

IN THE SUPREME COURT OF OHIO

ORIGINAL

In re Adoption of: G.V.

Supreme Court Case No. 2009-2355

Jason and Christy Vaughn

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

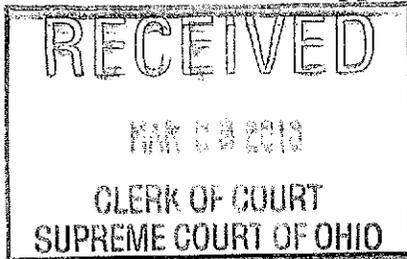
Appellants

Court of Appeals  
Case No. L-09-1160

Benjamin Wyrembek

Trial Court No. 2008 ADP 000010  
Lucas County Probate Court

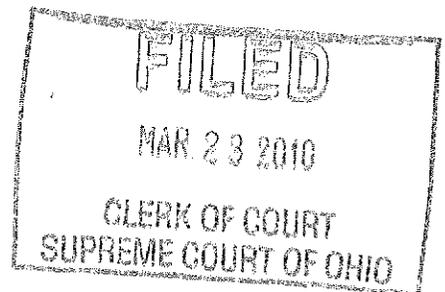
Appellee



MERIT BRIEF OF APPELLANTS JASON AND CHRISTY VAUGHN

Michael R. Voorhees (0039293)  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
(513) 489-2555 phone  
(513) 489-2556 fax  
[mike@ohioadoptionlawyer.com](mailto:mike@ohioadoptionlawyer.com)  
Attorney for Appellants Jason and Christy Vaughn

Alan J. Lehenbauer (0023941)  
The McQuades Co. LPA  
105 Lincoln Ave., P.O. Box 237  
Swanton, Ohio 43558  
(419) 826-0055 phone  
(419) 825-3871 fax  
Attorney for Appellee Benjamin Wyrembek



**TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES.....</b>	<b>ii</b>
<b>STATEMENT OF FACTS.....</b>	<b>1</b>
<b>ARGUMENT.....</b>	<b>2</b>
<b><u>Proposition of Law No. 1</u></b>	
<b>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...</b>	<b>2</b>
<b>CONCLUSION.....</b>	<b>22</b>
<b>CERTIFICATE OF SERVICE.....</b>	<b>22</b>
<b>APPENDIX</b>	<b><u>Appx. Page</u></b>
Notice of Appeal (December 30, 2009).....	1
Decision and Judgment of the Lucas County Court of Appeals, Sixth Appellate District (November 30, 2009).....	3
Judgment Entry of the Lucas County Probate Court (June 4, 2009).....	13
Cited Provisions of the Ohio Revised Code.....	18

## TABLE OF AUTHORITIES

A. CASES	PAGES
<i>Caban v. Mohammed</i> (1979), 441 U.S. 380, 60 L. Ed. 2d 297, 99 S. Ct. 1760.....	4, 5, 9
<i>In re Adoption of Asente</i> (2000), 90 Ohio St. 3d 91, 2000 Ohio 32, 734 N.E.2d 1224.....	17
<i>In re Adoption of Biddle</i> (1958), 168 Ohio St. 209, 6 O.O.2d 4, 152 N.E.2d 105.....	18
<i>In re Adoption of Joshua Tai T.</i> (2008), 2008 Ohio 2733, 2008 Ohio App. LEXIS 2292 (Ohio Ct. App., Ottawa County June 2, 2008) .....	18, 19
<i>In re Adoption of P.A.C.</i> (2009), 184 Ohio App. 3d 88, 2009 Ohio 4492, 919 N.E.2d 791.....	14, 15
<i>In re Adoption of Pushcar</i> (2006), 110 Ohio St. 3d 332, 2006 Ohio 4572, 853 N.E.2d 647.....	2, 15, 16, 18
<i>In re Adoption of Ridenour</i> (1991), 61 Ohio St. 3d 319, 574 N.E.2d 1055.....	3
<i>In re Adoption of Sunderhaus</i> (1992), 63 Ohio St. 3d 127, 585 N.E.2d 418. ....	16, 17
<i>In re Adoption of Zschach</i> (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070.....	3, 9, 21
<i>In re Gault</i> (1967), 387 U.S. 1, 13, 18 L. Ed. 2d 527, 87 S. Ct. 1428.....	7
<i>In re T.N.W.</i> (2008), 2008 Ohio 1088, 2008 Ohio App. LEXIS 929 (Ohio Ct. App., Cuyahoga County Mar. 13, 2008) .....	19
<i>In re Adoption of Baby Boy Brooks</i> (2000), 136 Ohio App. 3d 824, 737 N.E. 2d 1062.....	9, 15, 20
<i>Lehr v. Robertson</i> (1983), 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614.....	3, 4, 5, 9, 10
<i>Lemley v. Kaiser</i> (1983), 6 Ohio St. 3d 258, 452 N.E.2d 1304.....	9
<i>Michael H. v. Gerald D.</i> (1989), 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333.....	4, 5
<i>Planned Parenthood of Central Mo. v. Danforth</i> (1976), 428 U.S. 52, 74, 49 L. Ed. 2d 788, 96 S. Ct. 2831.....	7
<i>Quilloin v. Walcott</i> (1978), 434 U.S. 246, 54 L. Ed. 2d 511, 98 S. Ct. 549.....	4, 5
<i>Stanley v. Illinois</i> (1972), 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208.....	4, 5, 9
<i>State ex rel. Furnas v. Monnin</i> (2008), 120 Ohio St. 3d 279, 2008 Ohio 5569, 893 N.E. 2d 573.....	1
<i>State ex rel. Portage Co. Welfare Dept. v. Summers</i> (1974), 38 Ohio St. 2d 144, 67 O.O.2d 151, 311 N.E.2d 6.....	18

