1–24; 1980 Minn. Laws 1070–1079. This court should be hesitant to assume that the legislature intended Minn. Stat. §259.10 to be read in light of a statute passed thirty years later, particularly where, as here, the legislature has taken no action to indicate that intent.[6]

The divergent purposes of the name-change statute and the Parentage Act also belie any attempt to read them *in pari materia*. Statutes should only be read together if they "relat[e] to the same person or thing or hav[e] a common purpose." *Apple Valley Red-E-Mix, Inc. v. State by Dep't of Pub.*

[6] In contrast, the legislature amended other laws to incorporate the Parentage Act's definitions. *See* Minn. Stat. § 259.21, subd. 12 (2018) (referencing the Parentage Act in the Adoption Act's definition of "putative father"); Minn. Stat. § 260C.007, subd. 25 (2018) (referencing the Parentage Act in the Juvenile Court Act's definition of "parent"); Minn. Stat. § 524.1-201(22) (2018) (referencing chapter 257 in the Probate Code's definition of "genetic father.") Despite multiple amendments to the name-change statute since enactment of the Parentage Act, the legislature has not seen fit to explicitly incorporate the Parentage Act's provisions into Minn. Stat. § 259.10 (2018). *See* Act of March 11, 1986, ch. 317 § 1, 1986 Minn. Laws 16; Act of May 23, 1991, ch. 161 § 1; 1991 Minn. Laws 364–65;

Safety, 352 N.W.2d 402, 404 (Minn. 1984) (declining to read a registration and taxation statute in light of a statute involving police powers). This court has previously held that "child support is the primary purpose of the parentage act." *In re Estate of Palmer*, 658 N.W.2d at 200. By contrast, the name-change act is primarily concerned with a change in the child's status — more akin to adoption than to the establishment of child support. *Robinson*, 223 N.W.2d at 140. The differing purposes and enactment dates of the name-change statute and the Parentage Act undermine the appellate court's decision to read them together.

The definition of "parent" in the Juvenile Court Act provides an even less appropriate basis for interpreting the name-change statute. First, like the Parentage Act, the Juvenile Court Act serves a divergent purpose from the name-change statute. *Apple Valley Red-E-Mix, Inc.*, 352 N.W.2d at 404. In the context of juvenile protection, the court must prioritize a child's safety, while making permanent decisions about the child's placement "at the earliest possible date." Minn. Stat. § 260C.001, subd. 2(7) (2018). No such immediate child-safety considerations govern name-change petitions.

Second, by focusing narrowly on the Juvenile Court Act's definition of "parent," Appellant overlooks the additional protections available to natural fathers under the Act. These protections include a requirement that the social-service agency make diligent efforts to locate a child's parents, as well

as additional rights for putative and natural fathers. Minn. Stat. § 260C.150, subd. 3 (2018) (requiring diligent efforts to locate child's parents, and permission to contact putative father); Minn. Stat. § 260C.221 (2018) (requiring a search for all adult relatives); Minn. Stat. § 260C.007, subd. 27 (2018) (defining relative to include "a person related to the child by blood.") Thus, the legislature's more constrained definition of "parent" serves a different purpose in the Juvenile Court Act, and is buttressed by different protections for those who fall outside its bounds. The Juvenile Court's definition cannot be grafted into the name-change statute.

Rather than supporting Appellant's position, the Juvenile Court Act's technical definition of "parent" cuts against her arguments. By specifically defining the term "parent" in the Juvenile Court Act, the legislature demonstrated its intent to "depart from the ordinary sense of that term." *U. S. Jaycees*, 305 N.W.2d at 766. Thus, rather than the "literal and ordinary" meaning which should be ascribed to "parent" in other contexts, the Juvenile Court Act employs a specialized definition intended for a specific purpose. *Id.*; Minn. Stat. § 645.08(1) (2018) (technical words and phrases are construed according to their special meaning or definition). By the same logic, the legislature's decision to leave the word "parent" without any special meaning in the name-change statute (despite later amendments) suggests a broader and more ordinary use of the word as argued above.

In sum, neither the Parentage Act nor the Juvenile Court Act provide meaningful assistance in interpreting the name-change statute, Minn. Stat. § 259.10 (2018). The definitions provided within chapter 259 itself, as part of the Adoption Act, should be used.

C. Other canons of construction support providing notice to D.G. before his children's names are changed.

Besides considering related statutes, this court may also take account of policy-based rationales such as "the occasion and necessity for the law, the object to be attained, and the consequences of a particular interpretation." *In re Welfare of Children of N.F.*, 749 N.W.2d 802, 807 (Minn. 2008) (*citing* Minn. Stat. § 645.16). Though no state shares Minnesota's precise name-change statute, several other courts have had occasion to consider the broader importance of parental notice prior to changing a child's name. *See generally* 57 Am. Jur. 2d Name § 44. Each decision is instructive in understanding Minn. Stat. § 259.10's notice requirements, and each makes clear that D.G. is a parent within that purview.

In *Hardy v. Hardy*, the Maryland Court of Appeals considered the appeal of a natural, unadjudicated father of a district court's order changing his child's name. *Hardy v. Hardy*, 269 Md. 412, 414, 306 A.2d 244, 245 (1973). Though the child had largely "lived with and been supported by his mother," the court reversed an order changing the child's name without the published

notice typically required. *Id.* at 247. In support of its decision, the court observed that whether or not to change a child's name hinges upon an evaluation of the child's best interests. *Id.* at 246. "One possible, important source of knowledge is the relevant information that can be gained from those people who were made aware of the pendency of the petition," through the statutorily required notice, including the child's natural father. *Id.*

Even if a child's paternity is unclear, courts in other jurisdictions have insisted that notice be provided even to potential fathers. Thus, the Georgia Supreme Court, when confronted with two alleged fathers, required notice to both men in interpreting a Georgia statute requiring "the parent or parents of such child…be served with a copy of the petition" for name change. *Doe v. Roe*, 235 Ga. 318, 318, 219 S.E.2d 700, 701 (1975) (interpreting Ga. Code Ann. 79-501.) Once notice was provided, the court reasoned, the name-change application could be decided consistent with the statute. *Id.*

