Supreme Court of Ohio Clerk of Court - Filed March 26, 2015 - Case No. 2014-2201

IN THE SUPREME COURT OF OHIO

In the Matter of the Adoption of: H.N.R.	:	**Supreme Court Case No. 2014-2201**
C.S.M., Appellant	:	**On Appeal from the Greene County Court of Appeals, Second Appellate District**
D.R. and M.R., Appellees	:	**Court of Appeals Case No. 2014-CA-35**
	:	**Trial No. 10384AD-14-14**
	:	**Adoption Case**

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I. STATEMENT OF FACTS

This matter relates to H.N.R., a minor born on August 29, 2013 to a birth-mother residing in Chesapeake, Ohio. On January 18, 2014, the birth-mother signed her permanent surrender with Adoption Link, Inc., an Ohio licensed child placing agency (T.d. 4). The child was placed for adoption with Appellees on January 18, 2014 and Appellees filed their Petition for Adoption on February 11, 2014 in the Greene County Probate Court (T.d. 1). There is no father named on the child's original birth certificate (T.d. 2). No person registered with the Ohio Putative Father Registry (T.d. 6). The Petition for Adoption alleged that the consent of the putative father was not required because no person had registered with the Ohio Putative Father Registry. Appellant made no attempts to established paternity prior to February 11, 2014. Appellant is a putative father in this proceeding. As a putative father, Appellant attempted to intervene in the adoption proceeding. (T.d. 17). These are the undisputed and relevant facts of this case.

A hearing was held in the Probate Court on June 24, 2014, in which argument was presented relating to the legal issue of whether or not Appellant had any standing to intervene. On July 14, 2014, the Court entered its Judgment Entry finding that Appellant had no standing and that the consent of the putative father is not required (T.d. 31). This finding was affirmed by the Second Appellant District on November 7, 2014.

The Court allowed Appellant to provide testimony at the June 24, 2014 hearing. The testimony of Appellant was self-serving, irrelevant, and simply not true. Appellant offered no corroborating testimony or other evidence. The Court would have allowed other testimony or evidence if the testimony of Appellant was considered relevant to any of the legal issues to be decided. No further testimony or evidence was necessary.

In his testimony and brief, Appellant made several factual claims that were unsubstantiated and in conflict with the clear undisputed facts. Appellant claims he and the birth-mother were together when the child was born. However, he is not on the birth certificate (T.d. 2). A responsible father in a committed relationship with the mother and child would be on the birth certificate. If Appellant was on the birth certificate, he would be the legal father and his consent would be required.

Appellant claims that during the first months of child's life, he helped support and care for the child. However, he offered no evidence to substantiate that claim and he did not seek to have any support order established. A responsible father takes the legal steps to become legally responsible for his child. Appellant did not make any effort to become legally responsible.

Appellant implied that birth-mother somehow did something wrong by not informing him of the adoptive placement. There is no substantiated evidence of any

wrongdoing on the part of the birth-mother. As stated on her permanent surrender, the birth-mother placed the child for adoption because she wanted the child to have a family who is prepared to raise the child (T.d. 4). Appellant, by taking no legal steps, gave no indication that he was willing or prepared to help raise this child. The child was placed when she was 4 months old and the adoption was filed when the child was 5 months old. A birth-mother and a child cannot be expected to wait forever for the birth-father to become legally responsible. The birth-mother must make a long-term plan for her child, and, in situations where there is no birth-father assuming any legal responsibility, the birth-mother may decide that the best plan for her child is an adoptive placement.

The accusations by Appellant against the birth-mother are disingenuous. The only relevant fact is that, at the time of placement and filing of the adoption, Appellant had made no attempt to become legally responsible for the child. At the time of placement, the birth-mother had all the legal rights to the child and had the sole legal responsibility for the child. On January 18, 2014, the birth-mother, pursuant to R.C. R.C. 3109.042, as the unmarried mother of the child, had sole custody of the child and was the sole parent. Appellant had no legal rights to the child, and most importantly, had made no attempts to assert any legal rights or obligations to the child. Unless and until a putative father takes steps to become legally responsible for the child, the putative father is a legal stranger to the child.

There is no indication that Appellant would have ever filed anything, if not for the adoptive placement. A biological father does have a protected right to the opportunity to establish a legal relationship with his biological child. However, the putative father must timely seize that opportunity. Appellant's rights to the child were inchoate and unrealized. The only relevant facts in this case are that Appellant did not timely seize the opportunity to have a legal relationship with this child and that the birth-mother decided an adoption was the best long-term plan for her child.

The birth-mother did the responsible and loving thing by ensuring the future of her child by placing the child in a stable home, where her emotional and financial needs will be met. A birth-mother places a child when there is no stable relationship with the birth-father, and no stable relationship between birth-father and child, and no support from the birth-father. Appellant's self-serving and irrelevant testimony was in conflict with the reality of this situation.

Appellant claims to have seen the child every couple weeks, which is hardly sufficient to create a parental bond. A mere acquaintance or neighbor is just as likely to see a newborn every other week. Appellant took no action that were public actions sufficient to put non-family members on notice of any relationship. In contrast, signing the birth certificate, filing a parentage action, or registering with the putative father registry would have been public actions that Appellant could have taken.

