

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2024AP1435

Cir. Ct. No. 2023IN90

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE ESTATE OF JOSEPH GAIGG

SHARON PETERSON,

APPELLANT,

V.

**DOROTHY BECHER, AS PERSONAL REPRESENTATIVE OF THE ESTATE
OF JOSEPH GAIGG,**

RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County:
MARK J. MCGINNIS, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

¶1 HRUZ, J. Sharon Peterson appeals an order adjudicating Joseph Gaigg as Dorothy Becher’s biological father and determining that Dorothy is Joseph’s sole heir.¹ Peterson, Joseph’s niece, argues that the circuit court erred by concluding that Dorothy overcame the presumptions in WIS. STAT. §§ 891.39 and 891.41 (2023-24)² that Gordon Becher was her father because she was born during his marriage to Dorothy’s mother, Virginia Becher. Peterson also argues that Dorothy should not be allowed to inherit from Joseph’s estate because she could have potentially inherited from Gordon, her presumed father. Peterson further contends that the statute of limitations for paternity actions in WIS. STAT. § 893.88 bars Dorothy’s motion for a determination of paternity.

¶2 We conclude that Dorothy overcame both presumptions of paternity in WIS. STAT. §§ 891.39 and 891.41 by showing that Joseph was her father through genetic test results, one of the recognized ways of overcoming the presumptions set forth in those statutes. We also reject Peterson’s contention that Dorothy will inherit from two estates because Dorothy cannot inherit from Gordon’s estate, given that he died in 1996 and willed his entire estate to Virginia. We further conclude that WIS. STAT. § 893.88 does not bar Dorothy’s motion to determine paternity because that statute bars paternity actions and not motions in a probate proceeding. Accordingly, we affirm.

¹ We will refer to Dorothy, Joseph, and other members of their families using their first names, given that many of them share surnames.

² All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

BACKGROUND

¶3 Joseph died intestate on November 27, 2022. On May 8, 2023, Peterson filed an application for the informal administration of Joseph's estate and a proof of heirship. Peterson listed herself, Joseph's siblings, and several other of his nieces and nephews as interested persons. She also nominated herself and Cecelia Gaigg, Joseph's sister, as co-personal representatives. In the proof of heirship filing, Peterson noted that Joseph had no surviving spouse, no children, and no surviving parents.

¶4 On May 26, 2023, Dorothy, then 53 years old, filed an objection to Peterson's application for informal administration and to Peterson's appointment as the personal representative of Joseph's estate. Dorothy objected on the grounds that she was Joseph's only surviving issue, the application failed to list Dorothy as an interested party, and Peterson failed to provide notice to Dorothy as an interested party. Dorothy also made a demand for formal proceedings to address her objection and for a determination of Joseph's heirs. She further moved, pursuant to WIS. STAT. § 767.80, for a judgment declaring that Joseph was her biological father.

¶5 In support of her objection and her motion, Dorothy alleged that her mother, Virginia, was married to Gordon when Dorothy was born. Gordon died testate in 1996 and, per his will, left his entire estate to Virginia. Dorothy averred that Virginia had an affair with Joseph and that Dorothy was born as a result of that affair. Dorothy further averred that both Cecelia and Peterson knew Joseph was Dorothy's father, and she attached messages in which both of them

acknowledged that relationship. Dorothy also provided the results of a DNA test conducted after Joseph's death,³ which confirmed that Joseph "cannot be excluded as the biological father of" Dorothy because "they share genetic markers" and that "the probability of paternity is 99.99%."

¶6 Dorothy argued that she was Joseph's nonmarital child and that she was eligible to inherit from his estate pursuant to WIS. STAT. §§ 852.05 and 851.13. She also contended that she could overcome the presumptions, under WIS. STAT. §§ 891.39 and 891.41, that Gordon was her father with the DNA test results confirming that Joseph was, in fact, her father. Dorothy further argued that she could seek a paternity determination even though Joseph had not been adjudicated her father before his death, citing WIS. STAT. § 767.80 and *DiBenedetto v. Jaskolski*, 2003 WI App 70, 261 Wis. 2d 723, 661 N.W.2d 869. Finally, Dorothy argued that the statute of limitations for paternity actions, WIS. STAT. § 893.88, did not bar her motion for establishing paternity in a probate proceeding.