Likewise, notice has been found necessary even where a man is almost certainly *not* the father of the child, but was married to the mother at the time of the child's birth. In *P. v. Department of Health*, a New York court insisted that the mother's former husband (whose surname the child carried)

receive notice of a name-change petition filed by the child's natural father.[7] *P. v. Dep't of Health*, 200 Misc. 1090, 1091, 107 N.Y.S.2d 586, 588 (Sup. Ct. 1951). While recognizing the harshness of its decision "in the light of the petitioner's love and devotion for the child," and the former husband's complete absence from the child's life, the court held that the application could not proceed without notice to the former husband. *Id.* at 589.

A number of jurisdictions have found parental notice so essential that their courts have read such a requirement into name-change statutes where notice was otherwise not required. The Colorado Supreme Court required that notice of a proposed name change be given to a child's non-custodial parent, notwithstanding that the statute required only notice by publication. *Hamman v. Cty. Court In & For Jefferson Cty.*, 753 P.2d 743, 748 (Colo. 1988). Similarly, West Virginia's name-change statute lacked a parental-notice requirement. But that state's supreme court, exercising its "general powers over procedure in courts of equity," held that "before a court can proceed to consider a petition for a change of name when there is a living father, actual notice must be given to the father if his whereabouts are known or with reasonable diligence could be ascertained." *In re Harris*, 160

[7] The child's mother was "a patient at the state hospital" at the time of the name-change petition and represented by a guardian. *P. v. Dep't of Health*, 107 N.Y.S.2d at 588.

W. Va. 422, 425, 236 S.E.2d 426, 428 (1977).[8]

All of the above decisions reinforce the public-policy interests in providing notice to a natural father. Like Maryland's courts, this court has held that, "once a surname has been selected for the child… a change in the child's surname should be granted only when the change promotes the child's best interests." *Application of Saxton*, 309 N.W.2d at 301. A child's best interests include not only factors relevant in custody determinations, but, also:

> [T]he effect of the change of the child's surname on the preservation and the development of the child's relationship with each parent; the length of time the child has borne a given name; the degree of community respect associated with the present and the proposed surname; and the difficulties, harassment or embarrassment, that the child may experience from bearing the present or the proposed surname.

Id. Such an inquiry is undoubtedly aided by information available from the parent from whom the child obtained her surname. *Hardy*, 306 A.2d at 247. Children do not benefit from having such significant decisions made *ex parte*. Likewise, the approach adopted in *Doe* recognizes that a bare right to notice is not determinative. Once a court has ensured that all necessary parties have been notified, it retains authority to change a child's name (or not)

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[8] The Supreme Court of South Carolina also mandated notice of a name-change to a non-custodial father in *Ex parte Stull*, 276 S.C. 512, 513, 280 S.E.2d 209, 210 (1981).

consistent with the evidence presented to it. *Doe*, 219 S.E.2d at 701. The New York court in *P* makes clear the dangers of deciding, "however obliquely," the question of who is and is not a "parent," without all necessary parties present. *P.*, 107 N.Y.S.2d at 590. And finally, as made clear in *Hamman* and *Harris*, a child's surname is of obvious and significant concern to both parents, such that notice is necessary to comport with basic concepts of due process.

By contrast, courts have been most likely to deny notice to a natural father where a statute specifically negates such a right. For example, in *In re Name Change of Reindl*, the Iowa Supreme Court held that a natural father's consent to a name-change was not required where he was not named on the child's birth certificate. *In re Name Change of Reindl*, 671 N.W.2d 466, 469–70 (Iowa 2003). However, the court grounded its decision in the language of Iowa's statute, which requires the consent only of "both parents *as stated on the birth certificate*." Iowa Code § 674.6 (2003) (Emphasis added). Similarly, Indiana's name-change statute does not require consent to a name change from "the natural father of a child born out of wedlock whose paternity has not been established." Ind. Code § 34-4-6-2 (2018) (incorporating the consent to adoption statute into Indiana's name-change statute); Ind. Code § 31-3-1-6 (2018) (consent to adoption statute). Based on this explicit statutory language, the Indiana Court of Appeals concluded that a "natural father

enjoys no rights regarding the child's name until" paternity is adjudicated. *Matter of J.N.H.*, 659 N.E.2d 644, 646 (Ind. Ct. App. 1995). Put differently, where courts have denied notice to a natural father, they have done so at the explicit direction of their legislatures. Unlike the restrictive statutes in Iowa and Indiana, Minnesota's statute simply requires "notice to both parents," with no restriction on how the term "parent" is to be defined. Minnesota's broader language supports a correspondingly broader interpretation.

Taken together, the same policy objectives recognized in *Hardy*, *Doe*, *P*, *Hamman*, and *Harris* all support providing notice to D.G., a natural parent who has insisted that his children carry his name. The district court here is asked to effect "a change in status having significant societal implications." *Robinson*, 223 N.W.2d at 140. But if Appellant's interpretation of the statute is to be followed, the court must do so with one hand tied behind its proverbial back. Minn. Stat. § 259.10 requires no such thing. In fact, it mandates the opposite. D.G. is the children's natural father. He contributed his effort, energies, and income over several years until the parents' separation. (Add. 26 – 27.) He can undoubtedly provide information relevant to the court's analysis, and has a significant interest in the outcome. *Application of Saxton*, 309 N.W.2d at 301. If a name change is genuinely intended to serve M. and D.'s best interests, notifying their natural father serves that end.

D. Failure to provide D.G. with notice before changing his children's names may leave the name-change statute constitutionally infirm.

Finally, in ascertaining legislative intent, this court presumes "the legislature does not intend to violate the Constitution of the United States or of this state." Minn. Stat. § 645.17(3) (2018). Denying notice of a proposed name change to D.G. does just that.

