

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-1551

A17-1552

In re the Custody of L. R. W.,
Child of Taylor Marie Woodside and Jeremiah Patrick Johnson

Susan Kathleen Taylor, petitioner,
Respondent,

Jeremiah Patrick Johnson, petitioner,
Appellant (A17-1551),
Respondent (A17-1552),

vs.

Taylor Marie Woodside,
Respondent (A17-1551),
Appellant (A17-1552).

Filed July 23, 2018

Affirmed

Reilly, Judge

Blue Earth County District Court
File Nos. 07-FA-16-634, 07-FA-15-344

Elizabeth L. Weinandt, Weinandt Law Office, LTD., Mankato, Minnesota (for respondent
Susan Kathleen Taylor)

Kezia Smith, Killion Smith Law, Mankato, Minnesota, and

Tami Lynn Peterson, Saxton Peterson Law Firm, Mankato, Minnesota (for appellant
Jeremiah P. Johnson)

Amanda Hagen, Hagen Family Law, St. Paul, Minnesota (for appellant Taylor M.
Woodside)

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Parents challenge the district court’s determination that its custody and parenting-time orders are not void for lack of an unspecified type of jurisdiction. Because parents submitted to the jurisdiction of the court by actively participating in the proceedings, we determine that they have effectively waived objections and defenses to personal jurisdiction and service of process, and we affirm.

FACTS

Mother T.M.W. and father J.P.J. are the biological parents of a minor child born in August 2012. The parents never married, but father signed a recognition of parentage (ROP) after the child’s birth in 2012. *See* Minn. Stat. § 257.75 (2012) (describing effect of ROP).¹ Mother was the sole legal and physical custodian of the child. After the child was born, mother and child lived intermittently with S.K.T., the child’s maternal grandmother, and T.W., the child’s maternal grandfather. The child’s maternal grandparents are not married to one another and maintain separate homes. During this time, grandmother frequently kept the child for “weekends and entire weeks at a time.” In

¹ The ROP signed by father has “the force and effect of a judgment or order determining the existence of the parent and child relationship. . . .” Minn. Stat. § 257.75, subd. 3. An ROP establishes the parent-child relationship and permits a father to commence an action to determine parenting time under chapter 518. *See Beardsley v. Garcia*, 753 N.W.2d 735, 737-38 (Minn. 2008). Because the 2016 amendment did not make substantive changes to the ROP statute, we reference the 2012 statute.

May 2014, mother told grandfather that she was unable to care for the child. The child came to live with grandmother permanently in May 2014, and has lived continuously with grandmother since that time.

In January 2015, grandmother and mother submitted a proposed custody consent decree for approval in Blue Earth County District Court File No. 07-FA-15-344, seeking to transfer temporary legal and temporary physical custody of the child to grandmother under Minn. Stat. § 257C.07. The consent decree recognized that mother placed the child in grandmother's care "regularly from the time of his birth" and grandmother "accepted the caregiving responsibility, including responsibility for medical and/or emergency caregiving. . . ." The district court judge signed the decree, establishing temporary legal and temporary physical custody of the child with grandmother. Father was not served with notice of these proceedings.

In September 2015, mother filed a motion for parenting time. After participating in a neutral evaluation, grandmother and mother agreed that grandmother would have sole legal and sole physical custody of child, and mother would have parenting time. The district court judge signed the stipulation and order for custody, parenting time, and child support in March 2016. Father was not served with notice of these proceedings.

In February 2016, one month before the court signed the stipulation and order in mother's case, father filed a summons and petition to establish custody and parenting time in Blue Earth County District Court File No. 07-FA-16-634. Father sought an award of parenting time and joint physical and joint legal custody with grandmother. Because the existing custody order awarded temporary sole legal and temporary sole physical custody

of the child to grandmother, father served his summons and petition upon grandmother but not mother. Father and grandmother participated in a neutral evaluation and, in July 2016, submitted a stipulation and proposed order for custody, parenting time, and judgment to the court. The stipulation acknowledged that there was “an existing Order regarding the custody of and parenting time for the minor child. . . .” Father and grandmother agreed that grandmother would retain sole legal and sole physical custody of the child and father would be entitled to parenting time. The district court signed the proposed order in July 2016 and entered judgment on the order.

