

No. 2017-0173

IN THE
SUPREME COURT OF OHIO

KELLY ALAN HELMINGER AND
PAMELA MARIE HELMINGER
Petitioner-Appellant,
vs.

CHRISTOPHER O. WADE
Respondent-Appellee.

**Appeal from the Court of Appeals,
Twelfth Appellate District
Butler County, Ohio to
The Supreme Court of Ohio**

**MEMORANDUM AMICUS CURIAE FOR ADOPTION CIRCLE IN SUPPORT OF
PETITIONERS-APPELLEES**

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BRIEF

I. Statement of Amicus Curiae

Adoption Circle is a Private Child Placing Agency. Adoption Circle's philosophy is that all children have the right to love, security and nurturance; the foundation necessary to become a healthy, happy and productive adult. Adoption Circle realizes that this type of environment may not always be possible if a child remains with his or her family of birth. It is the Agency's belief that birthparents have the ultimate responsibility to make parenting decisions for their children. Adoption should be a parenting decision that birthparents make for their children after considering all of their options, free of pressure and coercion from all potential sources.

The primary focus of all of Adoption Circle's programs is to assist in adoption planning and the placement of newborn and young children. Adoption Circle will effectuate its philosophy and purpose by providing professional counseling for birthparents and adoptive parents contemplating an adoption plan.

Adoption Circle believes that if adoption is the choice for children and their parents, it should be facilitated by professionals who realize that adoption is a life-long process. Adoption Circle accepts this responsibility and Adoption Circle's policies reflect a commitment to the needs and best interest of the children of today, the adults of tomorrow.

Adoption Circle is committed to providing all parties to an adoption (birthparents, adoptive parents and adopted persons) with the support necessary to make the best possible decision for a child. The Agency maintains a staff of highly trained, state certified adoption assessors, who are available to perform adoption services including birthparent assessments and adoptive homestudies throughout Ohio. Adoption Circle may also provide adoption services to United States citizens in compliance with the Interstate Compact Rules and Regulations.

Adoption Circle shall be an Agency of advocacy for all its clients. The Agency believes it is important for all parties to be actively involved in designing their adoption plan. Adoption Circle will always attempt to meet the needs of its clients so long as facilitating the designed adoption plan is in full compliance with Ohio law and the Agency's license as a private child placement agency. Adoption Circle provides its services in full accordance with Federal and State Law including the Multi-Ethnic Placement Act as amended.

II. Statement of Case and Facts

Amicus Curiae respectfully adopts and incorporates by reference the Statement of Case and Facts presented by the Appellees.

III. Argument

Now comes Amicus Curiae, Adoption Circle, and offers the following memorandum in support of Appellees.

Position No. 1

In 1996 the Ohio legislature enacted ORC 3107.061 which clearly states 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 division (B) of section 3107.07 of the Revised Code.

The Ohio Putative Father Registry was again legislatively affirmed and revised in 2015 and exists in order to provide a putative father notice of an adoption plan. The putative father must then take additional steps to assert his constitutionally protected child/father relationship. A putative father, upon being on notice of the pregnancy and adoption plan, must take the steps necessary to demonstrate a commitment to the child or his consent will not be necessary in an adoption plan. A putative father's consent to an adoption plan is only required if he actively

pursues his parenting rights and responsibilities. He may do that in a number of ways including providing both emotional and financial support for the mother during her pregnancy and providing care and support for the minor. The Ohio legislature has clearly stated in ORC 3107.07(B)(2)(b) that a putative father's consent in an adoption is not necessary if he has 1) willfully abandoned the minor, or 2) failed to care for and support the minor, or 3) willfully abandoned the mother during her pregnancy.

The trial court with the appellate court affirming found that the putative father in this case did in fact abandon the mother and fail to support the minor; therefore, his consent was not a necessary component in this adoption. This was a factual determination that should be allowed to stand as there was no clear abuse of discretion on the part of the trial court. To accept this putative father's proposition would permanently alter the legislative intent of the putative father registry and undue this Court's prior holdings on adoption law. 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 proceedings 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 proceedings are 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.

Many other states, like Indiana, have enacted statutes to ensure that this exact situation

does not occur. The statute in Indiana provides that upon the putative father receiving pre-birth notice of the adoption plan, he has thirty days to file a paternity action or his consent to the adoption is irrevocably implied. Although Ohio law does not require the putative father to file a parentage to participate in the adoption decision-making process it does provide him with the opportunity to file a parentage action and that provides him the opportunity to change his status from putative father to legal father. R.C.3111.04. A putative father and a legal father have a different status under the law. A putative father who pursues becoming a legal father shows his commitment to one aspect of his parenting responsibilities as child support is inherently a part of a parentage action. Ohio law clearly and rightly requires a putative father to support a pregnant mother and unborn child if he wishes to prohibit an adoption plan for a newborn infant.

