

IN THE SUPREME COURT OF OHIO

In re Adoption of : G.V.

09-2355

Jason and Christy Vaughn

On Appeal from the
Lucas County Court of Appeals,
Sixth Appellate District

Appellants

Court of Appeals
Case No. L-09-1160
(Entry Date: November 30, 2009)

Benjamin Wyrembek

Trial Court No. 2008 ADP 000010
Lucas County Probate Court

Appellee

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANTS JASON AND CHRISTY VAUGHN

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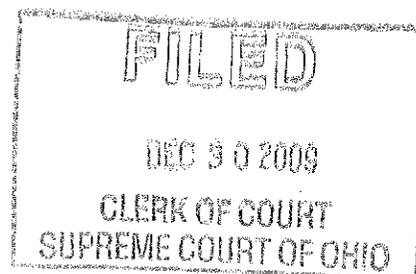


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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES SUBSTANTIAL CONSTITUTIONAL QUESTIONS

This case is of public or great general interest and involves substantial constitutional questions that will have a direct impact upon all adoptions in the State of Ohio.

This case involves the constitutional due process rights of the parties involved in an adoption, specifically the due process rights of the prospective adoptive parents to have their adoption heard in accordance with the clear statutory provisions set forth in the Ohio Revised Code. This case is of public or great general interest because the decision by the Sixth District has entered a decision that conflicts with decisions in other appellate districts and is contrary to the clear adoption process set forth in the statutory provisions of the Ohio Revised Code.

In Case No. 2009-1757, this Supreme Court recently accepted jurisdiction to hear the case of *In re Adoption of P.A.C.*, 2009 Ohio 4492 (Ohio Ct. App. Hamilton County Sept. 2, 2009). In the case of *In re Adoption of P.A.C.*, the First District correctly followed and applied Ohio law as it relates to a putative father in an adoption proceeding. In the present case, the Sixth District did the opposite by failing to follow and apply the clear statutory provisions. This case must be heard because it also conflicts with the Tenth Appellate District case of *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 737 N.E. 2d 1062. In the *Brooks* case, the Tenth District correctly followed and applied Ohio law.

There is confusion in some Ohio courts, including the Probate Court and the Court of Appeals in the present case, relating to the misinterpretation and misapplication of this Supreme Court's decision in *In re Adoption of Pushcar* (2006), 110 Ohio St. 3d 332. Some courts have been misapplying *Pushcar* to putative father cases. Many Probate Courts and the First District understand that *Pushcar* only applies to R.C. 3107.07(A) cases, and not to R.C. 3107.07(B) cases. This Supreme Court must hear this case to clarify *Pushcar* and end this confusion.

This case needs to be heard by this Supreme Court so that the integrity of the adoption process in the State of Ohio can be protected and maintained. A decision by this Supreme Court in this case will provide clarity and security to all Ohio adoptions. If this case is not heard by this Supreme Court and the decision by the Sixth District is permitted to stand and be cited as precedent, then there can be no further reliance on the clear statutory provisions relating to the adoption process set forth in the Ohio Revised Code. If this case is not heard, there can be no further reliance on the Ohio Putative Father Registry. This will result in increased litigation, with the child's fate being in an uncertain status for extraordinary long periods of time. Delaying the permanency of the child is certainly contrary to the best interest of the child. This matter requires judicial review and it is critical for this Supreme Court to grant jurisdiction to hear this case.

STATEMENT OF THE CASE AND FACTS

This case involves the adoption of a child by the Appellants, Jason and Christy Vaughn, and the objection to the adoption by the putative father. The child, Grayson, was born on October 29, 2007 at St. Luke Hospital in Lucas County, Ohio. The birth-mother of the child is Drucilla Bocvarov. On November 1, 2007, Drucilla Bocvarov executed her Permanent Surrender in accordance with R.C. 5103.15 and requested Adoption By Gentle Care (the "Agency") to take permanent custody of the child. On November 4, 2007, Jovan Bocvarov, the legal father of Grayson, executed his Permanent Surrender in accordance with R.C. 5103.15 and requested the Agency to take permanent custody of the child. The Agency is a duly licensed private child placing agency, as defined in R.C. 2151.011(A)(3), located at 380½ E. Town Street, Columbus, Ohio 43215 in Franklin County, Ohio. The Agency accepted the permanent custody of Grayson on November 4, 2007 and placed the child in an adoptive placement with Appellants. The placement received

