

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re Adoption of H.N.R.,  
A minor child

14-2201

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: On appeal from the Greene  
: County Court of Appeals  
: Second Appellate District  
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:  
: Court of Appeals  
: Case No: 2014-CA-35  
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: **Adoption involved**

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT CHRISTOPHER SHAWN MILLER

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Erik L. Smith (0089330)  
2562 Glen Echo Drive  
Columbus, Ohio 43202  
(614) 330-2739  
edenstore@msn.com

COUNSEL FOR APPELLANT,  
CHRISTOPHER SHAWN MILLER

Michael R. Voorhees (0039293)  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
(513) 489-2555 phone  
(513) 489-2556 fax  
mike@ohioadoptionlawyer.com

COUNSEL FOR APPELLEES,  
D.R. & M.R.

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**THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This cause presents a critical issue for the balancing of rights in the adoption of minor children: Whether the 30-day post-birth deadline for filing in the putative father registry is a fundamentally fair procedure in adoptions of children sought after that deadline passes. The answer is no because the filing deadline, which the public lacks common knowledge of, does not serve the purpose for which the registry was designed. Moreover, the father who is helping to care for the child during her first month of life is the father most prone to miss the deadline. The filing deadline will therefore eliminate many responsible fathers from adoption proceedings.

A putative father is a man who may be a child's biological father but who has not established fatherhood legally through marriage, adoption, or formal paternity establishment. Putative fathers have qualified constitutional rights in adoption proceedings. To meet constitutional requirements, Ohio's adoption statutes strive to balance the putative father's interest in parenting his child with the child's need to have a stable and permanent home expeditiously. The statutes therefore aim to avoid belated challenges from fathers.

To achieve that balance, the legislature established a putative father registry (PFR) a man can file in so he will be timely notified and heard on his parental fitness should an adoption petition be filed regarding a child he may have fathered. The registry serves no other purpose in the adoption context. Registration neither

establishes nor claims legal paternity, nor lets the registrant veto the adoption. It merely lets him be heard about the personal responsibility he took toward the child before the child was placed for adoption. A man in Ohio has no other way of preserving his right *as a putative father*. The mother naming him to the adoption petitioner or court, or a party giving him notice of the adoption hearing, means nothing. The putative father may not register more than 30 days after the birth.

That filing deadline applies to all putative fathers in all adoptions no matter how old the child is when adoption is sought, and no matter who is seeking to adopt the child. Merely initiating a paternity proceeding does not preserve a notice right. R.C. 3107.01(H)(3) and (4). Instead, a putative father who misses that deadline must become a legal parent to have a right to be heard in the adoption.

The registry benefits the parties by being a non-burdensome way for a putative father to ensure his right to be heard without intruding on the mother or the prospective adoptive parents by bringing legal proceedings. Confidentiality and privacy is maintained because no public notice or action is required. The adoption petitioner's attorney simply searches the PFR for registrants. That search clarifies who the parties will be. Thus, when children are surrendered for adoption as newborns, the mandatory 30-day post-birth registration deadline is likely a non-arbitrary way of balancing the respective rights of parties in adoptions of children born out of wedlock.

But when a child is surrendered for adoption after the age of 30 days, the PFR filing deadline becomes arbitrary by restricting the putative father's opportunity without advancing the policy of avoiding belated challenges by fathers. Because PFR registration concerns only the right to be heard, the child's interest in permanence and stability are not compromised by letting a man register any time before the adoption petition is filed. In all cases, the later fitness hearing focuses on what responsibility the registrant took *before* the child was surrendered or placed. R. C. 3107.07(B). The challenge is not belated because the registrant is known to the adoption petitioner before adoption is sought, the same situation that would exist had the father registered before the 30 days passed.

Here, the child, H.N.R., but originally named Nicole, was five and a half months old when the adoption petition was filed. Appellant, Shawn Miller, was Nicole's putative father. Although Shawn missed the PFR filing deadline, he had bonded with, and helped support, Nicole for an extended time since her birth. The court of appeals seemed to conclude that the 30-day registration deadline was not arbitrary as applied to Shawn because, after missing the deadline, Shawn did not try to become a legal parent before the adoption petition was filed.

