STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1616

T. G. G.,
Appellant,

vs.

H. E. S.,
Respondent,

A. F. K. and N. D. K., intervenors,
Respondents.

Filed June 24, 2019
Affirmed
Hooten, Judge

Isanti County District Court
File No. 30-FA-18-74

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

John J. Neal, Willenbring, Dahl, Wocken & Zimmerman, PLLC, Cold Spring, Minnesota (for appellant)

Jody Ollyver DeSmidt, DeSmidt Rabuse PLLC, Minneapolis, Minnesota (for respondent H.E.S.)

Mark D. Fiddler, Fiddler Osband, LLC, Edina, Minnesota (for intervenors A.F.K. and N.D.K.)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Kirk, Judge.*

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

S Y L L A B U S

I. The grant of a temporary restraining order does not constitute a "judicial hearing" for the purpose of determining the timeliness of a revocation of a recognition of parentage under Minn. Stat. § 257.75, subd. 2 (2018).

II. Minn. Stat. § 259.52, subd. 8(1) (2018), which prohibits a putative father who does not qualify for a statutory exception and did not timely register with the Minnesota Father's Adoption Registry from "maintaining" an ongoing paternity action once an adoption proceeding is commenced, does not facially violate the procedural due process rights of putative fathers.

O P I N I O N

HOOTEN, Judge

Appellant challenges the dismissal of his paternity action for failure to state a claim upon which relief can be granted. He argues that Minn. Stat. § 259.52, subd. 8 (2018), does not bar his paternity action or, in the alternative, that it is unconstitutional. We affirm.

FACTS

Appellant T.G.G. had a sexual relationship with H.E.S. (mother) in March 2017. Mother told him that she was on birth control at the time. The two ended their relationship shortly thereafter, and mother began seeing someone else. Mother then learned that she was pregnant. She gave birth to the child who is the subject of these proceedings on January 12, 2018. Two days later, the child was placed with two prospective adoptive parents (respondents) through Bethany Christian Services (the adoption service).

Appellant alleges the following facts in his paternity petition or complaint. Although he knew that mother was pregnant, he did not know he was the father of the child because they had ended their relationship and mother was dating someone else. After the birth of the child, appellant requested a paternity test. In February, mother agreed and a

specimen was collected from the child on or about February 22. A report dated March 5 showed a 99.9999% probability that appellant was the child's biological father. Appellant requested that mother allow him to raise the child and stop the adoption process, but she refused. On March 21, mother did, however, sign a Voluntary Recognition of Parentage (ROP), recognizing appellant as the child's biological father, which was then filed with the Minnesota Department of Health, Office of Vital Records. And that same day, which was 68 days after the child was born, appellant registered with the Minnesota Fathers' Adoption Registry.

On March 23, 2018, appellant filed a paternity action in Isanti County seeking to be adjudicated the father of the child. At the same time that he filed his paternity action, appellant also filed his affidavit and motion for injunctive relief prohibiting the adoption of the child pending his paternity action. On March 26, without the presence of any party, the district court granted a temporary restraining order and then scheduled a hearing for April 23.[1] On March 28, mother signed a ROP revocation form, which was processed on March 29. On the same day that the ROP revocation form was processed, mother was served with a notice of filing, the temporary restraining order, and a notice of hearing.

On April 16, appellant moved for summary judgment in his paternity action. Respondents then started a separate proceeding in Ramsey County by filing a petition to adopt the child on April 19. And that same day, they filed motions to intervene as a matter of right in appellant's paternity action and to dismiss that action under Minn. R. Civ. P.

[1] Although the district court referred to its order as a "temporary injunction," we refer to it as a temporary restraining order, which, as we will demonstrate, is the correct designation.

12.02(e) for failure to state a claim upon which relief can be granted. The district court granted respondents' motions. This appeal follows.

