STATE OF MICHIGAN
IN THE SUPREME COURT
(On Application for Leave to Appeal from the Published Decision of the Court of Appeals, Sawyer, P.J., O'Connell & Kelly, J.J.)

MATTHEW HELTON,
Plaintiff-Appellant,
-vs-
LISA MARIE BEAMAN and
DOUGLAS BEAMAN,
Defendant-Appellees,

Supreme Court No.:
Court of Appeals No.:314857
Lower Court No. 2012-798218-DP

/

Kevin S. Gentry (P53351)
Attorney for Plaintiff-Appellant
Gentry Nalley, PLLC
714 East Grand River Avenue, Suite 1
Howell, MI 48843
(734) 449-9999 telephone
(734) 449-4444 facsimile

Arnold L. Weiner, P22104
Attorney for Defendant-Appellees
Law Firm of Weiner & Michel
2901 Auburn Road, Suite 200
Auburn Hills, MI 48326
(248) 289-1320 telephone
(248) 289-1770 facsimile

/

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APPL
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PLAINTIFF-APPELLANT'S APPLICATION FOR APPEAL

ORAL ARGUMENT REQUESTED

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Prepared by:
Kevin S. Gentry, P53351
Attorney for Plaintiff-Appellant
GENTRY NALLEY, PLLC
714 East Grand River Avenue, Suite 1
Howell, MI 48843
(734) 449-9999 telephone
(734) 449-4444 facsimile

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STATEMENT OF JURISDICTION

The Oakland County Family Court's Order of January 30, 2013 [Attached Exhibit 1] was a final order pursuant to MCR 7.202(6)(a)(I), as it was the first order to determine the rights and liabilities of all parties in regards to this Revocation of Parentage Act case. Plaintiff-Appellant timely claimed his appeal on February 20, 2013. The Court of Appeals thus had jurisdiction pursuant to MCR 7.203(A)(1).

The Court of Appeals issued its published decision on February 4, 2014. Attached Exhibit 5. This Application is being filed within 42 days of that date. This Court thus has jurisdiction pursuant to MCR 7.301(A)(2).

ISSUE PRESENTED

Issue

DID THE TRIAL COURT REVERSIBLY ERR IN DECIDING THAT GRANTING PLAINTIFF'S REQUEST WOULD NOT BE IN THE CHILD'S BEST INTERESTS UNDER MCL 722.1443(4) WHERE IT 1) WAS UNCLEAR ON THE BURDEN OF PROOF; 2) DENIED PLAINTIFF'S REQUEST TO OFFER EXPERT TESTIMONY REGARDING THE CHILD'S BEST INTERESTS AND THE POTENTIAL OF HARM AND 3) THE TRIAL COURT MADE FACTUAL FINDINGS AGAINST THE GREAT WEIGHT OF THE EVIDENCE, SEVERAL OF WHICH WERE COMPLETELY REFUTED BY AND UTTERLY CONTRARY TO THE RECORD IN THIS CASE AND SHOULD THIS COURT GRANT LEAVE TO APPEAL TO SETTLE THE LAW REGARDING JUDICIAL CONSTRUCTION OF THE REVOCATION OF PARENTAGE ACT?

The trial court answered this question: No.
The Court of Appeals answered this question: No.
(But did suggest this Court's review was warranted)
The Defendant-Appellees will answer this question: No.
The Plaintiff-Appellant answers this question: Yes.

INTRODUCTION

This is a Revocation of Parentage Act (ROPA) case, and, as near as can be determined, the second such thing this Court will see, following its reversal by order of the first one. The Court of Appeals published three separate opinions in this matter. Two of those opinions seemed to agreed that Plaintiff would be barred by latches for not asserting his claim which, until this enactment, the law denied him standing on (he asserted it literally days after the ROPA became effective). But all three opinions took disparate and admittedly irreconcilable approaches to interpreting the ROPA. About the only thing that all three Judges below appear to agree on is that different judicial constructions of the ROPA are possible. The lead opinion explicitly suggested this Court review the matter and, in reality, by publishing an ROPA decision with three different opinions suggesting three different constructions of the statute the entire Panel below is obviously suggesting that this matter has both a great deal of jurisprudential significance and equal amount of uncertainty as to what the Legislature intended when enacting the ROPA.

One of this Court's primary roles under MCR 7.302(B)(3) is to address issues of jurisprudential significance and one of the opinions below actually raised constitutional questions regarding this statute, implicating at least a concern under MCR 7.302(B)(1) as well. Simply put, parties facing, or contemplating, ROPA actions, and the trial courts and Court of Appeals Panels considering them, need to know what the ROPA means, and all would benefit from having one answer from this Court, not three mutually exclusive and yet published ones from the Panel below. With this Court's recent reversal of *In re Moiles,* 303 Mich App 59; 840 NW2d 790 (2013), *reversed,* __ Mich ___; ___ NW2d ____; 2014 WL 709576 (Docket #148094) (2014) the morass of opinions below (one of which agreed with the underlying *Moiles* analysis on the

essential statutory questions this Court has now held *Moiles* should not have reached, one of which did not, and one of which split the difference) now amounts to the most substantial published guidance on interpreting the ROPA and, unfortunately, though not for lack of effort (the Panel below is to be commended for the obvious lengths to which it went to find agreement and determine how to interpret the statute, even though neither met with much success in the end), all this collection of opinions clearly states is that the question is one that is in need of attention from this Court.

* * *

The child is nine and everyone in this caption has always known either man could be her father, until 2006, when Plaintiff was definitively proven to be so. There has been contact between the Plaintiff and his daughter, though the amount is disputed. What is strange here is that, due to actions of a third party interloper, acting at the behest of no one and to the shock of everyone, the child ***does*** know that Plaintiff is her father. Nonetheless, the trial court here held that she would be better off wondering where he went than knowing that he cared for her. The accuracy, and even appropriateness of this speculation, which the trial court arrived at on its own accord after denying Plaintiff the opportunity to present expert testimony, is what this case is largely about, at least to the parties. Its significance beyond them arises in its novelty and, if the paths of the trial court and Court of Appeals below are any indication, the Bench and Bar are certainly in need of some guidance from this Court regarding the ROPA.

STATEMENT OF FACTS AND PROCEEDINGS

The record here is not large. An initial pretrial hearing was held on11/16/2012 and the transcript thereof ("Motion TR") is Attached Exhibit 3. The actual trial was held on 1/18/13 and

the transcript thereof, running 148 pages, will be referred to simply as "TR."

The Parties

The minor child, Tegan Joy Beaman, was born on June 27, 2003, meaning she was nine at the time of trial and is now age ten.. Exhibit 1, p 2. Defendant Lisa Maire Sztajer, n/k/a Beaman, is her mother. *Id.* Plaintiff is, by stipulation and DNA testing at the 99.9998% level, Tegan's biological father. *Id.* While it is undisputed that Tegan was born out of wedlock, Defendant Douglas Beaman's name appears on the birth certificate. *Id.*

Procedural Background

Tegan's parentage was always in question (at least in Plaintiff's [TR, 23-24] and another witness's recollection, though Defendant, while admitting to relations with both men, now claims to have always thought Defendant Beaman was the father, TR, 69) and Plaintiff requested, and the Defendants agreed to, DNA test proceedings in August 2003. Exhibit 1, p 2; TR, 27. Plaintiff thereafter was unable to pay the remainder due on the tests, due to a significant injury and extended off work rehabilitation period (TR, 27-28) and the results were finally received in 2006. Exhibit 1, p 2; TR, 27-28.

Plaintiff filed a DP case (2010-776139-DP, on September 7, 2010. Exhibit 1, p 2. Defendants responded by getting married on October 22, 2010, which deprived Plaintiff of standing and led to a stipulated dismissal of the DP action. Defendants now testify that the timing of their marriage was simply a fortuitous coincidence. TR, 85.

Following very quickly after the Legislature's enactment of the Revocation of Parentage Act Plaintiff filed the instant matter. Exhibit 1, p 3. Following denial of a motion for summary disposition by Defendants, the matter proceeded to a November 16, 2012 pretrial, where the

relevant proceedings in this appeal commenced.

November 16, 2012

Much of the November 26, 2012 pretrial consisted of discussions regarding the trial court's rule that every case must first go to mediation prior to being tried. Pretrial TR, 2-4. Defendants' position was that mediation was unnecessary as settlement was impossible. *Id.*, 4. The trial court[1] was unmoved and required mediation anyways (Defendants having next suggested they would be content with the matter never going to trial). *Id.*

Plaintiff next raised the issue of the expert evaluator whom his counsel had retained to evaluate the child. The exchange was both telling and rather short and can be found at Attached Exhibit 3, p 5-7. The trial court declined to permit this, believing such determinations were its task and the pretrial hearing then concluded after addressing scheduling issues. Pretrial TR, 7-8.

January 18, 2013

The parties appeared for trial on January 18, 2013, with all parties, Heather Crews (Plaintiff's sister and Defendants' acquaintance) and Leitsa Evangelista (mother of a friend of the minor child and the interloper mentioned in the margin below) testifying. TR, 2; Exhibit 1, p 3.

Before the opening of their cases, the parties stipulated that Plaintiff is, in fact, the minor child's biological father. TR, 3. The parties also stipulated to admission of a Affidavit of Parentage dated July 1, 2003, and a DNA Parentage Test Report Dated August 11, 2003 (which had not been released by the lab until sometime in 2006 due to a billing issue). TR, 4-5. A debate on the burden of proof (the statute being thought unclear by the trial court and no caselaw

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[1] The Honorable Elizabeth M. Pezzetti, Oakland County Probate Judge, presided at all relevant times in this action.

as yet being in existence[2]) followed. TR, 5-7. Thereafter, Plaintiff again raised the issue of his desire to have a psychological expert testify in regards to the minor child's best interests and the trial court reiterated its denial:

> MR. COHEN: Okay. Thank you, your Honor. The only other thing that I'd just make a statement for the record is that previously when the parties were here for the -- for the settlement conference I had indicated to the Court that it was my desire to involve a psychological expert, and the Court had indicated that that was not necessary and we'd not be able to do so.
> THE COURT: Well, what I said to you was the following. If you're going to have an expert testify generally as to the best interest of a child in some kind of situation -- some kind of paternity situation is not going to be helpful because you have to be specific. That's what I said to you. It has to be specific to this case. These are very fact specific.
> MR. COHEN: Yes.
> THE COURT: And I don't know that there is an expert who can testify to that. I don't think I would qualify anyone to testify.
> MR. COHEN: And I also -- and I also indicated to the Court that I -- that I would have liked the child to be evaluated by the expert and the Court indicated that they would not want an evaluation.
> THE COURT: I did not want the child to be evaluated by an expert.
> MR. COHEN: Thank you. Just put that statement on the -- for the record. I don't believe there's any other preliminary matters.
> TR, 7-8.