ICPC (Interstate Compact on the Placement of Children) approval on November 8, 2007. The child has resided in the home of Appellants in a supervised adoptive placement since the ICPC approval date of November 8, 2007. On November 15, 2007, Appellee registered with the Ohio Putative Father Registry. On January 16, 2008, Appellants filed a Petition for Adoption in the Lucas County Probate Court. On February 21, 2008, the filing that was previously filed by Appellee in the Fulton County Juvenile Court was transferred to the Lucas County Juvenile Court. On May 19, 2008, the Lucas County Probate Court wrongfully stayed the adoption proceedings. On February 27, 2009, Appellants conditionally agreed to DNA testing based upon this Supreme Court's ruling in *State ex rel. Furnas v. Monnin* (2008), 120 Ohio St. 3d 279, 2008 Ohio 5569. On March 17, 2009, the Lucas County Juvenile Court entered a finding that Appellee is the biological father and dismissed the entire proceeding in Juvenile Court due to the pending adoption. On June 4, 2009, the Probate Court misinterpreted and misapplied *Pushcar* and dismissed the Petition for Adoption. On November 30, 2009, the Sixth District also misinterpreted and misapplied *Pushcar* and wrongfully affirmed the decision of the Probate Court.

In support of their position on these issues, the Appellants present the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I:

The Ohio Revised Code sets forth a statutory scheme for adoption proceedings, which includes the Putative Father Registry and the definition of a putative father.

The decision of November 30, 2009 by the Court of Appeals is contrary to the clear adoption process set forth in the Ohio Revised Code, is contrary to other case law, and effectively destroys the Ohio Putative Father Registry.

The Ohio Revised Code clearly defines how adoption matters are administered. The Ohio General Assembly took great care in developing these statutory provisions. If the birth-mother is unmarried, then she is the sole residential parent and legal custodian of the child pursuant to R.C. 3109.042. If the birth-mother was married at the time of conception, then her husband is presumed to be the father pursuant to R.C. 3111.03(A)(1). Either way, Appellee is not a legal father, rather he is a putative father as statutorily defined. A putative father is defined by R.C. 3107.01(H) as a man who may be a child's father and to whom all the following apply: 1) he is not married to the mother; 2) he has not adopted the child; 3) he has not been **DETERMINED PRIOR** to the date a petition to adopt the child is filed to have a parent child relationship (paternity established); and 4) there was no acknowledgement of paternity signed by the birth-mother and the birth-father. It must be acknowledged that the General Assembly understands the meaning of words. There can be no other meaning for the words "determined" or "prior." R.C. 3107.01(H)(3) does **NOT** say that the paternity action must be "**FILED**" before the petition for adoption. It says that the parent child relationship must be "**DETERMINED PRIOR**" to the filing of the petition for adoption. In this case, paternity was not established prior to the filing of the petition for adoption. The General Assembly meant no other definition of a putative father. The General Assembly enacted no statute to change the status of a putative father during the adoption process. The definition of a putative father in R.C. 3107.01(H)(3) was not addressed in the Appellate Court's November 30, 2009 decision. The definition must be addressed by this Supreme Court.

"[I]n any case of statutory construction, the paramount goal is to ascertain and give effect to the legislature's intent in enacting the statute. . . . In so doing, however, the court must first look to the plain language of the statute itself to determine the legislative intent. . . . Under Ohio law, it is a cardinal rule that a court must first look to the language of the statute itself to determine the

legislative intent. . . . Thus, if the language used in a statute is clear and unambiguous, the statute must be applied as written and no further interpretation is necessary. . . . It is only where the words of a statute are ambiguous, uncertain in meaning, or conflicting that a court has the right to interpret a statute.” *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 828-829 (*citations omitted*). R.C. 3107.01(H)(3) is clear and unambiguous.

The law requires strict adherence to the adoption statutes. Adoption statutes are in derogation of common law and therefore must be strictly construed. The integrity of the statutory process is an absolute necessity. See *Lemley v. Kaiser* (1983), 6 Ohio St. 3d 258, 452 N.E.2d 1304. “While strict adherence to the procedural mandates of R.C. 3107.07(B) might appear unfair in a given case, the state's interest in facilitating the adoption of children and having the adoption proceeding completed expeditiously justifies such a rigid application. See *Lehr*, 463 U.S. at 265, 103 S. Ct. at 2995, 77 L. Ed. 2d at 629.” *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070, 1074.