**B. STATUTES**

**PAGES**

---

Ohio Revised Code § 2151.011(A)(3).....	1
Ohio Revised Code § 3107.01(H).....	8, 10
Ohio Revised Code § 3107.01(H)(3).....	8, 9, 13, 14
Ohio Revised Code § 3107.04(A).....	10
Ohio Revised Code § 3107.06.....	11
Ohio Revised Code § 3107.06(A).....	12
Ohio Revised Code § 3107.06(B).....	12
Ohio Revised Code § 3107.06(B)(1).....	12
Ohio Revised Code § 3107.06(C).....	13
Ohio Revised Code § 3107.06(D).....	13
Ohio Revised Code § 3107.06(E).....	13
Ohio Revised Code § 3107.07.....	11
Ohio Revised Code § 3107.07(A).....	13, 16, 18
Ohio Revised Code § 3107.07(B).....	13, 14, 16, 18, 19, 21
Ohio Revised Code § 3107.07(B)(1).....	14
Ohio Revised Code § 3107.07(B)(2).....	2, 13, 14
Ohio Revised Code § 3107.07(B)(3).....	12, 13
Ohio Revised Code § 3107.07(C).....	12
Ohio Revised Code § 3109.042.....	8
Ohio Revised Code § 3109.27.....	20
Ohio Revised Code § 3111.03(A)(1).....	8
Ohio Revised Code § 3127.02.....	20
Ohio Revised Code § 3127.23.....	19
Ohio Revised Code § 5103.15.....	1, 10
Ohio Revised Code § 5103.23.....	10

### Statement of 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 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 the child, 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 the child 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, 893 N.E. 2d 573. On March 17, 2009, the Lucas County Juvenile Court entered a finding that Appellee is the biological father and dismissed the entire

proceeding in the Juvenile Court due to the pending adoption. On June 4, 2009, the Probate Court misinterpreted and misapplied the case of *In re Adoption of Pushcar* (2006), 110 Ohio St. 3d 332, 2006 Ohio 4572, 853 N.E.2d 647 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.

### Argument

#### 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 statutory provisions set forth in the Ohio Revised Code relating to the parties involved in an adoption proceeding are clear and constitutional. The due process rights of a putative father are statutorily protected. Many states have enacted a putative father registry or other legislative provisions to address the rights of the parties in adoption proceedings. The use of putative fathers registries to facilitate early permanency for children is consistent with the stated national child welfare policy that views adoption as an option for providing such permanency. There has been much concern in recent years with providing children with stable, permanent homes. The Ohio legislature has moved by mandating prompt permanency for children in public agency custody and by allowing easier involuntary termination of the rights of abandoning birth-parents in private adoptions. Since 1997, the proper application of the Ohio Putative Father Registry has been instrumental in providing early permanency for a countless number of children.

The putative father registry represents a legislative balancing of the rights of the putative father against the rights of the child. For the court to disturb the balance struck by the legislature

denies the child an opportunity to have his or her best interests considered and reduces the child to a mere chattel. The child's right to permanency must be balanced against the rights of a birth-father that has allegedly abandoned both the birth-mother and the child. The Ohio Revised Code sets forth the right to allege the abandonment by the birth-father in R.C. 3107.07(B)(2). A court system that would not allow the statutory abandonment allegations to even be presented would delay permanency and would certainly be contrary to the child's best interest. Clearly, this is not a direction in which the court system should be moving.

This Supreme Court has stated that the ultimate goal in the adoption process is to protect the best interests of children and ensuring that the adoption process is completed in an expeditious manner. See *In re Adoption of Zschach* (1996), 75 Ohio St. 3d 648, 665 N.E.2d 1070; *In re Adoption of Ridenour* (1991), 61 Ohio St. 3d 319, 574 N.E.2d 1055. The Ohio Revised Code, which includes the provisions relating to a putative father, sets forth a statutory scheme in which an adoption may be completed in an expeditious manner. When the statutory adoption process is not followed, the entire matter becomes convoluted with inappropriate stays, irrelevant proceedings in courts without jurisdiction, and protracted litigation. If the statutory adoption process is followed, then this Supreme Court's stated goal of completing the process in an expeditious manner will be met.

The United States Supreme Court acknowledged and accepted the legal basis and the constitutionality of the putative father registry in *Lehr v. Robertson* (1983), 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985. In *Lehr*, the Supreme Court rejected the putative father's claim that, even if the statutory scheme adequately protected a putative father's opportunity to establish a relationship with his child in the "normal case," he was nonetheless entitled to "special notice" because the trial court and the birth-mother knew that he had filed an affiliation proceeding in another court. In rejecting this argument, the Supreme Court stated:

[t]his argument amounts to nothing more than an indirect attack on the notice provisions of the New York statute. The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. Since the New York statutes adequately protected appellant's inchoate interest in establishing a relationship with Jessica, we find no merit in the claim that his constitutional rights were offended because the Family Court strictly complied with the notice provisions of the statute.

*Lehr*, 463 U.S. at 265.

The ignoring of the clear statutory language relating to an adoption proceeding, the staying of an adoption proceeding to allow the establishment of paternity after the adoption petition is filed, and the allowing of the birth-father to retroactively change his status within the adoption proceeding, is "nothing more than an indirect attack" on the adoption process set forth in the provisions of the Ohio Revised Code. This is exactly what the U.S. Supreme Court would not permit in *Lehr*. "The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously, which underlie the entire statutory scheme, justifies the requirement that the court adhere precisely to the procedural requirements of the Ohio statutes.