In April 2017, father moved to vacate the January 2015 custody consent decree and the March 2016 parenting-time order between grandmother and mother, as well as the July 2016 order based on the stipulation between grandmother and father. Father’s motion does not reference any particular statute or court rule upon which his motion to vacate relies. Nevertheless, father asserted that all of the orders were void because the court lacked an unspecified type of jurisdiction. The district court denied the motion, and father and mother filed separate appeals, which we consolidated.

D E C I S I O N

Parents argue that the district court lacked jurisdiction over the custody proceedings involving their child. “Jurisdiction refers to a court’s power to hear and decide disputes.” *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 584-85 (Minn. 2016) (quotation omitted) (distinguishing subject-matter jurisdiction from claim-processing rules). The Supreme Court cautions us to “use[] the label ‘jurisdictional’ . . . only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the

persons (personal jurisdiction) falling within a court’s adjudicatory authority.” *Kontrick v. Ryan*, 540 U.S. 443, 455, 124 S. Ct. 906, 915 (2004).²

At the outset, we clarify the distinctions between subject-matter jurisdiction and personal jurisdiction. “Subject-matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought.” *Seehus v. Bor–Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). Defects in subject-matter jurisdiction may be raised at any time in the proceeding, including for the first time on appeal. *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). Subject-matter jurisdiction cannot be waived or conferred by the consent of the parties. *Seehus*, 783 N.W.2d at 147. Personal jurisdiction, by contrast, “refers to a court’s power to decide the rights and interests of the parties in a lawsuit.” *H.A.W. v. Manuel*, 524 N.W.2d 10, 12 (Minn. App. 1994), *review denied* (Minn. Jan. 13, 1995). “[S]ervice of process is the means by which a court obtains personal jurisdiction over a defendant. . . .” *McCullough & Sons, Inc.*, 883 N.W.2d at 590. Unlike subject-matter jurisdiction, parties may waive a challenge to personal jurisdiction. *Hanson v. Woolston*, 701 N.W.2d 257, 265 (Minn. App. 2005), *review denied* (Minn. Oct. 18, 2005); *see also* Minn. R. Civ. P. 12.02 (noting that lack of personal jurisdiction is an affirmative defense); Minn. R. Civ. P. 12.08 (noting that certain defenses, including lack of personal jurisdiction,

² Appellants’ argument assumes that the matter is jurisdictional in nature, and uses the term imprecisely. “[C]ourts and parties often use concepts and language associated with ‘jurisdiction’ imprecisely to refer to, among other things, nonjurisdictional claims-processing rules or nonjurisdictional limits on a court’s authority to address a question.” *Moore v. Moore*, 734 N.W.2d 285, 287 n. 1 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

are waived if not raised by motion or pleading); *McCullough & Sons, Inc.*, 883 N.W.2d at 590 (noting that unlike a defect in a court’s subject-matter jurisdiction, parties can waive defects in personal jurisdiction).

Jurisdiction presents a “threshold issue” that must be addressed prior to reviewing the merits of the case, *State v. Eibensteiner*, 690 N.W.2d 140, 149 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005), and we review legal issues concerning jurisdiction de novo, *Porro v. Porro*, 675 N.W.2d 82, 85 (Minn. App. 2004). First, appellants raise a jurisdictional challenge by asserting that grandmother failed to properly commence a proceeding under chapter 257C. Appellants failed to specify the type of jurisdiction implicated by their argument. For purposes of this appeal, we assume appellants use the term “jurisdiction” in the sense referred to in *Kontrick*. Under section 257C.03, an individual other than a child’s parent may petition the district court for custody of the child as a de facto custodian or an interested third party. Minn. Stat. § 257C.03, subd. 1(a) (2016). Section 257C.07 permits a parent to transfer legal and physical custody of a child to another by a custody consent decree. Minn. Stat. § 257C.07 (2016).