Opening statements followed. TR 8-19. During the course of these, in response to a question from the trial court, the Defendants agreed that there was no dispute as to standing under the Revocation of Paternity Act. TR, 9-10. Both parties also made arguments as to their views on the burden of proof under the Revocation of Paternity Act (hereinafter simply "the Act"

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[2] Given the evolution of subsequent caselaw this question has been pushed to the fringes of this and other ROPA cases but it is certainly one that could use some clarification from this Court.

or "the ROPA").[3]

Plaintiff Matthew Helton

Plaintiff lives in Oxford, which is about half an hour away from Defendants' home in Madison Heights. TR, 19-20. As Plaintiff is a high school football coach in Madison Heights he is in that area a lot and regularly. TR, 20. Plaintiff has four stepchildren, ranging in age from four to 21, living with him and his wife. TR, 20. He is actively involved in each of their lives on a daily basis. *Id.*

At the time of trial Plaintiff had almost returned to work following physical therapy for injuries arising from a serious 2010 automobile accident. TR, 20. Besides his regular employment he has moved up the ranks from a little league football coach all the way to coaching Madison Heights high school's varsity team. TR, 21.

Plaintiff has known the Defendant mother since around 1999 and Defendant Douglas Beaman even longer, as the two grew up playing on sports together, at least once in the 1980s being on the same team. TR, 21. They were never that close but always civil. *Id.*

The Defendant mother and some friends used to frequent a bar where Plaintiff worked security and they became close. TR, 21-22. In 2001 or 2002 Plaintiff briefly moved to Kentucky but moved back in December 2002 owing to both his own mother's declining health and a belief that the Defendant mother here might have been carrying his child. TR, 23. Plaintiff had

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[3] Whatever this Court may decide in regards to this minor child and the dispute between these parties it is probably undisputed, and obvious already (and certain to become more so) that the Bench and Bar would benefit from some guidance as to the burden of proof under the Act. As of the date this offering was composed, there are exactly zero appellate cases mentioning the Act in existence, at least according to Westlaw searches of both the Act's title and statutory citation.

actually discussed that issue with the Defendant mother during her pregnancy, where she admitted she the possibility that he was the father. TR, 23. That New Year's Eve (between 2002 and 2003) Plaintiff, his sister (Heather Crews), and both Defendants actually met at a table and discussed the situation and possibilities as to the soon to be arriving child's father, and Plaintiff recalls it being amicable. TR, 23-24.

Tegan was born on June 27, 2003 and shortly after she returned home from the hospital the Defendant mother invited Plaintiff over to see the child. TR, 24-25. Plaintiff stated that he saw a family resemblance to himself in the child instantly, as the child had features common in him and his family but not seen in either of the Defendants. TR, 25-26. Thereafter, for the first year and a half or so of her life, Plaintiff was a frequently, albeit inconsistently, visited the child. TR, 25-26. His mother (now deceased) and sister (who testified) were also present for some of these interactions as were three other individuals he named (who did not testify). *Id.* Plaintiff recalls everyone understanding that Tegan was obviously his daughter during this time period. TR, 26-27.

Sometime between Tegan being a year and a half and two years old, the Defendant mother halted Plaintiff's visits, pending the results of the previously taken paternity test. TR, 27. The test had already been done but Plaintiff, having suffered a fall at work and subsequently being off work for an extended period[4], could not pay the remaining fee and, despite his request, Defendants were not inclined to assist with the payment. TR, 27-28.[5] Plaintiff was able to pay

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[4] The injuries included two fractured vertebrae and various other damage. TR, 47.

[5] Plaintiff noted, quite accurately, that DNA testing a decade ago was certainly more costly than it is today as, back then, the cost was just under $1,000. TR, 27.

for the tests when he received a settlement arising from his work-related injury. TR, 32.

Once he was able to obtain the test results, the visits resumed, this time mostly at his sister's house in Madison Heights, where some combination of his mother, sister and nieces and nephews were often around. TR, 28. There were about four of these, the last one occurring actually at the football field where Plaintiff coached. TR, 29. During this period Plaintiff actually helped teach Tegan how to ride a bike, though even with training wheels, as much as she wanted to (since one of Plaintiff's nieces was riding) it was too much for her at that age. TR, 33-34. Defendants than abruptly called him, shortly before his family's planned Halloween party that he was scheduled to bring Tegan too and informed him that he would not be allowed to see Tegan unless he took them to court. TR, 29. Plaintiff then hired an attorney but to little avail. *Id.*

Plaintiff did drop off gifts[6] for Tegan at Defendants' home and did try to contact Defendant mother several other times. TR, 29-30. He would sign gifts at Christmas as "Santa Claus," never identifying himself as "dad." TR, 31. He had offered on several occasions to provide money to the Defendant mother for Tegan but the Defendants wanted none of that. TR, 31-32. When he received his settlement he offered the Defendant mother $1,000 just to buy Tegan Christmas presents but was rebuffed. TR, 32.

In 2010 Plaintiff filed an action to establish paternity (it does not appear that he was previously aware that a Paternity Acknowledgment had been signed). TR, 32-33. Defendants'

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[6] Always teddy bears, as Plaintiff's nickname is Grizz, a reference to him being a large teddy bear sort of person. TR, 30-31. Anyone meeting him is apt to immediately see where the name comes from.

marriage followed very shortly thereafter and, at that point, Plaintiff was informed (correctly at the time) that under the law he had no standing, and thus he dismissed the action. TR, 32.

April 19, 2012

On April 19, 2012 Plaintiff was working on a house in Madison Heights.[7] TR, 34. He was wearing a cutoff t-shirt and a tattoo running down the back of his arm that says "Tegan" was visible. TR, 34. Leitsa Evangelista, a neighbor of the homeowner whom he had briefly met just once previously the year before, while working on that same house, was in her yard and talking to the men next door working on her neighbor's house. TR, 35. Ms. Evangelista asked him about the significance of the tattoo and he replied that it was his daughter's name. TR, 35. Ms. Evangelista asked where his daughter lived and Plaintiff replied that she probably was out on the playground at the school in that very neighborhood. TR, 35. This led Ms. Evangelista to ask if Tegan's last name was Beaman, which Plaintiff confirmed, only then noticing that the conversation was significant and shocking to Ms. Evangelista, who, it turned out, was (unbeknownst to Plaintiff until that point) the mother of one of Tegan's friends. TR, 35-36. Plaintiff cautioned her that he had not seen Tegan in a long time and that court proceedings had failed, so he was left to hope that the then pending change in the law might allow him to return to court. TR, 36. Plaintiff then went back to his work. *Id.*

A couple of hours later Ms. Evangelista returned with Tegan. TR, 37. Plaintiff, surprised, and though recognizing her, having not seen her in four years, did not approach her.

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[7] No one seems to have directly asked but it can be gleaned (accurately) from the record that Plaintiff, when not working as a football coach, works in construction and on roofs. *See, e.g.,* TR 35, 47.

Id. He was busy trying to hold himself together in front of his co-workers. *Id.* Ms. Evangelista called him over and told him to show the girls (Tegan and her daughter) the tattoo, which he did. *Id.* In response to Tegan's question Plaintiff stated he knew a lot about her and cared about her, but never said he was her father, and then stumbled back to work. TR, 37-38. By this point, Plaintiff was to later learn, Ms. Evangelista had already told Tegan that he was her father. *Id.*

"Aunt" Heather

Plaintiff's sister, Heather Crews, was actually present when Ms. Evangelista returned with Tegan on April 19, 2012, as the home being worked on belonged to a family friend. TR, 38. It happens that Tegan knows Ms. Crews well, calling her Aunt Heather, and, before she died, referring to Ms. Crews (and Plaintiff's) mother as "grandma." TR, 38-39.[8] Because of this relationship he was able to learn that Ms. Evangelista had apprised Tegan of Plaintiff being her father. TR, 39-40. Plaintiff was concerned with Tegan's reaction, but relaxed somewhat once she went with her friend to the front yard and started doing flips, hand springs and other gymnastics moves.[9] TR, 39-40. Tegan looked at and smiled toward Plaintiff and he took it as her trying to be sure that he saw her doing her flips. TR, 40.

Plaintiff had, when his prior case had to be dismissed, felt defeated, but he watched closely the legislative debate on the Act and was pleased when it was announced, on father's day, that it had passed. TR, 41. His filing of this action followed quickly, on July 3, 2012. Attached Exhibit 2.

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[8] This does not appear to be merely a result of the house of a friend being near Ms. Evangelista's home, though Defendants would later dispute the amount of contact Tegan had with Plaintiff and his family.

[9] Tegan is involved in organized gymnastics. TR, 42.

Plaintiff was not pleased to learn that Ms. Evangelista had so abruptly informed Tegan of him being her father, and was concerned for how she might weal with it. TR, 41-42. With a stepdaughter who is now 21 Plaintiff knew full well that "teenage girls can be quite a handful" anyways. TR, 42. He had no intention of disrupting Tegan's relationship with Defendant Douglas Beaman but does wish to be involved with and supportive of his daughter's life. TR, 41-43.

On cross-examination, Plaintiff completely denied Defendants' allegation that his current wife is unable to have children. TR, 44. (The trial court, however, with exactly no support in this record, somehow credited that entirely unsupported allegation, Exhibit 1, p 9.) He and his wife did not, however, both being forty years old, plan to have any more children. TR, 44. He was not particularly concerned (though Defendants' counsel obviously was) with any carrying on of his family name since, after all, Tegan would presumably someday marry and probably take her husband's name. TR, 45. Plaintiff was not on worker's compensation during the April 19, 2012 event, though a subsequent injury did later put him back off work for a while. TR, 45-46. He had constantly tried to see Tegan, and often did, but for the periods when he did not that was due entirely to Defendants' preventing him from doing so. TR, 48-50.