The United States Supreme Court has recognized that a natural father "with an established relationship with his children has a liberty interest in the 'companionship, care, custody, and management of his…children,' and that this interest warrants protection absent a 'powerful countervailing interest.'" *Heidbreder v. Carton*, 645 N.W.2d 355 (Minn. 2002), citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). Such constitutional protections are available not just to adjudicated fathers, but to any biological father who commits to the responsibilities of parenthood. *Heidbreder*, 645 N.W.2d at 372. "While the Court has never addressed the precise degree of involvement" required, a father has a protected liberty interest in his relationship with his children "if he has a 'significant custodial, personal, or financial' relationship with the child." *Id.*, *citing Lehr v. Robinson*, 463 U.S. 248, 262, 103 S.Ct. 2985, 77, L.Ed.2 614 (1983).

Applying the Supreme Court's precedents in *Stanley* and *Lehr*, this court declined to recognize an unadjudicated, biological father's due process

rights where the record lacked evidence of a personal relationship with the child or an attempt to provide financial support (including during pregnancy or immediately following birth). *Heidbreder*, 645 N.W.2d at 372. However, courts in other states have concluded that natural fathers with more substantial relationships have an interest in a proceeding to change their child's name such that notice is constitutionally required. *Eschrich v. Williamson*, 475 S.W.2d 380, 382 (Tex. Civ. App. 1972), *writ refused NRE* (Mar. 29, 1972); *see also Hamman*, 753 P.2d at 748 (adopting the reasoning in *Eschrich*); *Application of Tubbs*, 1980 OK 177, 620 P.2d 384, 388 (1980) (holding change to minor child's surname without personal notice to living, non-custodial parent violates due process requirements of Oklahoma constitution).

Here, J.M.M. provided the only information about D.G.'s "personal or financial relationship" with M. and D.—painting a dim picture both of D.G. and his investment in their children. But even by J.M.M.'s admission, D.G. lived with the two elder children and J.M.M. as a family for several years. (Add. 26 – 27.) He secured housing, often by inconveniencing friends and family. (*Id.*) He contributed to their support. (*Id.*) He provided and arranged childcare.[9] (*Id.*) These actions, when combined with D.G.'s undisputed

[9] Though D.G. is not able to provide his own accounting of his contributions—or offer an explanation for his absence—this court might

biological connection, grant D.G. a constitutionally protected interest in his children's lives—including their surnames. *Heidbreder*, 645 N.W.2d at 372; *Eschrich*, 475 S.W.2d at 382. Interpreting Minn. Stat. § 259.10 to deprive D.G. of notice solely because parentage has not been formally adjudicated risks leaving the name-change statute constitutionally infirm. The legislature does not intend such a constitutional violation, and this court should interpret Minn. Stat. § 259.10 to require notice to D.G. Minn. Stat. § 645.17(3) (2018).

II. Even applying the definitions in Minnesota's Parentage Act, D.G. should receive notice of a proposed name change.

The appellate court previously determined that notice to "both parents" under Minn. Stat. § 259.10, required notice to a biological father who "has a parent-child relationship under the Minnesota Parentage Act." *Matter of J.M.M.*, 890 N.W.2d at 756. As discussed above, this court owes no deference to that interpretation. *Peterson*, 675 N.W.2d at 66. Moreover, as is already clear, this court need not resort to the Parentage Act in order to resolve the question of D.G.'s right to notice under Minn. Stat. § 259.10. The plain language, related statutes, and other canons of construction all demonstrate that notice to D.G. is required. But even if the court were to construe Minn.

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imagine that his testimony, if given, could differ significantly from J.M.M.'s account.

Stat. § 259.10 in light of the Parentage Act, the answer would be the same. D.G. should receive notice of the name-change application, at least as to the two elder children, M. and D.

As with other areas of statutory interpretation, this court interprets the Parentage Act *de novo*, while deferring to factual findings absent clear error. *Witso*, 627 N.W.2d at 65 (regarding the standard of review applicable to interpreting the Parentage Act); *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (regarding the review of factual findings).

Here, the district court found D.G. satisfied the criteria as a presumptive parent to his elder children, M. and D., having received them into his home and openly held them out as his own. Minn. Stat. § 257.55, subd. 1(d). The court also found D.G. could not qualify as a presumptive parent to the youngest child, G., who was born after D.G. and J.M.M. separated (Add. 28.)[10] Further, J.M.M. failed to rebut D.G.'s presumption of parentage by "clear and convincing evidence" in an "appropriate proceeding." Minn. Stat. § 257.55, subd. 2. Accordingly, the district court required notice to D.G., their presumptive father, before hearing an application to change M.'s or D.'s names. The district court properly interpreted the Parentage Act, and all of its findings are supported by the record below—a record only one

[10] J.M.M. has not challenged this finding on appeal, and D.G.—having received no notice of these proceedings—cannot challenge it.

parent had a hand in creating. Appellant's novel and unsupported interpretations of the Parentage Act do not provide grounds for reversal.

A. D.G. is a presumptive parent having held out M. and D. as his children.

Presumptions of paternity arise in those situations where "substantial evidence points to a particular man as being the father of the child, and formal proceedings to establish paternity are not necessary." UNIFORM PARENTAGE ACT, § 4 cmt. (1973). While not conclusive of parentage, paternity presumptions "create a functional set of rules that point to a likely father." *Matter of Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994). Such presumptions "serve the practical purpose of establishing paternity in the eyes of the law and the community until something more is done either to attack the presumption or to establish by action a father who will be viewed as conclusive in the eyes of the law." *Id.* Simply put, presumed parents *are* legal parents unless and until the operative presumption is rebutted.

