Alison Key: That's what I'm saying. I think I'm right.

Mark Thomson: Welcome to The ComMN Law, the best and only podcast about the Minnesota Supreme Court. My name is Mark Thomson. I work at Nichols Kaster in Minneapolis and I clerked for Justices Lillehaug and McKeig.

Alison Key: And My name is Alison Key and I clerked for Justices Stras and Hudson.

Mark Thomson: We've got a fascinating case about statutory interpretation and the naming rights for children today. But before we get to that, let's do some legal news. I've got a quick piece from an appearance that Justice Thissen had in Hutchinson, Minnesota, this week. This is from the Hutchinson Leader. And he—a couple of interesting things. One, he spoke on the issue of access to justice and the lack thereof. And he said, not surprisingly, those people tend to be poor, they tend to be people of color, and they also tend to be people in greater Minnesota. And I think to the extent access to justice is discussed, it often focuses on those first two things. And it was a wise move by Justice Thissen to bring to light that these problems are often quite severe in outstate Minnesota and likely, you know, nonmetropolitan areas in cities and states around the country. A relevant thing to bring up. He said, I don't know that I have great answers, but it's a conversation we should have. The other notable thing he said was in discussing his role as a supreme court justice versus his old role as a legislator. And he talked about how he generally quite likes the new job but couldn't resist offering another volley in the ongoing kind of shadow debate as to Justice Thissen's relationship to textualism and the court's approach to statutory interpretation. He said this, "I know legislators don't sit at the Capitol poring over dictionaries. It's important to know that they're just trying to solve a problem." Rah Rah for Justice Thissen.

Alison Key: One point on the scoreboard for Justice Thissen. Final piece of legal news for this episode is a Star Tribune article entitled, "Minnesota Judicial Budget Request reflects impending wave of retirements." So the article states that "Minnesota's judicial branch is facing a wave of retirements and the budget request it's sending to the governor aims to make court jobs competitive with other careers in the legal field. Nearly 40% of the state's judges are expected to have retired or be approaching retirement age within the next three years and a third of all judicial branch staff will reach retirement in the next decade." So reading this article, it kind of ties in nicely with a piece of legal news we discussed in our previous episode where we talked about the new head of the judicial selection commission who mentioned that there are plenty of people in the community who should be judges or want to be judges but just don't know it yet. So maybe this impending retirement of 40% of the state's judges will help get their attention. One other fascinating aspect of this article was that in terms of making the appeal to increase the pay of many of the court's judges and staff, the article notes, "many county attorneys and some of their chief assistants also make roughly 3% more than the district judges they appear before," which is probably slightly embarrassing for the judge that's handling cases involving

attorneys that make more money than them. So I can understand where the Minnesota judicial system would like to remedy that aspect.

Mark Thomson: Yeah, don't have to worry that the public defenders make anywhere near as much money as anyone involved, fortunately. Moving on to our feature case, it's got a long title. It's called, In re Application of J.M.M. on behalf of Minors for a Name Change. J.M.M. are the initials of a mother in this case who is seeking a name change on behalf of her children, those are the minors in the case title. And it's a kind of fascinating and underexplored issue in Minnesota law, as we'll hear from the amicus attorney that we interviewed. This is a statute that has not been analyzed or discussed very often. And so it leaves the justices kind of in an open field as far as trying to figure out what to do with it. So let's get started with the facts.

Alison Key: So like Mark mentioned, the appellant in this case, J.M.M., is a mother of three minor children, all three of whom share the same biological father. So quoting from actually the Court of Appeals opinion in this case, the factual situation that we have on this record is pretty remarkable. So the Court of Appeals says this, "despite his insistence that the children carry his last name, the biological father refused to sign any of the children's birth records as their father as part of his effort to avoid child support liability. The biological father has never paid appellant child support for the children. And while she and the biological father were living together, he threatened to harm her and her children if she ever attempted to collect child support from him or leave him.