Leitsa Evangelista

Ms. Evangelista took the stand and largely confirmed Plaintiff's recollection of the April 19, 2012 incident. TR, 51-69. As it bears little relationship to this issue outside of that one date, it can be briefly summarized as confirming that Ms. Evangelista knew the Beamans, as parents of a friend of her daughter, but not well, and had only, as Plaintiff recalled, met him twice, both times when he was working on her neighbor's house. TR 55-56. On April 19, 2012, when her

daughter asked if Tegan could come over and play, Ms. Evangelista, armed with her newfound knowledge, took it as a telling coincidence. TR, 57-58. She admitted to flat out telling Tegan, on the ride back to her house, that she was going to introduce her to her "real dad" and that her actual father was not Douglas Beaman. TR, 59-60. She claims to have done this not out of any ill will toward anyone but because she "just felt like it was the right thing to do." TR, 60. She specifically recalled that Plaintiff never told Tegan that he was her father or anything like that. TR, 61-62. Though, after all this, the Beamans prohibited Tegan from playing with her daughter and coming to Ms. Evangelista's house, Tegan still does both any way. TR, 63-65. According to Ms. Evangelista (elicited by Defendants' counsel and unobjected to by Plaintiff), her daughter informed her that Tegan was excited about meeting her father and told her friends about it the next day at school. TR, 67-68.[10]

Defendant Lisa Beaman

Defendant Lisa Beaman now claims that she always thought that Douglas Beaman was the child's father. TR, 69-70. She reports that Douglas Beaman was under a similar impression. TR, 70. She also claims that some of the distinctive characteristics Plaintiff recognized from his family in Tegan run in her family too, even if they are not present in her. TR, 70-71.

Ms. Beaman recalls Plaintiff first requesting to be placed on the birth certificate in 2007, after the DNA results became known. TR, 72. She adamantly denied Plaintiff having had visitation with Tegan, but claims there were "two days when my girlfriend and I dropped our

[10] Experienced readers of briefs in family law cases are apt to be rarely shocked by most anything humans might chose to do in such situations but, even in this context, Ms. Evangelista is something of an inexplicable outlier.

older daughters off at dance and went over to see Nancy who is Matthew's mother. While there she did offer to take care of her for an hour so that we could go get pedicures." TR, 72-73.[11] Other than that, according to Ms. Beaman there was "no visitation," with the qualifier that "we have been at the same places at the same time but no visitation." TR, 75. Ms. Beaman then proceeded to address some of these coincidences. *Id.*[12]

She agreed with Plaintiff that he had never given her any money for Tegan but the question of whether she had refused same was not asked by her counsel. TR, 73-74. Ms. Beaman noted particularly the lack of any support accompanying the 2010 case. TR, 74.

Ms. Beaman recalled Tegan being confused the night of the April 19, 2012 incident. TR, 77. Ms. Beaman described Tegan as having nightmares and insecurity. TR, 77-78. Somehow or another, despite there being "no visitation," and reportedly all sorts of problems for Tegan, Ms. Beaman reports that they did, and apparently still do, see Plaintiff at football games. TR, 79.

Ms. Beaman now claims she would have responded differently if Plaintiff had gotten the DNA test results earlier. TR, 80. She actually denied prohibiting Tegan from playing with Ms. Evangelista's daughter.[13] *Id.* Ms. Beaman's essential position can be seen in the following

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[11] Exactly why she would have chosen, of all people, Plaintiff's mother as a babysitter, or how Heather Crews became "Aunt Heather" to Tegan was left out of Ms. Beaman's narrative. TR, 73.

[12] The trial court somehow credited Ms. Beaman's recollection, Exhibit 1, p 7-8. The appropriate of that will be an issue *infra* and the entire transcript, which is not long, is attached, and while clear error is a high hurdle, it would probably be a rare reader who would intuitively agree with, as opposed to defer to, the trial court's finding on this record.

[13] Probably around zero readers would have been surprised if she had admitted that and more than a few might well have lauded her for evicting Ms. Evangelista from their lives (as, whatever one thinks about the rest of this case, a self-appointed interloper has no business taking on and making decisions that are difficult enough for the parents themselves to confront) but a

(rather leading) question from her counsel:

> Q: So other than these lawsuits there's been no interaction with Matt into her life; is that correct?
> A. That's correct.
> TR, 80.

Ms. Beaman's answer to why Plaintiff prevailing here would not be in Tegan's best interests focused a bit on Tegan and a lot on herself and the rest of her family[14]:

> I don't feel that it would be in her best interest because there's been no signs of consistency throughout these last nine and a half years. And I don't want to open up and put her into a situation where she's going to get hurt. And that is also not just her that's affected by this. It's the rest of her brothers and sister. We have a very close family. We go on a lot of trips together. We do a lot of games. We do a lot of sports. And not only would that be disruptive to her, it would be disruptive to the rest of the family as well.
> TR, 81-82.

Cross-examination began with Plaintiff's counsel asking how many of Ms Beaman's four children were "biologically Doug Beaman's." TR, 83. She said "two . . . Zack and Tegan." *Id.* Eventually Ms. Beaman admitted that was only true "up until the point when the DNA test came back." *Id.* It turns out only one child, Zack, is the biological son of her and Douglas Beaman, while the other two older children have two other different men who are their fathers. TR, 83. Those two men are active in their children's lives, making it a bit hard for Ms. Beaman to explain how Plaintiff's inclusion in Tegan's life would be so disruptive to their family. TR, 83-84.

Ms. Beaman admitted that, despite being with Douglas Beaman since 2004, they only got married in 2010, right after Plaintiff filed his original action. TR, 84-85. She denied the timing

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clear pattern is apparent in this record, Ms. Beaman denied essentially every assertion, large, small or tangential, in Plaintiff's case.

[14] Besides Tegan, Ms. Beaman has three other children. TR, 82.

was anything but a coincidence. TR, 85.

Ms. Beaman stated that she never believed Plaintiff was Tegan's father "because we only had sex twice." TR, 85. While those times happened right about nine months before Tegan was born she claimed that she "didn't think it was possible" Plaintiff was Tegan's father. TR, 86. The sequence of events seemed to be that Ms. Beaman was dating Douglas Beaman and was friends with Plaintiff, then broke up with Douglas Beaman, interchanging the men's roles in her life, before returning to a relationship with Mr. Beaman. TR, 86-87. Each man was aware of the nature of her relationship with the other man before the child was born. TR, 89. She did also admit discussing the question of paternity with Plaintiff and agreeing to a paternity test after the child was born, but likewise admitted that she proceeded with a paternity acknowledgment with Mr. Beaman shortly after the child's birth and thus before parentage was established. TR, 88-89.

Defendant mother's position now is that she would not have objected to Plaintiff seeing Tegan if things had been done differently (and apparently more quickly). TR, 90. She simply denied that Plaintiff had ever had any relationship with Tegan, that she had identified Tegan as Plaintiff's daughter to him, and that she had done anything whatsoever to facilitate visitation. TR, 91. She claimed that "Matt has not offered to see the child. The child has been in my custody and - - no. We've gone to a football game." TR, 92. Seeming to choose her words carefully, Ms. Beaman testified that "There has not been any arranged parenting time for Matt to spend with her." TR, 93.

Despite this, she admitted that Tegan had been at a birthday party with the children of Plaintiff's sister, Heather Crews. TR, 93. Tegan (and Plaintiff's other children) are on sports teams with Heather Crews' children and have attended numerous events where Plaintiff has

been, but Ms. Beaman insists there has been "no arranged parenting time." TR, 93. When cornered about her direct testimony that Plaintiff had not had any interaction with Tegan, on cross-examination Ms. Beaman stated "I'm testifying that we're in the same place at the same time does not mean that he was given parenting time or he had parenting time with her." TR, 93-94. Eventually, and very slowly, she came to admit that there had been times when Plaintiff and Tegan were interacting at these events but it was not parenting time, as she defined it. TR, 94-96.

With Defendant mother dancing around some issues the trial court interjected and asked her very directly:

> THE COURT: I want to be clear. Does she know that he is her real father?
> THE WITNESS: He (sic) knows that he is the person that she was told was her creator.
> TR, 97.
> Plaintiff's counsel then asked:
> Q: Did you come clean and explain what it means to Tegan, that he is the creator, as you say?
> A: Tegan and I have had many discussions but that has not been one of them, the difference between a creator and a father.
> TR, 98.

Douglas Beaman

Following the Defendant mother's testimony, the defense then, rather surprisingly, attempted to rest. TR, 98. The trial court stated "Well, I'd sure have to hear from Mr. Beaman, I guess," which led to Mr. Beaman being called to the stand. TR, 98. He was at the hospital when Tegan was born and, in response to his counsel's question, stated that he had engaged in sexual relations with the Defendant mother "eight or nine months before the birth." TR, 99. He was aware that Ms. Beaman was also having sexual relations with Plaintiff around that time but testified that he thought the child was his. TR, 99-100. He signed the affidavit of parentage

shortly after Tegan's birth and reported being an active and involved father to her. TR, 100-101. Plaintiff's counsel forthrightly stated that Plaintiff does not dispute Mr. Beaman's relationship with Tegan, though he could not agree to defense counsel's request that he stipulate to "an unbreakable bond as daughter and father" existed. TR, 101.[15]

Despite Plaintiff's repeated acknowledgments that Mr. Beaman's relationship with and conduct toward Tegan was not in dispute, TR 101-102, Mr. Beaman felt the need to defend himself in depth. TR 101-105. Mr. Beaman's position was that Plaintiff's petition should be denied because:

> Right now she has a family. She has a father, that she knows of me. And she's good in school. Just doesn't- - she doesn't need her life disrupted for anybody. TR, 105.

On cross-examination Mr. Beaman admitted his (unsurprising) displeasure at the sequence of events that led to the Defendant mother breaking up with him, having sexual relations with Plaintiff, and then returning to him. TR, 106-107. He appeared to claim that both men were involved in relations with her during essentially the same period of time. TR, 106-107.