The rights of a putative father in the adoption process gained national attention after the U.S. Supreme Court addressed certain due process issues in *Stanley v. Illinois* (1972), 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208. The U.S. Supreme Court subsequently addressed putative father issues in the following cases: *Quilloin v. Walcott* (1978), 434 U.S. 246, 54 L. Ed. 2d 511, 98 S. Ct. 549; *Caban v. Mohammed* (1979), 441 U.S. 380, 60 L. Ed. 2d 297, 99 S. Ct. 1760; *Lehr v. Robertson*; and *Michael H. v. Gerald D.* (1989), 491 U.S. 110, 105 L. Ed. 2d 91, 109 S. Ct. 2333. From these cases, a distinction can be drawn between a "developed parent-child relationship,"

which was implicated in *Stanley* and *Caban*, and the "potential relationship" involved in *Quilloin* and *Lehr*. The common factor in the holdings from these cases is that a putative father must have a developed relationship with his biological child to be entitled to due process protection. However, factoring in *Michael H.*, that understanding of the putative father's rights is debatable, as the putative father in *Michael H.* did not receive any favored status even after maintaining a substantial relationship with his child. The Court in *Michael H.* found that any claimed rights of the putative father must succumb to the rights of the marital family. In the present case, Appellee has never had a substantial relationship with the child and the marital unit, the birth-mother and the legal father, decided to place the child for adoption. Nevertheless, the statutory provisions of the Ohio Revised Code protected his due process rights.

To provide clarity and integrity to the adoption process, to balance the rights of all parties in the adoption process, and to protect the best interests of the children, state legislatures have enacted statutory schemes to address these issues. The true purpose of all of these statutory schemes, including the states that include a putative father registry, is to expeditiously secure the permanency for the child. The putative father must take some responsibility to even become a party in the adoption process. If he fails to timely register, or whatever the state statute requires, the putative father has failed to demonstrate his interest. If he does register, or otherwise secures his right to be heard pursuant to the state statute, there may be additional requirements that the state may impose relating to the putative father's full commitment. The Ohio Putative Father Registry has been in effect since January 1, 1997. The Ohio legislature decided that the putative father is entitled to notice if he timely registers, but his consent may not be required if he abandons the birth-mother during pregnancy or if he abandons the child. This is the statutory scheme enacted by the Ohio legislature. This is the statutory scheme that must be followed in adoption proceedings in all Ohio courts.

Children should be recognized as individuals possessed of their own interests and rights, including the right to be part of a stable and permanent family, and the right to remain part of that family once it is established, with an expectation that the status will be permanent. These rights are constitutionally founded and are at the core of all liberties. The child's inalienable right to life and liberty in the family context must be protected. These constitutional interests are both procedural and substantive. Therefore, they should not be disturbed absent a compelling, established competing interest that is entitled to constitutional protection. Even then, if the constitutionally protected interests are in conflict and evenly balanced, the conflict should be resolved in favor of the child. In the present case, the lower courts failed to even consider the rights of any other party other than the putative father.

Courts have increasingly recognized that children have rights under the United States Constitution, and it is unreasonable to remedy any purported breach of a biological parent's rights by curtailing the fundamental rights of the child. In the present case, the child has been in a proper legal adoptive placement since November 2007. The delays in this litigated matter have been caused by the failure to follow the clear statutory adoption process. These delays have resulted in the child becoming fully integrated as a family member in the prospective adoptive family. The rights of the child must be addressed and protected. The lower courts in the present case failed to follow the statutory adoption process and failed to even consider the rights of the child. Again, only the rights of the birth-father were considered, which has created an equal protection issue under the 14th Amendment. A proper application of the relevant statutory provisions will ensure that the rights of all parties in Ohio adoption proceedings, most importantly the child's rights, are addressed.

It has long been recognized that children are persons with rights protected by the United States Constitution. “Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.” *Planned Parenthood of Central Mo. v. Danforth* (1976), 428 U.S. 52, 74, 49 L. Ed. 2d 788, 96 S. Ct. 2831. “[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone.” *In re Gault* (1967), 387 U.S. 1, 13, 18 L. Ed. 2d 527, 87 S. Ct. 1428. By not following the statutory adoption process, the rights and best interests of the child are being ignored.

In the present case, the lower courts disregarded the statutory adoption process and did not allow Appellants to present any evidence as to the allegation that Appellee abandoned both the birth-mother and the child. The lower courts have elevated the rights of the birth-father above the rights of all other parties in the adoption proceeding. This has created an imbalance in the adoption process, which is in contradiction to the balance created by the Ohio legislature. If the statutory adoption process is followed, the rights of all parties can be addressed. If the process is not followed, the whole system breaks down with lengthy delays occurring and additional issues arising. For the protection of the rights of all parties involved, most importantly the rights of the child, this case must be reversed by this Supreme Court or there will be an imbalance and uncertainty in all Ohio adoptions involving 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 by the Appellate 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 re Adoption of Baby Boy Brooks* (2000), 136 Ohio App. 3d 824, 828-829, 737 N.E.2d 1062 (*citations omitted*). The statutory language set forth in 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.” *Zschach* at 665 N.E.2d at 1074. In the present case, strict adherence to the procedural mandates would have resolved this adoption expeditiously and would have been abundantly fair.

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 different standard than a legal father and that is constitutional. The U.S. Supreme Court has stated that “the mere existence of a biological link does not merit equivalent constitutional protection.” *Lehr*, 463 U.S. at 261. In fact, at the onset of its opinion in *Lehr*, the Supreme Court noted that it “disagreed” with *Lehr*'s assertion that *Stanley v. Illinois* and *Caban v. Mohammed* “gave him an absolute right to notice and an opportunity to be heard before the child may be adopted.” *Lehr*, 463 U.S. at 250. The Court in *Lehr* made it clear that there are no absolute rights for putative fathers,

when it cited with approval the dissent of Justice Stewart in *Caban* as follows:

Even if it be assumed that each married parent after divorce has some substantive due process right to maintain his or her parental relationship, ... it by no means follows that each unwed parent has any such right. Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.

*Lehr*, 463 U.S. at 260.

