STATE OF MICHIGAN

COURT OF APPEALS

KARI LYNN LIPNEVICIUS,

Plaintiff-Appellee,

v

GEOFFREY MICHAEL LIPNEVICIUS,

Defendant-Appellant,

and

JASON BRISTOL,

Intervening Party-Appellee.

UNPUBLISHED
August 26, 2010

No. 289073
Genesee Circuit Court
LC No. 06-270914-DM

Before: JANSEN, P.J., and MURRAY and GLEICHER, JJ.

JANSEN, P.J. (*concurring in part and dissenting in part*).

My colleagues and I agree (1) that the trial court legally erred by allowing the biological father, intervening party Jason Bristol (Bristol), to intervene in the divorce proceedings, (2) that defendant was the child's legal father prior to the trial court's determination that he was not a biological parent, (3) that the trial court's determination that defendant was not a biological parent did not amount to a "termination" of his parental rights, but rather constituted an extinguishment of his parental rights, and (4) that defendant was entitled to invoke the so-called "equitable parent doctrine" after the trial court's determination that Bristol was the child's biological father. We also agree that that although the trial court's ruling extinguished defendant's parental rights, there exist no constitutional infirmities that would require reversal in this case. However, unlike my colleagues, I conclude that despite defendant's entitlement to invoke the equitable parent doctrine in this case, he would not have been able to satisfy the standards of an equitable parent. Accordingly, instead of remanding for an evidentiary hearing on this issue, I would affirm in full.

I

Plaintiff Kari Lynn Lipnevicius (plaintiff) married defendant in October 2000, in Grand Blanc, Michigan. Plaintiff gave birth to two sons during the marriage: Nicholas Lipnevicius, born 3/25/03, and Nathan Lipnevicius, born 10/14/04. The younger son, Nathan, was conceived while plaintiff was having an extramarital affair with Bristol. Plaintiff stopped the affair with

Bristol when she and defendant moved to Ohio in March 2004. Plaintiff subsequently moved back to Michigan with her two children in March 2006, and filed her complaint for divorce in October 2006. Defendant continued to live in the marital home in Ohio.

In June 2007, plaintiff filed a motion seeking, among other things, (1) a determination of the parentage of Nathan, (2) a determination that Nathan was "not a product of the marriage," and (3) a determination that "defendant is not the equitable parent." Plaintiff asserted that DNA testing had been completed and that defendant was not Nathan's biological father. Plaintiff also asserted that defendant had been largely absent from Nathan's life and had therefore not developed a meaningful father-son relationship with Nathan. Plaintiff anticipated that if defendant were found not to be Nathan's biological father, he might nonetheless attempt to raise the equitable parent doctrine. She argued that he should not be permitted to do so. Plaintiff's motion did not disclose the identity of Nathan's true biological father.

Jason Bristol[1] then moved to intervene in the divorce proceedings pursuant to MCR 2.209 and filed a separate motion seeking "the court's determination that [Bristol] is the natural father of minor child Nathan Lipnevicius." Bristol sought to intervene solely "with regard to the issue of the establishment of parentage [of] minor child, Nathan Lipnevicius." Bristol represented that he was Nathan's true biological father. Bristol made clear that he "was not seeking to file a separate lawsuit," but was "merely seeking to intervene in the single issue of the determination of the natural father of minor child Nathan Lipnevicius."

Bristol submitted a DNA test report concluding that there was a 99.998 percent probability that he was Nathan's biological father. The report provided that "[b]ased on testing results obtained from analyses of the DNA loci listed, the probability of paternity is 99.998%." Bristol acknowledged that, under Michigan law, it was presumed that Nathan was the child of both plaintiff and defendant because he was born during their marriage. However, Bristol argued that the DNA testing evidence was sufficient to rebut this presumption.

Defendant filed a response to Bristol's motions. Defendant cited *Killingbeck v Killingbeck*, 269 Mich App 132; 711 NW2d 759 (2005), for the proposition that third parties are generally not permitted to intervene in divorce proceedings in Michigan. Defendant asserted that because Nathan was born during the marriage, it was presumed that he was the child of both plaintiff and defendant. Defendant observed that because he was already presumed to be Nathan's legal father, he had no reason to resort to the equitable parent doctrine in this case.

