

STATE OF MICHIGAN
COURT OF APPEALS

JOHN C. SPRENGER,

Plaintiff-Appellant,

v

EMILY R. BICKLE,

Defendant-Appellee.

FOR PUBLICATION
September 10, 2013
9:00 a.m.

No. 310599
Benzie Circuit Court
LC No. 11-009301-DP

Advance Sheets Version

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

RONAYNE KRAUSE, P.J.

Plaintiff appeals as of right an order entered on May 18, 2012, dismissing for lack of standing his complaint regarding paternity brought under the Paternity Act. MCL 722.711 *et seq.* We affirm.¹

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff alleges that he is the biological father of a minor child born to defendant in November 2011, while she was lawfully married to someone else. Plaintiff and defendant were briefly engaged after defendant's divorce from Adam Bickle in April 2011. Although the parties dispute whether defendant was pregnant before her divorce, mutual friends of the couple and members of both their families assert that within days of the divorce, defendant and plaintiff were sharing the news that they were expecting a child. The engagement between plaintiff and defendant ended; in August 2011, defendant remarried Adam and they were still married when she gave birth three months later.

In December 2011, plaintiff filed a paternity action under the Paternity Act, alleging himself to be the biological father of the child and requesting the court to determine issues of legal and physical custody, parenting time, and child support. In response, defendant filed a motion to dismiss, asserting lack of standing, MCR 2.116(C)(5), and failure to state a claim for which relief could be granted, MCR 2.116 (C)(8). In an April 6, 2012 ruling, the circuit court

¹ We publish this case pursuant to MCR 7.215(A). The majority did not request publication.

determined that plaintiff did not have standing and granted defendant's motion to dismiss under MCR 2.115(C)(5). This appeal followed.²

II. ANALYSIS

Plaintiff argues that the trial court erred by: (1) finding that plaintiff lacked standing to bring a claim under the Paternity Act because defendant had acknowledged to friends and family that plaintiff was the father of the child she was expecting, which rebutted the presumption of the child's legitimacy, and (2) denying him the opportunity to conduct discovery to prove that it would have been impossible for Adam Bickle to be the father. We disagree.

“This Court reviews the grant or denial of a motion for summary disposition de novo.” *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000). “In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties.” *Id.* “Statutory interpretation is a matter of law subject to review de novo on appeal.” *Rose Hill Center, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). “If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written.” *Id.*

Only the mother and the presumed legal father may challenge the presumption of legitimacy. *People v Zajackowski*, 293 Mich App 370, 378; 810 NW2d 627 (2011), vacated 493 Mich 6 (2012) (vacating defendant's conviction of first-degree criminal sexual conduct by relying on the plain language of the criminal statute rather than the civil presumption concerning legitimacy). See also *In re KH*, 469 Mich 621, 635; 677 NW2d 800 (2004) (recognizing that only the mother and the legal father may rebut the presumption of legitimacy that arises when a child is born during a marriage). In order for a third party to have standing to rebut this presumption, there must first have been a “judicial determination arising from a proceeding between the husband and the wife that declares the child is not the product of the marriage.” *Pecoraro v Rostagno-Wallat*, 291 Mich App 303, 306; 805 NW2d 226 (2011). Letters from friends and family cannot rebut the presumption of legitimacy. In this case, even if blood test results revealed a 99.99% probability that he is the biological father, plaintiff still would not have standing to bring a paternity action absent such a prior judicial determination. *Aichele v Hodge*, 259 Mich App 146, 148, 162; 673 NW2d 452 (2003). Unless and until defendant and her husband ask a court to declare that the child was born out of wedlock, plaintiff lacks standing to claim paternity under the Paternity Act. *Pecoraro*, 291 Mich App at 313.³ Defendant and her

² Shortly after filing his brief with this Court, plaintiff filed a new action in circuit court under the Revocation of Paternity Act, MCL 722.1431 *et seq.*, which became effective June 12, 2012. The Revocation of Paternity Act gives putative fathers in certain situations standing to bring paternity actions. In this case, we are reviewing decisions made in the context of the Paternity Act only, and our conclusions have no bearing on the action filed under the Revocation of Paternity Act.

