STATE OF MICHIGAN

COURT OF APPEALS

JACQUELYN KAY DANIELS, Plaintiff-Appellee,	UNPUBLISHED September 23, 2008
v	No. 280915 Emmet Circuit Court
THOMAS TATRO BOWMAN, Defendant-Appellant.	LC No. 06-009531-DS

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order denying his motion for revocation of an affidavit of parentage. We reverse and remand.

Defendant argues that the affidavit of parentage was improperly executed because the child was not born out of wedlock. We agree.

Questions of statutory interpretation are reviewed de novo on appeal. *Bay Co Prosecutor v Nugent*, 276 Mich App 183, 187; 740 NW2d 678 (2007). The primary goal of statutory interpretation is to "give effect to the intent of the Legislature, as expressed by the language of the statute." *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

In analyzing this issue, we must examine the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, along with its *pari materia* statute, the Paternity Act, MCL 722.711 *et seq*. *Aichele v Hodge*, 259 Mich App 146, 161; 673 NW2d 452 (2003). Statutes in *pari materia* relate to the same subject or share a common purpose and must be "read and construed together as one law." *Sinicropi v Mazurek*, 273 Mich App 149, 157; 729 NW2d 256 (2006).

The Acknowledgment of Parentage Act provides: "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." MCL 722.1003(1). Under this statute, when a child is born out of wedlock, the mother and a man can stipulate, without a judicial determination, that the man is the father of the child by signing together an affidavit of parentage. *Sinicropi*, *supra* at 157-158. When a valid affidavit of parentage is executed the acknowledgement of paternity "may be the basis for court ordered child support, custody, or parenting time without further adjudication under the paternity act." MCL 722.1004. The Acknowledgment of Parentage Act defines a "child" as "conceived

and born to a woman who was not married at the time of conception or the date of birth of the child, or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage." MCL 722.1002(b).

The Paternity Act gives jurisdiction to the circuit courts to make judicial determinations of paternity. *Barnes v Jeudevine*, 475 Mich 696, 702; 718 NW2d 311 (2006). The purpose of the Paternity Act is to provide support for children who are born out of wedlock. *Smith v Robbins*, 91 Mich App 284, 289; 283 NW2d 725 (1979). The Paternity Act defines a "child born out of wedlock" as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).

Our Supreme Court interpreted the Acknowledgment of Parentage Act and the Paternity Act in *Barnes, supra*. In *Barnes*, the defendant-mother was married at the time she conceived a child. *Id*. at 699. Her husband then filed for divorce. *Id*. A default judgment of divorce, entered before the birth of the child, stated that, "no children were born of this marriage and none are expected." *Id*. at 699-700. After the child was born, the plaintiff-biological father filed suit alleging he was the father of the child. *Id*. at 700.

The Supreme Court had previously held in *Girard v Wagenmaker*, 437 Mich 231; 470 NW2d 372 (1991), that "in order for a biological father to establish standing under the Paternity Act, there must be a 'prior court determination that a child is born out of wedlock.'" *Barnes, supra* at 703, quoting *Girard, supra* at 242. The *Barnes* Court acknowledged that this requirement was consistent with MCL 722.711(a). *Barnes, supra* at 703. The Court held that "a court determination under MCL 722.711(a) that a child is not 'the issue of the marriage' requires that there be an affirmative finding regarding the child's paternity in a prior legal proceeding that settled the controversy between the mother and the legal father." *Id.* at 705. Because the default judgment of divorce in that case did not require that the judge find by clear and convincing evidence that the child in question was not an issue of the marriage, the default judgment of divorce was not a sufficient prior judicial determination that the child was born out of wedlock. *Id*. at 706.