Assuming the court of appeals understood the issue, its reasoning was circular. It would mean that a putative father who misses the 30 day filing deadline must initiate a procedure that the PFR was designed to relieve him of to preserve the limited right

that the PFR was designed to preserve. That requirement would be arbitrary because merely initiating paternity proceedings does not entitle a putative father to notice of an adoption petition under the statutes. R.C. 3107.01(H)(3) – (4). Requiring that paternity proceeding can be non-arbitrary therefore only if it advances the purpose behind the adoption statutes in a way that letting a putative father register any time before an adoption is sought does not. The court of appeals never explained how it did so.

The issue is of great public importance because the PFR's existence is not common knowledge with the public, yet the deadline for filing in it is a harsh requirement that affects a fundamental interest. Moreover, the unwed father who helps support and care for the baby in her first months of life is the putative father most likely to miss the PFR filing deadline because he is distracted from hypothetical legal considerations such as adoption. That is especially true if adoption was not discussed as a possibility in the child's first month of life. That putative father believes that he is doing what a responsible father needs to do. Not until some time goes by or a conflict arises between him and the mother does he perceive a need to investigate legal remedies. He then finds that, despite his supportive parental actions, his opportunity interest vanished back when he was helping care for the child and, as in Shawn's case, discussing marriage with the mother. Instead of just letting the putative father register at that point, the State requires him to beat an adoption petitioner to the courthouse

with a paternity complaint or adjudication. Thus, the PFR filing deadline likely omits many responsible fathers from the adoption equation.

That gives rise to the substantial constitutional question. To satisfy due process, the State's statutory scheme must be non-arbitrary by leaving the qualification for notice of an adoption petition within the putative father's complete control and be unlikely to omit many responsible fathers. *Lehr v. Robertson*, 463 U.S. 248, 263-264, 103 S.Ct. 2895, 262 L.Ed.2d 511 (1983). Because the Ohio PFR filing deadline affects a fundamental interest arbitrarily and is likely to omit many responsible fathers, the constitutional question is substantial.

In sum, the PFR is a mechanism that affects a fundamental interest while being generally unknown to the public. Yet PFR registration is the only way a putative father can secure his right as a putative father. The PFR filing deadline then limits the putative father's ability to preserve his right to notice in a way that applies arbitrarily to fathers of children surrendered after the deadline. The father who helps the mother care for the newborn is especially prone to miss the deadline. Fundamental unfairness requires having a deadline commensurate with the surrender of the child or with the adoption petition, as many other states have. Because Ohio's statutory scheme also is prone to omit the very responsible men that it purports to protect, this Court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

## STATEMENT OF THE CASE AND FACTS

This case arises from the denied motion of appellant, Christopher Shawn Miller, (Shawn) to intervene in the adoption of his infant daughter, originally named Nicole, who was born out of wedlock and surrendered for adoption at several months of age. In 2012, Shawn and the mother, both unwed, began a romantic relationship that lasted about a year. Shawn lived in West Virginia during that entire time, while the mother lived in Ohio. A few months into the relationship, the mother became pregnant, and she and Shawn planned for the birth and to marry and raise Nicole together. They were still together and cohabitating when Nicole was born on August 29, 2013. Shawn was at the hospital for the birth, but was not named on the birth certificate. Shawn obtained positive DNA test results three weeks after the birth.

Up to then, and for the next few months, Shawn helped support and care for Nicole. That included holding, watching, and being with Nicole to the point where they formed a bond. Shawn did not realize that the paternity test was insufficient proof of his fatherhood under the law. He was also unaware of the Ohio PFR. Instead, he relied on the mother's representations that they would marry and raise the child together. Accordingly, Shawn did not file in the PFR or initiate court or administrative paternity proceedings at that time.

When Nicole was about four months old, the mother started avoiding Shawn. Shawn's inquiries were met only with a voice message from the mother telling him the

child had died. When Shawn could not contact or locate the mother at her usual residence, he asked the Sheriff to investigate the matter.

Shawn then learned that the mother had surrendered Nicole for adoption and that an adoption petition had been filed. Nicole was four and half months old when surrendered and over five months old when the adoption petition was filed. Shawn filed custody motions in Lawrence and Greene Counties, Ohio and moved to intervene in the adoption, asserting that his presence was required under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1 of the Ohio Constitution.

