

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

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

FOR PUBLICATION  
October 29, 2013  
9:00 a.m.

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

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

OWENS, J.

Respondent, K. Moiles, appeals as of right the circuit court's order granting the motion of petitioner, T. Weeks, to revoke Moiles's acknowledgement of paternity of a minor child, E.R. Moiles. Because we conclude that the trial court complied with the statute in question, the Revocation of Paternity Act,<sup>1</sup> we affirm.

**I. FACTS**

Moiles and Weeks were romantically involved for seven years, but ended their romantic involvement in December 2009. Weeks testified that the parties temporarily separated in 2006. The child at issue in this appeal was born in 2007. Even though both parties were aware that there was a possibility that Moiles was not the biological father of the child, Moiles signed an acknowledgment of parentage, affirming under penalty of perjury that he was the child's natural father. Under the Acknowledgment of Parentage Act, an acknowledgment establishes a child's paternity without requiring further adjudication.<sup>2</sup> The parties had a child in 2009, K.N. Moiles. The parties do not dispute that Moiles is the natural father of K.N. Moiles.

In May 2011, Moiles was involved in a Child Protective Services (CPS) investigation concerning bruises to his child from a previous marriage, K.A. Moiles. Moiles pleaded to jurisdiction in that case. Moiles was also involved in another CPS investigation in October 2011. In the trial that followed, Weeks testified that in October 2011, Moiles returned K.N. Moiles to

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<sup>1</sup> MCL 722.1001 *et seq.*

<sup>2</sup> MCL 722.1004.

her home with a bruise on his face. A jury eventually found that the trial court had jurisdiction over E.R. and K.N. Moiles. Services in that case remained ongoing through December 2012.

In June 2012, the Michigan Legislature passed the Revocation of Paternity Act (the Act),<sup>3</sup> which provides in part a means by which a trial court can revoke an acknowledgment of parentage.<sup>4</sup> The Act allows a mother, acknowledged father, alleged father, or prosecuting attorney to move to revoke an acknowledgment of parentage within three years after the child's birth, within one year after the acknowledgment of parentage was signed, or within one year after the effective date of the Act, whichever is later.<sup>5</sup>

In August 2012, Weeks moved to revoke Moiles's acknowledgment of the child's parentage. Weeks asserted that the child was conceived during the time that Weeks and Moiles were separated and that the child was not his biological child. A DNA analysis of the child and Moiles indicated a zero percent chance that Moiles was the child's biological father.

In December 2012, Weeks petitioned the trial court to suspend Moiles's parenting time on the basis that Moiles's oldest son had sexually abused the child. Moiles testified that he did not believe that the allegation was true, and that he instead believed that Weeks manufactured it "so that she can keep her parenting time."

On January 12, 2013, Weeks provided the trial court with a brief in support of her petition requesting the revocation of Moiles's acknowledgment of paternity. On January 22, 2013, the trial court heard Weeks's motion to revoke Moiles's acknowledgment of paternity. The trial court heard testimony solely from the technician who analyzed the DNA samples. Moiles contended that the Revocation of Paternity Act was not applicable to this case because the parties had not made any misrepresentations to each other. Moiles also contended that the trial court must consider the child's best interests before revoking his paternity.

The trial court found that the Revocation of Paternity Act was unambiguous and applied to Moiles's case because one or both parties knew or should have known that Moiles was not the child's biological father when they signed the acknowledgment. Thus, the trial found that the acknowledgment "was a misrepresentation of the material fact and was executed fraudulently by the two parties." The trial court further found by clear and convincing evidence that Moiles was not the child's "biological father," and revoked Moiles's acknowledgment of paternity.

## II. STANDARD OF REVIEW

The Revocation of Paternity Act does not provide a standard by which this Court should review the trial court's decision. Generally, this Court reviews for clear error the trial court's factual findings in proceedings involving the rights of children, and reviews *de novo* issues of

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<sup>3</sup> MCL 722.1431 *et seq.*

<sup>4</sup> MCL 722.1443(2)(a).

<sup>5</sup> MCL 722.1437(1).

statutory interpretation and application.<sup>6</sup> The trial court has committed clear error when this Court is definitely and firmly convinced that it made a mistake.<sup>7</sup>

Consistent with the general standards of review in actions involving the care and custody of children, we conclude that this Court should review for clear error the trial court's findings concerning the sufficiency of an affidavit and whether there is clear and convincing evidence that a man is not a child's father under MCL 722.1437(3). We also conclude that we should review de novo the trial court's conclusions of law.