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[15] Where defense counsel came up with that term is unknown, though the entire position of Plaintiff has never been that Mr. Beaman is unfit or inappropriate or that it would be beneficial to anyone to "break" the bond between him and Tegan, though Ms. Beaman displayed a fear of just this in her concluding testimony. TR, 98. Ours is an adversarial legal system, of course, but Plaintiff's entire position has never been in any way designed, or even something that could reasonably be construed to be, an attack on Mr. Beaman or his role in Tegan's life. Plaintiff simply seeks what our Legislature has now come to realize may well be beneficial for the child, a situation where she can know and receive affection and support from both the person who has been the father figure in her life and also know and receive affection and support from her undisputed biological father who, save for the unilateral act of executing a false (or at least then unknowing) affidavit of parentage by her mother and Mr. Beaman, would have not only been ready to assume a fatherly role toward Tegan throughout her life but, in fact, would legally have been mandated to do so regardless.

Despite this, he denied ever having any doubt he was the child's father. TR, 107, 109.

Mr. Beaman likewise claimed, in response to counsel's question on cross-examination, that the Defendants' marriage in 2010, very shortly after Plaintiff filed and served his original complaint was "purely coincidental." TR, 109-110. He claimed Tegan had never brought up the issue of her parentage to him, even after the incident with Ms. Evangelista. TR, 110, 112. He did not think that Tegan really "knew" the situation, though he admitted it was inevitable that she eventually would. TR, 111. He claimed, despite his prior testimony about disruption, to not believe that Plaintiff being involved in Tegan's life would affect his relationship with her. TR, 112.

It took until his counsel's redirect (and some very prodding questions) for Mr. Beaman to remember to testify to Tegan having nightmares and other negative effects from the incident with Ms. Evangelista. TR, 112-113. Once he brought this up he testified that all this lasted for some five months. TR, 113.

Heather Crews

Plaintiff called Heather Crews as a rebuttal witness. TR, 114. She had come to know Ms. Beaman via her brother, but apparently became closer to her than he was. TR, 115. She also has known Douglas Beaman since her own school years, though she was not as close to him. TR, 115.

Ms. Crews testified quite clearly that the Defendant mother, long before she married and shortly after Tegan's birth, would bring Tegan to the home of Plaintiff and Ms. Crews' mother (Nancy Helton) so that they could spend family time with her. TR, 116. This was not babysitting but, rather, intentionally chosen family time. *Id.* Ms. Crews also recalled specific

times Plaintiff had spent time with Tegan in her own home, and that Ms. Beaman brought Tegan to a football game (in 2006-2007) specifically so Plaintiff could see her for a while. TR, 117. Contrary to Ms. Beaman's testimony all of this was arranged and planned. TR, 117-118. She described a number of specific events, including Plaintiff endeavoring to teach Tegan how to ride a bike at Ms. Crews' home in 2006. TR, 121.

Ms. Crews was also present at a New Years Eve 2002 (as it turned 2003) evening at a bar where her and everyone in this case's caption met to discuss the situation, with both men discussing the possibility that they could be the father of the expected child and the Defendant mother not knowing who actually was. TR, 116-117. She recalled this (perhaps with aid of the holiday occasion) as being entirely amicable and the end result being that, since Mr. Beaman was now with the Defendant mother, the child would have a family and, if the test came out finding Plaintiff to be the father, the child would just "have two families to love her." TR, 117.

According to Ms. Crews, Plaintiff had a lot of time with Tegan when she was small, then there was a period where he was "not allowed" by Ms. Beaman, but then, once the DNA test "was paid for Lisa was allowing Tegan to come back" into Plaintiff's life. TR, 120. Ms. Crews had spoken with Ms. Beaman many times about this. Her children call Ms. Beaman "Aunt Lisa" and Ms. Beaman's child Zack fully believes her children are his cousins. TR, 120. She had more recently challenged Ms. Beaman because "I just don't understand the lies. Why would you continue to lie?" TR, 120-121. Ms. Crews believes that there is already a bond between Plaintiff and Tegan, though there contact had been interrupted, and found Defendants' testimony that there had been essentially no contact between Tegan and Plaintiff "absolutely false" because she had "personally been there, witnessed it, saw it with my own eyes." TR, 122-123.

The trial court interjected and focused solely on the earlier part of Ms. Crews' testimony regarding the child being dropped off at her mother's house. TR, 123. That happened, according to Ms. Crews, at least eight times before it stopped. TR, 123. After the paternity test there were at least three times in 2006 that Plaintiff saw Tegan as well. TR, 123-124. She witnessed numerous efforts, phone calls and letters, from Plaintiff to Ms. Beaman striving to reestablish contact with Tegan during the periods Ms. Beaman was prohibiting it. TR, 125-127.

On cross-examination Defendant's counsel probed her about Tegan's supposed reaction to the incident with Ms. Evangelista. TR, 131-132. Ms. Crews had no firsthand knowledge of it but had heard of it, and also heard from her children that Tegan had been told by her mother that Plaintiff was a horrible person who beat her.[16] TR, 132. She had most recently seen Tegan in late October (just before the pretrial hearing) and had seen her after the April incident with Ms. Evangelista and had not noticed any differences in her demeanor. TR, 134. Ms. Crews had noticed that Tegan was a bit off at a summer baseball game and that was the event where Tegan had told Ms. Crews' children about her mother's statements regarding Plaintiff beating her. TR, 134-135.[17] The parties thereafter rested and offered closings. TR, 135-147.

The Trial Court's Decision

The trial court's decision is Attached Exhibit 1 and each reader would undoubtably benefit by pausing to review it at this juncture. The applicable legal analysis begins on page 6 of

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[16] There is zero evidence of domestic violence, from or towards anyone in this case though, as excuses go when caught in a lie, it would hardly be novel for such an additional falsehood to be offered to explain some other falsehood.

[17] There were no hearsay objections from either side during this testimony. TR, 131-135.

Attached Exhibit 1. The trial court found the first three factors of MCL 722.1443(4), which relate to the presumed father, to be inapplicable. Exhibit 1, p 7. It then found that the Plaintiff wanted a relationship with Tegan but found that none as yet existed. *Id.,* p 7-8. It found the child to be nine years old (as all agreed, but the statute still mandates a finding of) and that it believed that Tegan had already suffered harm. Exhibit 1, 7-8.[18] The trial court's entire analysis on this point was:

> I believe that Tegan has been harmed by the surprise announcement the Plaintiff is her biological father. This harm has been manifested in Tegan's nightmares and insecurity. From the testimony provided, it appears that Tegan has a stable family environment with her mother, her siblings, friends, and the man she recognizes as her father. To upset these relationships at Tegan's age would cause additional emotional harm and negatively affect her sense of stability.
> Exhibit 1, p 8.

The trial court then found Plaintiff's motivations amicable, and somehow, and inaccurately on this record, adopted Defendants' allegation that Plaintiff's wife cannot have further children as fact. Exhibit 1, p 9. It then found that Plaintiff did not have a relationship with Tegan but that allowing him to do so posed "a risk that the father child relationship between Tegan and Defendant Doug Beaman would be altered." Exhibit 1, p 9. Finally, it faulted Plaintiff (alone) for not obtaining the DNA test results prior to 2006 and for delaying commencement of litigation. *Id.,* p 9. The trial court then denied Plaintiff's request for relief, citing MCL 722.1443(4).

Court of Appeals Proceedings

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[18] Though the trial court previously found in its facts that Ms. Evangelista's actions occurred only because "she "took it upon herself," Exhibit 1, p 4, it did not mention Plaintiff's blamelessness or equal surprise at the occurrence in its analysis.

Following the trial court's denial of relief, Plaintiff, *in pro per*, timely claimed an appeal and, having subsequently marshaled funds to retain counsel, was represented by the undersigned in his brief and oral argument before the Court of Appeals. Shortly before the oral argument below another Panel of the Court of Appeals published *In re Moiles,* 303 Mich App 59; 840 NW2d 790 (2013). Plaintiff filed a supplemental authority and counsel and the Panel then spent an extraordinarily long oral argument endeavoring to navigate the ROPA, *Moiles* and its interplay with this case.

On February 4, 2014 the Court of Appeals issued three separate published opinions in this matter. Attached Exhibit 4. Readers who have not already done so might find it useful to visit those opinions at this juncture. Addressing them with specificity would likely be unwieldy here as even getting to that point requires a fairly extensive review of the ROPA and *Moiles* as all opinions started from that point and moved forward. Accordingly, the substance of the various opinions below will be addressed more fully *infra* in the Argument section.

Plaintiff, recognizing the amount of effort the Panel had obviously put into this case, saw no benefit in moving for reconsideration, it being obvious that the Judges had already extensively debated the matter amongst themselves and elected to write separate published opinions with an eye toward garnering this Court's attention. *Moiles* once again interjected itself into this case as, in the midst of Plaintiff preparing this application this Court, on February 21, 2014, issued an order reversing the Court of Appeals in that case. *In re Moiles,* 303 Mich App 59; 840 NW2d 790 (2013), *reversed,* __ Mich ___; ___ NW2d ____; 2014 WL 709576 (Docket #148094)

(2014).[19] Plaintiff-Appellant now seeks leave to appeal from this Court, having little idea as to which of the many issues surrounding the ROPA the Court might be inclined to address but recognizing that the matter is, at a very personal level extremely important to him while the larger issues are relevant to many in similar positions and, indeed, everyone, parties, counsels, and courts, who are or will be involved in ROPA matters.

ARGUMENT

DID THE TRIAL COURT REVERSIBLY ERR IN DECIDING THAT GRANTING PLAINTIFF'S REQUEST WOULD NOT BE IN THE CHILD'S BEST INTERESTS UNDER MCL 722.1443(4) WHERE IT 1) WAS UNCLEAR ON THE BURDEN OF PROOF; 2) DENIED PLAINTIFF'S REQUEST TO OFFER EXPERT TESTIMONY REGARDING THE CHILD'S BEST INTERESTS AND THE POTENTIAL OF HARM AND 3) THE TRIAL COURT MADE FACTUAL FINDINGS AGAINST THE GREAT WEIGHT OF THE EVIDENCE, SEVERAL OF WHICH WERE COMPLETELY REFUTED BY AND UTTERLY CONTRARY TO THE RECORD IN THIS CASE AND SHOULD THIS COURT GRANT LEAVE TO APPEAL TO SETTLE THE LAW REGARDING JUDICIAL CONSTRUCTION OF THE REVOCATION OF PARENTAGE ACT?