J.M.M. Atty: He could have listed himself on the birth certificate, which he refused to do. And given the opportunity to sign a Recognition of Parentage at the hospital for both the first two children and he declined to do so because he did not want to have any legal responsibility or legal rights relating to the children and he did not want any responsibilities. But he wanted to make sure that they did not have J.M.M.'s last name.

Alison Key: So appellant-mother of these children, then, ended her relationship with the biological father of these children and moved back to Minnesota—she had been living in Wisconsin—moved back to Minnesota to live with her family when she was pregnant with her third child by that same biological father. So appellant-mother and her three children have had no contact with that biological father since she moved back to Minnesota.

J. McKeig: Counsel, does the record tell us if D.G. has done anything such as send cards, letters, and gifts to these children?

J.M.M. Atty: The record does tell us that he has *not* done any of those things, that there has been no contact with him since the call after the birth of the third child when J.M.M. informed him that that child had been born.

J. McKeig: So, no financial support, not attending any school conferences, doctors' appointments, et cetera.

J.M.M. Atty: That's correct.

Alison Key: So some years later, appellant petitioned a district court to change the last names of her children from the last name that the biological father had insisted that they have, which was his last name, to appellant-mother's last name.

J.M.M. Atty: Three and a half years ago, appellant J.M.M. initiated a name change proceeding in Hennepin County in order to change the names of her three children so that they would have her last name rather than that of her ex-boyfriend, D.G.

Alison Key: So appellate-mother, then, applied for a name change under Minnesota's Name-Change Statute, but the statute says this, "no minor child's name may be changed without *both parents* having notice of the pending of the application for the change of name, *whenever practicable,* as determined by the court." So when the face of this language, then, J.M.M. argued to the district court that she shouldn't be required to notify the biological father of her application for this name change. She states that she's the only parent listed on the children's birth certificates, that no father has been legally adjudicated as the parent of these children, that her ex-boyfriend, the biological father, hadn't seen any of these children for over two years by that point. In fact, he had never met the youngest child because she moved back to Minnesota before that child was born. And that he never cared for the two oldest children that he did know, that these kids don't know him as any type of parental figure in their lives. So she argues in that way that "both parents" doesn't apply here. There aren't two parents. She is the only parent. The biological father does not fall within the definition of parents in the statute. And she further stated that, under the second portion of the statute, whether it's practicable to provide notice, that because the biological father had threatened her and her kids with bodily harm and threatened to take her children away, it wouldn't be practicable for her to risk her life and safety to give notice to the father of the name change of her minor children in this case.

Mark Thomson: Yeah, I think it's important to keep in mind that this is really a case about notice, that J.M.M. does not want to provide notice for the reasons Alison's discussed. It's not about whether, if the biological father objected, the court is likely to grant the name change. I think, it's not really discussed, but based on all the facts that you've just heard, it seems extremely likely that a court would grant the name change. But before we get there, we have to resolve this notice issue.

Alison Key: So it's important to note, too, that her claims of domestic abuse do have quite a bit of weight here. Not just because she made those claims under oath to the district court, but also because in Hennepin County, where she lives now, single parents are required to pursue child support from the biological fathers if those mothers receive public assistance. But the mother here applied for and got a

waiver from the County itself, from Hennepin County, from pursuing the biological father, specifically because she demonstrated a credible risk of domestic violence if she were to interact with him.

J. McKeig: Can you tell me if I'm accurate that, that J.M. sought and received a waiver for establishing paternity pursuant to receiving public assistance and that was based on domestic violence?

J.M.M. Atty: That is correct, your honor. Yes. And that continues to be the case. She continues to receive some assistance in the form of childcare. And that waiver remains in— the family violence waiver— remains valid. So Hennepin county has excused her from seeking paternity or any contribution because of the serious and credible threat of violence and control in her past.

