**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-0427**

In the Matter of the Welfare of: D. A. M.

**Filed December 10, 2012**
**Reversed and remanded**
**Rodenberg, Judge**

Hennepin County District Court
File No. 27JV112155

Kathleen A. Moccio, Peter W. Gorman, Children's Law Center of Minnesota, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Harten, Judge.*

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

**RODENBERG**, Judge

In this juvenile delinquency appeal, appellant argues that the district court misinterpreted a federal immigration statute regarding state courts' ability to enter special findings for purposes of a proposed application under federal law for "special immigrant

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

juvenile status" (SIJS) pursuant to 8 U.S.C. § 1101(a)(27)(J) (Supp. 2011). Appellant contends that (1) the district court erred as a matter of law in determining that the court had "no authority under Minnesota law to make abuse, neglect, or abandonment findings" in a delinquency case; (2) the court erred in its analysis concluding that reunification with appellant's mother was viable; and (3) the court erred in declining to make findings with regard to the viability of appellant's reunification with his father. We agree, and reverse and remand for further proceedings consistent with this opinion.

## FACTS

Appellant D.A.M. was born in Honduras in 1994. When he was a toddler, his mother fled from the violence in Honduras and left appellant with his grandmother in Mexico for two years. Appellant's mother then brought him to the United States when he was five or six years old, and he has lived here ever since.

When they first arrived in the United States, appellant and his mother lived with appellant's father in New Jersey. His father obtained Temporary Protected Status, which allowed him to live and work in the United States. Appellant did not obtain a legal immigration status.

Shortly after arriving in the United States, appellant was removed from his home by the New Jersey child-protection agency due to neglect. Appellant and his brother were placed in foster care for six months. They returned home for about a year, but were again placed in foster care for another year due to their mother's alcohol abuse.

In 2006, appellant's parents separated following a violent altercation in which appellant's father physically assaulted his mother. Appellant moved with his mother to Minnesota, and his father remained in New Jersey.

Over the next several years, appellant's living situation became increasingly unstable. He generally lived with his mother during the school year, but at times lived in a friend's home due to his mother's alcohol abuse. Appellant also spent several summers with his father in New Jersey. His father also abused alcohol and was often violent and abusive toward him. Appellant's father did not supervise him, and appellant "spent a lot of time on the streets."

Appellant also lived with his father from March 2009 until early 2010. During that time, appellant did not regularly attend school. His father continued to abuse alcohol and was rarely at home. The child-protection agency in New Jersey became involved at some point, but apparently did not remove appellant from the home. In early 2010, appellant returned to Minnesota after his father physically abused him. Appellant had no further contact with his father.

While in Minnesota, appellant and his mother became homeless. Pursuant to a referral from the New Jersey Division of Youth and Family Services, Hennepin County Child Protection began providing services to the family on a voluntary basis in April 2010.

In March 2011, the state filed a delinquency petition charging appellant with simple robbery, to which he pled guilty. Appellant was screened for out-of-home placement. The parties agreed with the recommendation for placement, and the court

placed appellant in the long-term program at the Minnesota Correctional Facility (MCF)-Red Wing Residential Treatment Center.

During the course of the delinquency proceedings, appellant filed a motion for special findings. Appellant sought to apply for SIJS, a means of obtaining lawful permanent residency and a path to citizenship under federal law. *See* 8 U.S.C. §§ 1101(a)(27)(J) (establishing SIJS) (Supp. 2011), 1153(b)(4) (2006) (establishing annual immigrant-visa allotment for those with special immigrant juvenile status). As a prerequisite to applying for SIJS, federal law requires applicants to submit an order from a state court finding that (1) the court has jurisdiction to make judicial determinations about the care and custody of juveniles; (2) the child has either been declared "dependent" on the juvenile court, or has been placed in the custody of a state agency or department; (3) the child's "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law"; and (4) it would not be in the child's best interests to return to his or her home country or country of previous residence. 8 U.S.C. § 1101(a)(27)(J)(i)–(ii) (2006 & Supp. 2011); 8 C.F.R. § 204.11 (2010).

These findings by the state court do not bestow any immigration status on SIJS applicants. The findings are one step in the application process. The United States Citizenship and Immigration Services (USCIS) determines whether the applicant meets the requirements for SIJS under federal law. *See generally* 8 C.F.R. §§ 1.2, 204.11. Its decision whether to grant SIJS is discretionary. *See* 8 U.S.C. § 1101(a)(27)(J)(iii) (Supp.

2011) (requiring consent from the Department of Homeland Security as a prerequisite to obtaining SIJS).

