STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1754

In re: the Petition of K. P. W. and J. L. H. to
Adopt S. Q.-B. W., a Minor Child.

Filed March 3, 2014
Reversed and remanded
Hooten, Judge

Hennepin County District Court
File No. 27-JV-FA-13-29

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

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

HOOTEN, Judge

Appellants-potential adoptive parents challenge the dismissal of their petition to adopt the child of respondent-putative father, arguing that the juvenile court erred in determining that a recognition of parentage (ROP) document signed by respondent and the child's mother is valid despite its rejection by the Minnesota Office of Vital Records. Because the juvenile court erroneously interpreted the statutory provisions governing the

validity of ROPs, we reverse the dismissal of the adoption petition. We also remand for the juvenile court to consider arguments it did not address due to the dismissal.

FACTS

E.M.F. gave birth to Q.S.K.[1] on October 19, 2011. E.M.F. and respondent E.A.K. never married, and respondent is not listed on Q.S.K.'s birth certificate. E.M.F., however, does not dispute that respondent is factually Q.S.K.'s biological father. Five days after Q.S.K.'s birth, E.M.F. and respondent signed a ROP document which included their separate mailing addresses. In the jurat for the notarization of E.M.F.'s signature, it appears that "11" was initially filled in as the month, and then "10" was written over the "11." "10" was also written below the month, followed by initials coinciding with the notary's initials. The hospital submitted the ROP document to the Department of Health.

By affidavit, E.M.F. stated that, in November 2011, she received a letter from the Office of Vital Records of the Department of Health informing her that the ROP document had been rejected due to a "clerical error." Respondent testified by affidavit that he "was never notified by the Department of Health or [E.M.F.] that the ROP was returned." It is undisputed that, when E.M.F. was notified of the rejection, neither the Office of Vital Records nor the hospital informed respondent of the rejection. An affidavit of a legal assistant of respondent's counsel states that two individuals from the Office of Vital Records indicated that only the mother is notified of a rejected ROP document. The record lacks other evidence regarding the procedures of the Office of Vital Records for handling ROP document submissions.

[1] These are the initials of the child's legal name despite the caption of this appeal.

After the birth, respondent, for work reasons, lived separately from E.M.F. and Q.S.K. According to respondent, he last saw Q.S.K. in July 2012. About August 21, 2012, E.M.F. placed Q.S.K. for adoption with Carver County Social Services, which, in association with Lutheran Social Service, selected appellants K.P.W. and J.L.H. as potential adoptive parents. Q.S.K. has been in appellants' care since October 2012. On November 21, 2012, respondent registered with the fathers' adoption registry. Respondent testified that he called the hospital in late November 2012 and was told for the first time by a nurse that the ROP document had been rejected.

In December 2012, respondent petitioned the family court to establish paternity and sought sole legal and physical custody of Q.S.K.[2] Appellants moved to intervene in, and to dismiss, the paternity action. In February 2013, while the paternity action was pending, appellants petitioned the juvenile court to adopt Q.S.K., prompting respondent to move to intervene in, and to dismiss, the adoption action.

In May 2013, the family court granted appellants' motion to intervene in the paternity action, denied the motion to dismiss, and referred the case to alternative dispute resolution. On July 2, 2013, after unsuccessful attempts to settle, the juvenile court dismissed appellants' adoption petition. While the juvenile court's order stated that respondent's motion to intervene in the adoption proceeding was denied, the memorandum accompanying the order stated that "[s]ince the Court is dismissing [the]

[2] Although the juvenile court's order dismissing the adoption petition took judicial notice of the parentage proceeding, the file for the parentage proceeding was not incorporated into the file for this appeal. Therefore, we take judicial notice of the parentage file. *See Smisek v. Comm'r of Pub. Safety*, 400 N.W.2d 766, 768 (Minn. App. 1987) (taking judicial notice of a trial court order in a related proceeding).

