STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0779

In re the Matter of:
E. M. B., DOB February 14, 2014,
Sharo'n Lily Isabella Mathison, petitioner,
Respondent,

vs.

Jacqueline Nicole Webb,
Appellant,
Andrew Joseph Brown,
Respondent Below.

Filed March 13, 2023
Affirmed
Larson, Judge

Washington County District Court
File No. 82-FA-21-2247

Kathryn M. Lammers, Angela M. Streit, Heimerl & Lammers, L.L.C., Minnetonka, Minnesota (for respondent)

Michael Ortner, Theresa A. Bofferding, Ortner & Bofferding, L.L.C., St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larson, Judge; and Kirk, Judge.*

SYLLABUS

A grandparent who resided with a grandchild for 12 or more months may petition for visitation rights under Minn. Stat. § 257C.08, subd. 3 (2022), after the child's parent

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

removes the child from the home the grandparent and child shared even if the grandparent no longer resided in the home at the time of removal.

OPINION

LARSON, Judge

Appellant Jacqueline Nicole Webb (mother) challenges the district court's order granting her mother, respondent Sharo'n Lily Isabella Mathison (grandmother), grandparent visitation with mother's child, E.M.B. Mother argues the district court misapplied section 257C.08, subdivision 3, when it allowed grandmother to petition for visitation, because the provision does not allow a grandparent to petition if the grandparent no longer lived with the child at the time the parent removed the child from the home. We conclude that section 257C.08, subdivision 3, allows a grandparent otherwise satisfying that provision to petition the district court for visitation, even if the grandparent no longer lives with the child at the time the parent removed the child from the home. Therefore, we affirm.

FACTS[1]

Mother gave birth to E.M.B. in February 2014. At the time, mother was 16 years old. Before giving birth, mother lived with grandmother in grandmother's house. And after E.M.B.'s birth, mother and E.M.B. lived in grandmother's house with grandmother for just over two years. Mother and grandmother had a strained relationship. Yet, according to the district court, "[grandmother] was like a second parent to [E.M.B.]."

[1] The facts in this case are not in dispute.

Grandmother moved out of the house in April 2016.[2] According to the district court, grandmother moved out "because of [mother]'s anger towards [grandmother] and [grandmother's] belief that [mother] needed time and space to heal from this anger." Mother and E.M.B. continued to live in grandmother's house, while grandmother continued to pay utilities for the home. In April 2017, grandmother sold the house, and mother and E.M.B. moved into a new residence. Despite the move, grandmother continued to see E.M.B. regularly.[3] In September 2020, mother cut off E.M.B.'s contact with grandmother when mother suspected grandmother called child-protection services.

In June 2021, grandmother petitioned the district court for grandparent visitation with E.M.B. pursuant to section 257C.08, subdivision 3.[4] The district court held an evidentiary hearing. At the evidentiary hearing, mother moved for judgment as a matter of law, arguing section 257C.08, subdivision 3, does not provide a basis for a grandparent to petition for visitation when the grandparent leaves the shared home before the parent removes the child from the home. The district court reserved ruling on this issue, and the parties submitted written proposed orders.

---

[2] After grandmother moved out of her house, she continued to care for E.M.B. Grandmother had E.M.B. on weekends from Friday nights to Sunday afternoon.

[3] When mother first moved, grandmother still watched E.M.B. on the weekends. Sometime during 2018, grandmother's time with E.M.B. was reduced to one overnight on weekends. After mother had her second child in late 2019, E.M.B. would usually spend one weekend day with grandmother, but E.M.B. would no longer stay overnight.

[4] Although grandmother petitioned the district court under the 2020 version of subdivision 3, we apply the current version of the statute because it has not been amended since 2002. *See* 2002 Minn. Laws ch. 304, § 13.

The district court issued its findings of fact, conclusions of law, and order, granting grandmother's petition for grandparent visitation under section 257C.08, subdivision 3. The district court acknowledged that section 257C.08, subdivision 3, "does not specifically address a situation where a grandchild resided with a grandparent for twelve or more months, but the grandparent then leaves her own home, and the child continues to live there." But the district court reasoned that because grandmother moved to benefit mother and E.M.B., grandmother "should not be denied her ability to seek grandparent visitation."

Mother appeals.

ISSUE

Did the district court err when it determined that Minn. Stat. § 257C.08, subd. 3, provides a statutory path for grandmother to petition for visitation rights to her grandchild?

ANALYSIS

Mother challenges the district court's order granting grandmother visitation rights to E.M.B. under section 257C.08, subdivision 3. Mother contends the district court erred in its interpretation of the statute. Mother's argument presents a question of law, which we review de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009).