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 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. 5103.23, 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. Under Ohio law, the child cannot have two legal fathers at the same time. 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 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, other appellate cases in Ohio have acknowledged and applied the clear and unambiguous statutory definition of putative father.

In the case of *In re Adoption of P.A.C.* (2009), 184 Ohio App. 3d 88, 2009 Ohio 4492, 919 N.E.2d 791, 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.” *Id.* at 184 Ohio App. 3d 92-93. It is the same issue and the November 30, 2009 decision by the Sixth District in this case conflicts with the correct decision of *In re Adoption of P.A.C.*

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 correct decision of the Tenth Appellate District and the incorrect decision of the Sixth Appellate District in this case.

The *Pushcar* case was misinterpreted and misapplied by the lower courts. *Pushcar* 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 Lucas County Probate Court and the Sixth District 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.

*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 father was named on the birth certificate, but had not yet established paternity. (This aspect of Ohio law changed in 2001. The putative father can now only be named on the birth certificate if the Affidavit of Paternity is executed by mother and putative father. The Affidavit of Paternity establishes paternity.) 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. *Pushcar* has never had any application to this adoption proceeding. *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 communicate 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. Appellee is a putative father in this adoption proceeding and the allegation is that his consent is not required pursuant to R.C. 3107.07(B), and not pursuant to R.C. 3107.07(A), as in *Pushcar*.

The case of *In re Adoption of Sunderhaus* (1992), 63 Ohio St. 3d 127, 585 N.E.2d 418 is no different than *Pushcar* and likewise does not apply to this adoption proceeding. *Sunderhaus* was

also a R.C. 3107.07(A) case. The holding in *Sunderhaus* was “the one-year period of nonsupport prescribed by R.C. 3107.07(A) which obviates the requirement to obtain parental consent to an adoption pursuant to R.C. 3107.06 commences on the date that parentage has been judicially established.” *Id.* at 132. The Court stated that “[t]he ability to dispense with the consent requirement under R.C. 3107.07(A) is dependent upon two factors: (1) the establishment of the parent-child relationship, and (2) the failure to satisfy the support obligation arising therefrom.” *Id.* at 130. The Court also noted the distinction between the parental consent and the putative father as follows:

This distinction is illustrated by a comparison of the provisions governing a judicial determination of paternity contained in R.C. 3111.08(B) and 3111.12 with the less stringent standards governing the demonstration necessary to establish one as a "putative father" from whom consent to the adoption is not required pursuant to R.C. 3107.07(B). *Id.* at 131, fn. 3

The above language of the *Sunderhaus* case is clear. The holding in *Sunderhaus* does not apply to putative fathers and does not apply to this adoption proceeding.

The case of *In re Adoption of Asente* (2000), 90 Ohio St. 3d 91, 2000 Ohio 32, 734 N.E.2d 1224 also does not apply 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.

It is well established that the Probate Court has original and exclusive jurisdiction over any adoption filed in its court. This Supreme Court has held that “original and exclusive jurisdiction over adoption proceedings is vested specifically in the Probate Court pursuant to R.C. Chapter 3107” *State ex rel. Portage Co. Welfare Dept. v. Summers* (1974), 38 Ohio St. 2d 144, 151, 67 O.O.2d 151, 311 N.E.2d 6. It has also long been established that adoption “embraces not only custody and support but also descent and inheritance and in fact every legal right with respect to the child.” *In re Adoption of Biddle* (1958), 168 Ohio St. 209, 214, 6 O.O.2d 4, 152 N.E.2d 105. A pending case may be considered relevant to the adoption proceeding if it directly relates to a substantive issue in the adoption proceeding. To hold otherwise is a failure to acknowledge the original and exclusive jurisdiction of the Probate Court. If the allegation is that a parent’s consent is not required pursuant to R.C. 3107.07(A) because that parent failed to communicate or support for the one-year period, a paternity action that establishes the starting point for the one-year period may be relevant. However, a paternity action has no relevance to the allegations relating to a putative father pursuant to R.C. 3107.07(B).

The Sixth Appellate District in the case of *In re Adoption of Joshua Tai T.* (2008), 2008 Ohio 2733, 2008 Ohio App. LEXIS 2292 (Ohio Ct. App., Ottawa County June 2, 2008) distinguished *Pushcar* as follows:

Appellant has argued that the trial court was required to refrain from consideration of the adoption petition under the Ohio Supreme Court's decision of *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006 Ohio 4572, 853 N.E.2d 647.

The trial court overruled the motion and held that the decision of *In re Adoption of Pushcar* was distinguishable. We agree. In *Pushcar*, the issue of paternity of the child was pending in juvenile court at the time the petition for adoption was filed in probate court. The *Pushcar* court recognized that establishing paternity was a necessary element of the petitioner's case for adoption as the adoption in the case was being sought without the consent of the father under R.C. 3107.07(A). *Id.*, P 13. The court reasoned that establishing paternity was a necessary element of petitioner's case for adoption. In view of that fact, the probate court should have deferred proceeding

on the adoption until the juvenile court had adjudicated paternity. Here, however, paternity is not disputed and the juvenile court's involvement in prior proceedings was limited to continuing jurisdiction over custody.

In *Pushcar*, the Ohio Supreme Court reaffirmed that original and exclusive jurisdiction over adoptions in Ohio is vested in probate court. *Id.*, P 9. Furthermore, probate courts have jurisdiction to proceed with adoptions even where the involved child is subject to custody orders within the continuing jurisdiction of domestic relations or juvenile courts. *In re Adoption of Biddle (1958)*, 168 Ohio St. 209, 152 N.E.2d 105, paragraph two of syllabus (continuing jurisdiction of domestic relations court); *In re Hitchcock (1996)*, 120 Ohio App.3d 88, 103-104, 696 N.E.2d 1090 (continuing jurisdiction of juvenile court). Accordingly, appellant's argument that the trial court should have deferred proceeding with the adoption due to the pending jurisdiction of juvenile court over custody of Joshua is without merit. *Id.* at 13-14.

