

IN THE SUPREME COURT OF OHIO

In the Matter of ) CASE NO. 11-0831  
The Adoption of M.B. )  
 ) On Appeal from Summit County  
 ) Court of Appeals No: 25304  
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**APPELLEE, S.B.'s BRIEF**

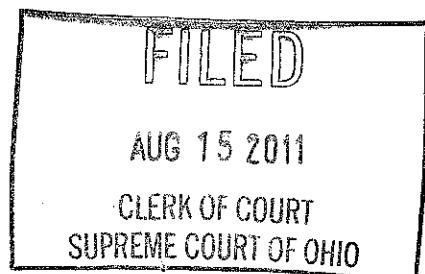
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## **STATEMENT OF PROPOSITION OF LAW**

### **PROPOSITION OF LAW NO. 1**

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Pursuant to the explicit language of Ohio Revised Code 3107.07(A), failure by a parent to support or maintain his or her child is sufficient to authorize adoption without that parent's consent only if there is a complete absence of support and maintenance for the statutorily defined one-year period.

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### **PROPOSITION OF LAW NO. 2**

When reviewing a Court's decision interpreting statutory language the Reviewing Court's standard of review is *de novo*.

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## **STATEMENT OF FACTS**

Appellee does not dispute the Appellant's Statement of Facts. The essential facts in this case have not been in dispute.

## **PROPOSITION OF LAW NO. 1**

**Pursuant to the explicit language of Ohio Revised Code 3107.07(A), failure by a parent to support or maintain his or her child is sufficient to authorize adoption without that parent's consent only if there is a complete absence of support and maintenance for the statutorily defined one-year period.**

This case involves this Court's definition of support and maintenance and whether items sent a child outside of Court ordered child support can constitute support under R.C. 3107.07. R.C. 3107.06 provides that a petition to adopt a child can be granted only if the parents of the child execute consent. However, R.C. 3107.07 has an exception to that statute and provides:

“consent to adoption is not required of ... (A) a parent of a minor when it is alleged in the adoption petition and the Court finds... that the parent has failed without justifiable cause ... 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 ... the filing of the adoption petition ....”

An adoption in Ohio is a two-step process, involving first a determination whether parental consent is required and, second, whether the adoption is in the best interest of the child. R.C. 310714(C); *In re Adoption of Kuhlmann* (1994), 99 Ohio App 3d 44, 51, 649 N.E.2d 1279, 1283-1284; *In re Adoption of Jordan* (1991), 72 Ohio App 3d 638, 645, 595 N.E.2d 963, 967-968

## LANGUAGE OF THE STATUTE

As with any statute, the starting point for analyzing 3107.07 is its plain language. R.C. 3107.07 plainly sets out when consent is not required if “a parent …has failed… to provide for the maintenance and support of the minor as required by law or judicial decree for one year….” The legislature did not modify failure of support and maintenance with any language such as adequate or substantially. Absent any modifying terms, failure to support and maintain should be defined as a complete failure or absent abandonment and any support and maintenance is sufficient to require a parent’s consent as the Court of Appeals found. Ohio Courts have applied an ordinary and accepted meaning of support and maintenance when interpreting Revised Code 3107.07(A). *In re McNutt*, 134 Ohio App 3d 822, 829. This is based on an analysis of this Court’s Decision *In re Adoption of Holcomb* which provided that because the language in 3107.07(A) does not modify communicate with words such as substantially or regularly the General Assembly intended to adopt an objective test for analyzing communication and support. *In re Adoption of Holcomb* (1985), 19 Ohio St 3d 361,368. *McNutt* at 829, *Supra*. Like the Ninth District Court of Appeals, those Courts then reviewed the Black’s Law Dictionary definition of maintenance and support and found that maintenance was the furnishing by one person to another, for his or her support, the means of living, or food, clothing, shelter etc., and that support included anything requisite to housing, feeding, clothing, health, recreation, vacation, travel expense or any other proper cognate purposes. *McNutt* at 829. Under this definition, the gift card to a clothing store would be

considered support and the cash could be used for either maintenance or support.

