20180075
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JUNE 14, 2018
STATE OF NORTH DAKOTA

SUPREME COURT OF THE STATE OF NORTH DAKOTA

No. 20180075

S.E.L,

PLAINTIFF – APPELLANT,

vs.

J.A.P., J.D.M.,

DEFENDANTS – APPELLEES,

and

STATE OF NORTH DAKOTA,

STATUTORY REAL PARTY IN INTEREST AND APPELLEE.

Appeal from the Findings of Fact, Conclusions of Law, and Order for Dismissal entered on February 2, 2018
Stark County District Court
Southwest Judicial District
Honorable Judge Rhonda Ehlis
Stark County Case 2016-DM-00203

APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES

I. Whether the Uniform Parentage Act as codified in North Dakota Century Code Section 14-20 et seq should apply in this case?

II. If the Court determines that the Uniform Parentage Act does apply in this case, whether the District Court Judge erred in granting the Defendant's Motion to Dismiss?

STATEMENT OF THE CASE

[1] The Appellant, S.E.L., representing himself, pro se, initiated this action against the Appellees, J.A.P. and J.D.M., on or about August 29, 2016 by filing a Summons and Complaint to Challenge Paternity Based on Fraud and to Adjudicate Paternity, Appendix ("App") 7, with the County of Stark, State of North Dakota. In said Complaint, S.E.L. set forth that it is his belief that he is the biological father to the child, J.J.M., born in 2014. Additionally, S.E.L. alleged that the biological mother, J.A.P., to this child never informed S.E.L. that she was pregnant. In the fall of 2015, J.A.P. informed S.E.L.'s mother that S.E.L. was the father of J.J.M. Upon learning that he was the father of J.J.M., S.E.L. filed paperwork with the Child Support Enforcement Division in Montana. At this time, S.E.L. learned that J.D.M. had signed an Acknowledgment of Paternity to J.J.M. at the hospital at the time of his birth. In February of 2016, the State of North Dakota removed J.J.M. from the custody of J.A.P. and J.D.M. and sent him to live in foster care. S.E.L. further alleged that J.A.P. was currently incarcerated in Las Vegas, Nevada and J.J.M was residing in Dickinson, ND. S.E.L. requested that the Court 1) void the Acknowledgment of Paternity signed by J.D.M.; 2) for genetic testing to determine paternity; 3) for J.J.M.'s birth certificate to be reissued declaring S.E.L. the father; and 4) for the Court to order J.J.M. to be released from foster care into S.E.L.'s custody and care.

[2] The State of North Dakota, through the Southwest Area Child Support Unit (SWACSU), responded with an Answer (App. 18). SWACSU alleged that it lacked sufficient knowledge to form a belief about the truth of each and every allegation of S.E.L.'s complaint. The SWACSU further alleged that J.A.P. and J.D.M. executed a voluntary acknowledgment of paternity for the child, J.J.M. greater than two years ago.

SWACSU further opposed genetic testing. N.D.C.C. § 14-20-44(2) states that an individual who is not a signatory to a Voluntary Acknowledgment of Paternity must commence a proceeding to challenge the Voluntary Acknowledgment of Paternity within two years. Plaintiff acknowledges in the Complaint that more than two years have passed since the Voluntary Acknowledgment of Paternity was executed. SWACSU further stated that the Plaintiff: 1) failed to serve all parties pursuant to Rule 4 of the North Dakota Rules of Civil Procedure; 2) failed to state a claim upon which relief can be granted; and 3) that the Plaintiff's Claim is barred by the applicable statute of limitations. SWACSU asked that the Plaintiff's requests be denied in their entirety.

[3] On January 18, 2017, S.E.L. filed a Request Motion for Blood/Genetic Testing of Alleged Father and Child in Order to Help Determine Paternity of Minor Child (App. 55).