The parties disagree whether someone seeking legal and physical custody of a child via a custody consent decree must first initiate a proceeding under Minn. Stat. § 257C.03. Appellants argue that any petitioner seeking a custody consent decree under section 257C.07 must first commence a proceeding under section 257C.03 and comply with the requisites of that section requiring petitions or motions, including written notice to the child’s parents. *See* Minn. Stat. § 257C.03, subds. 2-3 (articulating requisites of petition and necessity of serving written notice of hearing on parents of minor child). Appellants

argue that, because grandmother failed to comply with section 257C.03, the original custody consent decree is invalid for lack of jurisdiction. Grandmother counters that section 257C.07 operates as a stand-alone provision under the chapter and that she was not required to initiate an action under section 257C.03 before being awarded custody by a custody consent decree.

This dispute raises a question of statutory interpretation. Statutory interpretation presents a question of law, which we review de novo. *Hince v. O’Keefe*, 632 N.W.2d 577, 582 (Minn. 2001). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” *In re Welfare of J.P.–S.*, 880 N.W.2d 868, 871 (Minn. App. 2016) (quotation omitted). We begin by determining whether the statute’s language is ambiguous on its face. *Id.* (quotation omitted). When a statute is unambiguous, we apply its plain language without exploring the spirit or purpose of the law. *See Matter of Welfare of A.R.B.*, 906 N.W.2d 894, 897 (Minn. App. 2018). But if we conclude that the statutory language is ambiguous, we apply the canons of statutory construction. *J.P.–S.*, 880 N.W.2d at 871. When engaging in statutory interpretation, we “read a statute as a whole and give effect to all of its provisions.” *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018).

The plain language of the statute, viewed as a whole, supports the conclusion that a petition filed under section 257C.07 does not require a petitioner to first comply with the requirements of section 257C.03. In the definitional section of chapter 257C, a de facto custodian is defined as an individual, other than a parent of the child, who has acted as the primary caretaker of a child who has “resided with the individual without a parent present

and with a lack of demonstrated consistent participation by a parent” for certain defined periods of time. Minn. Stat. § 257C.01, subd. 2(a) (2016). An interested third party is defined as a person who is not a de facto custodian, but who can prove the existence of a child-endangerment factor listed in Minn. Stat. § 257C.03, subd. 7(a). Minn. Stat. § 257C.01, subd. 3. Notably, the definitions of “de facto custodian” and “interested third party” exclude individuals who have a child placed in their care through a section 257C.07 custody consent decree. *Id.*, subds. 2(d) (“‘De facto custodian’ does not include an individual who has a child placed in the individual’s care . . . through a custody consent decree under section 257C.07.”); 3(b) (“‘Interested third party’ does not include an individual who has a child placed in the individual’s care . . . through a custody consent decree under section 257C.07.”). Moreover, placement of a child by way of a custody consent decree may occur prior to a petition for legal custody by a de facto custodian or interested third party, indicating that a custody consent-decree proceeding provides an independent basis for custody transfers. Minn. Stat. § 257C.07. For these reasons, and applying the plain language of the statute, we conclude that it was permissible for mother to use a custody consent decree to transfer legal and physical custody to grandmother under section 257C.07 without first initiating a section 257C.03 proceeding.

Further, we note that if the legislature intended for section 257C.03’s requirements to govern pre-existing custody orders initiated under section 257C.07, it could have inserted language to that effect into the statute. *See State v. Wenthe*, 865 N.W.2d 293, 304 (Minn. 2015) (articulating the principle that it is not the function of a reviewing court to “supply that which the legislature purposely omits or inadvertently overlooks”). Based

upon the plain language of the chapter, we reject appellants' argument that the orders awarding temporary and permanent custody to grandmother are defective for lack of jurisdiction because she did not comply with the requirements of section 257C.03.

Next, parents raise a personal-jurisdiction challenge by claiming that they were not properly involved, served, or subject to the individual orders in the separate cases. Specifically, father argues that he was not served with notice of the custody proceedings between mother and grandmother in File No. 07-FA-15-344, and mother argues that she was not served with notice of the custody proceedings between father and grandmother in File No. 07-FA-16-634. Together, parents argue that the district court erred by denying father's motion to vacate the custody orders as void due to the underlying defects in the court's jurisdiction over father in File No. 07-FA-15-344 and mother in 07-FA-16-634.