Appellant seems to urge this Court adopt a standard that support means child support payments made pursuant to a Court decree suggested in a concurring opinion of Justice Douglas in *In re Adoption of Bovett* (1987) 33 Ohio St 3d 102. That approach ignores the "required by law or judicial decree" qualification of support and maintenance in R.C. 3707.07(A). By mentioning support and maintenance required by law, the legislature included support and maintenance given outside judicial decrees pursuant to the general requirement of R.C. 3103.03. Because R.C.3101.07 recognizes these support and maintenance payments made required by law, the statute requires consent if a parent supports and maintains a child outside of support under a judicial decree. Further, the use of the term "maintenance" in discussing a parent's obligation makes it clear that the legislature wished Court's to consider something more then Court ordered child support payments.

## **CONSTITUTIONAL CONSIDERATIONS**

The statute must be read in conjunction with several important constitutional considerations. Ohio Courts have continually recognized that the relationship between a parent and child is a constitutionally protected liberty interest. *In re Adoption of Zschach* (1996), 75 Ohio St 3d 648, 653. Accordingly, any exception to the parental consent requirement must be strictly construed so as to protect the right of natural parents to raise and nurture their children. *In re Adoption of Schoeppner* (1976), 46 Ohio St 2d 21, 24; *McNutt, Supra*. Defining support and maintenance as any support and maintenance is consistent with this strict construction. The relevant inquiry is not whether the parent provided support as

would be expected, but whether the parent's failure to support rises to such magnitude as to be the equivalent of abandonment, as the Court of Appeals ruled. McNutt, Id., Celestino v Schneider (1992) 84 Ohio App 3d 192. The statute has been constructed to allow adoption without parental consent only where there is evidence which indicates a complete abandonment of current interest in the child. In re Hupp (1982), 9 Ohio App 3d 128, 130. Adoption of Huffman (August 29, 1986) Mercer Co. App No.10-85-4, Unreported.

A petitioner seeking to adopt a child has a burden of proving, by clear and convincing evidence, both that the natural parent has failed to support or communicate with the child for the requisite one-year period and the failure was without justifiable cause. Adoption of Bovett, Supra. The standard of clear and convincing evidence is defined as the measure of degree of proof, which is more than a mere preponderance of the evidence, but not to the extent of such certainty as required beyond a reasonable doubt in criminal cases, and which would produce in the mind of the trier of facts a firm belief or conviction as the facts sought to be established. In re Adoption of Holcomb (1985), 18 Ohio St, 3d 361, 368. This stricter clear and convincing standard correctly recognizes the heightened constitutional scrutiny necessary to protect a non-consenting parent's rights.

As previously mentioned Ohio's Adoption Statute requires a two-part procedure. In the first portion, determining a parent's right to consent as done in this case, the focus is correctly on the parent's constitutional rights. Nowhere in R.C. 3107.07 is the best interest of the child mentioned. Presumably under R.C. 3107.07 a parent who was a child abuser, pedophile, murderer or who had committed any crime against the child would have the right to consent to the adoption if that parent paid support and communicated with the child. While

it may not be in the best interests of such a parent to continue a parental relationship, the child's best interest is not relevant to the inquiry under R.C. 3107.07. Rather, that specific section should be interpreted strictly by viewing the actions of the parent in supporting and maintaining the child.

In arguing about the intent of the statute, Appellant failed to recognize the bifurcated nature of adoption proceedings. When a parent refuses to consent the first portion of an adoption case before the Probate Court is the issue of the parent's. R.C.3107.07 focuses the Court's attention on the actions of the non-consenting parent and not on the best interest of the child. It is at this stage of the proceeding, termination of consent under 3107.07, that the focus should rest upon the protection of the constitutional rights of the parent rather than any interest of the child. Indeed under Ohio's bifurcated hearing process, the interest of the child is not even an issue before the Court at this junction in an adoption. See Adoption of Kuhlmann, Supra, Adoption of Jordan, Supra. All the issues of R.C.3107.161, which determines the best interest of a child in an adoption, are not considered and the legislature requires Courts to consider parent's rights and behavior in communicating, supporting and maintaining their child under this statute. Thus, while the overall intent of Chapter 3107 may be to foster the best interest of the child as noted in In re Adoption of Ridenour (1991) 61 Ohio St, 3d 319, the specific focus of Revised Code 3107.07 is to protect the constitutional right of a parent who remains involved in the life of a child. The simplest way to read Chapter 3107.07 to protect both the constitutional rights of a natural parent, and promote a child's best interest in a permanent stable home is to use Revised Code 3107.07 as a safety net for the constitutional rights of parents who have some involvement, however small, with their

children and permit those parents who have no contact or provide no support or maintenance to slip through 3107.07 and lose their right to consent to an adoption.