In this case, the district court made three of the four findings. It found that, under Minnesota law, it had jurisdiction to determine the care and custody of juveniles. It found that appellant had been placed in the custody of a department of the State of Minnesota at MCF-Red Wing. It found that appellant's best interests would not be served by returning him to Honduras or Mexico due to his lack of ties in those countries.

However, the district court concluded that it could not make the third finding regarding reunification. The court reasoned that, because the motion for special findings was raised in a delinquency proceeding rather than a child-protection or termination-of-parental-rights proceeding, it had no authority to determine whether reunification was viable under state law.

In the alternative, the district court found that reunification with appellant's mother was viable. It found that appellant maintained regular communication with his mother, and probation intended to return appellant to his mother after he completed the programming at MCF-Red Wing. It therefore concluded that "reunification with one or both of [appellant's] parents *is* viable."

With regard to appellant's father, the court made no factual findings as to whether reunification was viable. It acknowledged the evidence that appellant's father abused and neglected him, but concluded that it could not make the requested reunification determination absent formal proceedings in a child-protection matter under Minn. Stat.

§§ 260C.141–.328 (2010 & Supp. 2011). As a result, appellant contends that he is ineligible to apply for SIJS.

Appellant filed a notice of appeal from the district court's order regarding the motion for special findings. By special-term order, this court accepted jurisdiction.

Appellant filed a motion to stay the appeal on August 21, 2012, asserting that circumstances had changed with respect to his mother. This court denied the motion, and we proceed to address the merits of the appeal.

## D E C I S I O N

### I.

Appellant argues that the district court erred as a matter of law by misinterpreting the SIJS statute. Statutory interpretation poses a question of law, which this court reviews de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

### A. Standard for reunification findings

Of central importance to this appeal is appellant's contention that the SIJS statute requires only a finding that reunification with one of the child's parents is not viable, regardless of the viability of reunification with the other parent. The district court only made reunification findings with regard to one parent—appellant's mother. It appears to have implicitly concluded that a finding of the viability of reunification with one parent precludes SIJS eligibility, thus eliminating the need to address the possible non-viability of reunification with the other parent. However, upon close examination, the language of the SIJS statute confers eligibility even upon a finding that reunification with only one of the child's parents is not viable.

When interpreting a statute, appellate courts first apply the plain meaning of the text. *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010). Here, the plain language of the statute permits application to USCIS for SIJS eligibility when a state court finds that "reunification with *1 or both* of the immigrant's parents is not viable." 8 U.S.C. § 1101(a)(27)(J)(i) (Supp. 2011) (emphasis added). Thus, it expressly contemplates eligibility when: (1) reunification with one parent is not viable or (2) reunification with both parents is not viable. *Id.* A possibility of reunification with one parent does not bar SIJS eligibility. Rather, even when reunification with one parent is viable, courts must determine the viability of reunification with the other parent.

The statute's legislative history supports this interpretation. It formerly required a finding that the child was eligible for long-term foster care, which in turn required a finding that reunification with both parents was not viable. *See* 8 U.S.C. § 1101(a)(27)(J)(i) (2006); *see also* 8 C.F.R. § 204.11(a) (defining "eligible for long-term foster care" under the former version of the statute as a determination that "family reunification is no longer a viable option," and further providing that the child is expected to remain in foster care until reaching the age of majority).[1] Under the former version of

[1] The federal regulation which implements the SIJS statute, 8 C.F.R. § 204.11, has not yet been updated to reflect the statute's amendment in 2008. *See* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978 (Sept. 6, 2011) (to be codified at 8 C.F.R. pts. 204, 205, 245) (proposed regulation implementing the 2008 amendment). Accordingly, those portions of the regulation which conflict with the current statute are no longer in force. *See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–44, 104 S. Ct. 2778, 2781–82 (1984) (holding that agency regulations implementing federal statutes are generally controlling unless they are contrary to the statute).

the statute, then, SIJS was only available when reunification with *both* parents was not possible.

But the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA) broadened SIJS availability by eliminating the long-term foster-care requirement and instead requiring only a finding that "reunification with *1 or both*" parents is not viable. *See* Pub. L. No. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079–80 (emphasis added). Thus, the statute requires only a finding that reunification is not viable with one of the child's parents.

**B. Authority of state courts to enter SIJS findings**

Appellant argues that the district court erred in concluding that it had no authority to make reunification findings in the context of a juvenile delinquency proceeding, as opposed to a child-protection or termination-of-parental-rights proceeding.

