STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1782

William Christopher Edrington,
Respondent,

vs.

Julianna Lynn Sheridan, et al.,
Appellants.

Filed August 12, 2024
Reversed and remanded
Connolly, Judge

Ramsey County District Court
File No. 62-FA-23-492

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Susan M. Gallagher, Gallagher Law Office, L.L.C., Eagan, Minnesota (for respondent)

Erica A. Holzer, Jevon C. Bindman, Maslon LLP, Minneapolis, Minnesota; and

Mary Pat Byrn, Viitala Byrn & Ives PC, Minneapolis, Minnesota (for appellants)

Katherine S. Barrett Wiik, Saul Ewing LLP, Minneapolis, Minnesota; and

Heather Kemp, Krystal Bordoni-Cowley, Philadelphia, Pennsylvania; and

Shannon Minter, National Center for Lesbian Rights, San Francisco, California (for amicus curiae National Center for Lesbian Rights)

Considered and decided by Larson, Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellants challenge the district court's order denying their motion to dismiss respondent's paternity action, arguing that the district court erred in determining that respondent alleged sufficient facts to (1) compel genetic testing, and (2) obtain standing as a presumed father. We reverse and remand.

FACTS

Appellants Julianna Lynn Sheridan and Catherine Kish Sheridan, a same sex-couple, married in August 2017. During that summer, appellants asked respondent William Christopher Edrington, their mutual friend, if he would provide them with his sperm[1] so that they could "have a child in their home." The parties agreed that respondent would not be an anonymous donor and that he would take part in the child's life. No contracts were signed concerning this arrangement.

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

[1] In his petition, respondent identifies the genetic material that he gave to appellants, for use in assisted reproduction, as "semen." We note that the statutes relevant to this appeal use both "semen" and "sperm" to describe male genetic material. *See* Minn. Stat. §§ 257.56, subd. 1 (2022) (referring to "donated semen"), .62, subd. 5(c) (2022) (describing genetic material to include "sperm or ovum (egg)"). Because, for purposes of this opinion, there is no meaningful distinction between the two terms, we refer to the genetic material that respondent alleged he donated to appellants as "sperm." *See The American Heritage Dictionary of the English Language* 1684 (5th ed. 2018) (defining "sperm" as "[a] male gamete" or "semen").

Appellants chose to use an at-home method of assisted reproduction known as intravaginal insemination. To conduct this process, respondent provided appellants with a sample of his sperm in a sterile collection cup. Appellants then entered a private room, in either their home or respondent's home, where Catherine used an insemination syringe to insert respondent's sperm into Julianna's vagina. Respondent was not present for the insemination process and "had no sexual contact to effectuate the transfer of [his sperm] to Julianna." And no medical technology or medical personnel were used to inseminate Julianna.

The at-home insemination process was successful and Julianna gave birth to A.J.S., now six-years old, in July 2018. Because appellants were married at the time of A.J.S.'s birth, Catherine is A.J.S.'s presumed non-gestational mother and legal parent. *See* Minn. Stat. § 257.55, subd. 1(a) (2022). Based on her status as A.J.S.'s legal parent, Catherine was joined to this matter as an interested party. *See* Minn. R. Civ. P. 19.01. Appellants are the only two individuals listed on A.J.S.'s birth certificate, and together raised A.J.S. in their home. None of the parties signed a recognition of parentage. And neither Catherine nor respondent have moved to adopt A.J.S.

In June 2022, appellants requested that respondent not refer to A.J.S. as his daughter. At first, respondent abided by appellants' directive. But respondent alleged that this grew difficult when A.J.S. asked him whether he was her father. Following this incident, appellants limited respondent's contact with A.J.S.

In September 2023, respondent filed his fourth amended paternity petition requesting an order compelling Julianna and A.J.S. to submit to genetic testing, an

adjudication establishing that he is A.J.S.'s biological father, and joint legal and physical custody of A.J.S.[2] In his amended petition, respondent alleged that he is A.J.S.'s biological father because, although there was "no sexual intercourse involved in the conception of [A.J.S.,]" it was his sperm used to conceive A.J.S. On that basis, respondent requested that the district court compel Julianna and A.J.S. to submit to genetic testing under Minn. Stat. § 257.62, subd. 1(a) (2022).

Respondent also alleged that, since A.J.S. was born, he has received her into his home and openly held her out as his daughter. As support for this allegation, respondent states that he was notified when Julianna became pregnant, received sometimes daily phone calls regarding the pregnancy, met A.J.S. at the hospital the day that she was born, and immediately notified his family and close friends that he was "the father of a healthy baby girl." And after her birth, respondent alleged that he purchased child-care items for his home, including diapers, wipes, a crib, bedding, toys, food, and clothing. Relatedly, respondent alleged that he has cared for A.J.S. on a weekly, and sometimes daily, basis by feeding A.J.S., changing her diapers, bathing her, and putting her down for naps. Finally, respondent alleged that he has posted many pictures of A.J.S. on his social media accounts and that his friends and family—some of whom have met A.J.S.—are "aware that [he is] very proud to be [her] father."

[2] Respondent filed his original petition in April 2023. In that petition, respondent made additional requests that his surname be used on A.J.S.'s birth certificate and that he be awarded child support. Respondent no longer pursues these requests.

In March 2023, appellants moved to dismiss respondent's paternity action for two reasons. First, that respondent, as a sperm donor, is precluded from compelling genetic testing to assert that he is A.J.S.'s biological or legal father. *See* Minn. Stat. § 257.62, subd. 5(c). Second, that respondent failed to allege sufficient facts to obtain standing to bring his paternity action. *See* Minn. Stat. § 257.55, subd. 1(d) (2022).

The district court denied appellants' motion. In doing so, the district court ordered that Julianna and A.J.S. submit to genetic testing because respondent claimed to be A.J.S.'s biological father and alleged the requisite level of sexual contact to conceive A.J.S. through assisted reproduction. *See* Minn. Stat. § 257.62, subd. 1(a). The district court also determined that Minn. Stat. § 257.62, subd. 5(c), which generally precludes donors of genetic material from using genetic testing to claim parental rights to a child conceived through assisted reproduction, did not preclude respondent, as a sperm donor, from asserting parentage over A.J.S. Finally, the district court determined that respondent has standing to bring his paternity action under Minn. Stat. § 257.55, subd. 1(d), because he alleged sufficient facts to show that he received A.J.S. into his home and held her out as his biological child.

This appeal follows.[3]

DECISION

In Minnesota, paternity actions are governed by the Minnesota Parentage Act (MPA), which is modeled after the Uniform Law Commission's Uniform Parentage Act

[3] Amicus National Center for Lesbian Rights filed a brief supporting appellants.

(UPA). *Morey v. Peppin*, 375 N.W.2d 19, 22 (Minn. 1985); *see also* Minn. Stat. § 257.51 (2022) (providing that the MPA includes Minn. Stat. §§ 257.51-.74). The statutory provisions under the MPA create "the exclusive bases for standing to bring an action to determine paternity." *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001). Paternity actions are also governed by the rules of civil procedure. Minn. Stat. § 257.65 (2022). Consequently, when determining whether to grant or deny a motion to dismiss, the facts as alleged in the complaint must be accepted as true and all reasonable inferences must be construed in favor of the nonmoving party. *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019).

The MPA provides standing to bring a paternity action based on a myriad of paternity presumptions. *See* Minn. Stat. § 257.57, subds. 1-3 (2022); *see also* Minn. Stat. § 517.201, subd. 2 (2022) (providing that statutes with gendered language are to be construed "in a neutral manner to refer to a person of either gender"). Two paternity presumptions are relevant here. First, a putative father is presumed to be the biological father of a child "[i]f the results of blood or genetic tests . . . indicate that the likelihood of the alleged father's paternity . . . is 99 percent or greater[.]" *See* Minn. Stat. §§ 257.57, subd. 2(1) (conferring standing for actions brought under Minn. Stat. § 257.62, subd. 5(b)), .62, subd. 5(b) (2022) (providing paternity presumption based on genetic testing).

Second, a putative father is presumed to be the biological father of a child if, "while the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child[.]" *See* Minn. Stat. §§ 257.55, subd. 1(d) (providing holding-out paternity presumption), .57, subd. 2(1) (conferring standing for actions

brought under the holding-out presumption). If a party cannot allege facts sufficient to show that a presumption applies, they lack standing to assert paternity. *Witso*, 627 N.W.2d at 65-66.