The probate court denied Shawn's intervention because, despite his fatherly efforts, he neither filed in the PFR before Nicole turned 31 days old nor initiated court or administrative paternity proceedings before the adoption petition was filed.

Shawn appealed to the Second District Court of Appeals, arguing that the 30-day deadline for filing in the PFR was arbitrary as applied to putative fathers of children surrendered for adoption at older ages, and therefore unconstitutional as applied to him. He alleged that no adoption policy was served by requiring putative fathers to register within 30 days of the birth instead of at any time before the adoption was sought. The Court of Appeals affirmed the probate court's judgment. Relying on *In re Cameron*, 153 Ohio App.3d 687, 2003-Ohio-4304, 795 N.E.2d 707 (1st Dist.), which, in turn, analyzed and applied *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed 2d 614 (1983), the Court of Appeals concluded that Shawn lacked a so-called developed

relationship with Nicole that would have excused Shawn's lack of registration. (Op. at ¶¶ 27 - 28.) The Court of Appeals ended its opinion by noting that:

"[E]ven if R.C. 3107.07(B)(1) were interpreted in the manner [Shawn] suggests, it would not aid him. As was noted, [Shawn] suggests that putative fathers should be permitted to register at any time before adoptive proceedings are commenced, even if registration occurs after the thirty-day period. However, the petition for adoption in this case was filed prior to the time that [Shawn] initiated any action to protect his rights." (Op. at ¶ 29.)

The Court of Appeals erred in ruling that the PFR filing deadline was not arbitrary as applied to Shawn—if, in fact, the court addressed that issue at all. The Court of Appeals failed to recognize that putative father registration does not claim or establish paternity, but gives the registrant only a right to receive *notice* of the adoption hearing and to be heard in it. The Court of Appeals also failed to recognize that initiating a paternity action does not give a putative father a notice right. Instead, paternity *adjudication* is required.

The Court of Appeals thus erred in ruling that the PFR filing deadline was constitutional as applied to Shawn and putative fathers like him and that Shawn therefore was not a necessary party to the adoption proceeding.

In support of his position, the appellant presents the following argument.

ARGUMENT IN SUPPORT OF THE PROPOSITION OF LAW

**Proposition of Law:** The 30-day post-birth deadline for filing in the putative father registry under R.C. 3107.07(B)(1) is unconstitutional as applied to putative fathers of children surrendered for adoption after the filing deadline passes.

The court of appeals erred by not addressing the constitutional issue presented to it, which was:

“The 30-day post-birth deadline for filing in the Ohio Putative Father Registry applies arbitrarily to a putative father of a child surrendered for adoption at several months of age.” (Brief of Appellant at pg. 1.)

The court of appeals summarized that issue fairly correctly in paragraphs 17 and 18 of its opinion. But when the court of appeals discussed why it disagreed with the proposition, it started by stating:

“According to [Shawn], R.C. 3107.07(B)(1) violates his substantive due process rights because, prior to commencement of the adoption proceeding, he had established a ‘developed relationship’ with the child. In this regard, [Shawn] relies on *Lehr v. Robertson*...[,] (Internal quotes in original.) (Op. at ¶ 25.)

The court of appeals spent the next three paragraphs discussing why it concluded that Shawn had not established a developed relationship with Nicole. (Op. at ¶¶ 26-28.)

But Shawn never argued that he had a developed relationship with Nicole. Rather, Shawn argued that due process required giving him until the date of the surrender or adoption petition to file in the PFR. (Op. at ¶ 18.)

The court of appeals devoted only one more substantive paragraph to the issue:

"As a further matter, we note that even if R.C. 3107.07(B)(1) were interpreted in the manner [Shawn] suggests, it would not aid him. As was noted, [Shawn] suggests that putative fathers should be permitted to register at any time before adoptive proceedings are commenced, even if registration occurs after the thirty day period. However, the petition for adoption in this case was filed prior to the time that Shawn initiated any action to protect his rights." (Op. at ¶ 29.)