ISSUES

I. Does appellant qualify for an exception to Minn. Stat. § 259.52, subd. 8?

II. Does Minn. Stat. § 259.52, subd. 8, bar appellant's paternity action?

III. Is Minn. Stat. § 259.52, subd. 8, unconstitutional?

ANALYSIS

Appellant challenges the district court's dismissal of his paternity action for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). In appeals from such a dismissal, we review the legal sufficiency of the dismissed claim de novo. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). In doing so, we "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Id.* (quotation omitted).[2]

[2] The district court arguably should have resolved respondents' motion to dismiss as a motion for summary judgment. *See* Minn. R. Civ. P. 12.02 (stating if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). No party has raised this issue on appeal, the district court treated this as a rule 12.02(e) dismissal, and the issues before us on appeal are almost exclusively legal questions. Accordingly, we accept the facts in the paternity petition as true and construe all reasonable inferences in appellant's favor, as required under rule 12. But we also note that the district court took notice of mother's filing of the ROP revocation form, the issuance of the temporary restraining order, and respondents' adoption petition in Ramsey County. These three filings occurred after appellant filed his paternity action. The parties do not dispute the filing of these documents or, on appeal, the propriety of considering these documents in resolving the legal issues before us. In fact, both before the district court and in this appeal, the parties extensively referred to these documents in making their legal arguments. Because they are not in dispute, our statutory and constitutional analyses reach the same conclusions regardless of whether we analyze this matter as a rule 12 dismissal or a summary judgment dismissal.

The central issue in this case is how appellant's failure to register with the fathers' adoption registry within 30 days of the child's birth affects his paternity action. To resolve this question, the district court, respondents, and appellant all focused on Minn. Stat. § 259.52, subd. 8, which reads, in relevant part:

> Except for a putative father who is entitled to notice and consent under section 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:
>
> (1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child. . . .

The district court concluded, and respondents contend, that once respondents filed their petition to adopt the child, the statute barred appellant from maintaining his paternity action, making his claim legally insufficient for the purposes of dismissal for failure to state a claim upon which relief can be granted.

Appellant makes several arguments to the contrary. First, he asserts that he qualifies for an exception to the statute because he and mother signed a ROP. Second, he argues that even if he does not qualify for the ROP exception, the statute does not apply to him because he filed his paternity action before respondents filed their adoption petition. And third, he contends that if his first two arguments fail, then the statute violates his and the child's constitutional rights.

I. Exception to section 259.52, subdivision 8

Appellant begins by arguing that Minn. Stat. § 259.52, subd. 8, does not bar his paternity action because he qualifies for one of the exceptions that it specifically

contemplates. This exception, found in Minn. Stat. § 259.49, subd. 1(b)(7) (2018), provides that a parent must be given notice of a petition to adopt a child if "the person and the mother of the child have signed . . . a recognition of parentage . . . which has not been revoked or vacated." It is undisputed that appellant and mother signed a ROP on March 21, 2018, and that mother later filed a ROP revocation form.

The heart of this issue is the legal effect of mother's filing of the ROP revocation form. A ROP may be revoked "within the earlier of 60 days after the recognition is executed or the date of an administrative or judicial hearing relating to the child in which the revoking party is a party to the related action." Minn. Stat. § 257.75, subd. 2 (2018). In its order dismissing appellant's paternity action, the district court noted that mother and appellant signed the ROP on March 21, that appellant filed his paternity action on March 23, that it issued a temporary restraining order prohibiting the adoption of the child on March 26, and that it received a letter from the Minnesota Department of Health dated March 29, indicating that mother had revoked the ROP. The district court also found that the "actual date of revocation is not known to the Court, but the Court takes notice it was a date between March 21, 2018 and March 29, 2018." The record indicates that mother signed the revocation form on March 28 and that it was processed the next day. Thus, the revocation was timely insofar as it was filed within 60 days of the signing of the ROP.

But appellant argues that the "earlier" operative date that controls whether mother's revocation is effective is March 26, 2018, when the district court considered his motion for injunctive relief and issued a temporary restraining order. Appellant claims that because the district court's consideration of his motion for injunctive relief constituted a hearing,

and mother's revocation form was not filed until after this "hearing," her revocation was legally ineffective. The district court, however, concluded that mother's revocation of the ROP was legally effective because no hearing—judicial or administrative—had occurred by March 29, when her revocation was processed, and that appellant no longer qualified for the exception under Minn. Stat. § 259.49, subd. 1(b)(7).

Thus, whether mother's filing of the ROP revocation form is legally effective turns on the term "administrative or judicial hearing" in Minn. Stat. § 257.75, subd. 2. This presents us with an issue of statutory interpretation which we review de novo. *Christianson v. Henke*, 831 N.W.2d 532, 535 (Minn. 2013). The purpose of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). The first step is to determine whether, on its face, the statutory language in question is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). If we determine that it is unambiguous, then we enforce its plain meaning. *Christianson*, 831 N.W.2d at 537. If, however, the statutory language is ambiguous, then we proceed to the second step of statutory interpretation and apply the canons of construction to resolve its ambiguity. *Thonesavanh*, 904 N.W.2d at 435.