¶7 In response, Peterson argued that Dorothy had not overcome the relevant presumptions, pointing to the proof of heirship filed in Gordon's 1996 probate proceeding in which Virginia "swears that the decedent's children include Dorothy." Peterson briefly noted that it "seems rather inequitable that Dorothy would ... stand to inherit from both Joseph and Gordon." Peterson further contended that Dorothy had not shown that a county child support agency required the genetic testing, pursuant to WIS. STAT. § 767.804(1)(a)2. Peterson also argued that Dorothy had not satisfied the requirements in WIS. STAT. § 852.05(1) because

³ The DNA testing was conducted on a hair sample collected from Joseph.

Joseph had never been adjudicated Dorothy's father in a paternity proceeding and there was no evidence he had ever acknowledged that he was Dorothy's father.

¶8 In an oral ruling, the circuit court concluded that Dorothy was a nonmarital child and that the DNA evidence was sufficient for her to overcome the relevant presumptions that she was the child of Gordon and Virginia. The court also concluded that it could adjudicate Joseph as Dorothy's biological father even though he was not adjudicated her father while he was alive, and it did so. Because Dorothy was Joseph's child, the court determined that she was his sole heir pursuant to WIS. STAT. § 852.01(1)(b). The court also appointed Dorothy as the personal representative of Joseph's estate.

¶9 The circuit court subsequently issued a written order consistent with its oral ruling. Peterson appeals.

DISCUSSION

¶10 This appeal involves reviewing a circuit court's determination that a party presented sufficient evidence to satisfy a burden of proof rebutting a presumption, which is a question of law we review de novo. See **Schneider v. Schneider**, 150 Wis. 2d 286, 292, 441 N.W.2d 335 (Ct. App. 1989). This appeal also involves the interpretation and application of several statutes to a set of facts, which are questions of law we review de novo. See **DiBenedetto**, 261 Wis. 2d 723, ¶24.

¶11 When interpreting a statute, our review begins with the statutory language, which is given "its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." **State ex rel. Kalal v. Circuit Ct. for Dane Cnty.**,

2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. If this process results in “a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted).

¶12 Peterson raises several arguments regarding Dorothy’s failure to overcome the presumptions in WIS. STAT. §§ 891.39 and 891.41. In doing so, she cites cases that set forth the evidentiary requirements for overcoming those presumptions prior to when genetic test results were added to the statutes as another way to overcome the presumptions. We thus begin with a review of the current statutes and then address Peterson’s arguments.

¶13 WISCONSIN STAT. ch. 852 governs intestate succession. Unless modified by a decedent’s will, any part of a decedent’s net estate passes to his or her surviving heirs as set forth in WIS. STAT. § 852.01(1).⁴ An “[h]eir” is “any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent.” WIS. STAT. § 851.09. As applicable here, when a decedent dies intestate and there is no surviving spouse, the decedent’s entire estate passes to his or her issue, per stirpes. Sec. 852.01(1)(b). The term “[i]ssue” is broadly defined to include, among other things, children, grandchildren, and “nonmarital children and their lineal

⁴ The “[n]et estate” includes “all property subject to administration less” the items listed in WIS. STAT. § 851.17.

descendants to the extent provided by [WIS. STAT. §] 852.05.” WIS. STAT. § 851.13.

¶14 Pursuant to WIS. STAT. § 852.05(1), “[a] child born to unmarried parents ... is treated in the same manner as a child ... born to married parents with respect to intestate succession from and through the child’s mother, and from and through the child’s father if any of the following applies”: (1) “[t]he father has been adjudicated to be the father in a paternity proceeding under [WIS. STAT.] ch. 767 or by final order or judgment of a court of competent jurisdiction in another state”; (2) “[t]he father has admitted in open court that he is the father”; or (3) “[t]he father has acknowledged himself to be the father in writing signed by him.” Sec. 852.05(1)(a)-(c). Section 852.05(4) further provides that WIS. STAT. § 895.01(1) “applies to paternity proceedings under ch. 767.” Section 895.01(1) provides that certain causes of action survive, and it includes actions to determine paternity. Sec. 895.01(1)(am)1.

¶15 A child of unmarried parents seeking to inherit under WIS. STAT. § 852.05 must overcome the presumptions in WIS. STAT. §§ 891.39(1)(a) and 891.41 that the man married to the child’s mother at the time the child was born is the child’s biological father. See *Schneider*, 150 Wis. 2d at 289-91. Pursuant to § 891.39(1)(a), whenever it is established “that a child was born to a woman while she was the lawful wife of a specified man, any party” asserting that the husband was not the child’s father “shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence.” Genetic test results “showing that a man other than the husband is not excluded as the father of the child and that the statistical probability of the man’s parentage is 99.0 percent or

higher” satisfy the evidentiary burden,⁵ “even if the husband is unavailable to submit to genetic tests.” *Id.*

¶16 Pursuant to WIS. STAT. § 891.41(1)(a), a “man is presumed to be the natural father of a child if” that man “and the child’s natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.” This presumption is rebutted by genetic test results showing that a man other than the man presumed to be the child’s natural father “is not excluded as the father of the child and that the statistical probability of the man’s parentage is 99.0 percent or higher,” even if the man presumed to be the natural father is unavailable to submit to genetic tests. Sec. 891.41(2).

¶17 Here, Gordon was presumed to be Dorothy’s father, given that she was conceived and born while Virginia was married to Gordon. Dorothy thus had the burden to show that Gordon was not her father by a clear and satisfactory preponderance of the evidence. Dorothy did so here with the DNA test results showing that Joseph could not be excluded as Dorothy’s biological father, given that they shared genetic markers and that “the probability of paternity is 99.99%.” This evidence constitutes a clear and satisfactory preponderance of the evidence overcoming the presumptions in WIS. STAT. §§ 891.39(1)(a) and 891.41(1)(a).

¶18 Peterson argues that Dorothy did not overcome the above presumptions because she did not meet the four-factor test set forth in *Johnson v.*

⁵ A “[g]enetic test” is “a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability of an alleged father’s paternity.” WIS. STAT. § 767.001(1m).

Metcalf, 207 Wis. 155, 159, 240 N.W. 818 (1932), and applied in **Schneider**, 150 Wis. 2d at 292. Under that four-factor test, sufficient evidence rebutting both presumptions includes evidence that the husband was

- (1) incompetent; (2) entirely absent, so as to have no intercourse or communication of any kind with the mother; (3) entirely absent at the period during which the child must, in the course of nature, have been begotten; or (4) only present under such circumstances as afford clear and satisfactory proof that there was no sexual intercourse.

Schneider, 150 Wis. 2d at 292. In **Schneider**, we described the third and fourth categories of evidence as “any evidence that it was physically or biologically impossible for the husband to be the father,” and we explained that such evidence included blood tests. *Id.* at 292-93.

¶19 Importantly, both **Johnson** (decided in 1932) and **Schneider** (decided in 1989) preceded the addition of genetic test results as a way to rebut the presumptions in WIS. STAT. §§ 891.39(1)(a) and 891.41(1)(a). See 1997 Wis. Act 191, §§ 498, 501. Peterson fails to address these provisions, and she fails to respond to Dorothy’s argument that, under existing law, the DNA test results constitute a clear and satisfactory preponderance of evidence rebutting the two presumptions. Peterson instead argues that allowing Dorothy to inherit from Joseph is not a good result, from a public policy perspective, because Dorothy had the potential ability to inherit from Gordon, and allowing her to inherit from “two dads” “creates in [Dorothy] and others the ability to receive a windfall.”

¶20 We agree with Dorothy that Peterson’s “two dads” argument is irrelevant, given that Gordon died in 1996 and, per his will, Virginia inherited his entire estate. Furthermore, there are instances in which one person may be an heir to multiple estates if that person’s relatives die intestate and that person happens to

be a surviving heir under WIS. STAT. § 852.01(1). Peterson does not explain how such instances differ from Dorothy inheriting from both Gordon and Joseph. In addition, and contrary to Peterson’s argument, allowing Dorothy to overcome the statutory presumptions in WIS. STAT. §§ 891.39(1)(a) and 891.41(1)(a) in order to apply WIS. STAT. § 852.05(1) aids in “the accurate and orderly settlement of estates,” see *Caldwell v. Kaquatosh*, 84 Wis. 2d 545, 563-64, 267 N.W.2d 870 (1978), by ensuring that a decedent’s estate is properly administered through the determination of his or her lawful heirs.

¶21 Peterson next argues that Dorothy did not show that Joseph was her biological father in any of the ways set forth in WIS. STAT. § 852.05(1) because she was required to bring a paternity action while Joseph was still alive. As support, she cites *Caldwell* and *N.L.B. v. G.B.*, 140 Wis. 2d 400, 411 N.W.2d 144 (Ct. App. 1987). In *Caldwell*, the petitioner, a minor child, was born a few months after the decedent’s death. *Caldwell*, 84 Wis. 2d at 550. Although the decedent had told others that he was the petitioner’s father, he did not acknowledge paternity, either in writing or in open court, nor was there ever an adjudication of paternity. *Id.* The petitioner contended that the court should construe § 852.05(1) (1975-76)⁶ to allow him to establish paternity through a posthumous action for declaratory judgment. *Caldwell*, 84 Wis. 2d at 552.