In August 2007, the trial court heard oral argument on Bristol's motion to intervene. Bristol's attorney argued that the facts of the present case were unlike those of *Killingbeck*, most specifically because "[t]he door was opened by [plaintiff]" when she filed her own earlier motion seeking a judicial determination of Nathan's parentage. Bristol suggested that his motion to

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[1] Plaintiff testified that she had known Bristol since about 1994, and had dated him in the 1990s for approximately 2 years. Plaintiff stated that she had always kept in touch with Bristol, and that she had met up with him again in 2003. Plaintiff testified that her extramarital affair with Bristol began sometime in the fall of 2003.

intervene was simply complementary to plaintiff's own motion. Defendant's attorney cited *Killingbeck* and related cases for the proposition that a third party's motion to intervene in divorce proceedings should rarely be granted, and maintained that Bristol should not be permitted to intervene or to challenge defendant's position as Nathan's legal father. After hearing the arguments, the trial court entered an order granting Bristol's motion to intervene.

An evidentiary hearing was then held during which the DNA testing results were admitted into evidence. Counsel for defendant did not contest the DNA testing results, and conceded that Bristol was Nathan's biological father. On September 10, 2007, the trial court issued an order providing that "minor child Nathan Lipnevicius is not the issue of the marriage between Plaintiff Kari Lynn Lipnevicius and Defendant Geoffrey Michael Lipnevicius," and that "Jason Bristol is the natural father of minor child Nathan Lipnevicius."

A judgment of divorce was ultimately entered in December 2007, dissolving the parties' marriage. Bristol then filed a separate paternity action, which was assigned to the same trial court judge. Bristol's separate paternity action was resolved by a consent judgment, and Bristol then moved to be dismissed from the divorce action. The circuit court granted Bristol's motion and dismissed him from the divorce proceedings. Bristol thereafter married plaintiff.

In January 2008, defendant filed a delayed application for leave to appeal the trial court's August 2007 order, arguing that Bristol had lacked standing to intervene in the divorce action. Plaintiff moved to dismiss the delayed application as moot, arguing that Bristol had already been dismissed from the divorce proceedings and that defendant had failed to properly preserve the issue of his status as Nathan's father. In June 2008, this Court dismissed defendant's delayed application as moot.[2] This Court's order provided in relevant part:

> The motion to dismiss defendant's delayed application for leave to appeal . . . is GRANTED for the reason that the issue raised in the application is moot. The natural father had standing to bring the subsequent paternity action based on the trial court's September 10, 2007 order finding that the child in question was not the issue of the marriage between plaintiff and defendant. Defendant does not challenge the substance of this order, which effectively gave the natural father standing to bring his subsequent action under the Paternity Act. MCL 722.714, 722.711(a); *Barnes v Jeudevine*, 475 Mich 696, 703; 718 NW2d 311 (2006); *In re KH*, 469 Mich 621, 634-635; 677 NW2d 800 (2004). Whether the trial court erred by allowing the natural father to intervene in the divorce action is irrelevant to the outcome. The delayed application for leave to appeal is DISMISSED.

This Court's dismissal of defendant's delayed application was not appealed to the Supreme Court.

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[2] *Lipnevicius v Lipnevicius*, unpublished order of the Court of Appeals, entered June 20, 2008 (Docket No. 282990).

Meanwhile, in October 2007, defendant had filed a motion for summary disposition in the trial court. In the motion for summary disposition, defendant argued that he was Nathan's equitable parent, even though Bristol was Nathan's true biological father. Defendant asserted that he "clearly satisfied the criteria" for being adjudicated an equitable parent under *Atkinson v Atkinson*, 160 Mich App 601; 408 NW2d 516 (1987). Defendant further contended that, as Nathan's equitable father, he was "endowed with both the rights and responsibilities of a natural/legal parent."

Plaintiff and Bristol—Bristol had not yet been dismissed form the divorce case at this time—opposed defendant's motion for summary disposition, arguing that defendant was not an equitable parent and that he had stipulated to the admission of the DNA testing results. They also pointed out that the circuit court had already ruled on September 10, 2007, that Nathan was "not the issue of the marriage" and that "Bristol is the natural father of minor child Nathan Lipnevicius."