### **AMENDMENT TO R.C. 3107.07(A)**

The recent amendment to Revised Code 3107.07(A) helps clarify what level of support had been necessary to require a biological parent's consent to an adoption. While the amended statute does not apply to this case, it provides insight into the legislature's view of the statute. That new section has been amended to provide that consent to adopt is not required of ... “(A)[a] parent of a minor, ... that ... has failed without justifiable cause to provide more than de minimus 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....” Thus the newly Revised Code 3107.07(A) has crafted a de minimus requirement for communication but not for maintenance and support. Because the statute repeats the word “provide”, it seems logical that the legislature wished to treat contact and maintenance/support separately. Because “de minimus” follows only the failure to provide contact to one's child it is clear that contact and maintenance/support are to be treated differently and de minimus only pertains to a parent's contact. This interpretation is consistent with Court's treatment of the prior R.C.3107.07(A).

*In re Adoption of McDermott* (1980) 63 Ohio St 2d 301, 304 (finding that either failure to communicate/contact or failure to support/maintenance is sufficient to negate the need for a biological parent's consent because R.C. 3107.07(A) is written in the disjunctive.)

Thus, when the legislature amended R.C.3107.07 it clearly could have placed a de minimus requirement on the support/maintenance requirement but did not. The fact that the

legislature felt it necessary to add a de minimus component to communication indicates that the prior language of communication in R.C.3107.07 was not believed by the legislature to require more than a de minimus level of contact. Because the prior language of R.C.3107.07 was exactly the same for contact and support it can be assumed that the legislature did not feel that the prior section of 3107.07 contained a requirement for de minimus contact or de minimus support or maintenance without the de minimus language, which it added when it amended the statute.

*In re Adoption of O.N.C.* (2010) 191 Ohio App. 3d. 72 includes an excellent analysis of the legislative intent based upon the amendments to R.C. 3107.07(A). In that case the Court noted that prior to the final version of the new statute the Bill originally provided that consent was unnecessary when the biological parent had failed to “significantly” provide for the maintenance and support of their child. *Id* at 79. It was noted that this language was passed in the House, however the Senate amended the language to eliminate the qualifying period significantly to support thereby leaving it the same as it had been before the amendment. *Id.* In reviewing this legislative history of the new statute it sheds light on the legislature’s belief that the old statute, which did not provide any qualifying language for maintenance and support, should not be interpreted to place a significant or de minimus qualifier on the amount of support a parent provides.

### **OHIO CASE LAW**

Ohio Courts are split in defining support and maintenance under R.C.3107.07(A). The Courts that found similar support to S.B.’s sufficient noted a “meager amount of support is

sufficient to avoid a finding that the parents consent is not required" *In re Adoption of Bryant* (December 9, 1997) Adams App. No. 97CA 635 Unreported; *Celestino*, 84 Ohio App 3d at 197, *Supra*, *Vecchi v Thomas* (1999), 627 Ohio App. 3d 688, 692, *McNutt*, *Supra*. The findings of these cases more accurately follow the general rule of construction laid out by the Ohio Supreme Court in *Zschach* and *Schoeppner*. The question raised by the issue in determining the necessity of consent is whether the parent has failed to support their child to such a magnitude as to be the equivalent of abandonment. *Celestino*, *Supra*. If in these adoption statutes the legislature was attempting to protect a constitutionally protected liberty interest by strictly construing statutes to protect the right of natural parents to raise and nurture their children, courts should strictly construe support and maintenance to find that any amount of support is sufficient to avoid a finding that the parent's consent is not required. A parent that provides some support to their child has not "abandoned" their child in the meaning of R.C.3107.07(A) if that statute is strictly construed as is required. In reviewing cases under 3107.07(A) it must be constantly considered that Courts are treading upon a parent's constitutionally protected liberty interest to raise and nurture their child and the only means of doing that is finding that meager or minimal support is sufficient to require the consent of the parent.