The trial court answered this question: No.
The Court of Appeals answered this question: No.
(But did suggest this Court's review was warranted)
The Defendant-Appellees will answer this question: No.
The Plaintiff-Appellant answers this question: Yes.

Standard of Review

Statutory interpretation is a question of law that this Court reviews de novo. *Marketos v American Employers Ins Co,* 465 Mich 407, 413; 633 NW2d 371 (2001). *See, also, Cardinal*

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[19] While this Court's order is obviously published as it is fairly new undersigned counsel is serving a copy of it on Defendant-Appellees' counsel in conjunction with the brief in this matter in the event Defendant-Appellees' counsel has not yet seen it.

Mooney High School v Michigan High School Athletic Ass'n, 437 Mich 75, 80; 467 NW2d 21 (1991).

When a trial court fails to follow the applicable law, it abuses its discretion, and, thus, the underlying issues of law relevant to the trial court's decision, even if the decision itself is discretionary, are reviewed *de novo*. *See, e.g., Mercy Mt Clemens Corp v Auto Club Ins Ass'n*, 219 Mich App 46, 50-51; 555 NW2d 871 (1996). Markman, *Civil Appeals,* §9.45, p 9-9 (West, 2003).

Note: Neither the Court of Appeals nor this Court has yet to issue a holding as to the standard of review specific to any of these questions under the Revocation of Paternity Act.

The Revocation of Paternity Act

This action was filed very shortly after the enactment of the ROPA, and proceeded quickly, making it one of the earliest cases to arrive before the Appellate Courts regarding the ROPA, following quickly on *Moiles'* heels. Given the newness of the ROPA it is worthwhile to first consider the ROPA's definitions, as it is impossible to effectively apply the plain language of the application section (presented in its entirely shortly *infra*) without first understanding the designations which the Legislature has created for the typical players in these sorts of cases.

Under MCL 722.1433(1), ""Acknowledged father" means a man who has affirmatively held himself out to be the child's father by executing an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013." In this case there is no dispute that Douglas Beaman executed an affidavit of parentage shortly after Tegan was born and thus is an "acknowledged father" for purposes of the ROPA.

Under MCL 722.1433(3) ""Alleged father" means a man who by his actions could have

fathered the child." Here Plaintiff Matthew Helton is acknowledged by all to be an "alleged father" within the ROPA due to the timing of his sexual relationship with the Defendant mother. While he is in fact stipulated by all to be Tegan's biological father the ROPA does not require that level of certainty for an alleged father to proceed under the Act.

Under MCL 722.1433(2) "Affiliated father" means a man who has been determined in a court to be the child's father." Plaintiff Matthew Helton, at the time of the filing of this action, was not an affiliated father, though the trial court's finding at Exhibit 1, page 9 that Plaintiff is Tegan's biological father mean that he now meets the definition of an "affiliated father," though it is of no particular import in the case at this point.

The term "mother" is not defined in the ROPA and thus must be presumed to have its plain and ordinary meaning under MCL 8.3a and *Perez v Keeler Brass Co,* 461 Mich 602, 609; 608 NW2d 45 (2000). Defendant mother is obviously the other statutory party in this case.

Preliminary Considerations

Under MCL 722.1435(1), the section of the Revocation of Paternity Act applicable to "an action to set aside an acknowledgment of parentage is Section 7, found in MCL 722.1437.

MCL 722.1437(1) permits Plaintiff, as an alleged father, to file this action:

> (1) The mother, the acknowledged father, an alleged father, or a prosecuting attorney may file an action for revocation of an acknowledgment of parentage. 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 1 year after the effective date of this act.

MCL 722.1437(2) addresses the reasons sufficient to support a filing of an action under the ROPA:

(2) An action for revocation under this section shall be supported by an affidavit signed by the person filing the action that states facts that constitute 1 of the following:
(a) Mistake of fact.
(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.
(c) Fraud.
(d) Misrepresentation or misconduct.
(e) Duress in signing the acknowledgment.

MCL 722.1437(3) permits a trial court to order DNA testing (which is moot in this case as it was already completed prior to filing) and sets the burden of proof for demonstrating that the acknowledged father is not the actual father as one of clear and convincing evidence.

(3) If the court in an action for revocation under this section finds that an affidavit under subsection (2) 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.

Plaintiff's status as the biological father of Tegan, as demonstrated by the DNA test results is undisputed in this case and the trial court specifically held that Plaintiff met his clear and convincing burden on this issue. Exhibit 1, p 9.

MCL 722.1439 sets forth the statute of limitations for filing an action under the ROPA as three years after the date of the child's birth or one year after the date of the order of filiation, whichever is later, with a savings clause indicating that these limitations do "not apply to an action filed on or before 1 year after the effective date of this act." MCL 722.1439(2). It is undisputed that Plaintiff filed his action a matter of days after the enactment of the ROPA and thus falls within this savings clause.

MCL 722.1441 addresses the determination of whether or not a child has been born out of

wedlock. In this case it is undisputed that Tegan was born out of wedlock, thought the Defendants did later marry in 2010, when she would have been seven years old. With these preliminary mandates addressed, it is now appropriate to turn to the statutory section that controls the circuit court's determination.

MCL 722.1443

MCL 722.1443 addresses the parameters of the circuit court's actions. As the starting point for any effort at applying or construing a statute[20] must begin with the text of the statute itself, *In re MCI Telecommunications Complaint,* 460 Mich 396; 596 NW2d 164 (1999), the relevant text, found in MCL 722.1443(1)-(4), appears below:

> (1) An original action under this act shall be filed in the circuit court for the county in which the mother or the child resides or, if neither the mother nor the child reside in this state, in the circuit court for the county in which the child was born. If an action for the support, custody, or parenting time of the child exists at any stage of the proceedings in a circuit court of this state or if an action under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is pending in a circuit court of this state, an action under this act shall be brought by motion in the existing case under rules adopted by the supreme court.
> (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.

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[20] "The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent." *Chop v Zielinski*, 244 Mich App 677, 679; 624 NW2d 539 (2001), *citing Frankenmuth Mut Ins Co v Marlette Homes, Inc,* 456 Mich 511, 515; 573 NW2d 611 (1998). It is the precise language of the statute that is controlling. *People v Borchard-Ruhland*, 460 Mich 278; 597 NW2d 1 (1999). "Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Services, Inc,* 466 Mich 304, 312; 645 NW2d 34 (2002). Where the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd,* 240 Mich App 153, 166; 610 NW2d 613 (2000). In such cases, Courts will not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell,* 214 Mich App 304, 310; 543 NW2d 11 (1995).

(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.
(3) A judgment entered under this act does not relieve a man from a support obligation for the child or the child's mother that was incurred before the action was filed or prevent a person from seeking relief under applicable court rules to vacate or set aside a judgment.
(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.
(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(1)-(4).

Burden of Proof?

As noted *supra,* the parties debated the burden of proof in the course of this case. Plaintiff suggested that it was a shifting burden of proof, wherein once the alleged father proves by clear and convincing evidence he is the actual father (something that was undisputed here), the presumed father and/or mother would have a burden of demonstrating why it was not, under MCL 722.1443(4) in the child's best interests to have a relationship with her biological father. TR, 13-14. The trial court was skeptical of this proffered standard. *Id.* Defendants argued that all burdens remained with the Plaintiff alone. TR, 15-16. The trial court did not discuss what

burden it applied in its analysis under MCL 722.1443(4), stating only that it found "the evidence also establishes that it is not in Tegan's best interest to grant the relief requested by Plaintiff." Exhibit 1, p 9-10.

It appears from the plain text of the ROPA that since MCL 722.1437(3) specifically puts both the burden of proof on the "person filing the action" and sets it at clear and convincing evidence, while MCL 722.1443(4) does *neither* of these, that the burden under subsection (4) is not clear and convincing but, rather a simple preponderance and further that the burden should indeed be on those opposing the "person filing the action." In the absence of another standard being specifically set by the Legislature in custody matters, the standard is a preponderance. *See, e.g., Pierron v Pierron*, 486 Mich 81; 782 NW2d 480 (2010); *Hall v Hall*, 156 Mich App 286; 401 NW2d 353 (1986).

The Legislature is presumed to be aware of its other statutory enactments, and certainly those within the very same Public Act, *In re MCI, supra*, and when the Legislature specifically uses one set of terms, after having considered or used elsewhere another, the plain intent is that there is to be a different meaning given. *Jennings v Southwood*, 446 Mich 125; 521 NW2d 230 (1994). Had the Legislature wanted to require "the person filing the action" to bear a burden under Subsection (4), or wanted that burden to be one of "clear and convincing evidence" it certainly has demonstrated, in MCL 722.1437, that it knows exactly how to state that and the fact that it did not do so here precludes a Court from judicially implying it. *See, e.g., People v Haynes,* 281 Mich App 27; 760 NW2d 283 (2008).

Where the Legislature did not state any burden beyond a simple requirement that "the court finds," the plain language of the statute appears to set the burden under Subsection (4) at

the simple and traditional level of preponderance. That said, clarification of same from this Court would certainly be beneficial to the Bench and Bar. Moreover, while the absence of a setting of a burden with "the person filing the action," in a section that only comes to be examined *after* "the person filing the action" has borne the high burden of "clear and convincing" evidence of parentage to get that far seems to suggest that, as Plaintiff's counsel argue, the burden is thereafter shifted, once again, the statute is ambiguous on this point and, thus, judicial construction is required. *In re MCI, supra.*

Importantly, the trial court here did not seem to know or concern itself with what the burden of proof was, though it did appear to reject Plaintiff's counsel's construction, which is also the offering suggested here and the one which most closely tracks the statutory framework. TR, 14-15. This failure to explicitly state the burden of proof being applied, where the statute itself does not explicitly do so, may alone be sufficient to undermine the reliability of the trial court's determination and its apparent disagreement with the burden which most logically follows the plain text of not just this subsection but the entire statute is even more disconcerting. While there are a number of other questions that should be addressed which are discussed *supra*, this question is likely a mandatory one under any view of this case and this statute, regardless of how the Court elects to view the other questions herein.

Latches?

