

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Adoption of:
P.A.C.

Gary D. Otten, Appellant

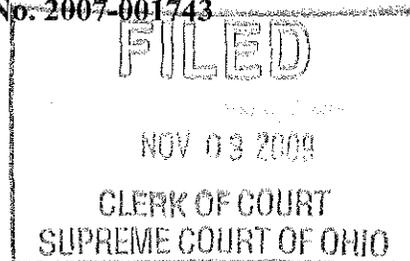
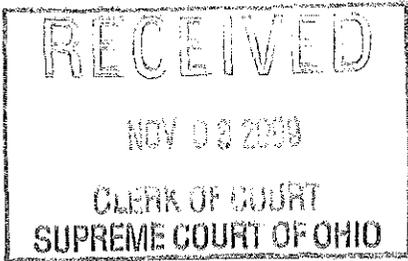
Kevin M. Crooks, Appellee

Supreme Court Case No. 2009-1757

On Appeal from the
Hamilton County Court of Appeals,
First Appellate District

Court of Appeals Case No. C-081149

Trial No. 2007-001743



APPELLEE'S MEMORANDUM OPPOSING JURISDICTION

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II. STATEMENT OF APPELLEE'S POSITION

This case does not raise a question which is of public or great general interest and is only of interest to the specific parties to this case. Further, Appellant has not alleged a constitutional question. Therefore, this Court should not grant leave to appeal and should decline jurisdiction to hear this case on the merits.

III. PROPOSITIONS OF LAW IN SUPPORT OF JUDGMENT AND OPPOSING JURISDICTION

Appellee's Response to Appellant's Proposition of Law

The Probate Court has original and exclusive jurisdiction over adoption proceedings and any proceeding in another court that does not affect the substantive issues of the adoption is not relevant and, unless the putative father timely registers with the putative father registry, he is not entitled to notice of the adoption proceeding, he is not entitled to be a party to the adoption proceeding, and his consent to the adoption is not required as a matter of law.

A. STATEMENT OF THE CASE

The child was born on July 13, 2005. The Petition for Adoption was filed in the Hamilton County Probate Court on April 20, 2007. On the date the Petition was filed, it is undisputed that paternity was not yet established and that Appellant was a putative father as defined in R.C. 3107.01(H). Appellant failed to register with the Putative Father Registry.

B. EXPLANATION OF WHY THIS CASE IS *NOT* A CASE OF PUBLIC OR GREAT GENERAL INTEREST

In his Memorandum to this Court, Appellant argues that the decision of the First Appellate District is in conflict with *In re Adoption of Pushcar* (2006), 110 Ohio St. 3d 332, 2006 Ohio 4572 and *In re Adoption of Asente* (2000), 90 Ohio St. 3d 91, 2000 Ohio 32. There is no conflict because *Pushcar* and *Asente* simply do not apply to the present case.

Pushcar involved a step-parent adoption where the Probate Court found that the consent of father was not required pursuant to R.C. 3107.07(A) based upon his failure to communicate with the child for a one year period. The Appellate Court in *Pushcar* held that the Probate Court could not allow the adoption to proceed under R.C. 3107.07(A) because there had been no judicial determination of paternity. This Supreme Court affirmed and held that, in such circumstances, the Probate Court must defer to the Juvenile Court and refrain from addressing the matter until adjudication in the Juvenile Court. It is very clear that *Pushcar* is only applicable to R.C. 3107.07(A) cases, and has no application to R.C. 3107.07(B) cases. The entire basis of the decision in *Pushcar* was that the requisite one-year statute for failure to communication did not begin to run until the date of the establishment of paternity. The one-year statute and *Pushcar* do not apply to the present case. The establishment of paternity is not relevant in the present case. Appellant is a putative father in this adoption proceeding and his consent is not required pursuant to R.C. 3107.07(B)(1), and not pursuant to R.C. 3107.07(A) as in *Pushcar*. The First Appellate District understood this and correctly applied the clear statutory mandate set forth in R.C. 3107.07(B)(1) and R.C. 3107.11. Further, this decision is in accord with *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070.

Asente is likewise not applicable to the present case. *Asente* involved an interstate adoption where the child was placed by Kentucky birth-parents with Ohio adoptive parents. The case was litigated all the way to both this Ohio Supreme Court and the Kentucky Supreme Court. This Ohio Supreme Court declined jurisdiction in Ohio because there was a specific proceeding pending in Kentucky that was part of the adoption process and proceeding. The central issue being litigated in Kentucky was whether or not the consents for adoption executed by the birth-parents were valid under Kentucky law. The present case does not involve a parental consent or a case pending in

another court that is part of the adoption process and proceeding. The present case involves the application of the clear statutory mandate relating to a putative father and *Asente* does not apply.

IV. CONCLUSION

The First Appellate District correctly interpreted and applied the existing case law and the clear statutory language. The decision by the First Appellate District in the present case creates no conflict or confusion. Appellant has failed to show any public or great general interest in that this case is only of interest to the specific parties to this case and all issues have previously been addressed by this Court. Therefore, Appellee respectfully requests this Court to not grant leave to appeal and to decline jurisdiction to hear this case on the merits.

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing Appellee's Memorandum Opposing Jurisdiction has been sent by regular U.S. mail this 2d day of November, 2009 to: Kenneth J. Cahill, Attorney for Appellant, Dworken & Bernstein, 60 South Park Place, Painesville, Ohio 44077.



Michael R. Voorhees (0039293)