

2000

# In re Adoption: Baby Boy Vedadi : Brief of Appellant

Utah Court of Appeals

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Sharon Preston; Attorney for Appellant.

Candice Ragsdale Pollack; Attorney for Appellees.

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IN THE UTAH COURT OF APPEALS

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In re Adoption of:

Baby Boy Vedadi.

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) Case No. 20000449CA

) Priority No. 4  
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BRIEF OF APPELLANT

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This is an Appeal from a Final Judgment Entered on May 1, 2000, Denying Appellant's Motion to Hold Utah Code Ann. § 78-30-4.14(2)(b)(iii) Unconstitutional, and a Final Judgment Entered on August 23, 1999, Finding that Appellant Failed to Comply with U.C.A. § 78-30-4.14(2)(b)(iii) and Thus Was Not Entitled to Contest the Adoption of His Biological Son, Both Having Been Entered After a Bench Trial before the Honorable Judge Roger Livingston, in the Third District Court in and for Salt Lake County, Utah.

SHARON PRESTON (7960)  
Attorney for Appellant  
3839 South West Temple, #1B  
Salt Lake City, UT 84115  
Tel: (801) 269-9541  
Fax: (801) 269-9581

CANDICE RAGSDALE POLLACK  
Attorney for Appellees  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84101  
Tel: (801) 539-0751  
Fax: (801) 539-6973

**FILED**

DEC 29 2000

COURT OF APPEALS

In re Adoption of:  
  
Baby Boy Vedadi.  
  
Case No. 20000449CA  
Priority No. 4

This is an Appeal from a Final Judgment Entered on May 1, 2000, Denying Appellant's Motion to Hold Utah Code Ann. § 78-30-4.14(2)(b)(iii) Unconstitutional, and a Final Judgment Entered on August 23, 1999, Finding that Appellant Failed to Comply with U.C.A. § 78-30-4.14(2)(b)(iii) and Thus Was Not Entitled to Contest the Adoption of His Biological Son, Both Having Been Entered After a Bench Trial before the Honorable Judge Roger Livingston, in the Third District Court in and for Salt Lake County, Utah.

SHARON PRESTON (7960)  
Attorney for Appellant  
3839 South West Temple, #1B  
Salt Lake City, UT 84115  
Tel: (801) 269-9541  
Fax: (801) 269-9581

CANDICE RAGSDALE POLLACK  
Attorney for Appellees  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84101  
Tel: (801) 539-0751  
Fax: (801) 539-6973

**CERTIFICATE OF INTERESTED PARTIES**

The following individuals and attorneys participated in these proceedings as parties before the district court:

Candice Ragsdale-Pollack  
Attorney for Mark and Genevieve Greeley  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

Gary Bell  
Attorney for Wendy Vedadi  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

Sharon Preston  
Attorney Scott Hartwig  
3839 South West Temple, #1B  
Salt Lake City, Utah

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IN THE UTAH COURT OF APPEALS

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In re Adoption of:

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BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to Utah Code Ann.  
§ 78-2-3(2)(h)(2000).

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

See Addendum A for text of pertinent statutes, rules,  
and constitutional provisions.

ISSUES, STANDARDS OF REVIEW, AND PRESERVATION OF ARGUMENT

ISSUE NO. 1: Does Section 78-30-4.14(2)(b)(iii) of the  
Utah Code violate the Equal Protection Clause of the U.S.  
Constitution because it makes the rights of biological  
fathers, but not mothers, conditional upon payment of birth

and pregnancy-related expenses? Standard of Review: Gender-based classifications "will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest." Mills v. Habluetzel, 456 U.S. 91 (1982). Preservation: (R. 308-311).

**ISSUE NO. 2:** Does Section 78-30-4.14(2)(b)(iii) of the Utah Code violate the Equal Protection Clause of the U.S. Constitution because it terminates the parental rights of certain classes of unwed fathers, and not other classes of unwed fathers, although there is no practical difference between the classes of unwed fathers? Standard of Review: Legislation is presumed valid and will be sustained on an equal protection challenge if the classification drawn by the statute is rationally related to a legitimate state interest. City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985). Preservation: (R. 308-311).

**ISSUE NO. 3:** Does Section 78-30-4.14(2)(b)(iii) of the Utah Code violate the Due Process Clause of the United States Constitution because it terminates the parental rights of biological fathers who have made their identity

known, and taken substantial steps to demonstrate an interest in and commitment to their child, prior to the child's birth? Standard of Review: The due process clause of the Federal Constitution's Fourteenth Amendment forbids the government to infringe fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. Washington v. Glucksberg, 521 U.S. 702 (1976). Preservation: (R. 308-311).

**ISSUE NO. 4:** Does Section 78-30-4.14(2)(b)(iii) of the Utah Code violate the Due Process Clauses of the Utah Constitution since this provision deprived Hartwig of his parental rights although he had made his identity known prior to the child's birth, and taken substantial steps to demonstrate his commitment to his child? Standard of Review: The parental interest is a fundamental right to be invaded only to the extent necessary to promote a compelling state interest. In re JP, 648 P.2d 1364 (Utah 1982). Preservation: (R. 308-311).

**ISSUE NO. 5:** Is Section 78-30-4.14(2)(b)(iii) of the Utah Code unconstitutionally vague? Standard of Review: "[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential part of due process of law." Connally v. General Construction Co., 269 U.S. 385, 391 (1926). Preservation: (R. 308-311).

**ISSUE NO. 6:** Did the trial court err when it ruled that Hartwig failed to comply with Section U.C.A. § 78-30-4.14(2)(b)(iii)? Standard of Review: "When reviewing a bench trial for sufficiency of the evidence, the trial court's judgment must be sustained unless it is against the clear weight of the evidence, or [unless] the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." State v. Layman, 953 P.2d 782, 786 (Ut.Ct.App. 1998). Preservation: This issue was the subject of a bench trial on June 23, 1999.

### STATEMENT OF THE CASE

Mr. Hartwig is the unwed biological father of Baby Boy Vedadi, who was born on February 14, 1999. The biological mother, Ms. Wendy Vedadi, placed the baby for adoption 24 hours after his birth, and Hartwig filed a Motion to Enjoin and Dismiss the Petition for Adoption on the grounds that he had complied with all of the requirements set forth in Section 78-30-4.14 of the Utah Code (governing the rights of biological fathers to block the adoption of their children by third parties). Section 78-30-4.14 provides that Mr. Hartwig's son may be adopted by third parties without his consent unless he strictly complied with the three provisions set forth in Section 78-30-4.14(2)(b).