### III. INTERPRETATION OF THE REVOCATION OF PATERNITY ACT

#### A. STATUTORY LANGUAGE

The Revocation of Paternity Act allows the trial court to (1) revoke an acknowledgment of parentage, (2) set aside an order of filiation, (3) determine that a presumed father is not a child's father, or (4) make a determination of paternity and enter an order of filiation.<sup>8</sup> Pertinent to this case, the Act provides that MCL 722.1437 "governs an action to set aside an acknowledgment of parentage."<sup>9</sup>

Under MCL 722.1437, a child's mother, acknowledged father, alleged father, or a prosecuting attorney may file an action to revoke an acknowledgment of parentage within (1) three years after the child's birth, (2) one year after the acknowledgment of parentage was signed, or (3) one year after the Act went into effect, whichever is later.<sup>10</sup> The affidavit must contain a statement of facts that establishes one of five grounds to revoke an acknowledgment:

(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.<sup>[11]</sup>

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<sup>6</sup> MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

<sup>7</sup> *In re Mason*, 486 Mich at 152.

<sup>8</sup> MCL 722.1443(2).

<sup>9</sup> MCL 722.1435.

<sup>10</sup> MCL 722.1437(1).

<sup>11</sup> MCL 722.1437(2).

If the trial court finds that the affidavit is sufficient, it must “order blood or tissue typing or DNA identification profiling” in accordance with the Paternity Act.<sup>12</sup> Under the section of the Paternity Act to which the Revocation of Paternity Act refers, the results of a blood, tissue, or DNA test presumptively establish the child’s paternity if there is a 99 percent or higher probability of paternity.<sup>13</sup> If the testing establishes a presumption of paternity, “either party may move for summary disposition under the court rules.”<sup>14</sup> Under the Revocation of Paternity Act, the purpose of the blood typing, tissue typing, or DNA identification profiling is “to assist the court in making a determination . . . ,” but the results “are not binding on a court in making a determination under [the Act].”<sup>15</sup>

## B. PRINCIPLES OF STATUTORY INTERPRETATION

This case requires this Court to interpret the Revocation of Paternity Act. When interpreting a statute, our goal is to give effect to the intent of the Legislature.<sup>16</sup> The language of the statute itself is the primary indication of the Legislature’s intent.<sup>17</sup> This Court enforces unambiguous statutes as written.<sup>18</sup> We must read the statute as a whole and may not read statutory provisions in isolation.<sup>19</sup> This Court reads the provisions of statutes “reasonably and in context,” and reads subsections of cohesive statutory provisions together.<sup>20</sup>

Generally we construe statutory terms according to their plain and ordinary meanings.<sup>21</sup> However, if the Legislature has chosen words that “have acquired a peculiar and appropriate meaning in the law,” we construe those terms according to their legal meanings.<sup>22</sup> Thus, “when the Legislature chooses to employ a common-law term without indicating its intent to alter the

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<sup>12</sup> MCL 722.1437(3); MCL 722.1443(5); see MCL 722.716.

<sup>13</sup> MCL 722.716(5).

<sup>14</sup> MCL 722.716(6).

<sup>15</sup> MCL 722.1443(5).

<sup>16</sup> *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass’n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 12-13.

<sup>19</sup> *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010).

<sup>20</sup> *McCahan v Brennan*, 492 Mich 730, 739; 822 NW2d 747 (2012).

<sup>21</sup> *In re Bradley Estate*, \_\_\_ Mich \_\_\_, slip op p 7; \_\_\_ NW2d \_\_\_ (2013).

<sup>22</sup> *Id.*, quoting MCL 8.3a.

common law, the term will be interpreted consistent with its common-law meaning.”<sup>23</sup> This is true even when the common-law meaning is from another area of the law.<sup>24</sup>

This Court construes the Acknowledgment of Parentage Act and the Paternity Act in *pari materia*.<sup>25</sup> Statutes in *pari materia* relate to the same subject or share a common purpose, and we must read and construe them together as one law.<sup>26</sup> Like the Acknowledgment of Parentage Act and the Paternity Act, the Revocation of Paternity Act deals with the same subject matter—the determination of a child’s legal father—and these acts all serve the interrelated purposes of establishing or disestablishing a child’s paternity. Therefore, we will construe these statutes in *pari materia*.

### C. 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 because the type of misrepresentation that Weeks alleged was not a misrepresentation under the Act. We disagree with his contention.

