[Cite as *In re P.L.*, 2019-Ohio-4681.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE P.L.	:	
	:	No. 108312
A Minor Child	:	
	:	
[Appeal by A.P.]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 14, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. PR-16-717446

Appearances:

Eric J. Cherry, *for appellant*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Steven W. Ritz and Marilyn Orkin Weinberg, Assistant Prosecuting Attorneys, *for appellee*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiff-appellant, A.P. ("appellant"), brings the instant appeal challenging the trial court's judgment granting summary judgment in favor of defendants-appellees, T.L. and K.L. ("defendants"), and defendant-appellee, Office of Child Support Services ("OCSS"), on appellant's complaint to establish paternity. Appellant argues that the trial court erred in concluding that pursuant to Ohio's

Uniform Parentage Act ("UPA"), R.C. Chapter 3111, appellant was barred from bringing his paternity action and challenging the acknowledgment of paternity filed by defendants in May 2008. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} The instant matter pertains to a dispute about the paternity of a minor child, P.L. In 2007, appellant and defendant T.L. had a sexual relationship. The child was born on May 12, 2008.

{¶ 3} Two days after the child was born, on May 14, 2008, defendants executed an acknowledgment of paternity. Therein, K.L. acknowledged his status as the child's legal father on May 14, 2008. This acknowledgment was registered with the Ohio Central Paternity Registry, and, in accordance with R.C. Chapter 3111, filed with Cuyahoga County Job and Family Services, Office of Child Support. The child's birth certificate designates T.L. as the child's mother and K.L. as the child's father. Defendants were married on January 11, 2010, and had a second child in June 2011.

{¶ 4} According to appellant, he lost contact with T.L. in October 2007. He purportedly suspected that T.L. was pregnant around the time they had a falling out, and confronted her about his suspicion. He maintains that T.L. denied any pregnancy.

{¶ 5} The next contact between appellant and T.L. occurred approximately five years later, in August 2013, when he saw her in public. After this encounter,

appellant purportedly located T.L. on social media, and discovered pictures of T.L. and the child on T.L.'s social media pages. The child was five years old at this time.

{¶ 6} Notwithstanding the fact that the child already had a legal father, defendant K.L., appellant suspected that he was the child's biological father. Accordingly, he attempted to establish paternity of the child.

{¶ 7} On November 30, 2016, appellant filed a complaint "to determine parent child relationship." Appellant commenced the action "to determine paternity pursuant to R.C. 3111.04." Appellant asserted two causes of action: Count 1, action to establish paternity; and Count 2, "action to determine parental rights and responsibilities." Appellant requested the trial court to "issue an order regarding paternity of the minor child; [and] that the Court order genetic testing to determine paternity[.]"

{¶ 8} Appellant filed an amended complaint on December 5, 2016, correcting a typographical error regarding the mother's last name. At the time, the child was eight years old.

{¶ 9} The trial court proceedings were lengthy and complex. We will address the proceedings that are pertinent to our analysis in this appeal.

{¶ 10} On March 24, 2017, defendants filed a motion to dismiss appellant's amended complaint. Therein, defendants argued that pursuant to R.C. 3111.25, 3111.26(A), and 3111.03, K.L.'s acknowledgement of paternity is final and conclusively established that he is the child's father. Defendants maintained that K.L. satisfied all three prongs set forth in R.C. 3111.25 in order to establish that he is

the child's father. Furthermore, defendants argued that appellant lacked standing to seek relief from paternity established by K.L. Defendants also filed a motion to transfer the matter to a visiting judge.

{¶ 11} On March 24, 2017, OCSS filed a motion to intervene, and a motion to dismiss appellant's complaint and request for genetic testing for failure to state a claim and insufficient service of process. Regarding the argument that appellant failed to state a claim upon which relief can be granted, OCSS argued that the parent-child relationship had already been established between K.L. and the child on May 14, 2008. OCSS argued that pursuant to R.C. 3111.25, the acknowledgment of paternity filed by defendants in May 2008 is final and enforceable with respect to establishing a parent-child relationship.

{¶ 12} On March 16, 2017, a magistrate issued an order granting appellant leave to file a motion for genetic testing. On April 5, 2017, appellant filed a motion "for genetic testing of parties." Therein, appellant argued that pursuant to R.C. 3111.10, the evidence obtained from genetic testing "may be used to rebut a presumption of paternity resulting from marriage." On the same day, appellant filed a brief in opposition to the motions to dismiss filed by defendants and OCSS.

{¶ 13} In his brief in opposition, appellant argued that the motions to dismiss were premature, and that the trial court need not rule on the motions until receiving and considering the results of genetic testing. Appellant asserted that when an acknowledgement of paternity becomes final and enforceable, under R.C. 3111.20 to 3111.35, it is only binding and enforceable as to the person acknowledging paternity,

K.L., and that the acknowledgment is not binding and enforceable as to appellant. He also appeared to argue that he was the victim of deceit, alleging that T.L. concealed the existence of the child from him for five years.

{¶ 14} On April 7, 2017, a magistrate issued a decision denying appellant's motion for genetic testing, granting OCSS's motion to intervene, denying defendants' motion to transfer the case to a visiting judge, and denying the motions to dismiss filed by defendants and OCSS.

{¶ 15} On April 12, 2017, appellant filed a second motion for genetic testing of the parties. A magistrate denied the second motion for genetic testing on April 14, 2017.

{¶ 16} On April 19, 2017, appellant filed a third motion for genetic testing, requesting that the child, K.L., T.L., and appellant all submit samples for comparison. On April 19, 2017, a magistrate granted appellant's motion for genetic testing.

{¶ 17} On April 26, 2017, defendants filed a motion to set aside the magistrate's April 19, 2017 order granting the motion for genetic testing. On April 28, 2017, the trial court granted defendants' motion to set aside the magistrate's order.

{¶ 18} Appellant filed a brief in opposition and objections to the trial court's judgment on May 8, 2017. On May 16, 2017, the trial court granted appellant's motion and ordered genetic testing to be rescheduled.

