STATE OF MICHIGAN

COURT OF APPEALS

JENNY N. GLAUBIUS, Plaintiff-Appellant,	FOR PUBLICATION July 15, 2014 9:10 a.m.
v	No. 318750 Macomb Circuit Court Family Division
JOHN A. GLAUBIUS, Defendant-Appellee.	LC No. 2012-004307-DM

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

HOEKSTRA, J.

In this action involving the Revocation of Paternity Act, MCL 722.1431 *et seq.*, plaintiff appeals as of right the trial court's order denying her motion to revoke defendant's paternity and determine that the minor child in question was born out of wedlock. Because, on the facts of this case, defendant qualifies as a "presumed father" and the parties' judgment of divorce does not preclude an action to overcome the presumption of legitimacy, we reverse and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant married on August 30, 2008. During their marriage, plaintiff became pregnant and subsequently gave birth to a daughter on May 18, 2011. On August 1, 2012, plaintiff filed for divorce, including in her complaint the allegation that the "parties have had one (1) child born of this marriage . . . ." Defendant, who had moved to Nebraska, acknowledged receipt of the complaint but failed to respond. As a result, at plaintiff's request, a default entered against defendant. On December 28, 2012, the parties entered into a settlement agreement relating to their divorce, and thereafter, the parties appeared before the trial court for a hearing and both consented to the entry of a default judgment of divorce. The judgment of divorce, which the trial court entered on February 13, 2013, did not make express findings of fact but stated generally that the complaint was "heretofore having been taken as confessed . . . ." Referring to the parties as "plaintiff-mother" and "defendant-father," the judgment of divorce provided that legal custody of the minor child would be granted to both parties, while physical custody remained with plaintiff. The judgment of divorce also detailed the parties' arrangements for defendant's visitation with the minor child. Defendant's duty to pay child support was waived in exchange for his payment of all travel costs related to visitation with the minor child.

On June 10, 2013, plaintiff filed a motion to revoke defendant's paternity as a "presumed father" under the Revocation of Paternity Act. Specifically, plaintiff's motion sought a determination that the child had been "born out of wedlock" pursuant to MCL 722.1441, and she asked the trial court to vacate portions of the judgment of divorce regarding custody, parenting time and child support. According to plaintiff's motion, the minor child's biological father was actually Joseph Witt, a man with whom plaintiff had been sexually involved during her marriage to defendant. Despite this extramarital relationship, plaintiff maintained that, at the time of her divorce, she believed defendant to be the child's biological father. It was only after the divorce, when a family member remarked on the lack of physical resemblance between the minor child and defendant, that plaintiff obtained a DNA test which established, with a 99.999% certainty, that Witt was the minor child's biological father.

In support of her motion, plaintiff attached an e-mail from defendant in which defendant arguably acknowledged Witt's biological relationship with the minor child and stated that he believed the child should have the opportunity "to grow up knowing her real father as daddy." In this e-mail, defendant further stated that he was prepared to waive "any legal rights" to the child. In addition, plaintiff provided an affidavit in which she attested that Witt had acknowledged his paternity and was desirous of establishing a relationship with the minor child.

Despite his remarks in the e-mail correspondence, defendant opposed plaintiff's motion to revoke his paternity. In opposing plaintiff's motion, defendant argued that plaintiff's characterization of defendant as a "presumed father" under the Revocation of Paternity Act was inaccurate because the judgment of divorce established defendant as an "affiliated father." As an "affiliated father," defendant asserted his paternity could not be revoked on the facts of this case because he had participated in the proceedings establishing him as an affiliated father. In a related argument, defendant further argued, based on principles of res judicata and equitable estoppel, that termination of his paternity was improper because the default judgment of divorce established defendant as the minor child's father.

