[Cite as *In re S.K.L.*, 2015-Ohio-2860.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102136

IN RE: S.K.L.
Minor Child

[Appeal by: D.F.]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. PR 13706774

BEFORE: E.A. Gallagher, J., Celebrezze, A.J., and E.T. Gallagher, J.

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EILEEN A. GALLAGHER, J.:

{¶1} Defendant-appellant D.F. appeals from a judgment of the Cuyahoga County Court of Common Pleas Juvenile Division ("juvenile court") dismissing his complaint to establish paternity for lack of subject matter jurisdiction and based on the doctrine of laches. For the reasons that follow, we affirm the dismissal of his complaint on jurisdictional grounds.

Factual and Procedural Background

{¶2} T.F. and S.W.L. were married on December 30, 1995. Two children, K.M.L. and S.K.L., were born during their marriage. K.M.L. was born on May, 6, 2001, and S.K.L. was born on June 17, 2005. S.W.L. was identified as the father of both children on their birth certificates.

{¶3} In July 2007, T.F. filed for divorce in the Cuyahoga County Court of Common Pleas Domestic Relations Division ("domestic relations court"). A judgment of divorce was entered on September 27, 2007. The judgment entry of divorce included a finding that K.M.L. and S.K.L. were born as issue of the marriage, identified S.W.L. as the father of the two children and incorporated the separation agreement that had been agreed to by the parties. Under the separation agreement, T.F. and S.W.L. agreed to shared parenting of their two minor children, K.M.L. and S.K.L., and that each would be the residential parent and legal custodian of the children during that parent's parenting time with them. The parties further agreed that the child support obligation would be deviated to zero and that neither party would pay child support to the other (in light of the

expenses each would incur in maintaining a separate household for the children following the divorce) and that S.W.L. would obtain health insurance coverage for the children and pay all uninsured medical expenses. No issue was raised prior to or during the divorce proceedings regarding the parentage of S.K.L.

{¶4} Since their birth, T.F. and S.W.L. raised the two children as their own both during the marriage and pursuant to the terms of the shared parenting plan following their divorce. After her divorce from S.W.L., T.F. married D.F.[1]

{¶5} Although D.F. arguably knew or should have known since 2004 or 2005 that S.K.L. could have been his biological child (based on his extramarital sexual relationship with T.F. at or around the time S.K.L. was conceived), he took no action to determine whether he was, in fact, S.K.L.'s biological father or to assert any parental claim with respect to S.K.L. until she was more than six years old.

{¶6} It was T.F. who first raised the issue of S.K.L.'s paternity with the court. In December 2011, four years after her divorce from S.W.L., T.F. filed a series of motions in the domestic relations court seeking to modify the allocation of parental rights and responsibilities, parenting time and the shared parenting plan set forth in the divorce decree based on the allegation that S.W.L. was not S.K.L.'s biological father. T.F. argued that genetic testing performed in September 2011 indicated that D.F. was S.K.L.'s

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[1]The date T.F. married D.F. is unclear from the record. In his brief, D.F. criticizes the trial court's finding that D.F. and T.F. "were married on the day of her divorce from appellee" as being "unsupported by the record" and asserts that he and T.F. were married on September 13, 2009. In his complaint to establish paternity, however, D.F. specifically avers that he and T.F. "married on 9/27/07" — the date the divorce between S.W.L. and T.F. was finalized. Assuming this was a typographical error, D.F. did not take any steps to correct this error in his complaint.

probable biological father and that this "change in circumstances" warranted modification of the parties' rights as set forth in the divorce decree. T.F. also sought to modify the child support order, seeking an increase in support from S.W.L. for the care of the children. S.W.L. moved to dismiss these motions, arguing that there had been no change in circumstances and that the issue of the children's paternity had been established in the divorce decree and could not be relitigated. The domestic relations court ordered that the genetic test results be sealed until further order of the court. On October 1, 2012, T.F. filed a motion to add D.F. as a third-party defendant.[2]

{¶7} On April 24, 2013, the magistrate dismissed T.F.'s motions to modify allocation of parental rights and responsibilities, parenting time and the shared parenting plan — the motions that had been predicated on the claim that D.F. was S.K.L.'s biological father — and ordered that the motion to modify child support be referred to a support magistrate. The magistrate concluded that "the paternity of the parties' minor children ha[d] been established in their divorce decree and is res judicata" and that T.F., therefore, "cannot raise the issue of paternity as a change of circumstances."[3] The magistrate also denied T.F.'s motion to add D.F. as a new party defendant. T.F. filed objections to the magistrate's decision. On June 27, 2013, the trial court overruled her

[2]Although the juvenile court indicated in its March 13, 2014 journal entry that D.F. had attempted to intervene on post-decree basis in the domestic relations case, there is no indication in the record that D.F. filed a motion to intervene. Rather, it appears that T.F. filed a motion seeking to having D.F. joined as a party to the post-decree proceedings.

[3] The magistrate also denied T.F.'s motion, filed in October 2012, to add D.F. as a new party defendant.

objections and adopted the magistrate's decision without modification. T.F. did not appeal the trial court's decision.

{¶8} While these motions were pending in the domestic relations court, D.F. commenced proceedings in the juvenile court. On August 17, 2012, D.F. filed a verified application to determine custody (Case No. CU 12113563) in the juvenile court identifying himself as the "father" and one of the "parents" of S.K.L. (making no reference to S.K.L.'s legal father, S.W.L.) and inaccurately attesting that S.K.L. had lived only with T.F. or with himself and T.F. from 2006 to present. That same day, D.F. also filed a complaint to establish paternity and for allocation of parental rights and responsibilities in the juvenile court (Case No. PR 12713562), alleging that he was the biological father of S.K.L. based on the results of the genetic testing performed in September 2011 and requesting (1) that "any presumption of parentage subscribed [sic] to [S.W.L.] be rebutted," (2) that he "be recognized as Father to [S.K.L.]" and (3) that he be granted custody of S.K.L. S.W.L. filed an answer to the complaint denying the allegations related to D.F.'s claims of paternity and asserting various affirmative defenses. Concluding that "not all proper parties to this action were joined and served" in accordance with R.C. 3111.07, the magistrate ordered D.F. to file an amended complaint that complied with R.C. 3111.07 and to serve all proper parties within 30 days or the case would be dismissed for want of prosecution. On January 25, 2013, D.F.'s complaint in Case No. PR 12713562 was dismissed without prejudice pursuant to Civ.R.