Minnesota's Parentage Act provides eight different presumptions of paternity. Minn. Stat. § 257.55, subd. 1 (2018). The first three all arise from the parents' marital status. *Id.* at (a)–(c). Four more stem from the execution of recognitions or acknowledgements of parentage between unmarried parents. *Id.* at (e) – (h). The final presumption, and the one relevant here, arises when a man, during the child's minority, "receives the child into his

home and openly holds the child out as his biological child." Minn. Stat. § 257.55, subd. 1(d) (2018).

While this court has not yet had occasion to interpret Minn. Stat. § 257.55, subd. 1(d)'s presumption, the Parentage Act "should be liberally construed to give effect to its remedial and humanitarian purpose." *Weber v. Anderson*, 269 N.W.2d 892, 894–95 (Minn. 1978) (interpreting an earlier version of Minnesota's paternity statutes); *Spaeth v. Warren*, 478 N.W.2d 319, 322 (Minn. App. 1991) (applying *Weber* to Minnesota's Parentage Act). This court has also taken note of the "legislatively established public policy favoring presumptions of legitimacy and the preservation of family integrity." *In re Estate of Jotham*, 722 N.W.2d at 455. This liberal construction of parentage presumptions is consistent with caselaw from the court of appeals and courts of other states. All these decisions have sought to liberally construe the Parentage Act's holding-out requirement, by considering the unique facts of each case. Minn. Stat. § 257.55, subd. 1(d).

Thus, in *Larson v. Schmidt*, the court of appeals held a man had "received the child into his home" even where the child had never lived with him, did not carry his surname, and the alleged father did not sign any proof of parentage or establish a home with the child's mother. *Larson v. Schmidt*, 400 N.W.2d 131, 132 (Minn. Ct. App. 1987). Instead, the court of appeals was persuaded that the alleged father qualified as a presumptive parent based on,

inter alia, his efforts caring for the child two nights per week; "spen[ding] a good deal of time" with the child and mother; attending the child's baptism; telling his family and friends the child was his; contributing $1,500 in support over three years; and spending time with the child in the community and in his family's home. *Id.*

Likewise, in *Zentz v. Garber*, the appellate court found sufficient basis that the father openly held out the child as his own where the child carried the biological father's surname, the father's name appeared on the birth certificate, and the father lived with the child's mother for two years after the birth. *Zentz v. Garber*, 760 N.W.2d 1, 2 (Minn. App. 2009). The court of appeals found the father's claims sufficient to create a presumption of paternity under Minn. Stat. § 257.55, subd. 1(d), even though he had exercised only "sporadic contact" with the child since that time. *Id.* at 3.

By contrast, the court of appeals has declined to find open holding out where a child did not share the surname of the man claiming parentage, and the man had previously petitioned to adopt the child, rather than asserting paternity. *Spaeth*, 478 N.W.2d at 322. Likewise, an alleged father who permitted the child to use another man's name, receive child support from another man, and exercise visitation with him without asserting parentage, cannot claim to have openly held the child out as his natural child. *Pierce v. Pierce*, 374 N.W.2d 450, 451 (Minn. Ct. App. 1985). Notably, in both *Spaeth*

and *Pierce*, the men seeking to assert parentage had not allowed the children to carry their surnames.

The totality-of-the-circumstances approach employed by the court of appeals is reflected in caselaw from other Uniform Parentage Act jurisdictions. *See* Minn. Stat. § 645.22 (2018) (requiring uniform laws to be construed uniformly).[11] Thus, the Colorado Court of Appeals found a man's actions sufficient to create a parentage presumption where the child bore his surname, he was present at the birth, and lived with the child for approximately 16 months. *D.S.P. v. R.L.K.*, 677 P.2d 959, 960 (Colo. App. 1983). Similarly, the Wyoming Supreme Court affirmed a holding-out-based parentage presumption for a father who allowed the mother and child to live with him rent-free, supervised and cared for the child, provided clothing and other items, and introduced the child as his son. *LC v. TL*, 870 P.2d 374, 377 (Wyo. 1994).

In response, Appellant relies upon caselaw from Texas. However, the cases Appellant cites belie her arguments by employing a similarly liberal construction of the parentage act's "holding out" standard. In *Matherson v. Pope*, cited by Appellant, the Texas Court of Appeals concluded a man openly

[11] Several of these jurisdictions have since updated to a later version of the Uniform Parentage Act. The undersigned have cited largely to jurisdictions interpreting the 1973 version of the Act that is currently in effect in Minnesota.

held out a child as his own by bringing the boy to spend time with his family and referring to him as "my son" and "my boy." *Matherson v. Pope*, 852 S.W.2d 285, 290 (Tex. App. 1993), *writ denied* (Sept. 10, 1993). The court concluded that these modest declarations provided sufficient evidence of "holding out" even though the child did not share the man's surname, stopped living with him after the age of two, and thereafter was raised by another man. *Id.* In *R.W. v. Tex. Dep't of Protective & Regulatory Servs.*, which Appellant also cites, the Texas Court of Appeals affirmed a finding of openly holding out even where the man "rarely visited the child or inquired about her well-being," "provided no financial support" for the child despite having the ability to do so, and where the child did not carry his surname. *R.W. v. Texas Dep't of Protective & Regulatory Servs.*, 944 S.W.2d 437 (Tex. App. 1997). The court affirmed the finding of presumed parentage based solely on the man's residing with the child for seven months after her birth, and telling his family and child protection employees that she was his child. *Id.* at 439.

Here, the facts found by the district court more than suffice to create presumption of D.G.'s parentage under the flexible standard above. Appellant does not dispute that D.G. received M. and D. into his home. Indeed, he secured housing for the family from multiple family and friends. (Add. 26 – 27.) Appellant claims, instead, that D.G. did not "openly hold the children out" as his biological children. In support of this argument,

Appellant focuses on her testimony that D.G. usually introduced the children by their first names rather than as "my son" or "my daughter." But Appellant's arguments ignore the crucial fact that is at the center of this litigation: D.G. held the children out to the world as *his children* by *insisting* they carry his last name. D.G. went even further with respect to his middle child, D., who bears D.G.'s first and last names. Whether, to J.M.M.'s memory, D.G. ever said expressly, "this is my daughter, M." or "this is my son, D.G., Jr.," makes little difference where D.G. seized the opportunity to declare his paternity by giving his name to all three children.