The putative father registry is an integral part of the adoption statutes. The putative father registry is constitutional and does not violate Appellee’s rights. Appellee timely registered, he was notified of the adoption, and his consent may or may not be required. A putative father’s consent is required if he has met the criteria for maintenance and support of the child and the birth-mother. If he does not meet that criteria, then his consent is not required. A putative father is held to a higher standard than a legal father and that is constitutional. A change of status from a putative father to a legal father is in direct contradiction to the process outlined by the General Assembly and there is no case law that supports such an impermissible exception to the statutory provisions.

The fact that Appellee established paternity in a separate proceeding after the filing of the adoption petition is not relevant in this adoption proceeding. The case of *In re Adoption of Pushcar* (2006), 110 Ohio St. 3d 332 only addressed the one-year statute relating to a “parent” and did ***NOT***

address any allegations relating to the consent of a PUTATIVE FATHER. *Pushcar* has nothing to do with the allegations in this case that the consent of the putative father is not required. A court must do more than read a headnote from a case to determine if a case applies. The headnote from *Pushcar* that includes language about the Probate Court refraining from proceeding with the adoption until the paternity case is completed in Juvenile Court is only relevant to the initiation of the one-year period. Nothing else makes sense and the Appellate Court obviously failed to read and understand the entire text of *Pushcar*. It is very clear that *Pushcar* does not apply and Appellee is a putative father in this adoption proceeding, because that is what he was when the adoption petition was filed and that is the clear law that applies to adoptions in Ohio.

The procedural steps set forth in the Ohio Revised Code that were followed in this adoption proceeding were as follows:

1. Placement: Pursuant to R.C. 5103.15, both legal parents executed permanent surrenders and the child was placed into the permanent custody of the Ohio agency. The putative father is not involved in the placement process. Only “parent” or “parents” are involved in the placement. The putative father is not a “parent” and is defined in R.C. 3107.01(H). If “putative father” and “parent” were the same thing, there would be no separate and distinct definition and provisions in the Ohio Revised Code relating just to the putative father.

2. ICPC: Pursuant to R.C. 5103.20, the Ohio agency placed the child with Appellants, who reside in Indiana, by obtaining the approval of the ICPC offices in Ohio and Indiana. Again, the putative father is not involved in the interstate placement approval process.

3. Petition: With the child legally placed with them in their Indiana home, Appellants could then proceed with the filing of the adoption petition. Pursuant to R.C. 3107.04(A), the petition was filed in the Probate Court in Lucas County, Ohio, which is the county where the child was born.

It was at this point in the adoption process that the putative father first became relevant and first needed to be considered. R.C. 3107.06 list the parties, if relevant to the adoption, whose consent is required, as follows:

§ 3107.06. Who must consent

Unless consent is not required under *section 3107.07 of the Revised Code*, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:

- (A) The mother of the minor;
- (B) The father of the minor, if any of the following apply:
 - (1) The minor was conceived or born while the father was married to the mother;
 - (2) The minor is his child by adoption;
 - (3) Prior to the date the petition was filed, it was determined by a court proceeding pursuant to *sections 3111.01 to 3111.18 of the Revised Code*, a court proceeding in another state, an administrative proceeding pursuant to *sections 3111.38 to 3111.54 of the Revised Code*, or an administrative proceeding in another state that he has a parent and child relationship with the minor;
 - (4) He acknowledged paternity of the child and that acknowledgment has become final pursuant to *section 2151.232 [2151.23.2], 3111.25, or 3111.821 [3111.82.1] of the Revised Code*.
- (C) The putative father of the minor;
- (D) Any person or agency having permanent custody of the minor or authorized by court order to consent;
- (E) The minor, if more than twelve years of age, unless the court, finding that it is in the best interest of the minor, determines that the minor's consent is not required.

