STATE OF MICHIGAN

COURT OF APPEALS

HAFEZ M. BAZZI, Plaintiff-Appellee,	UNPUBLISHED November 1, 2011
v	No. 299239 Oakland Circuit Court
ANNE ELIZABETH MACAULAY, Defendant-Appellant.	LC No. 2009-76235-DP

Before: M. J. KELLY, P.J., and OWENS and BORRELLO, JJ.

OWENS, J. (*dissenting*).

I respectfully dissent. I would reverse the trial court's determination that it had the authority to appoint a guardian ad litem (GAL) to investigate the affidavit of parentage signed by Mr. Szakaly and I would find that the trial court erred by failing to grant defendant's motion for summary disposition upon defendant's presentation of the signed affidavit of parentage. Plaintiff did not have standing under MCL 722.714 to bring this action to determine paternity. Any decision to the contrary violates the clear language of MCL 722.714(2): "[a]n action to determine paternity ***shall not*** be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act . . . ." (emphasis added). The word "'shall' is mandatory; it expresses a directive, not an option." *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009).

The primary purpose of statutory construction is to determine and give effect to the Legislature's intent. *Bush v Shabahang*, 484 Mich 156, 166; 772 NW2d 272 (2009). To determine that intent, this Court looks first to the language of the statute. *Id*. at 166-167. It must interpret the language in accordance with the Legislature's intent and, to the extent it can, give effect to every phrase, clause and word used. *Id*. at 167. It must read and construe the language in its grammatical context, unless it is clear that the Legislature had a different intent. *Id*.

The specific provision upon which defendant relies, MCL 722.714(2), appears clear and unambiguous, although we must consider what the Legislature meant by "the child's father." "Father" is not defined in the Paternity Act, MCL 722.711. However, it is defined in the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*. Under that act, "father" is "the man who signs an acknowledgment of parentage of a child." MCL 722.1002(d).

MCL 722.1003 provides:

> (1) If a child is born out of wedlock, a man is considered to be the natural father of that child if the man joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgment of parentage.
>
> (2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the acknowledgment is signed. An acknowledgment may be signed any time during the child's lifetime.

The six-year-old child in this case was born out of wedlock. Szakaly signed the acknowledgment of parentage with defendant the day after the child was born and is therefore considered the child's natural father. MCL 722.1003(1).

The statute provides for revocation of an acknowledgment of parentage ***only*** by certain persons:

> (1) The *mother* or the *man who signed the acknowledgment*, *the child* who is the subject of the acknowledgment, *or a prosecuting attorney* may file a claim for revocation of an acknowledgment of parentage.
>
> (2) A claim for revocation shall be supported by an affidavit signed by the claimant setting forth facts that constitute 1 of the following:
>
> (a) Mistake of fact.
>
> (b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.
>
> (c) Fraud.
>
> (d) Misrepresentation or misconduct.
>
> (e) Duress in signing the acknowledgment.
>
> (3) If the court finds that the affidavit is sufficient, the court may order blood or genetic tests at the expense of the claimant, or may take other action the court considers appropriate. The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the man is not the father and that, considering the equities of the case, revocation of the acknowledgment is proper. [MCL 722.1011; emphasis added.]

Based on these two statutes, plaintiff may neither bring an action for paternity nor seek revocation of the acknowledgment of parentage executed by defendant and Szakaly. Plaintiff does not have standing and the trial court therefore erred in failing to dismiss this action and in appointing a GAL.

As stated by the United States Supreme Court, "constitutionally protected parental rights do not arise simply because of a biological connection between a parent and a child; rather, they require more enduring relationships." *Lehr v Robertson*, 463 US 248, 260-261, 103 S Ct 2985, 77 L Ed 2d 614 (1983). Indeed, as this Court noted in *Hauser v Reilly*, 212 Mich App 184, 188-189; 536 NW2d 865, even "a rapist has a biological link with a child conceived by that rape." In *Sinicropi v Mazurek*, 273 Mich App 149, 165, 729 NW2d 256 (2006), this Court stated unequivocally, "[i]f an acknowledgment of parentage has been properly executed, subsequent recognition of a person as the father in an order of filiation by way of a paternity action cannot occur unless the acknowledgment has been revoked." The *Sinicropi* Court held that the alleged biological father had no standing to pursue his paternity action as long as the acknowledgment of parentage was unrevoked, and MCL 722.1011(1) clearly identifies only four parties who can seek revocation: the mother, the man who signed the acknowledgment, the child, and the prosecuting attorney. Here, the child already has a legal father: Mr. Szakaly. Szakaly is not even a party to these proceedings. As stated by our Supreme Court in *In re KH*, 469 Mich 621, 624, 677 NW2d 800 (2004), "where a legal father exists, a biological father cannot properly be considered even a putative father." Plaintiff cannot, under Michigan law, challenge the acknowledgment of parentage. The trial court was required to dismiss his claim ab initio upon presentation to the court of a facially valid acknowledgment of parentage. It was improper for the trial court to appoint a GAL and then hold these proceedings in abeyance while the GAL investigated whether grounds existed to file an action under a statute other than the Paternity Act; in this case, the Acknowledgment of Parentage Act.

In this case, of the four people who have statutory standing to challenge the validity of the acknowledgment of parentage, neither the mother, nor the man who signed the acknowledgment, nor the child, nor the prosecuting attorney, has done so. It could be argued that because the child cannot file an action herself while a minor, the language in the statute permitting the child to challenge the validity of the acknowledgment would be surplusage if a court in another action could not appoint a GAL to act for the child. This argument would fail for several reasons. A guardian appointed for a child under the Estates and Protected Individuals Code (EPIC) (MCL 700.1101 et seq.) could file on behalf of the child or the child, once an adult, could file on her own behalf. It may be argued that the child would then no longer be a "child" under the act and it would be too late to file. In using the term "child", rather than "minor", the legislature has clearly indicated that "child" refers not to age or minority status, but to identify the person who is the subject of the acknowledgment of parentage. This is also shown by the language of MCL 722.1003(2) wherein the statute provides that "an acknowledgment of parentage may be signed any time during the child's lifetime." The statute does not limit the time for executing an acknowledgment of parentage to the first eighteen years of the child's life.[1]

[1] One may question why a person would sign an acknowledgement of parentage after a child reached the age of eighteen years. The reasons are varied and undoubtedly the same as the reasons why the legislature provided for the adoption of an adult (MCL 710.43(3), MCL 710.56(3)): to legally recognize an emotional bond, for purposes of inheritance, etc.

Here, the majority would permit the self-proclaimed biological father to circumvent the limitation in MCL 722.1011(1) on who may challenge an acknowledgment of parentage by permitting a paternity action to continue long enough for a GAL appointed in the paternity action to conduct discovery and file an action under the Acknowledgment of Parentage Act challenging the validity of the acknowledgment of parentage. Such a paternity proceeding is clearly contrary to law and must be dismissed for lack of standing upon the presentation to the court of either a facially valid certificate of marriage showing that the mother was married at the time of conception or birth of the child, or a facially valid acknowledgment of parentage. The reason the court may appoint a GAL for a child under the Paternity Act is to protect the child's interests in the paternity action, not to facilitate a "fishing expedition" with an eye to a possible suit under another statute, such as the Acknowledgment of Parentage Act.

If the alleged biological father believes a fraud has been committed, he is free to urge the prosecuting attorney to challenge the acknowledgment of paternity.

I would reverse and remand this case for dismissal.

/s/ Donald S. Owens