In addition to a surname, D.G. actively cared for M. and D., sought out child care, contributed to their support, and lived with them as an intact family over a span of years. (Add. 26 – 27.) Accounting for the totality of the circumstances, even the facts as reported by J.M.M. are sufficient to support treating D.G. as a presumptive parent under Minn. Stat. § 257.55, subd. 1(d) (2018).

Appellant insists that D.G.'s failure to formally establish his parentage weighs against treating him as a presumed father under Minn. Stat. § 257.55, subd. 1(d) (2018). But Appellant's argument places the proverbial cart before the horse. Presumptions exist precisely because "substantial evidence points to a particular man as being the father of the child, and formal proceedings to establish paternity are not necessary." UNIFORM

PARENTAGE ACT, § 4 cmt. (1973). It would be anomalous to make legal action to declare parentage a factual prerequisite to establish a *presumption* which, in turn, provides the basis for an action to declare parentage. Put another way, the presumption in Minn. Stat. § 257.55, subd. 1(d) would serve little purpose if the only way to benefit from it was to seek a formal adjudication of what is meant to be presumed.

Appellant further contends that D.G.'s more recent alleged absence from the children's lives weighs against the presumption. It does not. The statute provides no limitations period within which a father who has resided with and held out his children must formalize that relationship. *See* Minn. Stat. § 257.57, subd. 2(1) (2018). Indeed, foreign caselaw cited by Appellant cuts against giving undue weight to this factor. *R.W.*, 944 S.W.2d 437 (man resided with child for only seven months and rarely visited thereafter); *Matherson*, 852 S.W.2d at 290 (child resided with presumptive father for only two years and thereafter lived with another man). D.G. may step forward at *any time* to declare his parentage. Stat. § 257.57, subd. 2(1) (2018) His temporary absence from the children's lives make him no less a presumptive parent.[12]

[12] J.M.M.'s allegations as to D.G.'s absence also highlight, again, the innate deficiencies of a one-sided record. But the district court had no opportunity to hear from D.G. as to why that would be the case. J.M.M. paints D.G.'s absence as selfish and disinterested. D.G. may be unaware how

B. J.M.M. failed to rebut D.G.'s presumption of parentage by clear and convincing evidence.

Once a parent establishes his presumptive status, parentage may be rebutted only by "clear and convincing evidence" in an "appropriate proceeding." Minn. Stat. § 257.55, subd. 2 (2018). The statute does not define the type of evidence that may rebut a presumption of parentage, or what constitutes an "appropriate proceeding." *Id.* However, caselaw makes clear that J.M.M.'s allegations of parental indifference leveled in an *ex parte* name-change application are insufficient on both counts.

1. D.G.'s alleged shortcomings as a parent are not legally sufficient to rebut his status as a presumptive parent.

After a presumption of parentage arises, it may be rebutted only by "clear and convincing evidence." Minn. Stat. § 257.55, subd. 2 (2018). The statute does not specify precisely what evidence suffices to rebut a presumption, nor have Minnesota's courts had occasion to interpret this term. However, caselaw from other Uniform Parentage Act states demonstrates that such evidence should be limited to evidence that another man is the actual father, such as genetic testing or a court decree establishing

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to find his children. He may be financially unable to bring an action. He may be disabled or incarcerated. He may be serving overseas. Without basic notice to D.G., we simply cannot know.

parentage.[13] The undersigned have been unable to locate any authority for the proposition that a presumption of paternity may be rebutted by poor or even abusive parenting. J.M.M.'s allegations, if proven, may well cause some to label him a bad father, but a father he remains.[14]

Appellant's claims to have rebutted D.G.'s presumption of parentage rest solely on the fact that "D.G. does not have a relationship with the

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[13] *In re Jesusa V.*, 32 Cal. 4th 588, 603–04, 85 P.3d 2, 11 (2004) (presumption may be rebutted by evidence "that the presumed father is not the biological father"); *Lane v. Lane*, 1996-NMCA-023, 121 N.M. 414, 417, 912 P.2d 290, 293 (presumption may be rebutted by evidence of sterility and artificial insemination); *J.N.H. v. N.T.H.*, 705 So. 2d 448, 452 (Ala. Civ. App. 1997) (scientific evidence was sufficient to rebut presumption); *Blake v. Div. of Child Support Enf't ex rel. Foster*, 525 A.2d 154, 159 (Del. 1987) (clear-and-convincing evidence can include results of scientific tests); *Villareal on Behalf of Villareal v. Peebles*, 299 Ill. App. 3d 556, 701 N.E.2d 145, 149 (1998) (hard or genetic evidence is needed to overcome presumption of paternity); *Dillon v. Indus. Comm'n*, 195 Ill. App. 3d 599, 552 N.E.2d 1082, 1088 (1990) (presumption rebutted by blood tests); *Patrick T. v. Michelle L.*, No. WD-00-005, 2000 WL 1752792, at *3 (Ohio Ct. App. Nov. 30, 2000) (genetic tests admissible to overcome presumption); *In re Marriage of Wendy M.*, 92 Wash. App. 430, 962 P.2d 130, 134–35 (1998) (order establishing another man as father of child is required to rebut presumption); *Rydberg v. Rydberg*, 2004 ND 73, ¶ 22, 678 N.W.2d 534, 539 (genetic testing sufficient to rebut presumption of paternity); *LC v. MG & Child Support Enf't Agency*, 143 Haw. 302, 430 P.3d 400, 419 (2018), *reconsideration denied sub nom. LC v. MG*, No. SCAP-16-0000837, 2018 WL 5785070 (Haw. Nov. 2, 2018) (presumption of parentage may only be rebutted by another presumption).

