This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0422

In the Matter of:
E. D. M., petitioner,
Appellant,

vs.

S. J. M.,
Respondent,

N. N. N.,
Respondent.

Filed November 9, 2020
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-PA-FA-20-57

Andrew T. Hunstad, Sheridan & Dulas, P.A., Eagan, Minnesota (for appellant)

S.J.M., Minneapolis, Minnesota (pro se respondent)

Amy J. Rotering, Susan J. Mundahl, Mundahl Law, PLLC, Maple Grove, Minnesota (for respondent N.N.N.)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the district court's sua sponte dismissal of his parentage action. He argues that the district court erred by (1) concluding that the judgment dissolving respondents' marriage bars this action, (2) dismissing the action without addressing his request for genetic testing or the parentage presumption he claims, and (3) attributing a presumption of parentage based on respondents' same-sex marriage. We affirm the district court's determination that respondents' marriage gives rise to a parentage presumption. But because the district court erred by giving preclusive effect to the dissolution judgment, we reverse the dismissal of this action and remand for further proceedings.

FACTS

In January 2020, appellant E.D.M. initiated this action, alleging that he is the biological father of a child born in February 2014. According to the complaint, the child was conceived when he had sexual intercourse with the child's mother, respondent S.J.M. He and S.J.M. were not married. In November 2013, S.J.M. married another woman, respondent N.N.N. The child was born during the marriage. N.N.N. did not adopt the child. In 2016, S.J.M. and N.N.N. ended their marriage. The stipulated dissolution judgment awards them joint legal and physical custody of the child and directs N.N.N. to pay child support; E.D.M. was not involved in the dissolution proceeding. The complaint also alleges that E.D.M. is presumed to be the child's biological father because he has received the child into his home and openly held him out as his biological child.

Along with his complaint, E.D.M. filed a motion asking the district court to order genetic testing. His supporting affidavit avers that he had sexual intercourse with S.J.M. "during the period in which the child was conceived."

Before S.J.M. answered the complaint, responded to the motion, or sought any relief, the district court dismissed the action. The court reasoned that N.N.N. is the child's presumed parent because the child was born during her marriage to S.J.M., and the parentage action is barred because the dissolution judgment conclusively "established" N.N.N. as the child's parent. E.D.M. requested permission to file a motion for reconsideration. The district court denied the request but added N.N.N. as a party. E.D.M. appeals.

D E C I S I O N

Interpretation of the Minnesota Parentage Act (MPA), Minn. Stat. §§ 257.51-.74 (2018), presents a question of law, which we review de novo. *Dorman v. Steffen*, 666 N.W.2d 409, 411 (Minn. App. 2003). "[T]he goal of all statutory interpretation is to ascertain and effectuate the intention of the legislature." *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (quotation omitted). To discern legislative intent, we look principally to the language of the statute itself. *Id.* We apply the plain and ordinary meaning of undefined terms, but we are mindful of context. *In re J.M.M.*, 937 N.W.2d 743, 747 (Minn. 2020).

I. The dissolution judgment does not bar this parentage action.

Under the MPA, a man is rebuttably presumed to be a child's "biological father" under various circumstances, including that which E.D.M. claims—that he receives the

minor child "into his home and openly holds out the child as his biological child." Minn. Stat. § 257.55, subds. 1, 2. Paternity "may be established" in one of only two ways. Minn. Stat. § 257.54(b). One way is to execute a recognition of parentage, but that option is available only if the biological mother joins in the recognition. Minn. Stat. §§ 257.54(b), .75, subd. 1 (2018). The other way is through a parentage action. Minn. Stat. § 257.54(b) (citing Minn. Stat. §§ 257.51-.74). A man alleging that he is a child's father may bring a parentage action "at any time." Minn. Stat. § 257.57, subd. 2(1).

A parentage action "may be joined with" a dissolution action. Minn. Stat. § 257.59, subd. 1. When that occurs, any man presumed or alleged to be the child's father must be joined as a party.[1] Minn. Stat. § 257.60. But when the actions are not joined, a dissolution judgment does not determine parentage and does not preclude a subsequent parentage action by someone who was not a party to the dissolution. *See Dorman*, 666 N.W.2d at 410-11 (observing that dissolution decree contained findings that husband was not child's biological father but "did not *declare* the non-existence of [his] parent-child relationship with [child]"); *Markert v. Behm*, 394 N.W.2d 239, 242-43 (Minn. App. 1986) (concluding that dissolution judgment recognizing joint child barred mother, on the ground of res judicata, from bringing a subsequent claim that former husband was not the father but would not preclude a third party, if he has standing, from bringing a separate paternity action).

[1] The child also must be joined as a party to a parentage action if a man seeks to establish paternity but the mother denies his claim. Minn. Stat. § 257.60.

N.N.N. and S.J.M.'s dissolution judgment awarded them joint legal and physical custody of the child born during the marriage; it did not establish parentage. Even if the judgment could be given preclusive effect as against N.N.N., it does not bar a parentage action by a nonparty who alleges that he is the child's father. Accordingly, the district court erred by concluding that the dissolution judgment bars E.D.M.'s parentage action.[2] We reverse the dismissal and remand for further proceedings, including a determination whether E.D.M. is entitled to an order for genetic testing under Minn. Stat. § 257.62, subd. 1. *See Frieson v. Pahkala*, 653 N.W.2d 199, 202 (Minn. App. 2002) (stating that the statute "requires" the district court to order testing "if requested by an alleged father who states sufficient facts to establish the possibility of paternity").