[4] On February 23, 2017, the Honorable Judge Rhonda R. Ehlis entered an Order regarding the Plaintiff's Motion for Genetic Testing (App.73). Judge Ehlis ruled that pursuant to N.D.C.C. § 14-20-44(2) the Plaintiff is unable to ask for genetic testing at this time, as the two-year window has expired, and he is not the acknowledged or adjudicated father of the child, for this reason, the Plaintiff's Motion for Genetic Testing is denied. The Court further ruled that the Defendant, J.D.M.'s, requests for additional time in which to file an Answer to this matter and request for continuance due to his incarceration were denied.

[5] On April 10, 2016, Attorney Theresa L. Kellington filed a Notice of Appearance on behalf of the Plaintiff, S.E.L. (App.89).

[6] On September 16, 2017, the State of North Dakota, by and through Brittney Bornemann, Assistant Stark County State's Attorney, filed an Answer to Plaintiff's

Complaint (App.128). In that Answer, the State admits that it believed that J.A.P. was the biological mother of J.J.M. but denied and lacked information and knowledge sufficient to form a belief about the truth of the remaining allegation. The State further stated that it did not object to genetic testing but asserted that all expenses to establish paternity should be the responsibility of the Plaintiff. The State requested that the Court deny the Plaintiff's requests, specifically the Plaintiff's request regarding any care, custody, or control of the minor child be denied.

[7] On June 12, 2017, the Honorable Judge Rhonda R. Ehlis entered an Order to Appointment Guardian Ad Litem, for Genetic Testing, and to Continue Trial (App.141). Judge Ehlis ordered that a Guardian Ad Litem shall be appointed. The Court further ordered that S.E.L., J.A.P., J.D.M. and the minor child, J.J.M., shall provide genetic samples to aid in the determination of paternity in this matter. The parties were to contact the Dickinson Regional Child Support Unit to set up a time for taking of the necessary samples. The Court further stated that J.A.P.'s mother could also participate in the genetic sample.

[8] On July 17, 2017, the State of North Dakota, by and through Steven G. Podoll, Special Assistant Attorney General with the Bismarck Regional Child Support Unit, submitted a Brief in Support of State's 3.2 Motion for Reconsideration of Order to Appoint Guardian Ad Litem, for Genetic Testing, and to Continue Trial (App.178).

[9] On August 10, 2017, the Plaintiff, S.E.L., by and through his attorney Theresa L. Kellington, responded by submitting to the Court the Plaintiff's Response to State's Motion for Reconsideration and Request for Reimbursement of Attorney Fees (App.211). S.E.L.

also filed a Motion for Order to Show Cause against the State for failing to allow the Plaintiff to schedule an appointment for Genetic Testing (App. 217).

[10] On December 29, 2017, Attorney Robert A. Keogh, filed a Notice of Appearance on behalf of defendant, J.D.M. (App.302).

[11] On January 3, 2018, J.D.M. filed an Answer, by and through his attorney (App.315). J.D.M. alleged that he was the biological father of J.J.M. and that the Plaintiff's claim to parentage of the minor child or to seek genetic testing, is barred by the statute of limitations as provided by North Dakota statutes. J.D.M. requested that the Court deny the Plaintiff's complaint in its entirety. J.D.M. also filed a Brief re: Issue of Paternity Test (App.317). J.D.M. joined the State in requesting reconsideration of the Order and opposed genetic testing.

[12] On February 2, 2018, the Honorable Judge Rhonda R. Ehlis entered a Findings of Fact, Conclusions of Law, and Order for Dismissal pursuant to a hearing held on January 8, 2018 (App.347). Judge Ehlis found that proper service was effectuated on J.A.P. and that he had not responded or made an appearance and was found to be in default. J.D.M. had also been found to be in default previously. The Court further found that because S.E.L. commenced this proceeding more than two years after the effective date of the subject paternity acknowledgment, he is not permitted to pursue a challenge of such acknowledgment. The action was dismissed pursuant to N.D.C.C. § 14-20-44. All other matters were dismissed including an order for genetic testing and order for appointment of Guardian Ad Litem.