That reasoning still sidestepped the issue. Shawn never argued about how a statute should be *interpreted*. Rather, Shawn argued that, because the deadline for filing in the PFR under R.C. 3107.07(B)(1) applied to all adoptions, even those commenced when the child was older without advancing the policy behind the adoption statutes, the deadline was arbitrary and thus unconstitutional as applied to him. Because Shawn was arbitrarily prohibited from using the PFR to secure his notice right, the statute could not be cured by requiring him to initiate paternity proceedings instead.

Shawn illustrated his argument with *Lehr v. Robertson*, wherein the United States Supreme Court found an adoption consent statute constitutional because it would not likely omit many responsible fathers and was not arbitrary. 463 U.S. at 263-264. The statute incorporated a putative father registry option, which the putative father never used. The adoption petition was filed when the child was two years old. The Supreme Court concluded that the statute would not likely omit many responsible fathers because, for one, it let the putative father register any time during the two years before the adoption was commenced. That put the right to secure a notice right within the putative father's complete control. Thus, the statute was not arbitrary. In addition, the

PFR was only one alternative for a putative father to secure a notice right. The statute also gave a non-registered putative father a right to be heard if the mother named him in a sworn statement or named him on the birth certificate, options Ohio does not give putative fathers. Ohio's mandatory PFR filing requirement, and 30-day time limit for filing in it, is thus far more restrictive than the statute analyzed in *Lehr*. The *Lehr* court would likely have found Ohio's mandatory 30-day post-birth PFR filing deadline arbitrary as applied to the putative father in *Lehr*, hence unconstitutional.

*In re Cameron* resembles this case factually. But the issues in *Cameron* were different and the constitutional reasoning, discussed in dicta, was wrong. There, the putative father's rights had been terminated in juvenile court before the adoption of the older child was sought, leaving the putative father without standing in the adoption anyway. The *Cameron* court then addressed the constitutionality of the PFR as a general mechanism, not the constitutionality of the deadline for filing in it. The court opined that: "...[W]e hold that the interest [the putative father] is seeking to protect is the opportunity to [develop] a relationship, and the United States Supreme Court has held that a statutory scheme incorporating a putative father registry, *such as that existing in Ohio*, is constitutionally adequate to protect such an inchoate interest." *Cameron* at ¶ 25. (Emphasis added.)

But the statutory scheme at issue in *Lehr* did not incorporate a putative father registry *such as that existing in Ohio*. Unlike Ohio's scheme, the New York statute

discussed in *Lehr* had no 30-day deadline, and it incorporated other simple alternatives to PFR registration, such as being named by the mother. Thus, no court has decided this issue, including the court of appeals.

CONCLUSION

Accordingly, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this Court accept jurisdiction so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

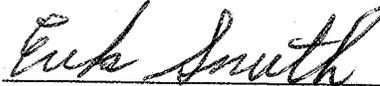


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Erik L. Smith (0089330)  
Counsel for Appellant  
Christopher Shawn Miller

CERTIFICATE OF SERVICE

I certify that I sent a true copy of this Memorandum in Support of Jurisdiction Notice of Appeal by regular U.S. Mail to Michael Voorhees, counsel for appellees, at 11159 Kenwood Road, Cincinnati, Ohio 45242 on December 22, 2014.



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Erik L. Smith (0089330)  
Counsel for Appellant  
Christopher Shawn Miller

APPENDIX

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

IN THE MATTER OF THE ADOPTION  
OF: H.N.R.

Appellate Case No. 2014-CA-35

Trial Court Case No. 10384AD-14-14

(Appeal from Probate Court)

.....  
OPINION

Rendered on the 7th day of November, 2014.  
.....

ERIK SMITH, Atty. Reg. No. 0089330, 2562 Glen Echo Drive, Columbus, Ohio 43202  
Attorney for Appellant - C.S.M.

MICHAEL VOORHEES, Atty. Reg. No. 0039293, 11159 Kenwood Road, Cincinnati, Ohio  
45242  
Attorney for Appellees - D.R. and M.R.

ADOPTION LINK, INC., 512 Dayton Street, Yellow Springs, Ohio 45387  
Appellee

N.A.B.  
Defendant-Appellee

.....  
WELBAUM, J.

{¶ 1} In this case, we are asked to decide if the thirty-day post-birth registration deadline of the putative father registry under R.C. 3107.07(B)(1) is unconstitutional as applied to Appellant. We find that it is not, and affirm the trial court judgment.