[14] Most importantly, the record demonstrates that D.G. is a *poor* father, as in, an apparently hard-working parent who is nonetheless one car repair away from homelessness. (*See, e.g.*, 5/31/17 Transcript, 19) (Explaining that family was in apartment of their own, but "the car we were using broke down, so we had to pick between rent or fixing the car.")).

children, nor does he apparently wish to." (App. Br. at 30.) These allegations, even if true, are legally insufficient to rebut a presumption of parentage where J.M.M. acknowledges D.G. to be the biological father, and no other presumption of parentage exists.

2. A challenge to D.G.'s presumptive parentage without notice to D.G. is not an "appropriate action."

Moreover, it is not enough for a party to rebut a parentage presumption by clear-and-convincing evidence. Minn. Stat. § 257.55, subd. 2 (2018). The statute limits attempts to rebut a parentage presumption to an "appropriate action." *Id.* This court previously considered the meaning of the "appropriate action" requirement in *In re Estate of Jotham* and concluded that an "appropriate action" must satisfy the basic requirements (including standing and timeliness) of an action to declare the existence or non-existence of a father-child relationship. 722 N.W.2d at 455. Thus, in *Jotham*, the court refused to permit a surviving spouse to challenge a parentage presumption in a probate action because she did not satisfy either the timeliness or standing requirements of the Parentage Act. *Id.*; Minn. Stat. § 257.57 (2018). Such a restriction, the court reasoned, was consistent with "legislatively established public policy favoring presumptions of legitimacy and the preservation of family integrity." *In re Estate of Jotham*, 722 N.W.2d at 455.

To determine the criteria for an "appropriate action," the *Jotham* court

looked to Minn. Stat. § 257.57, which provides standards for when actions to declare the existence or non-existence of a parent-child relationship may be brought, and by whom. *Id.* In addition to these timing and standing requirements, Minn. Stat. § 257.60 lists the necessary parties to such an action, including each presumptive father and any alleged biological father. If either a presumptive or alleged biological father is beyond the jurisdiction of the court, he must, at a minimum, be given notice and an opportunity to be heard. *Id.*[15]

Read in conjunction with Minn. Stat. §§ 257.57 and 257.60, Minn. Stat. § 257.55, subd. 2's "appropriate action" limitation precludes J.M.M. from rebutting D.G.'s parentage in an action of which D.G. has no notice. As recognized by this court in *Jotham*, such an "appropriate action" must meet the minimum requirements of an action to declare the existence or non-existence of a father-child relationship under Minn. Stat. § 257.57. 722 N.W.2d at 455. Such an action, in turn, would require D.G., as a presumptive

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[15] The California Supreme Court reached a similar conclusion holding that an "appropriate action" under California's version of the Uniform Parentage Act was limited to "an action in which another candidate is vying for parental rights and seeks to rebut a…presumption in order to perfect his claim, or in which a court decides the legal rights and obligations of parenthood should devolve upon an unwilling candidate." *In re Nicholas H.*, 28 Cal. 4th 56, 70, 46 P.3d 932, 941 (2002), *as modified* (July 17, 2002), *as modified* (July 17, 2002); Minn. Stat. § 645.22 (2018) (requiring uniform laws to be construed uniformly).

parent, to be made a party, or at least be provided with notice and an opportunity to be heard. Minn. Stat. § 257.60 (2018). Precisely the issue before this court is J.M.M.'s desire *not* to provide notice to D.G. The absence of notice is fatal to any attempt to rebut D.G.'s presumption of parentage.

C. D.G.'s unrebutted presumption of parentage entitles him to notice of a proposed name change.

Having found D.G. to be the presumptive father of M. and D., the district and appellate courts correctly required D.G. to be notified of any change to his children's names. On appeal, Appellant argues that, at best, D.G. is a "mere" presumed parent, not a "legal parent." (App. Br. at 14–15.), Appellant contends that without a formal adjudication, D.G. lacks a sufficient legal relationship with his children to receive basic notice of something as significant as a name change. Appellant's argument fundamentally misunderstands the role of presumptions under Minnesota's Parentage Act.

As noted, presumptions of paternity exist precisely because "substantial evidence points to a particular man as being the father of the child, and formal proceedings to establish paternity are not necessary." UNIFORM PARENTAGE ACT, § 4 cmt. (1973). Presumptions thus "serve the practical purpose of establishing paternity in the eyes of the law and the community until something more is done either to attack the presumption or to establish by action a father who will be viewed as conclusive in the eyes of

the law." *Matter of Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994).

This functional understanding of parentage presumptions is supported by the language of the Parentage Act itself. Minn. Stat. § 257.52 defines the parent-child relationship as the "legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Providing further clarification, Minn. Stat. § 257.54(b) provides that "the biological father *may* be established under" the provisions of the act. Minn. Stat. § 645.44, subd. 15 (2018) ("'May' is permissive."). Nowhere does the Parentage Act indicate that parentage *must* be formally adjudicated in order to create a legally recognized relationship. It is precisely because a presumption of parentage exists (and has not been challenged) that formal adjudication is unnecessary. UNIFORM PARENTAGE ACT, § 4 cmt. (1973).

Indeed, because of the power of presumptions, many Minnesota children have never had their parentage adjudicated. By way of example, few married couples bother to formally adjudicate their children's parentage. Minn. Stat. § 257.55 (2018). And the statute excludes these couples from executing a recognition or acknowledgement of parentage for a joint child. Minn. Stat. § 257.75, subd. 1 (2018); Minn. Stat. § 257.34, subd. 1 (2018). Instead, where a child is born to an intact marriage, the entire weight of her

parentage rests solely on the presumptions codified in Minn. Stat. § 257.55, subd. 1.

Of course, contrary to Appellant's arguments, children born to such unions do, in fact, have two "legal parents." Their father's legal status derives from the marital presumption. Because such status is presumptive, it may theoretically be challenged. Minn. Stat. § 257.57 (2018). But until such a challenge is raised, a married father is a "legal parent" to his children.