The case of *In re Adoption of Joshua Tai T.* is directly on point with the present case. The allegation in this adoption proceeding is that the consent of the putative father is not required pursuant to R.C. 3107.07(B). The case that was pending in the Lucas County Juvenile Court did not bar the Probate Court from proceeding with the adoption. The Probate Court has original and exclusive jurisdiction over this adoption. The establishment of paternity in the Lucas County Juvenile Court case was not a "necessary element" of the Petitioners' case in this adoption proceeding. The establishment of paternity is not a "necessary element" and is not relevant in this adoption proceeding.

The Eight Appellate District in the case of *In re T.N.W.* (2008), 2008 Ohio 1088, 2008 Ohio App. LEXIS 929 (Ohio Ct. App., Cuyahoga County Mar. 13, 2008) also found *Pushcar* to be inapplicable. The Court rejected the argument that the adoption should have been enjoined from proceeding and held that "a ruling from the juvenile court on the issue of parentage was not needed to proceed with the adoptions." *Id.* at 7.

In further support of the Probate Court's exclusive jurisdiction over this adoption is the fact that the R.C. 3127.23 Affidavit does not apply to this adoption proceeding. Ohio probate courts

have required the filing of this Affidavit in adoption proceedings for years, which requires disclosure of other pending cases. The former Ohio code section is R.C. 3109.27, which was part of the Uniform Child Custody Jurisdiction Act (“UCCJA”). In 2005, Ohio passed the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), which superseded the UCCJA. The Ohio code section for the Affidavit is now R.C. 3127.23. Where the UCCJA was not clear as to its applicability to adoption proceedings, the UCCJEA is now very clear. R.C. 3127.02 states that UCCJEA provisions do not govern adoption proceedings. Therefore, other proceedings are not relevant if such proceedings do not affect the substantive issues in the adoption.

Appellee may not change his status from a “putative father” to a “father” inside the adoption proceeding. This is contrary to the original and exclusive jurisdiction of the Probate Court over adoption proceeding. If the decision of the Sixth District is not reversed, the jurisdiction of the Probate Court over any and all adoption proceedings will be questionable. The decision must be reversed to maintain the integrity of the Probate Court and of the adoption process. In addition to the jurisdictional issue, if the decision of the Sixth District is not reversed, the entire statutory scheme that includes the Putative Father Registry will become meaningless. There can be no question that the decision of the Probate Court in this case creates an exception to the requirements of the Putative Father Registry. Once one exception is created, there can be no further reliance on the Registry and the entire process falls apart. The decision of the Probate Court is in clear contradiction of the intent of the Registry. A summary of the legislative history and the legislative intent of the Putative Father Registry was detailed in *In re Adoption of Baby Boy Brooks* as follows:

The Ohio Legislative Service Commission prepared an analysis of Am.Sub. H.B. No. 419, which provides insight into the legislative intent behind the changes to the adoption statutes. 3 Baldwin's Ohio Legislative Service (1996), L-336. The Legislative Service Commission cautions that the final version of bills may be different from the legislative analysis because they are subject to floor amendments and conference committee changes. *Id.* According to the analysis, the changes to the

adoption laws require a putative father to register with the putative father registry within thirty days of the child's birth or his consent will not be required. *Id.* at L-336, L-346. The original version of *R.C. 3107.07(B)(1)*, as amended by Am.Sub.H.B. No. 419, contained an exception to the requirement of registration within thirty days if the putative father was not able to register within the thirty-day time period for reasons beyond his control, other than a lack of knowledge of the child's birth, but the putative father must register within ten days after it becomes possible for him to register or his consent will not be required. *Id.* at L-287, L-346. However, this exception in *R.C. 3107.07(B)(1)* was removed from the final version of Am.Sub.H.B. No. 419. See *R.C. 3107.07(B)(1)*, effective September 18, 1996. Thus, the General Assembly determined that there would be no exceptions to the thirty-day filing requirement.

Given that the legislature did not intend for there to be any exceptions to the registration requirement, that the purpose of the adoption laws is to provide children with a stable home in an expeditious manner, and that adoption laws are to be strictly construed, I conclude that the General Assembly intended in *R.C. 3107.07(B)(1)* to eliminate the necessity of a putative father's consent to an adoption if he fails to register with the putative father registry within thirty days of the child's birth.

*Id.* at 834.

If the decision in case is not reversed, 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. There must be compliance with the clear statutory law and the directive of this 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.” *Zschach* at 665 N.E.2d 1073. By following the clear statutory language and the clear adoption process set forth in the Ohio Revised Code, the adoption process will be completed expeditiously, which will be in the best interests of all parties, especially the child.

**Conclusion**

For the reasons set forth above, the Appellants respectfully requests this Supreme Court to REVERSE the decision of the Sixth Appellate District and REMAND the matter for further proceedings.

Respectfully submitted,

  
\_\_\_\_\_  
Michael R. Voorhees (0039293)  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
(513) 489-2555 phone  
(513) 489-2556 fax  
Attorney for Appellants Jason and Christy Vaughn

**Certificate of Service**

I hereby certify that a copy of the foregoing Appellants' Merit Brief has been sent by regular U.S. mail this 22d day of March, 2010 to: Alan J. Lehenbauer, Attorney for Appellee, The McQuades Co. LPA, 105 Lincoln Ave., P.O. Box 237, Swanton, Ohio 43558.