{¶ 19} On June 2, 2017, defendants requested an order of no just reason for delay such that they could file an appeal challenging the order to submit to genetic testing. A magistrate denied defendants' motion on June 7, 2017.

{¶ 20} On June 13, 2017, appellant filed a motion for a declaratory judgment, pursuant to R.C. 3111.09(A)(2), that he is the child's natural father based on defendants' failure to submit to genetic testing. Defendants filed a brief in opposition to appellant's motion for declaratory judgment on June 27, 2017.

{¶ 21} On June 14, 2017, defendants filed a motion to set aside the magistrate's June 7, 2017 order denying their request for an order of no just reason for delay enabling them to file an appeal. On June 30, 2017, the trial court denied defendants' motion to set aside the magistrate's June 7, 2017 order.

{¶ 22} A magistrate scheduled a hearing on June 27, 2017, to determine whether defendants willfully failed to comply with the order of genetic testing. A hearing was held on June 27, 2017, on the issue of defendants' failure to submit to genetic testing.

{¶ 23} Following the hearing, a magistrate issued an order on June 28, 2017, finding that (1) defendants willfully failed to submit to genetic testing and willfully failed to submit the child to genetic testing; and (2) pursuant to R.C. 3111.09(A)(2), the court was required to issue an order determining the existence of a parent-child relationship. In making this determination, the magistrate's order provided, in relevant part: "[f]or the time being, the child has two fathers, each one arising from

the operation of law of separate statutes in existence in the state of Ohio under these circumstances."

{¶ 24} On June 30, 2017, defendants filed a motion to stay the magistrate's June 28, 2017 order, and a motion to seal the record and for a protective order. Defendants filed preliminary objections to the magistrate's June 28, 2017 decision, and a request for findings of fact and conclusions of law on July 12, 2017.

{¶ 25} On July 12, 2017, the trial court issued a journal entry staying the magistrate's June 28, 2017 order pending resolution of defendants' objections, and denying defendants' motions to seal the record and for a protective order.

{¶ 26} On July 21, 2017, the trial court approved and adopted the magistrate's June 28, 2017 decision.

{¶ 27} On August 4, 2017, defendants filed supplemental objections to the magistrate's June 28, 2017 decision. OCSS also filed objections to the magistrate's June 28, 2017 decision on August 4, 2017. Appellant filed a response to the objections to the magistrate's decision on August 22, 2017.

{¶ 28} On September 15, 2017, the trial court issued a judgment entry in which the court vacated its July 21, 2017 journal entry, and approved and adopted the magistrate's decision with certain modifications. The court concluded that appellant was permitted to prosecute his complaint to determine paternity, and denied defendants' request that the order for genetic testing be designated a final appealable order.

{¶ 29} The trial court vacated the magistrate's finding that the defendants willfully failed to comply with genetic testing, and vacated the magistrate's decision regarding appellant's motion for default judgment, including the magistrate's determination that the child has two fathers "for the time being." The trial court's judgment entry provided, in relevant part, "[a]t this time, [appellant] is not found to be the child's father by default, and the birth certificate shall not be changed pending further proceedings after genetic testing." The trial court remanded the matter to a magistrate for genetic testing and further proceedings, and explained, "should [appellant] be determined to be the child's father after further proceedings, his name shall *replace* [K.L.'s] name on the child's birth certificate; there shall not be two fathers listed on the child's birth certificate." (Emphasis sic.)

{¶ 30} On October 2, 2017, appellant filed a motion for declaratory judgment, pursuant to R.C. 3111.02(A)(2), based on defendants' failure to submit to genetic testing.

{¶ 31} On September 15, 2017, the parties were ordered to submit to genetic testing on or before September 29. On September 28, 2017, defendants filed a writ of prohibition in this court. *See State ex rel. T.L. v. Corrigan*, 2018-Ohio-853, 108 N.E.3d 253 (8th Dist.). On September 29, 2017, this court issued an alternative writ staying the trial court's order for genetic testing.

{¶ 32} On appeal, this court denied defendants' prohibition action, dissolved the alternative writ, and remanded the case to the trial court for further proceedings on March 7, 2018.

{¶ 33} The trial court issued a judgment entry on March 12, 2018, in which it denied appellant's motion for declaratory judgment based on the appellate proceedings. The trial court ordered the parties to complete genetic testing on or before March 23, 2018.

{¶ 34} On April 2, 2018, appellant filed the results of the genetic testing. The testing indicated that appellant could not be excluded as the child's biological father.

{¶ 35} On June 12, 2018, appellant filed an ex parte motion for an emergency temporary parenting plan. Defendants filed a response on June 15, 2018.

{¶ 36} On June 21, 2018, a magistrate transferred the case to a visiting judge based on the complexity of the matter. Appellant filed objections to the case being transferred on June 25, 2018. On June 22, 2018, the trial court approved and adopted the magistrate's decision transferring the case to a visiting judge.

{¶ 37} On September 13, 2018, defendants and OCSS filed motions for summary judgment. In their motion for summary judgment, defendants argued that (1) pursuant to R.C. 3111.03(B) and 3111.25, K.L.'s acknowledgment of paternity was a final and enforceable determination of paternity; (2) the final and enforceable determination of paternity, which had not been rescinded or ratified, should be given full faith and credit by the trial court; (3) there is no legal mechanism or statute under which appellant can challenge the final and enforceable determination of paternity; and (4) even if appellant is able to challenge the determination of paternity, his action is untimely. In support of their argument that appellant's paternity action was time-barred, defendants asserted that appellant filed his

complaint after both the 60-day time limit under R.C. 3111.27 and the one-year time limit under R.C. 3111.28 for rescinding the acknowledgment of paternity had expired.