[13] On February 21, 2018, S.E.L. filed a Notice of Appeal and Statement of Preliminary issues (App.357) and herein appeals said Findings of Fact, Conclusions of Law, and Order for Dismissal.

[14] On March 1, 2018 a Judgment of Dismissal was entered dismissing the action pursuant to N.D.C.C. § 14-20-44 (App.377).

STATEMENT OF FACTS RELEVANT TO ISSUES SUBMITTED FOR REVIEW

[15] S.E.L. firmly believes that he is the biological father of the minor child, J.J.M., born in 2014. S.E.L. petitioned the Court for an order allowing genetic testing of the minor child to establish paternity. The minor child is currently in foster care through Stark County Social Services. The child has been in foster care since February of 2016, which is over half of his life.

[16] S.E.L., and the biological mother of the child, J.A.P., had an intimate sexual relationship during the summer of 2013. The child was conceived sometime between the end of July and the beginning of August 2013. During the parties' relationship, J.A.P. did not have an intimate relationship with any other men. As such, it is most likely that the minor child, J.J.M. is the biological son of the Plaintiff and Appellant, S.E.L.

[17] The intimate relationship between S.E.L. and J.A.P. lasted until Labor Day of 2013. This relationship existed and occurred in White Sulphur Springs, Montana, where both S.E.L. and J.A.P. were residing.

[18] After Labor Day in 2013, J.A.P. moved to Helena, Montana from White Sulphur Springs, Montana.

[19] S.E.L. was not aware that J.A.P. was pregnant. He did not learn of the existence of the child until the fall of 2015. Immediately thereafter, he made all attempts necessary to make arrangements for there to be genetic testing, however all his efforts proved to be fruitless.

[20] J.A.P. returned to North Dakota at some point in time prior to the child's birth and started to date J.D.M. The child was born during the relationship. J.D.M. signed an acknowledgment of paternity at the time of J.J.M.'s birth with full knowledge that J.J.M. was not in fact his child.

[21] Neither J.A.P. or J.D.M. are involved in the child's life nor have they been for a significant period of time. J.A.P. and J.D.M. have both been incarcerated for much of the child's life. J.D.M. has never established a relationship with J.J.M. because of the extensive period of time that he has been incarcerated. The minor child is currently in foster care. S.E.L. firmly believes he is the biological father of the minor child and that no other person could possibly be the biological father of J.J.M.

ARGUMENT

[22] Standard of Review: This case involves two different standards of review.

[23] As for the first two (2) issues presented for review, the appropriate standard of review is de novo. According to the Court in Krueger vs. Krueger, 2011 ND 134, 800 N.W.2d 296, child support determinations involve questions of law which are subject to the de novo standard of review, findings of fact which are subject to the clearly erroneous standard of review, and may, in some limited areas, be matters of discretion subject to the abuse of discretion standard of review."

[24] According to the Court in Johnson vs. Johnson, 527 N.W.2d 663 (1995), interpretation of a statute is a question of law which Supreme Court reviews de novo on appeal.

[25] Interest of T.F., 2004 ND 126, ¶9, 681 N.W.2d 786, the Court defines the de novo standard of review and states, "Under the trial de novo standard we review the files, records, and transcript of the evidence in the juvenile court, and, although we are not bound by the findings of the juvenile court, we give those findings appreciable weight..." As such, this court will review the lower court's reasoning and fact finding from the beginning, based on the record.

[26] As for the last issue presented for review, the appropriate standard of review is clearly erroneous:

[27] Rule 52(a) of the North Dakota Rules of Civil Procedure provides pursuant to subparagraph (6) that findings of fact, including findings in juvenile matters, whether based on oral or other evidence, must not be set aside unless clearly erroneous and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

[28] Pursuant to the Court in Hartleib vs. Simes, 2009 ND 205, ¶41, 776 N.W.2d 217, "we have in the past employed the abuse of discretion standard of review on appeals from orders on petitions for name change under N.D.C.C. ch. 32-28." The Court cited the case of Edwardson vs. Lauer, 2004 ND 218, 689 N.W.2d 407 in stating that in that case they questioned application of that standard in cases involving a minor in light of the Court's application of the clearly erroneous standard of review to a name change of a minor under the Uniform Parentage Act, N.D.C.C. ch. 14-17. The Court continued its reasoning by

stating that "a decision to order a surname change under N.D.C.C. § 14-17-14(3) is driven by an examination of the best interests of the child, which is a factual process best suited for clearly erroneous review under N.D.R.Civ.P. 52(a)."

