

IN THE SUPREME COURT OF OHIO

**IN THE MATTER OF THE
ADOPTION OF: P.L.W. (BORN
12/15/2018)**

No. 2021-0068

**On Appeal from the Medina County
Court of Appeals, Ninth Appellate
District**

**Court of Appeals Case No.
20CA0032-M**

**APPELLEE'S RESPONSE TO MEMORANDUM IN SUPPORT OF JURISDICTION
OF THIRD-PARTY INTERVENOR/ APPELLANT**

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RESPONSE: THIS CASE DOES NOT INVOLVE SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

Appellant asserts that this case involves both a substantial Constitutional question allowing an appeal under Article IV Section (B)(2)(a)(iii) of the Ohio Constitution or that this case involves a matter of public or great general interest pursuant to Article IV Section (B)(2)(e) of the Ohio Constitution. Appellee asserts that the case does not qualify under either provision.

The constitutional arguments of Appellant mandate that this Court should reverse prior precedent and eliminate the existing statutory distinction of exceptions to the requirement of contest to an adoption as between a biological father whom has attempted to establish a parent-child relationship before a Petition to Adopt has been filed and a biological father whom has not. It is asserted that the constitutional dimensions of that distinction have been resolved and defined by the United States Supreme Court and by this Court. The Court identified differences between an inchoate right versus an asserted right. Further, the rights of the child to certainty and expediency weigh in when a biological father has failed to assert his rights.

Appellant interchanges terms such as natural father and legal father in such a manner as to confuse the application of court precedents. The adoption statutes and court precedents provide important distinctions. A legal Father is a person either married to a mother when a child was conceived or born; or has adopted the child; or has been declared as a Father by a court; or declared as the Father through an Administrative Order or an Acknowledgment of Paternity. O.R.C. 3107.06. A putative father is the negative of the definition of the legal father as a man not married to the Mother who has not adopted the child, has not been determined to have a parent and child relationship before the Petition is filed either through Court or through an administrative agency. O.R.C. 3107.01(H). The adoption statutes define a time line wherein a putative father can become a legal Father. The defining date is the filing of a Petition for

Adoption of the child. At that point in time the status of such an individual is defined. This Court has placed an overlay on the time line indicating that a status based on a court determination of paternity can be made after the Petition is filed IF the Father commenced his process before the Petition was filed. The Appellant herein did not so commence.

The status of the Father then determines the exceptions to the consent requirement to proceed with the adoption. O.R.C. 3107.06 mandates that a consent to an adoption is required of both a legal father and a putative father. O.R.C. 3107.07 defines the differences as to when the consent of a putative father and the consent of a legal father are not required. As to a putative father there are two separate independent methods by which it is determined that his consent is not needed. The first is that he failed to register not later than fifteen days after the birth of the child with the Ohio Putative Father Registry. The second is listed in three parts: one he is genetically not the father; two he abandoned or failed to care for the child; and three willfully abandoned the birth mother during her pregnancy and up to the surrender and placement of the child. O.R.C. 3107.07(B). As to a legal father, the consent is not required if the Petitioners can prove by clear and convincing evidence that a parent without justifiable cause failed to provide more than de minimus contact or failed to provide for maintenance and support for a period of one year prior to the filing of the Petition for Adoption. O.R.C. 3107.07(A).

Appellant argues that equal protection would direct that a Father that fails to initiate any administrative or legal action to establish his status as a legal father before a Petition is filed but does so after the Petition is filed, should be granted the same statutory standards for consent as a legal Father. Appellee disagrees. Such a determination would effectively eliminate the Ohio Putative Father Registry already determined by this Court to be constitutional. Such a determination would further place the finality of adoptions at risk. A birth father could, in

essence, file a complaint for parental rights at any point – presumably even after the adoption is finalized -- and then be deemed a legal father. Under those circumstances only the requirements of 3107.07(A) would be relevant to determining whether consent is required; the statutory consent exceptions as to a Putative Father would be not applicable.