{¶ 38} In its summary judgment motion, OCSS argued that (1) Ohio's UPA, R.C. Chapter 3111, does not provide for the relief sought by appellant — disestablishing K.L. as the child's legal father and establishing appellant as the child's father; (2) K.L.'s acknowledgment of paternity became a final and enforceable determination of paternity after 60 days, and was no longer a presumption of paternity; (3) because the acknowledgment of paternity is final and enforceable, it cannot be collaterally attacked by appellant; (4) R.C. Chapter 3111 does not include any provisions from the original UPA, particularly Section 610, that permit or enable appellant, when he filed his complaint in 2016, to challenge the final and enforceable determination of paternity pursuant to the acknowledgment of paternity filed by defendants in 2008; and (5) pursuant to R.C. 3111.02(B), the acknowledgement of paternity should be given full faith and credit.

{¶ 39} On September 20, 2018, appellant filed a motion for summary judgment. Therein, appellant argued that (1) the finality of K.L.'s acknowledgment of paternity does not permanently bar his paternity action or deprive him of his parental rights, as would an adoption or award of permanent custody; (2) the full faith and credit provisions under R.C. 3111.02(B) only apply to the parties that signed the acknowledgment of paternity — not putative fathers, such as appellant, that neither signed nor were aware that an acknowledgment of paternity had been

filed; and (3) Ohio's acknowledgment of paternity and rescission statutes, R.C. 3111.27, 3111.28, 3119.961, and 3119.962, did not bar his paternity action because he was an estranged father, and did not know that the child even existed, much less that defendants executed an acknowledgement of paternity in May 2008. In support of the third argument, appellant contended that these statutes only apply to persons who signed an acknowledgment of paternity or persons that knew or had reason to know that an acknowledgment of paternity was signed, and that they do not apply to estranged putative fathers such as himself. Appellant maintained that as the biological and putative father, he was permitted to bring the paternity action at any time as long as he did not know or have reason to know that K.L. had previously signed the acknowledgment of paternity in 2008.

{¶ 40} Appellant also raised a procedural due process argument, for the first time, challenging the constitutionality of R.C. Chapter 3111. Specifically, appellant argued that a determination that his paternity action was barred by R.C. Chapter 3111, based on the acknowledgment of paternity filed by defendants in May 2008, would violate his procedural due process rights because there would be no procedural protections for natural fathers in the event that the biological mother and another man acknowledge paternity — either willfully through fraud, or based on a mistake in fact — without the natural father's knowledge. In other words, appellant asserted that without giving natural or putative fathers notice that an acknowledgment of paternity has been filed and opportunity to either assert his parental rights or challenge the acknowledgment of paternity, a biological mother

and another man would be permitted to deceive the putative biological father and divest him of his natural parental rights without due process. Appellant argued that the provisions and procedures for establishing paternity under R.C. Chapter 3111 are "encumbered with opportunities for deceit and lack of procedural safeguards."

{¶ 41} OCSS filed a brief in opposition to appellant's summary judgment motion on October 4, 2018. Therein, OCSS argued that the trial court did not have jurisdiction to entertain appellant's procedural due process argument and constitutional challenge to R.C. Chapter 3111 because appellant did not raise this argument in his original or amended complaint, and raised the argument for the first time in his summary judgment motion.

{¶ 42} Defendants filed a brief in opposition to appellant's summary judgment motion on October 9. Therein, regarding appellant's due process argument and assertion that he neither had notice that the child was born nor that an acknowledgment of paternity had been filed, defendants argued that the sexual relationship between T.L. and appellant gave appellant notice of a potential paternity claim. Furthermore, defendants argued that appellant's constitutional challenges to R.C. Chapter 3111 were improperly raised for the first time in his summary judgment motion.

{¶ 43} The trial court held a hearing on the summary judgment motions on October 24, 2018. During the hearing, defendants' counsel asserted that appellant had notice of the possibility that T.L. was pregnant and his potential paternity claim as early as August 2007. Defense counsel emphasized that in appellant's summary

judgment motion, appellant acknowledged that (1) he had a sexual relationship with T.L., (2) he suspected that she was pregnant in or around October 2007, and (3) he approached T.L. "during or slightly before she was aware of her pregnancy" and confronted T.L. about his suspicion that she may be pregnant. (Tr. 26.)

{¶ 44} Appellant's counsel asserted,

> we have raised from the beginning that [appellant] reached out to [T.L.] very early on [regarding his suspicion that she was pregnant].
>
> He discovered a picture on social media and believed, based on the picture that he saw, that she was pregnant, so he reached out to her and asked her. She said no.
>
> So there was not only a lack of knowledge [about the pregnancy], there was an affirmative statement that denied that she was pregnant.

(Tr. 48.)

{¶ 45} Appellant's counsel indicated that appellant's last contact with T.L. was in October 2007, approximately seven months before the child was born on May 12, 2008.

{¶ 46} The next contact between appellant and T.L. was in August 2013, when the child was five years old. Appellant saw T.L. in public, looked her up on social media after the encounter, and discovered pictures of T.L. and the child on T.L.'s social media pages. Appellant reached out to T.L. at this time to inquire whether he was the child's father. After this confrontation, T.L. contacted the police and alleged that appellant was harassing her and her family.

{¶ 47} Regarding defendants' argument that appellant's paternity action was time-barred, appellant's counsel argued that the delay in commencing the paternity

action was caused by the deceit of T.L. when she concealed the pregnancy and the child from him, denied that she was pregnant when confronted by appellant, and reported appellant's purported harassment to the police.

{¶ 48} On February 27, 2019, the trial court issued a judgment entry and opinion granting summary judgment in favor of defendants and OCSS. The trial court held that the acknowledgment of paternity filed by defendants in May 2008 was final and enforceable. The trial court recognized that although R.C. 3111.27 permits rescission of an acknowledgment of paternity, only the persons that signed the acknowledgment — T.L. and K.L. — and not appellant, as the putative father, have the right to pursue rescission under this statute. The trial court also acknowledged that although R.C. 3111.28 permits rescission of an acknowledgment of paternity on the basis of fraud, duress, or material mistake of fact, the one-year time limit for commencing an action to rescind an acknowledgment under this statute had expired. Finally, the trial court concluded that R.C. Chapter 3111 does not contemplate or provide the relief sought by appellant. Accordingly, the trial court granted defendants' and OCSS's motions for summary judgment and dismissed appellant's paternity action.

