

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

MATTHEW HELTON,

Plaintiff-Appellant,

v

LISA MARIE BEAMAN,
DOUGLAS BEAMAN,

Defendant-Appellees.

Supreme Court: 148927

Court of Appeals: 314857

Oakland Circuit: 2012-798218-DP

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**AMICUS CURIAE BRIEF OF THE STATE BAR OF MICHIGAN
FAMILY LAW SECTION**

TABLE OF CONTENTS

Index of Authorities	ii
Questions Presented	iv
Statement of Interest of Amicus Curiae	vi
Statement of Facts	1
Argument	2
I. Whether Plaintiff's affidavit challenging the Defendant's affidavit of parentage was sufficient under MCL 722.1437(2), and specifically, whether the DNA testing results were sufficient to support the allegation that the affidavit of parentage was based on mistake of fact?	
II. Whether a "paternity determination" in MCL 722.1443(4) includes an acknowledgment of parentage?	
III. Whether, assuming the sufficiency of the Plaintiff's MCL 722.1437(2) affidavit, the circuit court is always required to consider the best-interest factors of MCL 722.1443(4)?	
IV. Whether, if MCL 722.1443(4) does apply, the Plaintiff in a revocation of parentage acknowledgment case must bear the burden of proving, by clear and convincing evidence, that revocation is in the best interests of the subject child?	
V. Whether the common law equitable doctrine of laches applies here in support of the circuit court's decision to deny the Plaintiff's request for revocation of acknowledgment of parentage?	
Relief Requested	30

INDEX OF AUTHORITIES

CASES

<i>Armstrong v Manzo</i> , 380 US 545 (1965).....	5
<i>Attorney General v Hartkins</i> , 257 Mich App 564; 699 NW2d 296 (2003).....	29
<i>Attorney General v PowerPick Player’s Club of Mich LLC</i> , 287 Mich App 13; 783 NW2d 515 (2010)	27
<i>Barnes v Jeudevine</i> , 475 Mich 696; 718 NW2d 311 (2006)	14
<i>Department of Human Servs v Laird (In Re Sanders)</i> , 495 Mich 394; 852 NW2d 524 (2014)	5
<i>Eberhard v Harper-Grace Hospitals</i> , 179 Mich App 24; 445 NW2d 469 (1989)	29
<i>Equality & Reform</i> , 431 US 816 (1977)	5
<i>Ford Motor Co v Woodhaven</i> , 475 Mich 425; 716 NW2d 247 (2006)	3
<i>Girard v Wagenmaker</i> , 437 Mich 231; 470 NW2d 372 (1991)	14
<i>Helton v Beaman</i> , 304 Mich App 97; 850 NW2d 515 (2014).....	3, 4, 5, 10, 23
<i>Heltzel v Heltzel</i> , 248 Mich App 1; ___ NW2d ___ (2001)	23, 24
<i>Hisaw v Hayes</i> , 133 Mich App 639; 350 NW2d 302 (1984).....	5
<i>Hunter v Hunter</i> , 484 Mich 247, 771 NW2d 694 (2009)	22, 24
<i>In Re Clausen</i> , 442 Mich 648; 502 NW2d 649 (1993).....	6, 24
<i>In Re Moiles</i> , 495 Mich 944; 843 NW2d 220 (2014)	5, 10
<i>Knight v Northpointe Bank</i> , 300 Mich App 109; 832 NW2d 439 (2013)	27
<i>Lehr v Robertson</i> , 463 US 248; 103 S Ct 2985; 77 L Ed 2d 614 (1983)	5, 6, 11, 21, 23, 25
<i>Lenawee County v Wagley</i> , 301 Mich App 134; 836 NW2d 193 (2013)	7
<i>Mathews v Eldridge</i> , 424 US 319, 33 (1976)	5
<i>McCahan v Brennan</i> , 427 Mich 730; 822 NW2d 747 (2012)	18
<i>Michael H. v Gerald D.</i> , 491 U.S. 110; 109 S. Ct. 2333; 105 L. Ed. 2d 91 (1989)	25
<i>Pierron v Pierron</i> , 486 Mich 81; 782 NW2d 480 (2010).....	16
<i>Prosecutor v Nugent</i> , 276 Mich App 183; 740 NW2d 678 (2007)	3
<i>Regents v Roth</i> , 408 U.S. 564 (1972).....	5
<i>Santosky v. Kramer</i> , 455 U.S. 745, 102 S. Ct. 1388; 71 Ed. 2d 599 (1982).....	25
<i>Sinicropi v Mazurek</i> , 273 Mich App 149; 729 NW2d 2546 (2006)	25
<i>Sprenger v Bickle</i> , 302 Mich App 400; 839 NW2d 59 (2013)	14
<i>Troxel v Granville</i> , 530 U.S. 57 (2000)	5

STATUTES

MCL 710.33(1)	28
MCL 722.23	7, 10, 15, 16, 19
MCL 722.27(1)(c).....	16
MCL 722.1001	2, 8

MCL 722.1431	vi, 2
MCL 722.1431(2)	4
MCL 722.1437	20
MCL 722.1437(1)	2, 21
MCL 722.1437(2)	iv, 2, 5, 10, 12, 14
MCL 722.1437(3)	2, 14, 15
MCL 722.1437(5)	4, 5, 6, 17, 18
MCL 722.1438(3)	19
MCL 722.1443	13, 19, 28
MCL 722.1443(2)	12, 13, 16, 21
MCL 722.1443(2)(d)	14, 15
MCL 722.1443(2)(e)	10
MCL 722.1443(4)	iv, 4, 7, 8, 10, 11, 12, 13, 16, 17, 20, 21, 25, 28, 29
MCL 722.1443(4)(a)	27
MCL 722.1443(4)(d)	23
MCL 722.1443(4)(g)	27
MCL 722.1443(4)(h)	15
MCL 722.1443(5)	15
MCL 722.1443(10)	29
MCL 722.1445	6, 11, 14, 15, 18, 21
MCL 722.1437 (2) – now (4)	2, 6, 17

QUESTIONS PRESENTED

I. Whether Plaintiff's affidavit challenging the Defendant's affidavit of parentage was sufficient under MCL 722.1437(2), and specifically, whether the DNA testing results were sufficient to support the allegation that the affidavit of parentage was based on mistake of fact?

Answer: Under the facts of this case, the DNA testing results were sufficient to support the allegation that the acknowledgment of parentage was based on mistake of fact.

II. Whether a "paternity determination" in MCL 722.1443(4) includes an acknowledgment of parentage?

Answer: This issue has been addressed by the amendment of MCL 722.1443(4), which clarifies/remediates the original provision.

III. Whether, assuming the sufficiency of the Plaintiff's MCL 722.1437(2) affidavit, the circuit court is always required to consider the best-interest factors of MCL 722.1443(4)?

