

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of: G.V.	:	Case No. 2009-2355
	:	
	:	
	:	On Appeal from the
Jason and Christy Vaughn	:	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
Appellee	:	Lucas County Probate Court
	:	

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CLERK OF COURT
SUPREME COURT OF OHIO

APPELLEE'S REPLY BRIEF TO MERIT BRIEF OF AMICUS CURIAE
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Now comes Appellee, Benjamin Wyrembek, by and through counsel, and for his reply brief to the *Merit Brief of Amicus Curiae American Academy of Adoption Attorneys in Support of Appellants*, states as follows:

REPLY ARGUMENT

Appellee's Reply to Amicus Curiae's Proposition of Law No. I:

Where a person has timely registered with the Ohio Putative Father Registry and has filed a parentage and custody action in juvenile court prior to the date on which an adoption petition is filed in probate court, the person has taken sufficient steps to establish and safeguard parental rights with respect to the child. The probate court must defer jurisdiction relative to said child to the juvenile court. Ohio adoption laws, including consent-to-adoption requirements and the definition of "putative father" under R.C. 3107.01(H), must be interpreted to give deference to a subsequent adjudication that the person is the child's parent. *In re Adoption of Pushcar* (2006), 110 Ohio St.3d 332, 2006 Ohio 4572, 853 N.E.2d 647, followed.

The American Academy of Adoption Attorneys ("the Academy") contends that the State of Ohio has a compelling interest in children being raised in stable, permanent homes. *The Academy's Amicus Curiae Brief* at page 2. The Academy suggests that the state's compelling interest overrides the due process rights of Appellee who filed a parentage complaint in juvenile court prior to Appellants' filing of a petition for adoption in probate court. According to the Academy, the Ohio General Assembly provided Appellee with appropriate due process rights through a putative father registry. *The Academy's Amicus Curiae Brief* at pages 3-9. The Academy asserts that, by registering, Appellee acquired the rights to notice and an opportunity to be heard in an adoption proceeding. *Id.* The Academy concludes that a hearing which defines Appellee's legal status under Ohio adoption laws is sufficient to protect Appellee's rights. *Id.*

The Sixth District, Court of Appeals, in *In re My'kavellie E.*, 6th Dist. No. L-07-1129, 2007 Ohio 7102, 2007 Ohio App. Lexis 6207, discussed the due process protections afforded an unwed father in a custody proceeding in juvenile court. The Sixth District in *In re My'kavellie E.*, at ¶18-¶19, stated:

"Parents have a fundamental liberty interest in the care, custody and management of their children. *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599; *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169. Therefore, in a permanent custody proceeding, "parents must be provided with fundamentally fair procedures in accordance with the Fourteenth Amendment Due Process Clause and Section 16, Article I of the Ohio Constitution." *In the Matter of Elliot* (June 25, 1993), 4th Dist. No. 92-CA-34, 1993 Ohio App. LEXIS 3267. See, also, *In the Matter of Vandale* (June 29, 1993), 4th Dist. No. 92-CA-31, 1993 Ohio App. LEXIS 3465.

"Unlike LCCS [Lucas County Children Services]'s assertion, we do not believe that due process of law applies only to those parties who have established parentage; however, we agree that the level of protection correlates to the actions of the alleged parent. As this court has noted:

'The fundamental requirement of due process is an opportunity to be heard at a meaningful time and in a meaningful manner.' *In the Matter of Aaron Jones* (Mar. 31, 1992), 6th Dist. No. L-91-204, 1992 Ohio App. LEXIS 1715, citing *Mathews v. Eldridge* (1976), 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18. * * *

In *In re My'kavellie E.*, there were two putative fathers. The trial court dismissed them from the custody action due to lack of required genetic testing. Permanent custody was later awarded to the county social service agency. On appeal, the Sixth District held that the trial court's dismissal of the father from the action deprived him of his due process right to a full hearing on the issue of paternity.

The case at bar is an adoption action. However, the risk of termination of parental rights of the natural parent exists just as much in this adoption action as it did in the custody action in

In re My'kavellie E. Given this risk, the probate court in this adoption proceeding was required to provide Appellee "with fundamentally fair procedures in accordance with the Fourteenth Amendment Due Process Clause and Section 16, Article I of the Ohio Constitution." *In re My'kavellie E.* at ¶18. Due process of law applied to Appellee even though he had not established parentage. *Id.* The probate court in the adoption proceeding was required to give Appellee a level of due process protection that correlated to his actions. *Id.*

Appellee timely registered with the Ohio Putative Father Registry. Appellee filed a parentage complaint 60 days after the child's birth and 17 days prior to the date on which Appellants filed their petition for adoption.

The probate court ordered that Appellee be given notice of the filing of the petition and of the hearing. In so doing, the probate court afforded due process rights in accordance with Appellee's timely registration with the putative father registry. R.C. 3107.11(A). The probate court also ordered that its jurisdiction in the adoption proceeding be deferred until the juvenile court resolved the pending parenting issue. In so doing, the probate court afforded due process protection that correlated to Appellee's prompt filing of a parentage action within 60 days of the child's birth. In so doing, the probate court acknowledged that the limited due process afforded Appellee under Ohio adoption statutes and the putative father registry did not provide Appellee with an opportunity to be heard on the pending parenting issue. If the probate court did not defer jurisdiction and if it proceeded with the adoption case, the probate court would define Appellee's parental status based on adoption law, i.e., a "putative father" as defined in R.C. 3107.01(H)(3). Appellee

would have been denied the opportunity to be heard at a meaningful time and in a meaningful manner on the parenting issue. See *In re My'kavellie E.* at ¶19. Appellee's due process right to a judicial ascertainment of paternity would have been violated.

Contrary to the position of the Academy, the state's interest in the prompt placement of children in stable, permanent homes does not cancel the due process rights of an earnest unwed biological father. "The State has a compelling interest in ensuring that the children of this State are financially supported by their natural parents." *State ex rel. Maxwell v. Trikilis*, 9th Dist. No. 06CA0071-M, 2007 Ohio 1355, at ¶16; *Marsh v. Clay* (Dec. 28, 2000), 8th Dist. No. 77171, 2000 Ohio App. Lexis 6225, at *7. Where an earnest natural father acts promptly to take responsibility for his child, the State has a compelling interest in ensuring that the child is placed with, and thereby financially supported by, the natural father. If there is an issue that the earnest natural father may be incapable of providing a stable, permanent home, then the juvenile court in the parenting action would conduct an investigation and issue an appropriate custody order.

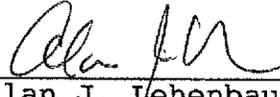
CONCLUSION

This case is not a "putative father registry" case as asserted by the Academy. Rather, this is a parenting case which required deference from the probate court in the adoption case until the juvenile court resolved the parenting issue. *Pushcar*. There is no deference if adoption laws are used to define the status of a registered putative father who has a parenting action pending prior to the filing of an adoption petition.

For these reasons and for the reasons set forth in Appellee's Merit Brief, Appellee requests that the Supreme Court AFFIRM the

decision of the Sixth Appellate District Court.

Respectfully submitted,

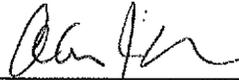


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellee's Reply Brief was sent by ordinary U.S. Mail this 9th day of April, 2010, to: Michael R. Voorhees, 11159 Kenwood Road, Cincinnati, OH 45242; Susan Garner Eisenman, 3363 Tremont Rd., Ste. 304, Columbus, OH 43221; and Mary Beck, Univ. of Missouri at Columbia, 104 Hulston Hall, Columbia, MO 65211.



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