We turn to the first step. "A statute is ambiguous only if it is subject to more than one reasonable interpretation." *Id.* (quotation omitted). "In determining a statute's plain meaning, words and phrases are construed according to rules of grammar and according to their common and approved usage." *State v. Rogers*, 925 N.W.2d 1, 3 (Minn. 2019) (quotation omitted). We begin by noting that the statute contemplates both administrative and judicial hearings. But the temporary restraining order, the issuance of which appellant

claims constituted a hearing, was ordered by a district court judge, and nothing in the underlying proceedings could be construed as having taken place in the administrative law context, so we focus solely on the meaning of "judicial hearing."

We begin by looking to the "common and approved usage" of judicial hearing. *Id.* *Black's Law Dictionary* defines a "hearing" as:

> A judicial session, usu. open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying <the court held a hearing on the admissibility of DNA evidence in the murder case>. — Also termed *judicial hearing*.

Black's Law Dictionary 836 (10th ed. 2014). We recognize this definition as the common and approved usage of judicial hearing. And looking at the statute and this definition, we conclude that the meaning of "judicial hearing" is plain and that the statute is therefore unambiguous. Thus, we apply the plain meaning of the statute and do not proceed to the second step of statutory interpretation.

At the time he filed his paternity action, appellant submitted an affidavit and exhibits to the district court in pursuit of injunctive relief. There was no "session" held by the district court for the purpose of deciding issues of fact or law. There was nothing open to the public. There was no testimony from witnesses or appearances by any party. Accordingly, we conclude that appellant's request for injunctive relief and the district court's grant of that request do not constitute a judicial hearing under Minn. Stat. § 257.75,

subd. 2. Because the grant of a temporary restraining order does not constitute a judicial hearing, mother was not barred from revoking the ROP.[3]

But appellant also argues that even if there was no hearing, mother's filing of the ROP revocation form was legally ineffective because the temporary restraining order prevented her from revoking the ROP. In his application for injunctive relief, appellant asked the district court to restrain mother and the adoption service "from moving forward with the adoption of [the child] while [appellant's] Complaint is pending." In its temporary restraining order, the district court said it was, "Prohibiting the adoption until paternity has been determined, and if established, [granting] a permanent order prohibiting the adoption without my consent." By its very terms, the temporary restraining order only prevented the finalization of the adoption; it did not prevent mother from exercising her legal right to revoke the ROP. Accordingly, this argument also fails.

II. Applicability of section 259.52, subdivision 8(1)

Appellant next argues that even if he does not fall under the ROP exception, he is still entitled to bring his paternity action. The district court disagreed, dismissing appellant's paternity action because it was barred under Minn. Stat. § 259.52, subd. 8(1). That statute says that a putative father who fails to timely register with the adoption registry

[3] In light of our holding that there was no hearing, what the district court called a temporary injunction was actually a temporary restraining order. A temporary injunction is issued after a hearing whereas a temporary restraining order is issued to "prevent immediate irreparable injury until a hearing can be conducted to determine the need for a temporary injunction." 2A David F. Herr & Roger S. Haydock, *Minnesota Practice* § 65.1 (5th ed. 2012); *see also* Minn. R. Civ. P. 65.02 (contemplating a hearing on a motion for a temporary injunction). And, after granting the temporary restraining order, the district court set a hearing for April 23, which follows the requirements of rules 65.01 and 65.02.

and who does not qualify for an exception "is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child."

Appellant asserts that this language does not bar him from bringing his paternity action because respondents' adoption petition was not filed until *after* he filed his paternity action. Importantly, he disputes that the word "maintaining" applies to his situation as he initiated the paternity action before the adoption petition was filed. Respondents dispute this reading of Minn. Stat. § 259.52, subd. 8(1).