Answer: Assuming that Plaintiff's affidavit is sufficient, the circuit court may enter a revocation order per MCL 722.1443(2) without considering the child's best interests. The circuit court must consider the best interests factors of MCL 722.1443(4) only before it declines to revoke the acknowledgment of parentage. The trial court retains discretion to decide which factors to apply.

IV. Whether, if MCL 722.1443(4) does apply, the plaintiff in a revocation of parentage acknowledgment case must bear the burden of proving, by clear and convincing evidence, that revocation is in the best interests of the subject child?

Answer: The burden falls on the person who is objecting to the revocation of paternity and the level of proof depends on whether that person is also a parent. The plaintiff in a revocation of parentage acknowledgment case does not bear the burden of proving by clear and convincing evidence that revocation is in the best interest of the subject child.

V. Whether the common law equitable doctrine of laches applies here in support of the circuit court's decision to deny the Plaintiff's request for revocation of acknowledgment of parentage?

Answer: Laches applies to the extent that the doctrine is incorporated into the Revocation of Paternity Act.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Family Law Council (“The Council”) is the governing body of the Family Law Section of the State Bar of Michigan. The Section is comprised of approximately 3,000 lawyers in Michigan practicing in the area of family law, and it is the section membership which elects 21 representative members to the Family Law Council.

The Council provides services to its membership in the form of educational seminars, monthly Family Law Journals (an academic and practical publication reporting new cases and analyzing decisions and trends in family law), advocating and commenting on proposed legislation relating to family law topics, and filing Amicus Curiae briefs in selected cases in the Michigan Courts.

The Council, because of its active and exclusive involvement in the field of family law, and as part of the State Bar of Michigan, has an interest in the development of sound legal principles in the area of family law.

The instant case involves the interpretation of the Revocation of Paternity Act [RPA] MCL 722.1431, *et seq*, a complex law enacted in June 2012 which dramatically affects the rights of parents and children and modifies previous law. The Family Law Section presents its position on the issues as requested by this Court in its September 24, 2014 Order granting leave to appeal.

STATEMENT OF FACTS

Amicus Curiae is not providing a separate Statement of Facts and relies on the facts and procedure as set out in the Court of Appeals' Opinion.

ARGUMENT

I. Whether Plaintiff's affidavit challenging the defendant's affidavit of parentage was sufficient under MCL 722.1437(2), and specifically, whether the DNA testing results were sufficient to support the allegation that the affidavit of parentage was based on mistake of fact?

Answer: Under the facts of this case, the DNA testing results were sufficient to support the allegation that the acknowledgment of parentage was based on mistake of fact.

The Revocation of Paternity Act [RPA], MCL 722.1431, *et seq.*, allows a trial court to (1) revoke an acknowledgment of parentage, (2) set aside an order of filiation, (3) determine a “genetic” father is not a father,¹ (4) determine that a child was born out of wedlock, or (5) make a determination of paternity and enter an order of filiation. Under MCL 722.1437(1) a child's mother, acknowledged father,² alleged father,³ or a prosecuting attorney may file an action to revoke an acknowledgment of parentage. An action to set aside an acknowledgment of parentage must be supported by an affidavit that shows *inter alia* mistake of fact in signing the acknowledgment. MCL 722.1437(2) [now subsection (4) as amended]. If the court finds this affidavit “sufficient,” the court must order tissue, blood, or DNA testing. MCL 722.1437(3), [now subsection (5) as amended].

Here, Plaintiff Helton, the alleged father, submitted an affidavit in support of revoking the paternity of the acknowledged father, Defendant Beaman – alleging mistake of fact because DNA test results demonstrated that Helton was the child's biological father. In addition, the Defendants

1 As noted, MCL 722.1438 is a new provision, amended in 2015, concerning men who are incorrectly identified as biological fathers.

2 MCL 722.1432(1) provides that an “[a]cknowledged father” means a man who has affirmatively held himself out to be the child’s father by executing an acknowledgment of parentage under the Acknowledgement of Parentage Act, 1996 PA 305, MCL 722.1001 to 722.1003.”

3 MCL 722.1432(3) provides that an “[a]lleged father” means a man who by his actions could have fathered the child.”

(Beaman and the child's mother) had incorrectly believed that Beaman was the child's biological father when executing the acknowledgment of parentage. *See, Helton v Beaman*, 304 Mich App 97, 104-105; 850 NW2d 515 (2014). The question posed is whether these DNA results were sufficient to support the allegation that the acknowledgment of parentage signed by Beaman was based on a mistake of fact.

The RPA does not define "mistake of fact." In *Bay Co Prosecutor v Nugent*, 276 Mich App 183; 740 NW2d 678 (2007), the Court of Appeals construed a provision (now repealed) of the Acknowledgment of Parentage Act [APA] that permitted a request to set aside an acknowledgment based on mistake of fact. Similar to the RPA, the provision in the APA did not define "mistake of fact." In *Bay Co Prosecutor v Nugent*, *supra* at 189-190, the Court of Appeals turned to other decisions defining the term to support its finding that DNA evidence was sufficient to establish a mistake of fact:

The APA does not define "mistake of fact." But there is no indication of a legislative intent to alter the meaning the term "mistake of fact" has acquired in our law, and thus we turn to other cases that have construed it. *See Ford Motor Co v Woodhaven*, 475 Mich 425, 439-440; 716 NW2d 247 (2006). "Mistake of fact" has been defined as "a misunderstanding, misapprehension, error, fault or ignorance of a material fact, a belief that a certain fact exists when in truth and in fact it does not exist." *Sentry Ins v Claims Co Int'l, Inc*, 239 Mich App 443, 447; 608 NW2d 519 (2000), quoting *Montgomery Ward & Co v Williams*, 330 Mich 275, 279; 47 NW2d 607 (1951). In *Woodhaven*, *supra* at 440, our Supreme Court, quoting Black's Law Dictionary (7th Ed.), held that "mistake of fact" was "[a] mistake about a fact that is material to a transaction." Because we opine that "mistake of fact" is a technical term that has acquired a peculiar meaning under the law, the recent Black's Law Dictionary (8th Ed.) definition of "mistake of fact"--"[a] mistake about a fact that is material to a transaction; any mistake other than a mistake of law"--is most helpful.

Just as with the APA, this definition of mistake of fact applies to the RPA.

Based on the circumstances of this case, both the trial court and the Court of Appeals found mistake of fact. After a hearing, the trial court made a factual finding - affirmed by the Court of Appeals - that both Defendants believed Beaman was the biological father at the time the acknowledgment was signed. The Court of Appeals also affirmed the trial court determination that the DNA test results subsequently showed Helton was the biological father - constituting a mistake of fact related to the signing of the acknowledgment. *Helton, Id.* at 105, 119 (opinions of Judges O'Connell and K. F. Kelly).