Interpretation of the MPA is a question of law that we review de novo. *Ramsey County v. X.L.*, 853 N.W.2d 813, 816 (Minn. App. 2014). The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2022). We read and construe statutes as a whole and within the context of the surrounding sections. *In re Welfare of Child. of A.M.F.*, 934 N.W.2d 119, 122 (Minn. App. 2019). Generally, words and phrases are construed according to their plain and ordinary meaning. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). We "look to the dictionary definitions of [undefined] words and apply them in the context of the statute." *Anoka County v. Law Enf't Lab. Servs., Inc.*, 3 N.W.3d 586, 594 (Minn. 2024) (quotation omitted). And we presume that the legislature intends the entire statute to be effective and does not intend a result that is absurd or unreasonable. Minn. Stat. § 645.17 (2022).

The first step of statutory interpretation is determining whether the statute is ambiguous. *A.M.F.*, 934 N.W.2d at 122. Statutes are ambiguous "if, as applied to the facts of the particular case, they are susceptible to more than one reasonable interpretation." *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72-73 (Minn. 2012). When a statute's plain language is unambiguous, it must be given effect. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). Only when a statute is ambiguous will this court apply the canons of construction to discern the legislature's intent. *Id.*; *see also* Minn. Stat. § 645.16.

On appeal, appellants challenge the denial of their motion to dismiss respondent's petition, arguing that the district court erred in (1) ordering that Julianna and A.J.S. submit to genetic testing pursuant to Minn. Stat. § 257.62, and (2) determining that respondent has standing to bring his paternity action under Minn. Stat. § 257.55, subd. 1(d). We address each argument in turn.

I. The district court erred by ordering that Julianna and A.J.S. submit to genetic testing.

A presumption of parentage will arise when genetic-test results indicate that the alleged parent has a 99 percent or greater likelihood of being the biological parent of the child. Minn. Stat. § 257.62, subd. 5(b). To obtain an order compelling genetic testing, subdivision 1(a) provides the following:

> The court or public authority may, and upon request of a party *shall*, require the child, mother, or alleged father to submit to blood or genetic tests. A mother or alleged father requesting the tests shall file with the court an affidavit *either* alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the *requisite sexual contact* between the parties.

Id., subd. 1(a) (emphasis added).

Appellants assert that the district court erred in determining that respondent has standing to compel genetic testing pursuant to Minn. Stat. § 257.62, subd. 1(a), because he alleged that he did *not* engage in sexual contact with Julianna. Respondent counters that because one dictionary definition of "requisite" is "needed for a particular purpose," the purpose here being the conception of a child via assisted reproduction, no sexual contact is required because intravaginal insemination does not involve sexual contact. The statute

does not define "requisite sexual contact." *See* Minn. Stat. § 257.62 (2022). But assuming without deciding that respondent sufficiently alleged the "requisite sexual contact," we determine that respondent is precluded from compelling a genetic test to claim parentage under subdivision 5(c) of the same statute:

> A determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under section 257.55, subdivision 2, nor does it allow the donor of genetic material for assisted reproduction for the benefit of a recipient parent, whether sperm or ovum (egg), to claim to be the child's biological or legal parent.

See id., subd. 5(c).

The plain language of subdivision 5(c) states that a "*determination* under this subdivision that the alleged father *is* the biological father," does not allow a sperm donor "to *claim* to be the child's biological or legal parent." Minn. Stat. § 257.62, subd. 5(c) (emphasis added). Read in context, a "determination" used "to claim" parentage inferably means sperm donors are prohibited from using a *positive test result* to claim parentage to a child conceived through assisted reproduction. *See id.* Thus, subdivision 5(c) precludes sperm donors from using genetic testing to assert paternity over a child artificially conceived with their donated sperm.

Respondent alleged that he is a sperm donor. And he admitted that he provided his sperm to Julianna to be used in assisted reproduction.[4] Because this makes respondent a

[4] Respondent argues that subdivision 5(c) does not apply here because he donated his sperm for his *own* benefit, and not simply for appellants' benefit. *See* Minn. Stat. § 257.62, subd. 5(c) (describing donors who provide sperm "for the benefit of a recipient parent"). Because respondent raised this issue for the first time on appeal, it is not properly before

donor of genetic material, he is precluded under subdivision 5(c) from using a genetic test to claim to be A.J.S.'s biological or legal parent. *See id.* Because respondent's only alleged purpose for the genetic test is to "establish proof of paternity" and be adjudicated as A.J.S.'s "biological father," we hold that the district court erred in ordering Julianna and A.J.S. to submit to genetic testing.