{¶ 49} It is from this judgment that appellant filed the instant appeal on March 15, 2019. Appellant assigns three errors for review:

> I. The trial court erred as a matter of law by failing to grant appellant relief from [R.C.] 3111.01 et seq. because it violates his right to procedural due process.

II. The trial court erred as a matter of law by granting appellee's motion for summary judgment.

III. The trial court erred as a matter of law and abused its discretion by failing to grant appellant relief under R.C. 3111.09.

II. Law and Analysis

A. Summary Judgment Standard of Review

{¶ 50} Summary judgment under Civ.R. 56 provides for the expedited adjudication of matters where there is no material fact in dispute to be determined at trial. To obtain summary judgment, the moving party must show that "(1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion when viewing evidence in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party." *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996), citing *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 219, 631 N.E.2d 150 (1994).

{¶ 51} The moving party has the initial responsibility of establishing its entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). "[I]f the moving party meets this burden, summary judgment is appropriate only if the nonmoving party fails to establish the existence of a genuine issue of material fact." *Deutsche Bank Natl. Trust Co. v. Najar*, 8th Dist. Cuyahoga No. 98502, 2013-Ohio-1657, ¶ 16, citing *Dresher* at 293.

{¶ 52} Once a moving party demonstrates no material issue of fact exists for trial and the party is entitled to judgment, it is the nonmoving party's duty to come

forth with argument and evidence that demonstrates a material issue of fact does exist that would preclude judgment as a matter of law. *Id*.

B. R.C. Chapter 3111

{¶ 53} The legislature enacted R.C. 3111.01 et seq., Ohio's Uniform Parentage Act, in 1982. R.C. Chapter 3111 was amended in 1986, 1992, and 2001, which is the current version.

> "The current version of the Ohio Parentage Act supplies three primary mechanisms by which the father-child relationship may be established. First, the relationship may be established by a civil action, as provided in ORC §§ 3111.01 to 3111.18. * * * Second, the father-child relationship may be established by an acknowledgment of paternity, as provided in ORC §§ 3111.20 to 3111.35. * * * Third, the father-child relationship may be established by an administrative determination of paternity, as provided in ORC §§ 3111.38 to 3111.54." Furniss, *The Uncertain Status of Non-Marital Children Under Ohio Inheritance Laws* (2009), 20 Ohio Prob. L.J. 45.

Clark v. Malicote, 12th Dist. Clermont No. CA2010-07-049, 2011-Ohio-1874, ¶ 11.

{¶ 54} The instant matter involves the second mechanism for establishing the father-child relationship. As noted above, the child was born on May 12, 2008. Two days later, on May 14, 2008, defendants executed and filed an acknowledgment of paternity.

C. Final and Enforceable Acknowledgment of Paternity

{¶ 55} Appellant's first and second assignments of error both challenge the trial court's judgment in favor of defendants and OCSS and determination that appellant was not entitled to relief under R.C. Chapter 3111. These assignments of

error and the arguments raised therein are interrelated, and as such, will be addressed together.

{¶ 56} As noted above, the child was born on May 12, 2008. The acknowledgment of paternity was executed by defendants on May 14, 2008.

{¶ 57} As an initial matter, we note that it is undisputed that appellant is, in fact, the biological father of the child.[1] The trial court's February 27, 2019 judgment entry provides, in relevant part, "Genetic Testing occurred, and the results were submitted to the court. The DNA Test Report, dated March 29, 2018 indicated that 'The alleged father ([appellant]) cannot be excluded as the biological father of the child.'"

{¶ 58} Furthermore, appellant does not argue that K.L.'s acknowledgment of paternity was defective in any way, or that defendants failed to comply with the requirements set forth in R.C. 3111.20-3111.35, including specifically, R.C. 3111.23. As the trial court recognized in its judgment entry addressing the summary judgment motions:

> Two days after [the child] was born, [o]n May [14], 2008, Defendant [K.L.] filed an acknowledgement of paternity. This Defendant complied with all the requirements of Ohio Rev. Code §§3111.20-3111.35. None of the parties allege that in some way this method of establishment of paternity was in any way defective. There is no dispute that this acknowledgment of paternity has become final and binding. It is no longer a presumption.

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[1] During the magistrate's June 27, 2017 hearing on appellant's motion for declaratory judgment, however, K.L. appeared to opine that genetic testing would confirm that he, not appellant, was the father of the child. (Tr. 19.)

{¶ 59} Accordingly, the record reflects, and it is undisputed, that defendants complied with the provisions set forth in R.C. Chapter 3111 in filing the acknowledgment of paternity.

{¶ 60} In the trial court below and in this appeal, the parties dispute the effect of the acknowledgment of paternity, and the effect — if any — of the subsequent genetic testing. Defendants and OCSS argue that once the acknowledgment of paternity became final and enforceable, it is dispositive on the issue of paternity and cannot be subsequently challenged by any third party, including appellant, as the child's putative and biological father.

{¶ 61} On the other hand, appellant argues that he is not precluded from challenging the final and enforceable acknowledgment of paternity as putative and biological father because he did not know or have reason to know about the acknowledgment of paternity executed by defendants. Appellant also appears to argue that the results of the genetic testing demonstrate the "fraudulent nature" of defendants' acknowledgment of paternity.

{¶ 62} After reviewing the record, we agree with defendants and OCSS, as their argument is consistent with the applicable provisions in R.C. Chapter 3111, specifically R.C. 3111.25-3111.28.

{¶ 63} R.C. 3111.25, governing finality of acknowledgment of paternity, provides:

> An acknowledgment of paternity is final and enforceable without ratification by a court when the acknowledgment has been filed with the office of child support, the information on the acknowledgment has

> been entered in the birth registry, and the acknowledgment has not been rescinded and is not subject to possible rescission pursuant to section 3111.27 of the Revised Code.