41(A). Shortly thereafter, D.F.'s application for custody in Case No. CU 12113563 was likewise dismissed.[4]

{¶9} On May 10, 2013, D.F. filed the current action to establish paternity in the juvenile court, seeking to have himself "deem[ed] the natural biological father" of S.K.L. In an affidavit attached to his complaint, D.F. averred that he and T.F. had an extramarital relationship during T.F.'s marriage to S.W.L., that S.K.L. was conceived as a result of that relationship and that he is the biological father of S.K.L. Also attached to the complaint was a "brief in support" along with copies of S.K.L.'s birth certificate, the divorce decree, the results of the genetic testing, the April 23, 2013 magistrate's decision and a Uniform Child Custody Jurisdiction Enforcement Act affidavit. S.W.L., "ex-husband/father," and T.F., "ex-wife/mother," were named as defendants in the action. S.W.L. filed an answer denying the allegations related to D.F.'s claims of paternity and asserting various affirmative defenses, including lack of subject matter jurisdiction, laches, the failure to join indispensable parties and that the prior determination of S.K.L.'s paternity in the divorce decree was final as to both T.F. and D.F. S.W.L. also filed a counterclaim for declaratory judgment, seeking a dismissal of the complaint to establish paternity and a declaration that (1) R.C. 3111.04(A) was unconstitutional as applied to S.W.L., (2) the court lacked jurisdiction to hear the action and (3) D.F. could not bring an action to establish the paternity of S.K.L. because she had been previously found to be issue of a valid marriage. S.W.L. also filed motions to realign the parties

[4]Only select filings from the divorce action and the prior juvenile court proceedings are included in the record in this case. It appears, based on the limited information before us, that Case Nos. PR 12713562 and CU 12113563 were voluntarily dismissed by D.F.

(i.e., to have T.F. identified as a plaintiff rather than a defendant), to allow K.M.L. to intervene in the action, for the appointment of counsel and a guardian ad litem for K.M.L., for the appointment of a guardian ad litem for S.K.L. and to seal the results of the genetic testing. D.F. filed briefs opposing these motions as well as a brief opposing S.W.L.'s "motions for declaratory judgment."

{¶10} At a pretrial conference held on March 13, 2014, the juvenile court ordered the parties to submit briefs on various legal issues relating to the court's jurisdiction, T.F. and D.F.'s standing to challenge the paternity of S.K.L., the constitutionality of R.C. Chapters 2151 and 3111 as applied to the case and the admissibility of the genetic testing results.[5] The parties timely submitted briefs (D.F. and T.F. submitted a joint brief) on these issues as ordered by the court.

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[5]Specifically, the five legal issues the juvenile court ordered the parties to brief were as follows:

> a. Does the putative father have standing to bring his complaint to establish parentage?
>
> b. In light of the domestic relations court having jurisdiction over the subject child and its prior findings and orders, what is the basis for this court's exercising jurisdiction in this matter?
>
> c. Are the provisions of O.R.C. Chapters 2151 and 3111 constitutional when applied to the facts of this case?
>
> d. Is the mother judicially estopped from supporting putative father's claim of parentage?
>
> e. Are the genetic test results admissible into evidence where the mother, having secured a prior judicial determination of parentage of the husband, has subsequently presented the child and herself voluntarily with the putative father for genetic testing?

{¶11} S.W.L. thereafter filed a motion to dismiss the complaint to establish paternity, or in the alternative, requesting that the court not consider T.F. and D.F.'s brief on the legal issues on the grounds that (1) D.F. and T.F. had failed to serve the Ohio Attorney General with a copy of their brief and (2) T.F. had failed to file an answer, which S.W.L. argued precluded her from filing any briefs in the case.

{¶12} On September 25, 2014, following its consideration of the pleadings, motions and briefs submitted by the parties, the juvenile court entered a judgment entry in which it granted S.W.L.'s motions to realign the parties and to dismiss the complaint, concluding (1) that the juvenile court lacked subject matter jurisdiction over the parentage issue and (2) that D.F. and T.F. were barred from bringing a parentage action based on the doctrine of laches. The juvenile court held that pursuant to R.C. 3111.16 and 3111.381(E), the domestic relations court "has jurisdiction and continues to hold jurisdiction over the subject matter herein." The court further held that pursuant to R.C. 3111.02(B), it was required to give full faith and credit to the determination made by the domestic relations court in the judgment entry of divorce that S.K.L. was the child of T.F. and S.W.L., that the S.W.L., that the determination of the parent-child relationship between S.K.L. and S.W.L. was determinative for all purposes under R.C. 3111.13(A) and that T.F. was "judicially estopped" from asserting that S.W.L. was not S.K.L.'s legal father.

{¶13} With respect to the laches issue, the juvenile court concluded that although T.F. and D.F. knew, or had reason to know, as early as 2004 that S.K.L. might not be the biological child of S.W.L., they did nothing to assert any such claim until seven or eight

years later, until after "[t]he parent-child relationship between [S.W.L.] and [S.K.L.] has not only been legally created, but has also been emotionally, socially and financially established." As such, the juvenile court concluded, "[a]ny determination that [S.W.L.] is not [S.K.L.'s] father would not only be an affront to their legal and emotional parent-child relationship, but would also result in devastating consequences to [S.W.L.] and [S.K.L.]." The juvenile court, therefore, dismissed D.F.'s complaint to establish paternity. It then dismissed S.W.L.'s counterclaim and all other pending motions as moot.

{¶14} D.F. appealed the juvenile court's dismissal of his complaint,[6] assigning the following five assignments of error for review:

> Assignment of Error No. 1: The trial court abused its discretion and erred as a matter of law in sustaining [appellee's] motion to dismiss appellant's complaint.
>
> Assignment of Error No. 2: The trial court abused its discretion and erred as a matter of law in giving full faith and credit to a judgment entry of the domestic relations division as it effects this appellant who was not a party to that action.
>
> Assignment of Error No. 3: The trial court abused its discretion and erred as a matter of law in finding that the judgment entry of the domestic relations division is determinative for all purposes including appellant's complaint.
>
> Assignment of Error No. 4: The trial court abused its discretion and erred as a matter of law in finding that the juvenile division lacks subject matter jurisdiction over parenting issues brought by appellant as this court has continuing jurisdiction over parentage of the subject child.

