

No. 22-0159

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IN THE  
**Supreme Court of Ohio**

IN THE MATTER OF THE ADOPTION OF H.P.

JEFFREY P., NICOLE P., AND JOSEPHINE D.

*Petitioners-Appellants,*

v.

KAIDIN W.

*Respondent-Appellee.*

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**On Appeal from the Van Wert County Court of Appeals,  
Third Appellate District**

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**BRIEF AMICUS CURIAE FOR THE ACADEMY OF ADOPTION AND ASSISTED  
REPRODUCTION ATTORNEYS IN SUPPORT OF PETITIONERS-APPELLANTS**

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**I. STATEMENT OF THE AMICUS CURIAE**

The Academy of Adoption and Assisted Reproduction Attorneys (“Academy”) is a not-for-profit organization of attorneys, judges and law professionals throughout the United States and internationally, who have distinguished themselves in the field of adoption law and who are dedicated to the highest standards of practice. The Academy’s mission is to support the rights of children to live in safe, permanent homes with loving families, to protect the interests of all parties to adoptions, and to assist in the orderly and legal process of adoption. The Academy’s work includes promoting the reform of adoption and surrogacy laws and disseminating information on ethical adoption and surrogacy practices. The Academy regularly conducts seminars on the rights of birth parents and children for attorneys and judiciary as well as seminars on laws regarding assisted reproduction. Its members testify regarding pending legislation and submit amicus briefs for consideration by courts. The ultimate goal of the Academy is to promote the best interests of children and families.

**II. STATEMENT OF THE CASE AND FACTS**

Amicus Curiae respectfully adopts and incorporates by reference the facts and procedural history presented in Appellants Jeffrey P. and Nicole P.’s Memorandum.

Now comes Amicus Curiae, the Academy of Adoption and Assisted Reproduction Attorneys, and offers the following memorandum in support of Appellants.

**MEMORANDUM**

**III. ARGUMENT**

This brief is being submitted in support of a mother’s thoughtful and painful decision to best care for her child, by placing that child for adoption. This is her constitutionally protected fundamental right. The Academy takes the position that the best way to support a mother’s

adoption decision is to support laws that offer her predictability and certainty and that offer children permanency. For the sake of efficiency, this brief will only address the issue most relevant to Amicus Curiae, the Academy of Adoption and Assisted Reproduction Attorneys, which is THE STATUTORY CONSTRUCTION OF OHIO ADOPTION LAWS REQUIRES STRICT ADHERENCE TO CHRONOLOGICAL PROCEDURES AND STATUTORILY SET TIMEFRAMES TO SERVE THE BEST INTEREST OF THE CHILD TO BE ADOPTED.

**1. A BIOLOGICAL FATHER'S STATUTORILY DEFINED LEGAL STATUS AS EITHER A PUTATIVE FATHER OR A (LEGAL) FATHER/PARENT IS DETERMINED IN AN ADOPTION PROCEEDING ON THE DATE OF THE FILING OF THE PETITION**

The future of adoption in Ohio is being challenged by the decision of the Third Appellate District's finding that a father can have both the status of a putative father at the date of filing an Adoption Petition, and then have the status and rights of a "legal father" after the filing of the Petition. Allowing the status change effectively nullifies Ohio's Putative Father Registry ("OPFR"). This is in clear contravention to the statutory framework set forth in Ohio Revised Code Chapter 3107.

A man can be a registered or an unregistered putative father, or a man can be a father and a parent. A man's biological connection to the child is not in and of itself sufficient to legally be declared a child's father. A close reading of Ohio Revised Code Chapter 3107 shows the terms "parent," "putative father," and "father" are not used interchangeably. The terms "legal father" and "biological father" are not used at all. In fact, R.C. 3107.06 defines "father" in three ways (1) a man married to the mother (note that a biological tie to the child is not required if a man is married to the mother of the child and a married man must give his consent regardless of biology) (2) a man who adopted the child and (3) a man who established a parent child relationship by court or administrative determination **PRIOR TO THE DATE THE PETITION WAS FILED.**

Within this code section and other provisions within the adoption statutes “putative father” is listed as an entirely separate category. *See id.*

A putative father is defined in the statute in language that is the mirror opposite of the definition of father, so that a person can be one or the other, not both. *Id.*

R.C. 3107.01(H) defining “Putative father”	R.C. 3107.06(B) defining “Father”
<p>(H) "Putative father" means a man, including one under age eighteen, who may be a child's father and to whom all of the following apply:</p> <ol style="list-style-type: none"> <li>(1) He is not married to the child's mother at the time of the child's conception or birth;</li> <li>(2) He has not adopted the child;</li> <li>(3) He has not been determined, <b>prior to the date a petition to adopt the child is filed</b>, to have a parent and child relationship with the child by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency proceeding in another state;</li> <li>(4) He has not acknowledged paternity of the child pursuant sections 3111.21 to 3111.35 of the Revised Code.</li> </ol>	<p>(B) The father of the minor, if any of the following apply:</p> <ol style="list-style-type: none"> <li>(1) The minor was conceived or born while the father was married to the mother;</li> <li>(2) The minor is his child by adoption;</li> <li>(3) <b>Prior to the date the petition was filed</b>, 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;</li> <li>(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.</li> </ol>

Specifically, R.C. 3107.01(H) defines putative father as follows:

(H) "Putative father" means a man, including one under age eighteen, who may be a child's father and to whom all of the following apply:

- (1) He is not married to the child's mother at the time of the child's conception or birth;
- (2) He has not adopted the child;
- (3) He has **not** been determined, **prior to the date a petition to adopt the child is filed**, to have a parent and child relationship with the child by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency proceeding in another state; (emphasis added).
- (4) He has not acknowledged paternity of the child pursuant to sections 3111.21 to 3111.35 of the Revised Code.

The common language in both definitions however, is “prior to the date a petition to adopt is filed,” clarifying that a man’s legal status in relationship to the child for purposes of adoption is determined at the date the Petition to Adopt is filed. The Third District’s opinion states unequivocally that at the time of the filing of the adoption petition Kaidin was an unregistered putative father, and further, they found “[t]here is no question that Kaidin did not register within 15 days of the birth of H.P. As a matter of law, Kaidin’s consent [to the adoption] was not necessary. The trial court did not err in making such a determination.” *See* Appendix B. of Appellant Josephine D.’s Brief, Opinion of the Third District Court of Appeals, ¶4. That should have been the end of the opinion, but then the court determined that Kaidin had a second status as “legal father” that he gained after the filing of the Petition and after the time for registering with the Putative Father Registry had run. *Id.* at ¶8. Kaidin in fact **did not** have a second status as legal father in this adoption because R.C. 3107.01(H) and R.C. 3107.06(B) clearly states that a determination of parentage must be established **prior to the date a petition is filed**.

The Third Appellate District’s opinion discusses Kaidin’s “second status” as that of biological father. *Id.* at ¶5. No statutory rights are associated with an undefined “biological father.” The opinion in paragraph 6 states that “paternity was established prior to the consent hearing.” *Id.* at ¶6. This is an inaccurate statement and a misunderstanding of the adoption process. The trial court held the Consent hearing on September 3, 2021, and at that hearing, the child’s mother appeared and gave her testimony and signed the “Consent to Adoption” Form 18.3. *See* Appendix A. of Appellant Josephine D.’s Brief, Judgment Entry of the Van Wert Probate Court p. 2. In signing Form 18.3 Consent to Adoption, she “waives notice of the hearing on the Petition for Adoption to be filed in the court and consents to the adoption.” *Id.* Also, at this Consent hearing the mother testified that she was unmarried, that no male person had provided her with any support during her pregnancy or since the birth, that no parentage action had been filed, that no male person had signed the birth certificate, and that she was making this plan and giving her consent after thoughtful consideration for what was in her child’s best interest. *Id.* The trial court found that she “gave her consent knowingly, voluntarily, free from unborn influence or duress, and upon her own free will.” The trial judge then proceeded to find that “it is in the best interest of applicant’s child, that such child be placed ...” *Id.*

At the conclusion of the Consent hearing, the child was legally placed into the home of Petitioners. *Id.* After the Placement hearing, the Petitioners proceeded to file Form 18.0 “Petition for Adoption.” *Id.* This form requires the Petitioners to identify whose consent to the adoption is required and whose consent to the adoption is not required. R.C. 3107.05(A)(10). In this case, mother had just given her consent which was noted on the Adoption Petition. At that time no one else was required to consent.



In determining who must consent to an adoption and whose consent to an adoption is not necessary, R.C. 3107.06 and 3107.07 set forth the parameters. R.C. 3107.06 requires anyone who falls within the six defined categories to consent unless their consent is not necessary under the categories found within R.C. 3107.07. *Id.* The R.C. 3107.06 categories for consent relative to this case include (A) The mother of the minor; (B) The father of the minor who **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 that he has a parent and child relationship with the minor; and (C) The putative father of the minor. (emphasis added).

In this case, the exceptions carved out in R.C. 3107.07 for when Consent to Adoption is not required that are relevant include:

(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 fifteen 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.

The Petitioners indicated that no person had timely registered pursuant to R.C. 3107.062 as a putative father and attached an addendum stating that while no one had yet registered, the 15-day period had not run, but if anyone did register, they would allege (based upon birth mother's testimony) that the registrant had failed to support the mother up to the time of placement and the

registrant failed to support and care for the child up to the time of placement. Had anyone registered, a further hearing on those allegations would have been required, but no one did timely register.

After stating that the trial court had correctly considered Kaidin a putative father, the appellate court then indicated that after the determination of paternity, he *also* had the status of “legal father.” *See* Appendix B. of Appellant Josephine D’s Brief at ¶8. This led the court to conclude that the trial court should now consider whether his consent was necessary under the allegations in R.C. 3107.07(A). *Id.* This was some four months after the Petition was filed. *See* Appendix A. of Appellant Josephine D’s Brief. Further both the appellate court’s decision and Appellee Kaidin’s brief constantly reference the January 29, 2021 hearing as a Consent hearing. This is a misnomer and legally significant. The January 29<sup>th</sup> hearing was not a Consent hearing, it was a hearing on Appellee Kaidin’s motion to intervene in the case and Appellants’ objections. The Consent hearing had already occurred on September 3, 2020.

R.C. 3107.07(A) states:

(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.

Allowing a father’s status to change after the filing of an adoption Petition undermines a mother’s right and responsibility to make an immediate plan for care for her newborn and places a child in a legal limbo without certainty of permanency. In addition, this would allow a putative father who failed to register with the OPFR, to later file a paternity action which gives the ability to disrupt the adoption at any point in the six months between placement and the finalization of

the adoption. This is not what the Ohio legislature intended when it created the putative father registry, and then again when it shortened the registration period from 30 days to 15 days. *See In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, ¶29. “The stated intent behind the creation of the registry and the inclusion of a 30-day registration deadline was to streamline the long and complicated process leading to the finalization of an adoption and to prevent unnecessary interruptions to the process caused by putative fathers belatedly attempting to exercise their rights.” *Id.*, citing *see In re Adoption of P.A.C.*, 126 Ohio St.3d 236, 2010-Ohio-3351, 933 N.E.2d 236, ¶56 (Cupp, J., dissenting), citing 64 Ohio Report No. 215, Gongwer News Service, Inc. (Nov. 9, 1995) 6, and 64 Ohio Report No. 198, Gongwer News Service, Inc. (October 17, 1995) 1.

Both this Court and the U.S. Supreme Court have understood that a putative father registry is not a violation of a man’s rights, but in fact, it is an orderly way for a child to secure placement into a permanent family. It bears repeating that the Third District Court of Appeal’s Decision if allowed to stand creates an uncertainty that will take away a mother’s right to place her child into a carefully chosen home with the promise of a permanent family for that child and would lead to extended judicial proceedings delaying permanency for the child.

The Ohio legislature has supported the facilitation of the adoption of children by creating laws that clearly define the status of a father and a putative father and that have strict and rigid timeframes. This Court has upheld these statutory guidelines and timeframes. *See In re Adoption of H.N.R.*, 2015-Ohio-5476; *see also In re Adoption of Zschach*, 75 Ohio St.3d 648, 650-652 (1996).

**2. THE STATUTORY CONSTRUCTION OF OHIO ADOPTION LAWS REQUIRES STRICT ADHERENCE TO CHRONOLOGICAL PROCEDURES AND STATUTORILY SET TIMEFRAMES TO SERVE THE BEST INTEREST OF THE CHILD TO BE ADOPTED.**

Chronological procedures and deadlines are the linchpins of the United States judicial system; without them, the entire system would fall apart. Throughout statutory language, words such as “before,” “after,” “prior to,” “not later than,” and “within” used in conjunction with a specified number of days, weeks, or months emphasize the importance of the timeliness to act. In Ohio adoption law, the legislature has created a statutory scheme that establishes a chronological order of events and deadlines to serve the best interest of the child to be adopted. “[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.” *In re H.N.R.*, 2015-Ohio-5476, ¶28, citing *In re Adoption of Zschach*, 75 Ohio St.3d 648, 652, 665 N.E.2d 1070(1996). Specifically, regarding the putative father registry, this Court has acknowledged that “[t]he nature of these conditions is such that each one must be satisfied chronologically in order for the next condition to arise.” *In re H.N.R.*, 2015-Ohio-5476, ¶19. “[A] man’s failure to timely register in the OPFR precludes him from receiving notice and an opportunity to prove that his consent as a mere putative father should be required for a child’s adoption.” *Id.* “Lengthier or more open-ended limitations on putative fathers would leave the rights of the parties to a pending adoption in a state of uncertainty and would impede the adoption process that had already begun.” *Id.* at ¶30.

Beginning with adoption definitions:

(H) “Putative father” means a man, including one under age eighteen, who may be a child’s father and to whom all of the following apply:

- (1) He is not married to the child’s mother at the time of the child’s conception or birth;
- (2) He has not adopted the child;
- (3) He has not been determined, **prior to the date a petition to adopt the child is filed**, to have a parent and child relationship with the child by a court proceeding pursuant to sections R.C. 3111.01 to 3111.18 of the

Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency in another state;  
(4) He has not acknowledged paternity of the child pursuant to sections 3111.21 to 3111.35 of the Revised Code. (emphasis added).

R.C. 3107.01(H). The statute defining “putative father” includes the unambiguous phrase “prior to the date a petition to adopt the child is filed.” R.C. 3107.01(H). Almost the exact same phrasing comes up again in R.C. 3107.06 “Consent to adoption,” which establishes that a father’s consent to an adoption is necessary if there has been legal establishment of a parent and child relationship with the minor, “[p]rior to the date the petition was filed.” R.C. 3107.06(B)(3). R.C. 3107.064 “Filing certified results of search” establishes when the certified results of an OPFR search are not required. R.C. 3107.064(B). R.C. 3107.064(B)(3) states:

**Prior to the date a petition to adopt the minor is filed**, a man has been determined to have a parent and child relationship with the minor by a court proceeding pursuant to sections 3111.01 to 3111.18 of the Revised Code, a court proceeding in another state, an administrative agency proceeding pursuant to sections 3111.38 to 3111.54 of the Revised Code, or an administrative agency proceeding in another state; (emphasis added).

