STATE OF MICHIGAN

COURT OF APPEALS

HAFEZ M. BAZZI, Plaintiff-Appellee,	UNPUBLISHED November 1, 2011
v	No. 299239 Oakland Circuit Court
ANNE ELIZABETH MACAULAY, Defendant-Appellant.	LC No. 2009-762325-DP

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

PER CURIAM.

In this paternity suit, defendant Anne Elizabeth Macaulay appeals by leave granted the trial court's order staying her motion to dismiss plaintiff Hafez M. Bazzi's paternity suit and appointing a guardian ad litem for her child. On appeal, Macaulay argues that, once she presented evidence that another man signed an affidavit of parentage, the trial court had to dismiss Bazzi's paternity suit because Bazzi had no standing to bring the action. Because Bazzi had no standing, Macaulay further contends, the trial court had no jurisdiction to appoint a guardian ad litem for her child. We conclude that the trial court had jurisdiction over the paternity suit until it determines that Bazzi lacks standing as a matter of law. However, whether Bazzi has standing is a matter that must be determined by applying the law to the relevant facts, which includes a determination that the document that Macaulay presented to the court was a duly and properly executed affidavit of parentage. The trial court elected to postpone that determination until the facts surrounding the execution of that affidavit had been developed through discovery. The trial court has the inherent authority to stay a motion to dismiss for further discovery. And, under the facts of this case, we cannot conclude that the trial court abused its discretion when it decided to temporarily stay resolution of Macaulay's motion until after the parties have had time to conduct discovery. We also conclude that the trial court did not abuse its discretion when it determined that the child's best interests should be safeguarded by appointment of a neutral third-party—a guardian ad litem—to represent the child during the pending litigation. For these reasons, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Macaulay became pregnant during a time when she was involved in an intimate relationship with Bazzi.[1] Indeed, Bazzi asserted that the relationship was "an exclusive monogamous romantic relationship." Macaulay gave birth to the child in January 2005. According to Bazzi, Macaulay told him that he was the child's father and similarly represented to others that he was the child's father. He also maintained a "regular parenting arrangement" with the child for approximately three years and during that time Macaulay accepted financial support for the child. However, in December 2008, Macaulay abruptly broke off all contact with Bazzi and, as a result, effectively precluded him from maintaining a relationship with the child.

In August 2009, Bazzi sued Macaulay to establish his paternity. He alleged, in relevant part, that he had a relationship with Macaulay both before and after the child's birth and that, upon information and belief, Macaulay became pregnant by him. He also alleged that Macaulay had "not taken any steps to acknowledge or confirm paternity of the minor child." He asked the trial court to determine the child's paternity, order joint legal and physical custody, grant parenting time, and determine his child support and health care obligations.

Macaulay did not answer the complaint; instead, in December 2009, she moved for the dismissal of Bazzi's suit. In her motion, Macaulay stated that—one day after the child's birth—she and Steven Szakaly signed an affidavit acknowledging Szakaly as the child's father. Macaulay also attached a copy of a document purporting to be an affidavit of parentage. This affidavit, she contended, conclusively established the child's paternity. Macaulay further argued that, because Bazzi lacked standing to challenge the affidavit under Michigan law, the trial court had to dismiss Bazzi's suit under MCR 2.116(C)(5).

Bazzi did not answer Macaulay's motion. Rather than answer the motion, Bazzi moved to stay resolution of Macaulay's motion pending further discovery. Bazzi asserted that Macaulay had repeatedly represented that Szakaly was just a "platonic" friend from college. He also stated that Szakaly was involved in a committed relationship with another woman during the time at issue and that he later married that same woman. Bazzi related that Szakaly had told him that he was not the child's father and wanted nothing to do with either Macaulay or her child. Given these potential facts, Bazzi argued that it was necessary to conduct further discovery to—among other things—investigate "the manner in which the Affidavit of Parentage was procured." Indeed, he contended that the purported affidavit of parentage was not "properly executed." In addition, Bazzi asked the trial court to appoint a guardian ad litem to protect the child's best interests.