Because there is a dispute over the meaning of the term "maintaining" in the context of Minn. Stat. § 259.52, subd. 8(1), we must engage in further statutory interpretation. As before, the first step is to determine whether there is an ambiguity in the language of the statute. *Thonesavanh*, 904 N.W.2d at 435. Here, it is unnecessary for us to proceed to the second step of statutory interpretation because the plain meaning of the statute is easily discernible: if a putative father does not timely register with the adoption registry or qualify for an exception and adoption proceedings are commenced, then the putative father is not allowed to bring an action asserting an interest in the child, and if he already has such an ongoing action, then he is not allowed to maintain it. That is precisely what happened here. Appellant failed to timely register with the adoption registry but qualified for an exception through the ROP, he commenced a paternity action, he lost his exception when the ROP was revoked, and then respondents filed an adoption petition. Applying the statute, appellant is not allowed to maintain his paternity action. Thus, Minn. Stat. § 259.52, subd.

8(1), is unambiguous, and its plain meaning bars appellant from maintaining his paternity action.[4]

III. Constitutional Challenges

Appellant argues that Minn. Stat. § 259.52, subd. 8, is unconstitutional. We review the constitutionality of a statute de novo. *Schatz v. Interfaith Care Ctr.*, 811 N.W.2d 643, 653 (Minn. 2012). But a statute is presumed to be constitutional, and the challenger must demonstrate that it is unconstitutional beyond a reasonable doubt. *Heidbreder v. Carton*, 645 N.W.2d 355, 372 (Minn. 2002).

i. Procedural Due Process

Appellant argues that his procedural due process rights were violated. "We conduct a two-step analysis to determine whether the government has violated an individual's procedural due process rights." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). The first step is to identify whether the government has deprived the appellant of a protected life, liberty, or property interest. *Id.* If there is no such deprivation, then there is no need for due process. *Id.* But if the government has deprived the appellant of a protected interest, then we move to the second step and determine whether the government's procedures were constitutionally sufficient. *Id.*

[4] The district court also determined that while an adoption petition had not been filed, adoption proceedings were already "pending" when appellant filed his paternity action. Because we have concluded that appellant is barred from maintaining his paternity action, we do not reach the question of whether adoption proceedings were pending when appellant filed his paternity action.

Appellant argues that his parental interests merit procedural due process protection. In *Heidbreder*, the Minnesota Supreme Court addressed the issue of whether the existence of a biological connection between a child and a putative father confers due process protection on the putative father's parental interests. 645 N.W.2d at 372–73. The supreme court explained that the biological connection alone is not sufficient; instead, "A putative father's interest in knowing his child is entitled to due process protection only when the father 'demonstrates a full commitment to the responsibilities of parenthood by com[ing] forward to participate in the rearing of his child.'" *Id.* at 372 (quoting *Lehr v. Robinson*, 463 U.S. 248, 261, 103 S. Ct. 2985, 2993 (1983)) (alterations in original). "[T]he degree of involvement a putative father must have to demonstrate a 'full commitment' to the responsibilities of parenthood" has not been defined, but a father may demonstrate such full commitment by showing that he has a "'significant custodial, personal, or financial relationship' with the child." *Id.* (quoting *Lehr*, 463 U.S. at 262, 103 S. Ct. at 2994). If a putative father is able to demonstrate this full commitment to his child, then "his interest in personal contact with his child acquires *substantial protection* under the due process clause." *Lehr*, 463 U.S. at 261, 103 S. Ct. at 2993 (emphasis added). But even if a putative father is unable to demonstrate full commitment to his child, the state must nonetheless adequately protect his opportunity to form a relationship with his child. *Id.* at 262–63, 103 S. Ct. at 2994; *see also Heidbreder*, 645 N.W.2d at 373 (applying the opportunity-to-form-a-relationship standard form *Lehr*).

Appellant argues that he is entitled to substantial procedural due process protection "because he has come forward to participate in the rearing of the child." He does not argue

that he has a significant custodial, personal, or financial relationship with the child that would demonstrate his full commitment to parenting the child. But he insists that his attempt to stop the adoption and parent the child himself demonstrates his full commitment to his child. For the purposes of this review, we agree.

The language about a "significant custodial, personal, or financial relationship" with the child comes from *Lehr*, 463 U.S. at 262, 103 S. Ct. at 2994. But the Supreme Court never purported to say that a full commitment to parenting could *only* be shown in this way. Nor did our supreme court limit the "full commitment" showing in this way when it adopted the "significant custodial, personal, or financial relationship" language. *Heidbreder*, 645 N.W.2d at 372. Accordingly, we emphasize what was insinuated by the *Heidbreder* court and conclude that a putative father may show his full commitment to raising his child and therefore be afforded "substantial" procedural due process protection of his parental interests even without demonstrating a significant custodial, personal, or financial relationship with his child. Rather, that conclusion turns on the facts of each individual case. Thus, appellant's lack of a significant custodial, personal, or financial relationship with his newborn child is not fatal to his argument that he should receive substantial protection under the due process clause.