Alison Key: So on this notice issue, then, she had petitioned to the district court that she should fall within the exception of providing notice to the biological father here. And the District Court rejected her petition to not notify the biological father of this name change, because the District Court interpreted that language saying "both parents" in the Minnesota Name-Change Statute to mean "biological parents." So there was an initial appeal to the Court of Appeals on this preliminary issue concerning the definition of a parent-child relationship. So the Court of Appeals on that initial appeal said, being a biological father was not simply enough to qualify under the "both parents" language of the Name-Change Law. But what's more relevant for us, then, is that on remand to the District Court, the District Court concluded that the biological father in this case was still entitled to notice of the name change application because (1) he did have a parent child relationship with those two children, and (2) providing notice was in fact "practicable" as defined under the Minnesota Name-Change Statute, because in the district court's mind there were ways to adequately address appellant-mother's safety concerns. So the Court of Appeals affirmed the District Court ruling in an unpublished opinion and the Court of Appeals agreed with the District Court that there was parent-child relationship between the minor children and the biological father that did require notice. And in addition that it was "practicable" for the mother here to carry out providing notice to that biological father. But in doing this, the Court of Appeals in this opinion permitted some of the biological father's more terrible personality traits to somehow factor in as redeeming qualities of him as it related to the question of whether or not he was in fact the father. The Court of Appeals first considered the fact that the biological father insisted and required that has children bear his last name. But the Court of Appeals says, remarkably, that the biological father "did take action at the birth of the two older children to ensure that their birth certificates used his last name despite not permitting himself to be listed with his father on the birth record."

Mark Thomson: Right. Just to put a fine point on it. Like, it's a case— In large, broad strokes, this is a case about what effect an abusive relationship and an estranged one might have on the surnames of children and the attempts to change them. And here, we're using a symptom of an abusive relationship, the forcing of the mother to

use the last name of the father, as a "pro" in the column of the father receiving notice.

Alison Key: So that was the first aspect in terms of what it means to— how the Court of Appeals interpreted "both parents" in the Minnesota Name-Change statute. And the second aspect of the court of appeals opinion was the analysis of the practicability of giving notice to the biological father in this case. So what the Court of appeals does, it first just looked to the dictionary definition of the word "practicable," and says, well, here, the mother knows where he lives. So literally the quote from the Court of Appeals is "appellant knows where the biological father lives and is able to serve him." So that was their analysis of the practicability. Then they continue to say, well, even if we were supposed to consider the possibility of domestic violence and the safety of the mother into this practicability analysis, which apparently their dictionary definition analysis didn't necessarily imply in the first instance, the court of Appeals majority opinion says that "the threats of violence were not barriers to the notice requirement here because they were only threats and he had never before carried them out." So kind of a fascinating analysis, probably pretty clearly divorced from reality, which I think is going to be the main arguments that we hear at the Minnesota Supreme Court,

Mark Thomson: So there are two legal issues on appeal to the Minnesota Supreme Court. One, whether the biological father of the children is entitled to notice of the name change application under Minnesota's Name-Change statute. And two, whether threats of violence against the family rendered notice of the application, not "practicable" within the meaning of the Name-Change statute. So appellant's attorney at oral argument is Catherine Barrett Wiik of Best and Flanagan.

J.M.M. Atty: Good morning, your honors. I'm Catherine Barrett Wiik and I'm a partner at Best & Flanagan. I'm here today with my co-counsel Lisa Beane of Robins Kaplan. And together we are appellate pro bono counsel for the appellant, J.M.M.

Mark Thomson: So Ms. Wiik is representing J.M.M., who's the mother in this case seeking the name change. And J.M.M.'s argument is that the biological father here is not a parent of these children as required in the "both parents" language of the Name-Change Law. So she agrees with the first Court of Appeals opinion that the language in the statute, "both parents," is ambiguous. And, having gotten past that threshold, she's arguing for a legal definition rather than a biological definition of the word "parents" in that law.