³ In *Pecoraro*, the birth mother told the plaintiff that he was the father of a child born during their relationship, while she was married to another man, DNA confirmed his paternity, and a New

husband have not sought such a judicial declaration; therefore, the trial court was correct in determining that plaintiff lacks standing to pursue a remedy under the Paternity Act.

The trial court also correctly denied plaintiff's request for discovery. Because plaintiff does not have standing to *bring* an action under the Paternity Act, he is not entitled to discovery to assist in *developing* a paternity claim.⁴ Even if the court had inexplicably allowed discovery, there was no information plaintiff could have discovered through the questions he proposed that would have conferred standing absent a prior judicial determination that the child was not the issue of defendant's marriage.⁵

Plaintiff also argues that the court should vacate or modify defendant's judgment of divorce to address the paternity issue. Plaintiff contends that if defendant knew she was pregnant at the time of her divorce and failed to acknowledge as much to the court, she perpetrated a fraud on the court and the court should vacate the judgment. Alternatively, plaintiff argues that if the court could not address paternity because defendant did not know she was pregnant, the court should address the issue now and modify the judgment accordingly. We disagree.

In support of his argument that the judgment of divorce should be vacated as a fraud on the court, plaintiff relies on *Allen v Allen*, 341 Mich 543; 67 NW2d 805 (1954), and *DeHaan v DeHaan*, 348 Mich 199; 82 NW2d 432 (1957). In both *Allen* and *DeHaan*, the plaintiff wives became pregnant while separated from their husbands. The courts set aside their judgments of divorce on the basis of fraud. The law under which the Court decided these cases called for the granting of interlocutory decrees of divorce that would become final after a specified period. See *Young v David Young*, 342 Mich 505, 506; 70 NW2d 730 (1955). The marital relationship between the parties did not end until the interlocutory decree became final, and a plaintiff's misconduct during that interlocutory period resulted in his or her loss of the right to an absolute divorce decree. *Linn v Linn*, 341 Mich 668, 673; 69 NW2d 147 (1955); *Curtis v Curtis*, 330 Mich 63, 66; 46 NW2d 460 (1951). Thus at the time *Allen* and *DeHaan* were decided, "a party's marital misconduct was an absolute bar to that party's ability to obtain a divorce. Had the trial court known of plaintiff's misconduct, by law it would have been powerless to grant the divorce." *Rogoski v City of Muskegon*, 107 Mich App 730, 737 n 3; 309 NW2d 718 (1981).

York court issued an order of filiation declaring him the father of the child that was subsequently enforced by a Wayne Circuit Court. On appeal from the circuit court's decision, this Court found that the plaintiff lacked standing under the Paternity Act because the mother and her husband had not asked a court to declare that the child was born out of wedlock.

⁴ It is true, as the dissent notes, that the majority did not provide authority for its conclusion that because plaintiff lacked standing he was not entitled to discovery. It is axiomatic.

⁵ The dissent considers the "controlling consideration" to be "whether the legal father was in fact 'incapable of procreation' at the time of the child's conception." As *Aichele* and *Pecoraro* clearly illustrate, however, biological fatherhood is not the dispositive issue. Regardless of whether defendant's husband had a vasectomy after the birth of their third child, under Michigan law he is the legal father of the child at issue in the instant case and, for purposes of the Paternity Act, remains so until he and the mother seek a judicial determination declaring otherwise.

Substantial changes in divorce law since the 1950s render those cases inapplicable to the instant case. But even if *Allen* and *DeHaan* were applicable, plaintiff would not have standing to invoke them because, unlike *Allen* and *DeHaan*, plaintiff was not a party to the instant defendant's divorce.⁶ With regard to modifying the judgment of divorce to address the paternity of the child, plaintiff does not have standing to request the court to modify a divorce to which he is not a party. *Berg v Berg*, 336 Mich 284, 288; 57 NW2d 889 (1953) (“[T]he husband and wife are the only parties to be recognized in a divorce case.”).

Finally, plaintiff argues that defendant's judgment of divorce provided for the custody and care of some of her children but not for the child with whom she was then pregnant. Plaintiff argues that this is tantamount to a judicial determination that the child was not issue of the marriage, which suffices to confer standing under the Paternity Act. We disagree.

