



HOT TOPICS

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TOPICS FOR DISCUSSION

- **NEW LEGISLATION**

- Establishment of Paternity in Juvenile Court (Minn. Stat. §260C.150, subd. 1)
- The Right to Court-Appointed Counsel in Paternity Cases (Minn. Stat. §257.69, subd. 1)

- **CASELAW UPDATE**

- Zaldivar v. Rodriguez (July 30, 2012): immigration laws and child support issues

HOT TOPIC:

**ESTABLISHMENT OF PATERNITY
IN JUVENILE COURT**

(Minn. Stat. §260C.150, subd. 1)



What is a “parent” for purposes of a CHIPS action?

Chapter 260C governs Child Protection. For purposes of a Child Protection action:

"Parent" means a person who has a legal parent and child relationship with a child which confers or imposes on the person legal rights, privileges, duties, and obligations consistent with §§257.71 to 257.74 or 257.75. It includes the mother and child relationship and the father and child relationship. For matters governed by the Indian Child Welfare Act, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in §260.755, subd. 14, and does not include the unwed father where paternity has not been acknowledged or established. Minn. Stat. §260C.007, subd. 25.

Recognized Parental Relationships

FOR MOTHERS: A legally recognized parent and child relationship exists for purposes of Chapter 260C between a child and a biological mother, by proof of her having given birth to the child, or under sections 257.71 to 257.74 or 157.75.

Recognized Parental Relationships, con't.

FOR FATHERS: A legally recognized parent and child relationship exists for purposes of Chapter 260C between a child and a father when:

1. there is a presumption of paternity and
 - a. no action has been taken to declare the nonexistence of the father and child relationship,
 - b. father and mother have signed a ROP, OR
 - c. there has been an adjudication of paternity.

Recognized Parental Relationships, con't.

2. there is no presumption of paternity but:
 - a. father has been adjudicated by court order, OR
 - b. father and mother have signed a ROP.

Bottom line: paternity must have been acknowledged or established in order for juvenile court to recognize relationship.

Recognized Parental Relationships, con't.

FOR INDIAN CHILDREN: A legally recognized parent and child relationship exists for purposes of Chapter 260C between a biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. It does not include an unmarried father whose paternity has not been acknowledged or established.

Recognized Parental Relationships, con't.

FOR ADOPTED CHILDREN: A legally recognized parent and child relationship exists for purposes of Chapter 260C between a child and an adoptive parent by proof of adoption.

2010 AMENDMENT

In 2010, the legislature amended Minn. Stat. §260C.150, subd. 1 to provide a mechanism for the establishment of a parent-child relationship within the Child Protection file.

Minn. Stat. §260C.150

Subdivision 1. Determining parentage.

A parent and child relationship may be established under this chapter according to the requirements of section 257.54 and the Minnesota Rules of Juvenile Protection Procedure.

LIMITS OF §260C.150

Based upon the language of the statute, it appears that establishment of paternity may be established by the juvenile court, but the juvenile court lacks the authority to revoke a ROP, or take any action beyond the establishment of the legal parent-child relationship.

LIMITS OF §260C.150

What potential problems can be foreseen from adjudicating paternity in the juvenile court?

If the juvenile court is only given the authority to adjudicate the legal relationship between parent and child, what about other issues attendant to a paternity action?

Issues with Adjudication

For example, several issues must be addressed in an action for the adjudication of paternity, such as: (1) child support, (2) custody, (3) parenting time, and (4) name of the child. In addition, the paternity order may address: (1) past support/reimbursement up to two years prior to commencement of action, (2) genetic test cost reimbursement, and (3) pregnancy and confinement costs and lost wages of mother.

Other Potential Issues

- Discrepancies between data retention and data access rules, family court file vs. child protection court file
- Potential paternity trial within the child protection file, if the adjudication is contested, jury trial
- Costs of genetic testing, court-appointed attorneys, etc.