[6]T.F. has not appealed.

Assignment of Error No. 5: The trial court abused its discretion and erred as a matter of law in determining that appellant's complaint is barred by the doctrine of laches.

Law and Analysis

{¶15} Appellant's first four assignments of error relate to the juvenile court's authority to hear D.F.'s complaint to establish paternity. In his first assignment of error, D.F. argues that the trial court erred in dismissing his complaint because S.W.L.'s motion to dismiss was based on only two issues: (1) D.F.'s failure to serve the Ohio Attorney General and (2) T.F.'s failure to answer the complaint. D.F. contends that because a notice of service was filed three days after S.W.L. filed his motion to dismiss, demonstrating that a copy of his brief had been served on the Ohio Attorney General, that issue was "presumably resolved." He further contends that the fact that T.F. failed to answer the complaint "has no bearing upon [D.F.]" because "he had no duty to answer his complaint." Although we agree that neither of the grounds asserted in S.W.L.'s motion, in and of itself, warranted dismissal of D.F.'s complaint, the juvenile court's dismissal in this case was not based solely on S.W.L.'s motion to dismiss, but rather, its determination that it lacked subject matter jurisdiction over the parentage issue raised by D.F.'s complaint — one of the affirmative defenses raised in S.W.L.'s answer and one of the issues the juvenile court had expressly asked the parties to address in their briefs. Even where the parties have not raised the issue, a court may sua sponte raise the issue of subject matter jurisdiction at any stage in the proceedings and must dismiss a complaint if it determines that it lacks subject matter jurisdiction. Civ.R. 12(H)(3) ("Whenever it

appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

{¶16} The juvenile court determined that it could not consider D.F.'s complaint because (1) it was required to give full faith and credit to the domestic relations court's parentage determination in the divorce decree under R.C. 3111.02(B), (2) the parentage determination in the divorce decree was "determinative for all purposes, including [D.F.'s] complaint" under R.C. 3111.13(A) and (3) it lacked subject matter jurisdiction "over the parentage issue" raised in D.F.'s complaint because the domestic relations court had continuing jurisdiction over the issue pursuant to R.C. 3111.16 and 3111.381(E).

{¶17} Pursuant to R.C. 3111.04(A), "a man * * * alleging himself to be the child's father" has the right to bring a paternity action "to determine the existence or nonexistence of the father and child relationship." In accordance with R.C. 3111.07(A), the natural mother, each man presumed to be the father under R.C. 3111.03 and each man alleged to be the natural father must be made parties to the parentage action if subject to the jurisdiction of the court. The child support enforcement agency of the county in which the action is brought also shall be given notice of the action and the child shall be made a party to the action unless a party shows good cause for not doing so. *See also State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 2012-Ohio-2686, 972 N.E.2d 553, ¶ 13-15 (granting writ of prohibition to prevent juvenile court judge from proceeding in parentage action due to lack of personal jurisdiction where alleged biological father "failed to name the minor child — an interested and necessary party pursuant to R.C. 3111.07(A) — as a party and failed to show good cause why the child should not be

joined as a party"; juvenile court "patently and unambiguously lacked jurisdiction to proceed in the case by ordering that the child submit to genetic testing").

{¶18} The "father and child relationship" means the "legal relationship" that exists between a child and his or her "natural father." R.C. 3111.01, 3111.02. A man is presumed to be the natural father of a child where the man and the child's mother are married to each other at the time of the child's birth. R.C. 3111.03(A)(1). However, this presumption can be rebutted by clear and convincing evidence that includes the results of genetic testing. R.C. 3111.03(B). In this case, the domestic relations court determined, as part of the divorce decree, that S.W.L. was the father of S.K.L. That finding was unchallenged for more than six years.

{¶19} In his second and third assignments of error, D.F. argues that the juvenile court erred in concluding that R.C. 3111.02(B) and R.C. 3111.13(A) barred his complaint because he was not a party to the domestic relations action in which S.W.L. was determined to be S.K.L.'s father. We agree.

{¶20} The "full faith and credit" provision in R.C. 3111.02(B) and the "determinative for all purposes" provision of R.C. 3111.13(A) implicate the doctrine of res judicata. *See Holzemer v. Urbanski*, 86 Ohio St.3d 129, 132, 712 N.E.2d 713 (1999). The "full faith and credit" doctrine requires a court to give a judgment or determination of another court the same effect as it would have been given by the issuing court. *See id.* at 136. Under the doctrine of res judicata, which encompasses both claim preclusion and issue preclusion, a final judgment by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and those in privity with them, and, as to them,

constitutes a complete bar to any subsequent action involving the same claim or cause of action or "based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381-382, 653 N.E.2d 226 (1995). In addition, a fact or issue that "'was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies'" regardless of whether the claims involved in the actions were the same or different. *Powell v. Wal-Mart Stores Inc.*, 8th Dist. Cuyahoga No. 101662, 2015-Ohio-2035, ¶ 13, quoting *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 692 N.E.2d 140 (1998).

{¶21} Res judicata applies to parentage determinations contained in a divorce decree, including parentage determinations based on an agreement of the parties and binds the parties to that agreement. *See, e.g., Van Dusen v. Van Dusen*, 151 Ohio App.3d 494, 2003-Ohio-350, 784 N.E.2d 750, ¶ 20-22 ("We do not wish to encourage domestic relations courts and juvenile courts to force the active litigation of the biological parentage in every divorce or parentage action. However, the parentage of a child is adjudicated at the time a divorce occurs. Once that adjudication has occurred, the principles of res judicata apply."); *Atchison v. Atchison*, 4th Dist. Scioto No. 00CA2727, 2001 Ohio App. LEXIS 3207, *21-23 (June 29, 2001) (res judicata applies to parentage determination in divorce decree); *Cordle v. Cordle*, 5th Dist. Fairfield No. 96CA0001, 1996 Ohio App. LEXIS 4469, *2-3 (Sept. 5, 1996) ("The doctrine of res judicata can be invoked to give conclusive effect to a determination of parentage contained in a divorce