In support of his argument to vacate defendant's judgment of divorce, plaintiff cites *Afshar v Zamarron*, 209 Mich App 86; 530 NW2d 490 (1995). *Afshar* claimed to be the biological father of a daughter conceived and born to Zamarron while she was married to another man. The lower court dismissed *Afshar*'s action for lack of standing. This Court confirmed on appeal that a putative father has standing under the Paternity Act only when a child has been born out of wedlock as defined by the act and also stated that “a divorce judgment that is specific with regard to the question of custody and support of one minor child of the marriage and that is silent with regard to another child may, under appropriate circumstances, be deemed to have determined the issue of paternity.” *Id.* at 91-92. *Afshar* may be distinguished from the instant case, however, because in *Afshar*, both Zamarron and her husband had acknowledged in their divorce proceedings that Zamarron's daughter was not issue of their marriage. This mutual acknowledgment by mother and presumed father in the context of judicial proceedings was critical to this Court's conclusion that the determination that the child was not issue of the marriage was implicit in the judgment of divorce.⁷ In the instant case, as has been repeatedly

⁶ The petitioners in *Allen* were actually the trustee of the deceased husband's estate and two heirs-at-law whom the court allowed to join.

⁷ The dissent says “the controlling consideration is not whether the parties to the divorce proceeding expressly made the court aware of the fact that the child was not the issue of the marriage.” This is simply untrue. That is precisely the consideration that allowed this Court to conclude in *Afshar* that the determination that the child was not the issue of the marriage was implicit in the judgment of divorce. The fact that both the mother and the presumed father acknowledged to the court that the child was not issue of the marriage was a necessary prerequisite for the plaintiff to acquire standing under the Paternity Act. *Id.* at 92. The dissent further tries to minimize the crucial significance of the mother and presumed father's admissions by asserting that *Afshar* stands for the proposition that “a biological father could have standing under the Paternity Act where . . . the divorce judgment was specific as to the paternity of one child and silent as to the paternity of another child” and could therefore be a determination that the unmentioned child was not issue of the marriage. What the Court actually held was that this is so “under appropriate circumstances.” *Id.* at 91-92. And *Afshar* “presents an example of such circumstances” because both the mother and the presumed father had acknowledged to the court

stated, neither defendant nor the child's legal father has sought to rebut the presumption of the child's legitimacy.

The dissent finds it notable that “[a]t a time when too many fathers are running *from* their parental responsibilities, plaintiff in this case is running *toward* his.” This echoes a sentiment expressed nearly a decade ago by this Court in *Spielmaker v Lee*, 205 Mich App, 51; 517 NW2d 558 (1994). In *Spielmaker*, this Court determined that the putative father of a child born two months after the mother's marriage to another man did not have standing under the Paternity Act because the mother was not “not married” during the entire time from conception to birth, and therefore the woman's husband was the child's legal father. *Id.* at 58. The panel observed that “at a time when much criticism is leveled at ‘deadbeat dads’ who fail to assume responsibility for their children . . . we are faced with a father who wishes to do precisely that yet we are obligated to deny him the opportunity.” *Id.* at 59. Rather than contort the law, however, the *Spielmaker* panel did “that which [they were] obligated to do, namely interpret[ed] a statute and appl[ied] the statute as written and in light of the precedent set by the Supreme Court.” *Id.* The panel expressed its dislike for the result and urged the Legislature to modify the statute. *Id.* at 60.

The Legislature has in fact provided a measure of relief for putative fathers by allowing them to bring paternity claims in certain situations. As mentioned, the lower court dismissed plaintiff's case for lack of standing just weeks before the Revocation of Paternity Act became effective. Plaintiff filed a separate lawsuit under this new act, and that case is still pending. We have not been called upon to decide whether plaintiff has standing under the Revocation of Paternity Act. Rather, this case concerns whether plaintiff has standing under the Paternity Act. The majority holds the trial court correctly determined that he does not.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Elizabeth L. Gleicher

that the child was not issue of the marriage. *Id.* In the instant case, the dissent would construe the court's silence regarding the child at issue as “an affirmative finding” that the child was not issue of the marriage. Presumably, the silence of the parties to the divorce would be construed as a tacit request for the court to declare that the child was born out of wedlock, since such is required before plaintiff could have standing under the Paternity Act. This is illogical.