335 So.3d 650

EX PARTE Z.W.E.

**(In re: Z.W.E.
v.
L.B.)**

1190748

Supreme Court of Alabama.

March 26, 2021

Sheri W. Stallings, Centre, for petitioner.

Joan-Marie Sullivan of Sullivan Banks Law LLC, Huntsville, for respondent.

PER CURIAM.

Z.W.E. ("the alleged father"), the alleged father of a child ("the child") of L.B. ("the mother"), petitioned this Court for a writ of certiorari to review the Court of Civil Appeals' decision in Z.W.E. v. L.B., 335 So. 3d 634 (Ala. Civ. App. 2020), affirming the Jackson Juvenile Court's dismissal of the alleged father's petition to establish the paternity of the child. We granted certiorari review to consider, as an issue of first impression, whether the term "child," as used in § 26-17-204(a)(5), Ala. Code 1975, a part of the Alabama Uniform Parentage Act ("the AUPA"), § 26 - 17 - 101 et seq., Ala. Code 1975, includes unborn children.

Facts and Procedural History

The alleged father and the mother were in a dating relationship and cohabited from February 2018 until August 2018, during which time the child was conceived. According to the alleged father's filing in the juvenile court,

> "from the time of conception the [mother] held the child out to be the child of the [alleged father], announced it publicly

[335 So.3d 652]

> and shared in preparation for the birth of the child with the [alleged father] and his family. [The alleged father] at no time denied paternity of the child and expressed both privately and publicly his desire to act as a father to the child, ... he held the child out as his own and provided financial and emotional support to the mother during the pregnancy."

However, according to the alleged father, beginning in mid-November 2018, the mother "refused to have any contact with the [alleged father] or his family." Subsequently, on November 14, 2018, the mother married Z.A.F. ("the husband").

On November 19, 2018, the alleged father filed a petition seeking to establish the paternity of the unborn child. On December 26, 2018, the child was born. On February 15, 2019, the mother filed a motion to dismiss the alleged father's petition. The mother argued that the husband is the presumed father of the child under § 26-17-204(a)(1), Ala. Code 1975 ("A man is presumed to be the father of a child if ... he and the mother of the child are married to each other and the child is born during the marriage."), and that the husband had persisted in his status as the legal father of the child. Accordingly, the mother argued, the husband's presumption of paternity could not be challenged. See § 26-17-607(a), Ala. Code 1975 ("If the presumed father persists in his status as the legal father of a child, neither the mother nor any other individual may maintain an action to disprove paternity.").

On April 3, 2019, the alleged father filed a response to the mother's motion to dismiss. Although the alleged father failed to cite the applicable portion of the AUPA, the alleged father argued that he, too, is a presumptive father of the child:

> "The [alleged father] asserts that from the time of conception the

> [mother] held the child out to be the child of the [alleged father], announced it publicly and shared in preparation for the birth of the child with the [alleged father] and his family. [The alleged father] at no time denied paternity of the child and expressed both privately and publicly his desire to act as a father to the child, therefore [the alleged father] asserts that he is the presumed father because prior to the marriage he held the child out as his own and provided financial and emotional support to the mother during the pregnancy."

Section 26-17-204(a)(5) is the applicable portion of the AUPA that is at issue in this case, and it states:

> "(a) A man is presumed to be the father of a child if:
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> "....
>
> "(5) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child or otherwise openly holds out the child as his natural child and establishes a significant parental relationship with the child by providing emotional and financial support for the child."

Based on his argument that he is also a presumptive father of the child, the alleged father requested an evidentiary hearing to present evidence proving that he had persisted in his status as a legal father of the child and, in addition, requested that, upon establishing that he, too, is a presumptive father of the child, the juvenile court hold an evidentiary hearing pursuant to § 26-17-607(b), Ala. Code 1975, which states:

> "(b) A presumption of paternity under this section may be rebutted in an appropriate action only by clear and convincing evidence. In the event two or more conflicting presumptions arise, that which is founded upon the weightier considerations of public policy and logic,

[335 So.3d 653]

> as evidenced by the facts, shall control. The presumption of paternity is rebutted by a court decree establishing paternity of the child by another man."

(Emphasis added.)

On May 23, 2019, the juvenile court entered an order granting the mother's motion to dismiss the alleged father's paternity action. The juvenile court determined that the husband is the presumed father of the child under § 26-17-204(a)(1) and that the husband had persisted in his status as the legal father of the child. The juvenile court's order states that the juvenile court held a hearing before entering its order and that, at the hearing, it "heard oral argument from both counsel and took the matter under advisement based on the pleadings herein." Based on the above-quoted language from the juvenile court's order, it is apparent that the juvenile court did not hold an evidentiary hearing to determine whether the alleged father persisted in his claimed status as a legal father of the child, and, thus, concluded that the alleged father is not a presumptive father of the child. Obviously, having concluded that the alleged father is not a presumptive father of the child, there was no reason for the juvenile court to hold an evidentiary hearing under § 26-17-607(b) as requested by the alleged father. After his postjudgment motion was denied, the alleged father appealed to the Court of Civil Appeals.

