

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0202**

In Re: the Petition of M. J. R. and C. L. R. to Adopt D. J. R.

**Filed July 20, 2020
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-JV-FA-19-2

Mark D. Fiddler, Rachel L. Osband, Delmar V. Flynn, Fiddler Osband, LLC, Edina, Minnesota; and

Brittany Shively, Vincent & Shively, PA, Minneapolis, Minnesota (for appellants M.J.R. and C.L.R.)

Michael P. Boulette, Autumn C. Gear, Barnes & Thornburg, LLP, Minneapolis, Minnesota (for respondent J.A.R.-A.)

Shannon E. Smith, ICWA Law Center, Minneapolis, Minnesota (for respondent S.B.A.)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Slieter, Judge.

S Y L L A B U S

If the biological parents of a child execute a valid recognition of parentage under Minn. Stat. § 257.75 (2018), and it has not been revoked or vacated, then both parents are entitled to receive notice of an adoption of the child and must consent to any adoption, under Minn. Stat. §§ 259.24, subd. 1(a), .49, subd. 1(b)(7) (2018), even if mother irrevocably consented to the child's adoption under Minn. Stat. § 259.24, subd. 6a (2018).

O P I N I O N

REYES, Judge

On appeal in this adoption proceeding, appellants-preadoptive parents argue that the district court improperly dismissed their adoption petition and erroneously vacated their preadoptive custody order because (1) mother had no right to sign a Recognition of Parentage (ROP) and (2) father did not demonstrate good cause for not meeting the 30-day paternity-action filing deadline. Because both biological parents executed a valid ROP that has been neither revoked nor vacated, we affirm.

FACTS

Minor child D.J.R. was born to S.A. (mother) and J.R.-A. (father) (parents) in January 2019. Five days later, mother consented to appellants M.R. and C.R. having preadoptive custody of D.J.R., which the district court granted pursuant to Minn. Stat. § 259.47, subd. 3 (2018). Father did not join in this consent. In February 2019, father registered with the Minnesota Fathers' Adoption Registry.

In March 2019, mother initiated a paternity action against father, seeking to have him legally adjudicated as the father of D.J.R. Soon thereafter, father filed an answer and counterpetition in mother's paternity action and an admission of paternity and intent to claim parental rights. The district court dismissed mother's paternity action after parents jointly executed and filed an ROP regarding D.J.R., which created a presumption of father's paternity pursuant to Minn. Stat. § 257.55, subd. 1(e) (2018).¹

¹ The ROP is not in the record, but the parties do not dispute its execution or filing.

In April 2019, mother filed a motion to vacate her consent to the adoption, seeking to terminate appellants' preadoptive custody of D.J.R. and to have D.J.R. returned to her care. The district court denied mother's motion, ruling that her consent had become irrevocable, and that her consent was not obtained by fraud. *See* Minn. Stat. § 259.47, subd. 7 (2018).

Later in April 2019, appellants filed a petition to terminate father's parental rights, claiming that he was palpably unfit to parent D.J.R. *See In re Welfare of J. A. R.-A.*, No. A19-1203, 2019 WL 7049940, at *1 (Minn. App. Dec. 23, 2019). The district court dismissed appellants' petition, determining that they had failed to state a prima facie case to terminate father's parental rights, and this court affirmed. *Id.* at *2.

In June 2019, appellants filed a motion in the adoption proceeding asking the district court to determine whether it could finalize the adoption without father's consent. The district court denied this motion, determining that, because father and mother executed and filed a valid ROP, father became the presumed father, requiring him to be notified of, and to consent to, any adoption of D.J.R. *See* Minn. Stat. §§ 259.24, subd. 1(a), .49, subd. 1(b)(7).

The district court also determined that either the mother or presumed father could initiate a paternity action and that mother's doing so entitled father to receive notice of the potential adoption of D.J.R. *See* Minn. Stat. § 259.49, subd. 1(b)(8) (2018). The district court determined that father demonstrated good cause for not initiating a separate paternity action, because father "went to court to initiate a paternity action and was told that he could not [do so] because one had already been initiated [by mother]." Father followed the

direction of court administration to file and serve a response in mother's paternity action instead of initiating his own duplicative paternity action. The district court concluded that father's response substantially complied with the requirements of Minn. Stat. § 257.55 (2018).

In February 2020, the district court dismissed appellants' petition to adopt D.J.R., vacated the January 2019 preadoption custody order, and determined that mother would be the sole legal custodian and sole physical custodian of the child unless and until father established his custodial rights under Minn. Stat. § 257.75, subd. 3(a). This appeal follows.

ISSUE

Did both parents' signing and executing an ROP with respect to D.J.R. after mother irrevocably consented to the child's adoption entitle father to receive notice of, and consent to, the adoption?

ANALYSIS

Appellants argue that, because mother signed an ROP after her consent to the adoption became irrevocable per Minn. Stat. § 259.24, subd. 6a, she had no right to sign the ROP, rendering it invalid. We disagree.

We interpret questions of law deriving under the parentage statute, chapter 257, and the adoption statute, chapter 259, de novo. *County of Dakota v. Blackwell*, 809 N.W.2d 226, 228 (Minn. App. 2011).

Neither party asserts that the relevant sections of chapters 257 or 259 are ambiguous, nor do we discern any ambiguity in those provisions. Therefore, we apply their plain meaning. See Minn. Stat. § 645.16 (2018). The parents of a child born to a mother not

married when she conceived and when she gave birth to the child may state in a signed writing under oath before a notary public and filed with the state registrar of vital records, that they are and wish to be recognized as the biological parents of the child. Minn. Stat. § 257.75, subd. 1 (describing ROP procedure). An ROP “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(a). Furthermore, an ROP is “determinative for all other purposes related to the existence of the parent and child relationship.” Minn. Stat. § 257.75, subd. 3(c)(2). Unless and until a court enters an order granting custody to someone else, the mother has sole legal and sole physical custody. *See* Minn. Stat. § 257.75, subd. 3(a).

