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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0092**

In re: the Petition of M.L.H. and J.N.H. to Adopt S.G.P.

**Filed December 16, 2019
Affirmed
Bjorkman, Judge**

Lyon County District Court
File No. 42-FA-18-710

Ruta Johnsen, Ann Knudson, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota (for appellant B.R.S.)

Ronald E. Seanor, Stoneberg, Giles & Stroup, P.A., Marshall, Minnesota (for respondents M.L.H. and J.N.H.)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-putative father challenges an order denying his motion to intervene in an adoption proceeding and allowing the adoption to proceed without his consent, arguing that he had good cause for failing to timely initiate a paternity action. Because the district court acted within its discretion, we affirm.

FACTS

Appellant-putative father¹ B.R.S. (father) and mother L.E.P. were involved in a romantic relationship, mother became pregnant, and the couple parted ways during the pregnancy. Mother gave birth to S.G.P. on February 9, 2018. She immediately signed an adoption plan with Lutheran Social Service of Minnesota (LSS), and the child was placed for potential adoption with respondents M.L.H. and J.N.H. Father's name does not appear on the child's birth certificate.

Father became aware of the child's birth on March 3. Two days later he registered with the Minnesota Fathers' Adoption Registry. On March 23, father received notice from LSS that the child had been born and that an adoption petition was or would be filed in Lyon County. LSS informed father that he could respond in one of three ways: (1) he could start a paternity action and file a form entitled "Admission of Paternity and Intent to Claim Parental Rights" in Lyon County, (2) he could deny paternity, or (3) he could consent to the child's adoption. The materials also informed father that if he wished to retain his parental rights to the child, he must take action within 30 days.

On April 5, father attempted to file an incomplete "Admission of Paternity and Intent to Claim Parental Rights" form in Lyon County. But he was unable to do so because there was no court file. Father then retained an attorney and signed a paternity complaint on April 17. Despite many attempts, father was unable to timely serve the complaint on

¹ A putative father is a "man who may be a child's father" but is either not married to the mother before the child is born or has not established his paternity. Minn. Stat. § 259.21, subd. 12 (2018).

mother.² According to father, mother avoided service by being “unreachable” on the numerous occasions that a private process server attempted to personally serve her. Father filed the complaint in Dakota County without proof of service on May 1—38 days after he received notice from LSS of the child’s birth and the proposed adoption.

Respondents petitioned to adopt the child on June 22. Father moved to intervene in the adoption proceeding, asserting that he had “good cause” to miss the 30-day statutory deadline to initiate the paternity action. Following a hearing, the district court denied father’s motion, determining the paternity action was untimely and father had not shown good cause for the delay. The district court also granted respondents’ motion to proceed with the adoption without father’s consent. Father appeals.

D E C I S I O N

The adoption statute provides that a child may not be adopted without the consent of the child’s parents or guardian. Minn. Stat. § 259.24, subd. 1(a) (2018). But “consent is not required of a parent who is not entitled to notice of the proceedings.” *Id.*, subd. 1(a)(1). A putative father is entitled to notice if he has (1) “registered with the fathers’ adoption registry”; (2) “timely filed an intent to retain parental rights with entry of appearance form under section 259.52”; and (3) initiated a paternity action “within 30 days of receipt of the fathers’ adoption registry notice” “unless, for good cause shown, he is unable to do so.” Minn. Stat. § 259.49, subd. 1(8) (2018). Section 259.52 requires putative

² In Minnesota, civil actions are commenced upon service of the summons on the defendant. Minn. R. Civ. P. 3.01. Mother did not acknowledge service of the paternity complaint until late July.

fathers to file within 30 days of receiving the adoption notice “a completed intent to claim parental rights form” in the county where the adoption petition will be filed. Minn. Stat. § 259.52, subd. 10 (2018). The notice must state that the putative father “intends to initiate a paternity action within 30 days” of receiving the notice. *Id.* “If good cause is shown, the putative father must be allowed more time to initiate the paternity action.” *Id.* Putative fathers who do not meet the statutory requirements are prohibited from later asserting any interest in the child in an adoption proceeding and are “considered to have abandoned the child.” *Id.*, subd. 10(1)-(3).

It is undisputed that father did not initiate a paternity action within 30 days of receiving notice from LSS of the proposed adoption. On appeal, father’s sole challenge is to the district court’s determination that he did not have good cause for failing to do so. Whether good cause is demonstrated is an issue within a district court’s discretion. *T.D. v. A.K.*, 677 N.W.2d 110, 113 (Minn. App. 2004) (“Permitting a party to serve or file a pleading after a time limit has expired is within a [district] court’s discretion, and the [district] court’s decision will not be reversed unless there has been an abuse of discretion.”), *review denied* (Minn. June 29, 2004).