[29] The Uniform Parentage Act, as codified in N.D.C.C. ch. 14-17 was repealed and replaced with N.D.C.C. ch. 14-20 et seq. It is noted that 14-17 was repealed by S.L. 2005, ch. 135, section 11, effective August 1, 2005.

[30] The Court in Hartleib vs. Simes, at ¶15, describes the abuse of discretion standard of review by stating that "a district court abuses its discretion if it acts in an arbitrary, unconscionable or unreasonable manner, if its decision is not the product of a rational mental process by which the facts of record and law relied upon are stated and considered together for the purpose of reaching a reasonable determination, or if it misinterprets or misapplies the law."

[31] Given the provisions of Rule 52 of the North Dakota Rules of Civil Procedure and the holding of the Edwardson case, the standard of review to be used in this case is that of clearly erroneous as it applies to the District Court's application of the North Dakota Uniform Parentage Act.

[32] The Court in Berger vs. Myhre, 2010 ND 28, ¶8, 778 N.W.2d 579, defines the clearly erroneous standard of review and states, "a finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made."

[33] In light of the foregoing, the Appellant is applying the clearly erroneous standard and asks this Court to overturn the District Court Judge's decision on the grounds that Judge Ehlis' decision was induced by an erroneous view of the law, that there was

insufficient evidence to support its decision, and on the firm belief that once this court reviews said decision, it will be left with a definite and firm conviction that a mistake has been made.

[34] The Uniform Parentage Act should not be applied in this case. North Dakota Century Code Section 14-20 et seq is commonly referred to as the Uniform Parentage Act. The purpose or scope of the act is best described in Section 14-20-03, which states the follows:

1. This chapter applies to determination of parentage in this state.
2. The court shall apply the law of this state to adjudicate the parent child relationship. The applicable law does not depend on:
   a) place of birth of the child; or
   b) the past or present residence of the child.
3. This chapter does not create, enlarge or diminish parental rights or duties under other law of this State.

[35] This case presents a very unusual set of circumstances which the undersigned and S.E.L. do not believe was the intent of the legislature to cover when said statute was enacted. We have a child who S.E.L. firmly believes is his biological child. J.A.P. and S.E.L. were in an intimate sexual relationship around the time that J.J.M. was conceived. Their relationship occurred in White Sulphur Springs, Montana where both of them resided at the time. S.E.L. was unaware that J.A.P. was pregnant around the time their relationship ended after Labor Day of 2013. J.A.P. returned to North Dakota at some point in time prior to the child's birth and began a relationship with J.D.M. The child was born during their relationship. J.D.M. signed the acknowledgment of paternity of J.J.M. Neither J.A.P. or

J.D.M. are involved in J.J.M.'s life nor have they been for a significant period of time. J.J.M. has been in foster care for over half of his life due to the neglect of J.A.P. and J.D.M. The presumed father no longer has a parent-child relationship with J.J.M. as he has been incarcerated for over half of the minor child's life.

[36] S.E.L. requested that the Court order DNA testing be conducted and assuming that he would be found to be the father, requested the primary residential responsibility over J.J.M.

[37] Given that S.E.L. and the biological mother had sexual intercourse at or around the time of conception, there is a very high probability that he is the biological father. In light of this evidence, it becomes probable that S.E.L. is the biological father to the child.