Following a hearing, the trial court entered an order and opinion denying plaintiff's motion to revoke defendant's parentage. Plaintiff now appeals as of right.[1]

II. REVOCATION OF PATERNITY ACT

On appeal, plaintiff challenges the trial court's dismissal of her motion to determine that the minor child was born out of wedlock and is not, in fact, defendant's child. Specifically, she maintains defendant is a "presumed father" within the meaning of the Revocation of Paternity

[1] On appeal, defendant argues, without citation to supporting authority, that this Court lacks jurisdiction over this case because "it is not clear that the trial court's order qualifies as an order affecting custody" under MCR 7.202(6)(a)(iii). Contrary to defendant's argument, plaintiff specifically requested that defendant's award of custody and parenting time as set forth in the judgment of divorce be vacated. The trial court's order denying this request thus affects custody of a minor under MCR 7.202(6)(a)(iii), and this Court has jurisdiction over this appeal.

Act whose paternity may thus be challenged pursuant to MCL 722.1441, regardless of the fact that a judgment of divorce establishing child custody, child support, and parenting time had previously been entered by the trial court.

A. STANDARDS OF REVIEW & RULES OF INTERPRETATION

When reviewing a decision related to the Revocation of Paternity Act, this Court reviews the trial court's factual findings, if any, for clear error. *Parks v Parks*, 304 Mich App 232, __; __ NW2d __ (2014); slip op at 3 (citation omitted). "The trial court has committed clear error when this Court is definitely and firmly convinced that it made a mistake." *Id.* (citation omitted). In contrast, we review de novo the interpretation and application of statutory provisions. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013). To the extent necessary, interpretation of a divorce judgment is also de novo. *Neville v Neville*, 295 Mich App 460, 466; 812 NW2d 816 (2012).

This case requires interpretation of the Revocation of Paternity Act. When interpreting a statute, we must give effect to the Legislature's intent, which we determine by looking first to the language of the statute itself. *Tellin v Forsyth Twp*, 291 Mich App 692, 701; 806 NW2d 359 (2011). In doing so, we give effect to every word, phrase and clause, avoiding a construction that would render part of the statute surplusage or nugatory. *Book-Gilbert*, 302 Mich App at 541. Undefined words are afforded their plain and ordinary meaning, and a dictionary may be consulted to ascertain the common meaning of a term. *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 240; 615 NW2d 241 (2000). "When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Lash v Traverse City*, 479 Mich 180, 187; 735 NW2d 628 (2007).

B. CLASSIFICATIONS OF FATHERS

In 2012, the Legislature enacted the Revocation of Paternity Act, which provides the methods for setting aside acknowledgments of paternity, and determinations and judgments related to paternity, as well as the measures for overcoming the presumption of legitimacy. See *In re Daniels Estate*, 301 Mich App 450, 458-459; 837 NW2d 1 (2013). Under the applicable provisions, the proofs and circumstances necessary to revoke paternity differ depending on the classification of paternity at issue, and, in some respects, depending on the individual seeking the revocation of paternity. Specifically, with regard to the type of paternity at issue, pursuant to MCL 722.1433, four classifications of fathers are recognized:

> (1) "Acknowledged father" means a man who has affirmatively held himself out to be the child's father by executing an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.
>
> (2) "Affiliated father" means a man who has been determined in a court to be the child's father.
>
> (3) "Alleged father" means a man who by his actions could have fathered the child.

> (4) "Presumed father" means a man who is presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth.

After identifying the classifications of fathers, the Revocation of Paternity Act details the methods applicable to the revocation of each specific type of paternity. For example, MCL 722.1437 provides the methods for setting aside an acknowledgement of parentage. MCL 722.1441 governs an action to determine that a child has been "born out of wedlock" and is not in fact a presumed father's child. See *Grimes v Van Hook-Williams*, 302 Mich App 521, 527; 839 NW2d 237 (2013). Lastly, MCL 722.1439 explains the process for setting aside an order of filiation, i.e., "a judicial order establishing an affiliated father," where the affiliated father did not participate in the proceedings establishing his paternity. See also MCL 722.1433(5). Notably, however, no express provision is made for setting aside an order establishing a man as an affiliated father where the man participated in the court proceedings determining his paternity. See MCL 722.1439(1).