The goal of statutory interpretation "is to ascertain and effectuate the intention of the legislature." *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 590 (Minn. 2021) (quotation omitted). "The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous." *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (quotation omitted). "In determining whether a statute is ambiguous, we will construe the statute's words and phrases according to their

plain and ordinary meaning." *Id.* (quotation omitted). A statute is ambiguous only if its language is subject to more than one reasonable interpretation. *Martin v. Dicklich*, 823 N.W.2d 336, 342 (Minn. 2012). Multiple parts of a statute may be read together to ascertain whether the statute is ambiguous. *Id.* at 344. "If the plain language of a statute is clear and free from all ambiguity, we will not disregard the letter of the law under the pretext of pursuing its spirit." *Rohmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012). But when the language is ambiguous "we will go beyond the plain language of the statute to determine the intent of the legislature." *Id.*

Section 257C.08, subdivision 3, provides that

> [i]f an unmarried minor has resided with grandparents . . . for a period of 12 months or more, *and is subsequently removed from the home by the minor's parents*, the grandparents . . . may petition the district court for an order granting them reasonable visitation rights to the child during minority.

(Emphasis added.) Mother asserts that section 257C.08, subdivision 3, plainly provides where the grandparent must live at the time the child "is subsequently removed from the home."[5] According to mother, the use of the word "home" requires the grandparent to live

[5] In her briefing, mother suggests that section 257C.08, subdivision 3, should not apply to these circumstances because grandmother, not mother, "removed" E.M.B. when grandmother sold the home where E.M.B. resided. Mother failed to present this argument to the district court and did not adequately brief the argument in our court. We, therefore, do not reach this argument because it is forfeited. *See In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (citation omitted) ("Minnesota appellate courts decline to reach an issue in the absence of adequate briefing."), *rev. denied* (Minn. Jun. 20, 2017); *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (citation omitted) ("An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on

with the child at the time of removal because "home" connotes an existing social unit. Mother compares the use of "home" in section 257C.08, subdivision 3, and the use of "household" in Minn. Stat. § 257C.08, subd. 4 (2022).[6] Citing the general rule that "when different words are used in the same context, [this court] assume[s] that the words have different meanings," *Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013), mother asserts "household" means a "shared living quarter" while "home" refers to a "social unit."[7]

Here, because the statute defines neither the word "home" nor "household," we may look to dictionary definitions to determine the common and ordinary meanings. *T.G.G. v. H.E.S.*, 946 N.W.2d 309, 315 (Minn. 2020). The plain meaning of these words does not comport with mother's argument that the word "home" refers to a "social unit" and, therefore, the grandparent must reside in the home at the time of removal. In fact, dictionary definitions provide that the words have the opposite meaning. *Compare The American Heritage Dictionary of the English Language* 852 (5th ed. 2018) (defining

---

mere inspection."), *rev. denied* (Minn. Apr. 26, 2017); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting a party cannot raise a new issue on appeal, "[n]or may a party obtain review by raising the same general issue litigated below but under a different theory").

[6] The relevant portion of section 257C.08, subdivision 4, states, "If an unmarried minor has resided in a *household* with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition . . . for . . . reasonable visitation rights." (Emphasis added.)

[7] The cases cited by mother to establish that "a 'home' is something far more than a household" are unpersuasive. These cases simply state a "home" is not a place of "industry." *See State v. Bachmann*, 521 N.W.2d 886, 888 (Minn. App. 1994) (holding an inmate is not entitled to work-release to perform homemaking responsibilities for her family), *rev. denied* (Minn. Nov. 29, 1994); *State v. Cooper*, 285 N.W. 903, 904-05 (Minn. 1939) (affirming a disorderly conduct conviction for a private chauffer who picketed outside the residence of their former employer).

"household" as "[a] domestic unit consisting of the members of a family who live together along with nonrelatives such as servants" or "[t]he living spaces and possessions belonging to such a unit"), *and Black's Law Dictionary* 888 (11th ed. 2019) (defining "household" as "[a] family living together" or "[a] group of people who dwell under the same roof"), *with American Heritage*, *supra*, at 840 (defining "home" as "[a] place where one lives; a residence"), *and Black's Law Dictionary*, *supra*, at 880 (defining "home" as "[a] dwelling place"). Considering the plain meaning of the words, the legislature intended the word "home" to mean "a dwelling place" and the word "household" to mean a "domestic unit." Thus, we are not persuaded that the legislature's use of the word "home" in section 257C.08, subdivision 3, plainly provides that a grandparent must reside with the child at the time of removal.

In contrast, grandmother asserts that section 257C.08, subdivision 3, has only two requirements: (1) the child residing with the grandparent for 12 months or more and (2) the child's subsequent removal from the shared home by a parent. According to grandmother, neither factor requires the grandparent to live in the home at the time of removal. Grandmother also relies on the legislature's use of the word "subsequently" to support her interpretation that the grandparent need not live in the home at the time of removal. Grandmother asserts that the use of "subsequently" means that the statute only requires a parent to remove the child from the home previously shared with a grandparent at some time after the 12-month period. *See American Heritage*, *supra*, at 1737-38 (defining "subsequent" to mean "[f]ollowing in time or order; succeeding"); *Black's Law Dictionary*, *supra*, at 1727 (defining "subsequent" as "occurring later; coming after something else").

Grandmother correctly observes that the statute is silent regarding where the grandparent must live at the time a parent removes the child from the home. The district court agreed, determining that the statute "does not specifically address a situation where a grandchild resided with a grandparent for twelve or more months, but the grandparent then leaves her own home[,] and the child continues to live there." Thus, we are faced with deciding whether that silence renders the statute ambiguous.