In December 2007, the trial court denied defendant's motion for summary disposition. The trial court found its previous order of September 10, 2007, to be dispositive on the issue of Nathan's legal parentage. The court noted that a child born during a marriage is presumed to be the issue of that marriage, but that this presumption of legitimacy can be rebutted by clear and convincing evidence of paternity. The court also noted that it was authorized to determine that Nathan was not the issue of the marriage, and stated that "[o]nce this determination is made, a party claiming to be the equitable parent cannot then make claims challenging whether the child was, in fact, born out of wedlock." The trial court concluded:

> [T]here has been a conclusive legal proceeding wherein this court found by clear and convincing evidence that Nathan was not the product of the marriage—hence he was born out of wedlock. If this court were to now confer the status of equitable parent on the defendant it would undermine this court's prior order and determination that Nathan was not an issue of the marriage, which is impermissible pursuant to *Coble v Green*, 271 Mich App 382; 722 NW2d 898 (2006).
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> After the plaintiff challenged the presumption of legitimacy, this court determined by clear and convincing evidence that third party Bristol was the natural father of Nathan—and that Nathan was not a product of the marriage; the arguments now made by the defendant seeking status as an equitable parent are moot pursuant to the holding in *Coble*. Accordingly, the order entered by this court on September 12, 2007, remains in effect. And the defendant's motion for summary disposition must be denied because the documentary evidence presented in support thereof cannot yield a different result.

In November 2008, defendant filed a delayed application for leave to appeal the trial court's December 2007 order. This Court initially denied defendant's delayed application for

leave to appeal.[3] But in *Lipnevicius v Lipnevicius*, 485 Mich 872 (2009), our Supreme Court remanded the matter for consideration as on leave granted, setting forth seven specific questions for this Court's consideration:

> [I]n lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. The court should consider: (a) whether the trial court legally erred in allowing the biological father to intervene in the divorce proceedings; (b) whether the defendant father was the child's legal father prior to the trial court's determination that the defendant father was not a biological parent; (c) whether the trial court's determination that the defendant father was not the child's biological parent amounted to termination of his parental rights; (d) if the trial court's determination did amount to a termination of the defendant father's parental rights, whether any constitutional implications exist; cf. *Santosky v Kramer*, 455 US 745 (1982); (e) whether the defendant father was entitled to invoke the equitable parent doctrine after the court determined that another man was the biological father; (f) whether the defendant father's entitlement to invoke the equitable parent doctrine is in any way affected by the fact that the biological father is apparently willing to undertake all parental responsibilities with regard to the child; and (g) whether, if the defendant father is entitled to invoke the equitable parent doctrine, he has satisfied the standards of an equitable parent.

II

This Court reviews for an abuse of discretion the trial court's decision on a motion to intervene. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Whether defendant was Nathan's legal father prior to the trial court's determination that defendant was not a biological parent, whether the trial court's determination in this regard amounted to a termination of defendant's parental rights, and whether any constitutional implications exist in this case are all questions of law. This Court reviews de novo questions of law, *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006), including questions of constitutional law, *Sidun v Wayne Co Treasurer*, 481 Mich 503, 508; 751 NW2d 453 (2008). Lastly, whether a party may assert parental rights under the equitable parent doctrine is a question that this Court reviews de novo on appeal. *Killingbeck*, 269 Mich App at 141.

III

A

[3] *Lipnevicius v Lipnevicius*, unpublished order of the Court of Appeals, entered January 21, 2009 (Docket No. 289073).

