

IN THE SUPREME COURT OF OHIO

In re Adoption of H.N.R.,	:	Case No: 2014-2201
A minor child	:	
	:	On appeal from the Greene
	:	County Court of Appeals
	:	Second Appellate District
	:	

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MERIT BRIEF OF APPELLANT CHRISTOPHER SHAWN MILLER  
APPENDIX TO BRIEF

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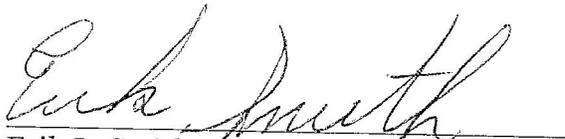


**Notice of Appeal of Appellant, Christopher Shawn Miller**

Appellant, Christopher Shawn Miller, the putative father of H.N.R., hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Greene County Court of Appeals, Second Appellate District, entered in Court of Appeals case No. 2014-CA-35 on November 7, 2014.

This case raises a substantial constitutional question and is one of public or great general interest.

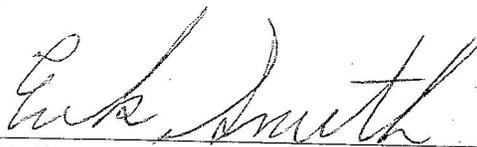
Respectfully submitted,



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

**CERTIFICATE OF SERVICE**

I certify that I sent a true copy of the foregoing 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.



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

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 7<sup>th</sup> 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

*Michael T. Hall*  
MICHAEL T. HALL, Judge

*Jeffrey M. Welbaum*  
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Hon. Thomas M. O'Diam  
Greene County Probate Court  
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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.  
.....

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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:

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Hon. Thomas M. O'Diam

JUL 14 2014

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

CASE NO.: 10384AD-14-14

~~THOMAS M. O'DIAM~~  
JUDGE PROBATE DIVISION  
COURT OF COMMON PLEAS

**DECISION AND JUDGMENT ENTRY  
ORDERING VACATION OF STAY, DENYING MOTION TO  
INTERVENE AND FINDING CONSENT NOT REQUIRED**

This matter came before the Court on June 24, 2014 for oral hearing on Petitioners' First Amended Motion for Protective Order; Motion to Remove/Deny Stay; Motion to Strike/Deny Motion to Intervene; and Motion for Judgment Entry Finding Consent Not Required. The Court also considered the biological father's Motion to Intervene at this hearing. Legal counsel for Petitioners, the biological father and his legal counsel were the only people present at the hearing.

**PROCEDURAL BACKGROUND**

H.N.R. was born on August 29, 2013 in Huntington, West Virginia. Her mother, N.A.B., was a resident of Chesapeake in Lawrence County, Ohio at the time.

On September 17, 2013, N.A.B. and the possible biological father, C.S.M., voluntarily consented to a DNA paternity test through Laboratory Corporation of America. That test determined a 99.99% probability that C.S.M. is H.N.R.'s father. The paternity test was dated September 23, 2013.

On January 18, 2014, N.A.B. signed a JFS Form 01666, Permanent Surrender of Child, granting custody of H.N.R. to Adoption Link, Inc., a private adoption agency in Greene County, Ohio. Adoption Link took immediate custody and placed the child for adoption with Petitioners, D.J.R. and M.K.R., on the same day. Adoption Link filed JFS Form 01666 in Greene County Juvenile Court on January 21, 2014.

Petitioners filed their Petition for Adoption of H.N.R. with this Court on February 11, 2014. On April 8, 2014, C.S.M. filed a Complaint for Custody and related pleadings in Lawrence County Juvenile Court seeking to establish his parentage and to gain custody of H.N.R. Lawrence County Juvenile Court informed this Court of its pending action on April 17, 2014.