C. ANALYSIS

In the present case, as an initial matter, we must decide what procedures apply to plaintiff's efforts to revoke defendant's paternity. In other words, we must first decide which statutory definition of "father" applies to defendant so that we may ascertain under which statutory provision, if any, plaintiff may seek revocation of defendant's paternity. The parties do not contend that defendant qualifies as an "acknowledged father," and there is no evidence that an acknowledgment of parentage has been signed in this case. See MCL 722.1433(1). Further, it appears that Witt, not defendant, is the "alleged" or biological child of the minor child. See MCL 722.1433(3). Thus, the specific definitional dispute at issue relates to whether defendant is a "presumed father" as contended by plaintiff, or an "affiliated father" as maintained by defendant. In particular, plaintiff alleges that defendant's fatherhood arose by operation of the presumption of legitimacy while defendant asserts that his status as the child's father was determined in the divorce proceedings, meaning that, in defendant's view, the judgment of divorce is an order of filiation. Because defendant participated in the divorce proceedings, he maintains his paternity as an affiliated father may not be revoked under MCL 722.1439(1).

As noted, a "presumed father" refers to a man who is "presumed to be the child's father by virtue of his marriage to the child's mother at the time of the child's conception or birth." MCL 722.1433(4). Indeed, Michigan has long recognized that a child conceived and/or born during an intact marriage is presumed to be a child of the marriage. See *In re KH*, 469 Mich 621, 634-635; 677 NW2d 800 (2004); *People v Case*, 171 Mich 282, 284; 137 NW 55 (1912). Given that defendant was married to plaintiff at the time of the minor child's conception and birth, he plainly obtained the status of presumed father. See MCL 722.1433(4). The foremost issue before this Court thus becomes whether defendant continued as a "presumed father" after the parties' divorce or whether by virtue of the judgment of divorce he obtained the status of an "affiliated father."

Relevant to this determination, as noted, the phrase "affiliated father" refers to "a man who has been determined in a court to be the child's father." MCL 722.1433(2). As a related matter, an "order of filiation" in turn refers to "a judicial order establishing an affiliated father."

MCL 722.1433(5). Thus, an "order of filiation" is a judicial order establishing that a man has been determined in a court to be a child's father. Ultimately, to decide whether a man qualifies as an "affiliated father" requires consideration of whether he "has been determined in a court to be the child's father."

According to a basic dictionary definition, to "determine" is: "1. to settle or resolve (a dispute, question, etc.) by an authoritative or conclusive decision [or] 2. to conclude or ascertain, as after reasoning or observation. . . ." *Random House Webster's College Dictionary* (1992). Applying this basic definition, it follows that an affiliated father exists where, in a court of law, a dispute or question over a man's paternity has been settled or resolved, and it was concluded by the court, based on reasoning or observation, that the man is the child's father. Given this understanding, it seems plain that the Legislature intended to recognize an affiliated father where there was an actual determination of paternity; that is, where there was a dispute or question presented regarding the man's paternity and the matter was in fact resolved by a court. A judicial order establishing this determination would constitute an "order of filiation" for purposes of the Revocation of Paternity Act.

As plaintiff notes on appeal, determinations regarding a man's paternity might occur, and do often occur, in the context of an action under the Paternity Act, MCL 722.711, *et seq*. Indeed, the Paternity Act expressly provides for the entry of an "order of filiation" declaring paternity. See MCL 722.717. On appeal, plaintiff argues that it is only an order of filiation entered pursuant to the Paternity Act which qualifies as an order of filiation for purposes of the Revocation of Paternity Act.

Contrary to plaintiff's arguments in this respect, we do not believe that an order of filiation may only arise from the procedures prescribed in the Paternity Act. As defined in the Revocation of Paternity Act, an "order of filiation" is simply "a judicial order establishing an affiliated father;" this definition makes no reference to an order entered pursuant to the Paternity Act. This general reference to a "judicial order" in MCL 722.1433(5), without reference to the Paternity Act, stands in marked contrast to Revocation of Paternity Act's definition of an "acknowledged father" as one who executed an acknowledgment of parentage under the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*. See MCL 722.1433(1). Had the Legislature similarly intended to restrict affiliated fathers to those identified through paternity actions, the Legislature would have so specified. See *Book-Gilbert*, 302 Mich App at 542 ("The courts may not read into the statute a requirement that the Legislature has seen fit to omit.").[2] Absent any indication of such specificity, any judicial order establishing a determination in court that a man is a child's father could demonstrate the determination of an affiliated father within the meaning of MCL 722.1433(2). See also MCL 722.1433(5).