decree, thereby barring a subsequent paternity action.")*; see also In re Gilbraith*, 32 Ohio St.3d 127, 128-129, 512 N.E.2d 956 (1987) ("the judicially created doctrine of res judicata can be invoked to give conclusive effect to a determination of parentage contained in a dissolution decree or a legitimation order"); *In re K.R.*, 7th Dist. Jefferson No. 10 JE 9, 2010-Ohio-6582, ¶ 7-18 (juvenile court did not abuse its discretion applying res judicata to preclude man who was determined to be father in dissolution decree and who had not raised any issue of the child's paternity during the first 11 years of the child's life from seeking to disestablish his paternity based on genetic testing that excluded him as the child's biological father; "the doctrine of res judicata can be invoked to give conclusive effect to a determination of parentage contained in a dissolution decree and, as such, acts as a bar to a subsequent paternity action brought under R.C. Chapter 3111"); *Kashnier v. Donelly*, 81 Ohio App.3d 154, 156, 610 N.E.2d 519 (9th Dist.1991) (separation agreement embodied in a dissolution decree that acknowledges that child was born of the marriage has res judicata effect; "[a] judgment entered by consent, although predicated upon an agreement between the parties, is an adjudication as effective as if the merits had been litigated and remains, therefore, just as enforceable as any other validly entered judgment, for res judicata purposes").

{¶22} However, because a judgment has res judicata effect only as to the parties to the judgment and those in privity with them, res judicata does not bar a subsequent parentage action under R.C. Chapter 3111 by a person who was not a party (or in privity with a party) to the divorce decree. *See, e.g., Fitzpatrick v. Fitzpatrick*, 126 Ohio App.3d 476, 482-483, 710 N.E.2d 778 (12th Dist.1998) (child not bound by mother's agreement

with alleged father not to establish paternity set forth in divorce decree; therefore, subsequent paternity action could be brought on behalf of child against alleged father in juvenile court); *Gatt v. Gedeon*, 20 Ohio App.3d 285, 485 N.E.2d 1059 (8th Dist.1984), paragraph one of syllabus (where domestic relations court determined that child was an issue of the marriage, res judicata did not bar subsequent paternity action by biological father because he had not been a party to the divorce action); *In re Mancini*, 2 Ohio App.3d 124, 125-126, 440 N.E.2d 1232 (9th Dist.1981) (probate court erred in ruling that divorce decree stating that child was issue of the marriage between wife and first husband was res judicata as to any action by second husband challenging child's paternity because second husband was not a party or in privity with a party to the divorce action between the mother and first husband); *Dawson v. Dawson*, 3d Dist. Union Nos. 14-09-08, 14-09-10, 14-09-11, 14-09-12, 2009-Ohio-6029, ¶ 21 (biological father who was not a party to the divorce proceedings was not bound by domestic relations court's determination that first husband was the father of child based on statutory presumption and "was free to pursue his paternity complaint in juvenile court"). Thus, although the juvenile court correctly determined that T.F. is barred by the doctrine of res judicata from relitigating the issue of S.K.L.'s paternity based on the divorce decree, no such bar applies to D.F. Accordingly, the trial court erred to the extent it determined that the "full faith and credit" provision in R.C. 3111.02(B) and the "determinative for all purposes" provision of R.C. 3111.13(A) precluded D.F. from seeking to establish that he is the natural biological father of S.K.L.

Subject Matter Jurisdiction

{¶23} In his fourth assignment of error, D.F. asserts that the juvenile court erred in concluding that it lacked subject matter jurisdiction "over [the] parenting issues brought by [D.F.]." However, his appellate brief contains no argument related to this issue. Nowhere in his brief does D.F. explain why he contends the juvenile court has subject matter jurisdiction over his complaint or why he contends the juvenile court erred in determining that it lacked subject matter jurisdiction in favor of the domestic relations court. S.W.L. urges us to overrule D.F.'s assignment of error for this reason alone. *See* App.R. 16(A)(7). However, even if we were to consider the issue, we would find that the juvenile court properly determined that it lacked jurisdiction over D.F.'s complaint in this case for the reasons that follow.

Standard of Review

{¶24} Subject matter jurisdiction is "a court's power to hear and decide cases." *Davis v. Heisler*, 4th Dist. Hocking No. 09CA12, 2010-Ohio-98, ¶ 15, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998). We review a trial court's decision to dismiss a complaint for lack of subject matter jurisdiction under a de novo standard of review. *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7, citing *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936, 746 N.E.2d 222 (10th Dist.2000). In order to dismiss a complaint for lack of subject matter jurisdiction, the court must determine whether the plaintiff "has alleged any cause of action that the court has authority to decide." *Rheinhold v. Reichek*, 8th Dist. Cuyahoga No. 99973, 2014-Ohio-31, ¶ 7, citing *Crestmont* at 936. In making such a determination, the court is not limited to the

allegations of the complaint but may consider any material pertinent to that inquiry. *Keybank Natl. Assn. v. Collins*, 8th Dist. Cuyahoga No. 77264, 2000 Ohio App. LEXIS 5226, *7-8 (Nov. 9, 2000), citing *Howard v. Covenant Apostolic Church, Inc.*, 124 Ohio App.3d 24, 705 N.E.2d 385 (1st Dist.1997); *see also Rheinhold* at ¶ 7, citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus.

{¶25} Pursuant to R.C. 2151.23(B)(2), juvenile courts have original jurisdiction "[t]o determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.18 of the Revised Code." S.W.L. asserts that S.K.L. was not "born out of wedlock" because T.F. was married to S.W.L. at the time of S.K.L.'s birth and that R.C. 2151.23(B)(2), therefore, does not apply. However, an allegation in a complaint that a child's biological parents were not married to each other at the time of the child's conception and birth (even if the mother was married to someone else at the time) has been deemed sufficient to confer jurisdiction on the juvenile court to determine the paternity of the child as a child "born out of wedlock." *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 51-52, 676 N.E.2d 109 (1997) (complaint sufficiently alleged that child was "born out of wedlock" for purposes of R.C. 2151.23(B)(2) by alleging that child's conception and birth resulted from extramarital affair notwithstanding that child was conceived during mother's marriage to husband and born within three hundred days of her divorce); *see also Dawson*, 2009-Ohio-6029 at ¶ 22 (purported biological father sufficiently alleged that child was "born out of wedlock" for purposes of establishing jurisdiction of juvenile court over his parentage action by stating

that child's conception and birth resulted from affair with mother during her marriage with husband); *see also Nwabara v. Willacy*, 135 Ohio App.3d 120, 127, 733 N.E.2d 267 (8th Dist.1999).