In so holding, we also reject the district court's interpretation of Minn. Stat. § 257.56 (2022). Under that statute, a person who consents to the artificial insemination of their spouse, under the supervision of a licensed physician, with a third-party's sperm, is still treated as the resulting child's biological parent. *Id.*, subd. 1. And the third-party donor is *not* treated as the child's biological parent. *Id.*, subd. 2.

The district court determined that sections 257.56 and 257.62 are inseparable because they both concern artificial insemination and a donor's ability to assert parentage over a resulting child. Accordingly, the district court determined that because appellants used an at-home assisted reproduction procedure, without the supervision of a licensed physician, they are precluded from receiving protection—as a married couple—under section 257.56 from parentage claims of third-party donors. Based on that conclusion, the district court also determined that Minn. Stat. § 257.62, subd. 5(c) does not preclude respondent from compelling genetic testing to claim parentage over A.J.S. despite his status as a sperm donor.

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us. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court). But even if it were properly before us, respondent admitted in his affidavit that he was providing his sperm to appellants so that they could have a child.

We reject the district court's analysis for two reasons. First, we observe, as did appellants, that interpreting Minn. Stat. § 257.56 with Minn. Stat. § 257.62, subd. 5(c) is permissible only after determining that the latter is ambiguous under the related-statutes canon of construction. *See* Minn. Stat. § 645.16(5) (considering "other laws upon the same or similar subjects"). And analyzing the two statutes together, does not, as respondent contends, fit within the scope of the pre-ambiguity whole-statute canon of interpretation because interpreting two related, but separate, statutes before determining that a statute is ambiguous requires that the statutes be enacted at the same time—which is not the case here. *See Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170 (Minn. 2021) (explaining that the whole-statute canon of interpretation involves reading a singular statute as a whole to give effect to all of its parts); *State v. Beganovic*, 991 N.W.2d 638, 645 (Minn. 2023) (explaining that the whole-statute canon of interpretation applies to multiple statutes only when two statutes are enacted at the same time and for the same purpose); *see also* 1980 Minn. Laws. ch. 589, § 6, at 1072 (enacting Minn. Stat. § 257.56); 2006 Minn. Laws. ch. 280, § 4, at 3 (enacting Minn. Stat. § 257.62, subd. 5(c)). Because Minn. Stat. § 257.62, subd. 5(c), is not ambiguous, we need not consider Minn. Stat. § 257.56 when determining whether respondent can compel genetic testing.

Second, even if Minn. Stat. § 257.56 did bear on our determination, it does not limit the reach of Minn. Stat. § 257.62, subd. 5(c). At the outset, the former is irrelevant to the facts as alleged by respondent because Julianna was not artificially inseminated under the supervision of a licensed physician. *See* Minn. Stat. § 257.56. Further, Minn. Stat. § 257.56 does not afford donors any affirmative right to assert parentage, much less the

right to bypass the clear directive in subdivision 5(c) that precludes positive genetic test results from being used to assert parentage over a child conceived through assisted reproduction. *See* Minn. Stat. § 257.62, subd. 5(c). Put another way, Minn. Stat. § 257.56 acts as a shield for married couples who conceive through assisted reproduction, under the supervision of a licensed physician, from facing parentage claims from third-party donors. *See* Minn. Stat. § 257.56. But it does not act as a sword for donors to assert parentage based on positive genetic test results against married couples who used at-home assisted reproduction procedures. *See id.* Accordingly, the district court erred in determining that Minn. Stat. § 257.56 limits Minn. Stat. § 257.62, subd. 5(c), and that it allows respondent to compel genetic testing.

We recognize that the Minnesota legislature has recently passed new laws governing assisted reproduction and the MPA. *See* 2024 Minn. Laws ch. 101, art. 4, § 1-10 (to be codified at Minn. Stat. § 257E.10-.27 (2024)). These laws will not come into effect until August 1, 2024. *See* Minn. Stat. § 645.02 (2022) (providing that, generally, "[e]ach act . . . enacted finally at any session of the legislature takes effect on August 1 next following its final enactment"). The parties did not brief the issue of whether the new laws apply retrospectively to this case. However, shortly before oral argument, counsel for appellants filed a letter, which was docketed as a motion, asking this court to order supplemental briefing on the applicability of these legislative amendments.[5] Counsel for

[5] Generally, to be properly before this court, an application for relief "shall be made by serving and filing a written motion." Minn. R. Civ. App. P. 127. A letter to the court usually is not considered to be a motion. *See In re Enbridge Energy, Ltd. P'ship*, 930 N.W.2d 12, 19 n.3 (Minn. App. 2019) (distinguishing a request for relief made by letter

respondent filed a response opposing the request. We declined to order supplemental briefing before oral argument, and the topic was not addressed at oral argument before this court. Thus, we deem the request for supplemental briefing to be moot. And we do not address the legislative amendments further here.