[2] Indeed, elsewhere in its provisions, the Revocation of Paternity Act does in fact specifically reference the Paternity Act and its procedures. See, e.g., MCL 722.1442(2)(d). This express reference to the Paternity Act in one provision of the Revocation of Paternity Act makes plain that its omission from the definition of "order of filiation" and "affiliated father" was deliberate. See *Book-Gilbert*, 302 Mich App at 542.

To be sure, paternity claims and determinations of paternity frequently arise during divorce or custody disputes, unrelated to actions under the Paternity Act. See *In re KH*, 469 Mich at 635; *Girard v Wagenmaker*, 437 Mich 231, 246; 470 NW2d 372 (1991). If, in the course of such divorce proceedings, a court makes a determination regarding a man's paternity and correspondingly enters an ordering establishing this determination, we see nothing in the plain language of MCL 722.1433(2) or MCL 722.1433(5) to suggest that such a determination in the context of divorce or custody proceedings would not establish a man's status as an affiliated father.

Of course, not all divorce proceedings squarely address the question of a child's paternity. See, e.g., *Barnes v Jeudevine*, 475 Mich 696, 705-706; 718 NW2d 311 (2006). Whether a particular divorce proceeding resolved the question of paternity will depend on the facts of the particular case and the determinations expressed in the divorce judgment. Specifically, whether divorce proceedings and a resulting judgment of divorce establish a man as an affiliated father within the meaning of MCL 772.1433(2) necessarily depends on whether there was a determination in court that the man was the child's father. That is, applying the plain language of the statute as discussed above, for a man to have been "determined" in a court to be a child's father, there must have been a dispute or question as to the issue of paternity and an actual resolution of the matter by the trial court, culminating in a judicial order establishing the man as the child's father.

On the present facts, we are persuaded that this particular divorce judgment was not a determination of defendant's fatherhood and thus not an order establishing him as an affiliated father. Specifically, in this case, the question of defendant's paternity appears never to have been an issue of dispute between the parties during the course of their divorce and it was thus not a question which the trial court actually resolved. Plaintiff alleged in her complaint that there had been one child "born of this marriage," a fact which the judgment of divorce took to be "confessed." But, nowhere did plaintiff allege, defendant assert or deny, or the trial court actually ascertain, that defendant was in fact the minor child's father. Rather, fairly considered, plaintiff's complaint and the ultimate judgment of divorce adhered to the presumption of legitimacy, treating defendant as the presumed father of the minor child and awarding visitation and custody in light of defendant's capacity as a presumed father. See generally *In re KH*, 469 Mich at 635 (recognizing that presumption of legitimacy remains intact and becomes conclusive if not rebutted during a divorce or custody dispute).

Where the parties to a divorce action have proceeded in keeping with this presumption of legitimacy, and do not contest the issue of paternity in the course of the divorce, in our judgment, the resulting judgment of divorce does not signify a determination, in court, that the husband is the father of the child for purposes of the Revocation of Paternity Act. Rather, the judgment of divorce merely recognizes the continued adherence to the presumption of legitimacy without answering the distinct question of whether the husband is the child's father. Cf. *Barnes*, 475 Mich at 705. Stated differently, in such cases, paternity was established by operation of the presumption of legitimacy during the parties' marriage, and absent some challenge to paternity during the course of the divorce, the matter of paternity was simply not at issue in the divorce and not a question "determined" by the trial court's decision. Cf. *Sinicropi v Mazurek*, 273 Mich App 149, 174; 729 NW2d 256 (2006) ("Paternity was not an issue when [the acknowledged father] filed the motion for custody in 2001 because the acknowledgment of parentage had

already established paternity."). Accordingly, on the facts of the present case, defendant qualifies as a presumed father, and did not become an affiliated father by operation of the judgment of divorce.