Before the Court of Civil Appeals, the alleged father argued that the juvenile court had erred in refusing to hold an evidentiary hearing to determine whether he persisted in his claimed status as a legal father of the child under § 26-17-204(a) and, assuming that the alleged father would have demonstrated his status as a

presumptive father under § 26-17-204(a), in refusing to hold a subsequent evidentiary hearing pursuant to § 26-17-607(b). The alleged father argued that he is a presumptive father under § 26-17-204(a) based on the facts that he held out the child as his own since the child's conception, that he provided both financially and emotionally for the mother and the child during the mother's pregnancy, and that he has persisted in his status as the legal father of the child. Essentially, the alleged father argued that his prebirth conduct toward and support of the child and his persistence in his parenthood is sufficient to establish himself as a presumptive father of the child under § 26-14-204(a).

The Court of Civil Appeals rejected the alleged father's argument. The Court of Civil Appeals stated that, "[a]s § 26-17-204(a) is currently written, none of the provisions conferring the status of a presumed father applies to the facts of this case." Z.W.E., 335 So. 3d at 639. More specifically, the Court of Civil Appeals concluded that

> "the AUPA as written currently does not provide for the recognition of prebirth emotional and financial support as a basis for conferring the status of presumed father, and this court cannot expand § 26-17-204(a) to shoehorn the facts of this case into fitting the provisions that do allow for such a status. ... Accordingly, we reject the alleged father's assertion that his prebirth support of the child confers upon him the status of a presumed father."

Id. at 641. Based on the above-quoted conclusion, the Court of Civil Appeals went on to further state that the alleged father lacked capacity to challenge the husband's status as the legal father of the child and, thus, concluded that the juvenile court had not erred in granting the mother's motion to dismiss the alleged father's paternity action. The Court of Civil Appeals specifically stated: "As we have previously held,

[335 So.3d 654]

the alleged father is not a 'presumed father' under the AUPA. Accordingly, the alleged father had no capacity to bring this action. The trial court was never required or even authorized [under § 26-17-607(b)] to weigh the competing presumptions the alleged father attempts to establish." Id. at 644.

Judge Moore dissented from the Court of Civil Appeals' decision, stating, among other things, that he disagreed "that the alleged ... father cannot, under the facts asserted, be considered a presumed father of the child." Z.W.E., 335 So. 3d at 647 (Moore, J., dissenting). Judge Moore concluded that the alleged father could be a presumed father under § 26-17-204(a)(5) if the alleged father could prove his allegations that "the alleged ... father ..., while the mother was pregnant, ... cohabited with the mother, ... openly acknowledged his paternity of the child, and ... provided the mother emotional and financial support." Z.W.E., 335 So. 3d at 648 (Moore, J., dissenting). Judge Moore explained that the word "child," as that term is used in § 26-17-204(a)(5), includes an unborn child. In so concluding, Judge Moore relied upon (1) this Court's decision in Ex parte Ankrom, 152 So. 3d 397, 411 (Ala. 2013), in which this Court, "when discussing the plain meaning of the word 'child' in the context of the criminal chemical-endangerment statute, held that the undefined term 'child' in that statute includes an unborn child," and (2) "Act No. 2019-189, Ala. Acts 2019, which is codified as Ala. Code 1975, § 26-23H-1 et seq., and which defines a 'child' as '[a] human being, specifically including an unborn child in utero at any stage of development, regardless of viability.' § 26-23H-3(7), Ala. Code 1975." Z.W.E., 335 So. 3d at 648 (Moore, J., dissenting). Judge Edwards also dissented and agreed with Judge Moore that the alleged father could be a presumed father under § 26-17-204(a)(5) if the facts alleged by the alleged father, set forth above, are proven true.

The alleged father petitioned this Court for certiorari review of the Court of Civil Appeals' decision, and we granted certiorari review to consider as an issue of first impression whether

the term "child," as used in § 26-17-204(a)(5), includes unborn children.

Standard of Review

This Court set forth the following applicable standard of review in Ex parte G.L.C., 281 So. 3d 401, 404 (Ala. 2018) :

> " ‘ " ‘On certiorari review, this Court accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of Civil Appeals.’ " ’ Ex parte S.L.M., 171 So. 3d 673, 677 (Ala. 2014) (quoting Ex parte Helms, 873 So. 2d 1139, 1143 (Ala. 2003), quoting in turn Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996))."

Discussion

The issue to be decided in this case is whether the alleged father may be determined to be a presumptive father under § 26-14-204(a)(5) based on his prebirth conduct toward and support of the child. The Court of Civil Appeals determined that, as a matter of law, the alleged father could not be a presumed father under § 26-14-204(a)(5) because the term "child," as defined in the AUPA, does not include unborn children. Based on its conclusion that the alleged father cannot be considered a presumed father under the facts asserted in this case, the Court of Civil Appeals determined that the alleged father lacked capacity to challenge the husband's presumption of paternity. Accordingly, the more specific question presented in this case is whether the term "child" as defined

[335 So.3d 655]

in the AUPA is broad enough to include unborn children. If so, it would be possible for the alleged father to establish himself as a presumed father under § 26-14-204(a)(5) based on his prebirth conduct toward and support of the child. Assuming the alleged father were able to do so, he would then have the capacity to challenge the husband's presumption of paternity.

The issue to be decided in this case is ultimately one of statutory interpretation. In interpreting statutes, we apply the following principles:

> " ‘ " ‘The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute.’ " ’ Ex parte Moore, 880 So. 2d 1131, 1140 (Ala. 2003) (quoting Ex parte Weaver, 871 So. 2d 820, 823 (Ala. 2003), quoting in turn Ex parte State Dep't of Revenue, 683 So. 2d 980, 983 (Ala. 1996)). ‘In any case involving statutory construction, our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there.’ Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). ‘Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous.’ Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001). ‘If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.’ IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). Moreover, ‘[w]ords used in a statute must be given their natural, plain, ordinary, and commonly understood meaning,’ IMED Corp., 602 So. 2d at 346, and ‘[b]ecause the meaning of statutory language depends on context, a statute is to be read as a whole ... [and s]ubsections of a statute are in

> pari materia.' Ex parte Jackson, 614 So. 2d 405, 406 (Ala. 1993)."