Some districts, including the lower court, have held that any meager contribution constitutes sufficient maintenance and support for requiring a biological parent's consent. *In re Adoption of Allonas*, 3d Dist No 3-01-27, 2002-Ohio-2723, 2002 WL 1299766, *Celestino v Schneider* (1992), 84 Ohio App. 3d 192, 616 N.E. 2d 581 (6<sup>th</sup> Dist) (minimal support payment provided by natural father was sufficient to preserve his consent as jurisdictional

prerequisite to child's adoption); Vecchi v Thomas (1990), 67 Ohio App. 3d 688, 588 NE 2d 186 (2d Dist) (child could not be adopted without biological father's consent since biological father had made support payments totaling \$130.00 during one year preceding filing of adoption petition, which prevented finding that he had failed to provide for maintenance and support of minor child).

Appellant's cite cases that arbitrarily required amounts of support to find consent necessary in R.C. 3107.07. Nowhere in the statute is there any language which would permit the Court to quantify support and maintenance as "sufficient" or define it as only applying when a child "needs" it as some Courts have found. It is noted that there are a number of cases, which have held that contributions having no value to a child, do not qualify as maintenance and support. For example, when a father placed a child on his health insurance plan but did not inform the custodial parent the Court found that that was not support. In re Adoption of Knight, (1994) 97 Ohio App.3d 670. A Court found that giving \$14.00 cash to his son was not money giving for maintenance and support. In re Adoption of McCarthy, (January 7, 1992) Lucas App.No.6-91-199. A Court found that a natural parent cannot suspend the operation of R.C. 3107.07(A) by making one or two token support payments. In re Adoption of Wagner (1997), 117 Ohio App.3d 448. These cases generally do not fit our facts in the case and neglect to consider the underlying constitutional right of the natural parent. Further, those cases do not follow the plain meaning of the statute but rather judicially add language to the statute to require support the Court deemed sufficient.

In reviewing the Ninth District Court of Appeals decision in this case Appellant points out that the Court cited 47 OH Jur Family Law §895 with provides relatively small support

provisions as being sufficient to find consent is required under the statute. Appellant noted that the cited section provided that maintenance/support may mean any type of aid to feed, clothe, shelter or educate the child, to provide for health, recreation or travel expenses or to provide for any other need of the child. The Appellant then notes that the Court concluded this section of opinion with the following quote

“relevant inquiry is not whether the parent provided support, but whether the parent’s failure to support is such magnitude as to be the equivalent of abandonment” 47 OH Jur Family Law §895.

Appellant’s complained that 47 OH Jur Family Law Section mentioned no Ohio case in support of this proposition. However, Appellant failed to note that earlier in the Court’s decision the Court cited its own case with nearly the exact same language in the matter of the Adoption of Jarvis (December 11, 1996), 9<sup>th</sup> Dist No. 177161 and In re Adoption of Mackall (April 24, 1985) 9<sup>th</sup> Dist No. 1365 in Ohio law. Thus, it is fair to say that Ohio law has recognized a general requirement that the consent statute should be overridden only when the parent’s failure to provide maintenance and support rises to a level of abandonment and loss of interest in the child. The approach of requiring abandonment fairly recognizes, the clear statutory language, which provides no qualification in defining support and maintenance and does not distinguish between the manner of how support is provided.

All cases which found consent was not necessary lost sight of the underlying constitutionally protected liberty interest protected by the bifurcated nature of the adoption statute, and this Court should not follow them. Instead the Court should follow those cases that find that minimal support is sufficient. Two other cases which have improperly interpreted 3107.07(A) on been followed by other Courts deserve special mention. In re

Adoption of Strausser (1987), 36 Ohio App.3d 232, the Court found that when the child possess sufficient clothes and toys that the natural father's purchase of clothing and toys may not be sufficient to preserve the father's right to prevent an adoption. Strausser seems to establish a dangerous precedent. Considering the financial circumstances of the custodial caregiver when determining whether to permit an adoption dangerously shifts the burden to considering the child's situation in determining whether a parent has paid support. Under that line of reasoning a child who is living in a more affluent situation would be more readily adopted than a child who is living in poverty. Certainly a parent's constitutionally protected liberty interest should not be determined by the financial fortunes of a child's caregiver. Thus Strausser adopts faulty reasoning and should not be followed.