R.C. 3107.07 lists the exceptions to the consent requirements, as follows:

§ 3107.07. Who need not consent

Consent to adoption is not required of any of the following:

- (A) A parent of a minor, when it is alleged in the adoption petition and the court, after proper service of notice and hearing, finds by clear and convincing evidence that the parent has failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the adoption petition or the placement of the minor in the home of the petitioner.
- (B) The putative father of a minor if either of the following applies:

(1) The putative father fails to register as the minor's putative father with the putative father registry established under *section 3107.062 [3107.06.2] of the Revised Code* not later than thirty days after the minor's birth;

(2) The court finds, after proper service of notice and hearing, that any of the following are the case:

(a) The putative father is not the father of the minor;

(b) The putative father has willfully abandoned or failed to care for and support the minor;

(c) The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

(C) Except as provided in *section 3107.071 [3107.07.1] of the Revised Code*, a parent who has entered into a voluntary permanent custody surrender agreement under division (B) of *section 5103.15 of the Revised Code*;

At the filing of the Petition for Adoption, the consent of the following parties were required to be addressed:

1. R.C. 3107.06(A): mother of the minor (Drucilla Bocvarov)– Her consent is not required in the adoption proceeding pursuant to R.C. 3107.07(C) because she entered into a voluntary permanent custody surrender agreement.

2. R.C. 3107.06(B): father of the minor (Jovan Bocvarov)– Pursuant to R.C. 3107.06(B)(1), Jovan Bocvarov is the “father” in the adoption proceeding because the minor was conceived while the father was married to the mother. His consent is not required in the adoption proceeding pursuant to R.C. 3107.07(C) because he entered into a voluntary permanent custody surrender agreement. Jovan Bocvarov was the one and only person who met the definition of “father” under R.C. 3107.06(B) at the time the petition was filed. R.C. 3107.07(B)(3) excludes Appellee from the definition because he did not establish paternity **PRIOR TO THE DATE THE PETITION WAS FILED.**

3. R.C. 3107.06(C): putative father of the minor (Benjamin Wyrembek, Appellee) – This is the only category that Appellee could meet at the time the petition was filed. Appellants alleged in the petition that the consent of the putative father (Appellee) is not required pursuant to R.C. 3107.07(B)(2). Appellants were denied their right to have these allegations heard and the adoption process has not been followed.

4. R.C. 3107.06(D): agency having permanent custody of the minor (Adoption By Gentle Care) – The Agency has consented.

5. R.C. 3107.06(E): not applicable.

In this adoption proceeding, Appellee can only be a putative father under R.C. 3107.06(C). As set forth in R.C. 3107.01(H)(3), putative father is defined as a man who may be a child's father and has not been determined, **PRIOR TO THE DATE A PETITION TO ADOPT THE CHILD IS FILED**, to have a parent and child relationship with the child by a court proceeding or by an administrative agency proceeding. The word "**PRIOR**" in R.C. 3107.01(H)(3) can have no other meaning. Appellee is a putative father in this adoption proceeding and R.C. 3107.07(B), not R.C. 3107.07(A), applies. The November 30, 2009 decision by the Sixth District failed to address this clear and unambiguous statutory language. The decision of the Court of Appeals ignored the word "**PRIOR**" in R.C. 3107.01(H)(3) and failed to even address this controlling statutory language.

The decision of the Sixth District is contrary to all other case law. If the November 30, 2009 decision is not reversed by this Supreme Court, the Ohio Putative Father Registry will be meaningless. If a putative father can change his status in an adoption proceeding by filing a paternity suit, whether he registered or not, there can be no further reliance on the Ohio Putative Father Registry. R.C. 3107.07(B) will become meaningless. The entire adoption process will fall apart. Thousands of Ohio children every year will be in an uncertain status and their permanency will be in

question. This Court needs to correct its decision to comply with the clear statutory law and the directive of the Ohio Supreme Court that “[u]ltimately, the goal of adoption statutes is to protect the best interests of children. In cases where adoption is necessary, this is best accomplished by providing the child with a permanent and stable home. . . and ensuring that the adoption process is completed in an expeditious manner.” *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070, 1073. By not following the clear statutory language and the clear adoption process set forth in the Ohio Revised Code, the adoption process will not be completed expeditiously, which will certainly be to the detriment of the child.

The definition of a putative father under Ohio law is defined in R.C. 3107.01(H)(3) and R.C. 3107.06(B)(3) and is the clear and unambiguous. The Court of Appeals failed to address this clear and unambiguous statutory definition. Whereas, all other appellate cases in Ohio have acknowledged and applied the clear and unambiguous statutory definition of putative father. This has created a conflict with other appellate districts. This case must be heard by this Supreme Court to address this conflict.

In the case of *In re Adoption of P.A.C.*, which has been accepted for review by this Supreme Court, the First Appellate District acknowledged and applied the clear and ambiguous definition of putative father, as set forth in R.C. 3107.01(H)(3). The First District refused to allow the putative father to change his status in the adoption proceeding, even though there was a pending paternity action when the adoption was filed. The determinative factor in the First District case was that the putative father had not established paternity prior to the date the petition to adopt the child was filed. After finding that the birth-father was a putative father in the adoption proceeding, the First District held that his consent was not required pursuant to R.C. 3107.07(B)(1) because he failed to register.

The November 30, 2009 decision by the Sixth District cannot be distinguished from *In re Adoption of P.A.C.* because the issue of whether or not the putative father registered is not the determinative factor. The determinative factor is that the Probate Court, in any adoption proceeding involving a putative father as alleged in the filed petition, must apply the clear and ambiguous definition of putative father, as set forth in R.C. 3107.01(H)(3). The First District did apply the definition in *In re Adoption of P.A.C.*, which then resulted in the finding that the consent of the putative father was not required under R.C. 3107.07(B), specifically R.C. 3107.07(B)(1). If the Sixth District followed the holding in *In re Adoption of P.A.C.* and correctly applied the clear and ambiguous statutory definition of putative father, the matter would have been remanded so that the case would proceed to address the allegations that the consent of the putative father is not required under R.C. 3107.07(B), specifically R.C. 3107.07(B)(2).

The First District stated that “[c]ourts have held, however, that the registration requirement is irrelevant if a putative father ceases to meet the statutory definition of a putative father before the adoption petition is filed. For example, if a putative father judicially or administratively establishes his parentage before the filing of the adoption petition, he ceases to be a putative father, and like any other father, his consent to the adoption is required unless an exception applies, regardless of his failure to timely register with the putative father registry.” *In re Adoption of P.A.C.* at p. 7 citing *In re Adoption of Baby Boy Brooks*. It is the same issue and the November 30, 2009 decision by the Sixth District in this case conflicts with *In re Adoption of P.A.C.* Therefore, a conflict now exists between the First Appellate District and the Sixth Appellate District and this Supreme Court must hear this case to resolve this conflict. This is especially important since this Supreme Court has accepted *In re Adoption of P.A.C.* and will be entering a decision in that case. It will be greatly beneficial to hear this case also, so that all putative father issues are clarified. This Supreme Court

may wish to even hear these cases at the same time, because the same issues are involved. This case is of public or great general interest and involves substantial constitutional questions that will have a direct impact upon all adoptions in the State of Ohio.

The November 30, 2009 decision by the Sixth District also conflicts with the Tenth Appellate District case of *In re Adoption of Baby Boy Brooks*. In *Brooks*, the Tenth District found that the putative father had established paternity prior to the filing of the adoption petition and, therefore, was no longer a putative father. The determinative factor in *Brooks*, as in *In re Adoption of P.A.C.*, was the clear and ambiguous definition of putative father, as set forth in R.C. 3107.01(H)(3). The Tenth District did apply the definition, which then resulted in the finding that the birth-father was no longer the putative father. The fact that the birth-father failed to register was not relevant. Even if the birth-father had registered, it still was not relevant to the determinative issue, which is whether or not he was a putative father on the date the adoption petition was filed. Therefore, a conflict now exists between the Tenth Appellate District and the Sixth Appellate District and this Supreme Court must hear this case to resolve this conflict. The conflicts, the issues involved, and the fact that this Supreme Court has accepted jurisdiction of *In re Adoption of P.A.C.*, makes the present case a case of public or great general interest.

Proposition of Law No. II:

The parties in an adoption proceeding have the due process right to have all raised issues to be addressed by the Probate Court. The failure to address the issues is a due process violation.

In their Petition, Appellants alleged that the consent of Appellee is not required based on any of the following: a) the husband of the birth-mother is the presumed legal father pursuant to R.C. 3111.03(A)(1) and the putative father has no standing in this adoption proceeding and is not entitled to any notice of this adoption proceeding; . . . c) the putative father has willfully abandoned or failed to care for and support the minor; d) the putative father has willfully abandoned the mother of the

minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner; e) R.C. 3107.06(C), which states that "Unless consent is not required under section 3107.07 of the Revised Code, a petition to adopt a minor may be granted only if written consent to the adoption has been executed by all of the following:...(C)The putative father of the minor; ..." is unconstitutional . . .; f) the biological parent must have legal custody of the minor to have any rights and the putative father, by definition, cannot have legal custody and therefore has no rights; g) the adoption is in the best interest of the child. The allegation of "b) the putative father is not the father of the minor" was voluntarily withdrawn by Appellants on September 15, 2008. However, all other allegations remained and the Probate Court failed to even address the allegations. The establishment of paternity was not relevant to any of the remaining allegations. This is, at the very least, a due process violation, which is a right guaranteed by the 14th Amendment to the U.S. Constitution.

CONCLUSION

For the reasons discussed above, this case involves matters of public or great general interest and involves substantial constitutional questions. Appellants respectfully request that this Ohio Supreme Court grant jurisdiction and allow this case to be heard, so that the important issues presented in this case will be reviewed on the merits.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction has been sent by regular U.S. mail this 29th day of December, 2009 to: Alan J. Lehenbauer, Attorney for Benjamin J. Wyrembek, The McQuades Co. LPA, P.O. Box 237, Swanton, Ohio 43558.

Michael R. Voorhees

Michael R. Voorhees

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COURT OF APPEALS

2009 NOV 30 A 9:25

COMMON PLEAS COURT
BERRIE QUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of:
The Adoption of G.V.

Court of Appeals No. L-09-1160

Trial Court No. 2008 ADP 000010

DECISION AND JUDGMENT

Decided: NOV 30 2009

Michael R. Voorhees, for appellants.

Alan J. Lehenbauer, for appellee.

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Probate Division, that dismissed appellants' petition to adopt minor child G.V. as having been filed prematurely. For the following reasons, the judgment of the trial court is affirmed.

E-JOURNALIZED

{¶ 2} The following undisputed facts are relevant to the issues raised on appeal. Minor child G.V. was born in October 2007. On November 1, 2007, the child's birth mother executed a permanent surrender in accordance with R.C. 5103.15 and asked a private adoption agency to take permanent custody of the infant. On November 4, 2007, J.B., the child's legal father, executed a permanent surrender in which he indicated that he was not the child's biological father. At the time the permanent surrenders were executed, the child's mother and J.B. were recently divorced. J.B. was presumed to be the legal father pursuant to R.C. 3111.03(A)(1) because he was married to the child's mother at the time the child was conceived. On November 8, 2007, G.V. was placed with appellants for the purpose of adoption.

{¶ 3} On November 15, 2007, appellee B.W. timely registered with the Ohio Putative Father Registry, seeking to initiate parental rights relative to G.V. On December 28, 2007, appellee filed a "Parentage Complaint: Petition to Establish Parental Rights and for Other Relief" in the Fulton County Court of Common Pleas, Juvenile Division. In response, appellants filed a motion requesting dismissal of the parentage complaint.

{¶ 4} On January 16, 2008, appellants filed a petition for adoption in the Lucas County Court of Common Pleas, Probate Division. On February 21, 2008, the Fulton County Juvenile Court transferred the parentage proceedings initiated by appellee to the Lucas County Court of Common Pleas, Juvenile Division, pursuant to Juv.R. 11.

{¶ 5} On April 23, 2008, appellee filed objections to the adoption. On May 19, 2008, the Lucas County Probate Court stayed the adoption proceedings pending determination of paternity by the Lucas County Juvenile Court. Thereafter, the juvenile court directed appellants, appellee, the child's birth mother and the individuals or agency with possession of G.V. to present themselves and the child for genetic testing as directed by the court. On March 17, 2009, the juvenile court issued a judgment entry declaring appellee to be the father of G.V. The juvenile court then dismissed the proceedings in that court due to the pending adoption.

{¶ 6} On June 2, 2009, a hearing was held in the probate court to address appellee's objections to the adoption. On June 4, 2009, the probate court issued the judgment entry which is the subject of this appeal dismissing the petition for adoption. In its decision, the trial court noted that the parties disagreed as to which adoption statute should be applied relative to the issue of whether or not appellee's consent to the adoption was necessary. Appellants asserted that R.C. 3107.07(B)(2), which addresses the circumstances under which the consent of a putative father is not required, should apply because appellee was a putative father when the petition to adopt was filed. Appellants asserted that appellee could not be elevated to the position of legal father once the adoption case had commenced. In response, appellee argued that, in light of the juvenile court's finding of parentage, the probate court should apply the provisions of R.C. 3107.07(A), which sets forth the circumstances under which the consent of a legal parent is not required.

{¶ 7} In response to these claims, the probate court found, pursuant to *In re Adoption of Pushcar* (2006), 110 Ohio St.3d 332, that while an issue concerning parenting of a minor child is pending in juvenile court – as was the case herein – a probate court must defer to the juvenile court and refrain from proceeding with the adoption of that child. The trial court reasoned, based on *Pushcar*, that the Supreme Court of Ohio intended the probate court to consider the findings of a juvenile court that are made while an adoption proceeding is being held in abeyance. In the case before us, appellee was found to be G.V.'s legal father while the probate case was stayed. Therefore the probate court ruled for purposes of determining the necessity of appellee's consent to the adoption that appellee is to be deemed a legal father and that the case falls under the provisions of R.C. 3107.07(A). Pursuant to R.C. 3107.07(A), a parent's consent to the adoption of a minor child is not necessary if the parent has failed without justifiable cause to communicate with the minor or to provide for the maintenance and support of the child as required by law or judicial decree for a period of at least one year immediately preceding either the filing of the petition for adoption or placement of the minor in the home of the petitioner.

{¶ 8} The trial court concluded, based on the holding in *In re Adoption of Sunderhaus* (1992), 63 Ohio St.3d 127, paragraph two of the syllabus, that the one-year statutory period of nonsupport which obviates the requirement to obtain parental consent to an adoption began to run on March 17, 2009, the date that appellee's parentage was judicially established. The court further reasoned that since the one-year period did not

begin to run until judicial ascertainment of paternity, appellants could not prove, pursuant to R.C. 3107.07(A), that appellee had failed to communicate with the child for one year prior to the filing of the petition because the petition was filed prior to the date paternity was established. The trial court therefore found that the petition for adoption was filed prematurely. It is from that judgment that appellants filed a timely appeal.

{¶ 9} Appellants set forth the following assignments of error:

{¶ 10} "Appellants' First Assignment of Error

{¶ 11} "The Probate Court erred by finding that Appellee was no longer a putative father in the adoption proceeding.

{¶ 12} "Appellants' Second Assignment of Error

{¶ 13} "The Probate Court erred in finding that it did not have exclusive jurisdiction over the adoption proceeding.

{¶ 14} "Appellants' Third Assignment of Error

{¶ 15} "The Probate Court erred by allowing Appellee to be a party to the adoption proceeding.

{¶ 16} "Appellants' Fourth Assignment of Error

{¶ 17} "The Probate Court erred by refusing to consider all allegations set forth in the Petition that were stated as separate grounds for finding the consent of the putative father is not required."

{¶ 18} Because adoption terminates a natural parent's fundamental right to the care and custody of his children, "any exception to the requirement of parental consent [to

adoption] must be strictly construed so as to protect the right of natural parents to raise and nurture their children." *In re Schoeppner's Adoption* (1976), 46 Ohio St.2d 21, 24. Further, the finding of the probate court in adoption proceedings "will not be disturbed on appeal unless such determination is against the manifest weight of the evidence." *In re Adoption of Bovett* (1987), 33 Ohio St.3d 102, 204. A determination is not against the manifest weight of the evidence when it is supported by competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279.

{¶ 19} In support of their first assignment of error, appellants assert that the trial court erred by finding that it was required by *Pushcar* to consider the juvenile court's determination of parentage made while the probate case was stayed. As explained above, *Pushcar* held that the probate court must defer to the juvenile court and refrain from addressing the matter until after adjudication in the juvenile court. Appellants cite the holding of the First District in *In the Matter of the Adoption of P.A.C.* In *P.A.C.*, the court held that where a biological father did not timely register with the putative father registry before the adoption petition was filed or otherwise safeguard his right to object to the adoption of his child, his consent to the adoption was not required even though a parentage action was pending at the time the petition was filed. In the case before us, however, appellee registered on the putative father registry 17 days after the child was born, well within the 30-day time limit allowed by law. Within two months after the child's birth, appellee filed a parentage action; appellants filed their petition to adopt 18 days later.

{¶ 20} After appellee's paternity was established, the probate court in this case correctly acknowledged the juvenile court's finding and proceeded with the adoption case and consideration of whether appellee's consent was required for the adoption.

{¶ 21} Based on the foregoing, we find that the trial court did not err by finding that appellee was no longer a putative father in the adoption proceeding. Accordingly, appellants' first assignment of error is not well-taken.