{¶ 64} R.C. 3111.26, governing the effects of a final and enforceable acknowledgment of paternity, provides, in relevant part, "[a]fter an acknowledgment of paternity becomes final and enforceable, the child is the child of the man who signed the acknowledgment of paternity, as though born to him in lawful wedlock." Once the acknowledgement of paternity has been filed with the child support office, R.C. 3111.27 governs the procedure for rescinding the acknowledgment.

{¶ 65} R.C. 3111.27 provides,

> (A) Except as provided in section 2151.232 or 3111.821 of the Revised Code, for an acknowledgment of paternity filed with the office of child support to be rescinded both of the following must occur:
>
> (1) *Not later than sixty days after the date of the latest signature on the acknowledgment, one of the persons who signed it* must do both of the following:
>
> (a) Request a determination under section 3111.38 of the Revised Code of whether there is a parent and child relationship between the man who signed the acknowledgment and the child who is the subject of it;
>
> (b) Give the office written notice of having complied with division (A)(1)(a) of this section and include in the notice the name of the child support enforcement agency conducting genetic tests to determine whether there is a parent and child relationship;
>
> (2) An order must be issued under section 3111.46 of the Revised Code determining whether there is a parent and child relationship between the man and the child.

(Emphasis added.) In other words, R.C. 3111.27 expressly requires the signing parties — defendants T.L. and K.L. — to fulfill certain requirements within 60 days

in order for the rescission of the acknowledgment to take effect. In the instant matter, it is undisputed that neither K.L. nor T.L. sought to rescind the acknowledgement of paternity at any time. Accordingly, appellant is not entitled to relief under R.C. 3111.27.

{¶ 66} Finally, appellant appears to argue that he should be permitted to challenge the acknowledgment of paternity on the basis of fraud or deceit. Specifically, he alleged that T.L. deceived him by concealing the pregnancy from him for approximately five years.

{¶ 67} During the trial court's summary judgment hearing, appellant asserted that he suspected that T.L. was pregnant around the time of their sexual relationship in 2007. Based on this suspicion, appellant stated that he contacted T.L., "very early on," during or shortly before her pregnancy, and confronted her about his suspicion:

> [h]e discovered a picture on social media and believed, based on the picture that he saw, that [T.L.] was pregnant, so he reached out to her and asked her. She said no.
>
> So there was not only a lack of knowledge [about the pregnancy], there was an affirmative statement that denied that she was pregnant.

(Tr. 48.) According to appellant, he did not learn that T.L. was pregnant or that she gave birth to the child until approximately five years later, around August 2013, when he saw T.L. in public, looked her up on social media, and discovered pictures of T.L. and the child on T.L.'s social media pages.

{¶ 68} R.C. 3111.28, governing an action to rescind an acknowledgment of paternity based on fraud, duress, or material mistake of fact, provides, in relevant part,

> After an acknowledgment becomes final * * * a man presumed to be the father of the child pursuant to section 3111.03 of the Revised Code who did not sign the acknowledgment, either person who signed the acknowledgment, or a guardian or legal custodian of the child may bring an action to rescind the acknowledgment on the basis of fraud, duress, or material mistake of fact. The court shall treat the action as an action to determine the existence or nonexistence of a parent and child relationship pursuant to sections 3111.01 to 3111.18 of the Revised Code. An action pursuant to this section *shall be brought no later than one year after the acknowledgment becomes final.*

(Emphasis added.) In the instant matter, as noted above, the acknowledgment of paternity was filed in May 2008. Appellant did not file his complaint to establish paternity, however, until November 30, 2016; he did not file his amended complaint until December 5, 2016. Appellant's complaint was filed long after the one-year time limit under R.C. 3111.28 had expired.

{¶ 69} Ohio courts have held that a final and enforceable acknowledgement of paternity "cannot be rebutted — even by the results of genetic testing — unless rescinded pursuant to R.C. 3111.28." *In re Elliot*, 3d Dist. Putnam No. 12-10-02, 2010-Ohio-5405, ¶ 20, citing *Galan v. Holbert*, 2d Dist. Greene No. 2007-CA-75, 2008-Ohio-1586, ¶ 17; and *Thomas v. Cruz*, 9th Dist. Lorain No. 03CA008247, 2003-Ohio-6011, ¶ 14 (the acknowledgment of paternity had not been rescinded, and as a result, was a final and conclusive determination of paternity that "rose to something even higher than a presumption.")

{¶ 70} In this case, defendants' acknowledgment of paternity was not rescinded, either by defendants pursuant to R.C. 3111.27, or pursuant to R.C. 3111.28. Appellant's paternity action challenging the acknowledgment of paternity was filed after the one-year time limit under R.C. 3111.28 had expired. Accordingly, appellant was not entitled to relief under R.C. 3111.28.

{¶ 71} Appellant argues that he was not barred from challenging the acknowledgment of paternity because he neither knew nor had reason to know about the acknowledgment of paternity that defendants filed in May 2008. As such, appellant appears to argue that the 60-day time limit under R.C. 3111.27 and the one-year time limit under R.C. 3111.28 should not bar his paternity action. After reviewing the record, we disagree.

{¶ 72} The legislature enacted R.C. 3111.01 et seq., Ohio's UPA, in 1982. R.C. Chapter 3111 was amended in 1986, 1992, and 2001, which is the current version.

{¶ 73} Ohio's version of the UPA was enacted "in substantially the original form of the Uniform Act[.]" *Crago v. Kinzie*, 106 Ohio Misc.2d 51, 68, 733 N.E.2d 1219 (C.P.2000). Although R.C. Chapter 3111 was substantially similar to the original Act,

> it unfortunately failed to include several fair and equitable provisions of the original Act that would preclude baseless actions and dissipate the rapidly approaching tsunami of parentage actions being filed in [Ohio] courts as the result of recent amendments to R.C. 3111.03 and 3111.09(D), that to a good extent make the disestablishment of paternity by genetic testing conclusive.

Id.