I first conclude that although the trial court legally erred by allowing Bristol to intervene in the divorce proceedings, this error was plainly harmless in light of plaintiff's nearly identical motion seeking a determination that Bristol was Nathan's biological father. MCR 2.209 describes various instances in which a party may intervene by right, and other instances in which a party may intervene at the trial court's discretion. But as this Court has previously observed, "[d]omestic relations actions are strictly statutory. The only parties to a divorce action are the two people seeking dissolution of their marriage. Third-party intervention in divorce actions is permitted in extremely limited circumstances . . . ." *Killingbeck*, 269 Mich App at 140 n 1; see also *Yedinak v Yedinak*, 383 Mich 409, 413; 175 NW2d 706 (1970) (noting that a divorce court's jurisdiction is limited "to determin[ing] the rights and obligations between the husband and wife, to the exclusion of third parties"). Indeed, the general rule is that "third parties can be joined in [a] divorce action only if they have conspired with one spouse to defraud the other spouse of a property interest." *Estes v Titus*, 481 Mich 573, 583; 751 NW2d 493 (2008). I recognize that Bristol's motion to intervene was quite limited in scope, seeking only "to intervene in the single issue of the determination of the natural father of minor child Nathan Lipnevicius." Nonetheless, as our precedent makes clear, the "sole recourse" for a nonparty to the divorce proceedings who seeks to establish paternity is by way of a paternity action, and not through the divorce action itself. *Killingbeck*, 269 Mich App at 140 n 1. Accordingly, I believe that the trial court legally erred by allowing Bristol to intervene in the parties' divorce action for the purpose of establishing the paternity of Nathan.

This is not to say, however, that the trial court was wholly without authority to determine the matter of paternity within the confines of the divorce action. Plaintiff, herself, had filed a nearly identical motion seeking a determination that Bristol was Nathan's true biological father. And as the text of the trial court's order makes clear, plaintiff's motion concerning the issue of paternity was decided concurrently with Bristol's motion. Even though Bristol should not have been permitted to intervene and to raise the matter of paternity by way of his own motion, plaintiff, as a party to the divorce, *did* have standing to raise the issue of Nathan's parentage. See *York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997). In a divorce proceeding, a wife may offer evidence that her husband is not the biological father of a child, even though the child was born during the marriage and the husband has treated the child as his own. *Atkinson v Atkinson*, 160 Mich App 601, 605-606; 408 NW2d 516 (1987). As this Court has held, "it is now well-established that in divorce actions the court may determine whether the husband is the father of the wife's child." *Id*. at 606. Accordingly, despite the trial court's error in permitting Bristol to intervene and raise the issue of Nathan's parentage, I conclude that the issue of Nathan's parentage was still properly before the court in the form of plaintiff's own motion. The trial court properly entertained plaintiff's separate motion and decided, on the basis of the undisputed DNA test results, that defendant was not Nathan's biological father. Therefore, the trial court's error in allowing Bristol to intervene and raise the issue of paternity was plainly harmless, and did not affect the outcome of the proceedings. It is well settled that this Court will not reverse on the basis of harmless error. *Guerrero v Smith*, 280 Mich App 647, 656; 761 NW2d 723 (2008).

B

I also conclude that defendant was, indeed, Nathan's legal father prior to the trial court's determination that defendant was not a biological parent. Under Michigan law, there is a

rebuttable presumption that a child born or conceived during a marriage is the issue of that marriage. *In re KH*, 469 Mich 621, 624-625; 677 NW2d 800 (2004); see also MCR 3.903(A)(7)(a), and *Aichele v Hodge*, 259 Mich App 146, 158-159; 673 NW2d 452 (2003). This presumption "'is deeply rooted in our statutes and case law,'" and "can be overcome only by a showing of clear and convincing evidence." *Barnes v Jeudevine*, 475 Mich 696, 703; 718 NW2d 311 (2006), quoting *In re KH*, 469 Mich at 634. It is undisputed that plaintiff gave birth to Nathan while plaintiff was still married to defendant. Thus, prior to the trial court's determination that defendant was not Nathan's biological father, defendant was legally presumed to be the child's father. See *In re KH*, 469 Mich at 624-625. Defendant did not lose his status as Nathan's legal father until the trial court subsequently decided plaintiff's motion, determining by clear and convincing evidence[4] that Bristol was the child's true biological father.

C

I next conclude that the trial court's determination that defendant was not Nathan's biological father *did not* amount to a "termination" of his parental rights as that term is used in the Juvenile Code, MCL 712A.1 *et seq*. Instead, I conclude that defendant's presumed parental rights in the child were *extinguished* once the trial court entered the judgment of divorce, determining that defendant was not the father of the child and that the child was not the issue of the marriage. Although it is arguable that the difference between "termination" and "extinguishment" is merely a matter of semantics, the former term carries significant legal implications that are inapplicable to the present situation.

