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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1098**

In re the Custody of: D.T.R.,
Michael L. Richards, Petitioner Below,

vs.

Derek Reiter,
Respondent,

Lynette A. Marthe,
Appellant.

**Filed May 29, 2012
Affirmed
Chutich, Judge**

Wright County District Court
File No. 86-FA-08-7613

Michael L. Richards (petitioner below)

Laura M. Thomas, Anupama Sreekanth (certified student attorney), University of
Minnesota Law School Civil Practice Clinic, Minneapolis Minnesota (for respondent)

Jill I. Frieders, Timothy A. Woessner, O'Brien & Wolf, L.L.P., Rochester, Minnesota
(for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

This appeal arises out of a paternity dispute between Michael Richards, petitioner below, and respondent Derek Reiter. The district court adjudicated Reiter as D.T.R.'s father, and the minor child's mother, appellant Lynette Marthe, argues that the district court erred in so finding. Because we conclude that the district court properly applied the statutory standard to resolve conflicting presumptions of paternity under the facts of this case, we affirm.

FACTS

Marthe and Reiter began dating in 1996 and became engaged in 2002. In August 2003, while engaged to Reiter, Marthe met Richards and had sexual relations with him. When Marthe found out she was pregnant, she believed that Reiter was the father. Marthe and Reiter married in November 2003, and the child, D.T.R., was born on May 13, 2004. Reiter's name was on the birth certificate and he believed that D.T.R. was his child. He was an involved father, participating in many activities with D.T.R., and supporting him financially. Marthe and Reiter had another son in January 2006.

After D.T.R. was conceived, Marthe and Richards had little contact, only trading a few e-mails and text messages. Richards was aware that Marthe was married and had a child, but Richards had no idea that the child was his biological child.

In the spring of 2008, when D.T.R. was about four, Marthe first told Richards that he may be D.T.R.'s biological father. Richards took a DNA test, and found out on July 2, 2008, that he was indeed the child's biological father. Marthe informed Reiter the next

day of the results. In August 2008, Richards served Marthe and Reiter with a petition for custody of D.T.R., which was later filed in Wright County District Court. In the petition, Richards asked the district court to “determine Derek Reiter’s non-paternity” of D.T.R.

Shortly after the custody petition, in fall 2008, Reiter filed for divorce. Marthe and Reiter were granted approximately equally-shared parenting time of D.T.R. and his brother on a temporary basis. On April 20, 2009, the district court issued a temporary order granting Richards parenting time with D.T.R. one weekend per month so Richards could begin to build a relationship with D.T.R. During a six-month period before the paternity trial, Richards only exercised his court-ordered weekend parenting time twice. With Marthe’s agreement, however, he spent additional time with D.T.R., including two or three overnight visits. With the help of a therapist, the parties eventually told D.T.R. that Richards, not Reiter, was his biological father.

The district court held an evidentiary hearing on December 22, 2009, to determine which man should be adjudicated the father of D.T.R. The parties stipulated to the following: Reiter and Richards were both presumed fathers under Minnesota law; competing presumptions of paternity existed; the controlling legal standard was “the presumption which on the facts is founded on the weightier considerations of policy and logic”; D.T.R. lived with Reiter since birth; Richards first met D.T.R. and became aware of his potential paternity in spring 2008; Reiter learned that he was not D.T.R.’s biological father in July 2008; Richards wanted to be involved in D.T.R.’s life; D.T.R. knew that Richards was his biological father; and Marthe agreed that D.T.R. should have a relationship with both Reiter and Richards. All three parties testified at the hearing, and

the district court also received into evidence a 46-page report from a neutral custody evaluator.

The district court adjudicated Reiter as D.T.R.’s father and dismissed the petition with prejudice. Marthe appealed the adjudication,¹ but this court dismissed the appeal for lack of standing. The supreme court reversed, concluding that Marthe had standing because “the determination of paternity directly impacts her responsibility for child support and her rights related to child support, and directly impacts her rights related to care, custody, and control of her child.” *In re Custody of D.T.R.*, 796 N.W.2d 509, 515 (Minn. 2011). Upon remand, we now address the merits of Marthe’s argument. *Id.*

D E C I S I O N

This case involves analysis of competing paternity presumptions under the Minnesota Parentage Act (“the Act”), Minn. Stat. §§ 257.51–257.74 (2010), a question of law that we review de novo. *Witso v. Overby*, 627 N.W.2d 63, 65 (Minn. 2001). While we review interpretation of the Act without deference to the district court’s legal conclusions, *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994), we will uphold the district court’s factual findings unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Under the Act, Richards and Reiter are both presumed fathers of the minor child. Richards is a presumptive father because of conclusive genetic testing. *See* Minn. Stat. § 257.62, subd. 5(b). Reiter’s presumption arises because the child was born during Reiter’s marriage to Marthe. *See* Minn. Stat. § 257.55, subd. 1(a).

¹ Richards is not a party to this appeal.

The Act and relevant precedent provide guidance in resolving competing presumptions. The Act states: “A presumption . . . may be rebutted . . . only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which *on the facts is founded on the weightier considerations of policy and logic controls.*” *Id.*, subd. 2 (emphasis added).

Thus, no one presumption necessarily trumps another. While there are notable historic policy considerations emphasizing the importance of blood relationships, “the determination of paternity is no longer solely an issue of biological fact.” *C.M.G.*, 516 N.W.2d at 560 (citing *Kelly v. Cataldo*, 488 N.W.2d 822, 826–27 (Minn. App. 1992), *review denied* (Minn. Sept. 15, 1992)). Section 257.62, subdivision 5(c) of the Act specifically confirms that the biological presumption is not conclusive, stating “a determination . . . that the alleged father is the biological father does not preclude the adjudication of another man as the legal father”

When determining the controlling presumption, courts examine and weigh the particular facts of the case in light of several factors, including blood relationships, the child’s existing relationships, and the best interests of the child under Minn. Stat. § 518.17 (2010). See *In re Paternity of B.J.H.*, 573 N.W.2d 99, 102–04 (Minn. App. 1998); *C.M.G.*, 516 N.W.2d at 560–61; *Kelly*, 488 N.W.2d at 827 (“The best interests of the child are one dimension of the facts.”). A district court’s paternity adjudication will be affirmed if it is based on the facts of the case and is supported by policy and logic. *B.J.H.*, 573 N.W.2d at 103 (affirming because the district court’s findings were not clearly erroneous and the adjudication was “logically based on the evidence presented”).

Applying these principles here, we conclude that the district court properly found that “the weightier considerations of policy and logic support” the determination that Reiter is D.T.R.’s father. Correctly noting that biology is not conclusive in adjudicating paternity, the court appropriately considered and gave great weight to the preexisting relationship between D.T.R. and Reiter, and to the best interests of the child. The court specifically found that Reiter and D.T.R. have “spent the last five and a half years forging a deep and loving father-son relationship” and noted that Reiter has provided emotional, physical, and financial support throughout the child’s life.

Moreover, the court concluded that “[D.T.R.’s] best interests and well-being dictate that the father he has known his whole life, who has loved, supported and cared for him be adjudicated his father.” This determination is supported by an extensive neutral custody evaluation that made detailed findings about the situation of each party and the best-interests-of-the-child factors under Minn. Stat. § 518.17. The court also noted that D.T.R. is close to his brother, Reiter’s biological son, and that D.T.R. has called Reiter “Dad” his whole life, among other findings. Based upon our review, the court’s findings are supported by the record and its conclusions are logically based on the facts.

Marthe cites *In re Paternity of B.J.H.* to contend that the district court did not give due weight to the biological relationship between Richards and D.T.R. The *B.J.H.* court affirmed the district court’s resolution of conflicting paternity presumptions in favor of the biological father, finding that the adjudication was “consistent with the policy of not unnecessarily impairing blood relationships and is logically based on the facts.” *Id.*

B.J.H. is distinguishable on its facts, however. The child in *B.J.H.* was only two months old when the biological father became involved and he and his family had ongoing contact with the child practically from birth. *Id.* at 101. Here, by contrast, D.T.R. was four years old when he met Richards and up to that point had only known Reiter as his father. Further, in *B.J.H.* a guardian ad litem supported the adjudication of paternity in the biological father based on the child's best interests. *Id.* No such finding about Richards was made here, and a neutral child-custody evaluation recommended joint legal custody and nearly equally-shared parenting time for Reiter and Marthe.

In sum, the district court properly applied the statutory standard in determining that, under the circumstances present here, weightier considerations of policy and logic favored adjudicating Reiter as D.T.R.'s father. While we affirm the district court's adjudication of Reiter as D.T.R.'s legal father, we note that D.T.R. is fortunate that Reiter and Richards both love him and desire to be involved in his life.

Affirmed.