[1] Because the parties had not conducted discovery as of the time of this appeal, in order to provide some background, we have drawn the facts from the parties' submissions to this Court and the lower court.

The trial court held a hearing on Bazzi's motion for a stay and the appointment of a guardian ad litem in January 2010. After hearing oral arguments, the trial court noted that, although the law clearly defined the rights at issue, the potential facts presented two "exceptional circumstances": that Bazzi allegedly acted as the father to the child for three years and that the affidavit of parentage might be fraudulent. The trial court also expressed concern for the child's rights. And, for the benefit of the child, the trial court determined that the allegations should be investigated before dismissing the "matter off hand." The trial court also determined that a guardian ad litem should conduct the investigation to determine what was in the child's best interests after assessing the facts. For those reasons, the trial court stated that it would grant Bazzi's motion for a stay and for the appointment of a guardian ad litem to represent the child and conduct the investigation into the facts of the case.

On July 1, 2010, the trial court entered an order appointing a guardian ad litem for the child and holding Macaulay's motion to dismiss in abeyance pending the guardian ad litem's investigation. On the same day, the trial court entered an order staying the lower court proceedings in order to permit Macaulay to appeal to this Court. Macaulay then moved for leave to appeal to this Court, which this Court granted in December 2010.[2]

II. ANALYSIS

A. STANDARDS OF REVIEW

On appeal, Macaulay argues that the trial court did not have the authority to hold her motion in abeyance because Bazzi did not have standing to bring a paternity suit; indeed, she contends that, because Bazzi did not have standing to bring his suit, the trial court did not have jurisdiction and its July 1, 2010 order was, accordingly, void. This Court reviews de novo the proper interpretation and application of statutes. *Adair v Michigan*, 486 Mich 468, 477; 785 NW2d 119 (2010). This Court also reviews de novo the proper application of the law of standing. See *McHone v Sosnowski*, 239 Mich App 674, 676; 609 NW2d 844 (2000). However, this Court reviews a trial court's decision to hold a motion in abeyance to permit additional discovery for an abuse of discretion. See *Westlake Transp, Inc v Public Service Comm'n*, 255 Mich App 589, 611; 662 NW2d 784 (2003) (determining that the trial court did not abuse its discretion when it denied the plaintiffs' request to stay the proceedings to conduct additional discovery). Similarly, this Court reviews a trial court's decision on a matter committed to its discretion, such as whether to appoint a guardian ad litem to represent the interests of a minor child involved in the litigation, for an abuse of discretion. See *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). This Court will not reverse a trial court's discretionary rulings unless the decision falls outside the range of reasonable and principled outcomes. *Id.*

[2] See *Bazzi v Macaulay*, unpublished order of the Court of Appeals, entered December 20, 2010 (Docket No. 299239).

B. STANDING AND JURISDICTION

Standing was traditionally a limited, prudential doctrine that developed to ensure sincere and vigorous advocacy. *Lansing Schools Educ Ass'n v Lansing Board of Ed*, 487 Mich 349, 359; 792 NW2d 686 (2010). To establish standing, the litigant must establish that he or she has a cause of action provided by law or otherwise had standing on the basis of a special injury or right that would be detrimentally affected in a manner different from the citizenry at large. *Id.* However, the Legislature can permissibly limit a person's standing; this "doctrine has been referred to as a requirement that a party possess 'statutory standing.'" *Miller v Allstate Ins Co*, 481 Mich 601, 607; 751 NW2d 463 (2008). The statutory standing inquiry is jurisdictional; if the complaining party does not have standing under the statute, the trial court will lack jurisdiction to reach the merits of the claim. *Id.* at 608, 612 (noting that statutory standing is jurisdictional and, because only the Attorney General has standing to pursue a claim that a corporation is improperly incorporated, the trial court should not have considered the merits of Allstate's claim).