Secondly, the Trial Court mentioned Gardner v Greenwalt (November 17, 2008), Stark App.No.207CA296, unreported. That case involved a parent who bought some meals at McDonald's for a child during the one-year period, minimal Christmas presents, such as a Slinky and a toy makeup box and whose Grandmother purchased items for the child. The Court in Gardner incorrectly read a de minimus requirement into 3107.07(A), which does not exist. Certainly the General Assembly could have indicated that the maintenance and support required in 3107.07(A) must be more than a de minimus amount but the legislature failed to do so. As stated earlier cases such as Gardner and Strausser fail to properly give weight to the constitutional issues involved, fail to recognize that 3107.07(A) withdraws consent when there is "abandonment" of the child and does not include de minimus or other language that qualifies support.

Appellant suggests that this Court should conclude the monetary gifts paid directly to a

child are not maintenance and support and that the provision of such gifts by a parent can be argued as a basis to allow a natural parent to challenge the adoptions in best interest side. However, Revised Code Section 3107.161 sets forth the factors to be considered in determining the best interest of a child in contested adoptions. None of the eleven factors involved in 3107.161(B) involve the financial support received by the child in his adoptive home or by the natural parent. While the Court does permit review of all relevant factors, as none of the relevant factors listed have anything to do with the financial situation of the consenting or non-consenting parent, it would seem that raising the issue during the best interest hearing would be inappropriate. In fact, the reason financial issues are likely not included in Revised Code Section 3107.161 is that the financial contribution of the non-consenting parent must be considered in the Revised Code Section 3107.07(A) analysis of consent. Appellant also argues that in this case M.B.'s standard of living meant that she did not need the \$185.00 submitted by father during the year in question. First, it must be noted that the standard of living was augmented by father who paid over \$70,000.00 in child support to mother in the years prior to the one-year period considered in this adoption. Thus, father made significant contributions to M.B.'s standard of living. Further, Appellant recklessly asks this Court change its focus of Revised Code Section 3107.07(A) to the child and the custodial parent's financial situation because according to the Appellant, this child is enjoying "a wonderful lifestyle in a nice suburb of Akron". Nowhere in Revised Code 3107.07 does the legislature make the mistake of segregating children into more affluent and less affluent for purposes of requiring for consent to an adoption.

Lastly, judicial economy and concepts of uniformity of application favor an objective

definition for support and maintenance. If this Court requires a subjective test, Probate Courts will be mired in hearings determining how much a parent provided a child, the value of food and items given during visits, and other questions of value of support. If this Court finds the financial situation of the child's caregiver is relevant, Probate Courts will have to take evidence of the needs of the child in the child's home and whether items given met those needs sufficiently. An objective test asking only whether some support was given favors judicial economy by allowing the Courts to simply find support and not determine if it was sufficient. If Court's are required to make a subjective finding, different Magistrates and Judges throughout Ohio will naturally apply different subjective standards of support and maintenance. With the different judicial standards will come different results for parents who have made the same contributions of support and maintenance and inconsistent results will follow. An objective standard will allow similarly situated parents to be treated the same way throughout the State rather then different Courts reaching different results in this area affecting parent's constitutional rights.

Applying those facts of those cases to the facts in this case, it is clear that Mr. Beban supported his daughter. It is undisputed that he sent her \$185.00 during the one-year period in question. \$125.00 of those dollars came in the form of a gift certificate to purchase clothing at Aeropostale and \$60.00 was cash given to her for her use. It is admitted that she received these items. Further, clothes and money to purchase other items is support and maintenance under the common and ordinary meaning of those terms. Clothes are necessities and the cash could be used for any necessity. It can hardly be said that a father who sent that money to his daughter abandoned her. Because Ohio Courts have correctly found that a failure to support

must amount to abandonment, Mr. Beban cannot be found to have abandoned his child in this case. McNutt and Celestino, Supra. It is proper to find such a high standard be proved for a parent to lose their right to consent because we are protecting Mr. Beban's protected constitutional right to raise and nurture his child. Thus, this Court should uphold the Ninth District Court of Appeal's Decision.