Adoption Petition[,] it is not ruling on the other matters before it, including [respondent's] Intervention Motion." Further, the juvenile court ordered custody of Q.S.K. to remain with appellants.

In dismissing the adoption petition, the juvenile court stated that it "does not ascribe bad faith or deception" to the parties. The juvenile court found that the ROP document was "rejected for an illogical and nonsensical reason— . . . the Notary accidentally initially wrote an '11' instead of '10'!"[3] The juvenile court noted, "*To make matters worse, Vital Statistics only notified the Mother and not the Father that the ROP had been rejected even though both parents' addresses were on the ROP!*" The juvenile court determined that the ROP is valid because it was "properly signed" and "properly filed" and the court was "not aware of any provision that the ROP must be '*perfectly*' completed or '*perfectly*' filed without even the slightest miniscule 'error.'" Based on this conclusion, the juvenile court found that respondent "never had a duty to [r]egister" with the fathers' adoption registry and that respondent was entitled to notice of, and the right to oppose, the adoption proceeding under Minn. Stat. § 259.49, subd. 1(b)(7) (2012).

Appellants moved for amended findings and conclusions of law, a trial, and, in the alternative, a stay pending appeal. In August 2013, the juvenile court made non-substantive alterations to its order for dismissal and granted appellants' request for a stay. In September 2013, appellants appealed the juvenile court's decision. The family court, in November 2013, stayed the paternity action pending this appeal.

[3] The factual finding that the notary error caused the rejection is not challenged on appeal.

D E C I S I O N

Appellants argue that the juvenile court erred in determining that the rejected ROP document is sufficient to satisfy Minn. Stat. § 257.75, subd. 1 (2012). We review statutory construction de novo. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "When construing a statute, our goal is to ascertain and effectuate the intention of the legislature." *Id.* at 278. "[W]e are to construe words and phrases according to their plain and ordinary meaning." *Id.* at 277. "A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant." *Id.* (quotation omitted).

Generally, "[n]o child shall be adopted without the consent of the child's parents." Minn. Stat. § 259.24, subd. 1(a) (2012). "[C]onsent is not required of a parent . . . who is not entitled to notice of the proceedings[.]" *Id.*, subd. 1(a)(1). A person must be given notice of an adoption proceeding if "the person and the mother of the child have signed a declaration of parentage under section 257.34 before August 1, 1995, which has not been revoked or *a recognition of parentage under section 257.75, which has not been revoked or vacated*." Minn. Stat. § 259.49, subd. 1(b)(7) (emphasis added). In turn, section 257.75 states:

> The mother and father of a child born to a mother who was not married to the child's father nor to any other man when the child was conceived nor when the child was born may, *in a writing signed by both of them before a notary public and filed with the state registrar of vital statistics*, state and acknowledge 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 (emphasis added).

While the term "filed" is not defined in the Parentage Act, the Vital Statistics Act, which established the Office of Vital Records under the supervision of the state registrar, Minn. Stat. § 144.213, subd. 1 (Supp. 2013), defines "file" as "to present a vital record or report for registration to the Office of Vital Records and to have the vital record or report *accepted for registration* by the Office of Vital Records," Minn. Stat. § 144.212, subd. 3 (Supp. 2013) (emphasis added). The Vital Statistics Act defines "registration" as "the process by which vital records are *completed, filed, and incorporated into the official records* of the Office of Vital Records." *Id.*, subd. 5 (Supp. 2013) (emphasis added).

With these statutory provisions in mind, we agree with appellants that the juvenile court erred in determining that the rejected ROP document is sufficient to create a valid ROP. The juvenile court reasoned that a valid ROP exists because respondent was not required to complete and file a "perfect" ROP document without errors. But whether respondent submitted a less-than-perfect ROP document is irrelevant under the statutory scheme governing ROPs. Applying the Vital Statistics Act's definition of "file" (and hence "registration") to the requirement of section 257.75 that a ROP document must be "filed with the state registrar of vital statistics," a ROP document must be "incorporated into the official records of the Office of Vital Records" to create a valid ROP. *See Am. Family Ins. Grp.*, 616 N.W.2d at 277 (requiring courts, when construing statutes, to "avoid conflicting interpretations"). Here, it is undisputed that the ROP document—whether it was perfect or not when submitted—was rejected by the Office of Vital Records. Therefore, there was no filing and registration of the ROP document to create a valid ROP.