In the case at bar, the putative father was given notice of the pregnancy on March 5, 2015, at which time the mother was approximately 3 weeks pregnant. Further, it is undisputed that the putative father registered with the Ohio Putative Father registry a little more than a month before the birth of the child. From the time he received notice, whether it is from the mother or from the Ohio Putative Father Registry, the trial court found he did nothing to assert his parental rights. He also did not do anything to provide support to the mother despite having an income above \$70,000. Upon the putative father doing nothing, he remained in the status of putative father. Further, the trial court found he willfully abandoned his parental responsibilities and therefore, his right to consent to the adoption. By requiring a father to not abandon the mother or to care for and support his child the statutory scheme set forth in O.R.C.3107.07 and O.R.C.3107.06 promotes the best interests of the child while providing a putative father a reasonable timeframe to seize his opportunity to parent. It also frees the mother who has alone provided for the child during the pregnancy and/or up to the time of placement to act in the

child's best interests.

Appellant's legal status at the time of the filing of the adoption petition was that of a putative father. Ohio Revised Code 3107.07(B)(2) states that a putative father's consent is not required if, 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 is has willfully abandoned or failed to care for and support the minor;
- (c) The putative father has willfully abandoned the mother 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.

In the case at bar it was confirmed that the consent of the putative father was not necessary because he abandoned the mother of the minor during her pregnancy, up to the time of her surrender of the minor child. There was no factual dispute that no financial support of any kind was offered to the mother during her pregnancy and up to the time of her surrender of the child or the child's placement in the home of the Appellees. The Court analyzed the willful abandonment of the birthmother and found that " review of the totality of the circumstances during the period of the S.A.C.'s pregnancy and up to the time of the placement of the minor P.L.H with the (adoption) Petitioners, the Court finds that that (adoption) Petitioners have proven by clear and convincing evidence that C.O.W. willfully abandoned S.A.C during her pregnancy and up to the time of the minor's placement in the home of the (adoption) Petitioners". See Trial Court Judgment Entry page 19.

Adoption statutes need clarity so that lives are not shattered as children are placed into adoptive homes not to be pulled out again thus disrupting bonding.

The logic of the Ohio legislature in enacting O.R.C. 3107 was based upon the express

understandings that

- 1) Men are on notice that an act of intercourse could result in a child. R.C. 3107.061,
- 2) A child's mother needs support during her pregnancy. R.C. 3107.07(B)(2)(c),
- 3) A child needs support from a man who wants to assert an interest in that child. 3107.07(B)(2)(b)
- 4) That past conduct is a reliable indicator of future conduct, e.g. R.C. 3107.161(B)(5).

The legislative intent is to allow a birthmother to create and carryout an adoption plan for her child without interference from a putative father if he has abandoned the mother during her pregnancy. The putative father provisions delineate both the non-support or abandonment provisions for the abandonment of the mother during pregnancy. The act presumes that the need to care for a child begins during pregnancy.

This is an adoption case involving a living, breathing child in need of prompt and consistent care and protection in order to flourish and survive. The father knew of the pregnancy shortly after conception. He failed to attend any doctor appointments, provide the mother any type of emotional or financial support. The needs of a child begin even before birth. It is uncontroverted that he provided no support of any kind to the mother during her pregnancy. The mother made the choice to make an adoption plan. The mother shared this intent with the father very early in the pregnancy. However, despite having received notice of the pregnancy and adoption plan, even prior to registering with the Ohio Putative Father Registry, the putative father failed to provide financial and/or emotional support to the mother or the child during her pregnancy, month after month.

The mother did not have her child taken away from her. Rather, she made the very conscience decision to place her child's best interest above her own and place him for adoption.

In the present case, the putative father suggested that the mother should consider an abortion. However, the mother did not want to abort her child. Therefore, the mother pursued an adoption plan. The mother reached out to an attorney to discuss her rights for her adoption plan. She sat across the table from a social worker to discuss her options; open adoption, closed adoption, placing the child with a relative, placing the child in private foster care. The mother had to share her social and medical history with the social worker. She had to attend doctors' appointments to ensure the medical needs for her child were met, despite her adoption plan. The mother had to look through profiles and meet families to decide if the family was the right one to raise her child. The mother saw her belly grow and felt movement of her child she would not raise. Every day for nine months this mother did something to support the health and welfare of her unborn child. Every day for nine months she had to look at her growing belly and wonder if she was making the right choice, if she picked the right family. Every day for nine months she knew she would walk through fire for the best interest of her child. What did the putative father do? He filled out an online registration.

CONCLUSION

Life and the need to support that life begins prior to birth. The putative father repeatedly failed to meet the basic needs of the child during the pregnancy, month after month. The mother carefully, thoughtfully and painfully chose a plan for the child that she believed was in the child's best interest. Her sacrifice and her decisions for the needs of this child, the child she carried and cared for, should be respected. This court is urged to support the best interests of the child in all interpretations and review of the law. Failure to do so would allow absent putative father's to thwart the plans that mothers are making for the best interest of their child. There is a

realistic concern that mothers will choose other options for their child, such as abortion, if they are not permitted to complete an adoption plan to which they have given careful consideration.

Respectfully Submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was mailed to
and the parties listed below, by ordinary U.S. Mail this 9 day of May 2017.

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