  
\_\_\_\_\_  
Michael R. Voorhees (0039293)

ORIGINAL

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

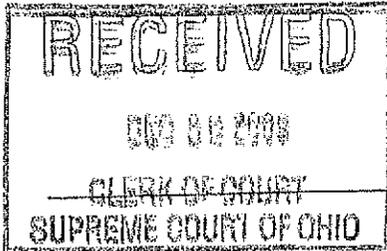
Appellants

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

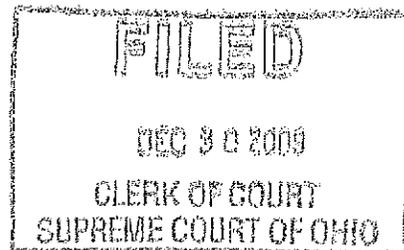
Appellee



NOTICE OF APPEAL  
OF APPELLANTS JASON AND CHRISTY VAUGHN

Michael R. Voorhees (0039293)  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
(513) 489-2555 phone  
(513) 489-2556 fax  
[mike@ohioadoptionlawyer.com](mailto:mike@ohioadoptionlawyer.com)  
Attorney for Appellants Jason and Christy Vaughn

Alan J. Lehenbauer (0023941)  
The McQuades Co. LPA  
105 Lincoln Ave., P.O. Box 237  
Swanton, Ohio 43558  
(419) 826-0055 phone  
(419) 825-3871 fax  
Attorney for Appellee Benjamin Wyrembek



Notice of Appeal of Appellants Jason and Christy Vaughn

Appellants Jason and Christy Vaughn hereby give notice of appeal to the Supreme Court of Ohio from the Decision of the Lucas County Court of Appeals, Sixth Appellate District of Ohio, entered on November 30, 2009 in the case captioned *In re Adoption of G.V.*, Lucas County Court of Appeals Case No. L-09-1160. This appeal involves the adoption of a minor child.

This appeal involves substantial constitutional questions and involves a case of public or great general interest, as set forth more fully in the Memorandum in Support of Jurisdiction of Appellants Jason and Christy Vaughn, which is being filed herewith. Pursuant to S. Ct. Prac. R. II, Section 1(A)(2), this appeal is taken as a claimed appeal of right based on the substantial constitutional questions involved in this case. Pursuant to S. Ct. Prac. R. II, Section 1(A)(3), this appeal is also taken as a discretionary appeal because it is a case of public or great general interest. The Decision entered by the Court of Appeals on November 30, 2009 in this case is attached hereto.

Respectfully submitted,



Michael R. Voorhees (0039293)

Voorhees & Levy LLC

11159 Kenwood Road

Cincinnati, Ohio 45242

(513) 489-2555 phone

(513) 489-2556 fax

mike@ohioadoptionlawyer.com

Attorney for Appellants Jason and Christy Vaughn

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Appeal has been sent by regular U.S. mail or by fax this 29<sup>th</sup> day of December, 2009 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)

FILED  
COURT OF APPEALS

2009 NOV 30 A 9:25

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: 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**

1. NOV 30 2009

*App. 3*

{¶ 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.

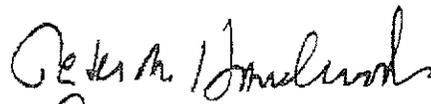
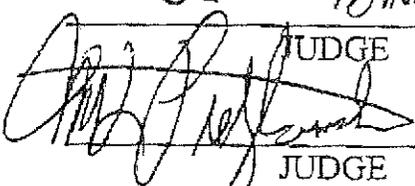
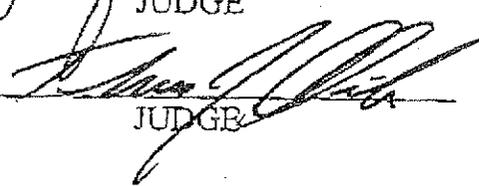
In the Matter of:  
The Adoption of G.V.  
C.A. No. L-09-1160

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>.

FILED  
LUCAS CO. PROBATE COURT  
JACK R. PUFFENBERGER, JUDGE

2009 JUN -4 P 1:36

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO  
PROBATE DIVISION

IN THE MATTER OF:

THE ADOPTION OF  
GRAYSON THOMAS VAUGHN

\*  
\*  
\*  
\*

CASE NO. 2008 ADP 000010

JUDGMENT ENTRY

This matter comes before the Court pursuant to a Petition For Adoption of Minor filed January 16, 2008 by Attorney Michael R. Voorhees on behalf of petitioners Jason and Christy Vaughn (Vaughns).

The child who is the subject of this adoption petition was born on October 29, 2007 in Lucas County, Ohio. On November 1, 2007 the child's birth mother, Drucilla Rose Bocvarov, executed a permanent surrender of this child to Adoption By Gentle Care, which is a private child placing agency (PCPA). Her former husband, Jovan Bocvarov, also executed a permanent surrender to the PCPA on November 4, 2007. Drucilla's permanent surrender indicated that at the time of surrender she was a "single parent" and Jovan's permanent surrender indicated that he was "not the biological father" of this child. The Bocvarovs had been divorced during the time of Drucilla's pregnancy, however since they were married at the time of conception of this child, Mr. Bocvarov is deemed to be the presumed natural father of this child. R.C. 3111.03(A)(1). Adoption By Gentle Care accepted the surrenders and forthwith placed the child with the Vaughns for purpose of adoption. The child has remained with the Vaughns since early November of 2007.

On November 20, 2007, Benjamin Wyrembek timely registered with the Ohio Putative Father Registry, seeking to initiate parental rights relative to the child herein. Also, on December 28, 2007, Mr. Wyrembek filed a Parentage Complaint; Petition to Establish Parental Rights and for other relief in the Fulton County Court of Common Pleas, Juvenile Division. The Vaughns filed a motion in Fulton County Juvenile Court on January 28, 2008 requesting dismissal of Benjamin Wyrembek's parentage complaint. Fulton County Juvenile Court

JOURNALIZED

JUN - 4 2009

App. 13

transferred the proceedings initiated by Benjamin Wyrembek to the Lucas County Court of Common Pleas, Juvenile Division, pursuant to Juvenile Rule 11 on February 21, 2008.