{¶26} R.C. 3111.06(A) provides for the "concurrent jurisdiction" of juvenile courts and domestic relations courts over paternity actions. *Corrigan v. Corrigan,* 8th Dist. Cuyahoga Nos. 74088 and 74094, 1999 Ohio App. LEXIS 2182, *9-10 (May 13, 1999); *Broxterman v. Broxterman*, 101 Ohio App.3d 661, 663, 656 N.E.2d 394 (1st Dist.1995). R.C. 3111.06(A) provides, in relevant part:

> Except as otherwise provided in division (B) or (C) of section 3111.381 of the Revised Code, an action authorized under sections 3111.01 to 3111.18 of the Revised Code may be brought in the juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code of the county in which the child, the child's mother, or the alleged father resides or is found * * *. *If an action for divorce, dissolution, or legal separation has been filed in a court of common pleas, that court of common pleas has original jurisdiction to determine if the parent and child relationship exists between one or both of the parties and any child alleged or presumed to be the child of one or both of the parties.*

(Emphasis added.)

{¶27} This court has previously interpreted the final sentence of R.C. 3111.06(A) as *requiring* paternity actions filed *during* divorce proceedings to be filed in domestic relations court and not juvenile court. *Gatt,* 20 Ohio App.3d at 288, 485 N.E.2d 1059 ("R.C. 3111.06(A) * * * requires the natural father to file a paternity action in domestic relations court if he is filing the action during the divorce proceedings" (Emphasis omitted.)). Where, however, the divorce action is *no longer pending,* this court has held that the domestic relations court does "not have the necessary jurisdiction to hear the action." *Id.* at 288-289 (where second husband filed an action to determine the

father-child relationship of child who was determined to be born as an issue of the marriage between mother and first husband in divorce decree, juvenile court, not domestic relations court, had jurisdiction over second husband's parentage action because the divorce action was no longer pending); *see also State ex rel. Smith v. Smith*, 110 Ohio App.3d 336, 339, 674 N.E.2d 398 (8th Dist.1996) (where parentage of child was not addressed in divorce decree and final judgment had already been rendered by domestic relations court in divorce proceedings before Cuyahoga County Child Support Enforcement Agency filed action to establish paternity, juvenile court erred in referring action to the domestic relations court because "R.C. 3111.06(A) instructs [the state] to file in juvenile court"); *Lester v. Moseby*, 5th Dist. Richland No. CA-2642, 1989 Ohio App. LEXIS 2745, *4-6 (June 23, 1989) (domestic relations court lacked subject matter jurisdiction over stepfather's post-decree motion to establish paternity of child previously determined to be issue of his wife's prior marriage; case was improperly venued in the completed divorce case and "should have been independently filed in the Juvenile Court in a separate, independent action"); *Fitzpatrick*, 126 Ohio App.3d at 478-481, 710 N.E.2d 778 (domestic relations court lacked original jurisdiction to consider request to set aside provision of divorce decree that stated that child was not husband's child based on agreement of the parties raised in guardian ad litem's post-decree motion to intervene filed on behalf of child 11 years after divorce; because divorce action was no longer pending at the time motion was filed, "original jurisdiction belong[ed] to the juvenile court"). *But see Mitchell v. Mitchell*, 8th Dist. Cuyahoga Nos. 46489 and 46490, 1983 Ohio App. LEXIS 12935 (Dec. 1, 1983) (where divorce decree declared children to be

issue of the marriage, juvenile court properly dismissed husband's post-decree complaints to determine parent-child relationship, concluding, based on the jurisdictional priority rule, that "because the original action was brought in the Common Pleas Court, the Juvenile Court is precluded from entertaining an action to determine the parent and child relationship. The proper forum to make such determination is the Common Pleas Court."); *La Bonte v. La Bonte*, 61 Ohio App.3d 209, 221, 572 N.E.2d 704 (4th Dist.1988), fn. 1 (where divorce decree ordered husband to pay child support but did not contain an express determination of paternity, appellate court reversed juvenile division's judgment dismissing husband's complaint to disestablish paternity and affirmed general division's ruling granting husband's motion for relief from judgment, concluding that under R.C. 3111.06(A), both the general division and juvenile division could decide the paternity issue because a divorce action had been filed in the general division but observing that, "in the interests of justice, it might be preferable for the general division herein to decide such issue in that it is more familiar with the parties and had made the child support order herein"); *see also Payne v. Cartee*, 111 Ohio App.3d 580, 595-597, 676 N.E.2d 946 (4th Dist.1996) (interpreting *La Bonte* as "permitt[ing] concurrent paternity actions in both the general and juvenile divisions" after the final divorce decree).

{¶28} In none of these cases, however, did the court specifically address the continuing jurisdiction of the domestic relations court in a parentage action where a prior determination of paternity was made. R.C. 3111.16 provides:

> *The court has continuing jurisdiction to modify or revoke a judgment or order issued under sections 3111.01 to 3111.18 of the Revised Code to*

> *provide for future education and support and a judgment or order issued with respect to matters listed in divisions (C) and (D) of section 3111.13 and division (B) of section 3111.15 of the Revised Code*, except that a court entering a judgment or order for the purchase of an annuity under division (D) of section 3111.13 of the Revised Code[7] may specify that the judgment or order may not be modified or revoked.

(Emphasis added.)

> **{¶29}** In addition, R.C. 3111.381(E) provides, in relevant part:
>
> If an action for divorce, dissolution of marriage, or legal separation, or an action under section 2151.231 or 2151.232 of the Revised Code requesting an order requiring the payment of child support and provision for the health care of a child, has been filed in a court of common pleas and a question as to the existence or nonexistence of a parent and child relationship arises, *the court in which the original action was filed shall retain jurisdiction to determine the existence or nonexistence of the parent and child relationship* without an administrative determination being requested from a child support enforcement agency.
>
> If a juvenile court or other court with jurisdiction under section 2101.022 or 2301.03 of the Revised Code issues a support order under section 2151.231 or 2151.232 of the Revised Code relying on a presumption under section 3111.03 of the Revised Code, the juvenile court or other court with jurisdiction that issued the support order shall retain jurisdiction if a question as to the existence of a parent and child relationship arises.