As discussed above, the federal statute requires a finding that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis *found under state law*." 8 U.S.C. § 1101(a)(27)(J)(i) (Supp. 2011) (emphasis added). The district court interpreted the "found under state law" language as requiring the application of state-specific concepts of "reunification" as applied in child-protection matters. It thus construed the statute to require a formal adjudication, at the conclusion of a child-protection proceeding and after the provision of formal case-plan services, that the child cannot be reunified with a parent. We conclude that this interpretation is erroneous.

When statutory language is ambiguous, courts may apply canons of construction to inform their interpretation. *ILHC of Eagan, LLC v. Cnty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005). A statute is ambiguous if it is susceptible to more than one meaning. *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). Here, the statute is ambiguous as to whether the "found under state law" language requires courts to apply state-specific definitions of "reunification," or whether it simply requires courts to apply state-law concepts of abuse, neglect, and abandonment.

Under the "doctrine of last antecedent," when "one phrase of a statute modifies another, the modifying phrase applies only to the phrase immediately preceding it." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 832 (9th Cir. 1996). Applied to the SIJS statute, the language "found under State law" modifies only the phrase immediately preceding it—"abuse, neglect, abandonment, or a similar basis." It does not also modify the language regarding reunification. Thus, the statute does not require applying a technical definition of "reunification."

Additionally, in interpreting statutes, courts must consider the statutory language in light of its broader context and purpose. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Here, the surrounding context and purpose of the statute indicate that Congress intended the reunification findings to be available in a broad range of juvenile matters. The SIJS statute does not limit the findings to child-protection proceedings. To the contrary, it expressly contemplates the entry of such findings whenever the child has been declared dependent on the juvenile court (as in child-protection proceedings) or has been placed in the custody of a state agency or department

(as in juvenile delinquency proceedings). *See* 8 U.S.C. § 1101(a)(27)(J)(i). Juvenile courts are broadly defined as any court which has "jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). If Congress had intended to limit the availability of SIJS findings to child-protection matters, it could have expressly so provided. Instead, the context of the statute indicates that the findings may be entered in a wide range of juvenile proceedings.

The purpose of the SIJS statute also suggests that it contemplates the entry of SIJS findings in juvenile delinquency matters. Congress required the reunification findings to be made by state juvenile courts, as opposed to the USCIS, in order to take advantage of the expertise of state courts in juvenile matters—particularly issues of child abuse, neglect, and abandonment. *See* Special Immigrant Juvenile Petitions, 76 Fed. Reg. at 54980. Federal law thus deems courts competent to make SIJS findings in any proceedings in which state law grants them authority to determine the care and custody of the child, whether in probate, guardianship, child-protection, or delinquency proceedings. The statute does not expressly or implicitly limit the availability of SIJS findings to child-protection cases.

The legislative history of the statute also supports this interpretation. As discussed above, the former version of the statute required a finding that the child was eligible for long-term foster care, and the child was generally expected to remain in foster care until reaching the age of majority. *See* 8 U.S.C. § 1101(a)(27)(J)(i) (2006); 8 C.F.R. § 204.11(a). Such a finding would ostensibly require some type of child-protection proceeding. But by removing the foster-care requirement in 2008, Congress broadened

the types of proceedings in which state courts are authorized to make SIJS findings. *See* TVPRA, Pub. L. No. 110-457, § 235(d)(1), 122 Stat. 5044, 5079–80. Additionally, the TVPRA also expanded the group of individuals who are eligible to apply for SIJS by including those placed in the custody of "an individual or entity appointed by a State or juvenile court." *Id.* The TVPRA therefore broadened the availability of SIJS findings, permitting SIJS findings to be entered in a variety of proceedings.

Thus, we conclude that the language regarding a "similar basis found under state law" does not require a state juvenile court in making SIJS findings to apply state-law definitions of "reunification" pertinent to child-protection proceedings. Rather, it appears that the SIJS statute contemplates entry of the requisite findings whenever juvenile courts have jurisdiction under state law to determine the care and custody of minors.[2] The district court was, in this case, authorized to make reunification findings for SIJS purposes.

### C. Reunification with mother

Appellant argues that the district court erred in finding that reunification with his mother was viable. The district court reasoned that because the Department of

[2] This interpretation comports with principles of according deference to administrative agencies. Congress delegated broad authority to the U.S. Department of Homeland Security (of which the USCIS is a part) to administer and enforce federal immigration law. *See* 8 U.S.C. § 1103(a) (2006) (delegating broad authority to the Department of Homeland Security to administer, enforce, and adopt regulations interpreting federal immigration law). Interpretation of the SIJS requirements rests primarily with the federal immigration agencies, and whether an applicant for SIJS meets the requirements of federal immigration law is ultimately a matter for the USCIS to determine. *Id.* Thus, any doubts regarding the interpretation of the SIJS statute should be left to the USCIS to resolve. *See Chevron U.S.A. Inc.*, 467 U.S. at 843–44, 104 S. Ct. at 2782.