J.M.M. Atty: We agree with the first Court of Appeals that the term "parent" or "both parents" in 259.10 is ambiguous. There, as the first Court of Appeals found, Black's Law Dictionary has a very broad series of definitions of "parent." And we think in this context it clearly— it is ambiguous and it would be appropriate for the court to look to the definitions in other statutes and the Parentage Act,

Mark Thomson: She encountered pretty severe resistance immediately from the Chief Justice.

C.J. Gildea: I'm having trouble understanding how the phrase "both parents" can be ambiguous if we look at it as a matter of biology. To me, I think you could argue pretty strongly that that has to mean biology and only biology.

Mark Thomson: So that met a pretty quick rejoinder from J.M.M.'s attorney that this case would be easy if the word "biological" was in the statute, but it's not.

J.M.M. Atty: That's still requires adding the modifier of "biology" when it is not, that's not in the statute.

Mark Thomson: So it's a choice that the court needs to make about whether to kind of insert that stricture in the definition of the statute. But, I think J.M.M.'s attorney's argument was that the Chief is kind of assuming the answer to the question and skipping the work of determining whether "biological" is going to dictate the terms here.

Alison Key: Um, another problem with this that J.M.M.'s attorney does point out is that interpreting "both parents" in the Name-Change Statute as "biological parents" clearly and quickly leads to some pretty absurd results.

J.M.M. Atty: That would suggest that in the instance where we did know that someone was a biological parent, but that legal rights had been terminated, that that person would be entitled to notice if that is the definition. That would also exclude adoptive parents where we know who the bio— you know, when there's a known adoption and we know— an open adoption. And similarly, you know, if you have a known sperm donor, even if all parties to that transaction look at the law and see that the legislature has said that the mother is the sole legal custodian and everyone relies on that, that also, if we interpret the name-change statute the way that appointed counsel wants and the way that the court did below, that would completely the expectations up.

Alison Key: So the Chief in her response to this question and in her initial question seemed to imply that you can just cure any absurdity that's created with the biological interpretation of parents by using the second portion of the statute.

C.J. Gildea: To me, I think you could argue pretty strongly that that has to mean biology and only biology. And then you get into the practicability of providing notice, if you, for example, don't know the other side of the biological equation.

Mark Thomson: The last big point that J.M.M.'s attorney made is about the word "practicable" in the statute. So we discussed the court of appeals interpretation of this a little earlier, and I think it's interesting to consider whether there's any daylight between the word "practicable" in the word "possible" because when the court of appeals is talking about, well J.M.M. knows the location of the biological father's residence, that strikes me as an assertion that it is possible for J.M.M. to deliver notice. It strikes me as somewhat different, and I think this is the case that J.M.M. was making, as to whether despite knowing the location of his

residence, it is "practicable." So, there's an argument for a fuller definition of that word here.

J.M.M. Atty: I do just want to say a few words on practicability. In this instance, Hennepin County has deemed that there is a credible, serious history of domestic violence here. And has excused a J.M.M. from re-engaging with D.G. In any way. And that is a credible finding which this court should consider and should make clear can be looked at when determining whether notice as practicable. And we have a very powerful amicus brief on that point.

Alison Key: So the standard of review here would require that the district court's determination on this practicability question is clearly erroneous. And so J.M.M.'s attorney would have to argue that the way that the district court used its discretion to weigh these considerations is clearly erroneous. And so that's what she was trying to argue here.

C.J. Gildea: Your argument is the conclusion of the district court was clearly erroneous.

J.M.M. Atty: Absolutely. I agree with the methodology that there was a weighing, and I think that's the proper weighing, that the district court engaged in, in the practicability. To look at the credible threats of violence and the history of control and abuse, and look at the legal interests. But as a matter of law, put far too much weight on D.G.'s interests in this situation. That is an aspect of the district court's— the most recent district court's analysis that suggests it doesn't understand the significance and the sophistication of domestic abuse.