In *T.D.*, this court held that a putative father seeking to establish good cause must demonstrate that “he lacked the necessary power, authority, or means” to timely initiate a paternity action. *Id.* at 113-14. There, the putative father had registered with the fathers’ adoption registry and timely filed a form asserting his intent to claim parental rights. *Id.* at 111. But he did not initiate a paternity action within the 30-day statutory period. *Id.* We concluded that the wrongful denial of father’s request for appointed counsel, the fact he

did not receive proper notice of the consequences for failing to file a paternity action, and his “significant eye injury” at the time of the child’s birth did not constitute good cause for failing to timely commence his paternity action. *Id.* at 114-15.

Father argues that mother thwarted his attempts to timely initiate the paternity action, providing good cause to extend the statutory deadline. He asserts that mother “actively concealed her plans to place the child for adoption, avoided service of the paternity pleadings,” and “played him” by insisting that she did not support the child’s adoption. And he contends the policy behind the 30-day requirement is met because everyone was aware from the beginning that he wants to parent the child.³ We are not persuaded.

The record does not establish that father lacked the power, authority, or means to timely commence his paternity action. First, father only sought to effectuate service through a private process server. Had he delivered the summons to the sheriff for service, he would have been able to file the complaint and effectively commence the action so long as the sheriff actually served mother within 60 days. Minn. R. Civ. P. 3.01(c). Second, as the district court observed, father offers no reason why he did not do on April 23 what he did on May 1—file the paternity complaint without proof of service. Third, while father hints that his efforts to timely initiate his paternity action were hampered by the conduct of

³ Father also argues that the district court’s refusal to grant him an evidentiary hearing deprived him of his constitutional right to due process. Because father did not raise this issue in the district court, it is forfeited. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (deeming forfeited constitutional questions not raised in the district court unless consideration is required in the interests of justice and the other party will not be unfairly surprised).

his attorney, any such conduct is insufficient to establish good cause for the delay. We rejected a similar argument in *T.D.*, holding that the fact father did not have an attorney and was forced to initiate the paternity action on his own was not good cause for his delay. *T.D.*, 677 N.W.2d at 114. On these facts, we cannot say that the district court abused its discretion by rejecting the argument that mother's evasive conduct established good cause for father's failure to commence a paternity action within 30 days.

Father's legal arguments supporting a broad reading of "good cause" are also unavailing. He acknowledges that our supreme court has strictly construed the requirement in Minn. Stat. § 259.52, subd. 8 (2018), that putative fathers register with the adoption registry within 30 days of the child's birth unless clear and convincing evidence shows it was not possible to do so. *Heidbreder v. Carton*, 645 N.W.2d 355, 369 (Minn. 2002) (rejecting "substantial compliance" argument of putative father who registered one day late). But father urges that "the different statutory deadlines for initially registering with the [registry] and the more flexible deadline for filing a paternity action are different because the balance of competing rights changes at different stages of the paternity and adoption process." We disagree. The interests of the various parties remain constant during adoption proceedings, and the identical 30-day statutory timelines for registering with the adoption registry and initiating a paternity action reflect a similar legislative concern that all aspects of the adoption process move quickly. See *Christianson v. Henke*, 812 N.W.2d 190, 192 (Minn. App. 2012) (stating that we "are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations" (quotation omitted)), *aff'd*, 831 N.W.2d 532 (Minn. 2013).

While the good-cause provision in Minn. Stat. § 259.52, subd. 10, affords district courts discretion to excuse a putative father's delay in initiating a paternity action, nothing in this record persuades us that the district court abused its discretion.

We are mindful of father's admirable desire to parent the child and his consistent efforts to make his intentions to do so known. But we discern no abuse of discretion by the district court in determining father does not have good cause for failing to initiate his paternity action within the statutory 30-day deadline. To be sure, the adoption timelines are short. But the statutory deadlines are clear and reflect the public policy of viewing promptness in resolving competing interests in reference to the child. *See Heidbreder*, 645 N.W.2d at 370 (declining to focus on the putative father's reasons for missing the adoption registry deadline, and stating that "[p]romptness is measured in terms of the baby's life not by the onset of the father's awareness" (quotation omitted)). Accordingly, we affirm the district court's order denying father's motion to intervene in the child's adoption proceeding and allowing the adoption to proceed without his consent.

Affirmed.