

STATE OF MICHIGAN
COURT OF APPEALS

JULIAN STUMP, Minor, by Next Friend
ADAM STUMP,

Plaintiff-Appellee,

v

DANIELLE JAGIELSKI,

Defendant-Appellant.

UNPUBLISHED
April 23, 2020

No. 351629
Hillsdale Circuit Court
LC No. 19-000642-DP

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

In this paternity action, defendant appeals as of right the circuit court's order directing the child's surname to be changed from defendant's surname to plaintiff's surname. The sole question presented is who has the legal right to select the child's surname. Because the law gives defendant, not plaintiff, the right to select the child's surname, we reverse and vacate that portion of the circuit court's order.

I. BACKGROUND

While in high school, defendant and plaintiff, Julian Stump, were in dating relationship that resulted in the conception and birth of a child. They were not married at the time of the child's conception or birth. Before the child's birth, their dating relationship soured, and it appears that defendant ceased communication with plaintiff. As a result, plaintiff was not present when the child was born. After the child was born, defendant gave the child her surname, Jagielski, and did not list plaintiff as the child's father on the child's birth certificate.

Shortly after learning of the child's birth, plaintiff, through his next friend, filed a paternity action along with a motion to establish paternity, custody, parenting time, and support. Genetic testing established that plaintiff was the child's biological father.

In his motion, plaintiff requested that the circuit court order his name to be added to the child's birth certificate to identify him the child's father and he also asked the circuit court to change the child's surname to his surname, Stump. Defendant objected to this latter request

because, under MCL 333.2824, she, as the child's mother, had the legal right to determine the child's surname. And, in any event, defendant did not want the child to have plaintiff's surname. Defendant asked the circuit court to deny plaintiff's request to change the child's surname, and, instead, requested that the child's surname remain Jagielski.

During the hearing on plaintiff's motion, defendant's attorney addressed the plaintiff's request to change the child's surname, stating: "I know what the perspective of this Court is on that, but . . . my client[] request[s] that the child be able to keep her name." Without permitting a response from plaintiff's counsel, the circuit court granted plaintiff's request to change the child's surname, ruling: "The child's gonna take the name of Stump. He's the father. [The child's] gonna take the father's name."

The circuit court then entered a temporary order regarding custody, parenting time, and support. Therein, the court directed that the child's "last name shall be changed to 'Stump' " and that "an amended birth certificate to be issued to reflect" the child's name change. After determining that plaintiff was the child's biological father, the circuit court also ordered plaintiff be identified as the child's father and that his name be added to the child's birth certificate to reflect his paternal status.

Defendant now appeals as of right.

II. STANDARD OF REVIEW

We review de novo questions of statutory construction and law. *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). "When a court incorrectly chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct." *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

III. ANALYSIS

Under the circumstances presented in this case, the law gives the mother the legal right to choose the child's surname. Accordingly, the trial court erred when it granted plaintiff's request to change the child's surname to one the child's mother did not choose.

Judicial review of statutory construction begins by examining the plain language of the statute. *Lee v Smith*, 310 Mich App 507, 509; 871 NW2d 873 (2015). If the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute and courts enforce the language as written. *Id.* "Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Ryant v Cleveland Twp*, 239 Mich App 430, 433; 608 NW2d 101 (2000). If, however, "the statute provides its own glossary, the terms must be applied as expressly defined." *Id.* Moreover, "[t]he word 'shall' is unambiguous and is used to denote mandatory, rather than discretionary, action." *Yachcik v Yachcik*, 319 Mich App 24, 36; 900 NW2d 113 (2017) (quotation marks and citation omitted).

The Legislature has provided numerous statutory paths to establishing paternity. *In re MKK*, 386 Mich App 546, 557; 781 NW2d 132 (2009). A child born during a marriage "is presumed to be the issue of that marriage." *In re Miller*, 322 Mich App 497, 503; 912 NW2d 872

(2018); MCL 555.29. And, when a child is born out of wedlock, paternity may be established under the Paternity Act, MCL 722.711 *et seq.*, the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, or the Genetic Parentage Act, MCL 722.1461 *et seq.*

However, “[n]othing in the statutes of this state require that a minor child bear the father’s surname[.]” *Garling v Spiering*, 203 Mich App 1, 2; 512 NW2d 12 (1993). Reviewing the pertinent portions of MCL 333.2824, the statute regulating the process of registering the father’s name and the child’s surname on a birth certificate, confirms this:

(1) The name of the husband at the time of conception or, if none, the husband at birth shall be registered as the father of the child. The surname of the child shall be registered as designated by the child’s parents.

(2) If the child’s mother was not married at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and without the completion, and filing with the state registrar, of an acknowledgment of parentage by the mother and the individual to be named as the father. The acknowledgment of parentage shall be completed in the manner provided in the acknowledgment of parentage act. For a certificate of birth completed under this subsection and upon the written request of both parents, the surname of the child shall be designated by the child’s parents.

(3) *If the name of the child’s father cannot be shown under subsection (1) or (2), the child shall be given the surname designated by the mother.*

(4) If the paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate of birth as found and ordered by the court. *The surname of the child shall be entered on the certificate of birth as designated by the child’s mother.* [Emphasis added.]

This statutory language is straightforward and controls the outcome in this case. Defendant was not married to plaintiff or another individual at the time of the child’s conception or birth. Defendant did not provide written consent and plaintiff never completed and filed an acknowledgment of parentage. MCL 333.2801; MCL 333.1104(1). Because subsection (1) and (2) did not show the child’s father’s name, the child’s birth certificate listed the surname designated by defendant, the child’s mother. MCL 333.2824(3). Defendant chose to give the child her surname, Jagielski.

Thereafter, the circuit court determined the child’s paternity. Over defendant’s objection grounded in MCL 333.2824(4), the circuit court ordered the child’s surname to be changed to plaintiff’s surname. Without citation to any legal authority, the circuit court’s sole proffered reason for changing the surname the child’s mother had given the child was simply that plaintiff was the child’s biological father. This is not sufficient reason and contravenes the clear and unambiguous language of MCL 333.2824(4), which plainly states that “[i]f the paternity of a child is determined by a court of competent jurisdiction . . . [t]he surname of the child *shall* be entered

on the certificate of birth *as designated by the child's mother.*"¹ (Emphasis added.) The word "shall" denotes a mandatory, not discretionary, action. *Yachcik*, 319 Mich App at 36. Defendant, the child's mother, designated Jagielski as the child's surname. The circuit court committed clear legal error when it changed the child's surname. *Fletcher*, 447 Mich at 881. The surname chosen by the child's mother, Jagielski, shall remain on the child's birth certificate. MCL 333.2824(4).

Reversed in part and vacated in part.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford

¹ If paternity is established under the Genetic Parentage Act, "the father of the child may be included on the birth certificate unless another man is recorded as the child's father on the birth certificate." MCL 722.1471(3). Moreover, if the birth certificate is amended under MCL 722.1471(3), "upon written request of both parents, the child's surname shall be recorded on the birth certificate as designated by the child's parents." *Id.*

And, if paternity is established under the Acknowledgment of Parentage Act, it "may serve as a basis for preparation of a new certificate of birth" under MCL 333.2831. See also MCL 333.2872(1) ("Upon written request and receipt of an acknowledgment of paternity from the probate court of a child born out of wedlock, the state registrar shall create a new certificate of birth to show paternity. Upon the written request of the parents, the surname of the child shall be changed on the certificate to that designated by the parents. The certificate shall not be marked 'amended'. The original certificate of live birth shall be sealed in accordance with [MCL 333.2832].").