

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of : G.V.	:	Supreme Court Case No. 2009-2355
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	:	
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	:	
	:	
	:	
	:	

**NOTICE OF DENIAL AND APPLICATION FOR RECONSIDERATION OF
THE MOTION TO CERTIFY A CONFLICT FILED WITH THE COURT OF APPEALS
BY APPELLANTS JASON AND CHRISTY VAUGHN**

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 Attorney for Appellee Benjamin Wyrembek

FILED
 JAN 21 2010
 CLERK OF COURT
 SUPREME COURT OF OHIO

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Notice of Denial and Application for Reconsideration of the Motion to Certify a Conflict filed with the Court of Appeals by Appellants Jason and Christy Vaughn

Pursuant to S. Ct. Prac. R. 4.4, Appellants Jason and Christy Vaughn hereby give notice to the Supreme Court of Ohio that the Motion to Certify a Conflict filed by Appellants on December 9, 2009 with 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, has been denied. Further, Appellants Jason and Christy Vaughn hereby give notice to the Supreme Court of Ohio that, based upon an obvious error by the Sixth District, an Application for Reconsideration of the denial of the Motion to Certify a Conflict has been timely filed by Appellants with the Sixth District. Appellants shall notify this Supreme Court immediately upon receipt of the decision by the Sixth District on the Application for Reconsideration.

Respectfully submitted,



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Attorney for Appellants Jason and Christy Vaughn

Certificate of Service

I hereby certify that a copy of the foregoing Notice has been sent by regular U.S. mail or by fax this 20th day of January, 2010 to: Alan J. Lehenbauer, Attorney for Benjamin Wyrembek, The McQuades Co. LPA, P.O. Box 237, Swanton, Ohio 43558 (fax # 419-825-3871).



Michael R. Voorhees (0039293)

In the Court of Appeals of Ohio
Sixth Appellate District
Lucas County

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

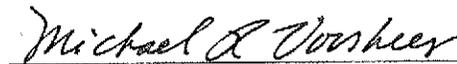
Case No. L-09-1160

Trial Case No. 2008 ADP 000010

Application for Reconsideration
of January 12, 2010 Decision denying
the Motion to Certify a Conflict
with Supporting Memorandum

Now come Appellants, by and through counsel, pursuant to App. R 26 and hereby make this application requesting this Court to reconsider its decision of January 12, 2010 denying the Motion to Certify a Conflict. A memorandum in support of this Application for Reconsideration is included below and filed herewith.

Respectfully submitted,



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Attorney for Appellants Jason & Christy Vaughn

Memorandum in Support

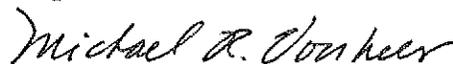
In support of this Application for Reconsideration, Appellants state the following:

This Court's decision of January 12, 2010 stated that "Appellants' subsequent appeal to this court did not involve a determination of the definition of 'putative father.'" This Court's decision of January 12, 2010 also stated that the standard for a motion for reconsideration is an "obvious error." There could not be a more obvious error than the statement by this Court that this Appeal did not involve a determination of the definition of "putative father." If this Appeal is about anything, it is about the statutory definition of "putative father." If this Court would direct its attention to Appellants' Brief, the issue presented under Appellants' First Assignment of Error is the definition of "putative father." The first paragraph of the Argument sets forth the R.C. 3107.01(H) definition of "putative father." Appellants' Reply Brief addresses the case of *In re Adoption of P.A.C.*, 2009 Ohio 4492 (Ohio Ct. App. Hamilton County Sept. 2, 2009) and states "[t]he determinative factor is that a 'putative father' is defined in R.C. 3107.01(H)(3) as a man who 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." Appellants' Application for Reconsideration of the November 30, 2009 Decision mainly addresses the definition of "putative father." Appellants' Motion to Certify a Conflict stated the following: "The issue for certification is the clear and unambiguous statutory language relating to the definition of a putative father under Ohio law as defined in R.C. 3107.01(H)(3) and R.C. 3107.06(B)(3). This Court's decision entered on November 30, 2009 failed to address this clear and unambiguous statutory definition" It is an "obvious error" to state that this Appeal does not involve a determination of the definition of "putative father."

When an adoption is filed, the Probate Court is required to apply the clear and unambiguous statutory language set forth in the Ohio Revised Code. The Probate Court has no discretion to do otherwise. Before anything else in an adoption proceeding, the Probate Court must determine the parties and their status. The Probate Court can make no further orders until that determination is made. That is exactly the determinative factor of why the Lucas County Probate Court erred in this case and is exactly the determinative factor in the holdings of both *In re Adoption of P.A.C.*, 2009 Ohio 4492 (Ohio Ct. App. Hamilton County Sept. 2, 2009) and *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 737 N.E. 2d 1062, as explained in the Motion to Certify a Conflict. There is no other factor that was the determining factor in this case, in *P.A.C.*, and in *Brooks*. The conflict is obvious and must be resolved by the Supreme Court.

For the reasons set forth above and in the Motion to Certify a Conflict, Appellants respectfully request that this Court reconsider its Decision of January 12, 2010 and certify to the Ohio Supreme Court the conflict between this Court's decision of November 30, 2009 in the present case and the opinion of the First Appellate District in the case of *In re Adoption of P.A.C.*, 2009 Ohio 4492 (Ohio Ct. App. Hamilton County Sept. 2, 2009), and the opinion of the Tenth Appellate District in the case of *In the Matter of Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 737 N.E. 2d 1062.

Respectfully submitted,



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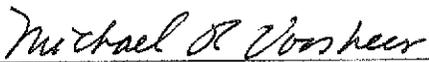
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mike@ohioadoptionlawyer.com

Attorney for Appellants Jason & Christy Vaughn

Certificate of Service

I hereby certify that a copy of the foregoing Application for Reconsideration has been served by regular U.S. mail or by fax this 20th day of January, 2010 upon: Alan J. Lehenbauer, Attorney for Benjamin J. Wyrembek, The McQuades Co. LPA, P.O. Box 237, Swanton, Ohio 43558 (fax # 419-825-3871).



Michael R. Voorhees (0039293)

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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 Pushcar* (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.

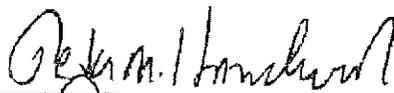
It is so ordered.

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

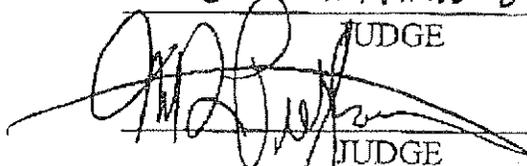
Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.
CONCUR.



JUDGE



JUDGE



JUDGE

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