The Court of Appeals found Helton's affidavit sufficient under MCL 722.1431(2). *Id.* The RPA does not define the term "sufficient." Without a definition within the Act itself, this Court may turn to other sources. According to Black's Law Dictionary (10th Ed. 2014), sufficient means "adequate; of such quality, number, force, or value as is necessary for a given purpose." Similarly, sufficient evidence is defined as "evidence that is sufficient to satisfy an unprejudiced mind seeking the truth." *Id.* Thus, an affidavit is sufficient if it adequately demonstrates the fact it purports to show. Finding the affidavit sufficient does not require the trial court to set aside the acknowledgment of parentage, but, rather, it permits the court to proceed with genetic testing per MCL 722.1437(5) (as amended). A court may refuse to set aside an acknowledgment of parentage if it would not be in the best interests of the child. MCL 722.1443(4), amended effective March 17, 2015 (*See*, discussion in Issues III & IV, below).

Whether there is a mistake of fact is dependent upon particular facts. For example, DNA results may not be sufficient to establish a mistake of fact if at the time an acknowledgment is signed, a man knew that the mother also had had a relationship with another man and that he might

not be or that he was not the biological father.⁴ Both *Helton* and *Bay County, supra*, 189-190 (revocation under the APA) emphasized the mistaken belief at the time of signing the acknowledgment of parentage that the acknowledged father was the biological father.

Although not raised in this particular case because the affidavit was sufficient, there are potential Constitutional concerns if trial courts determine that some biological fathers - for example those who file an affidavit supported by DNA results – do not satisfy the threshold requirements of MCL 722.1437(2) - now (4). These fathers are precluded from proceeding under the RPA. In such situations, a biological parent's rights are foreclosed by permitting any man to sign an acknowledgment of parentage regardless of that man's biological relationship to the child.⁵

4 In *In Re Moiles*, 495 Mich 944; 843 NW2d 220 (2014), this Court reversed the Court of Appeals in an order in lieu of granting leave, finding that the parties' knowledge of the possibility that respondent was not the biological father of the child at the time of signing the acknowledgment precluded a finding of either fraud or misrepresentation under MCL 722.1437(2). This Court's order in *Moiles* did not address the question of mistake of fact.

5 “[The] fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v Eldridge*, 424 US 319, 333 (1976), quoting *Armstrong v Manzo*, 380 US 545, 552 (1965). See also, *Hisaw v Hayes*, 133 Mich App 639, 644, 350 NW2d 302 (1984) (due process requires that litigant be afforded a determination of disputed questions of fact based on evidence). In *Board of Regents v Roth*, 408 US 564, 570-571 (1972), the Supreme Court stated that although “a weighing process has long been a part of any determination of the form of hearing required in particular situations . . . to determine whether due process requirements apply in the first place, we must look not to the ‘weight’ but to the nature of the interest at stake . . . to see if the interest is within the Fourteenth Amendment’s protection . . .” (Emphasis added). As stated in *Smith v Organization of Foster Families for Equality & Reform*, 431 US 816, 846 (1977) (comparing state created foster-care based claims to children to the constitutionally based natural parent-child protections), constitutionally protected parent-child liberty, privacy, and association interests “derive from blood relationship . . . and basic human right.” See also, *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (opinion by O’Connor, J. (2000) (citing *Smith* and emphasizing that the parent-child liberty interest is perhaps the oldest of the fundamental liberty interests); *Department of Human Servs v Laird (In Re Sanders)*, 495 Mich 394; 852 NW2d 524 (2014) (the right to parent one’s children is “essential to the orderly pursuit of happiness by free men,” citing *Meyer v Nebraska*, 262 US 390, 399; 43 S Ct 625; 67 L Ed 1042 (1923) and *Troxel, supra*).

As stated by Justice White in *Lehr v Robertson*, 463 US 248, 268-271 (1983) (dissent), the “biological connection” is itself a relationship that creates a protected interest. Thus the “nature” of the interest is the biological parent-child relationship; how well developed that relationship has become goes to its “weight,” not its “nature.”

There should be a low bar for meeting the sufficiency test, and moving a man forward to the testing requirements in MCL 722.1437(5) (as amended), and towards revocation and establishment of paternity. *Roth, supra*.

In the instant case, the DNA results supported the affidavit, which was sufficient for purposes of MCL 722.1437(2) [now (4)].⁶

And, there is an argument that any bar to permitting a man who has proven he is a biological father from establishing paternity is unconstitutional. *Smith, supra. In Re Clausen*, 442 Mich 648; 502 NW2d 649 (1993) (right of unwed father to establish paternity and relationship with his child); *Lehr, supra*, White, J. at 272 (“Whether *Lehr*’s interest is entitled to constitutional protection does not entail a searching inquiry into the quality of the relationship but a simple determination of the fact that the relationship exists - - a fact that even the majority agrees must be assumed to be established”).

⁶ As further discussed in Issue IV, *infra*, Mr. Helton satisfied the requirements of MCL 722.1437(5) by showing that he is a father - a biological father - by clear and convincing evidence. *See also*, MCL 722.1445.

II. Whether a “paternity determination” in MCL 722.1443(4) includes an acknowledgment of parentage?

Answer: This issue has been addressed by the amendment of MCL 722.1443(4), which clarifies/remediates the original provision.

Public Act 374 of 2014 amends MCL 722.1443(4), effective March 17, 2015. The amendment provides that “a court *may refuse* to enter an order setting aside a paternity determination, revoking an acknowledgment of parentage, determining that a genetic father is not a child's father, 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*”⁷ (Emphasis added). This new law adds “an acknowledgment of parentage” to the provision, clarifying that a trial court may refuse to revoke an acknowledgment - as well as other determinations of paternity - based upon the best interests of a child.

As stated in *Lenawee County v Wagley*, 301 Mich App 134, 174-175; 836 NW2d 193 (2013), the general rule is that statutes should be applied prospectively, but there is an *exception* where a statute is either (i) procedural in nature, that is, it applies to procedural matters rather than to substantive rights; or (ii) if it is remedial in nature, that is, it “corrects an existing oversight in the law, redresses an existing grievance, introduces regulations conducive to the public good, or intends to reform or extend existing rights.” In *Rookledge v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954), this Court quoted the following passage from 50 Am Jur, Statutes, §15, pp 33-34, which elucidates the meaning of remedial and procedural statutes:

⁷ Factors (a)-(c) of §1443(4) apply only to presumed fathers. Factors (d)-(h) apply to other fathers, including alleged fathers. Factor (h) is a catch-all factor. These are factors that the legislature has determined are relevant to denying revocation of paternity - and are not the same as the child custody best interest factors, MCL 722.23, contained in the Child Custody Act, MCL 722.21, *et seq.*

Legislation which has been regarded as remedial in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the public generally. Another common use of the term 'remedial statute' is to distinguish it from a statute conferring a substantive right, and to apply it to acts relating to the remedy, to rules of practice or courses of procedure, or to the means employed to enforce a right or redress an injury. It applies to a statute giving a party a remedy where he had none or a different one before.