The Legislature has provided a statutory scheme for determining the paternity of children born out of wedlock with the Paternity Act. See MCL 722.711 *et seq.* Under that act, a father—among others—may bring an action in the Circuit Court to establish the paternity of a child. MCL 722.714(1). A child born to a married woman is, however, considered to be the product of the marriage. See *In re KH*, 469 Mich 621, 634; 677 NW2d 800 (2004) ("The presumption that children born and conceived during a marriage are the issue of that marriage is deeply rooted in our statutes and case law."). Because the Paternity Act applies only to children born out of wedlock,[3] one cannot bring a suit to establish the paternity of a child born to a married woman unless there has been a prior court determination that the child was not the issue of the marriage. See *id.* at 635; see also *Girard v Wagenmaker*, 437 Mich 231, 252; 470 NW2d 372 (1991) (holding that a putative father cannot challenge the legitimacy of a child born to a marriage under the paternity act or the custody act absent a prior determination that the child was not the issue of the marriage). In addition to this limitation, the Legislature has provided that a putative father cannot bring a paternity action where the paternity of the child has already been legally established: "An action to determine paternity shall not be brought under this act if the child's father acknowledges paternity under the acknowledgement of parentage act, or if the child's paternity is established under the law of another state." MCL 722.714(2).

In this case, Bazzi sued to establish his paternity over a child that was not born to a married woman. In addition to allegations to establish grounds for his belief that he is in fact the child's biological father, Bazzi alleged that Macaulay had not taken any action—to his knowledge—to establish the child's paternity. As pleaded, Bazzi established his standing to

[3] The paternity act repeatedly refers to the "child." The term child is defined to mean a child born out of wedlock. See MCL 722.711(b). And the phrase child born out of wedlock means 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).

pursue a paternity claim under the Paternity Act. See *Altman v Nelson*, 197 Mich App 467, 475-477; 495 NW2d 826 (1992) (noting that a putative father need only plead facts that, if true, would establish his standing to sue under the paternity act in order to properly invoke the trial court's jurisdiction). As such, the trial court had jurisdiction over Bazzi's suit.

With her motion to dismiss, Macaulay challenged Bazzi's standing. And Macaulay appears to be entitled to summary disposition in her favor under MCR 2.116(C)(5), because the child's paternity has already been established through what appears to be a valid affidavit of parentage. See MCL 722.714(2). However, the mere filing of her motion to dismiss for lack of standing did not establish that Bazzi actually lacked standing and did not divest the trial court of jurisdiction; Bazzi's standing remains and the trial court retains jurisdiction over Bazzi's suit. As this Court has recognized, once a trial court has jurisdiction over a properly pleaded paternity claim, a trial court does not lose jurisdiction even when it acts in error:

> Where jurisdiction of the subject matter and the parties exist, errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, do not render the judgment void; until the judgment is set aside, it is valid and binding for all purposes and cannot be collaterally attacked. Once jurisdiction of the subject matter and the parties is established, any error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.
>
> If the court has jurisdiction of the parties and of the subject matter, *it also has jurisdiction to make an error*. [*Altman*, 197 Mich App at 473 (citations omitted) (emphasis added).]

Here, the trial court has jurisdiction over Bazzi's paternity claim until such time as it makes a judicial determination that Macaulay is entitled to dismissal under MCL 2.116(C)(5). But it has not made such a determination. Indeed, it specifically stated that it was neither denying nor granting Macaulay's motion to dismiss for lack of standing. Instead, the trial court determined that it was in the best interest of the child to hold Macaulay's motion in abeyance pending further limited discovery; specifically, an investigation into the nature of the relationship between Bazzi and the child after the child's birth and into the background behind the execution of the affidavit that Macaulay submitted with her motion. Thus, the allegations in Bazzi's complaint remain unrebutted—for the time being—and the court retained jurisdiction over the suit. See *Altman*, 197 Mich App at 477-479 (stating that the allegations in the complaint were sufficient to establish the plaintiff's standing and, therefore, the trial court erred when it determined that the orders that it entered were void as an improper exercise of jurisdiction).