The error in Appellant's arguments may be best illustrated counter-factually. In place of a presumption based on openly holding the children out, we can imagine J.M.M. and D.G. were married during the children's births and never formally divorced. Imagine further that instead of the facts relayed, J.M.M. left simply to pursue another romantic relationship, taking the children with her and concealing their location from D.G. Now, having left D.G. behind, J.M.M. seeks to change the children's names to those of her new partner. Must J.M.M. provide notice to D.G.?

By Appellant's logic, no. D.G.'s parentage would still rest on a "mere presumption." And as a presumptive rather than an *adjudicated* parent, D.G. would not be entitled to notice under the name-change statute. Minn. Stat. § 259.10 (2018). Put differently, in order to accept Appellant's argument that presumptive fathers are not fathers, this court must disregard the very real relationships between married fathers and their children. Such an

outcome surely falls within the category of absurd results, which the legislature did not intend. Minn. Stat. § 645.17(1) (2018).

Appellant may object that parentage presumptions arising from marriage are qualitatively different from other presumptions, and thus entitled to a higher level of respect. However, elevating marriage over other parentage presumptions finds no support in the Parentage Act. To the contrary, a primary purpose of the Parentage Act was to "provide substantive equality among children regardless of the marital status of their parents. *Morey v. Peppin*, 375 N.W.2d 19, 22 (Minn. 1985); *Witso*, 627 N.W.2d at 65; *see also* Minn. Stat. § 257.53 (2018) (parent child relationship may exist regardless of marital status). This purpose is further reflected in the structure of the Parentage Act, which provides no hierarchy of paternity presumptions. Minn. Stat. § 257.55; *Kelly v. Cataldo*, 488 N.W.2d 822, 827 (Minn. App. 1992) ("[T]he legislature has withheld a declaration of the weightier presumption [or parentage]."). The Parentage Act was passed to place children born to married and unmarried parents on equal footing. *Morey*, 375 N.W.2d at 22. Any interpretation that purports to elevate marital parentage presumptions over others does violence to that central aim.[16]

[16] Alternatively, Appellant may argue that such differential treatment already exists in the Juvenile Court Act, which privileges marital

Simply put, if receiving a child into one's home, naming her after you, and holding her out as your own is "merely a presumption," so too is marriage. To declare D.G. "merely a presumptive parent" is to paint Minnesota's married fathers with precisely the same label. Appellant mistakes the power of a presumption. As a presumptive parent, D.G. is a "legal parent" until his presumption is rebutted. Because the presumption has not been rebutted, D.G. should receive notice of any name change.

D. D.G.'s custodial status is irrelevant to determining whether he receives notice of a proposed name change.

Finally, D.G.'s right to notice is not impacted by the fact that J.M.M. has sole custody of M. and D. Minn. Stat. § 257.541, subd. 1 (2018). This court has twice held that a custodial mother does not possess a superior right to change a child's name over the child's natural father. *Robinson*, 302 Minn. at 35, 223 N.W.2d at 139–14; *Application of Saxton*, 309 N.W.2d at 301.

Despite these holdings, Appellant claims that the lower court decisions requiring notice to D.G. "deny [J.M.M.] the full bundle of legal rights that come with her 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,

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presumptions over others. Minn. Stat. § 260C.007, subd. 25 (2018). However, as already discussed above, the Juvenile Court Act aims at different ends than the Parentage Act, and also contains additional protections for unadjudicated fathers.

and to honor their wishes to have her last name." (App. Br. at 19–20.) Respectfully, they do not. J.M.M. admittedly retains sole custody of M., D., and G. by operation of law. Minn. Stat. § 257.541, subd. 1 (2018). However, even a sole custodian does not have the unilateral right to change the children's names without notice to their natural parent. Minn. Stat. § 259.10 (2018); *Robinson*, 302 Minn. at 35, 223 N.W.2d at 139–14. Appellant's suggestions to the contrary misunderstand the law.

III. Providing notice of the proposed name change to D.G. is not impracticable nor has notice been waived.

"[N]o minor child's name may be changed without both parents having notice of the pending of the application for change of name, *whenever practicable, as determined by the court*." Minn. Stat. § 259.10, subd. 1 (2018) (Emphasis added). J.M.M. argues that the district court and the court of appeals erred by finding that notice in this case was practicable and had not been waived by D.G. because of his alleged threats of physical violence. These arguments are unavailing.

A. Providing notice to D.G. is practicable.

J.M.M.'s argument that notice in the present case is not practicable hinges on the phrase "whenever practicable" being found to be ambiguous. It is not.

"Practicable" means "reasonably capable of being accomplished; feasible." *Black's Law Dictionary* 1210 (8th ed. 2004). Common language

provides a similar definition. *See The American Heritage Dictionary* 1421 (3rd ed. 1992) (defining "practicable" as "capable of being effected, done or put into practice; feasible").

When a statute, construed according to ordinary rules of grammar, is unambiguous, this court typically engages in no further statutory construction and applies this plain meaning. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted).

The question is therefore whether giving D.G. notice of a pending name-change application was "reasonably capable of being accomplished," or "feasible." As found by the district court — and affirmed by the court of appeals — it was. J.M.M. knew where D.G. lived and how to serve him.[17] (Add. 29). In fact, the record indicates that J.M.M. *has* communicated with D.G. since separating from him, when she contacted him to inform him of the birth of the youngest child.