The amendment should have retroactive/remedial effect. The original MCL 722.1443(4), did not specify that an acknowledgment of parentage, however, under both the APA and the Paternity Act, an unrevoked acknowledgment of parentage constitutes a paternity determination for all purposes without further adjudication under the Paternity Act.

MCL 722.1003(1) of the Acknowledgment of Parentage Act ("APA," MCL 722.1001, *et seq.*) 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 (Emphasis added).

MCL 722. 1004 of the APA provides that:

An acknowledgment signed under this act establishes paternity, and the acknowledgment may be the basis for court ordered child support, custody, or parenting time without further adjudication under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled Laws. The child who is the subject of the acknowledgment shall bear the same relationship to the mother and the man signing as the father as a child born or conceived during a marriage and shall have the identical status, rights, and duties of a child born in lawful wedlock effective from birth (Emphasis added).

Under both MCL 722.1003 and MCL 722.1004 of the APA, an unrevoked acknowledgment legally establishes paternity and confers the status of natural and legal father. Such an acknowledgment establishes paternity for purposes of the Paternity Act without further adjudication under the Paternity Act, and “may be the basis for court ordered child support, custody or parenting time.”

The Paternity Act, MCL 722.711, *et seq.*, is consistent with the APA and contains a specific bar to bringing a paternity action where there is an existing father under the Acknowledgment of Parentage Act. MCL 722.714(2) states:

2) An action to determine paternity shall not be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act, or if the child's paternity is established under the law of another state (Emphasis added).

MCL 722.711 specifies that an action to “determine” paternity shall not be brought if there is an acknowledgment under the APA. *See also*, MCL 722.717(1)(acknowledgment of paternity required basis for order of filiation).⁸

⁸ MCL 722.717(1) of the Paternity Act provides that:

(1) In an action under this Act, the court shall enter an order of filiation declaring paternity and providing for the support of the child under 1 or more of the following circumstances:

(a) The finding of the court or the verdict determines that the man is the father,

(b) **The defendant acknowledges paternity either orally to the court or by filing with the court a written acknowledgment of paternity (Emphasis added).**

MCL 722.714(2) provides that an action cannot be brought under the Paternity Act if there is an acknowledgment of parentage under the APA (thus there may be some inconsistencies between the sections), however, section 717 does indicate that an acknowledgment results in an order of filiation - and both have the effect of a paternity determination.

The issue of whether an acknowledgment falls within a “paternity determination” was addressed in *In Re Moiles*, 303 Mich App 59; 840 NW2d 790 (2013), rev’d 495 Mich 944 (2014).⁹ But this Court’s order in *In Re Moiles*, 495 Mich 944 (2014) found that the Court of Appeals had erred in addressing the applicability of MCL 722.1443(4) because the party’s affidavit had not met the threshold requirements of MCL 722.1437(2). However, the Court of Appeals at the time of its decision in *Helton* (prior to this Court’s reversal in *Moiles*) was bound by its decision in *Moiles*. In attempting to find an appropriate decision-making standard in denying revocation of an acknowledgment of parentage restricted by *Moiles*, the Court of Appeals in *Helton* applied the best interest factors of the Child Custody Act, MCL 722.21, *et seq.*

Moiles has since been reversed and the application of the Child Custody Act best interest factors (MCL 722.23) – which apply to custody cases – need not be applied in refusing to revoke an acknowledgment. Acknowledgments are treated as a court ordered determination under the Paternity Act and for purposes of custody, parenting time and support.

⁹ The Court of Appeals in *Moiles* held that an acknowledgment was *not* included as a paternity determination under MCL 722.1443(4). In doing so, the Court of Appeals referred to §1443(2), an earlier provision which provides:

(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 (now MCL 722.1443(2)(e) (Emphasis added).**

The *Moiles* court found that this reference to the Paternity Act in the context of what a trial court could do presumably after revoking one man’s paternity and issuing a new order controlled the definition of what constituted a paternity determination in subsection 1443(4).

Further, the RPA does not limit or define the term “paternity determination” - that exact term is only used in §1443(4).¹⁰ Acknowledgments are included within the term.

The amendment should have retroactive/remedial effect. While the original MCL 722.1443(4) did not specifically refer to the revocation of an acknowledgment of parentage, in light of the recent amendment, it appears that acknowledgments of parentage may have been unintentionally omitted in the original MCL 722.1443(4).

¹⁰ The reference to the Paternity Act in §1443(2)(d) [now (e)] (discussed by the Court of Appeals in *Moiles, supra*, rev'd 495 Mich 944), applies to what a court may do. Under that section, a court may revoke an acknowledgment of parentage, set aside an order of filiation or a paternity order or determine that a child was born out of wedlock - all revoking the paternity of one man. The trial court may then determine paternity of another man and enter an order of filiation. Subsection (d) [now (e)] includes a more general reference to a determination of paternity and a specific reference to an order of filiation under the Paternity Act. The reference to the Paternity Act is appropriate because MCL 722.717 specifically concerns an order of filiation. But the reference in subsection (2)(d) [now (e)] is not necessary to or related to subsection 1443(4).

Section 1443(2) refers to what a court may do, including specifically entering an order of filiation under the Paternity Act; Section 1443(4) contains the general term paternity determination. *See also*, MCL 722.1445 (setting out what a trial court may do). MCL 722.1439 specifically defines determinations under that section as court orders based on a child who “has an affiliated father and paternity was determined based on the affiliated father’s failure to participate in the court proceedings.” The definition of determination for that particular section does not apply to the general use of the term “paternity determination” in §1443(4), or the general reference to “determination” contained in both MCL 722.1443(2)(d) [now (e)] or MCL 722.1445.

In any event, *Moiles’* importation of the Child Custody best interest factors is not necessary. The original MCL 722.1443(4) included acknowledgments of parentage. There still exists however the argument that any restrictions on establishing a biological father’s paternity violates the Constitution. *See Smith, supra; Clausen; Lehr, supra* (discuss in Footnote 4, Issue I).

III. Whether, assuming the sufficiency of the plaintiff's MCL 722.1437(2) affidavit, the circuit court is always required to consider the best-interest factors of MCL 722.1443(4)?

Answer: Assuming that Plaintiff's affidavit is sufficient, the circuit court may enter a revocation order per MCL 722.1443(2) without considering the child's best interests. The circuit court must consider the best interests factors of MCL 722.1443(4) only before it declines to revoke the acknowledgment of parentage. The trial court retains discretion to decide which factors to apply.