(Emphasis added.)

{¶30} The Ohio Supreme Court has interpreted R.C. 3111.16 as providing the court that makes an initial parentage determination "continuing jurisdiction over all judgments and orders issued in accordance with R.C. 3111.01 to [3111.18], which

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[7]R.C. 3111.13(C) addresses provisions in judgments or orders "concerning the duty of support, the payment of all or any part of the reasonable expenses of the mother's pregnancy and confinement, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child." R.C. 3111.13(D) addresses the form in which support payments are made and R.C. 3111.15(B) addresses to whom the court may order support payments be made.

includes judgments or orders that concern the duty of support or involve the welfare of a minor child." *Cuyahoga Support Enforcement Agency v. Guthrie*, 84 Ohio St.3d 437, 444, 705 N.E.2d 318 (1999). This includes the court's prior parentage determination itself. *Id.* In *Guthrie*, the juvenile court entered an order in a parentage action filed by the Cuyahoga County Child Support Enforcement Agency, determining appellee to be the father of the child at issue and ordering interim child support. *Id.* at 437-438. After subsequent genetic testing excluded appellee as the child's biological father, the juvenile court entered judgment in favor of appellee, vacating the initial parentage determination and support order. *Id.* The Ohio Supreme Court held that the juvenile court "had the authority to vacate the initial finding of paternity" as an exercise of its continuing jurisdiction pursuant to R.C. 3111.16. *Id.* at 443-444, citing *Singer v. Dickinson*, 63 Ohio St.3d 408, 413-414, 588 N.E.2d 806 (1992) ("It has long been recognized in Ohio that a court retains continuing jurisdiction over its orders concerning the custody, care, and support of children, even when the court's initial order was based on an agreement by the parents of the child. * * * A child affected by such an order is considered a ward of the court, which may always reconsider and modify its rulings when changed circumstances require it during the child's minority."); *Lightner v. Perkins*, 3d Dist. Hardin No. 6-99-11, 2000 Ohio App. LEXIS 2874, *5-8 (June 27, 2000) ("The majority's broad reading of the continuing jurisdictional authority of trial courts [in *Guthrie*] extends to all decisions rendered 'under sections 3111.01 to 3111.19 of the Revised Code.' * * * [B]ased upon the Supreme Court's reading of R.C. 3111.16 in *Guthrie*, * * * juvenile courts have essentially unfettered authority to revisit all prior

judgments dealing with issues controlled by R.C. 3111.01 to 3111.19." (Emphasis deleted.)), quoting R.C. 3111.16.

{¶31} In this case, D.F. seeks an order establishing himself as S.K.L.'s natural biological father, an order that would — in effect, if not directly — disestablish S.W.L. as her father or conflict with the prior determination by the domestic relations court that S.W.L. is the legal father of S.K.L.[8] Further, although the relief D.F. seeks in his complaint is limited to establishing his paternity of S.K.L., he has indicated that his purpose in seeking to establish his paternity of S.K.L. is to "exercise his rights of a biological father," i.e., to seek a reallocation of the parties' parental rights and responsibilities as to S.K.L.

{¶32} R.C. 3111.13(C) provides, in relevant part, that a judgment or order determining the existence of a parent-child relationship "may contain, at the request of a party and if not prohibited under federal law, any other provision directed against the appropriate party to the proceeding, concerning the duty of support * * * or any other matter in the best interest of the child." It also provides that "[a]fter entry of the judgment or order [determining the existence of a parent-child relationship], the father may petition that he be designated the residential parent and legal custodian of the child or for parenting time rights in a proceeding separate from any action to establish

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[8]Although there may well be circumstances in which it would be in a child's best interests to recognize a legal parent-child relationship between a child and more than one father or mother, Ohio's parentage statute appears to recognize a legal parent-child relationship between a child and only two parents, one mother and one father, at any given time. R.C. 3111.01(A) (defining the "parent and child relationship" as "the legal relationship that exists between a child and the child's natural or adoptive parents and * * * includes the mother and child relationship and the father and child relationship").

paternity." R.C. 3111.13(C). With respect to S.K.L., all of these matters are currently the subject of orders issued by the domestic relations court. *In re J.H.-P.*, 2d Dist. Montgomery No. 26097, 2015-Ohio-548, ¶ 33 ("A court that obtains jurisdiction over, and enters orders regarding, the custody and support of children retains continuing and exclusive jurisdiction over those matters."). Further, the final divorce decree expressly provides that "[a]ll matters agreed to herein pertaining to the allocation of parental rights and responsibilities and child support and *all other matters relating to the parties' minor children shall be subject to the continuing jurisdiction of the Cuyahoga County Domestic Relations Court.*" (Emphasis added.)

{¶33} In *Broxterman v. Broxterman*, 101 Ohio App.3d 661, 656 N.E.2d 394 (1st Dist.1995), the First District held that the legal custodians of a minor child had the right to bring a paternity action in domestic relations court after parentage had been previously determined in a final decree of divorce. *Id.* at 663. The Broxtermans divorced in 1984. *Id.* at 662. The divorce decree included a finding by the court that Joshua Broxterman was born as issue of the marriage. *Id.* Custody of Joshua was originally awarded to his mother, Vicki Broxterman, and his father, Mark Broxterman, was ordered to pay child support and granted visitation rights. *Id.* In 1990, by agreement of the parties and with the approval of the court, permanent custody of Joshua was awarded to his maternal grandparents. *Id.* In 1992, the grandparents filed a post-decree motion in the domestic relations court for genetic testing to determine parentage, supported by an affidavit from Vicki Broxterman, that Mark Broxterman was not Joshua's biological father. *Id.* at 662-663. The trial court dismissed the action of the grounds that Joshua's parentage had

been decided by the divorce decree and was res judicata and that the grandparents lacked standing to raise the issue of parentage. *Id.* at 663. The First District reversed. The court held that Joshua was not in privity with his mother and that the doctrine of res judicata could not be invoked to bar him or his legal custodians from pursuing a paternity action brought on his behalf. *Id.* at 664. The court further held that Joshua's grandparents, as his custodians, had a legal right to bring a paternity action on Joshua's behalf, but that because a post-decree paternity action may not be in a child's best interests, where a divorce decree included an adjudication or agreement as to parentage and parental rights and obligations, a post-decree paternity action cannot be brought by an adult on a child's behalf absent an express determination by the court that such an action is in the child's best interests. *Id.* at 665-667. With respect to the jurisdiction of the domestic relations court to decide the issue, the court held that because other post-decree matters were pending in the domestic relations court, the domestic relations court retained jurisdiction to hear the matter after the final divorce decree had been entered. *Id.* at 663.[9]