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[17] J.M.M. states, without citation to the record, that she "does not in fact know where D.G. is living now," having "not communicated with him in years." (App Br. 30 n.3). J.M.M. had opportunity to testify to these facts, and did not. The district court's factual conclusion that J.M.M. *does* know where D.G. lives is supported by the record and should not be disturbed on appeal. *See* Minn. R. Civ. P. 52.01; *see also Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Recognizing this logical application of the plain statutory language, J.M.M. argues on appeal that the statute "acknowledges that notice of a pending application . . . is not always possible *or advisable*." (App. Br. 30 (emphasis added)). Contrary to this argument, the statute does not address situations where notice is "advisable," instead limiting the consideration to whether notice is *practicable*. Minn. Stat. § 259.10, subd. 1 (2018). J.M.M. would have this court rewrite the name-change statute to require notice "whenever practicable or advisable." But it has long been established that courts "cannot supply that which the legislature purposely omits or inadvertently overlooks." *Wallace v. Comm'r of Taxation*, 289 Minn. 220, 230, 184 N.W.2d 588, 594 (1971). This is true even if the court disagrees with the wisdom of the legislature in not including an advisability consideration with the notice requirement. *See State ex rel. Timo v. Juvenile Court of Wadena Cty.*, 188 Minn. 125, 128–29, 246 N.W. 544, 546 (1933); *State ex rel. Coduti v. Hauser*, 219 Minn. 297, 303, 17 N.W.2d 504, 507 (1945) (quoting *Timo*); *Blanche v. 1995 Pontiac Grand Prix*, 599 N.W.2d 161, 169 (Minn. 1999) (STRINGER, J., dissenting) ("We have long recognized that '[c]ourts have nothing to do with the wisdom or expediency of statutes. The remedy for unwise or inexpedient legislation is political and not judicial.'" (Quoting *Hickok v. Margolis*, 221 Minn. 480, 485, 22 N.W.2d 850, 852 (1946)).

B. D.G. did not waive notice.

J.M.M. argues that the notice requirement should have been waived in this case "based on D.G.'s threats of violence against J.M.M. and her family." (App. Br. 35 – 34.) This argument fails on both procedural and substantive grounds.

First, J.M.M. did not raise a waiver argument to the district court, nor did she raise the argument to the court of appeals. (*See* Add. 5 n.3). An appellate court generally will not consider matters not first argued to, and considered by, the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived). This is particularly true where, as here, the new argument is raised in an effort to reverse the lower courts.

But even if this court were to look past the procedural default, J.M.M.'s waiver argument is substantively unavailing. In arguing that the district court was *required* to waive the notice requirement, J.M.M. focuses on D.G.'s alleged threats of violence against J.M.M. and her family. But when the argument is viewed in the full context of how it is presented, the flaw becomes clear. The waiver argument is only made in the event that this court rejects J.M.M.'s argument that "practicability" requires not only feasibility, but *advisability*. And the waiver argument is —at its core — that

giving notice is not advisable. J.M.M.'s argument could therefore be restated as follows: "Even if this court concludes that notice need not be advisable, the district court was mandated to waive the notice requirement because notice is not advisable."[18]

The arguments of J.M.M. and *amici* similarly conflate notice of a name-change application with an attempt to seek child support. The alleged threats, as relayed by J.M.M., were that D.G. "threatened to hurt [her] and kill [her] family if he were ever pursued for child support." (Add. 41). But this case does not concern a child-support petition. J.M.M.'s and *amici's* hypothetical scenario (in which D.G. mistakes the name-change petition for a child-support petition) is altogether too remote to be determined here.

C. Allegations of domestic violence, standing alone, should not mandate the waiver of notice as a matter of law.

Both J.M.M. and *amici* argue that notice should be waived based on speculation that requiring notice would risk exposing J.M.M. to physical and/or emotional abuse from D.G. To be clear, the undersigned attorneys

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[18] Unlike J.M.M., *amici* does not argue that the district court was *required* to waive the notification requirement here, suggesting rather that this court "find that the district court has, *at its discretion*, the ability to waive the notification requirement of the other parent in cases of serious domestic and sexual violence by finding that notification is simply not practical." (Amicus Brief, 12-13, emphasis added). This argument, however, ignores the fact that the district court appears to have operated under the impression that it *did* have such authority. (*See* Add. 29). The district court just concluded that *this* case did not present such facts. *Id.*

recognize the potential dangers to domestic-assault victims. But since leaving her relationship with D.G., J.M.M. voluntarily contacted D.G. on at least one occasion, to inform him of the birth of the youngest child. (Add. 29, 61). Other than that one, self-initiated, contact, J.M.M. has heard nothing from D.G. There was no evidence to suggest that D.G. had traveled to Minnesota to harass or stalk J.M.M. In fact, that lack of contact is a factor in J.M.M.'s claim that D.G. does not care about his children. Both cannot be true. The district court's finding (that J.M.M.'s safety could be protected) was not clearly erroneous on this record. And as found by the district court, any safety concerns can be addressed in ways that do not deprive D.G. of his statutory due-process right to notification of the hearing. (Add. 29).[19]

The district court did not abuse its discretion (exercised as advocated by *amici*) by concluding *on this record* that the alleged threats to harm J.M.M. if she tried to establish paternity (which she is not) or seek child support (which she is not) did not override the statutory notification requirement.

[19] One of the suggested precautions that could be taken was redaction of J.M.M.'s contact information from the notice. (Add. 29). J.M.M. dismisses this precaution, suggesting that "the district court offered no mechanism to protect J.M.M.'s family" and her parents "would receive no additional protection." However, J.M.M. has resided with her father since leaving D.G. in 2013, and has not apparently experienced any further threats.

CONCLUSION

D.G. is, at a minimum, M. and D.'s "parent." There is no evidence that notification is infeasible. And, this case does not present a set of facts upon which this court should carve out a "public-policy" exception to the statute's notice requirements. Under the plain language of Minnesota's name-change statute, D.G. is entitled to notice before his children lose their shared surname. The district court's decision should be affirmed.

Respectfully submitted:

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms with the requirements of Minn. R. Civ. App. P. 132.01, subd. 1 and 3, for a brief produced with proportional font. The length of this brief is 13,985 words. The brief was prepared using Microsoft Office Word 2016.

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