Mark Thomson: On the other side of this case, representing respondent in absentia, is Michael Boulette of Barnes and Thornburg. He was appointed to argue this case by the Minnesota State Bar Association because the biological father did not appear in the case.

Respondent Atty: Good morning, your honors, may it please the court. Michael Boulette here as appointed counsel by the Minnesota State Bar Association.

Alison Key: So as far as appointed counsel on behalf of respondent's argument goes, even though the court of appeals had determined that "both parents" in the Minnesota Name-Change Statute should be interpreted in line with the definitions of parent in the Minnesota Parentage Act, on appeal to the Supreme Court, Michael Boulette on behalf of the respondent in this case, states that instead of deferring to that interpretation by the court of appeals, "both parents" is not ambiguous in this case, like the court of appeals had said it was. Instead a plain reading of the term "both parents" in this case means biology and only biology.

Respondent Atty: The legislature said "both parents." And as it used that term in 1951 and as it continues to use that term under a plain language meaning of the word, "parent" is primarily based in biology, particularly when we have the modifier

both giving us additional information. The plain language reading of the statute, potentially supplemented by reading it in pari materia with the adoption act would get the court to a place of, it's biology and it only needs to be biology.

Alison Key: So he states, you don't really need to even consider all the possible permutations of what "both parents" would mean in all of the other situations that J.M.M.'s attorney is talking about. Because in this case there is one biological father and one biological mother. And according to respondent attorney's interpretation of the record, similar to the court of appeals interpretation of the record, the biological father did in some way participate in those minor children's lives.

Respondent Atty: We don't need to turn to the Parentage Act unless the language in the statute is ambiguous as to this situation. It is not ambiguous as to this situation. D.G. Is the acknowledged biological father of M. And D. D.G. lived with these children, contributed his paycheck to support these children, found them housing, did all the things we expect of a parent under the dictionary definition of that term.

Mark Thomson: So as a first rejoinder, Justice McKeig just disagreed that the facts being cited here support the interpretation that respondent's attorney is giving them.

J. McKeig: Counsel, what about the fact that he has never introduced these children as his children? In fact, has only introduced them by their name to the community.

Mark Thomson: So it's one side of it that deals with some of the facts here, what the biological father did as a parent, whether he actually provided any reasonable assistance to the children. That's one thing. A separate issue is whether the legislature just intended "both parents" to mean parents from a biological perspective. And I think we can see here there are some seriously deleterious consequences that might flow from an interpretation like that. But nonetheless, it's a court of law and its job is to interpret the statutes on the books. And I don't see it as much of a closed book as the Chief Justice seems to, but I think there's a serious argument that this is what the legislature intended. They probably didn't think of these consequences and we might have to look at revisiting the statute.

Respondent Atty: Minnesota's name-change statute is by no means the only way we could imagine doing this. One could easily imagine a world in which legal custodians can just change their children's names and they can do it when they want, how they want and whatever. My point being, that Minnesota has elected to not go down that path. If we simply adopt a plain language approach though, even a plain language approach informed by the Adoption Act, it may well be that biological parenthood is enough to receive notice under the language the legislature's chosen to give us. I think that counsel has raised excellent points as to why that may be a silly policy. It may be that we want— that the legislature should have said it's adjudicated parents, or the legislature should have said it's parents who have taken an active involved in ongoing role. But the legislature hasn't said that.

Alison Key: So the second main point of respondent attorney's argument to the Minnesota Supreme Court is on the practicability prong. So aside from how we define the term "both parents" in the Minnesota name-change statute, the exception to providing notice for when it is not practicable doesn't apply here. So the respondent's attorney's argument is that the district court properly weighed the safety considerations in this case.

Respondent Atty: There is this overlying question of practicability that really does need to be considered. And appointed counsel takes seriously the allegations of domestic abuse and the need to treat it very seriously. I think you have to do with it precisely what the District Court did here, which is to take it extremely seriously, to weigh the facts carefully as presented to you. And then to make, and then to make a balancing decision about are the dangers of safety so great here as to render notice impracticable. It said, "I accept there may be circumstances where notice would be so dangerous that it shouldn't be given. I find under these facts and these circumstances that it doesn't rise to that level." With all due respect to J.M.M. and her sincerely held beliefs, that was the district court's job is to weigh those facts.