Section 257.75, the ROP statute, does not limit a mother’s ability to acknowledge her biological relation to her child. The Minnesota Supreme Court has acknowledged that ongoing adoption proceedings do not prevent parents from executing a valid ROP. *See T.G.G. v. H.E.S.*, ___ N.W.2d ___, ___, 2020 WL 3261161, at *6-7 (Minn. June 17, 2020) (stating, in a case examining mother’s ability to validly *revoke* ROP, that, “[b]ecause Father is a parent who signed an ROP, which has not been revoked or vacated, he is entitled to notice of the adoption-petition under Minn. Stat. § 259.49, subd. 1(b)(7)”).

The adoption statute provides that “notice of the hearing upon a petition to adopt a child *must* be given to . . . the parent of the child if . . . the person and the mother of the child have signed a . . . recognition of parentage . . . which has not been revoked or vacated.”² Minn. Stat. § 259.49, subd. 1(b)(7) (emphasis added). “Must” is mandatory.

² Notice of a hearing on a petition to adopt a child must be given to a person who (1) registered with the fathers’ adoption registry; (2) timely filed an intent to retain parental

Minn. Stat. § 645.44, subd. 15(a) (2018). Any resulting adoption also requires the father's consent. Minn. Stat. § 259.24, subd. 1(a) ("No child shall be adopted without the consent of the child's parents.").

Thus, an unrevoked, validly executed ROP creates a presumption of paternity that entitles the presumed father to notice of a hearing on the adoption petition, and requires that presumed father consent to, or withhold consent for, any resulting adoption. *See* Minn. Stat. §§ 257.75, subd. 3, 259.24, subd. 1(a), .49, subd. 1(b)(7). Appellants do not dispute the presumption of paternity. Rather, they argue that allowing parents to sign an ROP after mother's consent has become irrevocable interferes with the preadoptive custody order and "sabotage[s] an otherwise valid adoption."

But no adoption, valid or otherwise, occurred here. Appellants had *preadoptive custody* of D.J.R. An award of preadoptive custody is not a grant of an adoption. *See* Minn. Stat. § 259.47, subd. 3 (outlining preadoptive custody as precursor to adoption). Furthermore, the plain language of chapters 257 and 259 does not forbid a mother from signing and executing an ROP even after she irrevocably consents to an adoption. Nor does either section 259.49 of the adoption statute or section 257.75 of the parentage statute impose a deadline on parents signing and executing an ROP, although section 257.75, subdivision 2, provides a 60-day deadline for *revoking* an ROP. *See* Minn. Stat. § 645.19 ("Exceptions expressed in law shall be construed to exclude all others.").

rights under Minn. Stat. § 259.52 (2018); and (3) initiated a paternity action within 30 days of receiving the fathers' adoption-registry notice, unless "for good cause shown, he is unable to do so within the 30 days." Minn. Stat. § 259.49, subd. 1(b)(8).

Unless parental rights are terminated in an appropriate proceeding, a child's parents must consent before a child's adoption. Minn. Stat. § 259.24, subd. 1(a). However, a parent's consent to adoption "does not terminate [] parental rights," which may "be terminated *only* by an adoption decree or by a court order." Minn. Stat. § 259.24, subd. 5(2) (2018) (emphasis added). Because there is neither an adoption decree nor a court order terminating parental rights here, mother's consent to the prospective adoption did not render her subsequent ROP invalid. Moreover, given that both parents must consent to an adoption, Minn. Stat. § 259.24, subd. 1(a), once father signed the ROP, he, too, had to consent.

Appellants contend that section 259.24, subdivision 5(2), refers only to "the child's right to financial support" because the statute provides that, "[u]nless the child is adopted or your parental rights are terminated, you may be asked to support the child." But this argument is unavailing, because the statute refers to "*parental rights to a child*," not to the child's rights. Minn. Stat. § 259.24, subd. 5(2) (emphasis added); *see also id.* ("The consent itself does not terminate your parental rights."). Based on the plain language of chapters 257 and 259, we hold that, if the biological parents of a child execute a valid ROP under Minn. Stat. § 257.75, and it has not been revoked or vacated, then both parents are entitled to receive notice of an adoption of the child and must consent to any adoption, under Minn. Stat. §§ 259.24, subd. 1(a), .49, subd. 1(b)(7), even if mother irrevocably consented to the child's adoption under Minn. Stat. § 259.24, subd. 6a.

Appellants also argue that father is not entitled to consent to the adoption because he did not timely file a paternity action within 30 days of the child's birth, as required by

Minn. Stat. § 259.49, subd. 1(b)(8). Appellants contend that only a putative father may commence a paternity action per Minn. Stat. § 259.52, subd. 10. We decline to reach this argument because subdivision 1(b)(8) only applies if a putative father “is not entitled to notice under [subdivision 1(b)(7)],” which the father in this case is. *See* Minn. Stat. § 259.49, subd. 1(b)(8).

D E C I S I O N

Because both parents executed a valid ROP under Minn. Stat. § 257.75, and because that ROP has not been revoked or vacated, both parents were entitled to receive notice of an adoption of the child and to consent to any adoption, under Minn. Stat. §§ 259.24, subd. 1(a), .49, subd. 1(b)(7), even if mother irrevocably consented to the child’s adoption under Minn. Stat. § 259.24, subd. 6a.

Affirmed.