The supreme court has held that "silence does not render a statute ambiguous unless the silence renders the statute susceptible to more than one reasonable interpretation." *Rohmiller*, 811 N.W.2d at 590. When a statute is silent, we must "resolve whether the statutory construction issue . . . involves a failure of expression or an ambiguity of expression." *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010). We cannot add words or meaning to a statute that were intentionally or inadvertently omitted. *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001). Therefore, "[w]hen a question of statutory construction involves a failure of expression rather than an ambiguity of expression, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature." *Id.* (quotation omitted).

Applying that standard, the supreme court has held a small number of statutes were ambiguous when they were completely silent on a contested issue. *See MBNA Am. Bank, N.A. v. Comm'r of Revenue*, 694 N.W.2d 778, 782-83 (Minn. 2005); *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). In those few circumstances, the statutes at issue failed to articulate the consequences for failing to comply with a statutory requirement, creating an ambiguity of expression. *See Beardsley v. Garcia*, 753 N.W.2d

735, 738-39 (Minn. 2008) (describing *MBNA* and *Burkstrand*); *Rohmiller*, 811 N.W.2d at 590 (same). But in most cases when the statute is silent, the supreme court has held the statute includes a failure of expression and applies the statute's plain language. *See, e.g.*, *Beardsley*, 753 N.W.2d at 738-39; *Rohmiller*, 811 N.W.2d at 590-91; *STRIB IV, LLC v. County of Hennepin*, 886 N.W.2d 821, 826 (Minn. 2016) ("Ambiguity through statutory silence is rare.").

Here, like other cases in which the supreme court concluded silence was the absence of expression, section 257C.08, subdivision 3, is not completely silent on the requirements for a grandparent to petition for visitation. Instead, as grandmother described, the statute articulates two elements that must be met: (1) the child residing with the grandparent for 12 months or more and (2) the child's subsequent removal from the shared home—or "dwelling place"—by a parent. *See* Minn. Stat. § 257C.08, subd. 3. The statute's plain language does not require the grandparent to live with the child at the time the parent removes the child from the shared home.[8]

[8] We observe that even if the silence in the statute created an ambiguity, legislative intent would require the same result. The supreme court has articulated on numerous occasions that the purpose of Minn. Stat. § 257C.08 (2022) is "to give grandparents . . . a legal right to visitation with their grandchildren." *Rohmiller*, 811 N.W.2d at 591. This right had to come via statute because "[h]istorically, grandparents had virtually no legal right to maintain a relationship with a grandchild independent of the wishes of the child's parents." *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). Although the supreme court has not considered the legislative intent of subdivision 3 specifically, section 257C.08's general purpose is to allow a statutory path for grandparents to obtain visitation rights independent of the wishes of the child's parents. To interpret subdivision 3 to remove visitation rights in circumstances where the grandparent moved out for the benefit of the parent and grandchild would be contrary to legislative intent.

Applying the plain language, this case is unique in that grandmother, after living with her grandchild for approximately two years, voluntarily moved from her own home, then allowed mother and E.M.B. to continue living in the home grandmother still owned. The district court found grandmother did this "because of [mother]'s anger towards [grandmother] and [grandmother's] belief that [mother] needed time and space to heal from this anger." Grandmother continued to pay utilities for the home, until she sold it a year later. When grandmother sold the home, mother and E.M.B. moved to a new residence together.

These circumstances satisfy the requirements in section 257C.08, subdivision 3. E.M.B. resided with grandmother for more than two years—"a period of 12 months or more." Minn. Stat. § 257C.08, subd. 3; *see also Joel v. Wellman*, 551 N.W.2d 729, 731 (Minn. App. 1996) (explaining how to calculate "a period of 12 months or more" when a grandparent petitions for visitation), *rev. denied* (Minn. Oct. 29, 1996).[9] And after grandmother and E.M.B. lived together for this period of time,[10] mother removed E.M.B. from "the home" previously shared with grandmother. *Id.* Thus, the district court did not err when it concluded that section 257C.08, subdivision 3, provides a basis for grandmother

[9] Since *Joel*, the legislature renumbered the relevant statute from Minn. Stat. § 257.022, subd. 2a (1994), to section 257C.08, subdivision 3. The relevant statutory language has not been amended since *Joel*.

[10] Consistent with our caselaw, the district court only used the two years grandmother lived with the child to calculate the "period of 12 months or more." *Joel*, 551 N.W.2d at 731 ("[T]he grandchild must live with the grandparents for at least twelve months."). The district court did not include the time the child lived in the home, but grandmother no longer lived there. *See id.* (concluding the statute "does not require a consecutive time period" so long as the grandparent and child lived together for 12 months or more).

to petition for visitation rights and for the district court to grant a grandparent visitation rights if the district court finds it is "in the best interests of the child and would not interfere with the parent and child relationship."

DECISION

Section 257C.08, subdivision 3, provides a statutory path for grandparents to obtain visitation rights, even if the grandparent no longer resides in the shared home at the time the parent removes the child. Therefore, the district court did not err when it granted grandmother's petition for grandparent-visitation rights.

Affirmed.