In sum, the district court erred by ordering that Julianna and A.J.S. submit to genetic testing because the plain language in Minn. Stat. § 257.62, subd. 5(c), prohibits donors of genetic material for use in assisted reproduction from using genetic test results to claim to be the biological or legal parent of a resulting child. *See* Minn. Stat. § 257.62, subd. 5(c).

II. The district court erred in determining that respondent has standing under Minn. Stat. § 257.55, subd. 1(d).

Apart from proving parentage based on a genetic relationship, a putative parent who, "while the child is under the age of majority, . . . receives the child into his home and openly holds out the child as his biological child" is presumed to be the biological parent of the child and has standing to bring a paternity action. *See* Minn. Stat. §§ 257.55, subd. 1(d) (providing holding-out paternity presumption), .57, subd. 2(1) (conferring standing to presumed fathers under the holding-out presumption). Accordingly, we first address whether respondent alleged sufficient facts to show that he received A.J.S. into his home before turning to whether respondent alleged sufficient facts to show that he held A.J.S. out as his biological child.

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from a request for relief made by motion); *In re Petition of Halberg Const. & Supply, Inc.*, 385 N.W.2d 381, 384 n.1 (Minn. App. 1986) (explaining that "any request for relief from this court must be made by serving and filing a written *motion*" rather than a letter (quotation omitted)), *rev. denied* (Minn. June 19, 1986).

A. Respondent's allegations would not show that he received A.J.S. into his home.

The holding-out presumption does not provide a definition for the requirement that a putative parent "receive[]" the child into his or her home. *See id.* But our analysis in *Larson v. Schmidt*, 400 N.W.2d 131 (Minn. App. 1987), is instructive. In *Larson*, we analyzed only whether the putative father had "received the child into his home" because it was undisputed that he "openly held [the child] out" as his own. *Id.* at 133 (quotation omitted). In doing so, we adopted the California Supreme Court's receipt standard, which construed a similar phrase.[6] *Id.* at 135 (citing *In re Richard M.*, 537 P.2d 363, 369 (Cal. 1975)).

In *Richard M.*, the California Supreme Court held that receiving a child into the home is accomplished when the putative father either temporarily resides with the mother and the child or the putative father accepts the child into his home, even "for occasional temporary visits," as "a constructive reception may suffice." *Richard M.*, 537 P.2d at 369-70. But the California Supreme Court ultimately did not rely on "constructive reception," as the putative father, the child's mother, and the child had lived together after the child's birth—during which time the putative father cared for the child. *See id.* And even after the putative father no longer lived with the child, the child spent every other weekend at his home. *See id.*

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[6] The holding-out presumption in *Larson*—modeled after the UPA—is nearly identical to the version applicable here. *See Larson*, 400 N.W.2d at 133 (providing that, under Minn. Stat. § 257.55, subd. 1(d) (1984), a putative parent "is presumed to be the natural [parent] of a child if . . . [w]hile the child is under the age of majority, *he receives the child into his home* and openly holds out the child as his natural child" (emphasis added)). And the

Applying the reasoning in *Richard M.* to the facts in *Larson*, this court determined that the putative father, Larson, had received the child into his home based on these circumstances: (1) "for the first year and a half of the child's life, [the child's mother] and the child stayed about two nights per week with [Larson]"; (2) before Larson entered a half-way house for addiction recovery, he "spent a good deal of time" with mother and the child; (3) Larson spent a couple of mornings each week with mother and the child; and (4) Larson had done "some overnight babysitting" at his brother's house. *Larson*, 400 N.W.2d at 135 (quotations omitted). The *Larson* court also noted that, among other things, Larson had paid child support and engaged in "frequent conversations" with the child's mother about formally becoming the child's father. *Id.* (quotation omitted). The *Larson* court reasoned that Larson, the undisputed biological father, "accept[ed] the child into his home to the extent possible under the particular circumstances," given the child's mother's sporadic denial of visitation and Larson's living arrangement while recovering from addiction. *Id.* (quotation omitted). In reaching its decision, the *Larson* court explained that it was guided by Minnesota's approach of providing "children born out of wedlock the same legal status as other children." *Id.* at 134 (quotation omitted).