Mark Thomson: One last point, there were a couple amici here. Both on the side of J.M.M., their organizations called Standpoint and Battered Women's Justice Project. Standpoint was represented by Rana Alexander who's the executive director there. And we had the pleasure to interview her and we'll play that now.

Alison Key: All right. And now we are here with Rana Alexander. She filed an amicus brief in this case on behalf of Standpoint and she was kind enough to join us to answer a couple of questions about her organization and the brief she filed in this case.

Mark Thomson: Rana, if you would, tell us about Standpoint and the services that it offers in Minnesota.

Rana Alexander: Yeah so Standpoint is a statewide nonprofit organization, and what we do is we give legal advice and consultation to domestic and sexual violence victims, to domestic and sexual violence advocates, to the attorneys who represent them, and then to other folks. And largely that happens through— we have a 1-800 number and people give us a call and they ask us legal questions as it relates to the law as it relates to domestic and sexual violence. So that's one of the primary things that we do. We do a lot of training, we do a lot of technical assistance across the state on legal issues as they affect domestic and sexual violence victims.

Alison Key: Sounds like really important work that you and your organization are doing in Minnesota. So what made Standpoint particularly interested in this case with J.M.M.?

Rana Alexander: So we got a call from—at the time the primary attorney was working at Robins Kaplan—and we got a call about the case and wondering if we were interested,

because the language in the Name-Change Statute is kind of odd as it relates to changing the name of a minor. And it has this language in there about whether contacting "both parents" is practical. And so they were interested in our opinion on what we thought about that language. And then also the initial case, this case went up to the court of appeals, came back down and then went back up to the court of appeals, and then to the Minnesota Supreme Court. And this was at the beginning, the first time we went up to the court of appeals. And then also our opinion about the district court's statement about how, because of the word "both parents" in the Name-Change Statute, that that meant "both biological parents," and what our thoughts were about how that played out, if that was going to be the definition, as it related for domestic and sexual violence victims. So we were asked to come in as amicus and it was something that as an agency we've answered a lot of questions on in the past and had provided legal advice on. But we're never really sure if we were right. Because there is no case law on this issue. It was an opportunity to potentially solidify the law around those issues.

Alison Key: So you've kind of talked about this a little bit already about kind of the primary arguments that you were trying to emphasize to the court, but can you just walk us through, was it primarily a legal argument that you were making in terms of statutory interpretation of the term "both parents" or did you guys see your role more as trying to remind the court of the practical realities that you and your organization deal with on a regular basis?

Rana Alexander: In the amicus brief that we filed with the supreme court on this issue, it was more—it was, it was twofold. It was (A) you know, the district court does have discretion and in language is in there, in the statute. And then (B) how do we consider domestic violence, or sexual violence depending on the circumstance, as the court is deciding whether or not it is practical to not give notice, or whether the practicality goes away about giving notice to the other, to the alleged third party. Obviously in J.M.M., we had an alleged father, an alleged father who had made choices specifically to not sign a recognition of parentage. Who had made choices to not have their name on the birth certificate. Who had made choices to never file any sort of custody or parenting time action. And so, that was adding to the concern about had this alleged father who has worked very hard to not be legally responsible, and then in addition had made threats of violence against the mother and against the mother's family, and so trying to remind the court that this is the reality that many domestic violence victims live in. So we were, we were doing that twofold in trying to argue the law and the ability of the court to do it. And then also reminding the court about what the life is like of a domestic violence victim.

Mark Thomson: So in light of those points of emphasis in your brief, what were your impressions of oral argument?