C. THE STAY

Although Macaulay framed her claim of error on appeal in terms of standing and jurisdiction, her real claim of error is that the trial court should not have held her motion in abeyance. A trial court has the inherent authority to control the progress of a case. See MCR 1.105; MCR 2.401; see also *People v Grove*, 455 Mich 439, 470; 566 NW2d 547 (1997) ("Optimum service to the public, to victims, witnesses, jurors, litigants, and to counsel mandates that trial judges have the authority and discretion to manage dockets. The interplay between MCR 2.401 and MCR 6.001 provides for such efficient management, while allowing judges the flexibility to exercise their discretion appropriately, given the circumstances of an individual case."). And we conclude that this inherent authority includes the discretion to hold a motion in abeyance.

On appeal, Macaulay did not directly address the trial court's decision to exercise its discretion to hold her motion in abeyance pending further discovery. For that reason, we conclude that she has abandoned any claim of error in that regard. *Chen v Wayne State University*, 284 Mich App 172, 206-207; 771 NW2d 820 (2009) (stating that the failure to argue and support a claim of error constitutes the abandonment of that claim on appeal). Nevertheless, even if Macaulay's brief could be said to raise such a claim of error, on this record, we cannot conclude that the trial court abused its discretion when it elected to hold Macaulay's motion in abeyance pending further discovery.

This Court has recognized that it is normally inappropriate for a trial court to grant summary disposition before the parties have had a chance to conduct discovery. *Prysak v R L Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992). This is especially important when the grounds for the motion are founded on facts that are in dispute. See *Marilyn Froling Revocable Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 Nw2d 234 (2009). In such cases, a trial court is warranted in proceeding only when further discovery does not stand a fair chance of uncovering factual support for the opposing party's position. *Id.*

A motion under MCR 2.116(C)(5) tests the plaintiff's capacity to bring the suit. In reviewing such a motion, the trial court must consider the pleadings, affidavits, and other documentary evidence. *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003). And whether a party has standing is a matter of applying the law to the *established facts*. See *McHone*, 239 Mich App at 676. Accordingly, a trial court's decision to grant a motion under MCR 2.116(C)(5) should only follow if the undisputed facts establish that the complaining party does not have standing.

In this case, Macaulay claims that there is a valid affidavit of parentage establishing the paternity of the child. If this is true, then she would be entitled to the dismissal of Bazzi's suit because he would lack standing to bring a paternity suit. See MCL 722.714(2). However, MCL 722.714(2) refers to an acknowledgment of paternity under the acknowledgement of parentage act. See MCL 722.1001 *et seq.* That is, the paternity must have been established in compliance with all the provisions of that act. A man acknowledges that he is the natural father of a child, if he "joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgement of parentage." MCL 722.1003(1). In order to be valid, the acknowledgement must be signed by the mother and the father and notarized. MCL

722.1003(2). The acknowledgement must contain certain provisions, see MCL 722.1007, and must be filed, see MCL 722.1005. Although the affidavit of parentage appears valid on its face, and would normally be sufficient to sustain a motion for summary disposition under MCL 2.116(C)(5), it is possible that further discovery will reveal evidence tending to establish that the affidavit is not valid under the acknowledgement of parentage act.[4] If that were the case, then Macaulay might not be entitled to the relief requested under her motion. It must also be remembered that Macaulay filed her motion before the parties had conducted *any* discovery. Indeed, Bazzi was apparently completely blind-sided by Macaulay's claim that Szakaly was the child's real father. Under these circumstances, we cannot conclude that the trial court's decision to postpone consideration of Macaulay's motion for summary disposition pending further limited discovery fell outside the range of reasonable and principled outcomes. *Borowsky*, 273 Mich App at 672.