⁶ WISCONSIN STAT. § 852.05(1) (1975-76) provided:

An illegitimate child or his issue is entitled to take in the same manner as a legitimate child by intestate succession from and through (a) his mother, and (b) his father if the father has either been adjudicated to be such under [WIS. STAT. ch. 52 (1975-76)], or has admitted in open court that he is the father, or has acknowledged himself to be the father in writing signed by him.

¶22 Our supreme court concluded that the statutory language in WIS. STAT. ch. 52 (1975-76) (the precursor to WIS. STAT. ch. 767) required a paternity proceeding “to be maintained during the life of the putative father.” *Caldwell*, 84 Wis. 2d at 553. The court also found it significant that paternity actions did not survive the death of the father under the general survival statute, WIS. STAT. § 895.01 (1975-76). *Caldwell*, 84 Wis. 2d at 554. We subsequently relied on § 895.01 (1985-1986) in *N.L.B.* to conclude that its language specifically controlled whether the petitioner in that case could bring a paternity action against the estate of a deceased putative father under ch. 767 (1985-86). *N.L.B.*, 140 Wis. 2d at 403. We rejected the petitioner’s argument that the legislature authorized paternity actions against a deceased putative father by enacting ch. 767, and we noted that had the legislature intended to allow the maintenance of such actions, it would have also amended § 895.01 (1985-86) to include paternity actions. *N.L.B.*, 140 Wis. 2d at 403-04.

¶23 The problem with Peterson’s arguments, including her reliance on *Caldwell* and *N.L.B.*, is, once again, that the relevant statutory law has materially changed. The legislature subsequently amended WIS. STAT. § 895.01 to include paternity actions. See 1993 Wis. Act 481, § 192; § 895.01(1)(am)1. It also amended WIS. STAT. § 852.05 to include the provision that § 895.01(1) applies to paternity proceedings under WIS. STAT. ch. 767. See 1997 Wis. Act 188, § 118; § 852.05(4). While this case is not a paternity action, the inclusion of this provision is relevant because one of the ways in which a “child born to unmarried parents” can inherit under § 852.05(1) is if “[t]he father has been adjudicated to be the father in a paternity proceeding under ch. 767.” Sec. 852.05(1)(a). And, we have previously stated that paternity proceedings under ch. 767 may take place during the course of a probate proceeding, given that they are brought about

through motions. See *DiBenedetto*, 261 Wis. 2d 723, ¶25 & n.11. Indeed, this very process is contemplated by the above statutory changes and several provisions in ch. 767 that we describe below, and it is what occurred in this case.

¶24 Contrary to Peterson’s argument, Dorothy was not required to bring a paternity action while Joseph was still alive. WISCONSIN STAT. ch. 767 allows various persons, including a child and the personal representative of a deceased male alleged to be the child’s father, to “bring an action or file a motion” either “for the purpose of determining the paternity of a child” or “for the purpose of rebutting the presumption of paternity under [WIS. STAT. §§] 891.405, 891.407, or 891.41(1).” WIS. STAT. § 767.80(1)(a), (d), (e). If an alleged father is deceased, § 767.80(1m) allows an action to be brought in the county “in which proceedings for probate of his estate have been or could be commenced.” Chapter 767 further includes provisions regarding who may appear on behalf of a deceased respondent when such an appearance is required and the administration of genetic tests if a deceased respondent’s genetic material is available. See WIS. STAT. §§ 767.84(1)(a)2., 767.865(1)-(2). As noted above, the language in these provisions does not support a requirement that a party bring a paternity action while the putative father is still alive.

¶25 Peterson alternatively contends that Dorothy did not show a conclusive determination of paternity under WIS. STAT. § 767.804(1) because Dorothy did not show a genetic test was submitted to the state registrar or that the test was required to be performed by a county child support agency. Under that statute, a conclusive determination of paternity is established through genetic test results if certain requirements are met. Sec. 767.804(1)(a)1.-4. That conclusive determination also establishes a presumption of paternity under WIS. STAT. § 891.407.