Petitioners herein filed a Motion for Declaratory Judgment on January 16, 2008 which was denied by this Court. In denying this motion in its Judgment Entry of March 14, 2008, the Court specifically ordered the putative father to be served with notice of the Petition for Adoption. Benjamin Wyrembek was served and thereafter filed an objection to the adoption in the Lucas County Probate Court on April 23, 2008.

This Court further ruled on May 19, 2008 that this adoption matter should be deferred until the issue of paternity of the child, which was pending in juvenile court prior to the filing of this adoption petition, was determined. *In re Adoption of Joshua Tai T*, OT-07-055, Ohio Sixth Appellate District, 2008. Accordingly, the Court held this matter in abeyance pending the parentage determination. On March 17, 2009, the Lucas County Court of Common Pleas, Juvenile Division, issued a Judgment Entry declaring Benjamin Wyrembek to be the father of the child who is the subject of this adoption petition. (JC08-180254)

This Court then conducted a telephonic pre-trial on April 2, 2009, wherein all legal arguments and evidentiary hearings were to commence June 2, 2009.

This matter comes before the Court pursuant to an amended objection and two complaints for declaratory judgment filed April 7, 2009 by Attorney Alan J. Lehenbauer on behalf of Benjamin Wyrembek. Responsive pleadings were filed by Attorney Michael Voorhees on behalf of petitioners Jason Edward Vaughn and Christy Lynn Vaughn. In addition, Mr. Lehenbauer filed a Supplemental Memorandum in Support of Complaint for Declaratory Judgment on May 27, 2009. Pursuant to this Court's order of April 2, 2009, these legal issues were scheduled for hearing on June 2, 2009, prior to an evidentiary hearing on the petition and determination of best interest of the child.

Case called for hearing. Attorney Michael R. Voorhees present with petitioners Jason Edward Vaughn and Christy Lynn Vaughn. Attorney Alan J. Lehenbauer present with Benjamin J. Wyrembek. Attorney Heather Fournier, who was appointed by this Court as guardian ad litem of the child, also present. Arguments held relative to all pending legal issues.

After due consideration of the legal arguments presented, the Court hereby finds as follows: The parties have provided voluminous cases and statutes for the Court to consider in rendering a decision relative to the pending legal motions. In addition to the well known cases of *In re Adoption of Sunderhaus*, (1992) 63 Ohio St.3d, 127, and *In re Adoption of Pushcar*, (2006) 110 Ohio St.3d 332, the Court has considered numerous other relevant cases. The case of *Nale v. Robertson*, (1994) 871 S.W.2d 674, was decided by the Supreme Court of Tennessee. The *Nale* case provides an excellent history of various aspects of adoption law in the United States. The *Nale* case tracks many of the cases cited by counsel in this matter including *Stanley v. Illinois*, (1972) 405 U.S. 645 and *Lehr v. Robertson*, (1983) 463 U.S. 248. As stated in the *Nale* case, *supra*, parents, including parents of children born out of wedlock, have a fundamental liberty interest in the care and custody of their children. The United States Supreme Court has addressed several cases relating to the issue of a father's liberty in his relationship with a child born out of wedlock. *Stanley, supra*, and *Lehr v. Robertson, supra*. Specifically the *Nale* case stated, "no parent should be denied the privilege of parenthood merely because of birth out of wedlock." In the *Nale* case, the court found that Robertson had made every reasonable effort to establish a personal as well as legal relationship between himself and his son. He therefore has established fundamental liberty interests in the child. The right of a natural parent to the care and custody of his children is one of the most precious and fundamental in law. *Santosky v. Kramer* (1982), 455 U.S. 745,753, 102 S.Ct. 1388. Adoption terminates those fundamental rights. See 3107.15(A)(1). For this reason, "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. The Court of Appeals for the Sixth District of Ohio has stated in the case of *In re Smith* (1991), 77 Ohio App.3d 1,16, that the termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows.

The parties in this matter have agreed that the probate court has original and exclusive jurisdiction over this adoption proceeding. This Court relied on the *Pushcar* decision in its order of May 19, 2008 and specifically reiterates that the parentage action in this matter was filed prior to and was pending at the time the adoption petition was filed in this court. Accordingly, the Court refrained from proceeding with the adoption petition during the pendency of the parentage action. It is the opinion of this Court that it now has jurisdiction to consider the petition for adoption since the juvenile court has adjudicated the parentage matter to its conclusion. In this matter, the parties have a difference of opinion in relation to which adoption statute should be applied relative to the necessity of Mr. Wyrembek's consent. Petitioners allege that R.C. 3107.07(B)(2)(c) applies since Mr. Wyrembek was a putative father when the petition was filed. Petitioners further allege that Mr. Wyrembek is unable to elevate himself to the

level of a legal father once the adoption case has been commenced. Counsel for Mr. Wyrembek argues that this Court should consider the finding of parentage in the juvenile court, and therefore utilize the provisions of R.C. 3107.07(A) in determining whether Mr. Wyrembek's consent is required. It should be noted that R.C. 3107.07(B) relates to the consent of putative fathers and Section 3107.07(A) relates to the consent of legal fathers. Were the Court to proceed in this matter under R.C. 3107.07(B), the issue would be whether Mr. Wyrembek abandoned the birth mother during the time of her pregnancy and up to her time of her surrender of the child. Should the Court rule that Section 3107.07(A) applies, the issue would be whether Mr. Wyrembek failed to communicate 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 the filing of the adoption petition without justifiable cause.