Given our conclusion that defendant qualifies as a presumed father rather than an affiliated father, it follows that MCL 722.1441(1)(a) applies to plaintiff's efforts to revoke defendant's paternity.[3] In particular, MCL 722.1441(1)(a) provides:

> (1) If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the child's mother and . . .
>
> (a) All of the following apply:
>
> (*i*) The mother identifies the alleged father by name in the complaint or motion commencing the action.
>
> (*ii*) The presumed father, the alleged father, and the child's mother at some time mutually and openly acknowledged a biological relationship between the alleged father and the child.
>
> (*iii*) The action is filed within 3 years after the child's birth. The requirement that an action be filed within 3 years after the child's birth does not apply to an action filed on or before 1 year after the effective date of this act.
>
> (*iv*) Either the court determines the child's paternity or the child's paternity will be established under the law of this state or another jurisdiction if the child is determined to be born out of wedlock.

Considering this provision, nothing in the plain language of the statute required plaintiff to challenge the presumption of legitimacy in the divorce proceedings or prevents plaintiff from now seeking to challenge defendant's paternity after entry of the judgment of divorce. Instead, the only time constraint decreed in this provision requires the filing of an action within 3 years after the child's birth, and this constraint does not apply to actions filed on or before 1 year after the effective date of this act. There is no suggestion in the statute that its provisions cannot apply after a divorce.

On the contrary, following the divorce proceedings, the trial court retained continuing jurisdiction over child custody, child support, and parenting time, and according to MCL 722.1443(1), where an action for the support, custody, or parenting time of the child exists, an

[3] A mother may also seek a determination that the child was born out of wedlock under MCL 722.1441(1)(b) in certain circumstances where a presumed father has failed to support a child or lived apart from the child. The parties agree, however, that this provision is inapplicable in this case.

action under the Revocation of Paternity Act may be brought at *any* stage of the proceedings by a motion in the existing case. And, more specifically, an action to determine that a child was born out of wedlock may be brought "by a motion filed in an existing action." MCL 722.1441(5). By filing her motion in her existing divorce case, plaintiff has brought such a motion in the present case. Thus, in sum, in this case, the judgment of divorce does not preclude plaintiff's efforts to establish the minor child was born out of wedlock and, on remand, plaintiff may seek a determination that the minor child was born out of wedlock pursuant to MCL 722.1441(1)(a).[4]

III. RES JUDICATA

Before the trial court, and again on appeal, defendant also argues that the doctrine of res judicata prohibits plaintiff from attacking a paternity determination that was made, or could have been made, in the course of their divorce proceedings. The applicability of the doctrine of res judicata presents a question of law which we review de novo. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

Res judicata prevents "multiple suits litigating the same cause of action." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). Specifically, the doctrine bars a second, subsequent action when "(1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first." *Stoudemire*, 248 Mich App at 334. Res judicata has been broadly applied, barring, not only claims already litigated, "but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 121. Res judicata does not, however, apply to a continuation of a single legal action. *Harvey v Harvey*, 237 Mich App 432, 437; 603 NW2d 302 (1999). Further, res judicata is a "judicially created" doctrine, and "must not be applied when its application would subvert the intent of the Legislature." *Bennett v Mackinac Bridge Auth*, 289 Mich App 616, 630; 808 NW2d 471 (2010).

Before the enactment of the Revocation of Paternity Act, it had been repeatedly recognized that a support order arising from a divorce decree constituted an adjudication of paternity and, consequently, the doctrine of res judicata precluded a party to the divorce from later challenging paternity. See *Hackley v Hackley*, 426 Mich 582, 585; 395 NW2d 906 (1986) (opinion by BOYLE, J.); *Hawkins v Murphy*, 222 Mich App 664, 671; 565 NW2d 674 (1997); *Rucinski v Rucinski*, 172 Mich App 20, 22; 431 NW2d 241 (1988); *Baum v Baum*, 20 Mich App 68, 74; 173 NW2d 744 (1969). Defendant now argues on appeal that these cases should continue to control and res judicata should accordingly prevent plaintiff from relitigating the question of

[4] On remand, the trial court may determine that the minor child was born out of wedlock if plaintiff has satisfied MCL 722.1441(1)(a). However, even if the requirements of MCL 722.1441(1)(a) are met, the trial court may, of course, refuse to make such a determination "if the court finds evidence that the order would not be in the best interest of the child." MCL 722.1443(4).