Rana Alexander: I think oral argument went really well. You know, it was an interesting situation because I've never been involved in a case where there wasn't another party. And so the Minnesota Supreme Court had appointed counsel to make

arguments for arguably the other side. And so it was a— very generically, those dynamics are very interesting to watch. But I thought it was a really good oral argument. You know, it felt like there were, you know, certain justices who agreed with J.M.M.'s arguments. And there were certain justices who were a little on the fence, and then maybe one or two justices that were on the side of appointed counsel.

Alison Key: Assuming that J.M.M. does not end up prevailing in this case, what are Standpoint's next steps in terms of this particular issue. I know that appointed counsel in this case did make the argument in oral argument and in the brief as well that this may be kind of a bizarre policy for Minnesota, but it is in fact the law and it is the policy that Minnesota has chosen to enact. Does Standpoint, have any thoughts about maybe changing the law?

Rana Alexander: Well, as a 501(c)(3) organization, we don't lobby and we don't put legislation forward. So, and because it's the Name-Change Statute, I'm not even sure who that would be who would encourage a modification of the Name-Change Statute. I definitely think that it should happen because the statute is very unusual as it relates to the name change of minors. You know, the statute starts, the sentence starts off by talking about how felons, and the process that felons need to go to change their name, and then there's a comma, and then it talks about changing the name of minors. It's definitely oddly written. I think Standpoint would work with somebody or if they were wanting to move forward to modify the statute. But it— that would not be something that would be a Standpoint role. As for J.M.M., if she does not prevail, she'll have to make a choice on whether she wants to provide notification to proceed with that process or if she's just going to leave it alone. And wait until the kids are adults and they can change their names themselves.

Mark Thomson: Rana, understanding that Standpoint couldn't be directly involved in any legislative changes in the future, I wonder if this is the first time that an issue with this statute has come up and whether it's ever been discussed before that it might be in need of a rewrite.

Rana Alexander: I am not familiar with anybody who— about any discussions about the oddness of the Name-Change Statute. You know, there are very few cases in general about name changes in the state of Minnesota. And most of those relate to things like somebody wanting to change their name in an unusual way. I know there were a couple of cases about people wanting to change their name to numbers. The court has said no, you can't do that. We actually just had a court of appeals decision about somebody who wanted to change their name and overturning the district court's refusal. But, I'm not familiar with anybody or any organization or any group of folks, who's tried to push to change the Name-Change Statute.

Alison Key: So just getting again to one of the arguments you made, your brief makes note of a New York case that your organization thought was particularly relevant for

this case. Can you just mention the facts of that case and why you thought it was relevant to this case?

Rana Alexander: So in my research, originally, and so this again, that research had happened the first time we went up to the court of appeals. But there were— that was the only case I could find even remotely on point was this case out of New York, where, it happened to be a mom, and she had a couple of children and she wanted to change the name of the minor children. There had been pretty significant domestic abuse and so she had asked the court to waive the notice requirement that existed in New York law. New York law did not have that kind of goofy language that Minnesota has about, you know, if the court decides that it doesn't make sense to provide notice then you, you don't have to. So New York's court ultimately decided that it just could do this—and that's kind of where that practical language came in—the court decided that it just wasn't practical to give notice because of the significant domestic violence that had happened in that relationship. And that it would put the petitioner and the children in so much more danger to provide that kind of notice. And so it was a very clear example of the court finding that, you know, making this practicality argument and applying it even though in their state they didn't have language for that to happen. And so it was the argument of, they were able to do this in New York even though the language doesn't exist, but here in Minnesota we have this language. So we should follow the example of what New York did and the reasoning behind the New York case.

Alison Key: Right. Certainly what stood out to me about that statute in New York is it, like you said, it didn't even include an exception to notice to a potential biological father and the court even when ahead and kind of had a more victim-friendly result in that case in spite of it. So I'm glad that your brief mentioned that because I didn't see that brought up in any of the other briefs. And I think the Minnesota Supreme Court does often like to know it's not the first court to kind of push forward on some of these issues. So I thought that was a great inclusion. So is there anything else you wanted our listeners to know about your argument or Standpoint's perspective in this case?