Before a trial court can deny a motion to revoke paternity, the Revocation of Paternity Act requires that the court to consider a child's best interests. MCL 722.1443(4) (setting out factors). In analyzing the best interests of the child, the trial court has discretion because the statute provides a list of factors that the trial court "may" consider. Specifically, this section of the Act¹¹ provides:

(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. The court may consider the following factors:

- (a) Whether the presumed father is estopped from denying parentage because of his conduct;
- (b) The length of time the presumed father was on notice that he might not be the child's father;
- (c) The facts surrounding the presumed father's discovery that he might not be the child's father;
- (d) The nature of the relationship between the child and the presumed or alleged father.
- (e) The age of the child;
- (f) The harm that may result to the child.

¹¹ As discussed in Issue II, MCL 722.1443(4) has been amended to include "an acknowledgment of parentage" and "determining that a genetic father is not a child's father[.]"

(g) Other factors that may affect the equities arising from the disruption of the father-child relationship;

(h) Any other factor that the court determines appropriate to consider.

MCL 722.1443(4) (emphasis added).

The Legislature did not mandate that the trial court consider the best interests factors of MCL 722.1443(4) in all cases. The provision requires only that a trial court consider the factors of MCL 722.1443 before it can *deny* the request to revoke paternity. The statute is written in mandatory terms because the trial court “may refuse” to revoke paternity, but only “if the trial court finds evidence that the order [revoking paternity] would not be in the best interest of the child.” MCL 722.1443(4).

There is no requirement in the RPA that requires the trial court to consider the best interests of the child once it is satisfied with the sufficiency of the initial affidavit, and biological testing confirms the lack of a biological connection between the legal father and the child. A trial court need only consider best interests to “refuse to enter an order” revoking paternity. MCL 722.1443(4). There is no language inviting or requiring the trial court to consider the best interests of the child if the court is going to proceed with entry of a revocation order and establish paternity of another man. Based on the unambiguous statutory language of MCL 722.1443(2), a trial court may proceed with entry of a revocation order under without consideration of the best interest factors enumerated in MCL 722.1443(4). (*See*, discussion, Issue IV, below).

The statutory language which requires consideration of the best interests of the child only if the court intends or desires to deny the revocation of paternity, as opposed to in all cases, is consistent with the preference for natural fathers in the Revocation of Paternity Act. In enacting the

Revocation of Paternity Act, the Legislature specifically intended to lower the hurdles facing biological fathers who seek the opportunity to establish legal parentage despite it being conferred to another. There are fewer requirements or restrictions on revoking the paternity of a legal parent who is not biologically-related to the child, in favor of a man who is the biological father of the child. The Legislature provided several indicia of its preference towards biological fathers in the RPA:

- The Act permits revocation of paternity that was not previously permitted by common law. Prior to the Act, an alleged father who wanted to revoke a child's paternity and establish his own paternity had no recourse, because he did not have standing to pursue such an action prior to the RPA. *Sprenger v Bickle*, 302 Mich App 400, 409; 839 NW2d 59 (2013); *see also*, *Girard v Wagenmaker*, 437 Mich 231, 242-43; 470 NW2d 372 (1991); *Barnes v Jeudevine*, 475 Mich 696, 705, 707; 718 NW2d 311 (2006). The Act specifically allows an alleged father to supply an affidavit that the acknowledgment of paternity was entered by mistake or fraud or other grounds. MCL 722.1437(2). If the affidavit is sufficient, the statute directs the trial court to order testing to confirm that the child is the actual biological issue of the alleged father. MCL 722.1437(3). The trial court has the authority to revoke paternity and declare paternity of the biological father. MCL 722.1443(2)(d); *see also*, MCL 722.1445.
- The legislature evinced its preference for biological parents, for instance, by allowing an alleged father to supply an affidavit that the acknowledgment of paternity was entered by mistake or fraud. MCL 722.1437(2). The trial court is directed to order DNA testing to confirm that the child is the actual biological issue of the

alleged father. MCL 722.1437(3). Upon this showing, the Legislature granted the trial court the authority to declare paternity of the biological father. MCL 722.1443(2)(d); *see also*, MCL 722.1445.

- For all cases under the RPA, the statute directs that “the court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act.” MCL 722.1443(5). In light of the uphill battle historically faced by alleged fathers, the requirement for DNA testing is groundbreaking.

With the enactment of the RPA, the Legislature has eased the process for alleged fathers. Although the trial court does not have to consider the best interests of the child before revoking paternity under the Act in favor of a biological parent, the best interests of the child would still come into play at a subsequent custody and parenting time phase of the proceeding. At this point, the Child Custody Act would apply. The Child Custody Act mandates consideration of specified best interest factors in determining custody and parenting time. *See*, MCL 722.23 (custody best interest factors); MCL 722.27a (additional parenting time factors).

The Revocation of Paternity Act give trial courts broad discretion to consider whatever factors the court deems relevant. For example, the trial court may consider “[a]ny other factor that the court determines appropriate to consider.” MCL 722.1443(4)(h). This best interest factor contained in subsection (h) would allow the trial court, for example, to consider any of the best interest factors under the Child Custody Act, MCL 722.23, if applicable to the particular facts of the case.

Thus, a trial court is required to consider each and every best interest factors as articulated in (a) through (h) when denying revocation. Cf. MCL 722.27(1)(c) (mandating that the trial court consider the child's best interest before modifying the child's established custodial environment); MCL 722.27a (mandating that the trial court's award of parenting time "shall be grated in accordance with the best interests of the child). In custody cases, this statutory language has been interpreted to mean that the trial court is obligated to consider each and every one of the best interest factors of MCL 722.23 before modifying the child's established custodial environment. *See, e.g., Pierron v Pierron*, 486 Mich 81, 92-93; 782 NW2d 480 (2010) (noting that the trial court must consider all of the best interests factors for a change of custody case, but only needs to consider the relevant best interests factors if the contemplated order would not result in a change in the child's established custodial environment). In contrast, the RPA allows discretion in application of specific factors.

In summary, a trial court is not required to consider the best interests factors in MCL 722.1443(4) prior to entering a revocation order per MCL 722.1443(2). However, if a court is refusing to enter a revocation order, then it must consider the best interests of the child per MCL 722.1443(4). When considering the best interests of the child, the court may consider the factors specified in MCL 722.1443(4), but has broad discretion to consider additional factors as well.

IV. Whether, if MCL 722.1443(4) does apply, the Plaintiff in a revocation of parentage acknowledgment case must bear the burden of proving, by clear and convincing evidence, that revocation is in the best interests of the subject child?

Answer: The burden falls on the person who is objecting to the revocation of paternity and the level of proof depends on whether that person is also a parent. The plaintiff in a revocation of parentage acknowledgment case does not bear the burden of proving by clear and convincing evidence that revocation is in the best interest of the subject child.

There are four types of “fathers” whose pre-established legal parentage is at risk of revocation through application of the Revocation of Paternity Act. *See* MCL §722.1437 (acknowledged fathers), 722.1438 (“genetic” fathers¹²), 722.1439 (affiliated fathers), and 722.1441 (presumed fathers). Alleged fathers, which are the fifth category of fathers in MCL 722.1433, may initiate RPA actions but are not (by definition) capable of being a defending party.

As discussed in Issue I, an alleged father such as Mr. Helton must first file an affidavit under MCL 722.1437(2) [now (4)] when seeking to revoke the paternity of an acknowledged father. The initial burden concerning the affidavit is on the plaintiff. If deemed sufficient - and Mr. Helton’s was - the party proceeds to §1437(5). MCL 722.1437(5) provides that:

(5) If the court in an action for revocation under this section finds that an affidavit under subsection (4) is sufficient, the court shall order blood or tissue typing or DNA identification profiling as required under section 13(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.

Under MCL 722.1437(5) (amended numbering), if the court has found the affidavit of subsection (4) sufficient, the court must order genetic testing. The burden again on the plaintiff - here the alleged

12 This is a narrow category of fathers who are not biological fathers and their paternity has been based on the following: inaccurate genetic testing, genetic material was not available to the mother, or a man who has DNA identical to the genetic father is the child's father (the “identical” twin scenario). MCL 722.1438(2).

father - to show that the acknowledged father is not the “father” by clear and convincing evidence. The placement of this last sentence concerning clear and convincing evidence - after the genetic testing requirement - indicates its relation to proving a biological relationship to the child (by showing he is the biological father and that the acknowledged father is not).

MCL 722.1445 provides that:

If an action is brought by an *alleged* father who proves by clear and convincing evidence that he is the child's father, the court *may* 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 (Emphasis added).

The language in this provision requiring proof by clear and convincing evidence mirrors the language in MCL 722.1437(5).¹³ Both provisions essentially refer to the same thing - a man proving by clear and convincing evidence that he is the biological father. Reading the provisions together, once an alleged father has proved by clear and convincing evidence that the acknowledged father is not a biological father based on genetic testing under §1437(5), and concurrently that he is the “biological” father by clear and convincing evidence under §1445, the trial court may revoke paternity. MCL 722.1445 further provides that such a man need not file an action under the Paternity Act, because the trial court has the authority to enter an order of filiation for that man under MCL 722.717. As discussed in Issue I, *supra*, the DNA submitted by Helton supports that he is the biological father by clear and convincing evidence under both provisions.

¹³ "When undertaking statutory interpretation, the provisions of a statute should be read reasonably and in context." *McCahan v Brennan*, 492 Mich 730, 739; 822 NW2d 747, 752 (2012).

The language from these provisions – §1437 & §1445¹⁴ – specifically pertains to proving a biological connection and should not be relied upon in determining the best interests under §1443(3).

A trial court may refuse to revoke paternity, but must consider best interest factors before doing so. MCL 722.1443 is entitled Court Action and subsection (4) provides that:

A court may refuse to enter an order setting aside a paternity determination, revoking an acknowledgment of parentage, determining that a genetic father is not a child's father, 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. The court may consider the following factors:

- (a) Whether the presumed father is estopped from denying parentage because of his conduct.
- (b) The length of time the presumed father was on notice that he might not be the child's father.
- (c) The facts surrounding the presumed father's discovery that he might not be the child's father.
- (d) The nature of the relationship between the child and the presumed or alleged father.
- (e) The age of the child.
- (f) The harm that may result to the child.
- (g) Other factors that may affect the equities arising from the disruption of the father-child relationship.
- (h) Any other factor that the court determines appropriate to consider.¹⁵

¹⁴ See also MCL 722.1438(3) containing similar language.

¹⁵ Factors (a)-(c) pertain to presumed fathers only; factors (d)-(h) apply to other fathers, including alleged fathers. Factor (h) is a catch-all factor which permits a trial court to consider any other factor it determines appropriate and presumably would allow a court to consider the best interest factors of the Child Custody Act, MCL 722.23 if it deemed certain of those factors appropriate.

The burden of producing evidence is not invariably allocated to the pleader of the fact to be proved. That burden may be otherwise allocated by the Legislature or judicial decision based, among other factors, on an estimate of the probabilities, fairness and special policy considerations, and similar concerns may justify the creation, judicially or by law, of a presumption to aid the party who has the burden of production. *Johnson v Secretary of State*, 406 Mich 420, 432; 280 NW2d 9 (1979). While the Act does not specify, it would not be appropriate that the plaintiff – as the person seeking revocation – would be the party responsible for presenting the court with evidence opposing his position, i.e. that it is not in the best interest of the child to enter the revocation order. It would be the person objecting to revocation who should bear the burden of proof under MCL 722.1443(4) that revocation is not in the best interest of the child once a plaintiff satisfies the *prima facie* requirements as set out in section MCL 722.1437.¹⁶

By definition, "prima facie evidence" is "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced." Black's Law Dictionary (9th ed.), pp. 638–639. "'Prima facie evidence is such as in the judgment of the law is sufficient to establish the fact, and, if un rebutted, remains sufficient for that purpose.'" *Dep't of Envtl. Quality v. Worth Twp.*, 491 Mich. 227, 256, 814 N.W.2d 646, 662 (2012).

¹⁶ In Michigan, "there are two aspects of the 'burden of proof'--the burden of persuasion and the burden of going forward with the evidence." *Satterfield v Bd of Education of the Grand Rapids Public Schools*, 219 Mich App 435, 438; [699] 556 NW2d 888 (1996), quoting *Widmayer v Leonard*, 422 Mich 280, 290; 373 NW2d 538 (1985).

As in this case, once an alleged father has submitted a sufficient affidavit and proved by clear and convincing evidence that the acknowledged father is not a biological father based on genetic testing under §1437(5) (and that he is), the trial court may revoke paternity pursuant to MCL 722.1443(2). *See also*, MCL 722.1445 (order of filiation for alleged father upon such proof). Thus, if the plaintiff in a revocation action satisfies the foundational requirements to obtain a revocation order - including verifying the biological connection – the prima facie case is satisfied, and the court must enter a revocation order¹⁷ in the absence of contrary evidence being submitted by the responding party. It is only after the prima facie case is made that a responding party would produce evidence opposing revocation. Section 1443(4) only requires a best interest analysis if revocation is going to be refused - not if it is going to be granted. *See*, Issue III, *supra*. And, a court is only required to state its reasons for refusing revocation on the record. *See*, MCL 722.1443(4).