Petitioners would accept a child into their homes for the purposes of an adoption with no Putative Father having registered and no preexisting complaint or order of paternity, with the expectation that 3107.07(B) applies and suddenly find themselves limited to the impossibility of establishing the consent exceptions of 3107.07(A). These exceptions under (A) cannot even be asserted until the Father has failed to support or contact the child *for a period in excess of one year prior to the date the Petition is filed*. All Petitions filed before the mandated year of nonsupport or no contact would be dismissed. Even if adoptions were to wait out the year, those filed after the child attains the age of one year would still be required to wait a year after an Order of support was issued (based on current case law). Further, a justifiable defense to having failed to visit or contact would certainly be asserted as to an impossibility of performance given the child's residence with the confidential Petitioners. A tardy putative father granted legal father's rights would never lose on the consent issue.

This Court has already accepted the constitutionality of the distinction between legal fathers and putative fathers in *In re Adoption of H.N.R.*, 145 Ohio St 3d 144 (2015). A clear difference exists between the opportunity interest to be a Father and the interest in the constitutional protections afforded an existing parent and child relationship. This Court found that a legal father with an established a parent-child relationship should be accorded a greater degree of constitutional protections. This Court relied on the United States Supreme Court case *Lehr vs. Robertson*, 463 U.S. 248 (1983) which upheld the New York Putative Father Registry.

It was determined that there are competing interests on behalf of children that must be considered in determining the constitutionality of adoption statutes: “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.” *Id* at 265.

Appellant’s proposition that equal protection mandates a determination that putative fathers be able to assert the same status of legal fathers despite failing to assert their opportunity right to parent until after a petition for adoption has been filed must then fail on multiple levels. First, this Court has accepted the constitutional distinction between a putative father and a legal father. The first concerns an undeveloped opportunity interest and the second concerns a protectable fundamental interest to parent. Second, such a determination would effectively eliminate Putative Father Registries as an acceptable means of allowing a putative father to seek to protect his own rights while providing children with a stable and expeditious adoption. Third, allowing a father to belatedly file for a determination of paternity that would then change his status once he has been determined as the biological father *after the Petition* would result in the dismissal of all such adoption petitions due to impossibility of proof.

The Appellants second proposition of law indicates that this Court should allow a Putative Father to assert a defense of fraud committed ostensibly by a birth mother to forgive his failure to register with the Ohio Putative Father Registry requirement or to take independent action to initiate a parent-child relationship. Appellants argument for jurisdiction ignores the fact

that the Appellant was granted the unrestricted opportunity by the trial court to assert and establish his allegation of fraud. Appellants recite “facts” that ostensibly establish fraud but fail to represent that the lower court issued a direct finding on the issue of fraud based on that Court’s review of all testimony. The decision of Judge Dunn, attached to the Memorandum of the Appellant, recited the extensive testimony wherein all of the allegations of the Appellant were explored, made a determination as to credibility and found: “The actions he complains of by Ms. White did not rise to the mind of this court to constitute fraud nor an attempt to induce non-action.” See page 17 of the decision of Judge Dunn (page A-25).

The Court as with all courts have the inherent power to determine the impact of any allegations of fraud. Fraud can be considered in two ways. The first is a fraud on the Court and the second is a fraud between parties. In the cases cited by the Appellant, the Court properly considered the misrepresentations actions of the parties to be a fraud on the Court. These frauds included misrepresentations as to the location of a birth parent and the failure to provide notice to a legal parent. It was the false representations within the Petitions that led the Court to overturn the adoptions. In the instant case, Appellant seeks to include a personal fraud allegedly committed against him by the birth Mother as an excuse for his nonaction. The Petitions remained accurate. Setting aside that Judge Dunn found such fraud to be nonexistent, such a position cannot be supported.

The initial element of fraud as cited by Appellant indicates the action of fraud is based on a representation or, where there is a duty to disclose, a concealment of fact. Appellant cites *Burr vs. Board of County Commissioners*, 23 Ohio St. 3d 69 (1984). The reliance is misplaced. The Ohio Putative Father Registry statutes impose upon the Putative Father the sole responsibility to act leaving no opportunity for someone else to stop his ability to protect his opportunity right to

be a parent. Specifically, O.R.C. 3107.061 provides the Putative Father is on notice of a potential pregnancy from the time of sexual intercourse. Further, the Putative Father does not have to wait until a child is born but can register at anytime after intercourse. O.R.C. 3107.062. The Putative Father need not even notify the Birth Mother. The simple act of registration mandates that this Father receive notice of any potential adoption of a child born to this Mother even if he takes no other steps. The Putative Father Registry was enacted to advance the rights of children to a stable and expeditious adoption and to protect Putative Fathers. It allows the Putative Father to register from potential conception and not based on the child's birth.

The cases establish that even if a Putative Father does not register, he can bring a Paternity Action or seek an Administrative Order of Paternity without the cooperation or assistance of the Birth Mother. If it is initiated before the Adoption Petition is filed, then the Putative Father can seek to have his right to consent determined under the more restrictive standard. Appellant seeks to now blame Birth Mother for his failure to file such an action under the belief that any influence she had on him should excuse his noncompliance.

Appellant surprisingly argues that the Probate Court failed *at all* to consider the effect of the Mother's "deceitful and fraudulent actions on the untimely assertion of Father's parental rights." The Appellant asserts that this opens the door to encouraging fraud in other adoption matters. The argument is inaccurate. First, Judge Dunn acknowledged the position of the Appellant that fraud was an issue. Judge Dunn confirmed that Appellant asserts in part that his consent was required because "(birth mother) was disingenuous and deceitful surrounding the ultimate placement of the child for adoption." See Decision at page 4. Judge Dunn considered all of the evidence presented and found that no fraud existed. Appellant's requested relief is that Judge Dunn be directed to consider fraud but such in fact occurred.

Second, it is asserted that it is unnecessary to mandate a broad-based defense based on fraud as the trial Court should retain the authority to decide such an issue on a case-by-case basis. In the instant case Appellant introduced evidence to blame Birth Mother for his own inadequacies but now states that he was not heard on the issue. He was heard and lost. Paternity actions are guided by O.R.C. 3111.01 et seq. These statutes again emphasize the unilateral ability of a parent to bring the suit. A paternity action can even be commenced before the birth of the child. See O.R.C. 3111.04 (C). The statute provides that “No person, by using physical harassment or threats of violence against another person, shall interfere with the other person's initiation or continuance of, or attempt to prevent the other person from initiating or continuing, an action under sections [3111.01](#) to [3111.18](#) of the Revised Code.” O.R.C. 3111.19. A criminal penalty is imposed for such interference. O.R.C. 3111.99.

No Birth Mother can stop the initiation of any of these different avenues to establish paternity. Further, once started, the Birth Mother cannot circumvent them by placing the child for adoption. The case law in Ohio establishes that once the paternity action of any kind has commenced before the Petition for Adoption is filed, the determination of Parentage must be completed before the Adoption Petition can proceed. The Putative Father then becomes a legal Father with all of the protections that accompany that status.

The statutes and the case law create an expectation that it is the man, having had sexual intercourse with a woman, who has the responsibility of determining the depth of his decision to parent by commencing any one of multiple means of showing his intention to be a parent. The statutes and case law do not and should not create a duty in the woman having sexual intercourse with a man to tell him what or how to assert his rights to be a Father. If anything, the Courts should instruct the recalcitrant Putative Father that his reliance on a birth mother is indefensible.

The Appellant makes this argument on a constitutional level despite the fact that Judge Dunn listened to and found he did not have a basis for a defense of fraud. This is not a matter of public or great general interest. The Court through Judge Dunn and the adoption law operated exactly as intended within the confines of the constitutional protections afforded legal parents and allowed this adoption to proceed because a Putative Father, fully aware of sexual intercourse with the Birth Mother to whom he was not married, took no action.

APPELLEE’S POSITION IN RESPONSE TO THE PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1: A BIOLOGICAL FATHER’S STATUS AS BETWEEN PUTATIVE FATHER AND FATHER IS TO BE DETERMINED AT THE TIME OF THE ADOPTION HEARING RATHER THAN AT THE TIME THE ADOPTION PETITION IS FILED.

The Appellant bases the argument in support of Proposition of Law Number One by indicating that the statute under consideration fails to give the appropriate deference to biological parents by drawing a distinction between those that have timely acted to establish a parent-child relationship and those that have not timely acted. The argument ignores the carefully crafted distinction made by the Ohio adoption statutes and this Court with respect to Legal Fathers and Putative Fathers as well as the findings that the Ohio Putative Father Registry is constitutional.

Appellant ignores precedent respecting the constitutionality of the Ohio Putative Father Registry. See *In re Adoption of H.N.R.*, 145 Ohio St. 3d 144 (2015). Therein a child was relinquished for adoption after the deadline to register had passed. In that case, as here, the Putative Father did not attempt to register before the Petition for Adoption had been filed. The argument asserted that the then thirty-day deadline to register was constitutionally deficient and that the deadline should have been up to the date the Adoption Petition is filed. The Court noted that Appellant therein had not attempted to register before the Petition was filed (and after the thirty days) and found the constitutional challenge deficient by application.

Importantly, this Court discussed the competing interests of a child being adopted and the different protections afforded to Legal Fathers as compared to Putative Fathers. The biological link relied on the Appellant was held insufficient by itself to create the constitutional protections sought. Instead, the Putative Father must take steps to establish his parent child relationship.

But the mere existence of a biological link does not merit equivalent constitutional protection. The actions of judges neither create nor sever genetic bonds. (Brackets sic.) *Lehr* at 261, 103 S.Ct. 2985. C.S.M. strongly insinuates that greater constitutional protections might be at play in his case, particularly through his emphasis on the impact of R.C. 3107.07(B)(1) on "responsible" fathers. However, it remains true that the only interest at issue here is C.S.M.'s inchoate interest in developing a relationship with H.N.R. in the future. This interest, arising solely from a biological link with the child, is afforded far less constitutional protection than an already developed parent-child relationship would be. *Lehr* at 261, 103 S.Ct. 2985.

In re Adoption H.N.R., 145 Ohio St. 3d 144, 151-52 (Ohio 2015).

The Court further discussed the competing interest of a child in attaining a permanent and stable family:

In general, Ohio's adoption statutes relating to putative fathers are the result of the legislature's effort to balance a biological father's interest in having an opportunity to develop a relationship with his child against the state's interest in protecting the best interests of children. *In re Adoption of Zschach*, [75 Ohio St.3d 648, 650–651, 665 N.E.2d 1070](#) (1996). If adoption is necessary, a child's best interests are best served by ensuring that the adoption process proceeds quickly, so that the child may attain a permanent and stable family environment. *See id.* at 652, [665 N.E.2d 1070](#).

In re Adoption H.N.R., 145 Ohio St. 3d 144, 152 (Ohio 2015). *H.N.R.* establishes that the statutory distinction between the consent requirements of a Putative Father as opposed to a legal parent are constitutionally acceptable. If the Putative Father has taken none of the listed steps to establish a parent-child relationship before the Adoption Petition is filed then the inchoate interests of the Putative Father are subjected to a different and lower constitutional standard particularly given the best interests of the child. The reliance on the United States Supreme Court decision in *Lehr* provides additional authority for this Court's holdings.

The Appellant cites cases that do not apply to the matter before this Court. These cases discuss the rights of a parent when a parent-child relationship has been established as opposed to the case at bar where such a relationship has not been established. In *In re Adoption of Masa*, 23 Ohio St 3d 163 (1986) this Court considered an aspect of the definition of justifiable cause concerning the application of the adoption statutes eliminating the necessity of consent wherein a legal parent is alleged to have not supported his child in excess of one year. The Appellant was the legal father by marriage of the child; not the Putative Father as herein. In *In re P.L.H.*, 151 Ohio St. 3d 554 (2017), the Court considered the definition of willful abandonment of the Birth Mother under O.R.C. 3107.07(B)(2)(c) in deciding whether consent was necessary. The facts of that case show that the Birth Father had registered with the Ohio Putative Father Registry some two months before the birth of the child. The case does not match the instant case wherein the Appellant failed to register. In *In re Adoption of Schoeppner*, 46 Ohio St.2d 21, 24 (1976) the Appellant was the legal father by marriage of the child. The matter concerned the then failure to support exception to the consent statute. The United State Supreme Court case of *May v. Anderson*, 345 U.S. 528, 533 (1953) concerned a full faith and credit issue involving competing custody decisions in a divorce. The Father was the Father by marriage of the child.

Appellant then specifically misapplies the rulings of this Court in *In re Pushcar*, 110 Ohio St 3d 332 (2006) and *In re Adoption of P.A.C.*, 126 Ohio St 3d (2010). *In re Pushcar* involved a fact situation wherein the biological Father and the birth mother signed the birth certificate with the Acknowledgement of Paternity at the hospital. The Father was thereby the legal parent and not a Putative Father. The Father filed a paternity action *before* the adoption petition was filed. Logically the Court then indicated that when the complaint as to paternity and custody is pending before the Petition for Adoption is filed (which does not exist in the instant

case) then the juvenile court must complete its determination of paternity before the Probate Court then considers the Adoption Petition. Similarly, in *In re Adoption of P.A.C.*, a Father, although not registered with the Ohio Putative Father Registry, brought a complaint for paternity *before* the Adoption Petition was filed. The Court ruled that the determination of paternity and the status of the Father must be had before the Probate Court continued with the adoption. This Court ultimately clarified that *Pushcar* was meant to require that the Juvenile Court complete its determination of parentage – not paternity -- before the Probate Adoption Court continues its Petition. See *In re Adoption of M.G.B.-E.*, 154 Ohio St 3d 17 (2018).

These cases all concern a particular situation wherein a Putative Father has attempted to commence a parent-child relationship before the Petition for Adoption is filed but that Court with jurisdiction over the determination of parentage has not yet had the opportunity to objectively determine the relationship. This Court consistently ruled that under the circumstances when a paternity matter is pending when the adoption petition is filed, then the Father has taken steps to establish the parent-child relationship. Thus, he is a legal Father.

In this case, the Appellant wants to extend the application of *Pushcar* to rehabilitate all Putative Father's that did not register and did not file a paternity action before the filing of the Petition for Adoption. Such a determination would eliminate all statutory and constitutional distinctions between a Putative Father and a Legal Father.

A firm timeline needs to remain in effect to balance the competing interests of the child and the Father that has established a parent-child relationship. The Ohio adoption statutes as to consent as enhanced by this Court's ruling in *Pushcar* protect the Father who has started the process and allows him to complete it without unduly burdening the child's rights to a permanent

and stable environment. *Pushcar* should not protect Father's that have failed to act and thereby have done nothing to advance a parent-child relationship.

PROPOSITION OF LAW NO. 2: IN DETERMINING WHETHER A NONCONSENTING PARENT HAS TIMELY ASSERTED THEIR PARENTAL RIGHTS IN THE CONTEXT OF AN ADOPTION MATTER, ANY FRAUDULENT CONDUCT OF THE CONSENTING PARENT MUST BE CONSIDERED.

The second proposition of law of the Appellant seeks to have this Court direct a trial court to consider whether a Putative Father by definition can be redefined to become a Legal Father based on allegations that a birth mother fraudulently prevented him from initiating steps to register with the Putative Father Registry and or initiate the statutorily defined actions to establish a parent child relationship before a Petition for Adoption is filed. Appellant's proposition ignores that Judge Dunn already allowed the Appellant a full opportunity to establish his fact-based allegation of fraud. Judge Dunn found that Appellant failed to so prove.

Appellee asserts that despite Judge Dunn's process, the adoption statutes should not afford a broad-based attack in this situation and thereby it is unnecessary to hear this matter and delay this adoption any longer. In this case, the Petitioners accurately stated to the Medina County Probate Court that the child P.L.W. had been placed with them for the purposes of adoption by an Ohio Licensed private custodial placement Agency; that the Agency had consented to the adoption; that the birth mother and her Husband as the legal father had surrendered their permanent rights to the Agency and thereby were not required to consent and that the consent of any biological father was not necessary because no one had timely registered with the Ohio Putative Father Registry and there was no indication that any Putative Father had initiated any Administrative or legal proceeding concerning the paternity of the child.

Appellant moved to intervene in the adoption claiming his consent was required after he learned of the adoption through a paternity complaint filed in the Delaware County Probate

Court after the Petition was filed. Petitioners amended the complaint indicating that even if the Appellant was the Father of P.L.W. his consent was not required due to his failure to register or due to his failure to support the child or having abandoned the Mother. Appellees remain of the opinion that a stay of the adoption proceedings was not necessary under *Pushcar* etcetera because the paternity actions were not initiated prior to the filing of the Petition for Adoption.

The very issue Appellant seeks to raise in this Court was heard and decided by Judge Dunn. There was no fraud. Therefore, the issue as to whether fraud other than fraud on the Court can even be a defense to the failure to initiate was never ripe for consideration.