HOT TOPIC:

LEGISLATIVE CHANGES LIMITING THE RIGHT TO COURT-APPOINTED COUNSEL IN PATERNITY CASES

(Minn. Stat. §257.69, subd. 1)



RIGHT TO COURT-APPOINTED COUNSEL

Pursuant to the existing provisions of Minn. Stat. §257.69, subd. 1: “[i]n all proceedings under Minn. Stat. §§257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the public authority. The court shall appoint counsel for a party who is unable to pay timely for counsel in proceedings under §§257.51 to 257.74.”

Historic Right

In 1994, the Minnesota Supreme Court determined the scope of the right to representation in paternity cases includes not simply the adjudication of paternity, but extended to custody and parenting time issues as well, even after the adjudication of paternity had been determined. *Latourell v. Dempsey*, 518 N.W.2d 564 (Minn. 1994). The Court concluded that custody and visitation determinations were “proceedings” in a paternity action, and that the right to court-appointed representation continued according to the clear language of Minn. Stat. §257.69. **FUN FACT:** The County is responsible for paying the costs associated with court-appointed counsel in these cases.

NEW RULE

Effective August 1, 2012, this section was amended to limit county exposure to provide representation to potential fathers in paternity cases. The change in the statute specifically limits the county's responsibility for the father's attorney to the question of paternity only. If the father wants to continue the representation into issues like child support or parenting time, the county is no longer required to pay for those costs.

NEW LANGUAGE

The new language of the statute:

Subdivision 1. **Representation by counsel.** In all proceedings under sections 257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the public authority. The court shall appoint counsel for a party who is unable to pay timely for counsel. In proceedings under sections 257.51 to 257.74, the court shall appoint counsel for a party who would be financially unable to obtain counsel under the guidelines set forth in section 611.17. The representation of appointed counsel is limited in scope to the issue of establishment of parentage.

ANTICIPATED EFFECTS

The likely result of this change in legislation is the elimination of court-appointed representation in protracted custody and parenting time disputes, and thus, huge savings to the counties, who are ultimately responsible for those costs.

POTENTIAL PITFALLS

- Abuse by parties/attorneys, i.e. postponing the adjudication in an effort to prolong representation
- Others?

HOT TOPIC:

**IMMIGRATION LAWS AND
CHILD SUPPORT ISSUES**

Zaldivar v. Rodriguez

Court of Appeals

July 30, 2012



The Facts

- Luis Roberto Zaldivar Rodriguez is a native citizen of El Salvador, where he was trained as a physician.
- In 1993, he married a woman now known as Blanca Margarita Parada.
- Zaldivar and Parada moved to Minnesota in September 2000 with their daughter, who then was four years old.

More Facts

- The parties' marriage was dissolved by the Watonwan County District Court in 2003.
- At the time of the dissolution, the district court did not order either party to pay child support.
- In 2007, Watonwan County moved to establish a child-support obligation for Zaldivar. Zaldivar opposed the motion on the ground that he has no income and, thus, no ability to pay child support.

More Facts

- In August 2007, the district court ordered Zaldivar to pay child support of \$320 per month. Zaldivar appealed, and the Court of Appeals affirmed. The Minnesota Supreme Court denied review.
- In July 2010, Watonwan County brought a motion to hold Zaldivar in contempt due to his failure to pay child support.

The District Court's Findings

- In February 2011, the district court issued an order holding Zaldivar in contempt of court for failing to pay his child-support obligation. The district court found that Zaldivar “failed to offer any justification for noncompliance” with the order to pay child support.
- In July 2011, the district court held a hearing concerning whether to lift the stay of Zaldivar's 90–day term of confinement.

Findings, con't

- In July 2011, the district court issued an order in which it found that Zaldivar had not demonstrated an inability to pay child support. The district court found that Zaldivar's "present immigration status is not a dispositive factor in his inability to contribute something to child support" and that "[t]he evidence shows that he has received \$14,000 apparently tax free and has used none of it to pay his child support."