The Act does not define “misrepresentation.” We must read statutes in context in order to discern the Legislature’s intent.<sup>27</sup> Here, 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. We conclude that the Legislature meant to use the more particular, legal meanings of these terms. We are also not blind to the fact that an acknowledgment of parentage is a legally binding, signed writing. This further buttresses our conclusion that the Legislature meant to use the common-law legal meaning of the word “misrepresentation,” as it is understood in the context of other legally binding writings. Because there is no indication that the Legislature intended to alter the common-law meaning of “misrepresentation,” we examine Michigan’s common law to determine its meaning.<sup>28</sup> Moreover, because we conclude that “misrepresentation” is a legal term, our Supreme Court has said that we may also turn to a legal dictionary to determine its meaning.<sup>29</sup>

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<sup>23</sup> *In re Bradley Estate*, \_\_\_ Mich at \_\_\_, slip op at 7-8.

<sup>24</sup> *Ford Motor Co v Woodhaven*, 475 Mich 425, 439; 716 NW2d 247 (2006).

<sup>25</sup> *Sinicropi v Mazurek*, 273 Mich App 149, 156-157; 729 NW2d 256 (2006); *Aichele v Hodge*, 259 Mich App 146, 161; 673 NW2d 452 (2003).

<sup>26</sup> *Sinicropi*, 273 Mich App 157.

<sup>27</sup> *McCahan*, 492 at 739.

<sup>28</sup> See *Ford Motor Co*, 475 Mich at 439-440.

<sup>29</sup> *Id.* at 440; see also *Bay Co Prosecutor v Nugent*, 276 Mich App 183, 190; 740 NW2d 678 (2007) (applying the Black’s Law Dictionary definition to define the term “mistake of fact” as used in MCL 722.1437(2)).

Black's Law Dictionary defines "misrepresentation" as "The act of making a false or misleading assertion about something, usu. with the intent to deceive."<sup>30</sup>

In the common-law context, the word "misrepresentation" is typically discussed in the context of fraudulent and innocent misrepresentations, as defenses to contracts.<sup>31</sup> In the context of contracts, the elements of fraudulent misrepresentation are that (1) a party made a material misrepresentation; (2) the representation was false; (3) when the party made the representation, he or she either knew it was false or made it recklessly; (4) the party making the misrepresentation intended that the other party act on it; (5) the other party acted in reliance on it; and (6) the other party was injured.<sup>32</sup>

An innocent misrepresentation is different from a fraudulent misrepresentation.<sup>33</sup> The elements of an innocent misrepresentation are (1) a representation in a transaction between two parties; (2) that is false; (3) that actually deceives the other party; (4) that the other party relied on; (5) that the other party suffered damage from; and (6) the party making the misrepresentation benefitted from.<sup>34</sup> An innocent misrepresentation is different from a fraudulent misrepresentation because the party making the misrepresentation need not be aware that the representation is false and need not intend the other party to act on it.<sup>35</sup> Also, with an innocent misrepresentation, the person making the misrepresentation must benefit from the other party's injury or damage.<sup>36</sup>

However, because the definitions of fraudulent and innocent misrepresentations both encompass the act of making a false representation that deceives another, we find that the Black's Law Dictionary definition is most helpful in this context.<sup>37</sup>

Moiles argues that the misrepresentation had to be made from one party to another. Although in the context of contracts fraudulent and innocent misrepresentations are typically made from one party to another, in this context, there is no indication of a legislative intent for the term "misrepresentation" to only include misrepresentations made to a party signing the acknowledgment of parentage. All that the statute requires is that a misrepresentation was made and the circumstances of it are set forth in "an affidavit signed by the person filing the action."<sup>38</sup>

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<sup>30</sup> Black's Law Dictionary (9th ed).

<sup>31</sup> *Titan Ins Co v Hyten*, 491 Mich 547, 555-556; 817 NW2d 562 (2012).

<sup>32</sup> *Id.* at 555.

<sup>33</sup> *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 114; 313 NW2d 77 (1981).

<sup>34</sup> *Id.* at 116.

<sup>35</sup> *Id.* at 117.

<sup>36</sup> *Id.* at 118.

<sup>37</sup> This is consistent with how this Court previously defined "mistake of fact" as used in the statute.

<sup>38</sup> MCL 722.1437(2).

Had the Legislature intended that the misrepresentation be made from one party to the other party, it could have provided so.<sup>39</sup>

#### D. APPLYING THE STANDARDS

We conclude that the trial court correctly determined that the acknowledgment of paternity “was a misrepresentation of the material fact.” Alternatively, the trial court also correctly determined that the acknowledgment of paternity was “executed fraudulently by the two parties.”