There is no doubt that none of the grounds for terminating parental rights set forth in the Juvenile Code is present—or even alleged to be present—in this case. See MCL 712A.19b(3). This is not an "abuse and neglect" case filed under the Juvenile Code by the Department of Human Services, and none of the procedures set out in the Juvenile Code was utilized here. Rather, this was a divorce case in which the issue of paternity was timely raised by plaintiff, and in which the court properly resolved to "settle with finality a controversy regarding the child's legitimacy." *Barnes*, 475 Mich at 704. In addressing the issues presented, the trial court found that the strong and historic presumption of legitimacy established when a child is born during the marriage had been overcome by clear and convincing evidence. *Id*. at 703. Any parental rights bestowed upon defendant as a result of this presumption were duly extinguished by the court's findings in the judgment of divorce that defendant was not the biological father of the child and that the child was not the issue of the marriage. I conclude that once the judgment of divorce was entered to this effect, defendant *at that point in time* no longer had any legally enforceable rights in the minor child.[5] Any such legally enforceable rights that he was previously presumed to have were extinguished.

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[4] I note that the undisputed DNA test results in this case, indicating a 99.998 percent probability that Bristol was Nathan's biological father, certainly constituted "clear and convincing evidence" sufficient to rebut the presumption that defendant was the child's father. See *Barnes*, 475 Mich at 703.

[5] Of course, this statement that defendant "no longer had any legally enforceable rights in the (continued…)

D

Nor do I perceive any constitutional infirmities that would require reversal of the trial court's actions. It is true that natural parents enjoy a fundamental liberty interest in the care, custody, and management of their children. *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982); see also *In re Rood*, 483 Mich 73, 76; 763 NW2d 587 (2009). It is equally true that Michigan law, "like nature itself, makes no provision for dual fatherhood." See *Michael H v Gerald D*, 491 US 110, 118; 109 S Ct 2333; 105 L Ed 2d 91 (1989) (opinion of SCALIA, J.). It cannot seriously be disputed that, until the presumption of paternity was rebutted, the fundamental liberty interest in the care, custody, and management of Nathan belonged to defendant—who was *presumed* to be Nathan's natural father because he was married to plaintiff at the time of conception and birth. See *In re KH*, 469 Mich at 624-625; MCR 3.903(A)(7)(a). However, once plaintiff introduced clear and convincing evidence in the divorce court to rebut the presumption of legitimacy, as she was entitled to do under Michigan law, *Atkinson*, 160 Mich App at 605-606, and once the trial court entered its order providing that Nathan "is not the issue of the marriage," Nathan had no "father" as defined in MCR 3.903(A)(7), *In re KH*, 469 Mich at 637 (2004) (stating that "the trial court did not make a finding that the presumption of legitimacy was rebutted by the parents," but that "[i]f such a finding had been made, the children would have no "father"). At this point, defendant's rights as a father ceased to exist and Jason Bristol presumably could have been identified as a putative father under MCR 3.903(A)(24) and MCR 3.921(D). *In re KH*, 469 Mich at 637. Because defendant was no longer a "parent" after the presumption of legitimacy was rebutted, he necessarily possessed no further fundamental liberty interest in Nathan's care and custody at that time. *Santosky*, 455 US at 753. Accordingly, I find no constitutional error in this case.

E

I next consider whether defendant was entitled to assert the equitable parent doctrine after the trial court determined that he was not the child's biological father. Like my colleagues, I conclude that he was. However, unlike my colleagues, I am convinced that defendant is unable to satisfy the requirements of an equitable parent in this case.

1

The facts of the present case are similar to those of *Atkinson*. In *Atkinson*, 160 Mich App at 605-606, the defendant-wife gave birth to a child during her marriage to the plaintiff-husband. Thereafter, during subsequent divorce proceedings, the defendant-wife wished to introduce evidence that the child was not the plaintiff-husband's biological issue. This Court ruled that the defendant-wife was entitled to introduce such evidence. *Id*. However, this Court also ruled that the plaintiff-husband was entitled to invoke the "equitable parent" doctrine, stating:

> [A] husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1)

(…continued)

minor child" assumes that defendant was neither an equitable parent nor an individual with third-party custody rights in a child custody dispute.

> the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support. [*Id*. at 608-609.]

The *Atkinson* Court went on to hold that the plaintiff-husband qualified as an "equitable parent" under the circumstances of that case, and remanded the matter to allow the trial court to reevaluate the plaintiff-husband's requests for custody and visitation. *Id*. at 609.