D. THE DECISION TO APPOINT A GUARDIAN AD LITEM

We also cannot conclude that the trial court erred when it appointed a guardian ad litem to conduct an investigation and make recommendations on behalf of the child. An action to establish paternity may include an order concerning custody of the child as provided under the child custody act. See MCL 722.717b (stating that the trial court must include specific provisions for custody and parenting time, as provided under the child custody act, in any order of filiation). Further, trial courts may appoint a guardian ad litem to make recommendations and represent the best interests of the child. See MCL 722.27(1) and (1)(d) (providing that a trial court may appoint a guardian ad litem in an action arising under the child custody act or another action that incidentally involves a child custody dispute when it is in the best interests of the child); see also MCL 722.24(2); MCR 3.916(A); MCR 2.201(E). Hence, the trial court had the discretion to appoint a guardian ad litem to conduct an investigation and make recommendations if it determined that it was in the child's best interest to do so.

In this case, Bazzi has made allegations that he acted as the child's father for a considerable period of time, provided for the child financially, and established a bond with the child. Despite this, Macaulay has apparently severed this relationship and refused Bazzi's aid. Similarly, Bazzi has alleged that the man that Macaulay claims to be the child's natural father is married, has denied paternity to the minor child, and has stated that he wants nothing to do with the child. Accordingly, there is the distinct possibility that Macaulay has not only refused Bazzi's efforts to provide for the child, but also has not sought support from Szakaly. A child has the right to receive support from *both* parents. See *Borowsky*, 273 Mich App at 672-673 ("It is well settled that children have the right to receive financial support from their parents and that trial courts may enforce that right by ordering parents to pay child support."). And a mother cannot waive that right. See *Tuer v Niedoliwka*, 92 Mich App 694, 699-700; 285 NW2d 424 (1979) (noting that paternity proceedings are for the benefit of children born out of wedlock and

[4] For example, if Szakaly were to disavow the signature on the affidavit, that evidence would tend to show that the affidavit was not made in compliance with the acknowledgment of parentage act.

that a mother cannot waive her child's right to support). Given the allegations, the trial court could reasonably conclude that Macaulay was not acting in the best interests of her child. See *id.* at 699 (stating that a child's natural guardian "has no authority to do an act which is detrimental to the child."). Under these circumstances, the trial court could reasonably conclude that a neutral third-party—a guardian ad litem—should be appointed to ensure that the child's interests were adequately represented and to make recommendations to the court with regard to what might be in the child's best interest.

We are moreover untroubled by Macaulay's claims that the trial court is essentially enabling Bazzi to collaterally attack the validity of the affidavit of parentage through the appointment of a guardian ad litem. Macaulay correctly notes that a putative father cannot challenge the validity of an affidavit of parentage. See MCL 722.1011(1). Nevertheless, the acknowledgement of parentage act clearly provides that the *child* does have the right to challenge the validity of an affidavit of parentage on the basis of—among other things—fraud, misrepresentation, or misconduct. See MCL 722.1011(1), (2). And nothing within the acknowledgment of parentage act prevents a trial court from appointing a next friend to pursue such a claim on behalf of a minor child as part of a paternity suit. See MCR 2.201(E)(2) (authorizing trial courts to appoint a next friend for a minor). Indeed, the acknowledgement of parentage act provides that a person who has standing may challenge the validity of affidavit of parentage with a motion in "an existing action for child support, custody, or parenting time" and all the provisions of the acknowledgement of parentage act "apply as if it were an original action." MCL 722.1011(1). Because Bazzi's paternity claim is a type of suit for custody and parenting time, if the guardian ad litem returns with a recommendation that the trial court appoint a next friend to challenge the validity of the affidavit of parentage, there is nothing to preclude the trial court from doing so.

In addition, although Macaulay appears to anticipate that the guardian ad litem will return with unfavorable recommendations, the trial court has not yet taken any actions with regard to the guardian ad litem's recommendations because the guardian ad litem has not yet conducted an investigation or made recommendations. It is quite possible that Macaulay will be the beneficiary of the guardian ad litem's investigation and recommendations. The guardian ad litem might plausibly conclude that Szakaly is the natural father and that *he* should be held responsible for the support and maintenance of the child. As such, the trial court might in the end grant Macaulay's motion. In any event, if Macaulay feels aggrieved by the decisions that the trial court ultimately makes, she can appeal those decisions at that time.

