

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of E. R. MOILES, Minor.

FOR PUBLICATION  
October 29, 2013

No. 314970  
Mecosta Circuit Court  
Family Division  
LC No. 11-005712-NA

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Advance Sheets Version

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

WHITBECK, P. J., (*concurring in part and dissenting in part*).

Respondent, Kenneth L. Moiles, appeals as of right the circuit court's order granting the motion of petitioner, Tasha Weeks, to revoke Moiles's acknowledgment of paternity of the minor child. I acknowledge at the outset that, as the old adage asserts, bad facts make bad law. This case certainly involves bad facts, particularly with respect to Moiles's alleged child abuse. But the question before us is not a factual one. It is purely a legal one, involving the interpretation of a statute. Because I would conclude that the trial court did not comply with the Revocation of Paternity Act,<sup>1</sup> I would reverse and remand.

I agree with the majority's statement of the facts in this case, and its statements of the standard of review and applicable law. Where I diverge from the majority's opinion is in its application of the law to the facts in this case. The majority concludes that when Moiles signed an acknowledgment of parentage acknowledging that he was the child's "natural father," he made a false statement because he was not the child's biological father. For the reasons below, I would conclude that (1) the terms biological and natural father are not interchangeable and (2) Moiles did not make a false statement when he signed the acknowledgment of parentage.

I. MISREPRESENTATION UNDER MCL 722.1437(2)(d)

Moiles contends that the trial court improperly determined that the Revocation of Paternity Act applied to this case on the grounds of misrepresentation and fraud. I agree with his contention.

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<sup>1</sup> MCL 722.1431 *et seq.*

Weeks urges this Court to look to the dictionary to determine what the Legislature meant by “misrepresentation.” This Court may resort to a dictionary to determine a word’s common meaning.<sup>2</sup> If the word “misrepresentation” stood alone in the statute, I might agree that the Legislature intended to give the word its common, dictionary meaning. But we must read statutes in context to discern the Legislature’s intent.<sup>3</sup>

In this case, the context in which the Legislature has used the word “misrepresentation” is in a list with other common-law legal terms, including fraud, mistake of fact, and duress. I agree with the majority’s conclusion that the Legislature meant to use the more particular, legal meanings of these terms, and its reasoning for so doing. I also agree with the majority’s definitions of fraudulent and innocent misrepresentation. However, while recognizing that the Legislature used particular legal terms in the Revocation of Paternity Act, the majority concludes that the Black’s Law Dictionary definition of misrepresentation is the most helpful tool in ascertaining the Legislature’s intent in this context. I disagree.

## II. APPLYING THE STANDARDS

I would conclude that the trial court’s determination that a misrepresentation or fraud occurred in this case was incorrect. Moiles contended that the type of misrepresentation that Weeks alleged he committed was not a misrepresentation under the act. Despite the parties’ urging, the trial court did not delve into the meaning of the words “fraud” and “misrepresentation” as contemplated by the act. It is clear, however, that both fraud and misrepresentation require a party to make a representation that is false.<sup>4</sup>

In this case, the trial court found that Moiles and Weeks both knew or should have known that Moiles was not the child’s biological father. Therefore, it opined that the acknowledgment of paternity was a “misrepresentation of the material fact and was executed fraud[ul]ently by the parties.” The trial court determined that the parties’ representation was a misrepresentation because “acknowledgment was made under oath to the effect that [Moiles] was the *biological father* of [the child].” The trial court failed to recognize that, as stated in *In re Daniels Estate*, “the Acknowledgement of Parentage Act does not prohibit a child from being acknowledged by a man that is not his or her biological father.”<sup>5</sup> While *In re Daniels Estate* involved a situation that was factually distinguishable from this case,<sup>6</sup> its statement of the law is accurate. The Acknowledgment of Parentage Act itself does not require a man to be the child’s *biological*

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<sup>2</sup> *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011).

<sup>3</sup> *McCahan v Brennan*, 492 Mich 730, 739; 822 NW2d 747 (2012).

<sup>4</sup> *Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012); *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 117; 313 NW2d 77 (1981).

<sup>5</sup> *In re Daniels Estate*, 301 Mich App 450, 457; 837 NW2d 1 (2013).

<sup>6</sup> *Id.* at 451-452 (the child was born while the decedent and the child’s mother were cohabitating and the decedent introduced the child as his son).

father to acknowledge the child,<sup>7</sup> nor does the affidavit of parentage form itself require the father to represent that he is the child's *biological* father.