{¶ 74} Section 610 of the UPA, titled "adjudicating parentage of child with acknowledged parent," provides

> (a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage, brought by a signatory to the acknowledgment or denial, is governed by Sections 309 and 310.
>
> (b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under Section 602 and was not a signatory to the acknowledgment or denial:
>
> (1) The individual must commence the proceeding *not later than two years after the effective date of the acknowledgment.*
>
> (2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.
>
> (3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

(Emphasis added.)

{¶ 75} Other states have adopted Section 610 of the UPA. Furthermore, some states, including Michigan and Oklahoma, have even expanded the time period during which an acknowledgment of paternity can be challenged.

{¶ 76} The Ohio legislature, however, did not incorporate the provisions of Section 610 of the original UPA that permitted a challenge to an acknowledgment of paternity within two years. As noted above, pursuant to R.C. 3111.27 and 3111.28, Ohio's UPA required challenges to an acknowledgment of paternity to be brought within 60 days or one year, respectively.

{¶ 77} Similarly, Ohio's UPA did not include the original Act's provisions permitting the award of attorney fees as a portion of the costs in a parentage proceeding. *See Patrick T. v. Michelle L.*, 6th Dist. Wood No. WD-00-005, 2000 Ohio App. LEXIS 5578, 14 (Nov. 30, 2000), citing *Sutherland v. Sutherland*, 61 Ohio App.3d 154, 157, 572 N.E.2d 215 (10th Dist.1989) ("[w]hile the Uniform Parentage Act includes attorney fees as a portion of the costs which may be awarded in a parentage proceeding, the Ohio version of the Uniform Parentage Act excludes attorney fees."); *Welty v. Casper*,[2] 10th Dist. Franklin Nos. 13AP-618 and 13AP-714, 2014-Ohio-2903, ¶ 13, citing *Dunson v. Aldrich*, 54 Ohio App.3d 137, 143, 561 N.E.2d 972 (10th Dist.1988) (because Ohio's UPA excluded the UPA's provisions permitting attorney fees as a portion of the costs that may be awarded in paternity proceedings, "it was apparently the intention of the General Assembly to exclude attorney fees from an award fashioned by the domestic relations court under R.C. Chapter 3111.")

{¶ 78} In the instant matter, we find that the legislature plainly and unambiguously conveyed its legislative intent in R.C. Chapter 3111, and that there is no room for interpretation. In enacting Ohio's UPA, the legislature did not adopt or include the provisions from the original Act that would enable appellant to challenge K.L.'s final and enforceable acknowledgement of paternity. In *State v. V.M.D.*, 148 Ohio St.3d 450, 2016-Ohio-8090, 71 N.E.3d 274, the Ohio Supreme Court

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[2] Alternatively captioned "*In re A.A.C.W.*"

explained, "'when the General Assembly has plainly and unambiguously conveyed its legislative intent, there is nothing for a court to interpret or construe, and therefore, the court applies the law as written.'" *Id.* at ¶ 15, quoting *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706, 848 N.E.2d 496, syllabus. Furthermore, "'[j]udicial policy preferences may not be used to override valid legislative enactments, for the General Assembly should be the final arbiter of public policy.'" *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, ¶ 22, quoting *State v. Smorgala*, 50 Ohio St.3d 222, 223, 553 N.E.2d 672 (1990), *superseded by statute on other grounds as recognized in State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216, ¶ 54. *Accord State v. K.S.*, 8th Dist. Cuyahoga No. 107124, 2019-Ohio-1776, ¶ 15.

{¶ 79} Appellant has failed to identify any statute that gives the juvenile court authority to rescind or nullify K.L.'s acknowledgment of paternity and declare appellant as the child's father, or any statute that gives the juvenile court jurisdiction to adjudicate appellant's complaint to establish paternity. This court cannot go beyond the statutes and find another basis upon which the juvenile court could provide the relief appellant sought in his complaint. *See In re Fore*, 168 Ohio St. 363, 370, 155 N.E.2d 194 (1958).

{¶ 80} To the extent that appellant argues or suggests that the child can have both a biological father (appellant) and a legal father (K.L.), we disagree. The child already has two legal parents — K.L. and T.L. In *S.D. v. K.H.*, 2018-Ohio-1181, 98

N.E.3d 375 (8th Dist.), this court explained, "Ohio does not recognize more than two legal parents[.]" *Id.* at ¶ 19.

{¶ 81} For all of the foregoing reasons, and based on the provisions governing acknowledgment of paternity and rescission of an acknowledgment, we find that the trial court had no statutory authority to either set aside or rescind the acknowledgment of paternity that was executed in May 2008. The 60-day time limit under R.C. 3111.27 and the one-year time limit under R.C. 3111.28 had expired when appellant filed his complaint in 2016. Furthermore, because the child already had two legal parents, the trial court had no statutory authority to declare or recognize appellant as a third parent of the child.

{¶ 82} The Ohio Supreme Court has emphasized that "[t]he juvenile court possesses *only the jurisdiction that the General Assembly has expressly conferred upon it*." (Emphasis added.) *In re Gibson*, 61 Ohio St.3d 168, 172-173, 573 N.E.2d 1074 (1991), citing Section 4(B), Article IV of the Ohio Constitution, and *Seventh Urban, Inc. v. Univ. Circle Property Dev., Inc.*, 67 Ohio St.2d 19, 22, 423 N.E.2d 1070 (1981). The relief that appellant seeks — rescinding the acknowledgment of paternity executed in May 2008 and declaring appellant as the father of the child — is simply not contemplated or authorized under the current version of R.C. Chapter 3111. Any change to Ohio's UPA must be made by the legislature, not the trial court or this court.