Respondent argues that his allegations are like the facts in *Larson* because he alleged that he (1) cared for A.J.S. weekly or when permitted by appellants, (2) had told friends and family that A.J.S. was his child since her birth, (3) purchased a crib and other care

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Larson court examined a similar presumption under California law. *See Richard M.*, 537 P.2d at 369-70 (interpreting California Civil Code § 230 (1984): "received the child into his family").

items for A.J.S. to be kept and used at his home, (4) vacationed with Catherine and A.J.S., and (5) regularly spent time with A.J.S. and his family. Respondent emphasizes that he received A.J.S. into his home to the extent possible given that appellants limited his access to A.J.S. Appellants respond that *Larson* is distinguishable because A.J.S. has neither lived with nor slept overnight at respondent's home. And they note that A.J.S. is *not* a child born out of wedlock, and instead, has always been under the care of her two married mothers. We agree with appellants.

Although the *Larson* court pronounced a "flexible" approach to applying the holding-out presumption, it did so based on circumstances vastly different from those present here. *See id.* at 135 (describing receipt of the child into the home as a "flexible requirement"). In *Larson*, Larson had lived with the child before the child's mother halted visitation and before he began living in a half-way house. 400 N.W.2d at 135. The *Larson* court was concerned for the child's illegitimacy and determined that Larson—who engaged in "frequent conversations" with the child's mother about formally becoming the child's father—was the child's biological father. *See id.* (quotation omitted). And we observe that this court, as well as some foreign courts, have been persuaded by appellants' position that the holding-out presumption is satisfied when the putative father and the child previously lived together. *See Zentz v. Graber*, 760 N.W.2d 1, 2-3 (Minn. App. 2009) (involving parties that lived together with the child for almost two years after the child's birth), *rev. denied* (Minn. Mar. 31, 2009); *State v. D.E.A.*, No. A06-2426, 2007 WL 1816471, at *1, 4

(Minn. App. 2007)[7] (involving putative father who lived with the child and the child's mother for eight years, cared for the child as his own, and was regarded by the child and many others as the child's father), *rev. denied* (Minn. Sept. 18, 2007); *see also LC v. TL*, 870 P.2d 374, 377-78 (Wyo. 1994) (considering that mother and child lived with father rent free); *D.S.P. v. R.L.K.*, 677 P.2d 959, 960-61 (Colo. Ct. App. 1983) (involving putative father who lived with the child and the child's mother for around 16 months).

Respondent has not alleged that he has ever lived with A.J.S. or that A.J.S. has slept overnight at his home. And because A.J.S. was not born out of wedlock, there is no concern here that A.J.S. would be deprived of "the same legal status as other children." *See Larson*, 400 N.W.2d at 134 (quotation omitted) (applying a "liberal construction" to the MPA to ensure children born out of wedlock are afforded a father-child relationship).[8] Therefore, the facts in *Larson* are distinguishable from the facts as alleged by respondent.

Respondent submits two additional arguments that do not persuade us otherwise. First, respondent argues that a "familial relationship exists" between him and A.J.S. because he "agreed to be [A.J.S.'s] father." But respondent's petition alleged that, as to

[7] We cite nonprecedential opinions as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

[8] Recently, a California appeals court distinguished the decision in *Richard M.* from its decision in *W.S. v. S.T.* because *Richard M.* was decided in a "much different statutory context." 228 Cal. Rptr.3d 756, at 767-68 (Cal. App. 6th Dist. 2018). The *W.S.* court noted that *Richard M.* predated California's adoption of the UPA and was mainly concerned about avoiding classifying children as illegitimate. *Id.*; *see* Minn. Stat. § 645.22 (2022) ("Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them."); *see also In re Estate of Jotham*, 722 N.W.2d 447, 455 (Minn. 2006) (relying on decisions from other UPA courts as persuasive authority in interpreting the MPA).

the agreement he made *with* appellants, he made it "clear" that he "was not agreeing to be [an] 'anonymous *donor*,' and that it was understood [that he] would be present and involved in the child's life." (Emphasis added.) Based on respondent's allegations, appellants have honored this agreement. And we are not convinced that an agreement to be present in A.J.S.'s life is the same as being regarded as the child's biological father. *See* Minn. Stat. § 257.54 (2022) (providing that "the biological father may be established under sections 257.51 to 257.74 or 257.75").