Appellant is now asking this Court to ignore or disregard the law and Appellant's legal requirements to properly assert his rights because of some contact he had with the child. Appellant's alleged relationship with the child is, at best, based on what amounts to no more than de minimis contact with the child. Appellant took no legal steps until the child was 7 months old, which was 3 months after the child was placed for adoption. An infant is in need of constant care. No action for 3 months in an infant's life is clear evidence of no substantial or significant relationship with the child.

II. ARGUMENT OF LAW

Proposition of Law

The due process rights of a biological father of a child born out of wedlock are more than adequately protected under Ohio law and the Ohio Putative Father Registry is constitutional as applied to both children placed for adoption before and after the registration time period.

The due process rights of a biological father of a child born out of wedlock are more than adequately protected under Ohio law. If the biological father timely registers with the Ohio Putative Father Registry, he is entitled to notice of any adoption and has the right to be a party in the adoption proceeding and be heard in the adoption proceeding. Further, at any time prior to the filing of the adoption petition, the biological father can file a paternity action. If the paternity action is timely filed, then the adoption proceeding is stayed and the biological father has the right to establish paternity and become the legal

father, and then either consent to the adoption or withhold his consent to the adoption. Both the registering with the Registry and the filing of a paternity action may be completed prior to the child's birth and for a period of time after the birth of the child, and both are within the total control of the biological father to complete.

This Court has found that when there is a paternity action pending in the juvenile court, at the time the adoption petition is filed, the probate court must defer to the juvenile court and refrain from addressing the matter until adjudication in the juvenile court. See *In re Adoption of G.V.*, 126 Ohio St. 3d 249, 2010 Ohio 3349 (2010); *In re Adoption of P.A.C.*, 126 Ohio St. 3d 236; 2010 Ohio 3351 (2010); *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006 Ohio 4572 (2006). This Court's decisions in *G.V.* and *P.A.C.* were based on *Pushcar* and this Court's decision in *Pushcar* was based on *In re Adoption of Asente*, 90 Ohio St. 3d 91, 2000 Ohio 32, 734 N.E.2d 1224 (2000). Therefore, the genesis of these holdings is *Asente*.

In *Asente*, this Court acknowledged "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 92. In *Asente*, this Court held that no Ohio court had the jurisdiction to hear any matter relating to the child because of the prior filed proceeding in Kentucky. *Asente* is directly on point with the present case because there was an adoption proceeding filed with the Probate Court on February 11, 2014, which was the first proceeding filed. All other courts must refrain from

exercising jurisdiction. Therefore, Appellant was an unregistered putative father and his consent was not required pursuant to R.C. 3107.07(B)(1).

R.C. 3107.061 provides that a man who has sexual intercourse with a woman is on notice that if a child is born as a result and the man is the putative father, the child may be adopted without his consent pursuant to R.C. 3107.07. Appellant was on statutory notice and was required to either register or file a paternity action. Appellant did nothing. Appellant argues that this Court should ignore or disregard the law and Appellant's legal requirements to properly assert his rights because of his de minimis contact with the child. If any claimed relationship or contact, no matter how limited, can be a basis to disregard the clear law, then any and all adoptions could be disrupted at any time, without the need to follow any legal requirements. This is certainly contrary to the policy considerations stated by this Court. Ultimately, the goal of adoption statutes is to protect the best interests of children, and this is best accomplished by providing the child with a permanent and stable home and ensuring that the adoption process is completed in an expeditious manner. See *In re Adoption of Zschach*, 75 Ohio St. 3d 648, 665 N.E.2d 1070 (1996).

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*, 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*, 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*, 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." *Id.* at 257 Appellant in the present case is no different than the putative father in *Lehr*. In fact, Appellant in the present case did far less than the putative father in *Lehr*. The child in *Lehr* was over two years of age when the adoption was filed and the registration time had passed when the adoption was filed. The Court found the registry to be constitutional.

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).

III. CONCLUSION

Appellant had a more than adequate opportunity to form a legal relationship with the child and he failed to do so. The child was over five months old when the adoption petition was filed. Because the birth-father failed in those five months to take any affirmative legal step to establish paternity, or to timely register with the Putative Father Registry, the birth-father is an unregistered putative father whose consent is not required and who is not entitled to be a party to the adoption proceeding.

The Probate Court properly found that the consent of Appellant is not required pursuant to R.C. 3107.07(B)(1). Appellant claims the Putative Father Registry is unconstitutional as applied to him. The argument is without merit.

Therefore, Appellees, by and through counsel, respectfully request this Ohio Supreme Court to AFFIRM the decision of the Greene County Probate Court and the decision of the Second Appellate District.

Respectfully submitted,

/s Michael R. Voorhees

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Certificate of Service

I hereby certify that a copy of the foregoing Merit Brief of Appellees has been sent by e-mail this 27th day of March, 2015 to Erik L. Smith, Counsel for Appellant, at edenstore@msn.com.

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APPENDIX

Cited Provisions of the Ohio Revised Code

Ohio Revised Code § 3107.061
Ohio Revised Code § 3107.07
Ohio Revised Code § 3109.042

§ 3107.061 Putative father on notice that consent unnecessary
A man who has sexual intercourse with a woman is on notice that if a child is born as a result and the man is the putative father, the child may be adopted without his consent pursuant to division (B) of section 3107.07 of the Revised Code.

§ 3107.07 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 fifteen 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, putative father, or mother, of a minor if the minor is conceived as the result of the commission of rape or sexual battery by the father, putative father, or mother and the father , putative father, or mother 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 and "sexual battery" means a violation of section 2907.03 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.

§ 3109.042. Custody rights of unmarried mother

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