Two judges at the Court of Appeals level held, in the only thing they agreed upon, against the Defendant substantively on the issue of latches. In Michigan, the doctrine of laches is concerned with unreasonable delay, and generally functions, as does a statute of limitations, to bar a claim entirely. *Michigan Education Employees Mut Ins Co v Morris,* 460 Mich 180, 200;

596 NW2d 142 (1999). Importantly, however, our Legislature has dictated that latches is applicable, pursuant to MCL 600.5815, to claims that are based in equity:

> Sec. 5815. The prescribed period of limitations shall apply equally to all actions whether equitable or legal relief is sought. The equitable doctrine of laches shall also apply in actions where equitable relief is sought.

In other words, the Legislature has specifically determined that the equitable defense of latches shall ***not*** apply to an action which arises at law under an enactment of the Legislature. Obviously enough, the Legislature has carved out for itself the sole ability to set the limitations period in legal actions and it is thus not the place of the Judiciary to invade its policy decisions by imposing the judge-made doctrine of latches when a party has met the Legislature's specifically stated filing time requirements. This Court has, on occasion, without ever directly construing MCL 600.5815, at least suggested it could apply to a legal action in "extraordinary circumstances," *e.g., Lothian v Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982), *see also Kaminski v Wayne Co. Board of Auditors*, 287 Mich 62, 67; 282 NW 902 (1938), though such decisions certainly predate this Court's more recent fidelity to the precise text of statutory enactments and, indeed, seem to have not actually much considered MCL 600.5815's language. The Court of Appeals, however, has been more liberal in applying latches to solely legal actions though, once again, without much actual attention to, or sometimes even mention of, the actual statutory language. *E.g., Eberhard v Harper-Grace Hospitals,* 179 Mich App 24, 36; 445 NW2d 469 (1989), *Attorney General v Harkins*, 257 Mich App 564, 568-572; 669 NW2d 296 (2003).

Even if latches *might* apply here, it really should not. Judge Kelly below seemed to focus on the period of time during which the DNA results were not known, blaming, as did the trial court, 100% of the delay on Plaintiff when, obviously enough, either Defendant could just as

easily have acted. More importantly, the record here indicates that Plaintiff was permitted visitation with the child intermittently during this time which, of course, would have mitigated the need for legal action. More importantly, the record indicates that once Plaintiff did file his initial paternity action Defendants, fortuitously and, according to them, coincidentally, just happened to quickly marry and deprive Plaintiff of standing to pursue that action, something that it appears could have, and likely would have, occurred just as quickly after his filing of a paternity action regardless of when it might have occurred. The ROPA took effect on June 12, 2012. The docket entries, Attached Exhibit 2, indicate that Plaintiff filed this action on July 3, 2012, less than a month after the Legislature gave him standing to pursue it and the trial court subject matter jurisdiction to hear it. When Judge Kelly states that Plaintiff "sat on his rights" in this matter for nine years this simply neglects to note that the Legislature did not actually invest him with these rights until a mere three weeks before he filed this action.[21]

Moiles

In the part most applicable to the questions in this case the Court of Appeals opinion in *Moiles* held, *inter alia,* that an acknowledgment of paternity is not a paternity determination as that term is used in the statute, and therefore, that MCL 722.1443(4) does not apply." This Court's reversal indicated that such a ruling was premature and should not have been reached because:

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[21] As Judge Sawyer noted in dissent, Defendants did not raise the latches issue in its brief in the Court of Appeals nor did the trial court address it. Thus Judge Kelly raised the issue *sua sponte*, and Judge O'Connell concurred, something that seems to be an effort to have the ultimate result in this case align with a particular judicial viewpoint, rather than as would be expected by simply following the Legislature's enactment in the ROPA.

> Under the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, an acknowledging father is not required to attest that he is the biological father. Thus, the Court of Appeals erred in concluding that the parties' knowledge of the possibility that respondent was not the biological father of the child was sufficient to demonstrate either fraud or misrepresentation under MCL 722.1437(2). The circuit court similarly erred when, in partial reliance on the DNA identification profiling results, it granted the petition for revocation of the acknowledgment of parentage. We also VACATE that part of the judgment of the Court of Appeals regarding the applicability of MCL 722.1443(4) to an action for revocation of an acknowledgment of parentage. Because the parties' affidavit did not meet the requirements of MCL 722.1437(2), the Court of Appeals erred in addressing the applicability of MCL 722.1443(4).
>
> *In re Moiles,* __ Mich ___; ___ NW2d ____; 2014 WL 709576 (Docket #148094) (2014).

Space limitations here preclude fully revisiting the facts of *Moiles* but it is fair to say that it was a less than ideal vehicle for assessing the ROPA for a number of reasons, not the least of which was that the acknowledged father in that case was embroiled in a number of child abuse/neglect proceedings. The Court of Appeals decision in that case on the point which this Court reversed on also had some troubling implications which, obviously enough, this Court quickly sorted out.

On the issue of whether MCL 722.1443(4) should apply to ROPA cases arising from acknowledgments of paternity, however, the opinion of Judge Owens, joined by Judge Whitbeck, undertakes a careful and painstaking effort to adhere to the precise text of the Legislature's enactments:

> Moiles contends that an acknowledgment 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. 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.
>
> When a statute expressly mentions one thing, it implies the exclusion of other similar things. In this case, while MCL 722.1443 generally applies to any of the actions listed in subdivision (2), including the revocation of an acknowledgment of parentage, subdivision (4) specifically addresses only paternity determinations and determinations that a child is born out of wedlock. These are only two of the four types of actions that the trial court may take under the Revocation of Paternity Act. Had the Legislature wanted 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 that effect. But it did not.
>
> Therefore, we conclude that MCL 722.1443(4) did not require the trial court to make a best-interest determination before revoking Moiles's acknowledgment of parentage.
>
> *Moiles,* 303 Mich App at 74-76 [citational footnotes omitted].

The idea of that a best interests determination would *not* be involved in a determination regarding a child fairly horrified some in the family law bar and, indeed, both the lead opinion below (in trying to graft an established custodial environment MCL 722.27(1) analysis onto the ROPA when the Legislature made no mention of that) and Judge Kelly's opinion, in more directly arguing for an application of MCL 722.1443(4) to every ROPA case, regardless of the Legislature's intentional use of terms that distinguish when subsection (4) should apply (as *Moiles* clearly set forth) show some indications of this. In reality, however, it is impossible, of course, to decide a child custody, parenting time, change of domicile or much of anything else child related without considering the best interest factors of MCL 722.23 but, alas, they must simply be considered at the appropriate juncture, something Judge Sawyer caught onto below.

The Three Opinions, Best Interests and the ROPA

At this point, and in an application that is already at its maximal length, it is appropriate to more refer to the opinions below than recap them, as each judge put a good bit of effort into setting forth their position and each opinion is worth reading in its own right. That said, Judge O'Connell's idea, that since an ROPA determination might upset an established custodial environment, and thus a clear and convincing best interests MCL 722.27(1) analysis is required, looks exactly like what it is, a fairly transparent effort to "write around" a troubling prior decision and the Legislature's own language. While this Court has removed the former the latter is not nearly so malleable and, most importantly, such an effort is premature and unnecessary. To be sure, if a child's established custodial environment will be upset then, of course, such a thing can only be done via MCL 722.27(1)(c). That said, there is no indication that any, and certainly not every, ROPA decision will effect such an event. The question is simply premature as the ROPA is concerned with *titles*, not *custody*. There is exactly nothing in the ROPA that says if a paternity acknowledgment, or paternity determination is set aside the moving party will be awarded custody or even parenting time. To just assume that will, or even could, happen is nonsensical, as the necessary action to accomplish it has not even yet been filed.

The ROPA was enacted by the Legislature to remedy a very particular problem, certain persons, including some biological fathers who were ready, willing, able and enthused about taking on the role of parents, were disenfranchised by the law. They could not even get into the courthouse door. The ROPA provided a remedy for that and allows such persons to obtain legal recognition of their status and, if successful, then gain *standing* to *pursue* custody and parenting

time. The ROPA, however, does not actually give them any of that. And while the *Moiles* Court got the statutory text exactly right it missed the most important reason *why* a best interests determination is required in some instances but not others. Where a trial court has already made a determination in a case the Legislature, recognizing it was creating an exception to the usual rules of *res judicata,* created a higher bar, as there is no need to upset an existing determination without an indication that doing so would actually be in the child's best interests and, thus, that the moving party might well be entitled to some substantive relief in regards to custody or parenting time. On the other hand, where only an acknowledgment of paternity is present, and no court has yet addressed the issue, the ROPA focuses simply on getting the proper parties before the court and avoiding the occasional machinations, such as happened between these parties in 2010, where some persons might act in a manner that precludes a parent from ever asserting a claim and thus precludes the child from having the benefit of a trial court fully assessing his or her best interests.

Judge Kelly's opinion likewise endeavors on insisting that trial court's assess the worthiness of the cart as it sits in front of, instead of behind, the horses. Additionally, it is as worth noting here as anywhere that the ROPA is singularly *not* like every other legislative enactment in Michigan regarding children. The ROPA, simply put, is not child-centric. It focuses on the parental parties, with barely a mention of children. It was enacted specifically as a result of some fairly intense lobbying and fairly well-publicized situations where the existing law feel short of accomplishing, or really even permitting the courts to consider accomplishing, something approaching substantial justice. The Legislature, however, was careful, and perhaps more careful than Judge Kelly's opinion seems to give it credit for being. Rather than adopting a

truncated and minimalist best interests assessment, which is really what MCL 722.1443(4) contains, the Legislature appears to have envisioned that, just as is always the case, any successful ROPA litigant would *still* have to proceed under the Child Custody Act to obtain actual custody and/or parenting time rights. Rather than, as Judge Kelly's opinion would, adopt a truncated analysis of the best interest factors and really necessitated the crafting of an entirely new body of caselaw, the Legislature relied instead on the existing Child Custody Act law, which is longstanding and generally well-refined and capable of ably protecting the child's best interests if it turns out litigation even ends up being necessary (as some parties will likely settle things in a manner that benefits the child without litigation; not every ROPA case begins with people already knowing who the father actually is and that determination, alone, may resolve some).