Mitchell v. State, 316 So. 3d 242, 247 (Ala. Crim. App. 2019).

As set forth above, § 26-17-204(a)(5) states:

> "(a) A man is presumed to be the father of a child if:
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> "....
>
> "(5) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child or otherwise openly holds out the child as his natural child and establishes a significant parental relationship with the child by providing emotional and financial support for the child."

The AUPA defines the term "child" as "an individual of any age whose parentage may be determined under [the AUPA]." § 26-17-102(5), Ala. Code 1975.

In his brief to this Court, the alleged father notes that the AUPA provides a definition of the term "child" in § 26-17-102(5), but he provides no analysis of that definition. Instead, the alleged father looks to various other cases and statutes in an effort to interpret the word "child" in a manner that includes unborn children. Essentially, the alleged father, without first concluding that the actual language of § 26-17-102(5) is ambiguous, urges this Court to engage in statutory construction in interpreting § 26-17-102(5). However, as noted in Mitchell, " '[i]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'

[335 So.3d 656]

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)." 316 So. 3d at 247. Before entertaining the alleged father's statutory-construction arguments, we must first analyze the actual language of the applicable statutes to determine if an ambiguity exists requiring statutory construction.

In her brief to this Court, the mother argues that the plain language used in § 26-17-102(5) to define "child" precludes unborn children. As noted above, § 26-17-102(5) states: " 'Child' means an individual of any age whose parentage may be determined under [the AUPA]." In order to be considered a "child" under the AUPA, the parentage of the individual in question must be able to be determined under the AUPA. The mother notes that the term "determination of parentage" is defined in the AUPA as "the establishment of the parent-child relationship by the execution of a valid acknowledgment of paternity under Article 3 [of the AUPA] or adjudication by the court." § 26-17-102(7). Under the plain language of § 26-17-102(7), a determination of parentage is accomplished in one of two ways: (1) by executing a valid acknowledgment of paternity under Article 3 of the AUPA or (2) by adjudication of the court. Therefore, an individual is considered a "child" under the AUPA only if his or her parentage may be determined in one of the two ways set forth immediately above.

Concerning the establishment of paternity by an acknowledgment of paternity under Article 3 of the AUPA, the mother notes that § 26-17-304(a), Ala. Code 1975, states, in pertinent part: "An acknowledgment of paternity may be signed at the birth of the child or any time prior to the child's nineteenth birthday." (Emphasis added.) As the mother argues in her brief to this Court, under the plain language of § 26-17-304(a), an acknowledgment of paternity may be signed, at the earliest, at the birth of the child and, at the latest, on the day prior to the child's 19th birthday. Section 26-17-304(a) creates a window of time during which an acknowledgment of paternity may be signed. The mother's interpretation of the plain language of § 26-17-304(a) is correct. The parentage of a child cannot be determined under Article 3 of the AUPA before the birth of that child. Accordingly, because an acknowledgment of paternity cannot be signed before the birth of a child, this

particular path does not allow for an interpretation of the term "child" that includes unborn children.

Concerning the establishment of paternity by an "adjudication by the court," it is significant that " '[d]etermination of parentage' means the establishment of the parent-child relationship by ... adjudication by the court." § 26-17-102(7) (emphasis added). In order to be considered an "adjudication by the court," such adjudication must actually establish the parent-child relationship. The mother notes that § 26-17-611, Ala. Code 1975, states, in pertinent part: "A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child." (Emphasis added.) The plain language of § 26-17-611 clearly indicates that, although a proceeding to determine parentage of a child may be commenced before the child's birth, that proceeding may not be concluded until after the child is born. Section 26-17-102(6), Ala. Code 1975, defines "commence" as "to file the initial pleading seeking an adjudication of parentage in the appropriate court of this state." (Emphasis added.) Under the terms defined by the AUPA, § 26-17-611 permits only the filing of an initial pleading seeking the adjudication of parentage; it does not allow for the final establishment of the parent-child relationship by adjudication until after the

[335 So.3d 657]

child is born.[1] Accordingly, the mother argues, because the parent-child relationship cannot be finally established by adjudication by the court until after the child is born, this path also does not allow for an interpretation of the term "child" that includes unborn children.

We find the mother's argument convincing. The meaning of the language of the relevant portions of the AUPA, discussed above, is plain. Accordingly, we need not engage in statutory construction, and, thus, we need not consider the alleged father's various arguments that pertain to cases and statutes that do not address the actual language used in the AUPA. If the term "child" was undefined by the AUPA, as it was in the chemical-endangerment statute at issue in Ex parte Ankrom, then this Court's definition of "child" in Ex parte Ankrom would probably be controlling. However, the legislature defined the term "child" in the AUPA in such a way that excludes unborn children from the definition of "child." Our task in this case is not to interpret the word "child" generally but to interpret the legislature's definition of "child" set forth in § 26-17-102(5). As argued by the mother, the legislature's narrow definition of the term "child" excludes unborn children. In such a circumstance, as the Court of Civil Appeals noted, it is for the legislature, not this Court, to change the definition of the term "child" if it so desires.[2]