I. Facts and Course of Proceedings

{¶ 2} The subject of this appeal is the adoption of H.N.R., who was born on August 29, 2013. Appellant, C.S.M., and the birth-mother, N.A.B., were involved in a romantic relationship for about a year, but never married. N.A.B. became pregnant a few months into the relationship. At the time of the child's birth, C.S.M. was living with the birth-mother and was present at the birth. However, no father was named on the original birth certificate.

{¶ 3} C.S.M. is probably H.N.R.'s biological father. On September 17, 2013, C.S.M. and N.A.B. participated in a DNA test. The report of the test indicates a 99.99% likelihood that C.S.M. is H.N.R.'s biological father.

{¶ 4} During the first few months of the child's life, C.S.M. watched and held the child at least every couple of weeks. He believed that the paternity test established his parentage and was not aware of the Ohio Putative Father Registry (PFR) and its requirements. C.S.M. relied upon N.A.B.'s representations that they would some day marry and raise the child together. Accordingly, C.S.M. did not register with the PFR, nor did he initiate any court or administrative proceedings to establish legal fatherhood at that time.

{¶ 5} When H.N.R. was about four months old, the birth-mother began avoiding C.S.M. and their relationship deteriorated. After she left him a voice message indicating

that the child had died, C.S.M. called the sheriff's department and asked for an investigation.

{¶ 6} Subsequently, C.S.M. learned that N.A.B. had surrendered the child for adoption on January 18, 2014. On that date, Adoption Link, Inc. a private adoption agency, filed a notice with the Greene County Juvenile Court pursuant to R.C. 5103.15, indicating that the child had been surrendered for adoption. The child was then placed with the eventual adoptive parents.<sup>1</sup> On February 11, 2014, the adoptive parents filed an adoption petition in Greene County Probate Court. At the time, the child was five and half months old.

{¶ 7} Almost a month later, on April 8, 2014, C.S.M. filed a custody motion in the Lawrence County, Ohio, Juvenile Court. On April 17, 2014, that court notified Greene County Probate Court of its pending action. Subsequently, on April 25, 2014, C.S.M. moved to intervene in the adoption proceeding in Greene County Probate Court, and the probate court ordered a stay of the proceedings. The petitioners for adoption then filed motions contesting the stay and opposing C.S.M.'s motion to intervene in the probate court proceedings.

{¶ 8} On May 7, 2014, C.S.M. filed a motion to stay the adoption proceedings in the Greene County Probate Court. However, the court considered this motion moot in

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<sup>1</sup> In such situations, the juvenile court is not required either to approve the surrender or do anything more than journalize the notification documents that have been filed. See *In re E.B.*, 9th Dist. Summit No. 23850, 2008-Ohio-784, ¶ 15 (holding that a juvenile court lacks jurisdiction to hear challenges to validity of consent to adoption in cases where custody of children less than six months old has been surrendered to private agencies pursuant to R.C. 5103.15(B)(2)). Accord *In re T.J.B.*, 1st Dist. Hamilton No. C-130725, 2014-Ohio-2028, ¶ 11-15. This is the procedure used in the case before us.

light of its prior stay order. On June 9, 2014, C.S.M. also filed a motion in Greene County Juvenile Court, seeking to set aside the permanent surrender of custody, seeking temporary custody, and applying to establish parentage of the child.

{¶ 9} The Greene County Probate Court held a hearing on June 24, 2014, to resolve the pending motions. At the hearing, C.S.M. testified, and the trial court found him to be a credible witness. After considering post-hearing memoranda, the court found that C.S.M.'s consent to the adoption was not required because he failed to establish parentage via the PFR within 30 days of the child's birth, and did not initiate paternity proceedings prior to the time the adoption petition was filed. The trial court also found that C.S.M. failed to take appropriate steps to prove the authenticity and accuracy of the DNA test, and did not initiate any court or administrative proceedings to formally establish his parentage of H.N.R. until after Petitioners filed their petition to adopt the child.

{¶ 10} C.S.M. appeals the trial court order finding that his consent to adoption was not required.

## II. First Assignment of Error

{¶ 11} C.S.M.'s First Assignment of Error is as follows:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO INTERVENE FOR FAILING TO FILE TIMELY IN THE PUTATIVE FATHER REGISTRY BECAUSE THE STATE HAS SHIRKED ITS DUTY TO PROMOTE AWARENESS OF THE REGISTRY.

{¶ 12} As will be discussed in detail below, Ohio's adoption statutes require an

unwed father who has not established paternity of a child to file with the PFR within thirty days of the child's birth in order to have a right to participate in an adoption proceeding. According to C.S.M., the State of Ohio has an affirmative duty under R.C. 3107.065(B) to "establish a campaign to promote awareness" of the PFR, but failed to adequately satisfy this duty. However, C.S.M. did not raise this issue in the trial court, nor did he provide the trial court with any evidence pertaining to this assignment of error. Since the issue was not properly preserved, this assignment of error has been waived and is overruled. *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986).

{¶ 13} C.S.M. contends that the waiver doctrine is discretionary and that the parental interests involved in this case warrant consideration of his assignment of error. C.S.M. additionally argues that his trial counsel lacked a full opportunity to raise this issue.

{¶ 14} After reviewing the record, we disagree with the latter contention. The trial court gave counsel a full opportunity to raise any issues necessary. See Transcript of June 24, 2014 Hearing, p. 5. The only reservation noted by the court was that it would hold a further hearing so that the adoptive parents could present testimony to rebut C.S.M.'s testimony about his relationship with the child, if it became necessary to consider C.S.M.'s testimony. *Id.* at p. 55. However, the need for a further hearing never arose, because the court concluded that even though C.S.M.'s testimony appeared to be credible, his testimony was irrelevant to resolution of the legal issues in the case. Doc. #31, p. 3.

{¶ 15} We also reject C.S.M.'s reliance on the importance of parental interests.

We acknowledge that parental rights are extremely important. *See, e.g., In re Adoption of J.M.N.*, 2d Dist. Clark Nos. 08-CA-23, 08-CA-24, 2008-Ohio-4394, ¶ 7. However, the requirement of registering with the PFR within thirty days after birth in order to receive notice of a petition to adopt has been in effect since 1996. *See* H.B. No. 274, Section 1, 1996 Ohio Laws 143 (amending R.C. 3107.062). Likewise, the requirement to promote awareness of the PFR has been in effect since 1996. *See* H.B. No. 419, Section 1, 1996 Ohio Laws 132 (enacting R.C. 3107.065). C.S.M.'s counsel, therefore, should have been aware of the requirement and could have raised it at the trial court level. Under the circumstances, we see no reason to depart from the waiver doctrine.

{¶ 16} Accordingly, the First Assignment of Error is overruled.

### III. Second Assignment of Error

{¶ 17} C.S.M.'s Second Assignment of Error states that:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO INTERVENE FOR FAILING TO FILE TIMELY IN THE PUTATIVE FATHER REGISTRY BECAUSE THE 30-DAY POST-BIRTH DEADLINE FOR DOING SO UNDER R.C. 3107.07(B)(1) IS UNCONSTITUTIONAL AS APPLIED TO HIM UNDER ARTICLE I, SECTION 16 OF THE OHO CONSTITUTION AND THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

{¶ 18} Under this assignment of error, C.S.M. contends that Ohio's statutory scheme for registration of putative fathers violates due process because it omits many responsible fathers who are distracted in their child's first month of life and do not realize that they need to register. C.S.M. further contends that the statutory scheme is

unconstitutional as applied to him because his child was not placed for adoption until five months after her birth. According to C.S.M., he should have been given an opportunity to register any time before a surrender or adoption petition was filed, without resorting to more costly adversarial procedures that would establish his parental rights.