Further, in the Revocation of Paternity Act, MCL 722.1431 *et seq.*, the Legislature stated that the blood, tissue, or DNA test is “to assist the court in making a determination under [the Act]” and that “[t]he results of the blood or tissue typing or DNA identification profiling *are not binding on a court* in making a determination under [the Act].”<sup>8</sup> These statements further buttress my conclusion that the Legislature was not solely concerned about the child's *biological* relationship to the man who signed the acknowledgment of parentage.

Whether Moiles knew or should have known that he was not the child's biological father, he did not represent that he was the *biological* father of the child on the acknowledgment of parentage. Therefore, I would conclude that the trial court's finding that an “acknowledgment was made under oath to the effect that [Moiles] was the *biological father* of [the child]”<sup>9</sup> was clearly erroneous. And, to the extent that the trial court may have relied on that finding to determine that Moiles misrepresented to the state his status relating to the child, the trial court erred.

### III. CONCERNS ABOUT THE TRIAL COURT'S PROCEDURES

I also note my concern that, in this case, the trial court departed from the procedures delineated in the act. It first determined by a written order that DNA testing was warranted. It then, in a subsequent proceeding, determined that a misrepresentation occurred and revoked Moiles's acknowledgment of parentage.

I do not believe that this procedure was that which the statute contemplates. MCL 722.1437(3) provides that

[i]f the court in an action for revocation under this section finds that an affidavit under [MCL 722.1437(2)] is sufficient, the court shall order blood or tissue typing or DNA identification as required by [MCL 722.1443(5)]. The person filing the action has the burden of proving, by clear and convincing evidence, that the acknowledged father is not the father of the child.

The first sentence of this section is a classic “if-then” statement: *if* the trial court finds that the affidavit is sufficient, *then* it must order blood, tissue or DNA analysis. The second sentence provides that, after the testing, the person filing the action must prove by clear and convincing evidence that the acknowledged father is not the child's father. MCL 722.1445(5), to which MCL 722.1437(2) refers, in turn refers to the procedures under the MCL 722.716; a section which concerns blood, tissue, and DNA testing under the Paternity Act. MCL 722.716 provides

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<sup>7</sup> MCL 722.1003.

<sup>8</sup> MCL 722.1443(5).

<sup>9</sup> Emphasis added.

that the blood, tissue, or DNA testing establishes a presumption of paternity.<sup>10</sup> The Paternity Act's procedures provide that after the results of the blood, tissue, or DNA analysis, a party may move for summary disposition.<sup>11</sup>

Given the grammar of MCL 722.1437(3), and keeping in mind our courts' general disapproval of leaving children in legal limbo,<sup>12</sup> I conclude that MCL 722.1437 contemplates a multi-step process for terminating an acknowledgment of parentage. First, the trial court must determine *if* the affidavit is sufficient and, if it finds that it is, *then* it must order blood, tissue, or DNA analysis. And second, the trial court must review the results of the blood, tissue, or DNA analysis and make a determination regarding whether to revoke the acknowledgment of parentage in a separate proceeding.

#### IV. BEST-INTEREST DETERMINATION UNDER MCL 722.1443

I agree with the majority's well-reasoned conclusion that the trial court did not need to make a best-interest determination under MCL 722.1443(4) when revoking an acknowledgment of parentage.

#### V. DUE PROCESS

Because I would conclude that remand is necessary for compliance with the statute, I would also decline to consider Moiles's unpreserved due-process challenges.

#### VI. SUMMARY AND CONCLUSION

I would conclude that the trial court's determination to revoke an acknowledgment of parentage must be a two-step process—(1) the trial court must determine whether the affidavit is sufficient and, if necessary, order blood, tissue, or DNA testing, and (2) the trial court must then determine whether the petitioner has proven by clear and convincing evidence that the man is not the child's father.

For the reasons stated, I would conclude that the trial court clearly erred when it found that Moiles's action in signing an acknowledgment of parentage when he was not the child's biological child was a fraud or misrepresentation under MCL 722.1437. Therefore, I would reverse the trial court's order and remand for it to determine if the parties made a misrepresentation or committed fraud consistent with the legal meanings of those words.

/s/ William C. Whitbeck

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<sup>10</sup> MCL 722.716(5).

<sup>11</sup> MCL 722.716(6).

<sup>12</sup> See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000) (favoring permanency for children).