paternity.[5] However, these cases were decided before the enactment of the Revocation of Paternity Act, meaning they were decided on judicial principles of res judicata without consideration of whether the Revocation of Paternity Act legislatively authorized post-divorce challenges to paternity. Considering the Revocation of Paternity Act, we conclude that, in the particular circumstances described in the statute, the Legislature intended to authorize post-judgment challenges to paternity, including those where paternity was or could have been litigated. Further, we are persuaded that this legislative intent would be improperly thwarted by the application of res judicata to bar actions otherwise authorized by the Revocation of Paternity Act.

To begin with, in broad terms, the preamble to the Revocation of Paternity Act states that it is "AN ACT to provide procedures to determine the paternity of children in certain circumstances; [and] to allow acknowledgments, determinations, and judgments relating to paternity to be set aside in certain circumstances . . . ."[6] As the preamble makes clear, central to the purpose of the Revocation of Paternity Act is the creation of the ability to revisit and set aside prior determinations of paternity in specific circumstances. To effectuate this purpose, as we have discussed, the Revocation of Paternity Act allows for the revocation of acknowledgements, and the setting aside of judicial orders related to paternity. See MCL 722.1443(2). Through the enactment of methods for setting aside judicial determinations of paternity and other established classifications of paternity, the Legislature clearly evidenced an intent to allow relitigation or reconsideration of paternity in certain circumstances, provided that the statutory requirements are met. While we do not suggest that parties may repetitively litigate the question of paternity without end, it would nevertheless clearly subvert the Legislature's intent if we employed res judicata as a categorical bar to all litigation of paternity where paternity had been previously determined by a court, or could have been previously decided.

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[5] In a related argument, defendant maintains that this line of cases supports his claim that he is an "affiliated father" because they stand for the proposition that a child support order arising from a divorce is an adjudication of paternity. However, these cases involved the application of res judicata, not a discussion of who qualifies as an affiliated father within the meaning of the Revocation of Paternity Act. Again, MCL 722.1433(2) defines an affiliated father as one who "has been determined" to be the child's father. As we have discussed, this language clearly requires a determination regarding a man's paternity in a case where the question of his paternity has truly been at issue; that is, there is no indication that a man becomes an affiliated father simply because the presumption of legitimacy went unchallenged during a divorce or a determination of paternity *could* have been made in the course of previous proceedings. In other words, in our view, the Legislature plainly intended an actual determination of paternity. It would thus subvert the Legislature's intent if we held that paternity "has been determined" in every case where the issue of paternity *could* have been determined.

[6] While a preamble may not be considered authority for construing an act, it is useful for the interpretation of the statute's purpose and scope. *King v Ford Motor Credit Co*, 257 Mich App 303, 312; 668 NW2d 357 (2003).

More specifically, the argument that a child custody determination or a child support order incident to a divorce should always bar later attempts to litigate paternity is particularly unavailing given the plain language of MCL 722.1443(1) which provides that an action under the Revocation of Paternity Act may be brought by motion "at *any* stage of the proceedings" in an action for the support, custody, or parenting time (emphasis added). See also MCL 722.1441(5) ("An action [to determine that a child was born out of wedlock] may be brought . . . by a motion in an existing action . . . ."). By its plain terms, this provision authorizes motions at *any* stage, thereby including proceedings after the entry of a judgment of divorce. That is, even after the entry of a judgment of divorce, a court has continuing jurisdiction over child custody and support determinations, *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004), including the authority to revise, alter, or amend the original judgment of divorce. See *Kelley v Hanks*, 140 Mich App 816, 821; 366 NW2d 50 (1985); MCL 552.17. The duly authorized filing of a motion under the Revocation of Paternity Act in relation to such proceedings may thus be construed as a continuation of the divorce action to which res judicata does not apply. See *Harvey*, 237 Mich App at 437 ("Because the present controversy is a continuation of the parties' original divorce action, and not a separate lawsuit, the doctrine of res judicata is inapplicable here."). Thus, plaintiff's motion in the present case, as a continuation of divorce proceedings, would not be subject to res judicata.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher