

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Adoption of:  
H.N.R.

C.S.M., Appellant

D.R. and M.R., Appellees

Supreme Court Case No. 2014-2201

On Appeal from the  
Greene County Court of Appeals,  
Second Appellate District

Court of Appeals Case No. 2014-CA-35

Trial No. 10384AD-14-14

Adoption Case

---

APPELLEES' MEMORANDUM OPPOSING JURISDICTION

---

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 Appellees

Erik L. Smith (0089330)  
2562 Glen Echo Drive  
Columbus, Ohio 43202  
(614) 330-2739 phone  
[edenstore@msn.com](mailto:edenstore@msn.com)  
Attorney for Appellant

RECEIVED  
DEC 31 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
DEC 31 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**I. TABLE OF CONTENTS**

**I. TABLE OF CONTENTS** ..... i  
**TABLE OF AUTHORITIES** ..... iii

**II. STATEMENT OF APPELLEES' POSITION**..... 1

**III. APPELLANT'S PROPOSITION OF LAW**..... 1

**Appellees' Response to Appellant's Proposition of Law**

**It is well settled law that the 30-day post-birth deadline for filing with the putative father registry under R.C. 3107.07(B)(1) is constitutional, as applied to putative fathers of children surrendered for adoption after the filing deadline passes.**..... 1

**Authorities Cited:**

Ohio Revised Code § 3107.07(B)(1)..... 1, 6

*Lehr v. Robertson*,  
463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983)..... 2, 3, 4

*In re Napier v. Adoptive Parents of Cameron*,  
153 Ohio App. 3d 687, 2003 Ohio 4304  
(Ohio Ct. App., Hamilton County, Aug. 15, 2003) ..... 4

*In re Adoption of Osoro*,  
2008 Ohio 6925  
(Ohio Ct. App., Stark County, Dec. 30, 2008) ..... 4

*In re K.M.S.*,  
2005 Ohio 4739  
(Ohio Ct. App., Miami County, Sept. 9, 2005) ..... 4

*In re Adoption of Snavely*,  
C.A. Case No. 2000 CA 20, 2000 Ohio App. LEXIS 4963  
(Ohio Ct. App., Greene County, October 27, 2000) ..... 4

*Heidbreder v. Carton*,  
645 N.W.2d 355 (Minnesota 2002) ..... 5

*In the Interest of Baby Girl S.*,  
407 SW3d 904 (Texas 2013) ..... 5

*In re Adoption of W*,  
904 P.2d 1113 (Utah 1995) ..... 5

*In re Petition of K.J.R.*,  
293 Ill App. 3rd 49, 687 N.E. 2d 113 (Illinois 1997) ..... 5

*In re Adoption and Paternity of K.G.B.,*  
Case No. 12A02-1404-AD-255  
(Indiana Ct. App., Clinton County, September 26, 2014)..... 5

*In re Adoption of G.V.,*  
126 Ohio St. 3d 249, 2010 Ohio 3349 (2010). .... 6

**IV. CONCLUSION..... 7**

**CERTIFICATE OF SERVICE..... 7**

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<i>Heidbreder v. Carton</i> , 645 N.W.2d 355 (Minnesota 2002) .....	5
<i>In re Adoption and Paternity of K.G.B.</i> , Case No. 12A02-1404-AD-255 (Indiana Ct. App., Clinton County, September 26, 2014).....	5
<i>In re Adoption of G.V.</i> , 126 Ohio St. 3d 249, 2010 Ohio 3349 (2010).....	6
<i>In re Adoption of Osoro</i> , 2008 Ohio 6925 (Ohio Ct. App., Stark County, Dec. 30, 2008) .....	4
<i>In re Adoption of Snavely</i> , C.A. Case No. 2000 CA 20, 2000 Ohio App. LEXIS 4963 (Ohio Ct. App., Greene County, October 27, 2000) .....	4
<i>In re Adoption of W</i> , 904 P.2d 1113 (Utah 1995) .....	5
<i>In re K.M.S.</i> , 2005 Ohio 4739 (Ohio Ct. App., Miami County, Sept. 9, 2005) .....	4
<i>In re Napier v. Adoptive Parents of Cameron</i> , 153 Ohio App. 3d 687, 2003 Ohio 4304 (Ohio Ct. App., Hamilton County, Aug. 15, 2003) .....	4
<i>In re Petition of K.J.R.</i> , 293 Ill App. 3rd 49, 687 N.E. 2d 113 (Illinois 1997) .....	5
<i>In the Interest of Baby Girl S.</i> , 407 SW3d 904 (Texas 2013) .....	5
<i>Lehr v. Robertson</i> , 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983).....	2, 3, 4
 <u>STATUTES</u>	
Ohio Revised Code § 3107.07(B)(1).....	1, 6

## II. STATEMENT OF APPELLEES' POSITION

Appellant presents the one issue to this Supreme Court of whether the 30-day time-frame for filing with the putative father registry is constitutional, as applied to putative fathers of children placed for adoption after the 30-day time-frame. The constitutionality of the putative father registry, as well as the rights and obligations of birth-fathers, is well settled law. Therefore, this case does not raise a question which is of public or great general interest and is only of interest to the specific parties to this case. Further, Appellant has not raised any new constitutional questions that is not already addressed by well settled law. Therefore, this Supreme Court should not grant leave to appeal and should decline jurisdiction to hear this case on the merits.

## III. APPELLANT'S PROPOSITION OF LAW

### Appellees' Response to Appellant's Proposition of Law

**It is well settled law that the 30-day post-birth deadline for filing with the putative father registry under R.C. 3107.07(B)(1) is constitutional, as applied to putative fathers of children surrendered for adoption after the filing deadline passes.**

Appellant bases his sole argument on his testimony that was self-serving, irrelevant, and simply not true. The Probate Court would have allowed other testimony if the testimony of Appellant was considered relevant to any of the legal issues to be decided. No further testimony or evidence was necessary. The relevant facts in the record are: the child was born on August 29, 2013; the child was placed for adoption on January 18, 2014; the Petition for Adoption was filed on February 11, 2014; there was no father named

on the child's original birth certificate; no person registered with the putative father registry; and no birth-father made any attempts to established paternity prior to the filing of the adoption in the Greene County Probate Court.

The constitutionality of the putative father registry has long been a matter of well settled law. In fact, even prior to the enactment of the Ohio Putative Father Registry, the United States Supreme Court acknowledged and accepted the legal basis and the constitutionality of the New York putative father registry in *Lehr v. Robertson*, 463 U.S. 248, 77 L. Ed. 2d 614, 103 S. Ct. 2985 (1983). In upholding the constitutionality of the registry, the Court reviewed the constitutional rights of the unwed biological father and concluded that constitutional rights do not emerge from a mere biological connection. An unwed biological father has an inchoate interest that acquires federal constitutional protections only when he takes certain specified steps demonstrating a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child. The Court concluded that a putative father registry is constitutional as a registry places the right to receive notice within the control of the putative father.

In *Lehr v. Robertson*, the Court rejected a due process challenge to the New York putative father registry that required notice of an adoption petition to a putative father only if the putative father fell into one of seven categories, which included putative fathers who had registered with New York's adoption registry. The Court concluded that the statutory scheme adequately protected a putative father's opportunity to establish a

relationship with his child because the statutory procedure was unlikely to omit most responsible fathers and did not place qualification for notice beyond the control of an interested putative father. The Court noted that ignorance of the law does not relieve a putative father from having to comply with the statutory requirement to register. The Court found no due process violation, even though the statutory scheme denied a putative father who had expressed an interest in his child because:

[t]he right to receive notice was completely within appellant's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would receive notice of any proceeding to adopt Jessica. The possibility that he may have failed to do so because of his ignorance of the law cannot be a sufficient reason for criticizing the law itself. The New York Legislature concluded that a more open-ended notice requirement would merely complicate the adoption process, threaten the privacy interests of unwed mothers, create the risk of unnecessary controversy, and impair the desired finality of adoption decrees.

*Lehr v. Robertson*, 463 U.S. at 264.

In *Lehr v. Robertson*, the Court also 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 birth-mother knew that he had filed an affiliation proceeding in another court. The 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 v. Robertson*, 463 U.S. at 265.

Under the reasoning and conclusions of *Lehr v. Robertson*, an unwed father must take affirmative legal steps to establish his rights to a biological child and to secure his constitutional parental rights. The Court recognized the "paramount interest in the welfare of children" and noted that "the rights of parents are counterpart to the responsibilities they have assumed." Appellant in the present case is no different than the putative father in *Lehr v. Robertson*. In fact, it appears that Appellant in the present case did far less than the putative father in *Lehr v. Robertson*.

The Ohio Putative Father Registry has withstood constitutional challenges and the First District and the Fifth District have found the Ohio Registry to be constitutional. *In re Napier v. Adoptive Parents of Cameron*, 153 Ohio App. 3d 687, 2003 Ohio 4304 (Ohio Ct. App., Hamilton County, Aug. 15, 2003); *In re Adoption of Osoro*, 2008 Ohio 6925 (Ohio Ct. App., Stark County, Dec. 30, 2008). The Second District has also rejected constitutional challenges to the Ohio Registry. *In re K.M.S.*, 2005 Ohio 4739 (Ohio Ct. App., Miami County, Sept. 9, 2005); *In re Adoption of Snavely*, C.A. Case No. 2000 CA 20, 2000 Ohio App. LEXIS 4963 (Ohio Ct. App., Greene County, October 27, 2000). Appellant in the present case is no different than any of the other putative fathers in these cases.

Many states have enacted putative father registries to balance the rights of the child, birth-mother, adoptive parents, and putative father. The virtually unanimous weight of authority across the country has required the putative father to strictly comply with the laws of the state and timely register, or forfeit the right to notice of an adoption. Courts have consistently held that it is not too harsh to require that those responsible for bringing children into the world outside the established institution of marriage be required either to comply with those statutes that accord them the opportunity to assert their parental rights, or to yield to the method established by society to raise children in the manner best suited to promote their welfare. Courts have found the policy reasons behind a bright-line rule are compelling, and that if in each adoption case, the court had to individually assess the putative father's diligence in establishing paternity rights, the finality of adoption systems would be seriously undermined. Because of the unique nature of adoptions, courts have held that the firm cutoff date established by the registry is reasonable, if not essential, and courts have even rejected the claims of a birth father who registered one day late. See *Heidbreder v. Carton*, 645 N.W.2d 355 (Minnesota 2002); *In the Interest of Baby Girl S.*, 407 SW3d 904 (Texas 2013); *In re Adoption of W*, 904 P.2d 1113 (Utah 1995); *In re Petition of K.J.R.*, 293 Ill App. 3rd 49, 687 N.E. 2d 113 (Illinois 1997); *In re Adoption and Paternity of K.G.B.*, Case No. 12A02-1404-AD-255 (Indiana Ct. App., Clinton County, September 26, 2014).

The Ohio Putative Father Registry has been in effect since January 1, 1997. Over this period of more than seventeen years, many putative fathers have timely registered with the Registry. Appellant admittedly failed to register with the Registry and there is no question that his consent was not required under R.C. 3107.07(B)(1).

Appellant could have done two things to assert his rights in the case. Appellant could have timely registered with the Putative Father Registry or he could have filed to establish paternity prior to the filing of the adoption. The Petition for Adoption was filed when the child was over five months old. Therefore, Appellant had over five months to take an affirmative step by filing a paternity action. If Appellant had taken this affirmative step, the putative father registry would not even have been applicable. *In re Adoption of G.V.*, 126 Ohio St. 3d 249, 2010 Ohio 3349 (2010). Contrary to Appellant's self-serving and irrelevant testimony, Appellant was never actively involved in this child's life. What is clear in the record is that Appellant took no timely affirmative steps to assert any legal rights to the child. Appellant claims that proceedings to establish paternity can be thwarted by an uncooperative mother. That is absolutely not true. All that is required is for the birth-father to file his action prior to the filing of the adoption petition. That is totally within the control of the birth-father.

#### **IV. CONCLUSION**

The constitutional due process rights of the birth-father are more than adequately protected under Ohio law. Within the 30 days after the birth of the child, a putative father

may be heard in the adoption proceeding by registering with the Registry. More importantly, at any time before or after the 30-day time-frame, but prior to the filing of the adoption petition, the birth-father may file an action to establish paternity, and the later filed adoption must be stayed until after the paternity is established. This is all within the total control of the birth-father and is all well settled law. This case does not raise a question which is of public or great general interest and is only of interest to the specific parties to this case. Further, Appellant has not raised any new constitutional questions that is not already addressed by well settled law. Therefore, this Supreme Court should not grant leave to appeal and should decline jurisdiction to hear this case on the merits.

Respectfully submitted,

*Michael R. Voorhees*

---

Michael R. Voorhees (0039293)  
Voorhees & Levy LLC  
11159 Kenwood Road  
Cincinnati, Ohio 45242  
(513) 489-2555 phone  
(513) 489-2556 fax  
Attorney for Appellees

Certificate of Service

I hereby certify that a copy of the foregoing Appellees' Memorandum Opposing Jurisdiction has been sent by regular U.S. mail this 30<sup>th</sup> day of December, 2014 to: Erik L. Smith, Counsel for Appellant, 2562 Glen Echo Drive, Columbus, Ohio 43202.

*Michael R. Voorhees*

---

Michael R. Voorhees (0039293)