## **PROPOSITION OF LAW NO. 2**

**When reviewing a Court's decision interpreting statutory language the Reviewing Court's standard of review is *de novo*.**

Appellee submits there is no conflict with the Decision of the Court of Appeals in this case and the Decision in the matter of the Adoption of Kat. P., (July 22, 2009) Fairfield App No. 09CA10, 09CA11. In the Kat. P. case the issue before the Court of Appeals was whether the Trial Court correctly found that father's failure to pay support was without justifiable cause. The father in Kat. P. paid no child support for the one-year prior to the adoption and the children and the mother received no other form of support from the father during the period preceding the filing of the adoption petitions. *Id.* at 3. Instead father argued that he had justifiable cause for not supporting the children due to an automobile accident in 1997. The Trial Court was presented evidence that father was in a band and was involved in very physical performances and was had the ability to support his children but refused to do so. The Trial Court determined based upon the credibility of the available witnesses in Kat. P. that the father's lack of support was not justified. Correctly the question on appeal in Kat. P. was the credibility of the witnesses before the Trial Court and the Court correctly applied a manifest weight of the evidence standard to the appeal.

As can be seen from the first argument in this case of both parties, there is no factual dispute about the amount of support paid by father. It was agreed before the Magistrate, before the Trial Court, and before the Court of Appeals that he paid \$185.00. Nor was it disputed how or when that money was provided to M.B. The question before the previous

Courts was the statutory definition of support and maintenance and whether funds provided in the matter by father in this case are support. The Court of Appeals and the Supreme Court are not being asked to weigh evidence or determine credibility in this case but merely to decide the statutory meaning of the terms in Revised Code 3107.07. Therefore, the Ninth Appellate District below correctly applied a de novo standard of review because it was determining the meaning of maintenance and support.

While Appellant believes the Court never defined maintenance and support, Appellate believes the Court clearly did provide a definition of maintenance and support on Pages 5 & 6 of its Decision by adopting the maintenance and support definitions of maintenance in Black's Law Dictionary and given additional guidance by 47 OH Jur Family Law §895. Thus, as the Appellate Court defined maintenance and support as being whether the parent failed to support in such a magnitude as to be the equivalent of abandonment the Court then correctly reviewed the fact that father paid \$185.00 to determine that he did not abandon his child. At no point in this case was the Court of Appeals finding the Trial Court incorrectly determined facts; rather the Court of Appeals found the Trial Court incorrectly applied the law to the undisputed facts. In fact Appellee in this case specifically choose not to appeal the question of justification to the Court of Appeals in concern that the Court of Appeals would lose sight of the crucial analysis in this case, the definition of support and maintenance under Revised Code 3107.07. Appellee believed that the Trial Court did not give sufficient weight to the review of 3107.07(A)'s definition of support and maintenance because the Trial Court instead focused on the father's financial situation during the year prior to the adoption, the amount of money he received at work, and the amount of money he spent on items during that one-year

period. By focusing on the issue of justification as father did in the Kat. P. case Appellee believes he unwittingly aided the Trial Court in losing its way from the important question of the definition of support and maintenance into a subjective judgment into father's lifestyle choices during a difficult financial year. In reviewing the cases from the various Appellate circuits in Ohio the definition of support and maintenance seems to be an area of law in which the old legal axiom that bad facts make bad law is readily apparent. Those Appellate Courts that had focused more on a parent's justification or a parent's action in paying support when determining the issue of consent more often lose sight of the more important constitutional provisions reflected in Revised Code 3107.07, the plain language of 3107.07 and the bifurcated adoption process to improperly determine that a parent who had not abandoned his child should lose his relationship with that child without the parent's consent.

Thus, there is no true conflict with the decision of the Ninth District Court of Appeals and the Court of Appeals in the Kat. P. case. This Ninth District Court of Appeals dealt with the statutory definition of support and maintenance; the Kat. P. case dealt with the weight to be given facts taken under a review of whether failure to pay support was justifiable. In Kat. P. the Court correctly applied a weight of the evidence standard to review an Appeal arguing the evidence before the Trial Court. In the this case the Ninth District Court of Appeals correctly undertook a de novo review to determine the definition of the statutory term support and maintenance and applied that correct definition of support and maintenance to the undisputed facts in this case. As can be seen from Appellate Proposition of Law No. 2,

when reviewing a Court's decision interpreting statutory language the Reviewing Court's standard of review is *de novo*, this case does not present a unique legal question and it is well established that reviewing Courts review a question of law on a *de novo* basis.