{¶34} In this case, as in *Broxterman*, although the final decree of divorce has been entered, the domestic relations court continues to address issues relating to the support of S.K.L. and allocation of parental rights and responsibilities relating to S.K.L. *Compare Nwabara*, 135 Ohio App.3d at 127, 733 N.E.2d 267 (domestic relations court never acquired primary jurisdiction over child's paternity where unborn child was not a party to divorce action and where divorce decree found husband was not the father of child and

[9]The court acknowledged that *Gatt*, *supra* and other decisions had held that once a divorce action is completed, a paternity action must be brought in juvenile court. *Id.* at 663.

identity of the "true father" and resulting support issues relating to the child were not addressed); *Jantzen v. Jantzen*, 12th Dist. Butler No. CA2012-01-006, 2012-Ohio-5609, ¶17-18 (once husband rebutted presumption that he was father of wife's two children born during the marriage by clear and convincing evidence and domestic relations court found that children were not children of the marriage, it appropriately determined that it had no authority to address the separate and distinct issues of paternity and support for those children).

{¶35} D.F. expressly acknowledged in his juvenile court filings that he would have been required to file his paternity action in the domestic relations court if he had sought to establish his paternity of S.K.L. before the final divorce decree had been entered. Where, as here, the domestic relations court made the initial parentage determination and retained jurisdiction over matters such as support and the allocation of parental rights and responsibilities relating to S.K.L., we see no reason to interpret Ohio's parentage statute as providing for a different result simply because D.F. chose to delay his paternity action until after the divorce decree was final.

{¶36} When dealing with matters involving children, we must always be guided by the mandate to act in the best interests of the child. There are few areas where matters of stability, consistency and uniformity are more important than the life of a child. Policy considerations thus weigh heavily in favor of our interpretation of Ohio's parentage statute as granting exclusive continuing jurisdiction to the domestic relations court over the paternity issue raised in this case. Requiring that D.F.'s paternity action be heard by the domestic relations court that made the initial determination of S.K.L.'s paternity

would promote judicial economy, would avoid piecemeal rulings and the possibility inconsistent or conflicting results and would facilitate the fashioning of a single, comprehensive resolution that addresses all aspects of this family's situation and circumstances, considering the equities involved and what is in S.K.L.'s best interests. We do not believe a contrary result was intended by the legislature. *But see Dawson*, 2009-Ohio-6029, at ¶ 20-24 (appellant biological father who was not a party to the divorce proceedings was not bound by domestic relations court's determination that husband was the father of child based on statutory presumption and "was free to pursue his paternity complaint in juvenile court"; "even if there were inconsistencies between the domestic relations court and the juvenile court, we find that after about ten years of litigating the issue of paternity * * * the principal of finality also weighs heavily in favor of upholding an otherwise valid juvenile court determination that [appellant] is [child's] biological father"); *see also Peake v. Peake*, 3d Dist. Union No. 14-2000-09, 2000 Ohio App. LEXIS 3423 (July 27, 2000) (where man, whom juvenile court previously determined to be child's biological father in separate proceeding filed after divorce, filed post-decree motions in domestic relations court to intervene, modify child support and for visitation or, alternatively, to transfer case to juvenile court in an attempt to disestablish paternity of husband who had been adjudicated to be child's father in the divorce, domestic relations court properly denied the motions, "necessarily declar[ing] the conflicting orders of the [juvenile court] to be a nullity," based on the prejudice to husband and best interests of the child).[10] Accordingly, the juvenile court did not err in

[10]Because the issue of jurisdiction was not appealed, the *Peake* court did not address whether

determining that the domestic relations court was the proper court to hear D.F.'s complaint to establish paternity of S.K.L. The domestic relations court made the initial determination of S.K.L.'s paternity and retains continuing jurisdiction over that determination and matters of custody, support and visitation relating to S.K.L. *See* R.C. 3111.06(A), 3111.16; 3111.381(E); *Guthrie, supra*. D.F.'s fourth assignment of error is overruled.

Laches

{¶37} In his fifth and final assignment of error, D.F. argues that the juvenile court erred in determining that his complaint was barred by the doctrine of laches.

{¶38} Laches is an equitable defense. It applies where a party fails "'to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.'" *Connin v. Bailey*, 15 Ohio St.3d 34, 35, 472 N.E.2d 328 (1984), quoting *Smith v. Smith*, 107 Ohio App. 440, 443-444, 146 N.E.2d 454 (8th Dist.1957); *see also Sobin v. Lim*, 8th Dist. Cuyahoga No. 97952, 2012-Ohio-5544, ¶ 17 ("Laches is an equitable doctrine that bars the delayed assertion of claims when the delay has caused circumstances to change so much that it is no longer just to grant the plaintiff's claim.").

{¶39} The party invoking the doctrine of laches must establish four elements by a preponderance of the evidence: (1) an unreasonable delay or lapse of time in asserting a right; (2) the absence of an excuse for the delay; (3) knowledge, actual or constructive, of the injury or wrong; and (4) prejudice to the other party. *Sobin* at ¶ 17; *Portage Cty. Bd.*

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the juvenile court had jurisdiction to determine the paternity of the child given that the issue had already been decided by the domestic relations court. *Peake*, 2000 Ohio App. LEXIS 3423 at *3, fn. 1.

of Comm. v. Akron, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 81. "Because laches is a component of equity, we review claimed error in the application of the doctrine for an abuse of discretion." *Sobin* at ¶ 17, citing *Payne*, 111 Ohio App.3d at 590, 676 N.E.2d 946.