On June 23, 1999, the trial court entered an order declaring that Hartwig properly and timely complied with the first two provisions of that section by filing a Notice and Petition for Paternity prior to the baby's birth. In July of 1999, after an evidentiary hearing, the trial court entered an order stating that Hartwig had not strictly complied with Section 78-30-4.14(2)(b)(iii) and that his consent was therefore not required to the adoption of

child. The court's order effectively terminated Hartwig's parental rights with respect to his infant son. On May 1, 2000, the trial court entered an order denying Hartwig's Motion to Hold Section 78-30-4.14(2)(b)(iii) of the Utah Code Unconstitutional. Hartwig filed a Notice of Appeal on May 25, 2000.

### **STATEMENT OF THE FACTS**

Scott Hartwig met Wendy Vedadi in January of 1998. (R. 451 at pages 32:6-14, 205). Vedadi was the mother of four children, ages 7, 11, 14 and 18 months (R. 451 at p. 105:14-23). Hartwig was 33 years old (R. 451 at p. 1-11), and did not have any children of his own (R. 451 at p. 39:2-7). When Hartwig met Vedadi, he was employed full time at a garden shop and involved in softball during much of his free time. (Addendum F, Affidavit of Scott Hartwig). Hartwig often took Vedadi and her children to his weekly softball games. (R. 451 at pages 18-22, 116:11-24). Hartwig and Vedadi became engaged in approximately May of 1999. (R. 451 at p. 32:15-20).

Soon after they became engaged, Vedadi informed Hartwig that she was pregnant with his child. (R. 451 at p. 34:7-

11). Hartwig was elated to learn that he would be a father. (R. 451 at pages 32:22-25, 33:1-2, 34:7-22, 45:P-1). Hartwig immediately called his family and friends to report the good news about Vedadi's pregnancy. (R. 451 at pages 35:5-14, 119:23-25, 120:1-14). Hartwig attended a doctor's appointment with Vedadi in July of 1999. (R. 451 at pages 19-24, 148:9-14). During that appointment, Hartwig listened to the baby's heartbeat. (R. 39 at 2-7). After learning of the pregnancy, Hartwig began purchasing diapers and other items for the baby. (R. 451 at pages 50:1-18, 52:8-23, 384:9). Hartwig and Vedadi also picked a name for the baby: Justice Reade Hartwig. (R. 451, P. 38:4-18).

The relationship between Vedadi and Hartwig was rocky from the beginning, and the couple broke up and reconciled several times between May and October of 1999. (R. 451 at pages 33:7-10, 35:22-25, 37:22-25, 42:3-10, 49:15-17, 169:14-16). After a breakup in July of 1998, Vedadi threatened Hartwig for the first time that she was going to give their baby up for adoption. (R. 451 at p. 89:4-11). Hartwig realized that he might be solely responsible for the baby, and made a list of things to do, including "save money for doctor bills (1/2)" and "get insurance for me,

baby, and Wendy," and "set up baby's bedroom." (R. 451 at 67:18-25, 68:1-25, p. 450, Exhibit P-6).

Hartwig did not have medical insurance for himself when he found out that Vedadi was pregnant. (R. 451 at p. 77:11-13, 79:12-20). Hartwig made inquiries, but was unable to obtain medical insurance for Vedadi through his employer after he learned Vedadi was pregnant. (R. 451 at p. 193:6-14).<sup>1</sup> Vedadi had already been receiving Medicaid for her other children prior to her relationship with Hartwig, (R. 451 at p. 167:20-23, 191:1-11), and after learning that she was pregnant, she applied to extend that coverage to her pregnancy. (R. 451 at 190-191). Ultimately, Medicaid paid for the expenses of Vedadi's pregnancy and birth, except for a few office visits at the beginning of the pregnancy. (R. 451 at pages 157:15-25, 158:1-16).

In October of 1998, Vedadi broke off their relationship permanently. (R. 451 at pages 51:1-10, 52:24-25, 53:1-12). At that time, Vedadi again told Hartwig that she intended to give their child up for adoption. (R. 451 at pages 55:2-16). Vedadi was adamant in her desire to end the

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<sup>1</sup> Hartwig asks this Court to take judicial notice of the fact that private insurance companies will not issue a new policy for medical benefits on a woman who is pregnant at the time of applying for coverage.



relationship, and Hartwig acquiesced. (R. 451 at p. 53:1-12). When Hartwig went to pick up his belongings from Vedadi's home, Vedadi included among Hartwig's belongings certain items such as maternity clothes, that Hartwig had purchased for Vedadi. (R. 451 at 51:4-25, 52:1-5, 161:16-25). Vedadi told Hartwig that she would not return his phone calls in the future, (R. 451 at p. 184:5-10), because Vedadi considered Hartwig's assertions that he wanted to keep his baby and would do whatever necessary to prevent the adoption, as "threats." (R. 451 at page 184:5-22). Hartwig tried to call Vedadi several times in November and December, but she would not accept nor return his calls. (R. 450 at pages 53:3-25, 54:1-23, 182:19-25, 183:1-5, 184:1-10, 204:6-19, 241:4-19).

Vedadi testified that she purchased some diapers for the baby at the beginning of her pregnancy, (R. 451, P. 171-172), but did not buy anything else for the baby throughout her pregnancy. (R. 451, P. 171:21-25, P. 172:1-4). She testified that she spent a total of "a couple of hundred dollars" for costs relating to her pregnancy. (R. 172-173).

Shortly after the October breakup, Hartwig contacted Utah Department of Recovery Services, to ask what he could do regarding Vedadi's threats to give the baby up for adoption. (R. 451 at pages 56-57). The person with whom he spoke assured Hartwig that some forms would be sent to Hartwig, and instructed Hartwig to fill the forms out and return them. (R. 451 at p. 57:8-23, 80:12-22). Hartwig filled the forms out, named himself as the father, and gave all of the information requested regarding his own assets and employment. (R. 450, Form Entitled "Parents Background Information"). Hartwig testified that he believed the form served the purpose of identifying himself as the baby's father, naming himself as the responsible party for the medical expenses, and asserting his interest in obtaining custody of the baby. (R. 451 at p. 58:2-8, 79:21-25, 80:1-5). Where the form asked if the father had completed a "Voluntary Acknowledgment of Paternity," Hartwig made a handwritten note, saying, "Isn't this one?" (R. 450, Form Entitled "Parents Background Information").

From October of 1999 up until the baby's birth, Hartwig purchased baby furniture, clothing, diapers, and various other supplies. (R. 451 at pages 63:4-25, 64:1-6, 114:9-

13). In fact, he completely furnished an entire nursery for the baby at his apartment. (R. 451 at pages 66:2-16, see also Addenda F and G). Hartwig made inquiries regarding medical insurance for the baby, but was told that he could not enroll the baby without information regarding his birth, social security number, etc. (R. 451 at pages 104:13-23, 109:1-17). From October until the baby's birth, Hartwig constantly expressed his concern for his unborn child to friends and family. (R. 451, pages 121, 240:3-10).

A little after December 15, 1998, the Recovery Services form that Hartwig had filled out was returned to him in the mail, along with a note stating that Utah Recovery Services did not deal with custody issues. (R. 450, Exhibit P-3). After that, Hartwig started making telephone calls to various agencies, including Vedadi's doctors and the hospital where he believed his child would be born. (R. 451 at p. 6-16). In January of 1999, Hartwig began searching for an attorney, and retained counsel in early-January. (R. 451 at p. 1- 18).

On January 16, 1998, Hartwig sent letters, through his attorney, to Vedadi's medical providers, naming himself as the responsible party and asking that medical bills be sent

directly to him. (R. 450, Exhibits P-4 and P-5, R. 452 at pages 61:1-25, 62:1-12). On January 20, 1999, Hartwig filed a Complaint for Paternity with the Third District Court. (See Addendum E). Vedadi was personally served with the Complaint for Paternity on January 20, 1999. (R. 111). On January 25, 1999, Hartwig filed a "Notice of Commencement of Paternity Proceedings," with the Utah Department of Vital Statistics (R. 49). Along with his Complaint for Paternity, Hartwig filed an affidavit stating his desire and ability to obtain custody of his child, and expressing his willingness to submit to a court order requiring him to pay his share of expenses related to the pregnancy and birth. (See Addendum G).

On February 14, Vedadi gave birth to a baby boy. The next day, Vedadi relinquished her own parental rights and gave her consent to the baby being adopted by Marc and Genevieve Greeley. (R. 24). The baby was immediately turned over to the custody of the Greeleys. (R. 33).<sup>2</sup> In March of 1999, DNA testing was conducted, and Hartwig's paternity of the baby was confirmed. (R. 108-109). On March 26, 1999,

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<sup>2</sup> Vedadi also relinquished custody of her 2-year-old daughter Hope to the Greeleys, although Hope had lived in the Vedadi's home since birth with Vedadi's other children. (R. 33).

Hartwig filed a Petition to Enjoin and Dismiss Adoption Proceedings and a Motion For Temporary Order requesting temporary custody. (R. 41-60).

In April and May of 1999, Hartwig voluntarily underwent a psychological evaluation for the purpose of providing information to the court in support of his request for unsupervised visitation. (R.209-213). The psychologist's report indicated that Hartwig's test scores indicated that he had "superior parenting knowledge and capacity." (R. 211).

In June of 1999, Adoption Associates conducted a thorough study of Hartwig and his home. (R. 204-207). That study indicated that Hartwig has no criminal record whatsoever, and no history of abuse or neglect of children. (R. 206). Collateral references, many of whom had used Hartwig as a babysitter, confirmed that Hartwig was "affectionate, patient, calm, happy, easy going, playful with children, and calm." (R. 206). One reference expressed, "Hartwig is the most prepared for a new baby that I have ever seen anyone be. Any child would be lucky to receive his love and care." (R. 206). The social worker concluded: "Hartwig appears unusual in his motivation to

gain custody of his child. He appears to be responsible and capable of making the sacrifices necessary to care for his child. He appears to enjoy children and is often used to babysit his friends' children. He is financially responsible, and his work allows him the flexibility needed to meet the needs of his child. His health is good. The apartment where he lives is adequate for a child, and he has made extensive preparations to provide the clothes, equipment, and accessories needed to care for a child. There appears to be no reason why Hartwig should not receive custody." (R. 207-208).

In June of 1999, Hartwig sent a money order for \$1,000.00 to the Greeley's, through their attorney, for partial reimbursement of expenses related to pregnancy and birth. (R. 450, Letter Dated June 5, 1999; Copy of Money Order).

From April to July, 1999, Hartwig was permitted to exercise supervised visitation with his son for several hours each week. (R. 260- 263). Hartwig took care of the baby, played with him, and formed a very strong bond with the baby. (R. 262, 265-267). A pediatric nurse who observed the visitations described Hartwig as very loving, gentle,

and patient with his son. (R. 255-258). Even the supervisors selected by the Greeleys observed that Hartwig was patient, competent, and loving with his son. (R. 269-274). Hartwig paid approximately \$600.00 per month to Willwin Services for their services in supervising the visitation. (R. 260).

In July of 1999, this court entered an order stating that Hartwig had not strictly complied with Section 78-30-4.14(2)(b)(iii) and that his consent was therefore not required to the adoption of child. The court's order effectively terminated Hartwig's parental rights with respect to his infant son.

### **SUMMARY OF ARGUMENT**

Utah's current adoption statute, which was adopted in 1995, imposes new and additional requirements upon unwed biological fathers who wish to prevent the adoption of their children by third parties. These new provisions have not yet been reviewed by an appellate court in Utah. Previous versions of the adoption statute required biological fathers to register their claim of paternity with the Utah Department of Health, or forever waive their

rights to prevent the adoption of their offspring. Utah Code Ann. § 78-30-4(3)(a)(d) (Supp. 1975). The new version of the statute requires that an unwed father not only file a petition for paternity and custody, along with an affidavit stating his willingness to accept financial responsibility for his child, but also that a father "[pay] a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child." Utah Code Ann. 78-30-4.14(2)(b)(iii)(1999).

Section 78-30-4.14(2)(b)(iii) violates the Equal Protection Clause of the United States Constitution because it imposes a "financial responsibility test" on fathers based solely on gender, when there are no inherent differences based on gender which make women more likely than men to assume financial responsibility for their children. Additionally, Section 4.14 improperly discriminates between various classes of unwed biological fathers, allowing some unwed fathers to establish paternity by merely filing a simple form jointly with the mother,



while requiring others to prove that they have paid birth- and pregnancy-related expenses. Furthermore, the state's asserted interests in providing for speedy finalization of adoptions is not promoted, but in fact undermined, by Section 78-30-4.14(2)(b)(iii).

Section 78-30-4.14(2)(b)(iii) violates Due Process Clause of the Utah and United States Constitutions because it deprives Hartwig of his parental rights, although Hartwig's identity and paternity were established, and Hartwig had shown a significant paternal interest in his child. Furthermore, the state's interest in promptly finalizing adoptions is not promoted, but in fact undermined, by Section 78-30-4.14(2)(b)(iii).

Finally, the trial court erroneously determined that Scott Hartwig did not comply with Section 78-30-4.14(2)(b)(iii), although Hartwig made substantial expenditures for his child's benefit, named himself as the responsible party with medical providers and the Utah Office of Recovery Services, and was never informed of expenses or billed for medical expenses in spite of his requests.

## ARGUMENT

### I. Section 78-30-4.14(2)(b)(iii) of the Utah Code Violates the Equal Protection Clause of the United States Constitution.

#### a. **Utah's Adoption Statute Is Based Upon an Improper Gender-Based Distinction.**

Utah's Adoption Statute mandates that unwed biological fathers have no right to block the adoption of their children unless they first demonstrate that they have paid their fair share of expenses related to pregnancy and birth. Utah Code Ann. 78-30-4.14(2)(B)(iii)(1999). Unwed biological mothers may block the adoption of their children without demonstrating the same thing. Utah Code Ann. 78-30-4.14(1)(c)(1999). Thus, the applicability of Section 78-30-4.14(2)(b)(iii) depends on the gender of the biological parent.

"Gender-based distinctions must serve important governmental objectives and must be substantially related to achievement of those objectives in order to withstand scrutiny under the Equal Protection Clause. " Caban v.

Mohammed, 441 U.S. 380, 388-89 (1979) (quoting Craig v. Boren, 429 U.S. 190, 197 (1976)).

In Caban, the Supreme Court held that a state law which prevented an unwed biological father from contesting the adoption of his children under any circumstances violated the Equal Protection Clause. The Court explained that the provision did not bear a substantial relationship to the state's professed interest of providing adoptive homes for illegitimate children — because unwed biological fathers were no more likely to impede adoption than unwed mothers. The court noted that while there are inherent differences between men and women such that the mother's identity and location is always known, while the father's often is not, "the effect of New York's classification is to discriminate against unwed fathers even when their identity is known and they have manifested a significant paternal interest in the child." Id. at 1760. The Caban court rejected "the harshness of classifying unwed fathers as being invariably less qualified and entitled than mothers to exercise a concerned judgment as to the fate of their children." Id. at 1760.

Utah's statute is admittedly different from the statute in Caban because Utah's statute does not prevent all unwed biological fathers from blocking the adoption of their children. Nevertheless, 78-30-4.14(2)(b)(iii) does operate to prevent many biological fathers from blocking the adoption of their children - "even when their identity is known and they have manifested a significant paternal interest in the child." Caban at 1760. The provision must therefore "serve important governmental objectives and must be substantially related to achievement of those objectives in order to withstand scrutiny under the Equal Protection Clause." Caban.

The state objectives underlying this provision are set forth expressly in Section 78-30-4.12, which provides that "the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children." The Utah Supreme Court has already determined that these general goals are indeed important government objectives. See Wells v. Children's Aid Society, 681 P.2d 199, 204 (Utah 1984). Thus, the question here is

whether the classification created by the statute is "substantially related to achievement of those objectives." Caban at 388-89.

In Wells the Utah Supreme Court confirmed the constitutionality of a provision of Utah's adoption statute which required biological fathers, but not mothers, to simply file a notice of claim of parenthood in order to protect their right to contest the adoption of their children. The Wells court explained the substantial relationship between the paternity registration requirement and the state's interests, as follows:

It is vitally important to know finally and immediately if a newborn illegitimate child may be adopted. The statute seeks to balance the competing interests of the child and the putative father by first, identifying the person who acknowledges paternity and the resultant responsibilities, and second, if such identification does not occur, allowing for speedy adoption.

Wells at 204. Thus, the Wells court recognized that the inherent difference between women and men with regards to identification and proof of parenthood justified the differential treatment in that case because the differential treatment was reasonably calculated to advance the state's interest in having adoption of eligible

children take place in a speedy manner. Id. The court explained that the state's important goal of having adoptions be finalized quickly is undermined if agencies and mothers are required to make efforts to identify fathers who have not come forward – or if such fathers are allowed to come forward later rather than sooner. Id.

In contrast, the differential treatment based on gender embodied in Section 78-30-4.14(2)(A)(iii) is unrelated to the inherent differences between men and women with regards to identification and proof of parenthood. Biological fathers who have timely registered their claim of paternity and their willingness to be legally and financially responsible for their children are nevertheless required to also prove that they have paid their share of pregnancy and birth-related expenses (within 24 hours of the child's birth) or lose their parental rights forever.

Furthermore, this requirement, unlike the paternity registration requirement, is not reasonably calculated to advance the state's purported interests. First, the state has asserted an interest in promptly knowing if a father will assert his rights, so that adoption of eligible children can proceed promptly. While paternity registration

requirements allow a prompt and immediate determination as to whether an adoption may go forward, Section 78-30-4.14(2)(b)(iii) requires a complicated factual inquiry in every case as to the father's means, the amount and nature of pregnancy and birth-related expenses, what would constitute the father's "fair share" of such expenses, and whether the father was prevented from paying by someone having custody of the child. Thus, instead of promoting a prompt and final determination as to the eligibility of a child for adoption, this provision invites litigation and delay in every case where the father's rights turn on this particular provision.

Moreover, the state asserts an admittedly valid interest in preventing disruption of adoptive placements. However, this goal is not advanced either, but instead also undermined by the requirements of Section 78-30-4.14(2)(b)(iii) - because adoptive placements will not become permanent until the complex factual determinations required by the provision, and the inevitable litigation regarding the same, are complete.

Finally, the state has asserted an interest in "holding parents accountable for meeting the needs of children." If

the state's interest is in promoting or determining the financial responsibility of biological parents, there is no reason why this requirement should be imposed on unwed biological fathers and not unwed biological mothers. Although there is admittedly an inherent difference between men and woman when it comes identity and proof of parenthood, there is no inherent difference when it comes to financial responsibility. At any rate, the state's asserted interest is expressly gender neutral (i.e. the state seeks to hold "parents" accountable, not just fathers) – and thus cannot justify a provision which treats parents differently based on gender.

In sum, the requirement that hinges the parental rights of unwed biological fathers, but not mothers, on payment of pregnancy and birth-related expenses is not justified by inherent differences between mothers and fathers, and is not substantially related to the state's asserted interests. Furthermore, like the statute in Caban, "the effect of [the state's] classification is to discriminate against unwed fathers even when their identity is known and they have manifested a significant paternal interest in the child." *Id.* at 1760. Thus, Section 78-30-4.14(2)(b)(iii)



violates the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution.

**b. Utah's Adoption Statute Is Based Upon an Improper Distinction Between Various Classes of Unwed Biological Fathers.**

Under the Equal Protection Clause, even a general classification which results in differential treatment of similarly situated parties must be "rationally related to a legitimate state interest." City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985).<sup>3</sup> Utah's Adoption Statute mandates significantly distinct treatment of different classes of biological fathers with regards to their

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<sup>3</sup> Hartwig argues here that the discriminatory treatment of the various classes of unwed biological fathers is not "rationally related" to "a legitimate government interest." However, if this Court finds that Hartwig manifested a significant paternal interest in his infant son, and thus developed a fundamental right with regards to that relationship, see e.g. Lehr v. Robertson, 463 U.S. 248, 262 (1983), then this classification should be subjected to a "strict scrutiny" test since it operates to deprive Hartwig of a fundamental right. See e.g. Zablocki v. Redhail, 434 U.S. 374, 383, 388 (1978) (classification causing impediment to marriage restricts fundamental right and is therefore subject to strict scrutiny). In that case, the classification is required to be "narrowly tailored" to a "compelling government interest." Id. Clearly, where, as argued here, the classification is not even rationally related to the asserted interests it purports to advance, it is not narrowly tailored to the advancement of those interests.

parental rights. The statute provides that the following three classes of unwed biological fathers may block the adoption of their children by withholding their consent:

(1) . . .

(a) . . .

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the other's execution of her consent or her relinquishment to an agency for adoption;

(e) any biological parent who has executed a voluntary declaration of paternity in accordance with Title 78, Chapter 45e, prior to the mother's execution of her consent or her relinquishment to an agency for adoption;

(f) an unmarried father . . . if [all of following requirements are met prior to the mother's execution of her consent or her relinquishment to an agency for adoption]:

(2) (b) (i) [the father has] initiated [judicial] proceedings to establish paternity . . . and filed with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) the father has] filed notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health in a confidential registry established by the department for that purpose; and

(iii) if the father had actual knowledge of the pregnancy, [he must have] paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

Utah Code Ann. 78-30-4.14 (1999). The first class of unwed biological fathers described above may preserve their parental rights by obtaining a judicial adjudication of paternity. Since mothers are permitted to relinquish their children for adoption 24 hours after birth pursuant to Section 78-30-4.19, this method of preserving parental rights is simply not available to biological fathers in newborn adoptions unless the mother stipulates to paternity (since adjudication of a paternity complaint would necessarily take several months).

The second class of biological fathers may preserve their parental rights by simply executing a "voluntary declaration of paternity," a simple one-page document. Importantly, a biological father may only execute a voluntary declaration of paternity jointly with the biological mother. Utah Code Ann. § 78-45e-3 (1999).

Finally, there is a third class of unwed biological fathers of which Hartwig is a member. These fathers must file a Notice of Paternity with the Department of Health, and also a Complaint for Paternity and Custody in the courts. The complaint for Paternity and Custody must be accompanied by an affidavit in which the father acknowledges his willingness to support his child and to pay all expenses related to the pregnancy and birth. These documents must be executed and filed before the mother executes her consent to adoption - often within 24 hours of the child's birth.

Having established the classification system embodied in Utah's Adoption Statute, an analysis under the equal protection clause requires an inquiry into the asserted state interest underlying the classification, and the relationship between the classification and the asserted interest. Section 78-30-4.12 expressly provides that "the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children." These are admittedly legitimate state interests,

so the question becomes whether the classification created by the statute has a "rational relationship" to the interest asserted by the state. City of Cleburne at 446.

"The term 'rational' . . . includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class." Id. (J. Stevens, concurring). Furthermore, "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." City of Cleburne at 446 (citing Zobel v. Williams, 457 U.S. 55, 6163 (1982)).

In Utah's Adoption Statute, there is no apparent difference between the three classes of fathers which would justify requiring proof of payment of pregnancy and birth-related expenses from the third class of biological fathers. In fact, the third class of biological fathers necessarily become a member of that class, not because of any difference in their commitment to their children, but either because not enough time has passed to obtain a judicial adjudication of paternity (without the mother's consent), or because the biological mother will not jointly

execute the declaration of paternity. Thus, the primary and perhaps only difference between the fathers in the first two classes, and the fathers in the third class is whether the mother herself is willing to cooperate with the father's efforts to establish his paternity.

There is nothing about the first two classes of fathers which supports the premise that they would be more likely to provide financial support to their children. In fact, many "deadbeat fathers" will fall into the first class of fathers because their paternity is often adjudicated in a child support proceedings. If anything, the third class of fathers would seem the most likely to provide financial support, since these fathers have voluntarily filed a sworn affidavit with the court agreeing to an order against them for child support and medical expenses. There is no rational reason why these particular fathers should be forced to go one step further and prove that they have paid pregnancy and birth-related expenses (within 24 hours of the child's birth) - or lose their child forever.

Moreover, the classification simply does not bear a rational relationship to the state's professed goals. First, the classification does not assure that adoptions

will be finalized promptly, or that adoptive placements will not be disturbed. In fact, it virtually assures the opposite. In every instance where the finality of an adoption turns on the provision set forth in Section 78-30-4.14(2)(b)(iii), an evidentiary hearing will be required to determine the amount of the pregnancy and birth-related expenses, whether the biological father paid his fair share within his means, and whether the person having custody of the child prevented the father from paying those expenses. Inevitable litigation of this issue will cause, not prevent, delays in the finality of adoption proceedings.

In sum, the state's asserted goal is simply not advanced by the differential treatment of these classes of biological fathers. Because Section 78-30-4.14(2)(b)(iii) arbitrarily discriminates against one class of biological it violates the Equal Protection Clause of the United States Constitution.

II. Section 78-30-4.14(2)(b)(iii) is Unconstitutionally Vague.

"[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential part of due

process of law." Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

The U.S. Supreme Court has held that the vagueness doctrine applies to civil as well as criminal statutes. See A.B. Small Company v. American Sugar Refining Company, 267 U.S. 233, 239 (1925). The degree of vagueness that is constitutionally permissible, depends in part on the nature of the statute in question. For example, economic regulations are subject to a less strict vagueness test and courts have permitted greater tolerance of enactments with civil penalties "because the consequences of imprecision are qualitatively less severe." Hoffman Estates v. Flipside, 455 U.S. at 498-99 (1982).

Section 78-30-4.14(2)(b)(iii) operates to deprive a biological father of his "opportunity interest to develop a relationship with his biological children . . . a liberty interest under the Due Process Clause of the United States Constitution. Lehr v. Robertson, 463 U.S. 248, 262 (1983). Thus, although the adoption statute at issue is civil and not criminal, the consequences of imprecision in the statute are severe indeed. A father who is forced to guess at the meaning of the statute, and guesses wrong, is cut



off forever from his biological offspring. Accordingly, the statute must clearly be held to a high standard of clarity.

In the instant case, Utah's adoption statute required Hartwig to "pay a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth." Hartwig was required to comply with this provision by 24 hours after the baby's birth (because this is when the mother executed her consent). The statute does not specify whether "payment of expenses incurred" includes reimbursement of expenses paid by insurance companies or state agencies. The statute also does not specify whether "expenses" refers to medical expenses only, or if it refers to expenditures in general such as baby clothes or diapers, or if includes the mother's living expenses during the pregnancy. Furthermore, the statute does not provide any instructions as to how the expenses are to be paid when the father has not been informed of the actual expenses.

Hartwig did not construe this provision to mean that he was required to pay cash to the mother during her pregnancy, or to make payments to medical providers absent any evidence of the actual expenses incurred. He instead

construed the statute to mean that he should pay his share of expenses, once such expenses were incurred and made known to him. Thus, he made it known to the health care providers that he was the financially responsible party, and requested in writing that medical bills be sent to him. He also construed the provision to mean that, since he knew the medical expenses were being paid by Medicaid, he should register himself with the Office of Recovery Services so that he could be billed for reimbursement once the expenses were calculated. He further construed the statute to mean that he should make expenditures for his baby's benefit, which he did. He purchased clothing, baby supplies, and furniture to be used by the baby after his birth.

If Hartwig's interpretation of the requirements of Section 78-30-4.14(B)(2)(iii) was wrong, then the language of that provision simply does not provide clear instructions as to what is required of a biological father under these circumstances. Because of the lack of clarity in the provision, men of common intelligence would have to guess at its meaning and differ as to its application. Where the statute operates to deprive biological fathers of the opportunity to have a relationship with their

biological children, it clearly violates "the first essential part of due process of law." Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

III. Section 78-30-4.14(2)(b)(iii) as Applied to Hartwig Violates the Due Process Clauses of the Utah and United States Constitutions.

Section 4.14(2)(b)(iii) violates the Due Process Clauses of the Utah and United States Constitutions because the provision mandates the termination of Hartwig's parental rights even though Hartwig made substantial efforts to assume financial and legal responsibility for his child.

**a. Due Process Under the Federal Constitution**

The Fourteenth Amendment to the U.S. Constitution provides that no State shall deprive any person of life, liberty, or property without due process of law. See Lehr v. Robertson, 463 U.S. 248, 256 (1983). In Lehr, the U.S. Supreme Court upheld the constitutionality of a state provision preventing fathers from contesting the adoption of their children unless they had registered with a putative fathers registry. *Id.*

The Lehr court held that "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the Due Process Clause." The Court noted that "the significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship." Id. at 262. In upholding the paternity registration, the Lehr court noted that a provision preventing fathers from contesting the adoption of their children might violate the due process clause if the provision "[excluded] many responsible fathers, or if qualifications [for preserving parental right] was beyond the control of an interested putative father." Id.

Section 78-30-4.14(2)(b)(iii), like the statute at issue in Lehr, denies certain biological fathers, those who have not paid pregnancy and birth-related expenses by the time the mother executes her consent, the right to object

to the adoption proceedings of their children. But unlike the statute in Lehr, Section 78-30-4.14(2)(b)(iii) violates the Due Process Clause as applied to Hartwig because it operates to terminate his parental rights in spite of his reasonable efforts to assume legal and financial responsibility for the child.

First, it should be noted that the latest date upon which Hartwig could have complied with the provisions of Section 78-30-4.14, including the provision requiring him to pay his share of expenses, was 24 hours after his son's birth. Section 4.14 provides that the "biological father must comply with all of the given provisions prior to the time the mother executes her consent for adoption." In this case, Vedadi executed her consent to the adoption the day after the infant's birth.

Furthermore, the mother in this case was receiving Medicaid for her other two children when she became pregnant with Hartwig's son. (R. 451 at pages 190-191). Hartwig was unable to secure medical insurance through his employer, and shortly after Vedadi became pregnant, her Medicaid benefits were extended to include medical coverage for herself and her unborn child. (R. 451 at 190-191).

Vedadi testified that she paid for the first few doctor's visits out of pocket, and that all remaining expenses were paid by Medicaid. (R. 451 at 174-175).

Additionally, there was no contact between the parties from October of 1998 until the baby's birth. Hartwig asserts that he tried to contact Vedadi to inquire about the pregnancy and Vedadi's needs with relation to the pregnancy. Although Vedadi denied as much, she did admit that at the very least she received several telephone messages from Hartwig, which she did not return. (R. 451 at p. 183). She also testified that in October of 1998, she expressed to Hartwig that she did not wish to hear from him again and that she would not be returning his calls. (R. 451 at p. 184). Thus, the parties were no longer in communication after October of 1998, and Vedadi did not reveal to Hartwig what expenses if any she had incurred as a result of her pregnancy.

In an effort to take financial responsibility for the medical expenses of Vedadi's pregnancy and the birth of his child, Hartwig did two things prior to the birth of the child: First, in October of 1998, three months before the baby was born, he registered himself as the father of the

unborn child with the Department of Recovery Services, the agency he understood to be responsible for obtaining reimbursement of Medicaid benefits. Second, in January of 1998, one month before the birth of his child, he sent letters to Vedadi's health care providers naming himself as the party responsible for the medical expenses and asking that the medical bills be sent directly to him.

During the pregnancy and after the baby's birth, Hartwig purchased clothing, baby supplies, and furniture for his child who he assumed would be living with him since Vedadi had stated that she did not plan to keep the child. After the birth of the child, Hartwig did several additional things in an effort to take financial responsibility for the expenses of Vedadi's pregnancy and the birth of his child. First, he sent letters via counsel to the adoptive parents, asking for confirmation of birth related expenses so that he could provide reimbursement of the same. Second, he sent a check for \$1,000.00 to the adoptive parents to cover his share of out-of-pocket medical expenses pending receipt of some confirmation of additional expenses. To date, Hartwig still has not

received any confirmation of expenses relating to Vedadi's pregnancy and the birth of his child.

Under these circumstances, it was virtually impossible for Hartwig to pay his share of the pregnancy and birth-related expenses within 24 hours of the baby's birth. Nevertheless, Hartwig made every effort to take financial responsibility for his child. Since Section 78-30-4.14(2)(b)(iii) operates to terminate Hartwig's parental rights - although he has "demonstrated a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child" - the provision clearly violates basic notions of due process guaranteed by the Fourteenth Amendment of the U.S. Constitution.

**b. Utah Constitution**

In Wells v. Children's Aid Society, 681 P.2d 199 (Utah 1984), the Utah Supreme Court held that, under Art. 1, Section 7 of the Utah Constitution, legislation which infringes on parental rights (1) must be based on a compelling state interest in the result to be achieved, and (2) the means adopted must be narrowly tailored to achieve that purpose. The Wells court upheld the "paternity



registration requirement" of Utah's Adoption Statute, and explained that "[t]he state has a compelling interest in speedily identifying those persons who will assume a parental role over newborn illegitimate children." *Id.* The court held that the "registration requirement" was narrowly tailored to the state's compelling interest because there "was no infringement of the unwed father's rights not essential to the state's purposes." *Id.* at 207.

Section 78-30-4.14(2)(b)(iii) operates to terminate the parental rights of biological fathers who have not paid their share of pregnancy and birth-related expenses before the biological mother executes her consent (which she can do 24 hours after the birth). As argued above, this provision is not even substantially related to the state's purported interests (and much less "narrowly tailored"). The requirements contained in 78-30-4.14(2)(b)(iii) simply do not advance the goals asserted by the state. The requirement that unwed biological fathers prove that they have paid pregnancy and birth-related expenses before they can contest the adoption of their children does not assure that adoptions will be finalized promptly, or that adoptive placements will not be disturbed. In fact, it virtually

assures the opposite. Inevitable litigation of this issue will cause, not prevent, delays in the finality of adoption proceedings. In sum, the requirement contained in Section 78-30-4.14(2)(b)(iii) is not narrowly tailored to a compelling government interest, and thus violates the Due Process Clause of the Utah Constitution.

IV. The Trial Court Erred in Ruling That Hartwig Did Not Comply with Utah Code Ann. Section 78-30-4.14 (iii).

Section 78-30-4.14(iii) of the Utah Code requires that a father who wishes to oppose the adoption of his newborn child must "[pay] a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child."

Vedadi testified she paid approximately \$200.00 in out-of-pocket costs relating to her pregnancy, including medical expenses which were not covered by Medicaid (although she provided no receipts for such payments). The trial court found that Hartwig spent approximately \$75.00 on maternity clothing for Vedadi and diapers for the baby.

(R. 300).<sup>4</sup> Hartwig also spent at least several hundred dollars for furniture, diapers, clothing, and supplies for the baby, but the trial court found that these expenditures didn't "count" because the purchased items were kept at Hartwig's apartment rather than given to Vedadi. (R. 300). The trial court's ruling in this regard was clearly erroneous because there is no rational reason why diapers purchased for the baby and stored at Vedadi's house should be "counted," while diapers, clothing, furniture, and supplies purchased for the baby and kept at Hartwig's house should not be counted. They were expenditures made for the baby in both instances, and if such expenditures "count" for the purposes of Section 78-30-4.14(iii), they should clearly count in either instance. Based on the total expenditures made by Vedadi and Hartwig, Hartwig clearly paid his share of the overall out-of-pocket expenditures.

With regard to pregnancy and birth-related medical expenses, the only medical expenses actually "incurred" at the time of the baby's birth was approximately \$100.00 paid

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<sup>4</sup> The trial court found that Hartwig requested that Vedadi return these things to him when they broke up. The court's finding in this regard was clearly erroneous. Vedadi testified that she returned the items only because Hartwig said something "strange" about having receipts to show that he had purchased them for her. (R. 451 at p. 161:16-25).

out-of-pocket by Vedadi for two office visits. (R. 451 at p. 174:4-25). No evidence was presented regarding any other medical expenses actually "incurred" (i.e. actually billed or invoiced) before the baby was relinquished for adoption.

Furthermore, Hartwig testified that he believed the medical expenses were covered by Medicaid, and that he would be required to repay those expenses later. (R. 451 at p. 60:8-16). He also testified that Vedadi was not required to make any payment when they attended a doctor's appointment early in the pregnancy, (R. 451 at p. 78:7-16), and that he was not aware of Vedadi receiving any bills for medical services. (R. 451 at p. 60:13-16). No evidence was presented at trial which would contradict Hartwig's testimony in this regard. Thus, if such expenditures were indeed made by Vedadi, she did not provide information about the expenditures to Hartwig and accordingly made it impossible for him to reimburse her for those.<sup>5</sup> Subsection (iii) of the statute provides that a

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<sup>5</sup> The statute should be reasonably interpreted to require the party incurring the expense to inform the other party of the expense so as to provide a reasonable opportunity for reimbursement or payment. See e.g. Curtis v. Harmon Electronics, 575 P.2d 1044, 1046 (Utah 1978) ("A statute is presumed not to be intended to produce absurd consequences and . . . where it is possible . . . will be given a

father must pay expenses "when not prevented from doing so by the person or authorized agency having lawful custody of the child." Failure to provide information regarding expenses clearly operates to prevent reimbursement or payment of such expenses.