{¶ 19} In response to this assignment of error, Appellees claim that we lack jurisdiction to decide the constitutionality of R.C. 3107.07(B)(1) because C.S.M. failed to provide notice of his constitutional claim to the Ohio Attorney General, pursuant to R.C. 2721.12. However, the Supreme Court of Ohio has held that such notice is required only in declaratory judgment actions. *Cleveland Bar Assn. v. Picklo*, 96 Ohio St. 3d 195, 2002-Ohio-3995, 772 N.E.2d 1187, ¶¶ 6-7; *State v. Chapple*, 175 Ohio App.3d 658, 2008-Ohio-1157, 888 N.E.2d 1121, ¶¶ 14, fn. 2 (2d Dist.); and *State v. Watkins*, 2d Dist. Greene No. 2008 CA 41, 2009-Ohio-3043, ¶¶ 13, fn.1. The First District Court of Appeals has also specifically held that the notice requirement of R.C. 2721.12 does not apply to a constitutional challenge to an adoption proceeding. *In re Cameron*, 153 Ohio App.3d 687, 2003-Ohio-4304, 795 N.E.2d 707, ¶¶ 17-18 (1st Dist.).

{¶ 20} Furthermore, we conclude that the Probate Court had jurisdiction to decide the adoption proceeding notwithstanding the subsequent filing of parentage actions in Lawrence and Greene Counties. The trial court properly distinguished *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, 853 N.E.2d 647, and *In re Adoption of G.V.*, 126 Ohio St. 3d 249, 2010-Ohio-3349, 933 N.E.2d 245. Those cases set forth the general rule that “[w]hen an issue concerning parenting of a minor is pending in the juvenile court, a probate court must refrain from proceeding with the

adoption of that child.” *Pushcar* at syllabus. In this regard, the Supreme Court of Ohio has held that a probate court must refrain from proceeding with an adoption pending the outcome of a parentage case in the juvenile court and must refrain from ruling on the adoption until the adjudication of parentage is completed. *Id.* at ¶ 8. See also *In re Adoption of P.A.C.*, 126 Ohio St. 3d 236, 2010-Ohio-3351, 933 N.E.2d 236, ¶ 1.

However, all of these cases involve situations where the parentage actions were filed prior to the adoption proceeding.

{¶ 21} In the case before us, the Greene County Probate Court had jurisdiction to decide the adoption proceeding because the adoption proceeding was filed prior to the parentage action in either juvenile court. Under the jurisdictional priority rule, “ “[a]s between [state] courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.” ’ ’ ” *State ex rel. Otten v. Henderson*, 129 Ohio St.3d 453, 2011-Ohio-4082, 953 N.E.2d 809, ¶ 24, quoting *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 56, 476 N.E.2d 1060 (1985). (Other citation omitted.) This rule applies “even when the causes of action are not the same if the suits present part of the same ‘whole issue.’ ” (Citations omitted.) *Otten* at ¶ 29.

{¶ 22} In concluding that it had jurisdiction to decide the case, the probate court relied upon *In re Adoption of Asente*, 90 Ohio St. 3d 91, 734 N.E.2d 1224 (2000). Notably, *Pushcar* relied on *Asente*, and *G.V.* relied on *Pushcar*’s interpretation of *Asente*. See *Pushcar* at ¶ 10-11, and *G.V.* at ¶ 1 and 8. With respect to jurisdictional disputes, the *Asente* court stressed that:

One common thread runs through every statute, every court opinion, and every learned treatise on this matter. That common thread is built on the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter.

*Asente* at 92.

{¶ 23} Although the Supreme court in *Pushcar* and *G.V.* stated that when an issue concerning the parenting of a minor is *pending in the juvenile court*, a probate court must refrain from proceeding with the adoption of that child, this language must be read in light of the facts of those cases and recognition that the first court acquiring jurisdiction has proper authority and jurisdiction to determine the issues in the case. In the case before us, the Greene County Probate Court was the first court to acquire jurisdiction of the matter, and that court had jurisdiction to determine the issues in the case. As was stressed in fn. 1, *infra*, the Greene County Juvenile Court did not previously obtain jurisdiction over the case; it simply served as a place where a notification of surrender of custody was filed.

{¶ 24} As was noted, C.S.M. also claims that R.C.3107.07(B)(1) is unconstitutional as applied to him. This statute provides that:

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

\* \* \*

(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 of the

Revised Code not later than thirty days after the minor's birth \* \* \*.

{¶ 25} According to C.S.M., R.C. 3107.07(B)(1) violates his substantive due process rights because, prior to commencement of the adoption proceeding, he had established a "developed relationship" with the child. In this regard, C.S.M. relies on *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed 2d 614 (1983).