{¶40} As to its application in parentage actions, laches may be available as a defense in a parentage action filed prior to the expiration of the statute of limitations[11] if the defendant can show material prejudice as a result of the unreasonable and unexplained delay. *Wright v. Oliver*, 35 Ohio St.3d 10, 11-12, 517 N.E.2d 883 (1988); *H.N.H. v. H.M.F.*, 8th Dist. Cuyahoga No. 84642 2005-Ohio-1869, ¶ 7 ("Laches may be an equitable defense to a paternity action, but only if it is shown that the person for whose benefit the doctrine will operate has been materially prejudiced by an unreasonable and unexplained delay of the person asserting the claim."); *Seegert v. Zietlow*, 95 Ohio App.3d 451, 457, 642 N.E.2d 697 (8th Dist.1994). Delay in asserting the right alone is insufficient to establish laches. *Connin*, 15 Ohio St.3d at 35-36, 472 N.E.2d 328.

{¶41} The application of laches may very well be appropriate in this case if the facts are proven to be as alleged by the parties. S.W.L. has been the father S.K.L. has known her entire life, providing financial, psychological and emotional care and support to S.K.L. *See, e.g., Riddle v. Riddle*, 63 Ohio Misc.2d 43, 619 N.E.2d 1201 (C.P. 1992) (laches applied to estop plaintiff from using genetic testing to disestablish child's paternity with the defendant, his presumed father, where plaintiff allowed defendant to

[11]An action to determine the existence or non-existence of the father-child relationship must be brought within five years after the child reaches the age of 18. R.C. 3111.05.

believe he was the child's father for more than five years and allowed him to financially contribute to the care and support of the child, where defendant actively participated in the development of an intimate father-son relationship and where defendant would "suffer more than a financial loss supporting a child he was not legally obligated to support" but would also "suffer the breaking of a psychological and emotional bond which has been established between him and the child" and "the loss of a relationship which is very important to him"). Further, this is not a case in which the alleged biological father was a stranger to the child or was unaware that a woman with whom he had had a sexual relationship gave birth to a child conceived at or around the time of that relationship. D.F. has had a stepfather-stepdaughter relationship with S.K.L. for a number of years.

{¶42} In this case, however, the juvenile court found that laches barred D.F.'s paternity action after determining that it lacked subject matter jurisdiction over the parentage issue raised by the complaint. The juvenile court's finding that it lacked subject matter jurisdiction is inconsistent with its dismissal of the case on laches grounds. Because the juvenile court had determined that it lacked subject matter jurisdiction, it could not then also determine that D.F.'s complaint was barred by laches.

{¶43} Furthermore, "'[w]hat constitutes material prejudice is primarily a question of fact to be resolved through a consideration of the special circumstances of each case.'" *State ex rel. Doran v. Preble Cty. Bd. of Commrs.*, 12th Dist. Preble No. CA2012-11-015, 2013-Ohio-3579, ¶ 30, quoting *Shockey v. Blackburn*, 12th Dist. Warren No. CA98-07-085, 1999 Ohio App. LEXIS 2239, *10 (May 17, 1999).

{¶44} A "father" is more than biology. As one court has explained:

> "First, the statutes with which we must work do not adequately identify the elements of fatherhood. A father-child relationship encompasses more (and greater) considerations than a determination of whose genes the child carries. Sociological and psychological components should be considered. * * * Second, there is a need to separate issues of paternity from issues of fatherhood. The present statutory scheme blurs these issues and lumps them into one pot." [*Hulett v. Hulett*, 45 Ohio St. 3d 288, 295, 544 N.E.2d 257 (Brown, J. concurring).]
>
> There are potentially conflicting goals within the various parentage provisions. One obvious goal is to accommodate genetic evidence to insure that a correct parentage determination is made from the outset. See e.g., R.C. 3113.09. In fact, the duty to support children applies to "the biological or adoptive parent," R.C. 3103.03(A), and Ohio legislation gives precedence to genetic testing over any presumption of legitimacy. *See Hulett* at 292. On the other hand, the various parentage provisions encourage and accommodate the establishment of parent-child relationships regardless of whether a genetic relationship is conclusively established. *See, e.g.,* R.C. 2105.18 (probate court may establish a parent-child relationship through acknowledgment proceedings). The General Assembly has not specified that establishment of a genetic relationship is a prerequisite to establishment of a parent-child relationship.

Leguillon v. Leguillon, 124 Ohio App.3d 757, 766, 707 N.E.2d 571 (12th Dist.1998). Recognizing this fact, some courts have favored "finality" over "perfection" in matters involving determinations of parentage, custody, visitation and support of a minor child. *See, e.g., Peake*, 2000 Ohio App. LEXIS 3423 at *15-18; *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994) (upholding a judgment of paternity despite the fact that

subsequent genetic testing conclusively proved that man was not child's natural father, acknowledging that its decision "in effect declares as static a state of facts that reliable scientific evidence contradicts"). However, courts have also recognized that a child may have an interest in knowing the identity of his or her biological father and having that parent-child relationship established. *Leguillon* at 767 (observing that "[a] child's interest in parentage determinations are not necessarily the same as those of the parents. * * * A child's unique interests include establishment of familial bonds, indoctrination into cultural heritage, knowledge of the family's medical history, and inheritance and other survivorship rights."); *Clark v. Malicote*, 12th Dist. Clermont CA2010-07-49, 2011-Ohio-1874, ¶ 23 ("it is not necessarily in [the child's] best interests to 'perpetuate the fiction that [appellee] is his father, when in fact he is not[.]'"), quoting *Taylor v. Haven*, 91 Ohio App.3d 846, 852, 633 N.E.2d 1197 (12th Dist.1993).

{¶45} Under the special circumstances of this case, whether material prejudice exists would necessarily involve consideration of the prejudice to S.W.L. that would result if he were to be now stripped of his paternity nearly ten years after the birth of S.K.L. and what is in S.K.L.'s best interests. Such a determination is properly made after hearing evidence on the issue, not based on allegations in the pleadings and briefs submitted on jurisdictional issues — as the juvenile court did in this case.

{¶46} Accordingly, the juvenile court erred to the extent it dismissed D.F.'s complaint on laches grounds. However, because the juvenile court properly determined that the domestic relations court had exclusive continuing jurisdiction over its

determination of the paternity of S.K.L. and also dismissed D.F.'s complaint on that basis, D.F.'s fifth assignment of error is moot.

{¶47} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
EILEEN T. GALLAGHER, J., CONCUR