D. Procedural Due Process

{¶ 83} In his motion for summary judgment, appellant argued that a determination that R.C. Chapter 3111 barred his action to establish paternity would violate his procedural due process rights. Specifically, he argued that there would be no procedural protections for putative and biological fathers, such as himself, in the event that another man acknowledged paternity either willfully, through fraud, or based on a mistake in fact. He suggested that a biological mother and a man signing the acknowledgement of paternity could deceive a putative and biological father and divest him of his natural parental rights by filing an acknowledgment of paternity before the putative and biological father even discovers his rights and has an opportunity to assert them. Appellant alleged that the provisions under R.C. Chapter 3111 and procedures for establishing paternity are "encumbered with opportunities for deceit and lack of procedural safeguards."

{¶ 84} As an initial matter, we note that appellant did not challenge the constitutionality of R.C. Chapter 3111 in his original or amended complaint. He raised his constitutionality argument for the first time in his motion for summary judgment.

> The power to invalidate and enjoin a statute is further "circumscribed by the rule[s] that laws are entitled to a strong presumption of constitutionality and that a party challenging the constitutionality of a law bears the burden of proving that the law is unconstitutional beyond a reasonable doubt." *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, 802 N.E.2d 632, ¶ 16. And the General Assembly has prescribed specific procedures for attacking the constitutionality of a statute. R.C. 2721.12(A) requires that a party seeking a declaration that a statute is unconstitutional assert that claim

> in a complaint and serve it on the attorney general. *See Cicco v. Stockmaster*, 89 Ohio St.3d 95, 2000-Ohio-434, 728 N.E.2d 1066 (2000), syllabus. Compliance with R.C. 2721.12(A) is required to invoke the trial court's jurisdiction over a constitutional challenge. *See id.* at 97.

Toledo v. State, 154 Ohio St.3d 41, 2018-Ohio-2358, ¶ 18.

{¶ 85} In this case, appellant did not file a complaint challenging the constitutionality of R.C. Chapter 3111, nor seek a declaration that Ohio's UPA was unconstitutional. Furthermore, the record reflects that the trial court avoided reaching appellant's constitutional challenge to R.C. Chapter 3111, and disposed of the case based on statutory-interpretation principles — concluding that the acknowledgement of paternity was final and enforceable and that R.C. Chapter 3111 did not provide for the relief sought by appellant. We find that this complex and lengthy custody case is not an appropriate vehicle for determining the constitutionality of R.C. Chapter 3111, particularly because appellant did not assert his constitutional challenge to Ohio's UPA in his original or amended complaint, nor did he seek a declaration that R.C. Chapter 3111 was unconstitutional. Rather, he asserted his constitutional challenge for the first time in his motion for summary judgment.

{¶ 86} Based on appellant's belated constitutional challenge to R.C. Chapter 3111, the constitutional issue is underdeveloped in the record before this court. *See GPI Distribs. v. N.E. Ohio Regional Sewer Dist.*, 8th Dist. Cuyahoga No. 106806, 2018-Ohio-4871, ¶ 35; *75 Pub. Square v. Cuyahoga Cty. Bd. of Revision*, 76 Ohio App.3d 340, 346, 601 N.E.2d 628 (8th Dist.1991) (a reviewing court "needs a record,

and the proponent of the constitutionality of the statute needs notice and an opportunity to offer testimony when a statute is challenged on the basis that it is unconstitutional in its application"); *Cleveland v. Williams*, 8th Dist. Cuyahoga No. 106454, 2018-Ohio-2937, ¶ 19.

{¶ 87} Nevertheless, we cannot say that R.C. Chapter 3111 denied appellant an opportunity to assert his parental rights. Appellant could have challenged the acknowledgment of paternity within 60 days, before it became final and enforceable under R.C. 3111.03(A)(3). Furthermore, appellant could have challenged the acknowledgment of paternity within one year pursuant to R.C. 3111.28.

{¶ 88} As noted above, the summary judgment briefing and arguments presented during the trial court's hearing on the parties' summary judgment motions indicated that (1) prior to October 2007, when appellant and T.L. lost contact with one another, they had a sexual relationship; (2) before losing contact with T.L., appellant suspected that T.L. may have been pregnant in or around October 2007; and (3) appellant confronted T.L. about his suspicion. Appellant either knew or should have known that there was a possibility that T.L. may become pregnant based on their sexual relationship alone. Furthermore, the record reflects that appellant did, in fact, have sufficient notice of the possibility that T.L. was pregnant either immediately before T.L. became pregnant or during the early stages of her pregnancy, before T.L. gave birth to the child, and before the acknowledgment of paternity was filed by defendants: "[appellant] discovered a picture on social media and believed, based on the picture that he saw, that she was pregnant, so he

reached out to her and asked her." (Tr. 48.) Accordingly, the record reflects that appellant had sufficient notice of at least the possibility that T.L. was pregnant after their sexual relationship.

{¶ 89} This finding is supported by appellant's allegations in his amended complaint. In Count 2 of his amended complaint, appellant alleged, in relevant part,

> 10. [Appellant] sought to and seeks to be actively involved in the minor child's life from the date of birth. [Appellant] requested to be an active participant including attending the birth of the child. [Appellant] informally requested parenting to care for and support his child.
>
> 11. [T.L.] has refused [appellant's] requests.
>
> 12. As a result of [T.L.'s] refusal, [appellant] missed the birth of his child; and continues to miss critical bonding opportunities.

{¶ 90} R.C. 3111.04, governing standing to bring a paternity action, provides, in relevant part,

> (A)
>
> (1) Except as provided in division (A)(2) of this section, an action to determine the existence or nonexistence of the father and child relationship may be brought by * * * a man alleged or alleging himself to be the child's father[.]
>
> * * *
>
> (C) If an action under this section is brought before the birth of the child and if the action is contested, all proceedings, except service of process and the taking of depositions to perpetuate testimony, may be stayed until after the birth.

{¶ 91} Accordingly, either during or after his sexual relationship with T.L., or at the time he suspected that T.L. may be pregnant around October 2007, appellant could have asserted his parental rights and filed his paternity action to

determine the existence of a father-child relationship, pursuant to R.C. 3111.04, before the child was born. Appellant also could have filed his paternity action between May 12, 2008, when the child was born, and July 14, 2008, when the acknowledgment of paternity filed by defendants became final and enforceable. Despite having sufficient notice of the possibility that T.L. was pregnant around October 2007, appellant failed to pursue any of these avenues.