[38] The question then becomes who should prevail, foster parents or a biological father? The Uniform Parentage Act was enacted to protect formed relationships between children and their "fathers" as defined in the act. This would prevent biological fathers from interfering with formed relationships years after the fact. This purpose does not exist in this case. The biological mother and "presumed father" have no relationship with the minor child. Both the biological mother and "presumed father" have been incarcerated for much of the minor child's life. Due to neglect of the biological mother and "presumed father," the minor child was placed in foster care along with his sister. The minor child does not have a relationship with the biological mother or "presumed father." We have an individual who wants desperately to determine if he is the biological father and if so, to provide all the love, care, and nurturing, that a loving, caring biological father provides to his children. Surely, this is a better result than forcing the child to remain with foster parents.

[39] When necessary or appropriate, we can look to other jurisdictions. California Code - Cal. Fam. Code Section 7630, specifically subparagraph (b), states that "any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611." Paragraph (c) provides: "an action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father or the personal representative or a parent of the alleged father if the alleged father has died or is a minor."

[40] This is not a case to which the Uniform Parentage Act should apply and as such, S.E.L. is respectfully requesting that the Supreme Court overturn the District Court's decision accordingly.

[41] If the Court finds that the Uniform Parentage Act does in fact apply in this case, the Court should interpret the statute to address the specific circumstances of this case and find in favor of S.E.L.

[42] There has been one case on point heard by the Supreme Court of this State, but not by Supreme Courts of any other states that have adopted the Uniform Parentage Act. Said case is D.E. vs. K.F. and M.F., 2012 ND 253, 825 N.W.2d 832. The facts of that case are very similar to the facts of this case. In D.E. vs. K.F. and M.F., the case presented a very unusual set of circumstances, D.E. firmly believed that S.N.B. was his biological child. D.E. initiated an action in 2011 by filing a Summons and Complaint. In said Complaint,

D.E. set forth that it was his belief that he was the biological father to the child, S.N.B. Additionally, D.E. alleged that the biological mother to this child had died. D.E. requested that the Court order paternity testing to determine paternity and if he is found to be the biological parent, that the residential as well as decision making responsibility be placed with D.E. immediately. The child in question, S.N.B. was born in 2001. The biological mother, D.B., died on May 2, 2009. Her husband, E.B., died on February 27, 2003. D.B. and E.B. were married in approximately December of 2000. The child was born approximately one (1) month after D.B. and E.B. were married. However, E.B. was not the biological father of the child. Given that he and D.B. were married at the time of the birth of the child, he was considered to be the "presumed father" of the minor child by the District Court Judge Anderson. D.E. and D.B. were in a sexual relationship during the time the minor child was conceived. Said case was appealed to the Supreme Court of the State of North Dakota who then overturned said decision and instructed the District Court to appoint a Guardian ad Litem and that the original Defendants, M.F. and K.F., the foster parents for the minor child did not have standing in which to assert the statute of limitations provisions. Since the time of the mother's death, the child had been living with different foster parents, none of whom obtained foster parentage through the State of North Dakota nor legal guardianship or custody over the minor child. E.B. and D.B. were married just before the birth of the child. E.B. died in 2003 and D.B. died in 2009, leaving the child to be cared for by foster parents. The "presumed father" died when the child was approximately two (2) years of age. Approximately nine (9) years had passed since the passing of E.B. The "presumed father" was in the child's life for approximately two years,

during that time, he was a very heavy drug user. After D.E. appealed the case, a paternity test was done, establishing that D.E. was in fact the biological father of S.N.B.

[43] This Court should overturn the District Court's decision on the grounds that it is clearly erroneous.

[44] As indicated above, a finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence exists to support it, or if the reviewing court is left with a definite and firm conviction a mistake has been made. We firmly believe that by applying any of the three criteria for establishing "clearly erroneous" results in the overturning of the District Court's decision.