The plaintiff-biological father also argued that he had signed an affidavit of parentage, which made him the legal father of the child and gave him standing in the suit. *Id*. at 706. The *Barnes* Court disagreed, indicating that although the affidavit of parentage acknowledged the plaintiff-father as the biological father of the child, "the child is still presumed to be a legitimate issue of the marriage," and an affidavit of parentage "is not a court determination that the child was born out of wedlock, as is required under either the Paternity Act or the Acknowledgment of Parentage Act." *Id*. at 706-707. The Court explained: "Both acts provide that a child is born out of wedlock only when (1) the woman was not married at the time of the conception and birth, or (2) a court *previously determined* that the child was not an issue of the marriage." *Id*. at 707 (emphasis added).

In *Aichele, supra*, the defendant-mother was married when she had a child with the plaintiff-biological father. *Id*. at 148. The parties signed an affidavit of parentage after the child was born acknowledging that the plaintiff-biological father was the biological father of the child. *Id*. at 148-149. The affidavit stated: "Further, the mother states that she was not married when

this child was born or conceived; or that this child, though born or conceived during marriage, is not an issue of that marriage as determined by a court of law." *Id*. at 150.

About four years after the child was born, the defendant-mother refused to allow the plaintiff-father to have contact with the child, and the plaintiff-father filed a petition seeking custody, parenting time, and support. *Id*. at 149. This Court found that an affidavit of parentage can only be valid if the child is "born out of wedlock." *Id*. at 153-154. This Court further found that the Acknowledgment of Parentage Act's definition of "child" was "virtually identical" to the Paternity Act's definition of "child born out of wedlock." *Id*. at 154. This Court explained:

> It is no wonder that the definition is the same in the Acknowledgment of Parentage Act and the Paternity Act because the acts simply provide different means to the same end. Under the Paternity Act, a party can seek a judicial determination of paternity; under the Acknowledgement of Parentage Act, a man and a woman can essentially stipulate the man's paternity. Under either act, paternity can be properly established *only* if the child is "born out of wedlock," i.e., (1) the child is born of a woman who was not married at the time of conception or birth, or (2) a court previously determined that the child is not issue of the marriage. Neither of these two circumstances existed at the time plaintiff and defendant signed the affidavit of parentage. Therefore, the affidavit of parentage is invalid and without lawful effect. [*Id*. at 154-155 (emphasis in original).]

In this case, plaintiff gave birth to her son in 2002. Shortly thereafter, defendant and plaintiff signed an affidavit of parentage acknowledging defendant as the natural father of the child, despite the fact that plaintiff was married to another man from the child's conception until 2006. When a child is born in wedlock there is a presumption that the child is an issue of the marriage. *In re KH*, 469 Mich 621, 624-625; 677 NW2d 800 (2004). The only way this presumption can be rebutted is by conducting a judicial hearing in which a court finds by clear and convincing evidence that the child is not an issue of the marriage. *Id*. at 625. This presumption cannot be rebutted by an affidavit of parentage executed by the mother and the biological father, when the mother is married to another man, because the affidavit of parentage is not a court determination that the child is not an issue of the marriage. *Barnes, supra* at 706-707.

Therefore, for a married woman to establish that the father of her child is not her husband she must first have it judicially determined by clear and convincing evidence that the child is not an issue of the marriage. She can then either request an order of filiation or a judgment of paternity under MCL 722.714 of the Paternity Act, *or* stipulate to a man's paternity, without judicial intervention, by signing with the father an affidavit of parentage under MCL 722.1003(1) of the Acknowledgment of Parentage Act. An affidavit of parentage can only be valid if signed when a child is born out of wedlock, which means that the mother is not married at the time of the conception and birth of the child, or it was judicially determined, before the affidavit was signed, that the child is not an issue of the marriage. *Barnes, supra* at 707; *Aichele, supra* at 154-155.

Here, the parties signed an affidavit of parentage, but the affidavit is invalid because plaintiff was married to another man when the child was conceived and born, and there was no evidence presented that the affidavit was signed after it was judicially determined that the child was not an issue of the marriage.

We will not address defendant's second argument because our above analysis is dispositive.

Reversed and remanded for entry of an order declaring the affidavit of parentage at issue invalid. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Jane M. Beckering