

[Cite as *In re K.M.S.*, 2005-Ohio-4739.]

IN THE COURT OF APPEALS OF MIAMI COUNTY, OHIO

IN RE: K.M.S. :

: C.A. CASE NO. 05CA17

: T.C. CASE NO. 79942

: (Civil Appeal from
Common Pleas Court)

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O P I N I O N

Rendered on the 9th day of September, 2005.

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Appellant, Pro Se

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GRADY, J.

{¶ 1} This is an appeal from the probate court's
finding that appellant's consent to the adoption of his
daughter is not required.

{¶ 2} Bryce Francis and Charlotte Smallwood (n.k.a.
Wolf) were involved in a relationship which lasted several

years. Towards the end of the relationship, Smallwood became pregnant with Francis's child. The child was born in 1999. Francis provided no support to the mother or child. He also failed to register with the Ohio Department of Job and Family Services' putative father registry. The couple separated, and Smallwood married Stephen Wolf in 2001.

{¶ 3} In January, 2005, Wolf petitioned the probate court to adopt the child. The probate court held a hearing on April 13, 2005 to determine whether Francis's consent was required for the adoption to proceed. Francis was served with notice of this hearing on January 28, 2005. The probate court found that Francis's consent was not required, pursuant to R.C. 3107.07. Francis filed a timely notice of appeal.

{¶ 4} A probate court's finding that a putative father's consent is not required for adoption proceedings is an order which affects a substantial right and is a final appealable order subject to appellate review. *In re Adoption of Johnson* (1995), 72 Ohio St.3d 1217, 1995-Ohio-219. Francis, arguing pro se, raises three assignments of error.

THIRD ASSIGNMENT OF ERROR

{¶ 5} "WHETHER A JURIST OF REASON WOULD DEBATE THAT THE PROBATE COURT ERRED IN FINDING THAT MR. FRANCIS' CONSENT TO

THE ADOPTION WAS NOT REQUIRED UNDER THE CIRCUMSTANCES
OUTLINED HEREIN?"

{¶ 6} Francis argues that the probate court impermissibly "shifted the burden." How that burden was shifted and to what extent he was prejudiced is not explained. Nevertheless, Francis argues that the probate court's determination that his consent was not required was in error.

{¶ 7} A putative father is defined as a man who may be a child's father and: 1) is not married to the mother at birth or conception; 2) has not adopted the child; 3) whom no court or government agency has determined to have a parent/child relationship with the child; and, 4) has not acknowledged paternity of the child. R.C. 3707.01(H).

{¶ 8} The Department of Job and Family Services maintains a putative father registry. R.C. 3107.062. That section places all men on notice that "if a child is born as a result [of sexual intercourse with a woman] and the man is the putative father, the child may be adopted without his consent pursuant to [R.C. 3107.07(B)]". R.C. 3101.07(B)(1) states that a putative father's consent to adoption is not required if he fails to register as the minor child's putative father within 30 days of the minor's birth. *In re*

Adoption of Coppersmith (2001), 145 Ohio App.3d 141, 2001-Ohio-1484.

{¶ 9} A petitioner for adoption must file with the court a certified written statement from the Ohio Department of Job and Family Services that no man is registered on the putative father registry as the minor's father. R.C. 3107.064. Wolf made the required filing, and Francis offered no contradictory evidence. The probate court properly found that Francis' consent was not required.

{¶ 10} The assignment of error is overruled.

FIRST ASSIGNMENT OF ERROR

{¶ 11} "WHETHER A REASONABLE JURIST WOULD DEBATE THAT THERE WAS INSUFFICIENCY OF PROCESS?"

{¶ 12} Francis argues that Wolf failed to serve him with process upon the filing of his petition. He argues that he was prejudiced by an inability to rebut Charlotte Wolf's testimony that he had never seen his daughter.

{¶ 13} Notice to a putative father of a pending adoption is not required if the he fails to register on the putative father registry. *Coppersmith, supra*. Regardless, the record reflects Francis was served with notice of the April 13, 2004 hearing by the sheriff on January 28, 2005. Furthermore, he can not complain of prejudice by an

inability to call rebuttal witnesses when the record reflects that, in fact, his counsel called two witnesses at the hearing.

{¶ 14} The assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 15} "WHETHER A JURIST OF REASON WOULD DEBATE THAT MR. FRANCIS WAS DENIED DUE PROCESS OF LAW?"

{¶ 16} Francis argues that he was "prevented from exhibiting fully his case due to fraud and deception practiced upon him." He fails to specify any specific instances of fraud and deception. As a result, we are unable to analyze the merits of his argument.

{¶ 17} The assignment of error is overruled.

{¶ 18} The judgment of the probate court will be sustained.

BROGAN, P.J. And DONOVAN, J., concur.

Copies mailed to:

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Hon. Lynnita K.C. Wagner