[45] N.D.C.C. section 14-20-10 addresses presumption of paternity. Section 14-20-10 states the following:

1. A man is presumed to be the father of a child if:
    a. He and the mother of the child are married to each other and the child is born during the marriage;
    b. He and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce or after decree of separation;
    c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid and the child is born during the invalid marriage or within three hundred days after its

termination by death, annulment, declaration of invalidity, divorce or after a decree of separation;

d. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child; and

1. The assertion is in a record filed with the state department of health;

2. He agreed to be and is named as the child's father on the child's birth certificate; or

3. He promised in a record to support the child as his own; or

e. For the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

2. A presumption of paternity established under this section may be rebutted only by an adjudication under sections 14-20-36 through 14-20-58.

Section 14-20-42 was applied by the District Judge. This section provides as follows:

1. Except as otherwise provided in subsection 2, a proceeding brought by a presumed father, the mother or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child.

2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:

a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

b. The presumed father never openly held out the child as his own.

3. For purposes of this section and section 14-20-43, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action.

[46] According to Section 14-20-41 of the North Dakota Uniform Parentage Act, a proceeding to adjudicate the parentage of a child having no presumed, acknowledged or adjudicated father may be commenced at any time, even after: 1) the child becomes an adult, but only if the child initiates the proceeding; or 2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect. We believe this section to be applicable in this case, thereby allowing for D.E.'s request for genetic testing.

[47] There are other sections of the Uniform Parentage Act that, if interpreted consistent with the legislative intent of said act, could have been applied to allow for the genetic testing in this case.

Section 14-20-26 provides in relevant part the following:

1. Except as otherwise provided in sections 14-20-25 through 14-20-58, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

a. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

b. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child."

[48] S.E.L. asserts the he and J.A.P. were in a sexual relationship during the time the minor child was conceived. He was unaware at the end of their relationship that J.A.P. was pregnant. J.A.P. made statements to her mother and S.E.L.'s mother that S.E.L. is the father of J.J.M. J.A.P.'s sister also submitted an affidavit testifying to the fact that S.E.L. and J.A.P. were in a relationship during the time in which J.J.M. was conceived and she believed S.E.L. was J.J.M.'s father. The evidence shows a high probability that S.E.L. is the biological father of this child.

According to North Dakota Century Code Section 14-20-43:

1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the court may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the court determines that:

   a. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

   b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

2. In determining whether to deny a motion seeking an order for genetic testing under this section, the court shall consider the best interest of the child, including the following factors:

   a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

   b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;

   c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;

   d. The nature of the relationship between the child and presumed or acknowledged father;

   e. The age of the child;

   f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

   g. The nature of the relationship between the child and any alleged father;

   h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and

   I. Other facts that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

3. In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.

4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.

5. If the court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

[49] In this case, application of the foregoing statute would undeniably result in the court ordering genetic testing for S.E.L. and the minor child. If S.E.L. is genetically proven to be the child's biological father, which S.E.L. firmly believes will be the case, it would be catastrophic for this child to never be allowed to have a relationship with his biological father.

[50] The Court in this case did not apply Section 14-20-43 and did not give any reason for not applying said section. The undersigned assumes that the District Court did not feel such an analysis was appropriate given the two-year statute of limitations. However, in this particular case, the entire public policy and legislative intent must be considered in interpreting the terms of the Uniform Parentage Act. Paragraph 2 of 14-20-43 forces the Court to consider the best interest of the child. It is in this child's best interests for genetic testing to be ordered. It would be more harmful to J.J.M. to force him to remain in foster care than to allow for the genetic testing and proving of true parentage. J.A.P. and J.D.M. were living in different states at the time the child was conceived, and they were not in any kind of intimate sexual relationship at that time. J.D.M. knew full well he was not the father of J.J.M. and yet he fraudulently signed an Acknowledgement of Paternity stating

that he was in fact the father. It is not fair, equitable, or judicious for S.E.L. to be denied genetic testing based on the fraudulent actions of J.D.M.

[51] The enactment of the Uniform Parentage Act has been critical to parentage determinations. However, the evolution of the definition of family and scientific advances increasingly make it difficult to speak of an average American family. As such, courts must interpret the Uniform Parentage Act to apply to situations that were unforeseen when the Uniform Parentage Act was drafted. Western New England Law Review Vol. 30:773. Courts have routinely interpreted the Uniform Parentage Act (UPA) to find legal parentage in persons who are not the child's genetic parents. However, if those "persons" are no longer alive, should the biological father not have an opportunity to present evidence of paternity?