It is clear from the preceding statutes and the repetitive use of the phrase “prior to the date the petition was filed” that the legislature has deliberately given weight to the timing of the filing of the petition for adoption. The preceding statutes are evidence that the legislature intended for the filing of the petition for adoption to be the cutoff point in which a determination of parentage shall be made for purposes of determining whether or not a putative father’s consent is required.

Furthermore, R.C. 3107.062 states, “A putative father may register at any time. **For the purpose of preserving the requirement of his consent to an adoption, a putative father shall register before or not later than fifteen days after the birth of the child.**” (emphasis added).

Note, the use of the word “shall,” very clearly indicates that in order to preserve a right to be heard

on Consent, a putative father shall register no later than fifteen days. It does not say **or** he may proceed with a paternity action.

“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.” R.C. 3107.061. R.C. 3107.07 “Consent unnecessary” states:

Consent to adoption is not required of any of the following:

- \*\*\*  
(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 fifteen days after the minor’s birth.**

R.C. 3107.07(B)(1).

“The putative father may register **prior to the birth of the child or within fifteen days following the birth of the child.**” Ohio Adm.Code 5101:2-48-01(D). This is yet another example in which the legislature has deliberately set a timeframe in which a putative father must act if he wishes to preserve the requirement of his consent to an adoption. The preceding statutes and administrative code section show a multitude of places in which the legislature has repeatedly established that a putative father has ample opportunity to register with the OPFR and that he must timely register to preserve the requirement of his consent to an adoption.

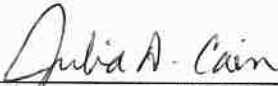
In the case at bar, Kaidin W. was on notice that if a child was born as a result of sexual intercourse with Josephine D. and he was the putative father, that the child may be adopted without his consent. Kaidin W. had ample opportunity to register with the OPFR. In mid-to-late August, Kaidin W.’s attorney advised him on the OPFR and suggested that he wait to register with the OPFR until after the baby was born. *See* Appendix B. of Appellant Josephine D.’s Brief p. 3. Kaidin W. did not have to wait until H.P. was born to register with the OPFR. He could have

registered at any time during the 9 months leading up to the birth of H.P. through 15 days after H.P.'s birth. Kaidin W. alleges that he received bad legal advice, but even if true, that should not be the basis to alter the entire practice of adoption by ignoring the legislature's structure for the determination of who is entitled to notice of an adoption proceeding.

#### **IV. CONCLUSION**

Affirming the Third District Court of Appeals decision in this case will impede the adoption process in Ohio. Allowing a putative father to change his status after the filing of an adoption Petition increases the possibility of a disrupted adoption thereby bringing uncertainty and unpredictability into an adoption. Allowing putative fathers to disregard the statutory deadlines set forth in Ohio's adoption laws, blatantly ignores the black letter of the law and ignores the legislative intent of enacting laws that promote the best interest of the child to be adopted. Ohio's adoption laws provide clear and unequivocal timeframes and guidelines regarding who is required to consent to an Adoption and under what circumstances. The Probate Judge understanding those guidelines and timeframes rendered a decision that prohibited the putative father from intervening in the pending adoption case because he failed to adhere to the timeframes. This Court is urged to support the fundamental right of a mother to make an adoption plan for her child and respecting the legislative intent by strictly adhering to the chronological procedures and statutorily set timeframes.

Respectfully Submitted,

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

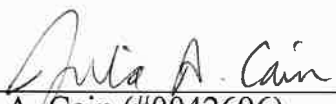
I hereby certify that I have served a copy of the foregoing *Memorandum in Support as Requested by Appellants – Amicus Curiae, Academy of Adoption and Assisted Reproduction Attorneys* by email, fax or regular U.S. mail this 16 day of May, 2022, upon the following:

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