This Court finds the facts in the instant matter strikingly similar to the facts in *In the Matter of the Adoption of JLM*, Case Number 200678, decided in the Probate Court of Stark County, Ohio on April 8, 2008. In *JLM*, as in this case, the father timely registered with the Putative Father Registry and filed a complaint to establish paternity prior to the filing of the Petition for Adoption. The Probate Court in *JLM* deferred to the juvenile court to establish paternity pursuant to *Pushcar, supra*. Upon the order of the juvenile court finding the parent-child relationship, the probate court dismissed the Petition for Adoption applying *Sunderhaus, supra*. The court held that the duty to communicate and support referred to in R.C. 3107.07(A) commenced upon the establishment of paternity. Since one-year had not passed since the paternity determination, the petition was considered premature and therefore dismissal was required.

This Court finds that when a parentage action is pending prior to the filing of the adoption petition, the Court must apply *Pushcar*. It must be logically assumed that the Supreme Court of Ohio intended the probate court to consider the findings of the juvenile court made while the adoption proceeding is being held in abeyance. In this case, the juvenile court has ruled that Mr. Wyrembek is the father of the child who is the subject of this adoption proceeding, therefore the Court hereby rules that for purposes of determining the necessity of Mr. Wyrembek's consent, he is to be deemed a legal father.

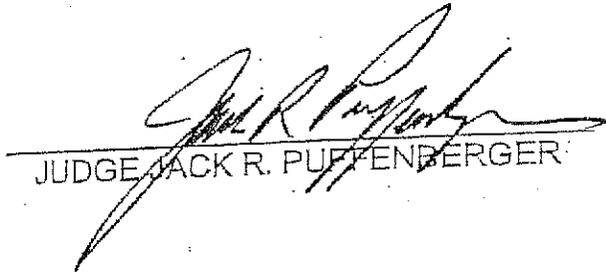
Accordingly, the Court rules that Section 3107.07(B) no longer applies to Mr. Wyrembek although he was a putative father when the petition was filed by virtue of his putative father registration. The judicial determination of a parentage action filed prior to the petition for adoption changes his status in this matter and he is now a legal father and falls under the provisions of R.C. 3107.07(A). In this regard, the Court notes that the one-year period prescribed by Revised Code Section 3107.07(A) commenced on the date that parentage has been judicially

established. *In re Adoption of Sunderhaus (1992)*, 63 Ohio St.3d 127, 132. Since one year had not expired prior to the placement of the child or the filing of the petition and one year has not expired since the paternity finding, it is impossible to show that Mr. Wyrembek's consent is not required pursuant to Section 3107.07(A). Accordingly, the Court finds the Petition for Adoption has been filed prematurely and therefore it is hereby dismissed.

Therefore, the Court hereby grants Mr. Lehenbauer's Complaint for Declaratory Judgment in part; specifically ruling that Mr. Wyrembek is now a legal father subject to the provisions of Section 3107.07(A) in this adoption proceeding. The Court further finds that all other legal issues pending, including the constitutionality of Chapter 3107, to be moot based upon the above ruling.

It is so ordered.

6/4/09  
DATE

  
JUDGE JACK R. PUFFENBERGER

Copies mailed this date to:

Attorney Alan J. Lehenbauer  
Attorney Michael R. Voorhees  
Attorney Heather J. Fournier

Cited Provisions of the Ohio Revised Code

§ 2151.011. Definitions

(A) As used in the Revised Code: ...

(3) "Private child placing agency" means any association, as defined in section 5103.02 of the Revised Code, that is certified under section 5103.03 of the Revised Code to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption.

§ 3107.01. Definitions

As used in sections 3107.01 to 3107.19 of the Revised Code: ...

(H) "Putative father" means a man, including one under age eighteen, who may be a child's father and to whom all of the following apply:

- (1) He is not married to the child's mother at the time of the child's conception or birth;
- (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 and child relationship with the child by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency proceeding in another state;
- (4) He has not acknowledged paternity of the child pursuant to sections 3111.21 to 3111.35 of the Revised Code.

§ 3107.04. Where petition to be filed; caption

(A) A petition for adoption shall be filed in the court in the county in which the person to be adopted was born, or in which, at the time of filing the petition, the petitioner or the person to be adopted or parent of the person to be adopted resides, or in which the petitioner is stationed in military service, or in which the agency having the permanent custody of the person to be adopted is located.

§ 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.

§ 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;

§ 3109.042. Custody rights of unmarried mother

An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.

§ 3111.03. Presumption of paternity

(A) A man is presumed to be the natural father of a child under any of the following circumstances:

(1) The man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within three hundred days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and the child's mother separate pursuant to a separation agreement.

§ 3127.02. Exceptions to provisions

Sections 3127.01 to 3127.53 of the Revised Code do not govern adoption proceedings or proceedings pertaining to the authorization of emergency medical care for a child.

§ 5103.15. Agreement for temporary custody or surrender of permanent custody

...(B)(2) The parents of a child less than six months of age may enter into an agreement with a private child placing agency surrendering the child into the permanent custody of the agency without juvenile court approval if the agreement is executed solely for the purpose of obtaining the adoption of the child. The agency shall, not later than two business days after entering into the agreement, notify the juvenile court. The agency also shall notify the court not later than two business days after the agency places the child for adoption. The court shall journalize the notices it receives under division (B)(2) of this section.

§ 5103.23. Interstate compact on placement of children enacted

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

- (A) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.
- (B) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.
- (C) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.
- (D) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this compact:

- (A) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.
- (B) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state.
- (C) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
- (D) "Placement" means the arrangement for the care of a child in a family free or boarding home, or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic, or any institution primarily educational in character, and any hospital or other medical facility.

Article III. Conditions for Placement.

- (A) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the

sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(B) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date and place of the birth of the child;
- (2) The identity and address or addresses of the parents or legal guardian;
- (3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;
- (4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(C) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to division (B) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(D) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

#### Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

#### Article V. Retention of Jurisdiction.

(A) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(B) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(C) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state

for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (A) hereof.

#### Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

- (A) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (B) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### Article VIII. Limitations.

This compact shall not apply to:

- (A) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.
- (B) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

#### Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada, or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

#### Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the state affected as to all severable matters.