The trial court did not abuse its discretion when it decided to appoint a guardian ad litem to investigate and submit recommendations with regard to the child's best interests. *Borowsky*, 273 Mich App at 672.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Stephen L. Borrello

STATE OF MICHIGAN

COURT OF APPEALS

HAFEZ M. BAZZI, Plaintiff-Appellee,	UNPUBLISHED November 1, 2011
v	No. 299239 Oakland Circuit Court
ANNE ELIZABETH MACAULAY, Defendant-Appellant.	LC No. 2009-76235-DP

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

OWENS, J. (*dissenting*).

I respectfully dissent. I would reverse the trial court's determination that it had the authority to appoint a guardian ad litem (GAL) to investigate the affidavit of parentage signed by Mr. Szakaly and I would find that the trial court erred by failing to grant defendant's motion for summary disposition upon defendant's presentation of the signed affidavit of parentage. Plaintiff did not have standing under MCL 722.714 to bring this action to determine paternity. Any decision to the contrary violates the clear language of MCL 722.714(2): "[a]n action to determine paternity ***shall not*** be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act . . . ." (emphasis added). The word "'shall' is mandatory; it expresses a directive, not an option." *Wolverine Power Supply Coop, Inc v DEQ*, 285 Mich App 548, 561; 777 NW2d 1 (2009).

The primary purpose of statutory construction is to determine and give effect to the Legislature's intent. *Bush v Shabahang*, 484 Mich 156, 166; 772 NW2d 272 (2009). To determine that intent, this Court looks first to the language of the statute. *Id*. at 166-167. It must interpret the language in accordance with the Legislature's intent and, to the extent it can, give effect to every phrase, clause and word used. *Id*. at 167. It must read and construe the language in its grammatical context, unless it is clear that the Legislature had a different intent. *Id*.

The specific provision upon which defendant relies, MCL 722.714(2), appears clear and unambiguous, although we must consider what the Legislature meant by "the child's father." "Father" is not defined in the Paternity Act, MCL 722.711. However, it is defined in the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*. Under that act, "father" is "the man who signs an acknowledgment of parentage of a child." MCL 722.1002(d).

MCL 722.1003 provides:

> (1) 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.
>
> (2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the acknowledgment is signed. An acknowledgment may be signed any time during the child's lifetime.

The six-year-old child in this case was born out of wedlock. Szakaly signed the acknowledgment of parentage with defendant the day after the child was born and is therefore considered the child's natural father. MCL 722.1003(1).

The statute provides for revocation of an acknowledgment of parentage ***only*** by certain persons:

> (1) The *mother* or the *man who signed the acknowledgment*, *the child* who is the subject of the acknowledgment, *or a prosecuting attorney* may file a claim for revocation of an acknowledgment of parentage.
>
> (2) A claim for revocation shall be supported by an affidavit signed by the claimant setting forth facts that constitute 1 of the following:
>
> (a) Mistake of fact.
>
> (b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.
>
> (c) Fraud.
>
> (d) Misrepresentation or misconduct.
>
> (e) Duress in signing the acknowledgment.
>
> (3) If the court finds that the affidavit is sufficient, the court may order blood or genetic tests at the expense of the claimant, or may take other action the court considers appropriate. The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the man is not the father and that, considering the equities of the case, revocation of the acknowledgment is proper. [MCL 722.1011; emphasis added.]

Based on these two statutes, plaintiff may neither bring an action for paternity nor seek revocation of the acknowledgment of parentage executed by defendant and Szakaly. Plaintiff does not have standing and the trial court therefore erred in failing to dismiss this action and in appointing a GAL.