[52] According to Western New England Law Review, Vol. 30:773, there are three dominant reasons why an increase in the number of potential fathers furthers the UPA's general goals. First, it prevents the societal problem of having children who only have one legal parent, are financially dependent on the state and lack the emotional and financial security of the historically recognized two parent support system. Second, it preserves a child's relationship with the person that the child recognizes as a parent. Third, it protects the rights that a child acquires through parents, including the rights to receive child support and health insurance benefits while the parent is alive and to inherit by intestacy, receive life insurance benefits, social security benefits and standing in a wrongful death suit in the event of a parent's death. In light of these reasons, the UPA's presumed father provision includes the broadest possible number of potential fathers to protect a child's two parent support system and the rights acquired with that system.

[53] According to the Court in Michael H. vs. Gerald D., 491 U.S. 110, 124 (1989), "the state's policy of treating the marital presumption as conclusive ... was justified by its interest in protecting both marriage and the child's established bonds within the intact marital family from external disruption."

[54] According to the 2005 Testimony of Duane Dekrey, Chairman on House Bill 1121 - Paternity, Uniform Parenting Act and related issues on January 17, 2005 (a copy of said article is attached hereto and incorporated herein by this reference), "paternity establishment is one of the five performance measures on which federal incentives are distributed and is one of three measures that can result in penalty for poor performance. Throughout the federal fiscal year, children are added or removed from our caseload. At the end of each federal fiscal year, we need to achieve at least a 90% average to avoid a federal penalty to the TANF program."

[55] Federal funding is another major contributing factor to the enactment and subsequent amendment of the North Dakota Uniform Parentage Act. This purpose is consistent with what S.E.L. is attempting to do. He wants to care for his biological daughter, financially, emotionally, physically, etc. The alternative is to have the child remain in foster care, thereby using public funding that could be eliminated in its entirety.

CONCLUSION

[56] In light of the foregoing, the appellant, S.E.L., and the undersigned firmly believe that this Court must overturn the District Court's decision in dismissing S.E.L.'s complaint. The circumstances of this case are not such that the Uniform Parentage Act should apply. If the Court deems that the Act should apply, the District Court still erred in rendering such a ruling. Appellant, S.E.L., respectfully requests that the District Court's order dismissing

the action be overturned so that S.E.L. can proceed with genetic testing, and presumably, the development of a life-long parent-child relationship with his son.

Dated this _____ day of June, 2018.

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SUPREME COURT

OF THE

STATE OF NORTH DAKOTA

S.E.L.,	)	
	)	
Plaintiff / Appellant,	)	Supreme Court No. 20180075
	)	
v.	)	Stark County Case No.
	)	45-2016-DM-00203
J.A.P., J.D.M.	)	
	)	
Defendants / Appellees,	)	
	)	
and	)	
	)	
The State of North Dakota, Statutory Real Party in Interest and Appellee	)	

APPEAL FROM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR DISMISSAL ENTERED ON FEBRUARY 2, 2018, BY JUDGE RHONDA EHLIS, SOUTHWEST JUDICIAL DISTRICT, STARK COUNTY, NORTH DAKOTA, CASE NO. 45-2016-DM-00203

PROOF OF SERVICE

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[1] Theresa L. Kellington does hereby certify that on the 14th day of June 2018, this document and the following:

1. Appellant's Brief; and
2. Appellant's Appendix.

[2] was served through email upon the following:

Supreme Court of North Dakota
supclerkofcourt@ndcourts.gov

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Assistant Stark County State's Attorney
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[3] and served upon the following via USPS:

J.A.P.
4385 Ammons St.
Wheatridge, CO 80033

[4] by placing a true and correct copy thereof in an envelope addressed as above and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

[5] Dated this 14th day of June 2018.

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