The trial court determined that the parties’ representation was a misrepresentation because the “acknowledgment was made under oath to the effect that [Moiles] was the biological father of [the child].” We recognize that in *In re Daniels Estate*, we stated that “the Acknowledgment of Parentage Act does not prohibit a child from being acknowledged by a man that is not his or her biological father.”<sup>40</sup> However, this statement did not refer to the situation in which a man knowingly executed a false acknowledgment of parentage. Rather, it referred to the situation in which a man honestly, but mistakenly, believed that he was the biological father of a child and signed an acknowledgment of parentage so believing. This statement does not stand for the proposition that a man can execute a valid acknowledgment of parentage knowing he is not the child’s biological father, particularly because signing the acknowledgment of parentage creates the legal presumption that the man is the child’s natural father.<sup>41</sup> This is consistent with the purpose of the Acknowledgment of Parentage Act, which allows a man who honestly believes he is the natural father of a child born out of wedlock to sign an affidavit acknowledging such, rather than having to go through proceedings to establish paternity in circuit court.<sup>42</sup>

When Moiles signed the affidavit of parentage form, he affirmed “under penalty of perjury” that he was the natural parent of the child.<sup>43</sup> Since the parties knew, or should have known due to the lack of contact at conception, that Moiles was possibly not the child’s natural father, Moiles made a false statement when he signed the acknowledgment of parentage indicating that he was the child’s natural father. This false statement deceived the child and the world, as it held him out to the world as something he is uncontrovertibly not: the child’s natural father. In falsely signing the acknowledgment of parentage, Moiles became fraudulently entitled

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<sup>39</sup> See *Bay Co Prosecutor*, 276 Mich App at 189 (“We may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” (quotation and citation omitted)).

<sup>40</sup> See *In re Daniels Estate*, \_\_\_ Mich App \_\_\_, slip op at 4; \_\_\_ NW2d \_\_\_ (2013).

<sup>41</sup> MCL 722.1003(1).

<sup>42</sup> See MCL 722.1004.

<sup>43</sup> Affidavit of parentage form, DCH-0682w (06/2006), available at <[http://www.michigan.gov/mdch/0,4612,7-132-2945\\_5221---,00.html](http://www.michigan.gov/mdch/0,4612,7-132-2945_5221---,00.html)> (accessed September 23, 2013). The form also provides, “Alteration of this form or the making of false statements with the affidavit for the purposes of deception is a crime. [MCL 333.2894]”

to benefits to which he was not entitled, such as the child's companionship, possible public assistance benefits, potential child support, custody, or parenting time, inheritance benefits, and potential wrongful death benefits. Accordingly, the ground of misrepresentation, as alleged in Weeks's affidavit, was established to support revocation of the acknowledgment.

Alternatively, the trial court also did not err when it determined that there was a second ground to support revocation of the acknowledgment: fraud. The trial court also determined that the acknowledgment of parentage was "executed fraudulently by the two parties." "Fraud" also requires a party to make a representation that is false.<sup>44</sup> As previously discussed, Moiles signed the acknowledgment attesting "under penalty of perjury" that he was the child's natural father. However, because he knew that he was most likely not the natural father, the acknowledgment was fraudulent, as it was either knowingly false or was made recklessly.<sup>45</sup>

Additionally, although DNA test results are not binding on a court, the trial court may use the results "to assist the court in making a determination under [the Act]." The DNA test ordered by the trial court conclusively established that Moiles was not the child's biological father. Therefore, the trial court's finding that the acknowledgment of paternity "was a misrepresentation of the material fact and was executed fraudulently by the two parties," was not clearly erroneous.

#### E. BEST-INTERESTS DETERMINATION UNDER MCL 722.1443

Moiles additionally contends that the trial court erred in failing to consider the child's best interests when determining whether to revoke his acknowledgment of parentage. We disagree.

MCL 722.1443 provides the procedures by which the trial court considers actions filed under the Revocation of Paternity Act. MCL 722.1443(4) provides in pertinent part:

(2) In an action filed under this act, the court may do any of the following:

- (a) Revoke an acknowledgment of parentage.
- (b) Set aside an order of filiation or a paternity order.
- (c) Determine that a child was born out of wedlock.

(d) Make a determination of paternity and enter an order of filiation as provided for under section 7 of the paternity act, 1956 PA 205, MCL 722.717.

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<sup>44</sup> *Titan Ins Co*, 491 Mich at 555.