Judge Sawyer caught the essence of this entire case when he noted that " Not only does the lead opinion err by turning this revocation of paternity case into a child custody case, it overlooks the fact that this is only a revocation of paternity case and not a child custody case. That is, merely because the acknowledgment of parentage is revoked and plaintiff becomes the child's legal father, that does not mean that there will be a change of custody. If, after establishing paternity, plaintiff chooses to pursue custody, the trial court will look to the custody act and the best interest factors to determine whether a change in custody from the mother to plaintiff is warranted." Attached Exhibit 4, Sawyer, P.J., *dissenting,* p 4. Judge Sawyer was exactly correct in that addressing the best interests would be premature when *all* that is before the Court is whether or not Plaintiff will be permitted to *litigate* the question of the child's best

interests, not whether or not any particular role for him in her life is consistent with those best interests.[22]

Applying the Plain Language of MCL 722.1443(4)

There is thus, as noted *supra,* a real question here whether MCL 722.1443(4) even applies here and, in Plaintiff's view, it should not, for the reasons stated in Judge Sawyer's dissent below and in the *Moiles* majority opinion. If this Court agrees then, obviously enough, the trial court erred in conducting an MCL 722.1443(4) test below. If this Court does find that the section applies, as Judge Kelly suggested it should then Plaintiff here offers his view of how MCL 722.1443(4) should apply here. This is obviously an entirely alternative argument and one that, in Plaintiff's view, this Court need never reach. In offering this alternative approach each of the statutory questions under this subsection will be taken in turn.

(a) Whether the presumed father is estopped from denying parentage because of his conduct.

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[22] Similarly *if,* and it is a very big *if,* there is a constitutional issue regarding a child's interest in maintaining a relationship with her parents, something that the United States Supreme Court has never actually held (and something that requires assuming that a parent's liberty interest in a lack of governmental intrusion in their rearing of their child has a mirror image from the child's point of view, which is not exactly obvious as a matter of law, practicality or how the parent/child relationship was viewed at the time of the framing) such an issue certainly would not be ripe *until* someone could claim that interest was actually intruded upon. Here such a claim is several very speculative steps from even possibly arising, making Judge Kelly's discussion of constitutional issues perhaps academically interesting but not at all in accord with this Court's longstanding practice of deciding constitutional matters only when they are both ripe and necessary to the resolution of the case at hand. "Constitutional questions will not be passed upon when other decisive questions are raised by the record which dispose of the case." *Lisee v Secretary of State*, 388 Mich 32, 40–41; 199 NW2d 188 (1972), *quoting People v Quider,* 172 Mich 280, 288–289; 137 NW 546 (1912).

The trial court found this section to be inapplicable. Exhibit 1, p 7, and this was undisputed at trial, though Judge Kelly's opinion in the Court of Appeals raised the issue of latches, which as already been addressed *supra.*.

(b) The length of time the presumed father was on notice that he might not be the child's father.

The trial court found this section to also be inapplicable. Exhibit 1, p 7. This appears to be plainly erroneous. By Defendant Douglas Beaman's own testimony, while he claimed to have always believed that he was the child's father, he was unquestionably aware that Plaintiff Matthew Helton was also a candidate to be the child's father. TR, 99-100; 106-107. While other witnesses, such as Plaintiff and Heather Crews, offered even more detail, every witness agreed that Defendant was having sexual relations with both men in the period eight to nine months before Tegan's birth and every witness agreed that both Plaintiff and Defendant Douglas Beaman were equally aware of the possibility that Plaintiff could be Tegan's biological father.

The trial court's finding of this factor as "inapplicable" demonstrates error regardless of how it is viewed. It may be that the trial court, because it was putting the burden, incorrectly, *supra*, on Plaintiff, did not care what Douglas Beaman knew. Regardless, however, of what burden the trial court did or did not apply to any party, the plain language of Subsection (4)(b) indicates that the Legislature did indeed mandate that "the length of time the presumed father was on notice that he might not be the child's father" is relevant. While Subsection (4) speaks in terms of factors the trial court "may" consider, the requirement that the court state its findings is mandatory and it appears, in specifically stating this criteria, the Legislature expected that it would be considered anytime it is actually applicable (to be sure, some situations will involve no

notice and come as a totally abrupt surprise to the presumed father but this is undisputedly not one of those).

The trial court seems to have simply disregarded undisputed evidence here in its effort to cast this issue entirely as one of Plaintiff's delay. To be sure, Plaintiff forthrightly admitted that, due to a work-related injury and extended period off of work, he could not afford to make the final payment and obtain release of the DNA test results, all parties were undisputedly aware that the test had been done. While the trial court repeatedly couched this case as one of tardiness of Plaintiff, Defendant Douglas Beaman had equal notice, and equal opportunity, to obtain the results of the DNA test and, unlike Plaintiff, has offered no reason at all as to why he could not or did not do so. While Defendant Douglas Beaman now claims to have always been certain he was Tegan's father, he likewise admits that he was always aware that it was possible Plaintiff was and Defendant Douglas Beaman did nothing at all to ascertain the truth of the situation. While the trial court stated that his notice and subsequent lack of action was totally irrelevant here the Legislature's inclusion of MCL 722.1443(4)(b) suggests that it should have been considered relevant and examined here.

(c) The facts surrounding the presumed father's discovery that he might not be the child's father.

The trial court found this factor to also be inapplicable. Exhibit 1, p 7. The entirety of the discussion as to Subsection (4)(b) applies equally here. The trial court thought it was entirely irrelevant that the presumed father here always knew he could well not be the child's father and yet did nothing, even after the DNA test had been performed, to discover its results. The Legislature's inclusion of this factor suggests that a proper analysis under the ROPA should

consider the facts surrounding Douglas Beaman's continual knowledge, from before the time Tegan was even born, that he might not be her father, and his inaction despite this knowledge, to be relevant.

(d) The nature of the relationship between the child and the presumed or alleged father.

There are two substantial errors in the trial court's findings here, which begin on Exhibit 1, p 7-8. The first involves the trial court's finding that Plaintiff had no real parenting time with Tegan, which, though the trial court couched it in terms of a credibility finding, which is entitled to a measure of deference, nonetheless is still against the great weight of the evidence on this record.

At this point, with exactly no caselaw on the ROPA, it is not entirely clear what the standard of appellate review would be for a trial court's factual findings. That said, since the Legislature has couched this question as one of a child's best interests, referencing the Child Custody Act, MCL 722.21, *et seq.,* it seems likely that the standards of review attendant to such questions are applicable here.

In *Fletcher v Fletcher*, 447 Mich 871, 880-881; 526 NW2d 889, 893-894 (1994) this Court discussed the constraints on and review of a trial court's factual findings in custody and best interests questions:

> To whom custody is granted is a discretionary dispositional ruling. *Cooley v Cooley*, 329 Mich 91, 95; 44 NW2d 884 (1950). Therefore, a custody award should be affirmed unless it represents an abuse of discretion. While the abuse of discretion standard is strict, it does not afford trial courts unfettered discretion in awarding custody. The court's exercise of that discretion is already limited by the

> statutory best interest factors, MCL 722.23, each of which must be carefully evaluated by the trial judge. *Wolfe v Howatt*, 119 Mich App 109; 326 NW2d 442 (1982). Further, as noted above, a court's ultimate finding regarding a particular factor is a factual finding that can be set aside if it is against the great weight of the evidence. Therefore, a court's discretion in weighing the evidence regarding a particular factor is not unlimited; rather, it must be supported by the weight of the evidence. *See Baker v Baker*, 411 Mich 567, 584-585; 309 NW2d 532 (1981).
>
> *Fletcher v Fletcher*, 447 Mich 871, 880-881; 526 NW2d 889, 893-894 (1994).

Here the greater weight of the evidence, by far, indicated that Plaintiff had, early in Tegan's life, and later after the DNA test results were revealed, engaged in parenting time with Tegan. While the Defendant mother denied same (and Heather Crews challenged her denials at each turn), Ms. Beaman was, as discussed *supra*, forced to walk back from her denials of Plaintiff actually spending time with Tegan to merely claim that such was not "arranged" or did not really amount to "parenting time" as she described it. While the parties disagreed about a good number of things, the record here reflects that Plaintiff had ample contacts with Tegan at various points in her life and that, when he did not, it was only due to affirmative prevention of such by the Defendants (something the trial court elected not to discuss at all).

At least as importantly, the trial court, despite finding in its facts that Ms. Evangelista's actions occurred because she "took it upon herself," in its discussion on page 8 of Exhibit 1, on this issue states in holding against Plaintiff that "he surprised Tegan in April 2012 by telling her that he was her father." The actual record here, the entirety of which was offered to the Court of Appeals as an exhibit, provides exactly no evidence to support this holding. Plaintiff specifically denied telling Tegan he was her father, Ms. Evangelista specifically admitted that she was the one who unilaterally and in a move that shocked everyone, told Tegan of this and there is not even second or thirdhand testimony (in a case where a lot of hearsay somehow wandered in) that

Tegan or anyone else present at the April 2012 event heard or has ever even said that Plaintiff told Tegan he was her father. The trial court's finding here is not just against the great weight of the evidence but, indeed, is utterly contrary to all of it. The trial court, for whatever reason, decided that Plaintiff (alone) deserved chided for the delay in obtaining the DNA test results and while he certainly does deserve some blame for that (though not all, both Defendants knew very well what the results might show and elected not to obtain them any quicker either, apparently under the view that this was simply Plaintiff's problem) he does not, at all, deserve blame for something he did not do, as he did not, and stated very clearly that he never would have, surprised Tegan in the manner the trial court stated toward the end of its opinion.

To be sure, Plaintiff's relationship could have been more established with Tegan. While he was delayed in paying for the DNA test results, however, this was not at all the reason for the state of the relationship. Rather the limits to his relationship were largely placed by Defendants who 1) cut off visitation twice, first about a year into Tegan's life and then again a while after the test results were obtained; 2) told Plaintiff he would have to go to court if he wanted to see Tegan and then 3) when Plaintiff did file the 2010 action, proceeded to quickly, after a relationship of apparently a decade more or less, decide to suddenly marry, which just so happened to deprive Plaintiff of standing until the Legislature enacted the ROPA. The trial court's findings on this point, while aligning well with its end result, do not match the great weight, or on a most significant question anything at all, found in this record.