With regard to assigning the burdens of proof and persuasion, it has been said that:

There is no key principle governing the apportionment of the burdens of proof. Their allocation, either initially or ultimately, will depend upon the weight that is given to any one or more of several factors, including: (1) the natural tendency to place the burdens on the party desiring change, (2) special policy considerations such as those disfavoring certain defenses, (3) convenience, (4) fairness, and (5) the judicial estimate of the probabilities. [*McCormick, supra*, §337, p 952.]

17 At this point, under Justice White's opinion in *Lehr*, Constitutional rights would attach based on the "nature" of the biological relationship. However, the extent a man may exercise those rights, however, go to "weight" and it is here that best interest considerations would come into play.

It should also be noted that there are other restrictions besides the best interest considerations concerning seeking revocation. The RPA - after the initial one year period after enactment - restricts the filing of an actions to a certain time period. For example, MCL 722.1437(1) provides that :

An action under this section shall be filed within 3 years after the child's birth or within 1 year after the date that the acknowledgment of parentage was signed, whichever is later. The requirement that an action be filed within 3 years after the child's birth or within 1 year after the date the acknowledgment is signed does not apply to an action filed on or before June 12, 2013.

Brown v Beckwith Evans Co., 192 Mich App 158, 168; 480 NW2d 311 (1991); *see also*, *Diedrich v Harten*, 103 Mich App 126, 131; 302 NW2d 618 (1981) (“Any allocation of the burden of proof in a given case should be based on such factors as an estimation of the probabilities, fairness, and special policy considerations.”); *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 718; 202 NW2d 727 (1972) (placing of the burden of proof is “merely a question of policy and fairness based on experience in the different situations,” quoting 9 Wigmore, Evidence, §2486, p 275).¹⁸

Once there is such proof that an alleged father is the biological father, the burden of production of evidence and persuasion would the responsibility of the person opposing revocation and arguing that revocation is not in the child’s best interest. *See, Brown, supra* (burden on opposing party to raise defensive provision).

This leaves the question of what evidentiary standard applies to proving that revocation is not in the best interests of the child. The purpose of the RPA is to revoke the legal parentage of non-biological fathers. It provides a mechanism for biological fathers, among others, to seek revocation – an expansion from previous law. These revocation cases “introduce a significantly heightened intrusion upon a parent's fundamental right to parent because they involve an all-or-nothing proposition: whether a parent's right to be a parent and make decisions regarding his or her child's upbringing is permanently severed.” *See, Hunter v Hunter*, 484 Mich 247, 268; 771 NW2d 694

¹⁸ “However, some general rules do exist. Of particular relevance here is the general rule that a party claiming the benefits of a statutory exception bears the burden of proving that section applicable. *Diedrich, supra*; 3 Callaghan's Michigan Pleading & Practice (2d Ed.), §36.123, p 592. Closely related to this is the vintage and somewhat mechanistic rule that **where a party relies upon a statute for a claim, and the statute contains an exception not found in the “enacting clause,” i.e., found in a later section or separate statute, the party need not plead and prove that the case does not come within the exception; rather, the opposing party must raise the exception, it being defensive in nature.** Anno: Burden of allegation and proof in civil cases as regards exception in statute, 130 ALR 440, 443; *People v Grabiec*, 210 Mich 559, 561; 178 NW 55 (1920); *Myers v Carr*, 12 Mich 63, 71 (1863). . .” *Brown, supra* at 168-169 (emphasis added). *See also*, 306 Mich App 369, 382; 856 NW2d 394 (2014).

(2009) (custody actions between parents and third parties). A successful revocation action results in an order that will either irrevocably sever a pre-established legal father's parentage, permanently foreclose a biological father from being recognized as his child's father, or forcing a non-biological father to remain a legal father for a child who he has no interest in raising. As in this case, by raising a §1443(4) best interests objection to the entry of a revocation order, the respondent poses a threat to a biological father's *opportunity* to establish paternity and be recognized as a biological and legal father.

Discussions about what burdens of proof should (or should not) be carried by the respective parties in revocation cases often boil down to a debate over whether a biological father's intrinsic right to raise his child is more important than maintaining the established custodial environment.¹⁹ The lead opinion in *Helton v Beaman*, *supra*, 304 Mich App 97; 850 NW2d 515 (2014), emphasized the existence of an established custodial environment in the home of the child's mother and the acknowledged father. However, it must be again emphasized that the RPA provides for revocation of parentage and the establishment of paternity - it does not provide for custody or parenting time to a successful biological father in a case such as this. A biological connection offers a natural father “**an opportunity**” to develop a relationship with his child, but it is not a guarantee. *Lehr v Robertson*, 463 US at 262. The RPA only addresses this “opportunity” and does not provide custodial rights.

¹⁹ The custodial environment is a consideration in custody cases under the Child Custody Act, *Heltzel*, *supra*, but is not specified under the RPA. The closest factor is MCL 722.1443(4)(d) the nature of the relationship between the child and the presumed father, applicable in cases involve presumed fathers. However under the catch-all factor (h), a trial court may consider other “factors” when addressing revocation of an acknowledged father.

There are only two burden of proof in civil matters, the “more likely than not” standard (i.e. preponderance of the evidence standard), and the “clear and convincing” standard. Generally, the heightened clear and convincing evidentiary standard is applied when there is the potential to strip a parent of parentage or deny the right to exercise parentage; this heightened standard recognizes and protects the ability to exercise such a fundamental right. *See, e.g. Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (in custody cases between third persons and biological parents, balancing a biological parent’s rights against the established custodial environment with a third person - requiring a third person to prove their claims to custody by clear and convincing evidence under the Child Custody Act best interest factors); *Hetzel v Hetzel*, 248 Mich App 1, 22-23 (2001), lv. den. 465 Mich 942; 639 NW2d 256 (2001) (clear and convincing evidentiary level of proof applied to custody determinations between third parties and parents).²⁰

It would be inappropriate for the non-biological legal father to be able to foreclose the opportunity of a biological father to have his parentage legally recognized (resulting from the signing of an acknowledgment by the non-biological father) based on a showing that it is “more likely than not” that it is in the best interests of the child to maintain the legal father's parentage.²¹

20 Tests which involve tension between the natural parent and established custodial environment presumptions must lean in favor of the parent in order to pass Constitutional muster. *Hetzel, supra* at 23; *Hunter, supra*.