{¶ 26} In *Lehr*, the Supreme Court of the United States found that the State of New York putative father registry was constitutional, because it was "adequately designed to protect an 'unmarried father's interest in assuming a responsible role in the future of his child,' assuming that the father complied with the statute." *In re Cameron*, 153 Ohio App.3d 687, 693, 2003-Ohio-4304, 795 N.E.2d 707, ¶ 20 (1st Dist.), quoting *Lehr* at 264. However, "*Lehr* did not specifically address the 'constitutional adequacy' of the New York statutory scheme when the relationship between the unwed father and his child had already become what the court referred to as a 'developed relationship' before the adoption" as opposed to an " 'inchoate interest in establishing a relationship.' " *Cameron* at ¶ 22 and 24. Because the putative father in *Lehr* "never had any 'significant custodial, personal, or financial relationship' with his child, the court stated that it was concerned only with whether the statutory scheme unconstitutionally interfered with the potential for such a relationship." *Id.* at ¶ 22, quoting *Lehr* at 262-263.

{¶ 27} However, in *Cameron*, the First District Court of Appeals applied R.C. 3107.07(B)(1) and *Lehr* to facts similar to those present here and found no substantive due process violation. The court of appeals noted that the putative father had claimed that the birth-mother used the "deceit of 'extended visitation' to conceal the fact that she

had placed the child for adoption” behind the father’s back. *Id.* at ¶ 24. Nonetheless, the court found that the putative father’s weekly visits to the child were “hardly adequate to the task of creating a strong bond with the infant.” *Id.* The facts presented here by C.S.M. are even less compelling.

{¶ 28} In finding no constitutional infirmity in the Ohio statutory scheme and no violation of the putative father’s procedural or substantive due process rights, the First District Court of Appeals stated that:

We hold, therefore, that even if [the putative father’s] allegations of his financial support and weekly visitations with his infant son are accepted, such a relationship could not be considered a “developed relationship” for the purposes of distinguishing *Lehr*. Rather, we hold that the interest he is seeking to protect is the opportunity to develop such a relationship, and the United States Supreme Court has held that a statutory scheme incorporating a putative father registry, such as that existing in Ohio, is constitutionally adequate to protect such an inchoate interest.

*Cameron* at ¶ 25. *Accord In re Adoption of Orosio*, 5th Dist. Stark No. 2008 CA 00163, 2008-Ohio-6925, ¶ 45.

{¶ 29} As a further matter, we note that even if R.C. 3107.07(B)(1) were interpreted in the manner C.S.M. suggests, it would not aid him. As was noted, C.S.M. suggests that putative fathers should be permitted to register at any time before adoptive proceedings are commenced, even if registration occurs after the thirty-day period. However, the petition for adoption in this case was filed prior to the time that

C.S.M. initiated any action to protect his rights.

{¶ 30} Accordingly, we overrule the Second Assignment of Error and affirm the trial court judgment.

.....

FROELICH, P.J. and HALL, J., concur.

Copies mailed to:

Erik Smith  
Michael Voorhees  
Adoption Link, Inc.  
N.A.B.  
Hon. Thomas M. O'Diam

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

IN THE MATTER OF THE ADOPTION  
OF: H.N.R.

:  
: Appellate Case No. 2014-CA-35

:  
: Trial Court Case No. 10384AD-14-14

:  
: (Appeal from Probate Court)

:  
: **FINAL ENTRY**

.....

Pursuant to the opinion of this court rendered on the 7th day  
of November, 2014, the judgment of the trial court is **Affirmed**.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the Greene County  
Court of Appeals shall immediately serve notice of this judgment upon all parties and make  
a note in the docket of the mailing.

  
\_\_\_\_\_  
JEFFREY E. FROELICH, Presiding Judge

2  
  
MICHAEL T. HALL, Judge

  
JEFFREY M. WELBAUM, Judge

Copies mailed to:

Erik Smith  
2562 Glen Echo Drive  
Columbus, OH 43202

Michael Voorhees  
11159 Kenwood Road  
Cincinnati, OH 45242

Adoption Link, Inc  
512 Dayton Street  
Yellow Springs, OH 45387

N.A.B.

Hon. Thomas M. O'Diam  
Greene County Probate Court  
45 North Detroit Street  
Xenia, OH 45385-2998