Second, respondent refers to his weekly visits with A.J.S. as "parenting time." We disagree with that characterization. A father's rights to custody and parenting time are addressed under Chapter 518. *See* Minn. Stat. § 257.541, subds. 2, 3 (2022). The provisions of Chapter 518 relevant to the adjudication of a particular father's custody and parenting rights are determined by how the father's legal relationship with the child is established. *See* Minn. Stat. § 257.541, subds. 2(a), (b) (identifying the statutory provisions for addressing a father's rights to custody and parenting time if "paternity has been acknowledged under [Minn. Stat. § 257.34] and paternity has been established under [the MPA,]" if paternity "has not been acknowledged under [Minn. Stat. § 257.34] and paternity has been established under [the MPA]" and "[i]f paternity has been recognized under [Minn. Stat. §257.75,]" respectively). Here, respondent fits none of the categories listed in Minn. Stat. § 257.541, subds. 2, 3. Therefore, respondent's access to A.J.S. is not "parenting time" under any of these provisions.

Moreover, under Chapter 518, "parenting time" is defined as "the time a parent spends with a child regardless of the custodial designation regarding the child." Minn.

Stat. § 518.003, subd. 5 (2022). Chapter 518 does not define a "parent." But how a parent-child relationship is established is addressed by Minn. Stat. § 257.54. Respondent fits neither of the relevant categories in Minn. Stat. § 257.54. Thus, respondent's access to A.J.S. does not fit the definition of "parenting time" in Chapter 518.

In sum, respondent's allegations, even if they are true, would not show that he received A.J.S. into his home.

B. Respondent's allegations would not show that he held A.J.S. out as his biological child.

The holding-out presumption also requires that the putative parent "openly holds out the child as his biological child." *See* Minn. Stat. § 257.55, subd. 1(d). The statute does not define the phrase "holds out." *See id.* Appellants cite *Pierce v. Pierce*, 374 N.W.2d 450 (Minn. App. 1985), *rev. denied* (Minn. Nov. 4, 1985), for the proposition that the "'holding out' element is not satisfied where (1) the claimant has waited years to claim paternity, and (2) the child uses the surname of another person."

In *Pierce*, the putative father, Pierce, failed to hold the child out as his own because he took no action to claim paternity, and he allowed the child to continue using his presumed father's surname—who paid child support and regularly visited the child. *Id.* at 451. Pierce also conceded that he was not sure if the child was his. *Id.* at 452; *cf. Zentz*, 760 N.W.2d at 2, 6 (explaining that putative father openly held the child out as his own when the child's mother acknowledged that he was the child's father, he lived with the child's mother, the child bore his surname, and he appeared on the child's birth certificate).

Although, unlike in *Pierce*, respondent has alleged that A.J.S. is his biological child and has regularly cared for her, we are not persuaded that his allegations, even if they are true, are sufficient to show that respondent openly held A.J.S. out as his biological child. Similar to *Pierce*, respondent waited almost five years to assert parentage over A.J.S. *See Pierce*, 374 N.W.2d at 451. And not only do appellants refuse to refer to respondent as A.J.S.'s father, but respondent admits that A.J.S. recognizes that she has two mothers, and that she does not have a father. *See Zentz*, 760 N.W.2d at 2, 6 (determining that father openly held the child out as his own, in part, because the child's mother acknowledged he was the child's father).

Moreover, similar to *Pierce*, respondent is not listed on A.J.S.'s birth certificate, has not signed a recognition of parentage, and has not maintained his objection to A.J.S. using Catherine's surname. *See Pierce*, 374 N.W.2d at 452. And respondent cites no authority that supports his argument that posting pictures of A.J.S. on social media and referring to her as his child to only his family and friends is sufficient to show that he "openly holds out [A.J.S.] as his biological child." *See* Minn. Stat. § 257.55, subd. 1(d).

In sum, respondent's allegations, even if they are true, would not show that he has held A.J.S. out as his biological child. Therefore, respondent lacks standing under the holding-out presumption to bring his paternity action.

Because we hold that respondent cannot compel genetic testing to establish paternity, and has failed to allege facts sufficient to obtain standing under the holding-out presumption, we hold that the district court erred in denying appellants' motion to dismiss.

Accordingly, we reverse and remand for the district court to dismiss respondent's petition with prejudice.

Reversed and remanded.