<sup>45</sup> *Id.*

(4) A court may refuse to enter an order setting aside a paternity determination or determining that a child is born out of wedlock if the court finds evidence that the order would not be in the best interests of the child. The court shall state its reasons for refusing to enter an order on the record. . . .

Moiles contends that an acknowledgement of parentage *is* a paternity determination because it establishes a child’s paternity. We disagree, and conclude that the trial court correctly determined that an acknowledgment of parentage is not a paternity determination as that term is used in the statute, and therefore, that MCL 722.1443(4) did not apply. An acknowledgment of parentage does establish the paternity of a child born out of wedlock and does establish the man as a child’s natural and legal father.<sup>46</sup> However, in MCL 722.1443(2)(d), the Legislature expressly linked a “determination of paternity” to the section 7 of the Paternity Act. We conclude that the Legislature’s use of the phrase “paternity determination” in MCL 722.1443(4) specifically refers to a “determination of paternity” under MCL 722.717, and the resulting order of filiation.<sup>47</sup>

When a statute expressly mentions one thing, it implies the exclusion of other similar things.<sup>48</sup> Here, while MCL 722.1443 generally applies to any of the actions listed in subdivision (2), including revoking an acknowledgment of parentage,<sup>49</sup> subdivision (4) specifically addresses only paternity determinations<sup>50</sup> and determinations that a child is born out of wedlock.<sup>51</sup> These are only two of the four types of actions that the trial court may take under the Revocation of Paternity Act.<sup>52</sup> Had the Legislature wished the trial court to make a determination of the child’s best interests relative to revoking an acknowledgment of parentage, it could have included language to do so. But it did not.

Therefore, we conclude that the trial court was not required to make a best-interests determination under MCL 722.1443(4) when revoking an acknowledgment of parentage.

#### IV. DUE PROCESS

Moiles raises several unpreserved due process challenges that we decline to address because Moiles has failed to show plain error affecting his substantial rights.<sup>53</sup>

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<sup>46</sup> *Sinicropi*, 273 Mich App at 163; see MCL 722.1004.

<sup>47</sup> MCL 722.717(1).

<sup>48</sup> *Bradley v Saranac Community Schs Bd of Ed*, 455 Mich 285, 298; 565 NW2d 650 (1997).

<sup>49</sup> MCL 722.1443(2)(a).

<sup>50</sup> MCL 722.1443(2)(b).

<sup>51</sup> MCL 722.1443(2)(c).

<sup>52</sup> MCL 722.1443(2).

<sup>53</sup> See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

## V. CONCLUSION

The trial court did not clearly err when it found that Moiles's action in signing an acknowledgment of parentage knowing that he was possibly not the child's biological father constituted a fraudulent execution of the acknowledgment which contained a misrepresentation of a material fact (his parentage) under MCL 722.1437. In addition, the trial court did not err when it determined that it was not required to make a best-interests determination under MCL 722.1443(4) when revoking an acknowledgment of parentage.

We affirm.

/s/ Donald S. Owens

/s/ Michael J. Kelly

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

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

Respondent, K. Moiles, appeals as of right the circuit court's order granting the motion of petitioner, T. Weeks, to revoke Moiles's acknowledgement of paternity of a 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 722.1001 *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 in order to discern the Legislature’s intent.<sup>3</sup>

Here, 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 Acknowledgment 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>

Here, 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 fraudulently 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> See *In re Daniels Estate*, \_\_\_ Mich App \_\_\_, slip op at 4; \_\_\_ NW2d \_\_\_ (2013).

<sup>6</sup> *Id.* at slip op p 1 (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, 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]." 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, Moiles 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]" 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 that the blood, tissue, or DNA testing establishes a presumption of paternity.<sup>8</sup> The Paternity

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<sup>7</sup> MCL 722.1003.

<sup>8</sup> MCL 722.716(5).

Act's procedures provide that after the results of the blood, tissue, or DNA analysis, a party may move for summary disposition.<sup>9</sup>

Given the grammar of MCL 722.1437(3), and keeping in mind our courts' general disapproval of leaving children in legal limbo,<sup>10</sup> I would conclude that MCL 722.1437 contemplates a multi-step process for terminating an acknowledgment of parentage. Therefore, I would conclude that 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-INTERESTS DETERMINATION UNDER MCL 722.1443

I agree with the majority's well-reason conclusion that the trial court did not need to make a best interests 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 above, 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>9</sup> MCL 722.716(6).

<sup>10</sup> See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000) (favoring permanency for children).