As stated by the United States Supreme Court, "constitutionally protected parental rights do not arise simply because of a biological connection between a parent and a child; rather, they require more enduring relationships." *Lehr v Robertson*, 463 US 248, 260-261, 103 S Ct 2985, 77 L Ed 2d 614 (1983). Indeed, as this Court noted in *Hauser v Reilly*, 212 Mich App 184, 188-189; 536 NW2d 865, even "a rapist has a biological link with a child conceived by that rape." In *Sinicropi v Mazurek*, 273 Mich App 149, 165, 729 NW2d 256 (2006), this Court stated unequivocally, "[i]f an acknowledgment of parentage has been properly executed, subsequent recognition of a person as the father in an order of filiation by way of a paternity action cannot occur unless the acknowledgment has been revoked." The *Sinicropi* Court held that the alleged biological father had no standing to pursue his paternity action as long as the acknowledgment of parentage was unrevoked, and MCL 722.1011(1) clearly identifies only four parties who can seek revocation: the mother, the man who signed the acknowledgment, the child, and the prosecuting attorney. Here, the child already has a legal father: Mr. Szakaly. Szakaly is not even a party to these proceedings. As stated by our Supreme Court in *In re KH*, 469 Mich 621, 624, 677 NW2d 800 (2004), "where a legal father exists, a biological father cannot properly be considered even a putative father." Plaintiff cannot, under Michigan law, challenge the acknowledgment of parentage. The trial court was required to dismiss his claim ab initio upon presentation to the court of a facially valid acknowledgment of parentage. It was improper for the trial court to appoint a GAL and then hold these proceedings in abeyance while the GAL investigated whether grounds existed to file an action under a statute other than the Paternity Act; in this case, the Acknowledgment of Parentage Act.

In this case, of the four people who have statutory standing to challenge the validity of the acknowledgment of parentage, neither the mother, nor the man who signed the acknowledgment, nor the child, nor the prosecuting attorney, has done so. It could be argued that because the child cannot file an action herself while a minor, the language in the statute permitting the child to challenge the validity of the acknowledgment would be surplusage if a court in another action could not appoint a GAL to act for the child. This argument would fail for several reasons. A guardian appointed for a child under the Estates and Protected Individuals Code (EPIC) (MCL 700.1101 et seq.) could file on behalf of the child or the child, once an adult, could file on her own behalf. It may be argued that the child would then no longer be a "child" under the act and it would be too late to file. In using the term "child", rather than "minor", the legislature has clearly indicated that "child" refers not to age or minority status, but to identify the person who is the subject of the acknowledgment of parentage. This is also shown by the language of MCL 722.1003(2) wherein the statute provides that "an acknowledgment of parentage may be signed any time during the child's lifetime." The statute does not limit the time for executing an acknowledgment of parentage to the first eighteen years of the child's life.[1]

[1] One may question why a person would sign an acknowledgement of parentage after a child reached the age of eighteen years. The reasons are varied and undoubtedly the same as the reasons why the legislature provided for the adoption of an adult (MCL 710.43(3), MCL 710.56(3)): to legally recognize an emotional bond, for purposes of inheritance, etc.

Here, the majority would permit the self-proclaimed biological father to circumvent the limitation in MCL 722.1011(1) on who may challenge an acknowledgment of parentage by permitting a paternity action to continue long enough for a GAL appointed in the paternity action to conduct discovery and file an action under the Acknowledgment of Parentage Act challenging the validity of the acknowledgment of parentage. Such a paternity proceeding is clearly contrary to law and must be dismissed for lack of standing upon the presentation to the court of either a facially valid certificate of marriage showing that the mother was married at the time of conception or birth of the child, or a facially valid acknowledgment of parentage. The reason the court may appoint a GAL for a child under the Paternity Act is to protect the child's interests in the paternity action, not to facilitate a "fishing expedition" with an eye to a possible suit under another statute, such as the Acknowledgment of Parentage Act.

If the alleged biological father believes a fraud has been committed, he is free to urge the prosecuting attorney to challenge the acknowledgment of paternity.

I would reverse and remand this case for dismissal.

/s/ Donald S. Owens