Based on the foregoing, we cannot say that the Court of Civil Appeals erred in holding that the term "child," as defined in the AUPA, does not include unborn children. As a result, even accepting the alleged father's undisputed facts as true (that he brought the unborn child into his home, held the child out as his own, and provided financial and emotional support for the child), the alleged father cannot demonstrate that he is a presumed father under § 26-17-204(a)(5) because the child in this case, for whom the alleged father provided prebirth care and support, did not fit within the AUPA's definition of "child" before the child's birth; the child's parentage could not have been determined

[335 So.3d 658]

under the AUPA before the child's birth. Accordingly, the Court of Civil Appeals did not err in ultimately concluding that the alleged father lacked capacity to challenge the husband's paternity of the child.[3]

Conclusion

The Court of Civil Appeals did not err in concluding that the plain language of the AUPA does not include unborn children within its definition of "child." Accordingly, the alleged father cannot be considered a presumed father under § 26-17-204(a)(5) and, thus, does not have the capacity to challenge the husband's status as

a presumed father of the child.

AFFIRMED.

Mendheim and Stewart, JJ., concur.

Bolin * and Sellers, JJ., concur specially.

Parker, C.J., and Wise* and Bryan, JJ., concur in the result.

Shaw and Mitchell, JJ., dissent.

SELLERS, Justice (concurring specially).

Z.W.E. ("the alleged father") has not demonstrated to my satisfaction that the Court of Civil Appeals erred in concluding that he is not a "presumed father" under the Alabama Uniform Parentage Act ("the Act"), § 26 - 17 - 101 et seq., Ala. Code 1975. I write specially to note my concerns regarding application of the Act to a person in the alleged father's circumstances.

In Ex parte Presse, 554 So. 2d 406 (Ala. 1989), this Court adopted the position former Chief Justice Torbert had taken when dissenting in Ex parte Anonymous, 472 So. 2d 643 (Ala. 1985). The Court in Presse held that, when a child has a presumed father, the Act precludes another man from challenging the presumed father's paternity. Many of the "presumed-father" cases are commenced after a child is born and after a paternal bond has developed between the child and his or her presumed father. In the present case, the alleged father, before the child's birth and before any bond could have formed between the child and the mother's husband, sued under the Act in an effort to establish himself

[335 So.3d 659]

as the legal father of the child. Because the Act allows for a prebirth action to establish paternity, it makes logical sense that such an action would be continued until after the birth of the child for genetic testing to establish paternity. But the language of the Act taking away the capacity of an alleged father to challenge paternity when a presumed father exists thwarts such an effort in the circumstances presented here.

It appears to me that the Act might violate constitutional principles if the parental rights of a biological father can be extinguished unilaterally by a mother's marrying another man immediately before the birth of the biological father's child. Even if a biological father avails himself of the prebirth procedure set out in the Act, he apparently has no legal recourse to counter the mother's actions. At some point, the Court may need to consider further the rights of a biological father who claims paternity before his child's birth.

Bolin, J., concurs.

PARKER, Chief Justice (concurring in the result).

The main opinion properly rejects the arguments of Z.W.E. ("the alleged father"), which fail to adequately deal with the language of the Alabama Uniform Parentage Act ("the AUPA"), § 26 - 17 - 101 et. seq., Ala. Code 1975. Yet I believe that a compelling textual argument can be made that the AUPA's definition of "child" includes unborn children. Because such an argument is absent in this case, I would not conclusively hold that unborn children are excluded.

The AUPA defines "child" as "an individual of any age whose parentage may be determined under the [AUPA]." § 26-17-102(5). The key phrase "may be determined" does not specify a particular chronological relationship between a determination of parentage and the individual's status as a "child." The phrase could narrowly mean "may presently be determined," as the main opinion concludes, but it could also mean "may subsequently be determined," as Justice Shaw argues. Indeed, the latter meaning is consistent with this and other courts' interpretations of verb phrases containing the word "may." See Morgan Cnty. Nat'l Bank v. Terry, 213 Ala. 313, 313, 104 So. 762, 763 (1925) (holding that mortgage provision securing "all ... indebtedness and demands which may be a proper charge against me and in favor of [the mortgagee] bank" applied only to subsequently created debts (emphasis added));

In re Van Vechten's Estate, 218 Iowa 229, 251 N.W. 729, 731 (1933) (holding that, under statute that required refund of estate tax "[w]hen, within five years after the payment of the tax ..., a court of competent jurisdiction may determine" that the tax was improper, the words "may determine" meant that a claimant must file refund action within five years, such that trial court's determination then became a future legal possibility; the words did not mean that claim must be finally adjudicated within five years (emphasis added)); People v. Peals, 476 Mich. 636, 640, 720 N.W.2d 196, 198 (2006) (holding that definition of "firearm" as "a weapon from which a dangerous projectile may be propelled" included weapons that could not presently propel, but were designed to propel, projectiles (emphasis added)); Ex parte American Fertilizing Co., 122 S.C. 171, 115 S.E. 236, 236 (1922) (holding that mortgage securing amounts that "may be due" was not limited to present debts but also included subsequent debts); Wallace v. Quick, 156 S.C. 248, 153 S.E. 168, 181 (1930) (holding that deed conveying "any other interest I may be entitled to" included subsequently acquired

[335 So.3d 660]

interests (emphasis added)); Marion Cnty. Lumber Co. v. Hodges, 96 S.C. 140, 79 S.E. 1096, 1096-97 (1913) (holding that conveying all timber on plantation, "except such as may be necessary for plantation use," meant that "enough timber should be left to supply both the present and future needs of the plantation" (emphasis added)); England v. Valley Nat'l Bank of Phoenix, 94 Ariz. 267, 272, 383 P.2d 183, 186 (1963) ("Generally, the term 'may be' is construed as meaning in the future."). Under this broader meaning, a presently unborn child whose parentage may be determined in the future would qualify as a "child."