It is asserted that it was never intended by the Ohio adoption statutes that the failure to register through the Ohio Putative Father Registry could be excused by the fraud of a birth mother. O.R.C. 3107.061 places the burden directly on the man that has engaged in sexual intercourse to register: “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.” There are no exceptions and no defenses. The statutes clearly warn a Putative Father that unless he registers or brings an action to establish his rights, his child may be adopted without his consent. O.R.C. 3107.061. Further, this Court discussed the Registry and noted it does not present any difficulties in its application: “Registering as a putative father is relatively simple. At the time he engages in sexual intercourse, a man is considered to be on notice of the potential biological and ensuing legal consequences of that intercourse. R.C. 3107.061. From that point forward, he can register as a putative father by filling out a short form on a webpage maintained by ODJFS or by mailing the same information to ODJFS. Ohio Adm.Code 5101:2-48-02(C).” *In re Adoption H.N.R.*, 145 Ohio St. 3d 144, 148 (Ohio 2015).

The Tenth District Court of Appeals discussed the issue of whether fact-based defenses to the Ohio Putative Father Registry should be permitted in *In re Adoption of Baby Brooks*, 136 Ohio App 3d 824 (Tenth District March 21, 2000):

Second, appellant attaches too much importance to the legislature's rejection of a ten-day grace period for those putative fathers who were unable to register for reasons beyond their control. Certainly, the legislature intended to preclude putative fathers from raising fact-specific, equitable excuses for their failure to register in a timely manner. Thus, consistent with the statute and its legislative history, the magistrate and trial court here properly found that Phelps's equitable arguments concerning the reasons for his untimely filing with the putative father registry were legally irrelevant.

Id at 831. Appellant's claim of fraud by the Birth Mother should also be legally irrelevant.

The second part of the "fraud" argument concerns the consent statutes. It is noted that if a Putative Father fails to register, he can still protect his rights through filing in Court or through an Administrative Agency for a determination to have a parent-child relationship with the child so long as it is prior to the date a Petition for Adoption was filed. The absence of such a filing throws the consent issue into 3107.07(B) which again clearly provides that the failure to register renders Appellant's consent unnecessary.

Appellant claims that the Birth Mother committed fraud and caused him not to file for such a determination. Appellants submit "facts" for this Court's consideration in support of the allegation. Rather than recite a litany of opposing facts, Appellees again note that Judge Dunn of the Medina County Probate Court reviewed all of the testimony submitted in the matter and found: "The actions he complains of by Ms. White did not rise to the mind of this court to constitute fraud nor an attempt to induce non-action." See page 17 of the decision of Judge Dunn as attached to the memorandum in support of jurisdiction at page A-25. The issue of fraud as the basis for a constitutional challenge to the Ohio adoption statutes was not raised in the trial court. As the Ninth District Court of Appeals found in this case, since Appellant had not

raised a constitutional challenge to the mandate of a defense based on fraud of the birth mother in the trial court, he was thereby precluded from doing so on appeal.

The cases relied on by Appellant are not determinative. In both cases the fraud was occasioned by the Petitioners in an attempt to hide or prevent the Court's knowledge of a material fact of the Petition. *In re Adoption of Murphy*, 5 Ohio App 3d 14 (Sixth District 1988) concerned primarily the failure of the Petitioners to file the adoption in the correct county and did not provide notice to a Father "of a baby judicially decreed to be his own son." In *In re the Adoption of L.G.K.J.K.*, 113 N.E. 3d 767 (October 31, 2018), the related Indiana statute mandated that a presumptive father receive notice of an adoption petition. The case involved the adoption of a child by a Grandparent wherein the Mother and the Grandparent failed to disclose a preexisting relationship between the child and the biological father where that disclosure was mandated by statute. In both these cases the fraud was in the representation of false facts in the Petition. This is not the case here.

CONCLUSION:

The instant matter is no different than the facts of *H.N.R.* Appellant failed to register and failed to initiate a determination of paternity prior to the filing of the Adoption Petition. There is no substantial constitutional question. The Appellant's attempt to pass his failures onto the Birth Mother (not a party) by a fact-based fraud defense were denied on the merits and could have been denied based on statutory construction. The request for jurisdiction should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Response to Memorandum in Support of Jurisdiction was served this 27th day of January, 2021 upon:

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