The juvenile court appears to have based its decision on the doctrine of substantial compliance. This doctrine recognizes that "the law does not mandate in all cases strict and literal compliance with all procedural requirements." *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 391 (Minn. 1980). We have previously applied the substantial-compliance doctrine to the retention-of-parental-rights statute, Minn. Stat. § 259.261, subd. 1 (1992). *See In re Welfare of A.M.P.*, 507 N.W.2d 616, 621 (Minn. App. 1993), *superseded by statute*, Minn. Stat. § 259.49, subd. 1(b)(8) (Supp. 1997), *as recognized in Heidbreder v. Carton*, 645 N.W.2d 355, 365 (Minn. 2002), *cert. denied*, 537 U.S. 1046 (2002). The retention-of-parental-rights statute provided that:

> Any person not entitled to notice under section 259.26, shall lose parental rights and not be entitled to notice at termination, adoption, or other proceedings affecting the child, unless within 90 days of the child's birth or within 60 days of the child's placement with prospective adoptive parents, whichever is sooner, that person gives to the division of vital statistics of the Minnesota department of health an affidavit stating intention to retain parental rights.

Minn. Stat. § 259.261, subd. 1. In *A.M.P.*, a putative father failed to timely give to the division of vital statistics an affidavit stating his intention to retain parental rights under the statute. 507 N.W.2d at 621. Nonetheless, we determined that the putative father had "substantially complied" with the statute because he had submitted the affidavit to the county within the required time and had no reason to believe that the affidavit had not been forwarded to the division of vital statistics. *Id.*

After *A.M.P.*, the legislature eliminated section 259.261 and created the Minnesota fathers' adoption registry. *Heidbreder*, 645 N.W.2d at 365. While acknowledging our

prior application of the substantial-compliance doctrine in *AM.P.*, the supreme court in *Heidbreder* expressly declined to "carve out a substantial compliance exception" to the current adoption law, Minn. Stat. § 259.49, subd. 1(b)(8). *Id.* at 369–70. The court explained that adoption registries are "intended to balance the putative father's interests with those of the child, the birth mother, and adoptive parents." *Id.* at 369. While recognizing that a substantial-compliance exception would benefit putative fathers who failed to timely register, the court noted that "such an exception would also weaken the permanence and stability adoption registries give adopted children." *Id.* at 369–70.

While *Heidbreder* did not address whether the substantial-compliance doctrine applies to the ROP statute, we conclude that it does not. Under the retention-of-parental-rights statute at issue and in effect when we decided *A.M.P.*, an affidavit stating *only* a putative father's intention to retain parental rights entitled the father to notice when he "*gives* [it] to the division of vital statistics." Minn. Stat. § 259.261, subd. 1 (emphasis added). In contrast, as we have determined, a valid ROP exists only if *both* the mother and the putative father have signed a ROP document that has been *accepted* by the Office of Vital Records. The roles of the agency and the mother in the creation of ROPs preclude the conclusion that a putative father alone can substantially comply with the ROP statute.

Moreover, while the doctrine of substantial compliance can apply to statutes that are directory, it does not apply to statutes, such as the ROP statute, that are mandatory. *See Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp.*, 583 N.W.2d 293, 295 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998). Statutory provisions are

directory where they "do not declare the consequences of a failure of compliance" and "[where] no substantial rights depend on compliance." *State by Lord v. Frisby*, 260 Minn. 70, 76, 108 N.W.2d 769, 773 (1961).