When a statute's meaning is less than clear, we ordinarily look to the surrounding statutory scheme for clues. See Boutwell v. State, 988 So. 2d 1015, 1020 (Ala. 2007) ; Tucker v. Molden, 761 So. 2d 996, 999 (Ala. 2000). As the main opinion explains, there are two ways to determine parentage: by a father's acknowledgment of paternity and by court adjudication. § 26-17-102(7). As for the first way, although paternity can be acknowledged only after the child is born, § 26-17-304(a), the AUPA allows hospitals to provide the acknowledgment paperwork to an alleged father before the birth, § 26-17-315(a)(1)-(2). Similarly, although paternity can be adjudicated by a court only after the birth, § 26-17-611, the AUPA allows an alleged father to file the paternity action and take other litigation steps before the birth, id. From these provisions, it appears that the AUPA recognizes that, before birth, an individual exists whose parentage may be determined in the future.

When faced with an unclear statute, we also try to interpret the statute harmoniously with statutes that address related subjects. See Bandy v. City of Birmingham, 73 So. 3d 1233, 1242 (Ala. 2011) ; Dunn v. Alabama State Univ. Bd. of Trs., 628 So. 2d 519, 523 (Ala. 1993), overruled on other grounds by Watkins v. Board of Trs. of Alabama State Univ., 703 So. 2d 335 (Ala. 1997). By law, a father of an unborn child conceived out of wedlock may take responsibility for the child by filing a notice with the putative father registry. § 26-10C-1(a)(2) and (c). If he fails to file, he forfeits his parental rights. § 26-10C-1(i). Similarly, the adoption code's consent-by-abandonment provision requires a biological father to support his unborn child or risk losing his rights. § 26-10A-9(a)(1). If a father's parental rights can be lost by failing to claim or support an unborn child, it would stand to reason that a father's parental rights could also be established by claiming and supporting an unborn child. Indeed, it would seem strange to give legal effect to a father's taking responsibility (or not) under the putative-father and adoption statutes, but not to give legal effect to it under the parentage statutes.

Finally, substantial doubt about the meaning of a statute may sometimes be resolved in the light of settled precepts of public policy and jurisprudence. See Old Republic Ins. Co. v. Lanier, 644 So. 2d 1258, 1260-62 (Ala. 1994) ; Allgood v. State, 20 Ala. App. 665, 667, 104 So. 847, 848 (1925) ; 82 C.J.S. Statutes § 472 (2009)

; 73 Am. Jur. 2d Statutes § 91 (2012). In Alabama, the people and the Legislature have established a clear public policy of recognizing unborn children as individual persons. Enshrined in our constitution is "the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children." Art. I, § 36.06(a), Ala. Const. 1901 (Off. Recomp.). The homicide statutes define "person" as "including an unborn child in utero at any stage of development." § 13A-6-1(a)(3), Ala. Code 1975. The recently enacted Alabama Human Life Protection Act uses the same words in defining "person."

[335 So.3d 661]

§ 26-23H-3(7). The death-penalty statutes prohibit execution of a woman who is "with child." § 15-18-86. The statute governing health-care advance directives prevents a pregnant woman's wish to decline medical treatment from being carried out until the child is born. § 22-8A-4(h) ("Advance Directive for Health Care," § 3). The intestacy statutes provide an unborn child inheritance rights. § 43-8-47. And the trust code allows a court to appoint a guardian for an "unborn individual." § 19-3B-305(a).

This Court's cases have reflected the same general recognition that unborn children are human beings who have rights and are the objects of others' responsibilities and rights. We have held that unborn children are protected by the capital-murder statute, Ex parte Phillips, 287 So. 3d 1179, 1189-94, 1199-1201 (Ala. 2018), the wrongful-death statute, Mack v. Carmack, 79 So. 3d 597 (Ala. 2011), the chemical-endangerment statute, Ex parte Ankrom, 152 So. 3d 397 (Ala. 2013), and an automobile-insurance policy, Alabama Farm Bureau Mut. Cas. Ins. Co. v. Pigott, 393 So. 2d 1379 (Ala. 1981). Against this background of policy and precedent, arguably the AUPA's phrase "may be determined" should be interpreted in a way that recognizes the personhood of the unborn.

If these or similar arguments had been made in this case, this Court might have been persuaded. But the textual arguments were not made, so this Court cannot reverse based on them. See Ex parte Kelley, 296 So. 3d 822, 829 (Ala. 2019). Accordingly, I concur in affirming the judgment of the Court of Civil Appeals, but I would leave for another day the correctness of its interpretation of the AUPA's definition of "child."

Wise, J., concurs.

BRYAN, Justice (concurring in the result).

I concur in the result of the main opinion, but I agree with the sentiments expressed by Justice Sellers in his special writing.

SHAW, Justice (dissenting).

I disagree that the plain language of the Alabama Uniform Parentage Act ("AUPA" or "the Act"), Ala. Code 1975, § 26-17-101 et seq., excludes an unborn child from its definition of the word "child." Therefore, I would not affirm the decision of the Court of Civil Appeals, Z.W.E. v. L.B., 335 So. 3d 634 (Ala. Civ. App. 2020), and I respectfully dissent.

In this case, Z.W.E. ("the alleged father") claimed to be the father of an unborn child and sought a court determination of parentage under the AUPA. Although numerous issues were discussed by the Court of Civil Appeals in its decision affirming the trial court's dismissal of that action, the main opinion here addresses the narrow issue of whether, for purposes of the AUPA, one could be a presumed father of an unborn child.

The Alabama Code at times includes an unborn child within the definition of "child" or equates the two. See, e.g., Ex parte Ankrom, 152 So. 3d 397, 421 (Ala. 2013) ("[T]he plain meaning of the word 'child' in [Ala. Code 1975, § 26-15-3.2,] includes an unborn child."), and Ala. Code 1975, § 26-23H-3(7) (defining both "unborn child" and "child" as "[a] human being, specifically including an unborn child in utero at any stage of development, regardless of viability"). The AUPA, however, defines "child" as follows: " 'Child' means an individual of any age whose parentage may be determined under [the AUPA]." Ala. Code 1975, § 26-17-102(5).

[335 So.3d 662]

By referring to an "individual of any age," it is clear that the AUPA does not limit the definition of "child" to a specific age range. It is suggested that the remaining phrase, "whose parentage may be determined under [the AUPA]," refers to a "determination of parentage," a phrase separately defined in Ala. Code 1975, § 26-17-102(7). That Code section states: " 'Determination of parentage' means the establishment of the parent-child relationship by the execution of a valid acknowledgment of paternity under Article 3 [of the AUPA] or adjudication by the court." The document required for an acknowledgment of paternity under Article 3 of the Act "may be signed at the birth of the child or any time prior to the child's nineteenth birthday," Ala. Code 1975, § 26-17-304(a), and a court proceeding to determine parentage "may not be concluded until after the birth of the child," Ala. Code 1975, § 26-17-611. Because these two procedures to establish parentage cannot be completed until after the birth of a child, the main opinion concludes that parentage of an unborn child may not be determined and that, therefore, an unborn child is not a "child" for the purposes of § 26-17-102(5).

I disagree that this reading is required by the plain language of the Act. Although § 26-17-102(7) specifically defines the phrase "determination of parentage," the definition of "child" in § 26-17-102(5) does not use that phrase but, instead, refers only to whether an individual's parentage "may" be determined.[4] The definition of "child" does not specify whether it requires that parentage must immediately be capable of determination as opposed to whether parentage "may" subsequently be capable of determination under the Act.

The reading of the Act adopted by the main opinion requires that, to conclude that an individual's "parentage may be determined" under § 26-17-102(5), an individual's parentage must be capable of being established within the timing mechanisms of the acknowledgment procedures mentioned above (after birth and before the age of 19) or, in a court-adjudication proceeding, "after birth" when the proceeding could be concluded. Under that rationale, in regard to an "adjudication by the court," "parentage may be determined" would mean that a court's determination of parentage must be capable of immediate resolution in order for the individual subject to the proceeding to be considered a child.

However, a less narrow reading of the phrase "an individual of any age whose parentage may be determined under [the AUPA]" would be that the individual's parentage "may," or could, be established simply at some point in a parentage-determination proceeding and that the individual is one to whom the Act would apply. The Act specifically allows a determination proceeding to be commenced before an individual is born, although it cannot be concluded until after birth: "A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child." § 26-17-611. An unborn child, who is an "individual of any age," can -- "may" -- have parentage determined in the proceeding, but, only because of a detail of court procedure, the proceeding cannot be "concluded" until after birth.[5] Both before birth

[335 So.3d 663]

and after birth, it is the same "individual of any age" whose parentage is determined. The individual's status changes from unborn to born before the proceeding is concluded, but that same individual's parentage will in fact be determined. The word "may" in the phrase "may be determined" refers to whether a determination of an individual's, including an unborn individual's, parentage is capable of being made in a proceeding and not to when such a determination must be made.[6]

Given the above, I disagree that the plain language of the Act excludes an unborn child from the definition of "child" found within it. That said, the alleged father does not sufficiently raise and argue the correct statutory analysis discussed above, and it thus cannot be used as a basis upon which to reverse the Court of Civil

Appeals' decision. Hart v. Pugh, 878 So. 2d 1150, 1157 (Ala. 2003) ("[W]hen we are asked to reverse a lower court's ruling, we address only the issues and arguments the appellant chooses to present.") Instead, the gist of the alleged father's argument is that the word "child" is undefined and that, therefore, the Court must employ a plain-meaning analysis, as it did in Ankrom, supra, to similarly determine the meaning of the word. However, as noted above, the word is defined in § 26-17-102(5), and the meaning of the language used in that definition requires us to engage in a specific analysis that is not addressed by the parties. Under these circumstances, and based on a careful review of the proceedings in both the trial court and the Court of Civil Appeals, I would quash the writ of certiorari and indicate that, "[i]n quashing the writ of certiorari, this Court does not wish to be understood as approving all the language, reasons, or statements of law in the Court of Civil Appeals' opinion. Horsley v. Horsley, 291 Ala. 782, 280 So. 2d 155 (1973)." Ex parte Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C., 266 So. 3d 1083, 1084 (Ala. 2018). I thus respectfully dissent.

If the result in this case was not intended by the legislature, then it is the province of that body to change or clarify the AUPA. There might be strong policy concerns that would justify preventing a challenge to the parentage of a child born into a marriage. The legislature could, however, elect less restrictive means to ensure that such policy concerns are addressed only in cases in which they would actually apply.

MITCHELL, Justice (dissenting).

I respectfully dissent. In my view, the definition of "child" in the Alabama Uniform Parentage Act ("AUPA"), § 26 - 17 - 101 et seq., Ala. Code 1975, includes an unborn child. I discuss below how I arrive at that conclusion and how I would direct the Court of Civil Appeals to instruct the trial court on remand.

The AUPA provides its own definition of "child." § 26-17-102(5), Ala. Code 1975. When the Legislature defines a term, we may not disregard that definition and substitute

[335 So.3d 664]

our own. See Tanzin v. Tanvir, 592 U.S. ––––, ––––, 141 S. Ct. 486, 490, 208 L.Ed.2d 295 (2020) ; Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 36, at 225 (Thomson/West 2012) (explaining the interpretive-direction canon). This principle applies even when the statutory definition " 'varies from a term's ordinary meaning.' " Tanzin, 592 U.S. ––––, 141 S. Ct. at 490 (citation omitted); see also Scalia & Garner, Reading Law § 36, at 225. A "child" is defined in the AUPA as "an individual of any age whose parentage may be determined under [the AUPA]." § 26-17-102(5). Therefore, this is the definition we must apply.

There are two ways that a child's parentage "may be determined" under the AUPA. § 26-17-102(7). The first is by the execution of a valid acknowledgment of paternity. Id. As the main opinion correctly notes, an acknowledgment of paternity cannot be accomplished until after the child is born. See § 26-17-304(a), Ala. Code 1975 ("An acknowledgment of paternity may be signed at the birth of the child or any time prior to the child's nineteenth birthday."). The second way parentage may be determined is by court adjudication. § 26-17-102(7). Although an adjudication proceeding may begin before the birth of a child, it "may not be concluded until after the birth of the child." § 26-17-611, Ala. Code 1975.

The verb phrase "may be determined" within the definition of "child" has divided the members of this Court. The main opinion holds that this verb phrase is in the present tense -- i.e., it refers only to an individual whose parentage may presently be determined under the AUPA. 335 So. 3d at 656. Under that interpretation, an unborn child does not fall within the definition because his or her parentage cannot presently be determined under the two permissible methods. Id. Chief Justice Parker, on the other hand, sees an ambiguity. Id. at 659 (Parker, C.J., concurring in the result). In his view, it is possible that the verb phrase also covers an individual whose parentage may subsequently be

determined under the AUPA. Id. Under that interpretation, an unborn child falls within the definition because his or her parentage may be determined at a future time. Justice Shaw also acknowledges these alternative possible meanings of the phrase "may be determined," though he does not frame the issue as an ambiguity. Id. at 662 (Shaw, J., dissenting). Rather, he believes that the plain language of the AUPA includes an unborn child. Id. I agree that the AUPA's definition of "child" includes an unborn child, but I arrive there by a different path.

The Legislature has provided interpretive directions for word tenses. Within certain bounds, the Legislature may provide the courts with directions for interpreting statutes. See, e.g., Ex parte N.G., 321 So. 3d 655, 660-62 (Mitchell, J., dissenting) (noting that the Legislature, by statute, has prohibited the use of the titles of sections in the Alabama Code in statutory interpretation). And under the interpretive-direction canon, courts should follow such legislative instructions to the extent that they do not violate the separation-of-powers doctrine. Id. Here, an interpretive-direction statute directly addresses the temporal issue raised by Chief Justice Parker and Justice Shaw. Section 1-1-2, Ala. Code 1975, states that "[w]ords used in this Code in the past or present tense include the future, as well as the past and present." (Emphasis added.) So, even if the main opinion is correct that the verb phrase "may be determined" is in the present tense, that phrase also "include[s] the

[335 So.3d 665]

future" based on the instructions provided by the Legislature.[7]

Looking through the lens of § 1-1-2, the phrase "may be determined" means both "may presently be determined" and "may later be determined." Therefore, because an unborn child's parentage may be determined under either acknowledgment of paternity or court adjudication once he or she is born, an unborn child qualifies as a "child" under the AUPA.

That said, Z.W.E. must still show that the statutory presumption he relies upon can be proven as to an unborn child. The presumption that he says applies to him arises if,

> "while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child or otherwise openly holds out the child as his natural child and establishes a significant parental relationship with the child by providing emotional and financial support for the child."

§ 26-17-204(a)(5), Ala. Code 1975 (emphasis added). This section -- particularly the last clause -- raises a host of questions. As a threshold matter, there is the question of whether a father can emotionally and financially support an unborn child. Assuming that's possible, Z.W.E. must then establish that he met the requirements of § 26-17-204(a)(5), entitling him to his own presumption of paternity.

We are ill-equipped to answer these questions now. Whether it is scientifically possible for a father to emotionally support an unborn child is complicated. Absent any evidence or briefing before us about these matters, it would be imprudent to make that call at this point. But those issues can and should first be decided by a trial court, before which expert witnesses can be called, an evidentiary record can be developed, and arguments can be made for a proper appeal.

Accordingly, I would reverse the decision of the Court of Civil Appeals and direct it to remand this case to the trial court for a hearing to determine whether Z.W.E. can and did meet the requirements to claim the presumption under § 26-17-204(a)(5). If the trial court finds that it is possible for the requirements of § 26-17-204(a)(5) to be met before a child is born and that Z.W.E. met those requirements, it should then make a determination of whose presumption of paternity -- Z.W.E.'s or Z.A.F.'s -- is based "upon the weightier considerations of public policy and logic, as evidenced by the facts." § 26-17-204(b).

Notes:

[*] Although Justice Bolin and Justice Wise were not present at oral argument in this case, they have listened to the audiotape of the oral argument.

[1] We note that subsections (1) through (3) of § 26-17-611, Ala. Code 1975, allow for "service of process," "discovery," and "collection of specimens for genetic testing" to occur before the birth of a child. However, as noted by the Uniform Comment to § 26-17-611, those are "initial steps [that] may be completed prior to the birth of the child" in recognition of the fact that "establishing a parental relationship as quickly as possible may be in the best interest of a child." Completion of those "initial steps" does not result in the establishment of the parent-child relationship; they are simply part of the proceeding to determine parentage. The establishment of the parent-child relationship does not occur until the matter is adjudicated by the court, which, by the plain language of § 26-17-611, cannot occur until after the birth of the child.

[2] Concerning parentage proceedings before birth, we note that, unlike Alabama, other states have chosen to pass statutes concerning this issue that are not identical to Section 611 of the Uniform Parentage Act (2002). For instance, Colorado's statute concerning this issue states: "Proceedings under [Colorado's version of the Uniform Parentage Act] may be commenced prior to the birth of a child." Colo. Rev. Stat. § 19-4-105.5(3). Colorado included no language indicating that such an action could not be concluded until after the birth of the child whose parentage is at issue, and Colorado courts are free to adjudicate an unborn child's parentage. See, e.g., People in Interest of G.C.M.M., 477 P.3d 792 (Colo. App. 2020). Arizona is another state whose statute permits the determination of an unborn child's parentage. Arizona's statute specifically states that "[a] delay in determining paternity in an action commenced before the birth of the child shall be granted until after the birth of the child for purposes of paternity tests if any party to the proceedings requests." Ariz. Rev. Stat. § 25-807.B. Of course, if no delay is requested, the Arizona court would be free to determine an unborn child's parentage.

[3] We note that the alleged father argues before this Court that he is entitled to an evidentiary hearing in order to demonstrate that he has persisted in his presumption of paternity. See the alleged father's brief at p. 12 ("The material question before this [C]ourt is whether or not a man can hold himself out to be the presumed father of a child prior to birth thus affording him the opportunity of an evidentiary hearing to present evidence of his persistence." (emphasis added)). The alleged father also argues that an evidentiary hearing is required to weigh the allegedly competing presumptions of paternity of the alleged father and the husband. However, any argument in the father's brief to this Court that the juvenile court erred in refusing to conduct an evidentiary hearing is premised on the alleged father's argument that he is a presumed father of the child. As demonstrated above, the alleged father has failed to demonstrate that the Court of Civil Appeals erred in concluding that the alleged father cannot establish a presumption of paternity based on his prebirth conduct toward and support of the child.

We further note that Judge Moore stated in his dissent to the Court of Civil Appeals' opinion that, "[r]egardless of whether [the alleged father] is a presumed father, an alleged biological father has a right to an evidentiary hearing to determine whether the husband of the mother is, in fact, persisting in his status as the presumed father of the child …." Z.W.E., 335 So. 3d at 647 (Moore, J., dissenting). The alleged father does not make any such argument before this Court concerning the type of evidentiary hearing discussed by Judge Moore.

[4] Given that the Alabama Constitution specifically protects the rights of the unborn, see Art. I, § 36.06, Ala. Const. 1901 (Off. Recomp.), I see no dispute that an unborn child is someone other than an "individual" or any other indication that the AUPA considers an unborn child as anything other than a human being.

[5] The plain language of § 26-17-611 does not prevent an interlocutory or preliminary determination of parentage being made before birth; instead, the proceeding simply may not be "concluded," which I presume means the entry of a final judgment, until after birth.

[6] There are other limitations on the availability of parentage-determination proceedings even if an individual is born, including restrictions on "standing" to maintain the action, Ala. Code 1975, § 26-17-602 ; necessary parties, Ala. Code 1975, § 26-17-603 ; venue, Ala. Code 1975, § 26-17-605 ; personal jurisdiction, Ala. Code 1975, § 26-17-604 ; who may bring an action when the "child" is an adult, Ala. Code 1975, § 26-17-606(a)(1) ; and actions for the purpose of obtaining support after the child reaches the age of 19, Ala. Code 1975, § 26-17-606. In cases that do not comply with these restrictions, parentage of an individual "may" not be determined or "may" not be determined in a particular court.

[7] Although neither party identified § 1-1-2 as the missing piece to this interpretive puzzle, that is no reason to ignore it. As a general matter, it is true that we "will not reverse a trial court's judgment based on arguments not made to this Court." Ex parte Kelley, 296 So. 3d 822, 829 (Ala. 2019). But "our duty, first and foremost, is to the correctness of law," which "is not something the parties ultimately dictate to us." Ex parte Vanderwall, 201 So. 3d 525, 541 (Ala. 2015) (Murdock, J., concurring specially); see also Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 960 (Ala. 2004) (" '[L]itigants' failure to address the legal question from the right perspective does not render us powerless to work the problem out properly. A court of appeals may and often should do so unbidden rather than apply an incorrect rule of law to the parties' circumstances.' " (quoting Williams-Guice v. Board of Educ. of Chicago, 45 F.3d 161, 164 (7th Cir.1995))). Thus, we should not constrain ourselves to the narrow interpretive theories the parties have advanced if doing so causes us to misinterpret a statute.