The question is therefore: for the purposes of our analysis, did appellant allege sufficient facts to show a full commitment to parenting the child in other ways? In answering this question, we are mindful of the procedural posture of this case—that appellant is appealing a dismissal for failure to state a claim upon which relief can be granted—and the associated requirement that we accept the facts in appellant's complaint

as true and construe all reasonable inferences in his favor. *See Bahr*, 788 N.W.2d at 80. We find it useful to compare the facts of appellant's case with those of *Lehr* and *Heidbreder*. In *Lehr*, the appellant did not seek to establish a legal relationship with his child until after the child's mother had remarried and her new husband was seeking to adopt the child. 473 U.S. at 259, 262, 103 S. Ct. at 2992, 2994. By that point, the child was two years old and the putative father only sought visitation. *Id.* In *Heidbreder*, the putative father had indicated that he was "absolutely against adoption and . . . believed adoption was not right," and the supreme court said that his actions were "consistent with those of a putative father who does not want his child adopted because he believes adoption is not right but intends to avoid assuming the responsibility of providing for the child's financial and emotional needs by simply waiting for the birth mother to send [him] papers." 645 N.W.2d at 371, 373 n.12 (quotations omitted).

In contrast, the record here indicates that appellant sought full custody and responsibility for raising the child shortly after birth. And there is no indication that appellant is motivated solely by a moral opposition to adoption. We conclude that appellant's case is distinguishable from *Lehr* and *Heidbreder*. Further, the underlying facts of this case—especially appellant's expressed desire to take on full parenting responsibilities and the promptness of his paternity action following the DNA results—and the reasonable inferences we are required to make in appellant's favor lead us to conclude that, for the purposes of rule 12.02(e) review, appellant has sufficiently alleged a full commitment to parenting the child. Therefore, his parental rights are entitled to substantial protection under the due process clause.

We now turn to the second step of the procedural due process analysis. At this step, we must "determine whether the procedures followed by the [government] were constitutionally sufficient." *Sawh*, 823 N.W.2d at 632 (quotation omitted). To do so, we apply a three-factor balancing test. *Id.* First, we consider the private interest that will be affected. *Id.* Second, we consider the risk of an erroneous deprivation of this private interest through the procedures in place and the value of alternative procedural safeguards. *Id.* And finally, we consider the government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* (quotation omitted).

Appellant makes two specific arguments at this second step in the procedural due process analysis. He first argues that the language in Minn. Stat. § 259.52, subd. 8(1), which bars a father from "maintaining" a paternity action once an adoption petition is subsequently filed, is unconstitutional on its face. In order to succeed on a facial constitutional challenge, an appellant must show that the statute "is unconstitutional in *all* applications." *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (quotation omitted) (emphasis added). And if we conclude that the statute is not unconstitutional as applied to appellant's situation, it would follow that it cannot be facially unconstitutional.

Appellant in essence asserts that the three-factor balancing test necessarily favors him because the "maintaining" language does not promote the government's interests and in fact contradicts them. To determine whether that is the case, we must first identify the government's interests. In *Heidbreder*, our supreme court discussed adoption registries

and explained that they "serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who has failed to timely register and who is not otherwise entitled to notice can disrupt the adoptive placement." 645 N.W.2d at 369. And more succinctly, the court identified the government's interests as being about "permanence and stability in adoptions." *Id.* at 364.

This government interest in "permanence and stability in adoptions" fits into the broader governmental interest in protecting the best interests of the child. It is a long-standing family-law principle that when children are directly affected by proceedings, the district court must consider and protect their best interests. *See Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995) ("As in all matters involving court-established family relationships of children, we begin with reference to our paramount commitment to the best interests of the children."); Minn. Stat. § 259.20, subd. 1 (2018) (stating that in the context of adoptions, the policy of the state of Minnesota and the purpose of the adoption statutes is to ensure "that the best interests of adopted persons are met in the planning and granting of adoptions"); Minn. Stat. § 260C.301, subd. 7 (2018) (stating that in the context of the termination of parental rights "the best interests of the child must be the paramount consideration"); Minn. Stat. § 518.17 (2018) (requiring district courts to consider the best interests of the child in the context of custody and parenting time). We therefore identify the government's interests as: permanence and stability in adoptions and, more broadly, the best interests of the child who is subject to potential adoption.