Here, because a valid ROP has the force and effect of a parentage adjudication, Minn. Stat. § 257.75, subd. 3 (2012), a substantial statutory right depends on compliance with the filing requirement to establish a valid ROP. Also implicated is a substantial constitutional right because a putative father who has "grasp[ed] [the] opportunity and accept[ed] some measure of responsibility for the child's future," such as by establishing a valid ROP, is entitled to "substantial protection under the Due Process Clause." *See Lehr v. Robertson*, 463 U.S. 248, 261–62, 103 S. Ct. 2985, 2993 (1983). And as recognized in *Heidbreder*, under the former adoption laws in effect when we decided *A.M.P.*, "the fact that a putative father failed to file an affidavit [stating his intention to retain parental rights] did not bar a putative father from seeking to establish an interest in the child by commencing a paternity action before the adoption was final." 645 N.W.2d at 364. Now, one potential consequence from failing to comply with the filing requirement to create a valid ROP and to register with the fathers' adoption registry is that the putative father will be "barred . . . from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child." *See* Minn. Stat. § 259.52, subd. 8(1) (2012). We therefore conclude that the requirement that a ROP document must be accepted by the Office of Vital Records is a mandatory provision. Accordingly, the doctrine of substantial compliance is inapplicable to alleviate the obligation to strictly comply with the ROP statute.

We are also not persuaded by respondent's theories that the ROP is valid. He argues that the Office of Vital Records is simply "the record keeper" and "does not grant parents anything." But we must acknowledge that the Office of Vital Records has a role in the creation of ROPs because the legislature requires this agency to incorporate ROP documents into the official records before they are sufficient to satisfy the ROP statute. Respondent also invokes contract theories and argues that "the parties, in good faith signed the [ROP document] and reasonably relied on the appearance that they had satisfied the" ROP statute. But a ROP is a creature of statutory law and not of the common law of contracts. And respondent's argument ignores the legislature's plain and unambiguous instruction that a ROP document must be accepted by the Office of Vital Records.[4]

Respondent also contends that the Office of Vital Records' conduct was "arbitrary" and that the agency's failure to provide him with notice of the rejected ROP document violated his constitutional rights. "It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise." *In re Senty-Haugen*, 583 N.W.2d 266, 269 n.3 (Minn. 1998). Further, we "must generally consider only those issues that the record shows were presented and considered by the trial court in deciding

[4] Without briefing to this court, respondent's attorney, at oral argument to this court, argued that the adoption statute, Minn. Stat. § 259.49, subd. 1(b)(7), refers only to a "signed" ROP, and not a "signed" and "filed" ROP as stated in Minn. Stat. § 257.75, subd. 1. Arguments not briefed are waived, *Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987), so we decline to rule on this argument. We note, however, that we doubt this argument's weight: Although the adoption statute refers only to a "signed" ROP, this provision also requires that the ROP be signed "under section 257.75." This reference to section 257.75 would be superfluous if the mere act of signing satisfies Minn. Stat. § 259.49, subd. 1(b)(7).

the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Here, because the juvenile court dismissed appellants' adoption petition on the sole basis that a valid ROP exists, it declined to address respondent's arguments that his constitutional rights were violated and that he was entitled to oppose the adoption on other grounds under Minn. Stat. § 259.49, subd. 1(b). Because of our practice of constitutional avoidance, the existence of unresolved non-constitutional issues, and the absence of the juvenile court's consideration of the constitutional issues, respondent's constitutional arguments are not properly before this court and we decline to address them.

While we sympathize with the juvenile court's understandable frustration with this case, we must conclude that it erred as a matter of law in interpreting the statutory provisions governing the validity of ROPs. Therefore, we reverse the dismissal of the adoption petition and remand for the juvenile court to consider other aspects of this case not addressed because of the dismissal, including respondent's motion to intervene and, if necessary, any relevant constitutional questions.

Reversed and remanded.