

IN THE SUPREME COURT OF OHIO

IN RE: THE ADOPTION OF:

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:  
H.P.,  
:  
:  
:      CASE NO 2022-0159  
:  
:      EXPEDITED: This action involves the  
:  
:      adoption of a minor - S.Ct.Prac.R. 12.09:

[JOSEPHINE D. – APPELLANT]

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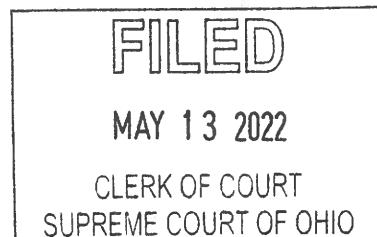
MERIT BRIEF OF AMICI CURIAE SUBMITTED BY AN AD HOC COMMITTEE OF  
PRIVATE PLACING ADOPTION AGENCIES

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## **STATEMENT OF INTEREST OF AMICI CURIAE**

This case has far reaching implications for all parties and institutions involved in any adoption filed in the State of Ohio. Licensed Private Placing Adoption Agencies (hereinafter referred to as Agencies) must rely upon the bright line deadlines that are set forth in Ohio's adoption statutes when making important decisions about how best to protect the interests of children placed in their care. More specifically, Agencies must promptly decide whether or not a placement should be made and how best to expeditiously achieve permanency for the children entrusted to their care. Agencies consider it imperative to avoid disrupted placements and to act promptly if a disruption is necessary so the inevitable harm that will be caused to children who must be removed from a placement will be minimized. Agencies are unable to act expeditiously to prevent harm to children without "bright line" deadlines.

## **STATEMENT OF FACTS**

Undersigned amici hereby adopt the Statement of Facts included in the Merit Brief of Appellant Josephine D.

## **INTRODUCTION**

Agencies reasonably rely on the plain language in the statutes and relevant caselaw to make decisions about the care and permanency planning for children. Cases starting with **In Re Brooks 136 Ohio App. 3d 824, 737 N.E.2d 1062** through **In Re Adoption of H.N.R, 145 Ohio St.3d 144** have held that a Petition For Adoption filed *before* a Complaint for Parentage has been filed may proceed to finalization without the consent of the putative father if the putative father failed to register with the Ohio Putative Father Registry. The Petition for Adoption should be finalized as long as the adoption is determined to be in the best interests of the child. **State ex rel. Furnas v.**

**Monnin, 120 Ohio St. 3d. 279, 2008-Ohio-5569** holds that the juvenile court may proceed with the Complaint For Parentage, but only for the limited purpose of allowing the biological father to provide a Social and Medical History as permitted in **R.C. § 3107.09**. Agencies act in accordance with the statutes and the relevant caselaw to make decisions about the long term best interests of the children they serve.

### **ARGUMENT**

Amici Curiae Proposition of Law: Deadlines set forth in **R.C. 3107.062** (Putative Father Registry), in cases such as **In Re Adoption of H.N.R.** (and numerous other cases cited in the Merit Brief of Appellant) should not be set aside based on the completion of genetic testing and the issuance of a Judgment Entry pursuant to Ohio Revised Code Sections **3111.09(B)(4)** and **3111.12** *after* the adoption is already pending.

### **RIGHTS OF A PUTATIVE FATHER**

Ohio Law provides opportunities for a putative father to take steps to protect his parental rights even before a child is born. Appellee Kaidin W. was aware of the pregnancy in February of 2020. A putative father is on notice that he must register with the Putative Father Registry after he engages in sexual intercourse with the birthmother if he wishes to protect his right to notice of the adoption proceeding. A putative father may file with the Putative Father Registry at any time immediately after sexual intercourse but he may wait up to 15 days after the child is born. **R.C. § 3107.062** Failing to timely register means his consent to the adoption is no longer required. **R.C. § 3107.061, and R.C. § 3107.07.**

Kaidin W. also could have filed a Complaint for Parentage at any time after conception occurred or as soon as possible after he learned that the birthmother was pregnant. **R.C. §**

**3111.04(C)** Appellee was represented by counsel prior to the child's birth. Appellee was aware or should have been aware that he had these rights long before the child was born. Filing a Complaint for Parentage prior to the filing of the Petition for Adoption would have required the Court to stay this adoption proceeding until the determination of parentage had been made by the juvenile court. Registering with the Ohio Putative Father Registry within 15 days after the birth of the child would have entitled the putative father to notice of all adoption proceedings. Appellee Kaidin W. did not timely take advantage of these legal remedies. When a putative father takes either of the aforementioned steps in a timely manner, a licensed private placing adoption agency will not accept a Permanent Surrender of Child or would likely revoke the Permanent Surrender of Child if the Appellee had taken the steps necessary to assert his rights.

The decision of the 3<sup>rd</sup> District Court of Appeals in *In Re the Adoption of H.P.* gives considerable attention to the communications between the birthmother, her parents and the Appellee Kaidin W.. (In Re H.P., 15-21-03, on pages 3-4) The analysis of the 3<sup>rd</sup> District Court of Appeals and the Appellee focus on the fact that Appellee allegedly tried to file with the registry two days late because Appellee was not aware that the child had been born. **R.C. § 3107.062** does not say that a putative father may register up to 15 days after the birthmother informed him that the child was born. Appellee Kaidin W. placed all the responsibility on the birthmother to make sure he timely asserted his rights.

The Court of Appeals found that the Appellee Kaidin W. had obtained a "determination of parentage" prior to the "consent hearing". (In Re H.P. at pages 4, 10). Neither of these conclusions seem to be accurate. The Logan County Common Pleas Court confirmed that Appellee Kaidin W. was the biological father based on a DNA testing report but the Court ultimately did not make a

determination of parentage order. (See Judgment Entry from Logan County Juvenile Court in **Case Number 20 AD 43**)

The Judgment Entry in Van Wert County Probate Court, **Case Number 2024017**, lists the Motions being considered. The hearing held in Van Wert County Probate Court on January 29, 2021 was not a Consent hearing. Further, the 3<sup>rd</sup> District Court of Appeals relies upon **Allen County Children Services Board vs. Mercer County Court of Common Pleas, 150 Ohio St.3d 230, 2016-Ohio-7382, 81 N.E. 3d 380** when deciding that the putative father may obtain DNA testing and thereafter prevent the adoption from proceeding to finalization. This case does not stand for the principle that a putative father may prevent an adoption from proceeding to finalization even if he failed to file a parentage proceeding prior to the date when the Petition for Adoption was filed. This case considers the rights of a birthparent who wishes to make an adoption plan after a Custody Order was issued to Allen County Children Services by a Juvenile Court.

Legitimate issues can be raised about the steps taken by Kaidin W. to protect his legal rights. Kaidin W. verbally expressed his desire to be a father to this child. However, Kaidin H. did not timely file a Complaint for Parentage. Kaidin W. did not provide support for the child after birth or emotional support to the birthmother during the pregnancy. Kaidin W. did not timely register with the putative father registry. Kaidin W. seems to be arguing that he was misinformed about when he may register with the Putative Father Registry. First, the law is unambiguous. Kaidin W. could have filed any time after he had sexual intercourse with the birthmother. He had nine months and fifteen days to act. The simple act of completing an internet search with the words, *Putative Father Registry-Ohio* would take him directly to the Ohio Department of Job and Family Services website with easy instructions about how and when registration may occur. The

entire process would take less than ten minutes. Second, his claim that he was misinformed about the registry does not explain why he failed to avail himself of the right to file a Parentage Complaint long before the child was born.

### **AGENCY RESPONSIBILITIES**

The decision of the Court in *In Re H.P.* and the arguments made by Appellee Kaidin W. strongly suggest that the contact he made with birthmother and her parents prior to the birth of the child was a factor the Court should consider when determining that his consent was required. This only further illustrates how important it is for all parties to adhere to the bright line deadlines that are set forth in the law. Private child placing agencies are often completely unaware of the conversations that may be taking place between a birthmother, a putative father, or any other family members. Conversely, during the pregnancy an agency may be aware of a putative father who vociferously declares his intention to parent the child but never takes any further steps. Without the “bright line” deadlines set forth in the law, agencies must guess which putative fathers will eventually assert their rights through the legal remedies available to them and which putative fathers will take no further action. Agencies will no longer be able to rely on the Ohio Revised Code or the caselaw to determine what steps they should take to protect the best interest of children or when those decisions need to be made by the agency.

The decision by the 3<sup>rd</sup> Circuit Court of Appeals in *H.P.* means that agencies must make and maintain a placement for children knowing that the placement could be disrupted months after the child comes to live in the home of the prospective adoptive parents. The only alternative is to make no placement and deprive the child of a permanent home based solely on the *possibility* that a putative father may act before the adoption is finalized. The focus of agencies is to serve the best

interests of children and to help create a legally secure placement. *In Re H.P.* eliminates the “bright line” deadlines that are necessary for agencies to make crucial decisions about how to protect children placed in their permanent custody. This uncertainty is clearly detrimental to children. An agency can act in a manner that is believed to serve the best interests of the child if the agency is aware that a parentage proceeding is pending prior to the filing of the Petition for Adoption. An agency can act accordingly if the putative father has timely registered. No steps may be taken to protect children who have been placed and are bonding everyday with prospective adoptive parents if there is no way to know when or if permanency is possible for the child.