Having identified what the government's interests are, we may now address appellant's argument and decide whether, as he claims, the prohibition on maintaining an

already-ongoing paternity action runs contrary to these interests. Appellant's position is that allowing potential adoptive parents to suddenly cut off a putative father's ongoing paternity action is harmful to the child and actually destabilizes adoptions. But appellant's argument ignores the reality that the filing of an adoption petition is not the beginning of the adoption process. In this case, for example, respondents did not file their petition to adopt the child until three months and one week after the child's birth, but that was not the start of the adoption process. The child was placed with respondents two days after birth and had been in the custody of the prospective adoptive parents for over two months before appellant filed his paternity action. And before the child was even placed with respondents, a background study had been completed in anticipation of the placement. In other words, respondents, like many prospective adoptive parents, had been involved in the child's and mother's lives long before formally filing the adoption petition.

Keeping an example such as this in mind, it is evident to us that the prohibition on maintaining an already-ongoing paternity action protects the government's interest in "permanence and stability in adoptions," as well as its interest in being able to protect the best interests of children who are subject to adoption proceedings, because it prevents a child from being taken from the home in which the child is being raised and being placed with someone whom the child may not even know several months after the child's birth. We conclude that the prohibition on maintaining a paternity action *does* serve the government's interests.

But that is not the end of our inquiry. Having decided that the "maintaining" language serves the government's interests, we must now conduct the three-factor

balancing test to determine whether this language is nonetheless facially unconstitutional. On the one hand, we consider appellant's private interest—in this case, a putative father's right to parent his child—and the possibility of erroneously depriving him of that interest. And on the other hand, we consider the aforementioned government interests. We are not insensitive to the importance of appellant's interest and the risk of erroneous deprivation of parental rights. But that does not change the fact that in cases involving children the long-standing "cardinal principle . . . is to regard the benefit of the infant paramount to the claims of" the parent. *State ex rel. Flint v. Flint*, 65 N.W. 272, 273 (Minn. 1895). And the child had been living with respondents for a little over two months before appellant filed his paternity action and was still living with them a month later when they filed their adoption petition. We do not see how it would be in the child's best interests to be taken away from the home that the child has lived in for all but two days of the child's life. We conclude that the balancing test favors the government's interests and that appellant has not met the heavy burden of proving beyond a reasonable doubt that the "maintaining" language of Minn. Stat. § 259.52, subd. 8(1), is facially unconstitutional.

Appellant's second due process argument is that the 30-day deadline for registering with the adoption registry is unconstitutional as applied to putative fathers who file a paternity action before an adoption proceeding is commenced. He further argues that the only purpose of this deadline "is to punish unwed fathers." But, as with the "maintaining" language, appellant ignores the reality of the adoption process. While respondents did not file their adoption petition until after appellant had filed his paternity action, the child had been living with them for over two months by the time appellant filed his paternity action.

As with our balancing of interests above, we conclude that having a deadline in place for putative fathers to register with the adoption registry allows for greater clarity and certainty in adoption proceedings, which ultimately protects the best interests of the child. While a 30-day deadline and this outcome may seem harsh, it is ultimately the legislature's prerogative—not ours—to decide where to draw the line on how long putative fathers have to come forward and assert their rights. *See, e.g.*, *Heidbreder*, 645 N.W.2d at 362, 370 (holding that a failure to timely register cannot be excused even if the appellant was only one day late). Accordingly, appellant's second due process argument also fails.

ii. Equal Protection

Finally, appellant argues that, as applied, Minn. Stat. § 259.52, subd. 8, violates the child's equal protection rights because it discriminates between nonmarital children and marital children by denying nonmarital "children the opportunity to build a relationship with their fathers." The equal protection clauses of the Fourteenth Amendment and the Minnesota Constitution require that "similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive." *Greene v. Comm'r of Minn. Dep't of Human Servs.*, 755 N.W.2d 713, 725 (Minn. 2008) (quotation omitted).