## **CONCLUSION**

For the reasons set forth in the proceeding arguments, Appellee, S.B. respectfully requests that this Court uphold the Decision of the Ninth District Court of Appeals.

Respectfully submitted,

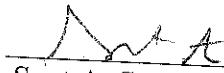


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**PROOF OF SERVICE**

I, Scot A. Stevenson, Attorney for Appellee, hereby certify that a copy of the foregoing Appellee's Brief was served upon Attorney Carmen V. Roberto at 23 S Main St., 3d Floor, Akron, Ohio 44308 by regular U.S. Mail this 15<sup>th</sup> day of August, 2011.

  
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**APPENDIX**

**TAB**

|                                    |   |
|------------------------------------|---|
| Ohio Revised Code Section 3103.03  | A |
| Ohio Revised Code Section 3107.06  | B |
| Ohio Revised Code Section 3107.07  | C |
| Ohio Revised Code Section 3107.161 | D |

### **3103.03 Married persons' obligations of support.**

(A) Each married person must support the person's self and spouse out of the person's property or by the person's labor. If a married person is unable to do so, the spouse of the married person must assist in the support so far as the spouse is able. The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding section 3109.01 of the Revised Code and to the extent provided in section 3119.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

(C) If a married person neglects to support the person's spouse in accordance with this section, any other person, in good faith, may supply the spouse with necessaries for the support of the spouse and recover the reasonable value of the necessaries supplied from the married person who neglected to support the spouse unless the spouse abandons that person without cause.

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

(E) If a decedent during the decedent's lifetime has purchased an irrevocable preneed funeral contract pursuant to section 4717.34 of the Revised Code, then the duty of support owed to a spouse pursuant to this section does not include an obligation to pay for the funeral expenses of the deceased spouse. This division does not preclude a surviving spouse from assuming by contract the obligation to pay for the funeral expenses of the deceased spouse.

Effective Date: 03-22-2001; 2008 SB196 07-06-2009

## **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.

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

## **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 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.

Effective Date: 10-29-1999; 2008 HB7 04-07-2009

## **3107.161 Determining best interest of child in contested adoption - burden of proof.**

(A) As used in this section, "the least detrimental available alternative" means the alternative that would have the least long-term negative impact on the child.

(B) When a court makes a determination in a contested adoption concerning the best interest of a child, the court shall consider all relevant factors including, but not limited to, all of the following:

- (1) The least detrimental available alternative for safeguarding the child's growth and development;
- (2) The age and health of the child at the time the best interest determination is made and, if applicable, at the time the child was removed from the home;
- (3) The wishes of the child in any case in which the child's age and maturity makes this feasible;
- (4) The duration of the separation of the child from a parent;
- (5) Whether the child will be able to enter into a more stable and permanent family relationship, taking into account the conditions of the child's current placement, the likelihood of future placements, and the results of prior placements;
- (6) The likelihood of safe reunification with a parent within a reasonable period of time;
- (7) The importance of providing permanency, stability, and continuity of relationships for the child;
- (8) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
- (9) The child's adjustment to the child's current home, school, and community;
- (10) The mental and physical health of all persons involved in the situation;
- (11) Whether any person involved in the situation has been convicted of, pleaded guilty to, or accused of any criminal offense involving any act that resulted in a child being abused or neglected; whether the person, in a case in which a child has been adjudicated to be an abused or neglected child, has been determined to be the perpetrator of the abusive or neglectful act that is the basis of the adjudication; whether the person has been convicted of, pleaded guilty to, or accused of a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the person's family or household; and whether the person has been convicted of, pleaded guilty to, or accused of any offense involving a victim who at the time of the commission of the offense was a member of the person's family or household and caused physical harm to the victim in the commission of the offense.

(C) A person who contests an adoption has the burden of providing the court material evidence needed to determine what is in the best interest of the child and must establish that the child's current placement is not the least detrimental available alternative.

Effective Date: 11-06-1996