{¶ 92} The record reflects that appellant simply failed to challenge the acknowledgment of paternity and assert his parental rights in a timely manner. Had appellant inquired about or sought to establish paternity at or around the time he had sexual relations with T.L. in 2007, suspected that T.L. was pregnant "very early on," and purportedly confronted T.L. about his suspicion that she may be pregnant, in or around October 2007, appellant would have been able to establish paternity, assert and exercise his parental rights, or challenge K.L.'s acknowledgment of paternity.

{¶ 93} For all of the foregoing reasons, we decline to address appellant's constitutional challenge to R.C. Chapter 3111.

{¶ 94} Appellant's first and second assignments of error are overruled.

E. R.C. 3111.09

{¶ 95} In his third assignment of error, appellant argues that the trial court erred and abused its discretion in failing to grant him relief under R.C. 3111.09(A)(2).

{¶ 96} R.C. 3111.09(A)(2), governing genetic testing and DNA records, provides, in relevant part:

> (2) * * * If the [child support enforcement] agency is made a party to the action [instituted under sections 3111.01 to 3111.18 of the Revised Code], the agency shall schedule the genetic testing in accordance with the rules adopted by the director of job and family services pursuant to section 3111.611 of the Revised Code. If the alleged father of a child brings an action under sections 3111.01 to 3111.18 of the Revised Code and if the mother of the child *willfully fails* to submit to genetic testing or if the mother is the custodian of the child and *willfully fails* to submit the child to genetic testing, the court, on the motion of the alleged father, shall issue an order determining the existence of a parent and child relationship between the father and the child without genetic testing. * * * If a party shows good cause for failing to submit to genetic testing or for failing to submit the child to genetic testing, the court shall not consider the failure to be willful.

(Emphasis added.)

{¶ 97} In the instant matter, appellant argues that he is entitled to relief under R.C. 3111.09 based on the magistrate's June 28, 2017 decision in which it found that defendants willfully failed to submit to genetic testing. Appellant's argument is misplaced.

{¶ 98} The record reflects that the trial court issued a judgment entry on September 12, 2017, in which it vacated the magistrate's decision with respect to appellant's motion for default judgment.

{¶ 99} Although the magistrate did, in fact, determine that defendants willfully failed to submit to genetic testing, this finding was subsequently vacated by the trial court in its September 12, 2017 judgment entry. Appellant did not file a motion for reconsideration or seek to appeal the trial court's ruling.[3] Furthermore, the record reflects that defendants and the child did submit to genetic testing. The results of the genetic testing were filed by appellant April 2, 2018.

{¶ 100} The record before this court does not contain a finding that defendants willfully failed to submit to genetic testing or willfully failed to submit the child to genetic testing. Without a specific finding to this effect, appellant is not entitled to relief under R.C. 3111.09.

{¶ 101} Appellant further contends that because Ohio law recognizes only two legal parents, the magistrate erred in its June 28, 2017 decision by ordering both defendant K.L.'s and appellant's name, in addition to defendant T.L.'s name, be listed on the child's birth certificate.

{¶ 102} In its June 28, 2017 decision, the magistrate determined that defendants willfully failed to submit to genetic testing and willfully failed to submit the child to genetic testing. Based on this finding, and pursuant to R.C. 3111.09(A)(2), the magistrate recognized that the court was required to issue an order determining the existence of a parent-child relationship. In making this determination, the magistrate stated, "[f]or the time being, the child has two fathers,

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[3] Appellant filed a motion for declaratory judgment on October 2, 2017, based on defendants' failure to submit to genetic testing. The trial court denied appellant's motion for declaratory judgment on March 12, 2018.

each one arising from the operation of law of separate statutes in existence in the state of Ohio under these circumstances."

{¶ 103} In the instant matter, appellant contends that although the trial court properly recognized that in Ohio, a child can only have two legal parents, the trial court abused its discretion by failing to remove K.L.'s name from the child's birth certificate and to designate appellant on the birth certificate as the child's father. Again, appellant's argument is misplaced.

{¶ 104} Appellant essentially argues that the trial court erred or abused its discretion in carrying the magistrate's June 28, 2017 decision into effect. As noted above, however, the trial court vacated the magistrate's June 28, 2017 decision. Accordingly, we find no merit to appellant's argument that the trial court erred or abused its discretion in the manner in which it modified and adopted the magistrate's decision.

{¶ 105} For all of the foregoing reasons, appellant's third assignment of error is overruled.

III. Conclusion

{¶ 106} After thoroughly reviewing the record, we find no basis upon which to conclude that the trial court erred in granting summary judgment in favor of defendants and OCSS. The record reflects that defendants complied with the provisions set forth in R.C. Chapter 3111 in filing their acknowledgment of paternity in May 2008. The acknowledgment of paternity has not been rescinded by defendants, nor modified in any way by the trial court. Pursuant to R.C. 3111.26, the

acknowledgment of paternity became final and enforceable, and established that K.L., who signed the acknowledgment of paternity, was the father of the child.

{¶ 107} The juvenile court only has the jurisdiction and authority that is expressly conferred upon it by the legislature. The relief that appellant seeks — a rescission of the acknowledgment of paternity, thereby disestablishing K.L. as the child's father, and a declaration that appellant is the child's father — is neither contemplated nor authorized under the current version of R.C. Chapter 3111. As the trial court recognized, "[t]he relief [appellant] seeks would require [the trial court] to change the law. Changes to the law as written are better left to the legislative branch of government rather than the judicial branch of government." Any change to Ohio's UPA must be made by the legislature — not the trial court or this court.

{¶ 108} Appellant failed to demonstrate the existence of a genuine issue of material fact. Accordingly, defendants and OCSS were entitled to judgment as a matter of law on appellant's complaint to establish paternity.

{¶ 109} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, A.J., and
KATHLEEN ANN KEOUGH, J., CONCUR