We note at the outset that our supreme court has previously examined whether section 259.52 violates equal protection in a different context. In *Heidbreder*, the putative father made an as-applied equal protection argument, asserting that the mother received more favorable treatment in the adoption proceedings than he did. 645 N.W.2d at 376. The supreme court held that "[e]qual protection does not prohibit the state from treating a

birth mother with an established custodial relationship with the child more favorably than a putative father who does not have an established relationship." *Id.* Though *Heidbreder* involved an as-applied challenge and is factually distinguishable from appellant's own case, its holding nonetheless does not bode well for future as-applied challenges. Perhaps with this in mind, appellant does not argue that his own equal protection rights have been violated, but instead puts forth the novel theory that the child's rights were violated.

But before we can address the merits of this argument, we must determine whether appellant even has standing to make such an argument on behalf of the child. "Standing is the requirement that a party have a sufficient stake in a justiciable controversy." *Sec. Bank v. Larkin*, 916 N.W.2d 491, 496 (Minn. 2018) (quotation omitted). Standing may be acquired through a statutory grant or by suffering an injury in fact. *Id.* And typically, "a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." *Powers v. Ohio*, 499 U.S. 400, 410, 111 S. Ct. 1364, 1370 (1991).

There is, however, an exception to this rule. A litigant is allowed to bring a claim on behalf of a third party if he is able to show that: (1) he suffered an injury in fact, thus giving him a "sufficiently concrete interest in the outcome of the issue in dispute"; (2) he has "a close relation to the third party"; and (3) there exists "some hindrance to the third party's ability to protect his or her own interests." *Powers*, 499 U.S. at 410–11, 111 S. Ct. at 1370–71 (quotation omitted). But it is important to note that the injury in fact must be "fairly traceable" to the supposed cause of that injury. *Lexmark Intern., Inc. v. Static*

Control Components, Inc., 572 U.S. 118, 125, 134 S. Ct. 1377, 1386 (2014); *see also Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014).

And while appellant does articulate an injury in fact—being denied the opportunity to build a relationship with the child—he fails to show that this injury is "fairly traceable" to the supposed cause of his injury: nonmarital children being treated differently from marital children. There may be a connection between appellant's injury and this supposed discrimination in the sense that they both arise in the adoption context, but we are not convinced that appellant has a "sufficiently concrete interest in" whether nonmarital children are discriminated against; his interest is really only in his own status as a putative father who failed to timely register for the adoption registry, and our supreme court has previously upheld an equal protection challenge to section 259.52 regarding this interest. *See Heidbreder*, 645 N.W.2d at 376 (holding sections 259.49 and .52 do not violate a putative father's equal protection rights just because the putative father was treated differently with respect to his rights than the mother). Accordingly, appellant's injury cannot be fairly traced from this supposed discrimination, and we conclude that appellant does not have standing to assert the child's equal protection rights.

Moreover, we fail to see how appellant could prove that Minn. Stat. § 259.52, subd. 8, invidiously discriminates against nonmarital children when the whole purpose of the statute and the government interests behind it are "permanence and stability in adoption proceedings" and the pursuit of the best interests of the child. And it is worth noting that this kind of best-interests consideration can lead to a similar result for marital children in termination-of-parental-rights proceedings. *See* Minn. Stat. § 260C.301, subd. 7 (stating

that in the context of the termination of parental rights, "the best interests of the child must be the paramount consideration").[5]

D E C I S I O N

The grant of a temporary restraining order does not constitute a judicial hearing for the purposes of Minn. Stat. § 257.75, subd. 2, and the terms of the temporary restraining order did not enjoin mother from revoking the ROP, so appellant does not qualify for the ROP exception to Minn. Stat. § 259.52, subd. 8. Under Minn. Stat. § 259.52, subd. 8(1), once an adoption proceeding is commenced, a putative father who failed to timely register with the adoption registry and does not qualify for an exception to the statute is unambiguously barred from maintaining a paternity action, even if he filed his paternity action before the adoption petition was filed. Finally, the "maintaining" language in Minn. Stat. § 259.52, subd. 8, does not violate due process, and appellant does not have standing to raise the child's equal protection rights.

Affirmed.

[5] Appellant also argues that his jury trial rights are violated by Minn. Stat. § 259.52, subd. 8(1). But in this context, his right to a jury trial is contingent upon the existence of a viable paternity action, which he does not have. This argument also fails.