STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1452

In re the Estate of:
Christopher Mark Dircz, Decedent.

Filed May 6, 2013
Affirmed
Crippen, Judge[*]

Anoka County District Court
File No. 02-PR-11-584

Jerome M. Rudawski, Rudawski Law Offices, P.A., Roseville, Minnesota (for appellant Thomas Dircz)

David C. Olson, Lanners & Olson, P.A., Plymouth, Minnesota (for respondent H.H.)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant challenges the district court's denial of his motion to compel genetic testing. Because appellant is not entitled to this relief under the Parentage Act, we affirm.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

This case involves a probate proceeding arising out of the death of Christopher Mark Dircz on September 2, 2011. The pertinent facts are undisputed. H.H. gave birth to F.M.D. on June 10, 2010. H.H. was not married at the time of F.M.D.'s birth, but F.M.D.'s birth certificate names the decedent as his father, and on June 14, 2010, the decedent and H.H. signed a voluntary recognition of parentage.

The district court appointed appellant Thomas Dircz, the decedent's brother, as the personal representative of the decedent's estate. Appellant moved the district court to compel genetic testing to establish F.M.D.'s paternity for the purpose of identifying heirs to the decedent's estate. He appeals the district court's denial of this motion.

D E C I S I O N

When denying appellant's motion, the district court stated that under the Parentage Act, Minn. Stat. §§ 257.51-.74 (2012), "[t]he personal representative is not one of the individuals specified . . . as having standing to bring an action to vacate the recognition" and concluded that "[t]he statute definitely provides that no further action may be taken by the court to determine parentage once a recognition has been properly executed and filed."

Appellant's arguments present issues of statutory construction. "The construction of a statute is a question of law, subject to de novo review by [appellate courts]." *In re Estate of Jotham*, 722 N.W.2d 447, 450 (Minn. 2006). "The goal of statutory construction is to ascertain and effectuate the intention of the legislature." *Id.* (quotation

omitted). "A court must construe the words of a statute according to their plain meaning." *Id.*

"The [Recognition of Parentage] statute is a vehicle for unmarried parents to establish parentage of their child without litigating the issue." *Christianson v. Henke*, 812 N.W.2d 190, 193 (Minn. App. 2012), *review granted* (Minn. May 30, 2012). The statute permits parents, unmarried at the time a child is conceived and born, to execute a written acknowledgment under oath "that they are the biological parents of the child and wish to be recognized as the biological parents." Minn. Stat. § 257.75, subd. 1 (2012). The recognition under the statute "has the force and effect of a judgment or order" and "is determinative for all purposes." *Id.*, subd. 3; Minn. Stat. § 257.66, subd. 1. When executed and filed with the state registrar of vital statistics, "if there are no competing presumptions of paternity, a judicial or administrative court may not allow further action to determine parentage regarding the signator of the recognition." Minn. Stat. § 257.75, subd. 3. "In other words, the [Recognition of Parentage] has the effect of a final judgment establishing parentage." *Christianson*, 812 N.W.2d at 193.

The recognition "may be revoked in a writing signed by the mother or father before a notary public and filed with the state registrar of vital statistics within the earlier of 60 days after the recognition is executed or the date of an administrative or judicial hearing relating to the child in which the revoking party is a party to the related action." Minn. Stat. § 257.75, subd. 2. Because nothing in the record indicates that either H.H. or decedent attempted to revoke the recognition, and in any event the time limits have expired, this statutory provision does not apply here.

The recognition statute also permits an action to vacate, which "may be brought by the mother, father, husband or former husband who executed a joinder, or the child." *Id.*, subd. 4. Appellant, as the personal representative, is not statutorily entitled to challenge the recognition of parentage. Because decedent's recognition was properly executed and filed and therefore has "the force and effect of a judgment or order," the district court was not authorized to "allow further action to determine parentage regarding the signator of the recognition." The court therefore did not err by denying appellant's motion to compel genetic testing.[1]

Appellant nonetheless argues that he has standing to bring this motion because he "stands in the shoes" of the decedent. *See* Minn. Stat. § 524.3-703 (2012) ("Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death."). The supreme court's opinion in *Jotham* instructs the analysis here. In *Jotham*, the daughter of a decedent sought to introduce evidence in a

[1] There is no statutory authority to compel a blood test under the Parentage Act except that found in section 257.62, which applies only to parties to a paternity action, i.e., "[a] mother or alleged father." Minn. Stat. § 257.62, subd. 1(a); *see also Witso v. Overby*, 627 N.W.2d 63, 69 (Minn. 2001) (concluding that a putative father had standing to bring a motion to compel genetic testing and stating that "[o]ur conclusion does not open the door to unfettered challenges to the sanctity of marriages, family unity and parent-child relationships. By vesting in the courts the safeguard of a judicial determination that a putative father has asserted by affidavit sufficient grounds to determine that sexual contact occurred between him and the child's mother that could reasonably have resulted in the child's conception as provided in Minn. Stat. § 257.62, subd. 1 (2000) additional protection is provided against frivolous claims of paternity and a balance is achieved between the interests in the preservation and protection of familial relationships and the interests of the putative father to establish his paternity" (footnote omitted)).

probate proceeding to rebut the presumption that her father was also another woman's father. *Id.* at 449. She argued that she was "simply litigating heirship in a probate proceeding" and thus the proceeding was beyond the scope of the Parentage Act. *Id.* at 451. The supreme court disagreed, concluding that "in a probate proceeding in which a Parentage Act presumption is invoked, paternity must be determined in accordance with the dictates of the Parentage Act" and "the probate court must apply the Parentage Act in its entirety to determine paternity for purposes of intestate succession."[2] *Id.* at 453-54.