ISSUES ON APPEAL

- Did the district court err by holding Zaldivar in contempt of court for failing to pay child support despite the fact that he is not authorized by federal immigration law to work in the United States?
- Did the district court clearly err when making the findings necessary to hold Zaldivar in contempt of court?

Legal Analysis

- When a district court considers imposing a child-support obligation, the district court must apply a rebuttable presumption that a parent can be gainfully employed on a full-time basis. Minn. Stat. §518A.32, subd. 1 (2010).
- The district determined potential income based upon Zaldivar's “employment history, education, and job skills.”

Presumptions

When a district court considers whether to hold a child-support obligor in contempt of court for failure to pay child support, the existing child-support order “constitutes prima facie evidence that the obligor has the ability to pay the award.” Minn. Stat. §518A.71 (2010). Accordingly, the child-support obligor “is presumed to have an income from a source sufficient to pay the maintenance or support order.” *Id.*

Contempt Burden of Proof

“If the obligor disobeys the order, it is prima facie evidence of contempt.” *Id.* A child-support obligor may avoid a finding of contempt only by proving his or her inability to comply with the order, and the obligor has the burden of persuasion on that issue.

NCP's POSITION

Zaldivar contends that these provisions of the Minnesota Statutes cannot be applied to a person who is not authorized by law to work in the United States. He reasons that because it is a federal criminal offense for an employer to hire and employ him, he cannot earn an income and, thus, cannot comply with his child support obligation.

IMMIGRATION LAW 101

- Under the federal Immigration Reform and Control Act of 1986 (“IRCA”), it is unlawful for an employer to employ an unauthorized alien. 8 U.S.C. §1324a(a) (2006). Employers who knowingly violate this prohibition may face both civil fines and criminal prosecution. 8 U.S.C. §1324a(e)(4)(A), (f)(1) (2006).

Immigration Law 101, con't.

- But the same types of sanctions do not apply to an unauthorized alien who seeks or obtains employment in the United States. An unauthorized alien who works in the United States without authorization may be subject to criminal prosecution only if he or she knowingly uses forged, counterfeit, altered, or falsely-made documents to obtain employment. 8 U.S.C. §1324c(a)(1)-(3); 18 U.S.C. §1546(a),(b)(2006).

Ability to Work

- As a practical matter, an unauthorized alien can work in the United States without risk of criminal punishment, even if such employment is inconsistent with an employer's restrictions under federal immigration law.

Legal Precedence

- An administrative law judge (ALJ) and the Workers' Compensation Court of Appeals concluded that an employee's status as an unauthorized alien did not, as a matter of law, prevent him from conducting a reasonable and diligent job search for purposes of Workers' Compensation

Questions for the Court

- First, is federal immigration law “intended to preclude the authority of states to” hold unauthorized aliens in contempt of court for failure to satisfy child-support obligations? NO.
- Second, does Minnesota's child-support statute permit a district court to hold unauthorized aliens in contempt of court for failure to satisfy child-support obligations? YES.

THE HOLDING

- The district court did not err by ordering Zaldivar to pay child support or by holding him in contempt of court on the ground that Zaldivar is an unauthorized alien.
- It is the role of the legislature, not the courts, to determine whether unauthorized aliens who are otherwise obligated to pay child support should be relieved of those obligations due to their immigration status.

Ability to Comply with Purge Conditions

- Zaldivar may comply with the purge conditions contained in the order without facing criminal consequences so long as he does not knowingly use forged, counterfeit, altered, or falsely-made documents.

What's Next?

- The special concurrence by Judge Stoneburner suggests that it may be an abuse of discretion for district courts to require job search by a person who cannot legally work in the U.S. as a purge condition.
- In its footnotes, the Court of Appeals acknowledged that there are civil consequences for an authorized alien accepting employment, although none of these affected Zaldivar's situation.
- Perhaps the legislature will speak on this issue, in light of this holding.

DISCUSSION QUESTIONS

- How does this case impact how your county will enforce obligations?
- How does this case impact how your county will calculate income?
- Other questions?

THANK YOU!

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