21 A number of opinions have conditioned the Constitutional protection of the intrinsic human right to participate in the care and custody of one's biological child on the level of participation the biological father has had in the child's life. This Court, in *In Re Clausen*, 442 Mich 648; 502 NW2d 649 (1993) reviewed United States Supreme Court decisions regarding the denial of an unwed father's rights in terms of seeking custody or parenting time, noting that while some of those cases place limits on the rights of natural parents, including unwed fathers, those cases involve litigation pitting one natural parent against the other, for example, when a step-father lives with a child's mother (who is a natural parent). Those cases address attempts at custodial rights or contact, not the basic establishment of paternity. And, to the extent the cases involve natural parent versus natural parent, the parties are on equal Constitutional footing vis-a-vis each other in terms of custody. The *Clausen* court echoed the Iowa trial court that an unwed father who has not had a custodial relationship (such as Daniel Schmidt in the *Clausen* case), nevertheless has a constitutionally protected interest in establishing that relationship. *Id* at 684. *See, Smith v OFFER, supra* (comparing constitutionally protected parent-child liberty, privacy, and association interests “derive[d] from blood relationship . . . and basic human right” to relationships

Requiring an elevated burden of production in cases involving parental rights is consistent with the United States Supreme Court's decision in *Santosky v Kramer*, which recognized that:

Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss.

Santosky v Kramer, 455 US 745, 758; 102 S Ct 1388, 1397, 71 L Ed 2d 599 (1982). As a revocation action has serious and lifelong consequences for both the parties and children involved - including as here denying revocation and the establishment of paternity, the application of the more stringent evidentiary burden is appropriate as a basic due process consideration. *See, e.g. Mathews v Eldridge, supra* (Issue I).

Thus, the burden in this case is not on the Plaintiff to show - by clear and convincing evidence - that revocation is not in the best interest of the child. Where the respondent chooses to rebut the presumption in favor of revocation, the respondent must present evidence that entry of the revocation order is not in the child's best interests as detailed in MCL 722.1443(4) by clear and

based on state contract). *Lehr, supra*.

A biological father's right to paternity often paled in comparison to that of a presumed father whose parentage stemmed from a marital relationship to the child's mother. *See, Michael H v Gerald D*, 491 US 110 (1989); *Sinicropi v Mazurek*, 273 Mich App 149; 729 NW2d 256 (2006). This statement of law, however, stems from the evaluation of the constitutionality of statutes which give preference to presumed fathers in the absence of statutes that provide avenues for unwed biological fathers to obtain paternity of children born to married mothers. The purpose of the Revocation of Paternity Act is to revoke the legal parentage of non-biological fathers. It specifically permits the intrusion into the "sanctity" of marriage, and specifically permits the bestowing of legal parentage upon an alleged father in cases against presumed fathers. There is no United States Supreme Court case which evaluates the comparative burdens of presumed and putative fathers in the presence of a State statute such as Michigan's Revocation of Paternity Act.

convincing evidence, an evidentiary standard which recognizes the fundamental nature of the right involved - involving revocation of and establishment of paternity and its attendant opportunities.²²

²² The Family Law Council is not taking a position at this time as to the evidentiary burden a responding legal father must bear when there is no identifiable alleged father.

V. Whether the common law equitable doctrine of laches applies here in support of the circuit court's decision to deny the Plaintiff's request for revocation of acknowledgment of parentage?

Answer: Laches applies to the extent that the doctrine has already been incorporated into the Revocation of Paternity Act.

The doctrine of laches is a common law defense prompted by a plaintiff's failure to do something that should have been done under the circumstances; or a failure to claim or enforce a right at the proper time. "The defense, to be raised properly, must be accompanied by a finding that the delay caused some prejudice to the party asserting laches and that it would be inequitable to ignore the prejudice so created. The defendant bears the burden of proving this resultant prejudice." *Attorney General v PowerPick Player's Club of Mich, LLC*, 287 Mich App 13, 51; 783 NW2d 515 (2010). "If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches" and may simply "leave the parties where it finds them." *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013).

Among the many equitable concepts already incorporated into the Revocation of Paternity Act, the Legislature included a list of statutory criteria that the court may consider when determining whether to deny a motion to set aside a paternity determination. These factors encompass several equitable considerations, the very same considerations that would very likely be considered if the doctrine of laches were to be applied, including, "whether the presumed father is estopped from denying parentage because of his conduct" and "other factors that may affect the equities arising from the disruption of the father-child relationship." MCL 722.1443(4)(a), (g).

As such, although the Act does not specifically prohibit the assertion of the common law defense of laches, it would be redundant and unnecessary for a party to assert laches because the factors listed in MCL 722.1443(4) already allow the court to consider whether there was a lack of diligence of petitioning party, and to consider the prejudicial effect of that lack of diligence (if any) on the child and the relationship between the child and the presumed the father. Therefore, the common law doctrine of laches, as an equitable defense, may apply to the Revocation of Paternity Act at any time.

In this particular case, the equitable factors in MCL 722.1443(4), would likely weigh in favor of denying the plaintiff, Mr. Helton, relief, despite the fact that he timely filed under the Act. In this case, Mr. Helton suspected that he was the child's father from the start of the mother's pregnancy. Evidence was presented that he sat down with the mother and Mr. Beaman to discuss the ramifications of the likelihood of his paternity. Nevertheless, plaintiff failed to file a notice of intent to claim paternity, as is allowed under MCL 710.33(1). He obtained a genetic test two months after the child's birth, receiving the results proving his paternity, three years later, yet still did almost nothing to hold himself out to be an involved father of the child, but allowing another man, Mr. Beaman, to do so. While there were some obstacles in the way of him further pursuing standing in the matter, ultimately from the time before the child was born until she was seven years old, Mr. Helton apparently took no action to establish paternity based on the Court of Appeals opinion.

Subsection (10) of MCL 722.1443 prevents common law actions after two years from the effective date of the act. The plain language of subsection (10), however, does not preclude the assertion of common law defenses. The common law doctrine of laches is an equitable defense. As

such, a party is not precluded by MCL 722.1443(10) from asserting the common law doctrine of laches. An equitable defense can be brought in an action, even if not directly referenced in a statute. *Eberhard v Harper-Grace Hospitals*, 179 Mich App 24, 36; 445 NW2d 469 (1989); *Attorney General v Hartkins*, 257 Mich App 564, 568-572; 669 NW2d 296 (2003).

Even though a party is not specifically prohibited from raising the doctrine of laches as an equitable defense, it would be redundant to do so in the cases of presumed fathers because the factors as set forth in MCL 722.1443(4) are carefully crafted to consider the very circumstances wherein a defense of laches might apply. Specifically, factors (a)-(d) of MCL 722.1443(4) ask the court to consider: (a) Whether the presumed father is estopped from denying parentage because of his conduct; (b) the length of time the presumed father was on notice that he might not be the child's father; (c) the facts surrounding the presumed father's discovery that he might not be the child's father; and (d) The nature of the relationship between the child and the presumed or alleged father. Additionally, in cases involving presumed fathers, acknowledged fathers, alleged fathers, and affiliated fathers, the court may also consider the age of the child, the harm that may result to the child; other factors that may affect the *equities* arising from the disruption of the father-child relationship; and any other factor that the court determines appropriate to consider.

RELIEF

The Family Law Section requests that this Court consider the arguments presented in this brief.

Respectfully submitted,

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