Thus, under *Jotham*, the Parentage Act must be applied to the facts of this case. The Parentage Act specifically delineates four circumstances where a personal representative has standing to bring an action to declare the nonexistence of the father-child relationship. Minn. Stat. § 257.57, subd. 2. None applies to an adult's recognition of parentage under Minn. Stat. § 257.75. And given the legislature's explicit authorization for the personal representative to challenge paternity in certain circumstances, had the legislature so desired, it could likewise have given the personal representative leave to challenge a recognition of parentage. *See. Am. Family Ins. Grp. v.*

[2] We note that technically there is not a paternity presumption in this case. Rather, as previously discussed, a recognition of parentage creates a definitive judgment; something greater than a mere presumption. Nonetheless, the reasoning of *Jotham*, i.e., that "[w]hen a party benefits from a Parentage Act presumption of paternity and relies on that presumption to establish paternity in a probate proceeding, the party has chosen to establish paternity under the Parentage Act," is equally applicable here. *Jotham*, 722 N.W.2d at 452. F.M.D. relies on the paternity benefit that a recognition of parentage provides and has chosen to establish paternity under the Parentage Act. Therefore under *Jotham*'s reasoning, all provisions of the Parentage Act apply in this case. *Cf. In re Estate of Palmer*, 658 N.W.2d 197 (Minn. 2003) (holding that where a party is unable to use the Parentage Act to establish paternity for purposes of intestate succession, the party may employ an alternative means of establishing paternity—namely, proving paternity by clear and convincing evidence).

Schroedl, 616 N.W.2d 273, 277 (Minn. 2000) (stating that appellate courts interpret statutory terms in harmony with surrounding sections to avoid conflicting interpretations and avoid interpretations that would render portions of any statute superfluous, void, or insignificant); *see also City of Cloquet v. Crandall*, 824 N.W.2d 648, 652 (Minn. App. 2012) (reasoning that "[i]f the legislature wanted to include contract purchasers within its section 117.187 definition, presumably it would have included them there explicitly just as it did in section 117.036"). As noted above, appellant as the personal representative does not have standing to vacate decedent's recognition of parentage.

Appellant further argues that he brought an "appropriate action" to challenge F.M.D.'s paternity under Minn. Stat. § 257.55, subd. 2. But appellant's argument reflects a misunderstanding of the law applicable to this case. Section 257.55 delineates numerous circumstances in which "[a] man is presumed to be the biological father of a child." Minn. Stat. § 257.55, subd. 1. These circumstances include, among others, those where "he and the child's biological mother are or have been married to each other and the child is born during the marriage"; "while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child"; "he and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man is presumed to be the father under this subdivision"; "he and the child's biological mother have executed a recognition of parentage in accordance with section 257.75 and another man and the child's mother have executed a recognition of parentage in accordance with section 257.75"; and "he and the child's biological mother executed a recognition of parentage in accordance with

section 257.75 when either or both of the signatories were less than 18 years of age." *Id.* (a), (d), (f)-(h). These presumptions may be rebutted "in an appropriate action" only by clear and convincing evidence. *Id.*, subd. 2. But, despite the above-mentioned parentage recognitions, which are inapplicable here, other recognitions of parentage, duly executed and filed, do not merely create what the statute designates as a presumption of paternity. *See Custody of Child of Williams v. Carlson*, 701 N.W.2d 274, 279 (Minn. App. 2005) (concluding that a recognition of parentage does not create a presumption of paternity). Rather, these recognitions of parentage have "the force and effect of a judgment or order" and are "determinative for all purposes." It is therefore not possible for appellant to bring "an appropriate action . . . to rebut [the] paternity presumption."

Appellant next argues that this action is appropriate under the Minnesota Uniform Probate Code, Minn. Stat. §§ 524.1-101-.8-103 (2012). This argument is misplaced. As noted above, and conceded by appellant, *Jotham* dictates that "in a probate proceeding in which a Parentage Act presumption is invoked, paternity must be determined in accordance with the dictates of the Parentage Act." Appellant nonetheless states that "[t]he instant case is distinguishable in that it is an action to *dis*establish paternity." But the respondent in *Jotham* also was trying to "*dis*establish" paternity. *See Jotham*, 722 N.W.2d at 449 (stating that "[respondent] seeks, for purposes of determining intestate succession, to introduce evidence to rebut the presumption that [decedent] is the father of appellant"). Thus, the cases are indistinguishable in this regard and the Parentage Act was properly applied by the district court in this case. Moreover, it does not appear that appellant made this argument in the district court, and it is therefore waived on appeal.

See Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988) (stating that generally an appellate court will not consider matters not argued to and considered by the district court).

Lastly, appellant argues that "[this] action is appropriate under Minnesota Rule of Civil Procedure 35.01—Order of Examinations," which permits the district court to produce a person for a blood examination bearing on named controversies. But, once again, *Jotham* and the Parentage Act control in this case. Moreover, assuming that rule 35.01 is applicable in this context, the rule's language indicates that its application is discretionary. Appellant insists that he presented sufficient evidence to warrant genetic testing, but "[a]bsent an abuse of discretion, we will not substitute our judgment for that of the district court." *In re Conservatorship of Smith*, 655 N.W.2d 814, 821 (Minn. App. 2003).

In sum, based on his foregoing arguments, the district court did not err by denying appellant's motion to compel genetic testing.

Affirmed.