STATE OF MICHIGAN

COURT OF APPEALS

JESSICA ANN ROE,

Plaintiff-Appellee,

v

RANDY GENE GRAY II,

Defendant-Appellant.

UNPUBLISHED
May 13, 2021

No. 355636
Clare Circuit Court
Family Division
LC No. 20-900020-DM

Before: SHAPIRO, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

In this action brought under the Revocation of Paternity Act (RPA), MCL 722.1431 *et seq.*, defendant appeals as of right the parties' consent judgment of divorce. Defendant challenges the trial court's prior orders denying his motions to revoke his paternity of two of the parties' minor children. We reverse, vacate the portions of the judgment of divorce concerning custody of the minor children, vacate the Uniform Child Support Order, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Plaintiff and defendant married in 2013 and, during their marriage, plaintiff gave birth to three children. In January 2020, plaintiff filed a complaint for divorce. In September 2020, defendant filed motions to revoke paternity of the parties' two oldest children. Defendant requested that the trial court find that the children were born out of wedlock and if necessary, order genetic testing to make that determination. The trial court declined to order genetic testing on the basis that defendant was the "legal father" and denied defendant's motions. The trial court entered the parties' consent judgment of divorce, which provided that the parties have joint legal and physical custody, along with week-on, week-off parenting time. It also incorporated a uniform

child support order requiring defendant to pay child support to plaintiff in the amount of $396 for their three children.[1] This appeal followed.

II. STANDARD OF REVIEW

Defendant argues that the trial court erred by denying his motions to revoke paternity without first ordering genetic testing. We agree.

"When reviewing a decision related to the [RPA], this Court reviews the trial court's factual findings, if any, for clear error." *Glaubius v Glaubius*, 306 Mich App 157, 164; 855 NW2d 221 (2014). A finding is clearly erroneous, if, after a review of the entire record, this Court "is left with the definite and firm conviction that a mistake has been made." *Berger v Berger*, 277 Mich App 700, 702; 747 NW2d 336 (2008). "The proper interpretation and application of a statute is a question of law, which this Court reviews de novo." *Rogers v Wcisel*, 312 Mich App 79, 86; 877 NW2d 169 (2015).

III. ANALYSIS

"The [RPA] was added by way of 2012 PA 159, and took effect on June 12, 2012." *Grimes v Van Hook-Williams*, 302 Mich App 521, 527; 839 NW2d 237 (2013). "The RPA provides the procedures for courts to determine the paternity of children in certain situations." *Jones v Jones*, 320 Mich App 248, 253; 905 NW2d 475 (2017). Specifically, "MCL 722.1441 governs actions to determine if a 'presumed father' under the RPA is not a child's legal father because the child was born out of wedlock for the purpose of establishing paternity." *Demski v Petlick*, 309 Mich App 404, 424; 873 NW2d 596 (2015).

MCL 722.1441(2) governs when a child's paternity is challenged during a divorce proceeding and provides:

> If a child has a presumed father, a court may determine that the child is born out of wedlock for the purpose of establishing the child's paternity if an action is filed by the presumed father within 3 years after the child's birth or if the presumed father raises the issue in an action for divorce or separate maintenance between the presumed father and the mother. The requirement that an action be filed within 3 years after the child's birth does not apply to an action filed on or before 1 year after the effective date of this act.

The RPA provides a court with authority to "[d]etermine that a child was born out of wedlock." MCL 722.1443(1)(d). MCL 722.1443 further provides:

> (4) A court may refuse to enter an order . . . determining that a child is born out of wedlock if the court finds evidence that the order would not be in the best

[1] A third child was born to the parties during their marriage and defendant signed an affidavit of parentage for this child.

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.

(5) The court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act. Blood or tissue typing or DNA identification profiling shall be conducted in accordance with section 6 of the paternity act, 1956 PA 205, MCL 722.716. The results of blood or tissue typing or DNA identification profiling are not binding on a court in making a determination under this act.

"To be clear, a court is required to always perform a best-interest evaluation under MCL 722.1443(4). Otherwise, the court would not be aware that the best interests indicate that the revocation should not be granted." *Jones*, 320 Mich App at 256 n 3.

"The goal of statutory interpretation is to give effect to the Legislature's intent." *Rogers*, 312 Mich App at 86. To determine legislative intent, this Court first looks to the language in the statute. *Jones*, 320 Mich App at 253. "If a statute's language is clear, this Court assumes that the Legislature intended its plain meaning and enforces it accordingly." *Rogers*, 312 Mich App at 86. "Words of statutes are given their plain and ordinary meanings, while legal terms are construed according to their legal meanings." *Jones*, 320 Mich App at 253. "Statutes must be read as a whole, and this Court may not read statutory provisions in isolation." *Id*. "[T]he word 'may' is used to express opportunity or permission." *Hackel v Macomb Co Comm*, 298 Mich App 311, 319; 826 NW2d 753 (2012), citing *Random House Webster's College Dictionary* (2001). In contrast, "the word 'shall' generally indicates a mandatory directive, not a discretionary act." *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013). " '[A] necessary corollary to the plain-meaning rule is that courts should give the ordinary and accepted meaning to the

mandatory word 'shall' and the permissive word 'may' unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.' " *Grabow v Macomb Twp*, 270 Mich App 222, 229; 714 NW2d 674, 679 (2006), quoting *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982).

MCL 722.1443(2)(d) provides that a trial court "may" determine that a child was born out of wedlock. Despite this permissive language, MCL 722.1443(5) provides that "[t]he court *shall* order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act. . . . The results of blood or tissue typing or DNA identification profiling are not binding on a court in making a determination under this act." (Emphasis added.) As previously stated, "[s]tatutes must be read as a whole, and this Court may not read statutory provisions in isolation." *Jones*, 320 Mich App at 253. The trial court committed legal error by failing to order DNA tests and therefore prematurely denied defendant's motions to revoke his paternity.

We reverse the trial court's orders denying defendant's motions to revoke his paternity and remand for further proceedings. On remand, the trial court must order DNA tests and consider the results when determining whether the children were born out of wedlock. If the trial court refuses to enter an order determining that either child was born out of wedlock, it must find by a preponderance of the evidence that the order would not be in the best interests of the child. See *Jones*, 320 Mich App at 257 n 4. In doing so, the trial court should consider the best-interest factors provided in MCL 722.1443(4). If the trial court determines that either child was born out of wedlock, it should modify the terms in the judgment of divorce and the Uniform Child Support Order accordingly.

We reverse, vacate the portions of the judgment of divorce concerning custody of the minor children, vacate the Uniform Child Support Order, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering