

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of: G.V. : Case No. 2009-2355
: :
: :
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 : :
: :
Appellee : Trial Court No.2008 ADP 000010
: Lucas County Probate Court
: :

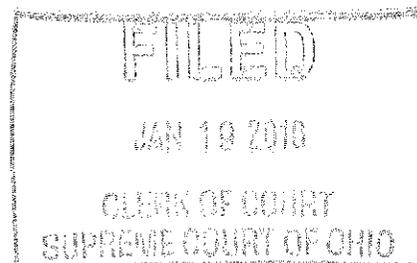
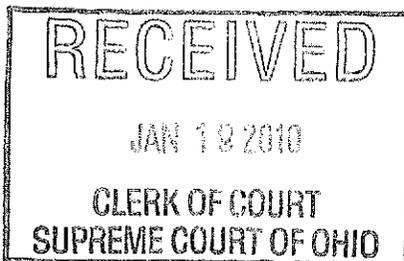
NOTICE OF DENIAL OF MOTION TO CERTIFY A CONFLICT
OF APPELLANTS JASON AND CHRISTY VAUGHN

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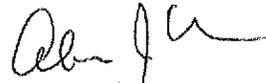
Attorney for Appellee,
Benjamin Wyrembek



Notice of Denial of Motion to Certify a Conflict

Now comes Appellee, Benjamin Wyrembek, by and through counsel, and hereby gives notice to the Supreme Court of Ohio that Appellants' Motion to Certify a Conflict was denied by the Lucas County Court of Appeals, Sixth Appellate District of Ohio in the case captioned *In re Adoption of G.V.*, Lucas County Court of Appeals Case No. L-09-1160, relating to the Decision entered by the Court of Appeals on November 30, 2009. A copy of the Sixth Appellate District decision denying Appellants' Motion to Certify a Conflict is attached hereto.

Respectfully submitted,

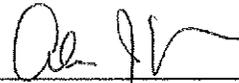


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Attorney for Appellee,
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PROOF OF SERVICE

I hereby certify that a copy of the foregoing Notice was sent by ordinary U.S. Mail this 15th day of January, 2010, to: Michael R. Voorhees, 11159 Kenwood Road, Cincinnati, OH 45242.



Alan J. Lehenbauer
Attorney for Appellee,
Benjamin Wyrembek

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COURT OF APPEALS

2010 JAN 12 A 11: 21

COMMON PLEAS COURT
BERNIE 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:

JAN 12 2010

* * * * *

This matter is before the court on the motions of appellants to reconsider our November 30, 2009 decision in this case or, in the alternative, to certify the record to the Supreme Court of Ohio, and appellee's responses thereto.

In our decision, we affirmed the trial court's finding that appellee was the legal father of the subject child and that, for purposes of determining the necessity of his consent to the adoption, the case falls under the provisions of R.C. 3107.07(A).

Appellants continue to assert that appellee can only be a putative father in this case, not

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the child's legal father, because his paternity was not established until after the date the petition to adopt was filed.

As stated in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, at paragraph two of the syllabus:

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been."

Upon due consideration, this court finds that appellants have failed to call to our attention any "obvious error" in our decision or raise any issues that we did not thoroughly consider in making our original decision. Accordingly, we find appellants' application for reconsideration not well-taken and it is denied.

In support of their motion for certification, appellants submit that this court's decision is in conflict with two Ohio appellate decisions as to "the clear and unambiguous statutory language relating to the definition of a putative father under Ohio law as set forth in R.C. 3107.01(H)(3) and R.C. 3107.06(B)(3)." Appellants cite the following cases as being in conflict with our decision: *In re Adoption of P.A.C.*, 1st Dist. No. C-081149, 2009-Ohio-4492, and *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App.3d 824.

In our decision in this case, we found, pursuant to *In re Adoption of Pushear* (2006), 110 Ohio St.3d 332, that the probate court properly held the adoption proceeding

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in abeyance while the paternity case was pending in the juvenile court. After appellee's paternity was established, the probate court in this case acknowledged the juvenile court's finding and proceeded with the adoption case and its consideration of whether appellee's consent was required for the adoption. Appellants' subsequent appeal to this court did not involve a determination of the definition of "putative father." As such, our decision is not in conflict with the decisions in *P.A.C.* and *Baby Boy Brooks*, supra. Unlike the instant case, *P.A.C.* involved the legal significance of a putative father's failure to timely register with the putative father registry. In *P.A.C.*, the First Appellate District held that, where the biological father did not timely register on the putative father registry or otherwise safeguard his right to object before the adoption petition was filed, the probate court erred by finding that he was entitled to object to the adoption. In *Baby Boy Brooks*, the man who claimed to be the child's father failed to timely register with the putative father registry, but judicially established his paternity prior to the filing of the petition to adopt his son; the Tenth District held that his consent was required for the adoption to proceed.

On consideration whereof, this court finds that our November 30, 2009 decision is not in conflict with the decisions in the cases cited by appellants. Accordingly, appellants' motion to certify is found not well-taken and the same is hereby denied.

It is so ordered.

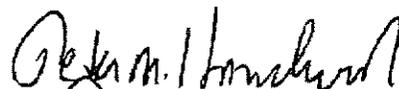
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In the Matter of:
The Adoption of G.V.
C.A. No. L-09-1160

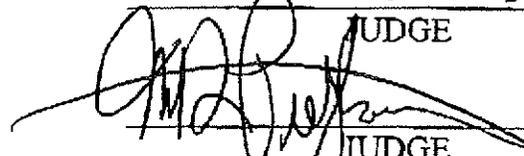
Peter M. Handwork, J.

Mark L. Pietrykowski, J.

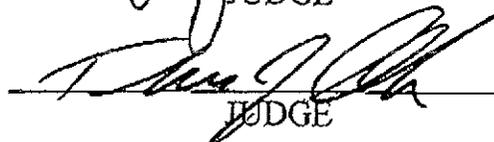
Thomas J. Osowik, P.J.
CONCUR.



JUDGE



JUDGE



JUDGE

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