On April 25, 2014, C.S.M. filed a Motion to Intervene in the adoption proceeding pending in this Court. C.S.M. contended that he is a necessary party to the adoption proceeding because Ohio statutory law, the Ohio Constitution and the United States Constitution require

his consent to the adoption. The same day, this Court entered an Order Staying Proceeding until final resolution of the Lawrence County Juvenile Court case. The Stay was based on the Ohio Supreme Court cases of *In Re Adoption of Pushcar*, (2006) 110 Ohio St.3d 332 and *In Re Adoption of G.V.*, (2010) 126 Ohio St.3d 249.

Petitioners promptly filed their combined Motions contesting the Court's Order Staying Proceeding and the proposed intervention of C.S.M. on April 29, 2014. The Court ordered Petitioners to serve their Motion on C.S.M., effectively overruling Petitioners' contention that they did not have to serve it on anyone because adoption proceedings are confidential. Petitioners complied with the Court's order and served their Amended Motion on C.S.M. on May 13, 2014.

In the interim, C.S.M. filed a Motion to Stay Adoption Proceeding in this Court on May 7, 2014. The Court did not rule on that Motion because it was moot in light of the Court's own April 25, 2014 Order Staying Proceeding.

On June 9, 2014, C.S.M. filed a Motion to Set Aside Permanent Surrender/Motion for Temporary Custody Award/Application to Establish Parentage in Greene County Juvenile Court. He also filed a separate Complaint for Custody in Greene County Juvenile Court the same day. C.S.M. did not simultaneously dismiss the proceedings in Lawrence County Juvenile Court and to this Court's knowledge, both Juvenile Court cases are still pending.

At the conclusion of this Court's June 24 hearing, the Court gave both parties an opportunity to supplement their legal arguments with any case law involving a chronology of events more similar to this case. Petitioners filed a supplemental legal memorandum. C.S.M. did not file any supplemental information.

#### FINDINGS OF FACT

The Court finds that the preceding section of this Decision accurately reflects the procedural history of this case.

Additionally, the Court finds from the pleadings and testimony at the hearing that C.S.M. did not register with the Ohio Putative Father Registry. C.S.M. testified that he did not know he had to register anywhere. He thought that the paternity test was enough to prove he was the father. He also testified that after the paternity test he believed that N.A.B. and he would be getting married, so there was nothing to worry about.

The Court also finds that the paternity test C.S.M. obtained is evidence that C.S.M. is likely the biological father of H.N.R. However, C.S.M. did not take appropriate steps to prove the authenticity and accuracy of the test. C.S.M. never initiated any court or administrative

proceedings to formally establish his parentage of H.N.R. until after Petitioners filed to adopt H.N.R.

The Court acknowledges that C.S.M. appeared to be a genuine and credible witness. Nonetheless, the remainder of his testimony and evidence is not relevant to resolving the legal issues in this case.

#### CONCLUSIONS OF LAW

Probate Courts have original and exclusive jurisdiction over adoption proceedings under *R.C. Chapter 3107. State ex rel. Portage Co. Welfare Dept. v. Summers*, (1974) 38 Ohio St. 2d 144. Accordingly, this Court has proper jurisdiction and authority to determine the issues in this case.

When Petitioners filed their adoption proceeding on February 11, 2014, there were no cases pending in any Juvenile Court regarding H.N.R. C.S.M. did not file his custody and parentage action in Lawrence County Juvenile Court until April 8, 2014. Lawrence County Juvenile Court acquired jurisdiction after this Court already had jurisdiction over the adoption.

Greene County Juvenile Court also did not acquire jurisdiction over H.N.R. until after this Court. First, Greene County Juvenile Court did not have any initial or continuing jurisdiction over H.N.R. as a result of N.A.B's permanent surrender because signing JFS Form 01666 does not require Juvenile Court approval under *R.C. §5103.15(B)(2)*. That statute merely requires notifying Juvenile Court of the surrender and the placement for adoption, which Juvenile Court then journalizes. *Id.* Second, C.S.M. did not file his actions in Greene County Juvenile Court until June 9, 2014.

Petitioners correctly point out that *In Re Adoption of Pushcar*, (2006) 110 Ohio St.3d 332, and *In Re Adoption of G.V.*, (2010) 126 Ohio St.3d 249, are factually distinguishable from the present case. The general rule in both of the cited cases is 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." *Pushcar* syllabus. In both of those cases, however, the juvenile proceeding was filed before the adoption petition. The sequence of events is exactly opposite in our present case.

Petitioners argue that *In re Adoption of Asente*, (2000) 90 Ohio St. 3d 91, upon which *Pushcar* and *G.V.* are based, is controlling in this case. Although *Asente* involved an interstate custody dispute, the principal issue was competing jurisdiction of separate courts. In discussing the complexity of that issue, the Ohio Supreme Court stated:

"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.” *Id* at 91.

This Court agrees with Petitioners’ argument and finds that *Asente* requires this Court to proceed with the adoption proceeding despite the later-filed Juvenile Court cases. This result is consistent with *Pushcar* and *G.V.* because it honors the principal that the first court to acquire jurisdiction over the matter must proceed without interruption by later proceedings in other courts. In *Pushcar* and *G.V.*, jurisdiction was invoked in the Juvenile Courts first, so the Probate Court had to refrain from proceeding with the respective adoptions. In this case, no juvenile proceedings were “pending” at the time Petitioners filed their adoption action. To interpret the cases otherwise would mean that anyone could stymie any adoption proceeding by filing an action in Juvenile Court at last minute.

This Court finds that its reliance on *Pushcar* and *G.V.* in issuing the Order Staying Proceeding was misplaced. *Asente* is controlling in this case and directs that this Court proceed with Petitioners’ adoption despite the later-filed Juvenile Court actions. Accordingly, this Court vacates its prior Order Staying Proceeding dated April 25, 2014, and denies C.S.M.’s Motion to Stay Adoption Proceedings filed May 7, 2014.

We now turn to the issues of whether C.S.M. has standing to intervene in this case and whether his consent to the adoption is required. These issues are related because C.S.M. can only intervene in the adoption proceeding if the law requires his consent to the adoption.

Section 3107.07 of the *Revised Code* defines when a person’s consent to an adoption is not required. The portion of that statute pertinent to this case reads as follows:

“Consent to an 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;”

*R.C. §3107.07(B)(1)* (Emphasis added).

Petitioners complied with the requirement in *R.C. §3107.064* to search the putative father registry. They filed with their adoption petition an Ohio Putative Father Registry Certification dated January 17, 2014 indicating that no putative father is registered for H.N.R. At the hearing, C.S.M. acknowledged that he did not register with the putative father registry. As a

matter of law under R.C. §3107.07(B)(1), therefore, his consent to the adoption of H.N.R. is not required.

C.S.M. also did not legally establish his parent and child relationship with H.N.R. before Petitioners filed their adoption petition. Section 3111.02(A) of the *Revised Code* describes the various ways in which a natural father may establish his parent and child relationship. C.S.M. did not timely pursue any of those alternatives in this case. Even though the paternity test is evidence that C.S.M. is probably the natural father of H.N.R., that evidence alone is not sufficient to formally establish parentage under Ohio law.

C.S.M. contends in his Motion to Intervene that denying him the right to intervene and object to the pending adoption proceeding violates his rights under the Ohio Constitution and U.S. Constitution. However, he never asserted any legal authority to support that proposition. Therefore, the Court rejects those arguments.

This Court finds that C.S.M.'s consent to Petitioner's adoption of H.N.R. is not required because C.S.M. did not legally establish his parent and child relationship with H.N.R. before Petitioners filed for adoption and because C.S.M. did not timely register with the putative father registry. Since his consent to the adoption is not required, C.S.M. does not have any standing to intervene in this adoption proceeding. The Court, therefore, denies C.S.M.'s Motion to Intervene.

Finally, the Court denies Petitioners' Motion for Protective Order. The Court finds that a Protective Order is unnecessary and unwarranted in this case.

This Court will proceed with the final adoption hearing determining the best interest of the child as originally scheduled.

This is a final appealable order. The Court directs the clerk to serve a copy of this Judgment and its date of entry on the journal to all parties or their counsel who are not in default for failure to appear.

It is so ordered.

FINAL APPEALABLE ORDER.

The clerk shall give notice and date of entry upon the journal to parties not in default.



Thomas M. O'Diam, Judge

The parties/attorneys were notified by mail of the date of filing aforesaid.

CR 58

  
Clerk

## Certification of Judgment Entry

The above Judgment Entry is a true and accurate copy of the original kept by me as custodian of the records of this Court.



Thomas M. O'Diam, Judge and Ex-Officio  
Clerk of Greene County Probate Court

Copy: Michael R. Voorhees, Esq.  
Ronald P. Keller, Esq.

PROBATE COURT OF GREENE COUNTY, OHIO

FILED  
GREENE COUNTY, OHIO

IN THE MATTER OF THE ADOPTION OF HANNAH NICOLE RANLY 10:14  
(Name after adoption)

CASE NO. 10384AD-14-14

THOMAS M. EDAM  
JUDGE, PROBATE DIVISION  
COURT OF COMMON PLEAS

**FINAL DECREE OF ADOPTION**  
(Without Interlocutory Order)  
[R.C. 3107.13, 3107.14 & 3107.19]

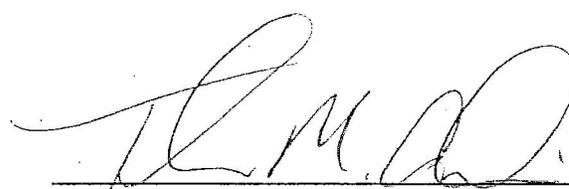
This day this matter came on to be heard on the petition of \_\_\_\_\_

Daryl John Ranly and Mandy Kristine Ranly

for the adoption and change of name of the minor being adopted.

The Court finds that notice has been given to all parties in interest; that all consents have been filed herein or have been found not required; that the allegations in the petition are true; that the minor has been lawfully placed in the home of the petitioner; that the minor has lived in the home of the petitioner for six months as required by law; that a report of the assessor has been filed and is approved; that the adoption is in the best interest of the minor being adopted; that the accountings, as required, have been filed, reviewed and approved; and that the minor is an adopted person as defined in Section  3107.39 or  3107.45 of the Revised Code.

It is therefore ordered that the Petition for Adoption is granted, and that the name of the minor is changed to Hannah Nicole Ranly

  
\_\_\_\_\_  
Probate Judge

July 30, 2014  
Date

(23) (34)

## Ohio Constitution

### Article I. Bill of Rights

#### § 16. Redress in courts

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

## United States Constitution

### Amendment V

No person shall . . . be deprived of life, liberty, or property, without due process of law.  
.. [.]

### Amendment XIV

#### Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Archive

## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3107. ADOPTION

*Current through the 130th General Assembly*

#### § 3107.01. Adoption definitions

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

- (A) "Agency" means any public or private organization certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption.
- (B) "Attorney" means a person who has been admitted to the bar by order of the Ohio supreme court.
- (C) "Child" means a son or daughter, whether by birth or by adoption.
- (D) "Court" means the probate courts of this state, and when the context requires, means the court of any other state empowered to grant petitions for adoption.
- (E) "Foster caregiver" has the same meaning as in section **5103.02** of the Revised Code.
- (F) "Identifying information" means any of the following with regard to a person: first name, last name, maiden name, alias, social security number, address, telephone number, place of employment, number used to identify the person for the purpose of the statewide education management information system established pursuant to section **3301.0714** of the Revised Code, and any other number federal or state law requires or permits to be used to identify the person.
- (G) "Minor" means a person under the age of eighteen years.
- (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.

#### Cite as R.C. § 3107.01

**History.** Effective Date: 03-22-2001

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## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3107. ADOPTION

*Current through the 130th General Assembly*

#### § 3107.06. Consent to adoption

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** , **3111.25** , or **3111.821** 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.

#### Cite as R.C. § 3107.06

**History.** Effective Date: 03-22-2001; 2008 HB7 04-07-2009

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## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3107. ADOPTION

*Current through the 130th General Assembly*

#### **§ 3107.062. [Effective Until 3/23/2015] Putative father registry**

The department of job and family services shall establish a putative father registry. To register, a putative father must complete a registration form prescribed under section **3107.065** of the Revised Code and submit it to the department. The registration form shall include the putative father's name; the name of the mother of the person he claims as his child; and the address or telephone number at which he wishes to receive, pursuant to section **3107.11** of the Revised Code, notice of any petition that may be filed to adopt a minor he claims as his child.

A putative father may register at any time. For the purpose of preserving the requirement of his consent to an adoption, a putative father shall register before or not later than thirty days after the birth of the child. No fee shall be charged for registration.

On receipt of a completed registration form, the department shall indicate on the form the date of receipt and file it in the putative father registry. The department shall maintain registration forms in a manner that enables it to access a registration form using either the name of the putative father or of the mother.

#### **Cite as R.C. § 3107.062**

**History.** Amended by **129th General Assembly File No. 180, HB 279, §1**, eff. 3/20/2013.

Effective Date: 07-01-2000

**Note:** *This section is set out twice. See also § 3107.062, as amended by 130th General Assembly File No. TBD, SB 250, §1, eff. 3/23/2015.*

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**R.C. § 3107.064. [Effective Until 3/23/2015] Filing certified results of search**

- (A) Except as provided in division (B) of this section, a court shall not issue a final decree of adoption or finalize an interlocutory order of adoption unless the mother placing the minor for adoption or the agency or attorney arranging the adoption files with the court a certified document provided by the department of job and family services under section **3107.063** of the Revised Code. The court shall not accept the document unless the date the department places on the document pursuant to that section is thirty-one or more days after the date of the minor's birth.
- (B) The document described in division (A) of this section is not required if any of the following apply:
- (1) The mother was married at the time the minor was conceived or born;
  - (2) The parent placing the minor for adoption previously adopted the minor;
  - (3) Prior to the date a petition to adopt the minor is filed, a man has been determined to have a parent and child relationship with the minor 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) The minor's father acknowledged paternity of the minor and that acknowledgment has become final pursuant to section **2151.232** , **3111.25** , or **3111.821** of the Revised Code;
  - (5) A public children services agency has permanent custody of the minor pursuant to Chapter 2151. or division (B) of section **5103.15** of the Revised Code after both parents lost or surrendered parental rights, privileges, and responsibilities over the minor.

Archive

## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3107. ADOPTION

*Current through the 130th General Assembly*

#### **§ 3107.07. [Effective Until 3/23/2015] Consent unnecessary**

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** 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** 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;
- (D) A parent whose parental rights have been terminated by order of a juvenile court under Chapter 2151. of the Revised Code;
- (E) A parent who is married to the petitioner and supports the adoption;
- (F) The father, or putative father, of a minor if the minor is conceived as the result of the commission of rape by the father or putative father and the father or putative father is convicted of or pleads guilty to the commission of that offense. As used in this division, "rape" means a violation of section **2907.02** of the Revised Code or a similar law of another state.
- (G) A legal guardian or guardian ad litem of a parent judicially declared incompetent in a separate court proceeding who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;
- (H) Any legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent, for a period of thirty days, or who, after examination of the written reasons for withholding consent, is found by the court to be withholding consent unreasonably;

- (I) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is found by the court to be by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse;
- (J) Any parent, legal guardian, or other lawful custodian in a foreign country, if the person to be adopted has been released for adoption pursuant to the laws of the country in which the person resides and the release of such person is in a form that satisfies the requirements of the immigration and naturalization service of the United States department of justice for purposes of immigration to the United States pursuant to section 101 (b)(1)(F) of the "Immigration and Nationality Act," 75 Stat. 650 (1961), **8 U.S.C. 1101(b)(1)(F)**, as amended or reenacted.
- (K) Except as provided in divisions (G) and (H) of this section, a juvenile court, agency, or person given notice of the petition pursuant to division (A)(1) of section **3107.11** of the Revised Code that fails to file an objection to the petition within fourteen days after proof is filed pursuant to division (B) of that section that the notice was given;
- (L) Any guardian, custodian, or other party who has temporary custody of the child.

**Cite as R.C. § 3107.07****History.** Effective Date: 10-29-1999; 2008 HB7 04-07-2009**Note:** *This section is set out twice. See also § 3107.07, as amended by 130th General Assembly File No. TBD, SB 207, §1, and 130th General Assembly File No. TBD, SB 250, §1, eff. 3/23/2015.*

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## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3111. PARENTAGE

*Current through the 130th General Assembly*

#### § 3111.27. Rescinding acknowledgment

- (A) Except as provided in section **2151.232** or **3111.821** of the Revised Code, for an acknowledgment of paternity filed with the office of child support to be rescinded both of the following must occur:
- (1) Not later than sixty days after the date of the latest signature on the acknowledgment, one of the persons who signed it must do both of the following:
    - (a) Request a determination under section **3111.38** of the Revised Code of whether there is a parent and child relationship between the man who signed the acknowledgment and the child who is the subject of it;
    - (b) Give the office written notice of having complied with division (A)(1)(a) of this section and include in the notice the name of the child support enforcement agency conducting genetic tests to determine whether there is a parent and child relationship;
  - (2) An order must be issued under section **3111.46** of the Revised Code determining whether there is a parent and child relationship between the man and the child.
- (B) Not later than the end of the business day following the business day on which the office receives a notice under division (A)(1)(b) of this section, it shall contact the agency indicated in the notice to verify that the person sending it has complied with division (A)(1) of this section. If the office verifies compliance, and the notice was sent within the time limit required by this section, the office shall note in its records the date the notice was received and that the acknowledgment to which the notice pertains is subject to rescission. The office shall direct the agency to notify the office of the agency's issuance of an order described in division (A)(2) of this section. On receipt from an agency of notice that an order described in division (A)(2) of this section has been issued, the acknowledgment to which the order pertains shall be rescinded as of the date.

If the office is unable to verify compliance with division (A)(1) of this section, it shall note in its records the date the notice under division (A)(1)(b) of this section was received and that compliance with division (A)(1) of this section was not verified.

#### Cite as R.C. § 3111.27

**History.** Effective Date: 03-22-2001

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## Ohio Statutes

### Title 31. DOMESTIC RELATIONS - CHILDREN

#### Chapter 3111. PARENTAGE

*Current through the 130th General Assembly*

#### § 3111.49. Conclusiveness of order

The mother, alleged father, and guardian or legal custodian of a child may object to an administrative order determining the existence or nonexistence of a parent and child relationship by bringing, within thirty days after the date the administrative officer issues the order, an action under sections **3111.01** to **3111.18** of the Revised Code in the juvenile court or other court with jurisdiction under section **2101.022** or **2301.03** of the Revised Code in the county in which the child support enforcement agency that employs the administrative officer who issued the order is located. If the action is not brought within the thirty-day period, the administrative order is final and enforceable by a court and may not be challenged in an action or proceeding under Chapter 3111. of the Revised Code.

**Cite as R.C. § 3111.49**

**History.** Effective Date: 03-22-2001

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**Ohio Statutes****Title 31. DOMESTIC RELATIONS - CHILDREN****Chapter 3111. PARENTAGE**

*Current through the 130th General Assembly*

**§ 3111.381. Request to precede court action - jurisdiction**

- (A) Except as provided in divisions (B), (C), (D), and (E) of this section, no person may bring an action under sections **3111.01** to **3111.18** of the Revised Code unless the person has requested an administrative determination under section **3111.38** of the Revised Code of the existence or nonexistence of a parent and child relationship.
- (B) An action to determine the existence or nonexistence of a parent and child relationship may be brought by the child's mother in the appropriate division of the court of common pleas in the county in which the child resides, without requesting an administrative determination, if the child's mother brings the action in order to request an order to determine the allocation of parental rights and responsibilities, the payment of all or any part of the reasonable expenses of the mother's pregnancy and confinement, or support of the child. The clerk of the court shall forward a copy of the complaint to the child support enforcement agency of the county in which the complaint is filed.
- (C) An action to determine the existence or nonexistence of a parent and child relationship may be brought by the putative father of the child in the appropriate division of the court of common pleas in the county in which the child resides, without requesting an administrative determination, if the putative father brings the action in order to request an order to determine the allocation of parental rights and responsibilities. The clerk of the court shall forward a copy of the complaint to the child support enforcement agency of the county in which the complaint is filed.

Ohio Department of Job and Family Services  
**APPLICATION FOR SEARCH OF OHIO PUTATIVE FATHER REGISTRY -  
 REGISTRATION FOR FATHERS**

Ohio Putative Father Registry  
 P.O. Box 182709  
 Columbus, Ohio 43218-2709  
 Phone: 1-888-313-3100

The following information, if it is complete and submitted within 30 days of the child's birth, will enable you to be notified in the case of an adoption proceeding involving a child of whom you may be the father.

<b>SECTION I: IDENTIFYING INFORMATION ABOUT THE FATHER</b>			
Father's LAST Name	FIRST Name	MIDDLE Name	
Social Security Number	Phone Number		
Date of Birth (MM/DD/YY)	Race		
Other names by which father may be known 1.	3.		
2.	4.		
Home Address			
City	State	Zip Code	
Father's Mailing Address/Apt. (If different than above)			
City	State	Zip Code	
<b>SECTION II: IDENTIFYING INFORMATION ABOUT THE MOTHER</b>			
Mother's LAST Name	FIRST Name	MIDDLE Name	
Social Security Number	Phone Number		
Date of Birth (MM/DD/YY)	Race		
Other names by which mother may be known 1.	3.		
2.	4.		
Home Address			
City	State	Zip Code	
Mother's Mailing Address/Apt. (If different than above)			
City	State	Zip Code	

**SECTION III: IDENTIFYING INFORMATION ABOUT THE CHILD**

Child's LAST Name		FIRST Name	MIDDLE Name
Race		Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	
Estimated Due Date of Mother (MM/YY)		Child's Date of Birth (MM/DD/YY)	
Child's Birthplace	City	State	
Hospital name, if any			
Birth Certified <input type="checkbox"/> Yes <input type="checkbox"/> No		Multiple Birth <input type="checkbox"/> Yes <input type="checkbox"/> No	

**SECTION IV: ACKNOWLEDGEMENT**

I have read, or someone has read to me, the instructions to Putative Fathers before signing this form, and I understand that completing this form is not enough to protect my rights to be legal father of the child identified on this form. For further information on filing a parentage action form contact:

Office of Child Support Enforcement  
Ohio Department of Job and Family Services  
50 W. Town Street, 5<sup>th</sup> Floor, Suite 400  
Columbus, Ohio 43215  
1-800-686-1556 (in Ohio) or 614-752-9743

**I certify that the information provided above is true and correct to the best of my knowledge. I understand that a person who knowingly or intentionally registers false information on this form commits a Misdemeanor of the First Degree.**

**I understand that I must tell the Putative Father Registry if I change my address or if any other information changes on the form so that I can be located if the child I have identified becomes the subject of an adoption.**

Signature of Putative Father	Date
------------------------------	------

Respectfully submitted,

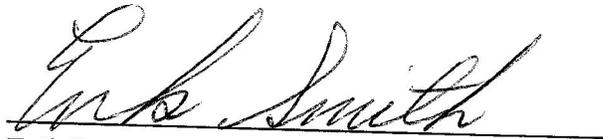


Erik L. Smith (0089330)  
62 W. Weber Rd.  
Columbus, Ohio 43202  
(614) 330-2739  
edenstore@msn.com

COUNSEL FOR APPELLANT,  
CHRISTOPHER SHAWN MILLER

**CERTIFICATE OF SERVICE**

I certify that I sent a true copy of this Appendix by E-mail to Michael Voorhees,  
counsel for appellees, at < mike@ohioadoptionlawyer.com > on March 13, 2015.



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