We disagree. We acknowledge that a judgment is void "if the issuing court . . . lacked personal jurisdiction over the parties through a failure of service that has not been waived. . . ." *Bode v. Minn. Dep't of Nat. Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999), *aff'd*, 612 N.W.2d 862 (Minn. 2000). But it is well established in Minnesota that a party may consent to personal jurisdiction and "does so when he takes or consents to any step in the cause which assumes that jurisdiction exists or continues." *Comm'r of Nat. Res. v. Nicollet Cty. Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31-32 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Nov. 13, 2001). Here, the district court declined to vacate the January 2015, March 2016, and July 2016 custody and parenting-time orders, reasoning that:

[I]t is this Court's position that even if there is some claim that [mother] is not bound by the Findings and agreement in file FA-16-634, she is still bound by the agreement and Court ordered Judgment in FA-15-344. Similarly, [father] in light of the information he had, may not be bound by the Findings in FA-15-344 wherein he was not a party but acknowledged and adopted substantially the same information by his agreement with attorney representation in 07-FA-16-634. As such, each of the parties are currently bound by the judgment and stipulated agreement which was reached in the files pertaining to [each parent].

We discern no error in the district court's conclusion. Father actively participated in family court proceedings in his case and functionally reaffirmed grandmother's custody of the minor child when he asserted his custodial rights in his 2016 court filing and named grandmother as a party. Father voluntarily participated in the neutral evaluation process and submitted a stipulated agreement to the court for approval.³ Similarly, mother agreed that grandmother should have custody of the child, participated in a neutral evaluation procedure, and submitted stipulated custody and parenting-time orders to the court in the 2015 action. We therefore conclude that appellants waived any purported defects in personal jurisdiction by "affirmatively invok[ing] the jurisdiction of the court to rule" in their favor. *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 (Minn. 2000); *see also Wachsmuth v. Johnson*, 352 N.W.2d 132, 133 (Minn. App. 1984) (rejecting personal-

³ We note, moreover, that even if grandmother and mother had initiated an action under section 257C.03 and served written notice of the petition upon father, father would have had the opportunity to petition for rights of parenting time or custody in an independent action under section 518.156—which is exactly what father did. *See* Minn. Stat. § 518.156 (2016) (permitting a parent to initiate a child-custody proceeding by motion where mother and father have signed a recognition of parentage).

jurisdiction challenge where parent moved to reduce child support arrearage because he “made a general appearance and subjected himself to the jurisdiction of the court”).

Lastly, we reject parents’ collateral attacks on the judgments. Parents claim that although they each invoked the power of the court in their individual cases, they did not invoke the power of the court in *each other’s* actions. Parents did not raise this argument below. A party may, when appropriate, make a collateral attack on a “judgment entered in a different proceeding.” *Bode v. Minn. Dep’t of Nat. Res.*, 612 N.W.2d 862, 866 (Minn. 2000) (quotation omitted). Minnesota does not permit a collateral attack on a judgment that is “valid on its face,” although an attack “going to the jurisdiction of the court” may be grounds to challenge a judgment. *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996) (stating that “[a] judgment alleged to be merely erroneous, or founded upon irregularities in the proceedings not going to the jurisdiction of the court, is not subject to attack”), *review denied* (Minn. Feb. 26, 1997). However, jurisdictional attacks in collateral actions must be made within a “reasonable time.” *Bode*, 612 N.W.2d at 869. What qualifies as a “reasonable time must be determined by considering all attendant circumstances,” including intervening rights, prejudice to the adverse party, and the commanding equities of the case. *Id.* at 870 (quotation omitted).

Parents failed to assert their collateral attacks within a reasonable time. Father waited more than a year between filing his petition and then seeking to vacate it. Given the state’s strong preference for finality in fixing custody in child-custody matters, we consider this delay unreasonable as a matter of law. *See, e.g., In re Welfare of J.R.*, 655 N.W.2d 1, 5 (Minn. 2003) (noting that delays affect “a child’s opportunity to have a

permanent home”); *In re Welfare of J.J.B.*, 390 N.W.2d 274, 280 (Minn. 1986) (characterizing “untoward delay” in resolution of certain child-custody matters as “intolerable”); *Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. App. 1999) (“In the interest of finality, ‘setting aside a judgment on voidness grounds is narrowly restricted.’”), *review denied* (Minn. Aug. 18, 1999).

Affirmed.