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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

FAMILY LAW: Effect of a properly signed
acknowledgment of parentage on custody
ACKNOWLEDGMENT OF of the minor child
PARENTAGE ACT:

CHILD CUSTODY:

After a mother and father sign an acknowledgment of parentage concerning a child born out of wedlock, in accordance with the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*, the mother has custody of that child unless otherwise determined by a court or otherwise agreed upon by the parties, in writing. A police agency may rely on a duly executed acknowledgment of parentage as establishing the mother's custody of the minor child, unless presented with a court order or written agreement signed by the parties stating otherwise.

Opinion No. 7191

March 28, 2006

Mr. David L. Morse
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You have asked if a properly executed affidavit of parentage legally gives the mother of a child born out of wedlock custody of the child named in the affidavit. You have also asked if there is any difference in the legal effect to be accorded a court's custody order and an affidavit of parentage for purposes of police agencies assisting custodial parents in returning children improperly withheld from them.

Under the Acknowledgment of Parentage Act (Act), 1996 PA 305, MCL 722.1001 *et seq*, the paternity of a child born out of wedlock may be established by the signing of an acknowledgment of parentage. Section 3(1) of the Act, MCL 722.1003, provides:

If a child is born out of wedlock, a man is considered to be the natural father of that child if the man joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgment of parentage.

The form must be prepared or approved by the State Registrar,¹ MCL 722.1008, and must include the following written notices to the parties:

- (a) The acknowledgment of parentage is a legal, public document.
- (b) Completion of the acknowledgment is voluntary.
- (c) The mother has custody of the child unless otherwise determined by the court or agreed by the parties in writing.
- (d) Either parent may assert a claim in court for parenting time or custody.
- (e) The parents have a right to notice and a hearing regarding the adoption of the child.
- (f) Both parents have the responsibility to support the child and to comply with a court or administrative order for the child's support.
- (g) Notice that signing the acknowledgment waives the following:
 - (i) Blood or genetic tests to determine if the man is the biological father of the child.
 - (ii) Any right to an attorney, including the prosecuting attorney or an attorney appointed by the court in the case of indigency, to represent either party in a court action to determine if the man is the biological father of the child.
 - (iii) A trial to determine if the man is the biological father of the child. [MCL 722.1007(a) – (g).]

The completed original acknowledgment of parentage must be filed with the State Registrar. MCL 722.1005(1).² In addition to establishing paternity without the necessity for a court order, a properly executed acknowledgment of parentage may serve as the basis for court-ordered child support, custody, or parenting time. MCL 722.1004.

Section 6 of the Act, MCL 722.1006, establishes that the mother is presumed to have custody, unless otherwise determined by the court or otherwise agreed upon by the parties in writing:

After the mother and father sign an acknowledgment of parentage, the mother is presumed to have custody of the minor child unless otherwise determined by the court or otherwise agreed upon by the parties in writing.

In the context of that statute, "presumed" means taken to be true without further proof, subject, of course, to a court order or written agreement of the parties providing otherwise. In the absence of a statutory definition, the words of a statute are generally given their common meaning, which may be shown by a dictionary.³ The relevant definition of "presumed" provides: "to suppose to be true without proof, <presumed innocent until proved guilty.> *Merriam-Webster's Collegiate Dictionary, 10th Edition* (2001). Thus, unless a court order determines otherwise or the parties agree otherwise in writing, custody is taken as being with the mother.

That point is confirmed by section 7(c) of the Act, MCL 722.1007(c), requiring that the form give notice of that custody assumption:

The acknowledgment of parentage form shall include at least all of the following written notices to the parties:

* * *

(c) *The mother has custody of the child unless otherwise determined by the court or agreed by the parties in writing.* [Emphasis added.]^[4]

Where the language in a statute is clear and unambiguous, the statute must be applied as written. *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002).

It is my opinion, therefore, that after a mother and father sign an acknowledgment of parentage concerning a child born out of wedlock, in accordance with the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.*, the mother has custody of that child unless otherwise determined by a court or otherwise agreed upon by the parties, in writing. A police agency may rely on a duly executed acknowledgment of parentage as establishing the mother's custody of the minor child, unless presented with a court order or written agreement signed by the parties stating otherwise.

MIKE COX
Attorney General

[Att.](#)

¹ The State Registrar is the official within the Department of Community Health who administers, controls, and serves as the custodian of Michigan's system of vital statistics. MCL 333.2813.

² A copy of the most recent form approved for purposes of complying with the Acknowledgment of Parentage Act, entitled "Affidavit of Parentage," is attached to this opinion. The form requires the parties to affirm the statements made therein "under penalty of perjury" and to have the completed form notarized. The Acknowledgment of Parentage Act does not affect the validity of an acknowledgment signed before June 1, 1997. MCL 722.1012. After that date, acknowledgments of parentage must conform to the act's requirements.

³ *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 240; 615 NW2d 241 (2000), "Where the Legislature has not expressly defined the terms used in a statute, this Court may turn to dictionary definitions 'to aid our goal of construing those terms in accordance with their ordinary and generally accepted meanings.'" [Citation omitted.]

⁴ This does not preclude a police officer from taking appropriate steps to resolve the issue, if the officer has reason to believe that the acknowledgment of paternity is not authentic or has been falsified. A false affidavit of parentage is invalid and without lawful effect. *Aichele v Hodge*, 259 Mich App 146, 155-156; 673 NW2d 452 (2003).

Editor's Note: Subsequent to this opinion issuing, the Legislature enacted 2006 PA 105, amending MCL 722.1006, effective April 18, 2006.