{¶ 22} In their second assignment of error, appellants assert that the probate court erred by finding that paternity was relevant to the adoption proceeding and staying the adoption until the juvenile court determined the paternity issue. Appellants assert that since they withdrew from their petition the allegation that appellee was not the child's biological father, the issue of paternity was irrelevant to the adoption proceeding. Pursuant to *Pushcar*, however, the probate court in this case correctly determined that it could not proceed with the adoption until paternity was established by the juvenile court. Appellee's status as either a putative father or biological father would control which statutory provision would be applied to determine under what circumstances his consent would be required. In this case, if appellee were found merely to be a putative father, pursuant to R.C. 3107.07(B)(2), appellants would only have to show that he willfully abandoned or failed to support the minor child, or that he willfully abandoned the mother during her pregnancy and until the time of the surrender or placement of the child in appellants' home. Because the issue of paternity clearly was relevant in this case, the

probate court properly stayed the case pending the juvenile court's determination.

Accordingly, appellants' second assignment of error is not well-taken.

{¶ 23} In their third assignment of error, appellants assert that the probate court erred by allowing appellee to be a party to the adoption proceeding. Appellants base their argument on the undisputed fact that J.B. was the child's legal father at the time that the adoption petition was filed, as he was married to mother at the time that G.V. was conceived. Appellants state correctly that since both legal parents executed permanent surrenders, their consent is not necessary for an adoption. Appellants then claim that since J.B. was the child's legal father, appellee had no legal authority either to register with the putative father registry or to file objections in the adoption case. Referring to J.B. and appellee, appellants further claim that it is a due process violation to require adoptive parents to seek the consent of "multiple classifications of fathers," at different points in time.

{¶ 24} Appellants' arguments have no merit. At no time during the pendency of this case was it asserted that appellants had to obtain the consent of the legal father. J.B. executed a permanent surrender of his parental rights when the child was six days old. In the permanent surrender, J.B. stated, "I am not the biological father." Appellants' argument as to the unfairness of adoptive parents being burdened with having to seek the consent of "multiple classifications of fathers" simply cannot be applied to the facts of this case. Should the petition to adopt G.V. be refiled, based on the probate court's ruling, the only individual whose consent appellants would potentially need would be

appellee. Appellants also incorrectly claim that appellee was not entitled to receive notice of the adoption proceeding, stating that in Ohio the only means for a putative father to be entitled to receive notice of an adoption proceeding is to timely register with the putative father registry. Since that is exactly what appellee did, this argument simply has no merit. Further, pursuant to R.C. 3107.11, appellee had a right to receive notice of the adoption petition and of the time and place of the hearing. Appellants did not give him such notice. On March 14, 2008, the probate court ordered appellants to serve appellee, as putative father, with notice of the petition. As appellants' arguments have no merit, their third assignment of error is not well-taken.

{¶ 25} In support of their fourth assignment of error, appellants assert that the probate court erred by refusing to consider all of their arguments as to why appellee's consent was not required. Ultimately, the probate court did not reach a decision as to whether appellee's consent was or was not required. This is because the court dismissed the petition to adopt as prematurely filed, for the reasons set forth above. Accordingly, this argument has no merit and appellants' fourth assignment of error is not well-taken.

{¶ 26} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Probate Division, is affirmed. Costs of this appeal are assessed to appellants pursuant to App.R. 24.

JUDGMENT AFFIRMED.

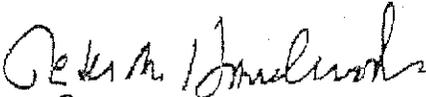
In the Matter of:
The Adoption of G.V.
C.A. No. L-09-1160

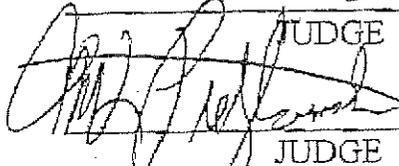
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

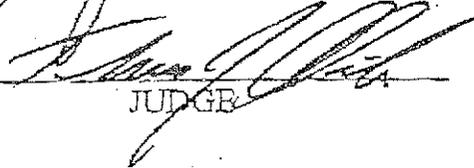
Peter M. Handwork, P.J.

Mark L. Pietrykowski, J.

Thomas J. Osowik, J.
CONCUR.



JUDGE


JUDGE


JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

Attachment not scanned