Pursuant to the reasoning of *Atkinson*,[6] I conclude that defendant was permitted to invoke the equitable parent doctrine following the trial court's determination that he was not the child's biological father. The trial court erred by denying defendant's motion for summary disposition and by declining to allow him to invoke the equitable parent doctrine.

2

I perceive no reason why defendant's entitlement to invoke the equitable parent doctrine should have been affected by the fact that Bristol was willing to undertake all parental responsibilities with regard to the child. It does not appear that a biological father's willingness or ability to provide for the child has ever been considered as an important factor in this Court's equitable-parent jurisprudence. I conclude that defendant's entitlement to invoke the equitable parent doctrine in this case was not dependent on, or affected by, Bristol's willingness to care for the child.

3

However, even though the trial court erred by declining to allow defendant to invoke the equitable parent doctrine in this case, I conclude that defendant would not have been able to satisfy the requirements of an equitable parent with respect to Nathan. For this reason, I would affirm the trial court's decision in full.

As this Court stated in *Atkinson*, 160 Mich App at 608-609:

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[6] This Court's decision in *Atkinson* constitutes binding precedent. MCR 7.215(C)(2). Of course, because *Atkinson* was decided prior to November 1, 1990, my colleagues and I would be perfectly free to disagree with its holding and reach a contrary result in the case at bar. MCR 7.215(J)(1). However, the equitable parent doctrine has been referenced, if not expressly reaffirmed, in several post-1990 cases. See, e.g., *Van v Zahorik*, 460 Mich 320, 330-334; 597 NW2d 15 (1999); *Coble v Green*, 271 Mich App 382, 388; 722 NW2d 898 (2006); *York*, 225 Mich App at 335-339. I therefore decline to deviate from the holding and rationale of *Atkinson* in this case. Although I agree with my colleagues that the equitable parent doctrine is seemingly inconsistent with Michigan's comprehensive statutory scheme governing child custody matters, I would leave for the Supreme Court or the Legislature the question whether the equitable parent doctrine should be redefined or abolished.

> [A] husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support. We hold that the husband may be considered the "equitable parent" under these circumstances and remand this case in order to allow the circuit court to reevaluate custody and visitation, treating plaintiff as a natural parent . . . .

It is clear that a man must satisfy all three of these requirements in order to be considered an equitable parent under the reasoning of *Atkinson*.

In the instant case, while defendant may desire to be a parent, and is apparently willing to support Nathan, the record indicates that he cannot meet the first criterion enumerated in *Atkinson*. Nathan was born in October 2004. Plaintiff filed her complaint for divorce in October 2006, and had moved the children out of the marital home in Ohio some time before that. During the brief time that Nathan lived with defendant, defendant worked a minimum of 80 hours a week, traveled frequently on business, and apparently spent very little time with Nathan or his older brother. In light of these circumstances and Nathan's young age at the time he left defendant's home, I simply cannot conclude that Nathan developed a real father-child relationship with defendant or that he would acknowledge such a relationship with defendant at this time. Nor does it appear that plaintiff cooperated in the development of such a relationship over a period of time before filing for divorce.

It is undisputed that defendant was largely absent during Nathan's early life, and defendant has had only minimal contact with Nathan since that time. I find no evidence in the record to suggest that Nathan has looked to defendant for parental comfort or that Nathan considers defendant to be his father. Accordingly, I conclude that even though defendant should have been permitted to invoke the equitable parent doctrine in this case, he would not have been able to satisfy the requirements of an equitable parent. See *id*. at 608-609.

IV

In sum, my colleagues and I agree that the trial court legally erred by allowing Bristol to intervene in the divorce proceedings, that defendant was the child's legal father prior to the trial court's determination that he was not a biological parent, that the trial court's determination that defendant was not a biological parent constituted an extinguishment of his parental rights, and that defendant was entitled to invoke the equitable parent doctrine in the case at bar. We also agree that that there exist no constitutional infirmities that would require reversal in this case. However, unlike my colleagues, I would affirm in full because I conclude that defendant cannot satisfy the standards of an equitable parent and I do not believe that any further factual development of this issue is necessary.

/s/ Kathleen Jansen