II. The district court did not err by attributing a parentage presumption to N.N.N. based on her marriage to S.J.M.

The MPA establishes three circumstances in which "[a] man is presumed to be the biological father of a child" based on marriage. Minn. Stat. § 257.55, subd. 1(a)-(c). Among them, a man is presumed to be the father when "he and the child's biological mother are or have been married to each other and the child [was] born during the marriage." *Id.*, subd. 1(a).

---

[2] E.D.M. also faults the district court for noting that he and S.J.M. never married or attempted to marry, emphasizing that "[t]he parent and child relationship may exist regardless of the marital status of the parents." Minn. Stat. § 257.53. It is unclear why the court noted the absence of an actual or attempted marriage because E.D.M. does not claim a marriage-based paternity presumption. But any error is harmless because the court did not rely on the absence of a marriage-based presumption in dismissing this action. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

E.D.M. argues that the district court erred by applying this presumption to N.N.N. He does not dispute that provisions of the MPA that refer to fathers may be applied to mothers. But he asserts that Minn. Stat. § 257.55, subd. 1(a), does not apply to N.N.N. because she undisputedly is not the child's biological parent. We are not persuaded.

E.D.M. is correct that Minn. Stat. § 257.55, subd. 1(a), refers to "biological" parentage. Standing alone, it does not apply to same-sex spouses because they cannot have a child who is the biological product of both parents. But as the district court observed, this provision does not stand alone. In 2013, when the legislature legalized same-sex marriage, it expressly addressed marriage-based parentage presumptions:

> When necessary to implement the rights and responsibilities of spouses or parents in a civil marriage between persons of the same sex under the laws of this state, including those that establish parentage presumptions based on a civil marriage, gender-specific terminology . . . must be construed in a neutral manner to refer to a person of either gender.

2013 Minn. Laws ch. 74, § 6 (now codified at Minn. Stat. § 517.201, subd. 2 (2018)). E.D.M. has not identified, and we do not discern, any way to construe marriage-based parentage presumptions gender-neutrally, as Minn. Stat. § 517.201, subd. 2, instructs, without treating someone as a presumed parent who undisputedly has no biological connection to the child.

Instead, E.D.M. argues that it is not "practicable" to treat a woman with no biological connection to a child as the child's mother, citing Minn. Stat. § 257.71. This argument is unavailing for two reasons. First, his reliance on Minn. Stat. § 257.71 is misplaced. That statute provides that, in "an action to determine the existence or

nonexistence of a mother and child relationship," the provisions of the MPA applicable to "the father and child relationship" apply "[i]nsofar as practicable." Minn. Stat. § 257.71. Because this is not an action to determine maternity or non-maternity, it does not apply.

Second, interpreting Minn. Stat. § 517.201, subd. 2, as indicating the legislature's intent to prioritize marriage over biology is consistent with the long-standing principle, enshrined in the MPA, that biology is not dispositive of parentage. *See County of Dakota v. Blackwell*, 809 N.W.2d 226, 229 (Minn. App. 2011) ("A legal adjudication of paternity is not controlled by biology."). The clearest illustration of this principle is in Minn. Stat. § 257.56, subds. 1-2, which provides that when a man "donated" his genetic material for artificial insemination of a married woman, her husband is "treated in law as if he were the biological father" of the resulting child and the donor "is treated in law as if he were not the biological father." But even when an alleged father did not donate his genetic material but testing confirms a biological link between him and a child, that link "does not preclude the adjudication of another man as the legal father" if the other man's conflicting claim of parentage is founded on "weightier considerations of policy and logic." Minn. Stat. §§ 257.55, subd. 2, .62, subd. 5(c); *see also Blackwell*, 809 N.W.2d at 229 (recognizing that action to establish parentage of man with proven biological link to child should include as a party the man who was married to mother at child's birth and raised child for seven years, to determine whose presumption prevails).

In sum, the plain language of Minn. Stat. § 517.201, subd. 2, and the MPA as a whole persuade us to neutrally construe the parentage presumption in Minn. Stat. § 257.55, subd. 1(a), to read, "A [person] is presumed to be the [parent] of a child if . . . [the person]

and the child's biological mother are or have been married to each other and the child is born during the marriage[.]" So construed, the presumption applies to N.N.N., and the district court correctly determined that she is the child's presumed parent.

But this presumption is not conclusive and, like the dissolution judgment, does not prevent E.D.M. from pursuing an action to establish his parentage. *See* Minn. Stat. § 257.55, subd. 2 (providing that parentage presumptions can be rebutted); *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994) (stating that parentage presumptions are "not conclusive"). To the extent the district court concluded otherwise, it erred. On remand, the district court should determine whether E.D.M. is also entitled to a parentage presumption, whether any presumption in favor of E.D.M. conflicts with N.N.N.'s parentage presumption, and, if so, which presumption prevails. *See* Minn. Stat. § 257.55, subd. 2 (requiring court to assess competing presumptions based on considerations of "policy and logic"); *In re Welfare of C. F. N.*, 923 N.W.2d 325, 332 (Minn. App. 2018) (explaining that resolving conflicting presumptions requires examination of "the particular facts of the case," including the child's best interests), *review denied* (Minn. Mar. 19, 2019).

Affirmed in part, reversed in part, and remanded.