¶26 That presumption, however, is not at issue here; nor is the determination provided for in WIS. STAT. § 767.804(1) the only manner of establishing paternity under WIS. STAT. ch. 767. See WIS. STAT. §§ 767.805 (voluntary acknowledgement of paternity), 767.82(2) (presumptions of paternity applicable to action), 767.87(1) (evidence relating to paternity), 767.84 (genetic testing in paternity actions), 767.865(2) (genetic testing of deceased respondent). Here, Dorothy established paternity by rebutting the presumptions in WIS. STAT. §§ 891.39 and 891.41 that Gordon was her father, and by providing evidence of genetic testing showing that Joseph was her father. That is all Dorothy was required to do for purposes of this case.⁷

¶27 Finally, Peterson argues that Dorothy brought her paternity action long after WIS. STAT. § 893.88, the statute of limitations for bringing such an action, had already run. Section 893.88 requires actions for establishing paternity to “be commenced within 19 years of the date of the birth of the child or be barred.” As noted above, however, WIS. STAT. § 767.80 allows for various persons to “bring an action *or file a motion*” for the purpose of determining a child’s paternity. Sec. 767.80(1) (emphasis added). In ***DiBenedetto***, we distinguished between a “motion” and an “action,” stating that a “motion” “may be nothing more than ‘[a]n application to [a] court for an order,’” while an “action” is “‘a lawsuit brought in a court’ and ‘denotes the entire controversy at issue.’” ***DiBenedetto***, 261 Wis.2d 723, ¶26 (alterations in original; citations

⁷ To the extent Peterson is arguing that WIS. STAT. § 767.804(1) is the only method by which Dorothy could establish paternity while Joseph was still alive, the argument is undeveloped. We note, however, that the relevant presumptions in WIS. STAT. §§ 891.39 and 891.41 that Dorothy was required to overcome refer specifically to “genetic test[s],” defined by WIS. STAT. § 767.001(1m), as the method of proof, and not to the requirements in § 767.804(1).

omitted). Because of this distinction, we concluded that § 893.88 bars only “actions” for establishing paternity but it does not bar “motions” for establishing paternity in a probate proceeding. ***DiBenedetto***, 261 Wis. 2d 723, ¶26.

¶28 ***DiBenedetto*** plainly defeats Peterson’s statute of limitations argument. Here, Dorothy made a motion to determine paternity within Joseph’s probate proceeding; she did not bring an action to establish paternity. Such a motion is allowed for the narrow purpose of determining paternity in a probate proceeding. It does not, as Peterson contends, render the term “action” in WIS. STAT. § 767.80(1) superfluous or allow a party to avoid the application of WIS. STAT. § 893.88. We did not read the term “motion” so broadly in ***DiBenedetto*** as to allow a motion for establishing paternity in *any* proceeding.

¶29 Rather, we noted that such a motion had to be relevant to the determination of a proceeding, and, in ***DiBenedetto***, a motion to establish paternity was relevant to the determination “of lawful inheritance by intestate succession” through “evidence establishing whether persons claiming to be heirs have the requisite relationship to the deceased.” ***DiBenedetto***, 261 Wis. 2d 723, ¶28; see also ***James A.O. v. George C.B.***, 182 Wis. 2d 166, 181-82, 513 N.W.2d 410 (Ct. App. 1994) (noting that although the petitioner could no longer bring a paternity action due to the running of the statute of limitations, he was not precluded from proving paternity “in judicial or other forums that may have to consider such interests”). Similarly, here, Dorothy’s motion to establish Joseph’s paternity was relevant for determining Joseph’s heirs under intestate succession in this probate proceeding. Thus, WIS. STAT. § 893.88 does not bar Dorothy’s motion.

¶30 In all, it is clear from both WIS. STAT. § 852.05 and WIS. STAT. ch. 767 that Dorothy could move for a paternity determination after Joseph’s death, given that Dorothy’s right to inherit from him depends on that paternity determination. See also **DiBenedetto**, 261 Wis. 2d 723, ¶25 (interpreting § 852.05(2) (1999-2000), regarding property of a child born to unmarried parents, together with WIS. STAT. § 767.45(1) (1999-2000), the previous version of WIS. STAT. § 767.80, and concluding that they anticipate a paternity proceeding may include a personal representative’s motion to determine “the paternity of a deceased whose kindred’s right to inherit depends on that determination”).

By the Court.—Order affirmed.

Recommended for publication in the official reports.