Rana Alexander: I think one of the things that is interesting about this case that I didn't brief in the supreme court brief because it was not— because it wasn't part of the reasoning the second time at court at the district court level. But the first brief that I did to the court of appeals, we did make an argument about the danger that could be if the court made a finding that the language of the Name-Change Statute talks about "both parents" and the first district court decision said that both parents meant and biological parents. And in that, when we were at the court of appeals, Standpoint also argued the significant concerns about using biological parent as the definition of parents in this example. So when we submitted our, our amicus brief at the Minnesota Supreme Court, we didn't make that argument because it wasn't argued at the district court level and the court of appeals. However, after we submitted our brief, then appointed attorney submitted their brief. And in that brief, they really did argue this biological, that we should see both parents as meaning natural or biological

parents. And, you know, we argued it the first time around, but didn't argue it again. But if we do use this definition of biological parent, it could create a lot of concerns for domestic and sexual violence victims. You know, I can think of a couple of cases that we cited in our first brief where you have abuser who has killed the other parent, and now the county is moving to terminate the person's—the batterer or the abuser's—parental rights because they murdered the children's—in most of those cases—mom. And the father is fighting the termination of their rights, arguing that I should still get to be able to be a parent to this child who I left parentless, you know, left without a parent because I killed them. So that child may make— be like, I don't want to have my father's last name because he killed my mom. But if we go with biological, that means that father would have a legal right to notice and to object. Seems significantly problematic, especially when we're talking about domestic violence victims. On a similar vein, when we're looking at sexual violence, you may have somebody who is sexually assaulted and ends up becoming pregnant and they choose to keep that. And, you know, they may at some point, they give the child their last name and they get married and they decide, you know, the mom and the and the new husband decide, and the new husband says, he wants to adopt the child and wants to change the child's last name to his. Now that mom is going to have to give notice, if we use that definition of biological, she'd have to give notice her rapist, sitting in prison for raping her. That's a significant problem and a concern that we did raise in our first brief, but we didn't raise in the second one because we weren't aware that was going to be a legal issue that we're going to be addressed.

Alison Key: Well thank you so much for talking to us here. I know our listeners appreciate it. And we appreciated, hearing Standpoint's perspective from the lead attorney on the Standpoint brief, Rana Alexander. So thank you very much.

Rana Alexander: Absolutely. Thank you so much.

Alison Key: So Mark, who's going to win this case and why?

Mark Thomson: I'm frankly not sure. I think you saw that there were a couple of votes clearly for both sides and it's not an issue on which, you know, political leanings are neatly mapped. It's kind of an issue in which it's like a practical result versus what some might consider a more legalistic and formalistic interpretation. So, I suppose I will lean toward J.M.M., but I say that with no confidence.

Alison Key: I probably end up agreeing with that prediction. I think the Chief Justice and Justice Anderson clearly demonstrated that they're probably going to come out on the side of the biological father. All over the board from the rest of the justices in terms of whether they would agree with J.M.M. on the definition of "both parents" or on the practicability question. But I do agree that, I think other than the Chief and Justice Anderson, J.M.M. has five votes here.

Mark Thomson: What do we learn from the case today, Alison?

Alison Key: We learned from the case today to never give birth in Wisconsin. Or at least write, "Ignore the father's thoughts about names" in your birth plan.

Mark Thomson: I think everyone should write that in their birth plan.

Alison Key: I agree.

Mark Thomson: Thanks for joining us on another episode of The ComMN Law. You can check us out at thecommnlaw.com. We've got a free CLE calendar there. You can also go there and claim your credit for listening to this episode. Thanks to our communications directors, Joy and Chloe, and a special thanks to Rana Alexander for lending us her time and thoughts today.

Alison Key: Have a nice one, ComMNers. Alright, get us TF outta here.