(e) The age of the child.

The trial court accurately found the child's age as nine. Exhibit 1, p 8.

(f) The harm that may result to the child.

The trial court credited the Defendant mother's testimony as the Tegan having nightmares after the April 2012 incident and that this was indicative of harm to the child.[23] As the trial court put it:

> From the testimony provided, it appears that Tegan has a stable family environment with her mother, her siblings, friends, and the man she recognizes as her father. To upset these relationships at Tegan's age would cause additional emotional harm and negatively affect her sense of self.
>
> Exhibit 1, p 8.

Even if the testimony regarding Tegan being harmed is credited (and it is worth recalling that the testimony was conflicted by Ms. Evangelista, who appeared to be honest in the uncanny, no filter, no concern for how she would be perceived sort of way, in regards to Tegan's subsequent interactions with her friends at school), as discussed *supra*, attributing or imputing this harm to Plaintiff can only be done by going well beyond the evidence in this record.

Moreover, what the trial court appears to be holding here is that ***if*** Tegan's relationships were disrupted ***then*** it would be harmful, something that is probably true for just about 100% of children. The question the Legislature instructs the trial court to ask in MCL 722.1443(4)(f) is not, to put it in the trial court's terms, whether harm would occur ***if*** relationships are disrupted but rather ***will*** relationships be disrupted and harm occur. The former is probably always true but the latter is what is in question and what the trial court missed entirely in analyzing this section. It does not even find that anything negative would or would likely happen if Plaintiff's petition

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[23] It is worth noting that Defendant Douglas Beaman took a good bit of prodding from his counsel to even remember to testify in regards to these events. TR, 112-113.

was granted but rather, that something negative might and, if it did, it would harm the child. Essentially, the trial court here seemed to be suggesting that Defendants were a stable home for Tegan and any injection of Plaintiff into her life inherently would not be. In prior rulings of this Court a finding of instability that might negatively affect a child, or stability that might benefit her, has require particular specific factual evidence, not simple assumptions. *E.g., Mogle v Scriver,* 241 Mich App 192; 614 NW2d 696 (2000).[24]

The real root of the trial court's error here lies in its pretrial ruling. When Plaintiff endeavored to present an expert witness to examine this complicated issue (which, it should be noted, trial courts rarely to never had to confront prior to the ROPA, meaning no court has much experience with it) and evaluate this particular child and parents (because few indeed would suggest all children are alike) the trial court flatly refused, stating "that would be my job." Pretrial TR, Exhibit 3, p 7. Sadly, on this record, it appears that the trial court underestimated the task or overestimated its abilities.

The idea of psychological evaluations and expertise in evaluating potential harm to a child and best interest questions is hardly novel and, indeed, the value of this has been recognized for years and endorsed by the Legislature. As one example, MCL 552.505(1)(g):

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[24] While the trial court found a favorable quote in *Sinicropi v Mazurek*, 273 Mich App 149; 729 NW2d 256 (2006) the case itself is hardly similar. In *Sinicropi* it appears no one but the mother had any idea of a potential biological father other than the acknowledged father and the biological father himself had nothing to do with the child until, around the time the child was age 5, his status became known in the course of litigation between the mother and acknowledged father. In the instant case, of course, everyone knew what the possibilities were and, even in the strained factual findings of the trial court, Plaintiff has been involved with Tegan far more, and far more often, than was seen in *Sinicropi,* while pursuing this and a prior matter of his own volition, rather than having his status stumbled upon in the course of someone else's litigation.

(1) Each office of the friend of the court has the following duties:

* * *

(g) To investigate all relevant facts, and to make a written report and recommendation to the parties and to the court, regarding child custody or parenting time, or both, if ordered to do so by the court. If custody has been established by court order, the court shall order an investigation only if the court first finds that proper cause has been shown or that there has been a change of circumstances. The investigation may include reports and evaluations by outside persons or agencies if requested by the parties or the court, and shall include documentation of alleged facts, if practicable. If requested by a party, an investigation shall include a meeting with the party. A written report and recommendation regarding child custody or parenting time, or both, shall be based upon the factors enumerated in the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.

MCL 552.505(1)(g).

Here, instead of appointing or even just allowing (as Plaintiff was asking for the evaluator and willing to fund the effort) an expert to evaluate the child, or even just to generally offer expert evidence on a question that few to no Michigan trial courts have encountered previously, the trial court simply stated that figuring out if the child would be harmed was its job, but then, after declining to allow evidence regarding such a question, found against Plaintiff on exactly the issue he sought to offer evidence on. The trial court's finding against the Plaintiff on this question is entirely speculative but that is unsurprising on this record, as the trial court's holding effectively precluded the record from having any evidence on the question the Legislature has stated must be considered in this subsection.

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

As noted *supra*, the trial court's finding regarding Plaintiff's wife's supposed inability to bear children is not only unsupported in this record, it is directly refuted by it. The only thing

supporting this finding as an assertion of defense counsel that was rebuffed by the evidence. While the point is small, its suggestion regarding the trial court's lack of fidelity to the record evidence, and susceptibility to the unsupported suggestions of defense counsel, is not.

Beyond this, once again, the trial court's findings were entirely speculative, stating "there is a risk" that the relationship between Tegan and Defendant Douglas Beaman would be disrupted. Exhibit 1, p 9. The origin of this is a bit uncertain, as Defendant Douglas Beaman himself stated he was not concerned this could happen. TR, 112. Regardless, beyond being speculative, it also essentially weighed and compared the risks between the two men in this case. This was, while perhaps something in the way of an equitable decision, not at all a child-centric best interests sort of analysis, at least not as such is understood elsewhere that such terms appear. *See, e.g.,Pierron, supra.*

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

On this final point the trial court's holding was telling:

> Plaintiff, Defendant Mother, and the child submitted to a DNA test on August 11, 2003. As such, Plaintiff could have found out the results of the DNA test in 2003, when the child was still an infant.

Exhibit 1, p 9.

This, of course, is entirely true on this record. Whatever one thinks of Plaintiff's legitimate, and really undisputed, interrelated health, financial and occupational issues, he bears some of the blame for the delay. The following sentences, pointedly ***not*** held by the trial court, are just as true:

> Plaintiff, Defendant Mother, and the child submitted to a DNA test on August 11, 2003. As such, ***Defendant Mother*** could have found out the results of the DNA

test in 2003, when the child was still an infant.

Likewise, of course, the following is certainly true and undisputed, as both Defendants, though only marrying in 2010, where undisputedly together in 2003, having signed the Acknowledgment of Paternity despite their awareness of Plaintiff's possible fathering of Tegan.

> Plaintiff, Defendant Mother, and the child submitted to a DNA test on August 11, 2003. As such, ***Defendant Douglas Beaman*** could have found out the results of the DNA test in 2003, when the child was still an infant.

Conclusion

This is a newer statute presenting novel questions, an important couple of which the trial court elected not to trouble itself with on the way to a conclusion that seemed to be more of the focus than either the statutorily prescribed questions or the evidence actually present in this record. The Court of Appeals then struggled with its own prior *Moiles* decision and the ROPA and though this Court has now excised the former from our caselaw the latter seems to be, from the opinions below at least, plenty perplexing. This case is important to the Bench and Bar because every subsequent trial court should, regardless of the result here, navigate the ROPA with more guidance than the trial court had here. But it is important for another reason too. Plaintiff, for all his starts, stops, difficulties and related issues, has always, as everyone admits, known that he could be Tegan's father, and tried to do right by her, without unduly intruding into Defendants' lives. When they stopped his visitation when she was an infant he saved up to pay for the paternity results' release and was vindicated. After they again cut off his visitation (after allowing it to resume following the DNA results) and told him to he had to seek legal relief, he hired a lawyer. When that did not work, he filed suit, only to see Defendants all of a sudden

decide to marry, conveniently depriving him of standing. As is exactly what is encouraged in our system for those who feel aggrieved by the law he, and many like him, sought vindication with the Legislature. When that was received he immediately commenced this action, and sought to offer evidence on every point the statute says is relevant.

The trial court declined to allow Plaintiff to present his evidence regarding the potential harm to Tegan, harm to her being the last thing he seeks, and then ruled against him, holding him responsible for a rather nutty interloper whom everyone agreed was acting entirely independently and at no one's behest. Plaintiff has done all the law requires and expects of him to vindicate his rights to have a relationship with his child. He seeks to harm or interfere with no one, only to see, with a bit of regularity, a child he fathered and cares deeply for. Thanks to the ridiculous actions of Ms. Evangelista, Tegan now knows that Plaintiff exists and who and what he is to her. While the trial court imagined all sorts of harm *might* befall Tegan if Plaintiff's request was granted, it is fairly certain what will happen if the trial court's denial stands. Tegan knows she has a biological father, but is now precluded, until she is 18, from knowing that he cares about her a great deal. Sometime, Defendants agree, when she's old enough, they will stop being less than completely honest with her and admit what the trial court has found, thanks solely to an interloper, she already knows. It seems far more than likely that Tegan would be better off through the rest of her childhood years, since she knows that her father is out there somewhere, and not too far away, if she also knows that he really cares about her. The alternative the trial court has mandated, and the Court of Appeals has effectively preserved, is one where she will always be left to wonder where her father went after that one day in April when she accidentally learned that the man whom she had seen often enough with Aunt Heather was actually her father.

A child should not have to wonder if her father cares for her, and one of the things the Legislature provided in the course of enacting the ROPA was a legal avenue, where one had previously not existed, to vindicate this important interest of Tegan and children like her throughout our state.

RELIEF REQUESTED

Wherefore, Plaintiff-Appellant MATTHEW HELTON, respectfully requests that this Honorable Court grant leave to appeal and upon doing so reverse the Court of Appeals February 4, 2014 published decision and the Oakland Family Court's order of January 13, 2013 denying his request to set aside the 2003 affidavit of parentage under the Revocation of Parentage Act and grant him such other relief as is consistent with equity and good conscience.

Respectfully Submitted:
GENTRY NALLEY, PLLC

P53357

Kevin S. Gentry, P53351
Attorney for Plaintiff-Appellant
GENTRY NALLEY, PLLC
714 East Grand River Avenue, Suite 1
Howell, MI 48843
(734) 449-9999 telephone
(734) 449-4444 facsimile

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