The Ohio Revised Code and the Ohio Administrative Code are replete with time sensitive requirements for agencies. An updated home study must be prepared and maintained for prospective adoptive parents prior to any adoptive placement. **(R.C. § 3107.031, though R.C §3107.35)** A private placing adoption agency must complete an assessment of the birthmother including a Social and Medical History and the Ohio Laws and Adoption Materials Form at least seventy two hours before a Permanent Surrender of Child may be signed. An agency must wait seventy-two hours after the child is born before a Permanent Surrender of Child may be executed. **(R.C. § 3107.081 though R.C §3107.083, 3107.09)** An agency must meet monthly with the prospective adoptive parents and submit monthly post placement reports to the Court. An agency must provide a final Putative Father Registry check before the adoption may be finalized. An agency must complete and submit a Prefinalization Report to the Court twenty days prior to the date when the adoption is scheduled for finalization **R.C. § 3107.12.**

Ohio Law also requires prospective adoptive parents to meet time sensitive deadlines. The Petition for Adoption must be filed prior to the filing of a parentage proceeding. **(In Re Adoption**

**of G.V., 126 Ohio St. 3d 249, 2010-Ohio-3351)** The prospective adoptive parents must file a Preliminary Accounting when the adoption is filed and a Final Accounting ten days before the adoption is finalized. **R.C. § 3107.055** The adoption cannot occur in less than six months after the adoptive placement has been made. **R.C. § 3107.13.** This is only a partial list of deadlines and requirements Agencies and prospective adoptive parents must meet pursuant to the Ohio Revised Code and the Ohio Administrative Code.

A birthmother also cannot wait to act. She must make a permanency plan for her child immediately after she learns that she is pregnant. A birthmother must seek prenatal care for herself and her unborn child throughout her pregnancy. She has to decide whether she wishes to move forward with her adoption plan after the birth of the child. A birthmother cannot wait months to make her decision about placement. She will have to make that decision soon after the seventy-two-hour waiting period or place the child in temporary foster care if she wants time to contemplate her decision after the child is born. Irrespective of her decision about temporary foster care with the agency, she must promptly decide whether to execute a Permanent Surrender of Child or decide if parenting the child is possible and in the child's best interests. She may decide to parent the child even if she does not believe that maintaining custody is in her child's best interests.

It is already true that no other party to an adoption may wait until 15 days after the child is born to address that child's need for permanency and a legally secure placement. Based on the 3<sup>rd</sup> District Court of Appeals decision in *In Re H.P.* a putative father now has *no* time limitations on his decisions except to make sure that he secures unchallenged genetic testing before the adoption is finalized. According to the 3<sup>rd</sup> District Court of Appeals the "race to file" has been replaced with the "race to judgment". (*In Re H.P.* at page 8) Current caselaw prevents adoptive parents and

agencies from proceeding to finalization when the Petition for Adoption was filed *after* a Complaint for Parentage has been filed. (**In Re Adoption of G.V., 126 Ohio St. 3d 249, 2010-Ohio-3351**). The 3<sup>rd</sup> District Court of Appeals has concluded that a putative father is not similarly restrained. Based on the decision in **In Re H.P.** a putative father can prevent the adoptive parents from proceeding if he has obtained unchallenged genetic testing *any time* prior to the finalization of the adoption. It is not a “race to judgment” if only one party is permitted to finish the race.

## CONCLUSION

***In Re H.P.*** does not exist in a vacuum and the outcome is not specific to the facts that were presented in that case. All individuals and institutions are impacted by this decision. Private child placing agencies routinely ask questions about the putative father, including but not limited to whether or not the putative father has provided support, whether he has expressed a desire to parent and whether or not he has filed anything in Court. Agencies often attempt to contact the putative father to determine his intentions and to offer him the opportunity to participate in the adoption process or to make his intentions clear. Irrespective of the efforts made by an agency, it is likely that the agency will not always be aware of or privy to conversations and actions that may be taking place between a birthmother, her family and the putative father. The “bright line” deadlines set forth in the Ohio Revised Code, the Ohio Administrative Code and the caselaw represent the only reliable way for a licensed private placing agency to protect the interests of everyone involved, including the putative father.

For the reasons outlined above, this Ad Hoc Committee of unaffiliated agencies support the position of the Appellant, Josephine D., and respectfully request that the adoption proceed in a manner that is consistent with Ohio Law.

Respectfully submitted on behalf of the *Ad Hoc Committee of Private Placing Adoption Agencies*



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