Corrections (DOC) intended to return appellant to the custody of his mother, reunification was viable.

The SIJS statute does not define the term "viable." When a statutory term is not defined, courts must apply its plain and ordinary meaning. *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999) ("A court construes technical words in a statute according to their technical meaning and other words according to common and accepted usage."). The term "viable" commonly means "practicable" or "capable of succeeding." *The American Heritage Dictionary* 1988 (3d ed. 1992); *Black's Law Dictionary* 1701 (9th ed. 2009). Likewise, because the statute does not provide a technical definition for the term "reunification," its ordinary meaning applies. *See Taylor*, 594 N.W.2d at 535. Considering the statute's purpose and context, "reunification" appears to mean returning the child to successfully live with his or her parent.

As discussed above, the SIJS statute does not require child-protection proceedings as a prerequisite for determining whether reunification is viable. That the DOC intends to return appellant to the custody of his mother at the end of his current placement does not, standing alone, establish that reunification with the mother is viable. Planning for return of appellant to his mother after his placement does not answer the question of whether appellant will be able to successfully live in her care. The viability of appellant's reunification with his mother for SIJS purposes requires the district court to consider her present living conditions, her willingness and ability to care for appellant, and all other relevant circumstances, so as to make a conclusion about whether that reunification is "practicable" or "capable of succeeding."

We therefore reverse and remand for the district court to consider the viability of appellant's reunification with his mother under the proper legal standard, which is the viability of returning appellant to successfully live with his mother.

**D. Reunification with father**

Appellant challenges the district court's conclusion that it could not make reunification findings regarding appellant's father. The district court reasoned that it was unable to make the requested findings based on concerns that such findings would impact the father's parental rights. Specifically, it noted that appellant's father was not a party to this proceeding. The court concluded that it was unable to make a credibility determination based solely on appellant's allegations.

Because federal law does not require a child-protection proceeding as a prerequisite to entering SIJS findings, it similarly does not require the child's parents to be notified of the proposed entry of SIJS findings. The statute broadly contemplates entering SIJS findings in any proceeding in which the court has authority to determine the care and custody of minors. Thus, the case plan services and other procedural requirements mandated in child-protection or termination-of-parental-rights proceedings are not applicable.

The rights of appellant's father are not impacted by appellant's application for SIJS. To the contrary, the sole purpose of SIJS is to provide immigration relief to children who have been abused, neglected, or abandoned by a parent. *See generally* 8 U.S.C. § 1101(a)(27)(J) (2006 & Supp. 2011) (establishing SIJS eligibility and detailing required findings); *see also Zheng v. Pogash*, 416 F. Supp. 2d 550, 558 (S.D. Tex. 2006)

(recognizing the purpose of SIJS). Under state law, a factual finding regarding the viability of reunification in a delinquency case does not determine or affect the outcome of a child-protection or termination-of-parental-rights proceeding. *See generally* Minn. Stat. §§ 260C.141–.328 (establishing those proceedings). In any such child-protection proceeding, appellant's father could avail himself of the plenary protections available under state law. Thus, the SIJS statute contemplates that state courts may make reunification findings under the circumstances of this case, and the district court erred in concluding that it had no authority to do so.

Additionally, the district court declined to enter reunification findings regarding appellant's father based in part on its reunification findings regarding his mother. It found that "reunification with one or both of [appellant's] parents *is* viable." It therefore appears to have concluded that a finding of viability of reunification with one parent was sufficient.

As discussed above, the SIJS statute requires courts to enter findings regarding whether "reunification with 1 or both of the immigrant's parents *is not* viable." 8 U.S.C. § 1101(a)(27)(J)(i) (Supp. 2011) (emphasis added). The federal statute confers SIJS eligibility when reunification with one parent is not viable. A finding of viability of reunification with appellant's mother therefore does not dispense with the need to determine the viability of reunification with appellant's father. On remand, the district court must address the viability of reunification with appellant's father irrespective of the determination regarding the viability of reunification with the mother.

## II.

Appellant also argues that the record in this case establishes that reunification with his father is not viable. In essence, he requests this court to make reunification findings on appeal. However, it is not the role of this court to find facts. *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966) ("It is not within the province of [appellate courts] to determine issues of fact on appeal."). Remand is the proper remedy.

Because the district court misinterpreted the law, we reverse and remand for reunification findings regarding both parents and considering all relevant facts and circumstances.

**Reversed and remanded.**