Finally, the trial court erred in faulting Hartwig for not providing medical insurance for Vedadi. Hartwig testified that he did not even have medical insurance for himself when Vedadi became pregnant, and that he attempted to, but could not, obtain medical insurance for Vedadi after finding out that she was pregnant. Since Hartwig could not obtain medical insurance for Vedadi, he registered himself as the responsible party with the Office of Recovery Services and sent letters to the providers naming himself as the responsible party and requesting that he be billed for the medical expenses.

In sum, Hartwig complied with Section 78-30-4.14(iii) by making substantial expenditures for the baby's benefit, and by naming himself as the responsible party with

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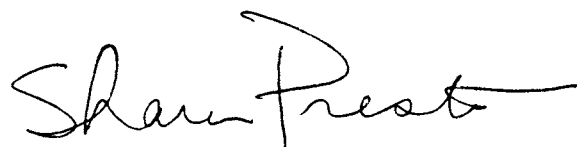
reasonable and sensible construction.") Clearly, it would be unreasonable to require a party to reimburse, or pay a certain share of, expenses that the party has not been made aware of, and all the more so where the party's parental rights turn on payment of such expenses.

Recovery Services and private medical providers, and by requesting that he be billed for medical expenses. If Hartwig did not comply with regards to the \$100.00 paid by Vedadi, he was prevented from doing so by Vedadi's refusal to communicate with Hartwig, and her failure to inform Hartwig of expenses paid by her.

### CONCLUSION

Section 78-30-4.14(2)(iii)the Utah Code operated to deprive him of his parental rights in violation of the Due Process and Equal Protection Clauses of the Utah and United States Constitution, where Scott Hartwig made his identity known and objectively manifested a significant paternal interest in his child prior the child's birth. Accordingly, Hartwig respectfully requests that the order of the trial court be reversed, and that the matter be remanded to the trial court for custody proceedings.

Dated this 29<sup>th</sup> day of December, 2000.



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SHARON PRESTON

Attorney for Scott Hartwig

**MAILING CERTIFICATE**

I hereby certify that on this 29<sup>th</sup> day of December, 2000, I deposited two copies of the foregoing Appellant's Brief in the U.S. Mail, postage prepaid, and addressed as follows:

Candice Ragsdale-Pollack  
Attorney for Mark and Genevieve Greeley  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

Gary Bell  
Attorney for Wendy Vedadi  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

Sharon Preston

## **ADDENDUM A**

Text of Statutes and Constitutional Provisions



UTAH CODE ANNOTATED  
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\*\*\* STATUTES CURRENT THROUGH THE 2000 SUPPLEMENT \*\*\*  
\*\*\* ANNOTATIONS THROUGH 2000 UT 35 AND 2000 UT APP 86 \*\*\*  
\*\*\* (2000 GENERAL SESSION) \*\*\*

TITLE 78. JUDICIAL CODE

PART IV. PARTICULAR PROCEEDINGS

CHAPTER 30. ADOPTION

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Code Ann. § 78-30-4.12 (2000)

§ 78-30-4.12. Rights and responsibilities of parties in adoption proceedings

(1) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The Legislature finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) In enacting Sections 78-30-4.11 through 78-30-4.21, the Legislature prescribes the conditions for determining whether an unmarried biological

father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) An unmarried biological father has the primary responsibility to protect his rights.

(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(4) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

HISTORY: C. 1953, 78-30-4.12, enacted by L. 1995, ch. 168, § 2.

NOTES:

EFFECTIVE DATES. --Laws 1995, ch. 168 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

NOTES TO DECISIONS

CONSTRUCTION.

Sections 62A-4a-201 and 78-30-4.12 are complementary: once an unmarried father has taken the required steps to establish paternity and preserve his rights of notice and consent as required by the Adoption Act, he may become eligible for the parental rights afforded under the *Child Welfare Reform Act*. *C.F. v. D.D.*, 1999 UT 70, 984 P.2d 967.

LEXSTAT U.C.A. 78-30-4.14

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\*\*\* STATUTES CURRENT THROUGH THE 2000 SUPPLEMENT \*\*\*  
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\*\*\* (2000 GENERAL SESSION) \*\*\*

TITLE 78. JUDICIAL CODE

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GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Code Ann. § 78-30-4.14 (2000)

§ 78-30-4.14. Necessary consent to adoption or relinquishment for adoption

(1) Either relinquishment for adoption to a licensed child-placing agency or consent to adoption is required from:

(a) the adoptee, if he is more than 12 years of age, unless he does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent or her relinquishment to an agency for adoption;

(e) any biological parent who has executed a voluntary declaration of paternity in accordance with Title 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for adoption;

(f) an unmarried biological father of an adoptee, as defined in Section 78-30-4.11, only if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

(g) the licensed child-placing agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) In accordance with Subsection (1), the consent of an unmarried biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented

from doing so by the person or authorized agency having lawful custody of the child, and either:

(A) visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

(B) regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of this subsection.

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection prior to the time the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency. The father shall:

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under Subsection (1) or (2) may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that his rights should be terminated, based on the petition of any interested party.

(4) If there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative

father and the time and date of filing. That certificate shall be filed with the court prior to entrance of a final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

HISTORY: C. 1953, 78-30-4.14, enacted by L. 1995, ch. 168, § 4.

NOTES:

EFFECTIVE DATES. --Laws 1995, ch. 168 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

35 of 43 DOCUMENTS

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CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS

AMENDMENT 14

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

USCS Const. Amend. 14, § 1 (2000)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the **equal protection** of the laws.

2 of 13 DOCUMENTS

UTAH CODE ANNOTATED  
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\*\*\* STATUTES CURRENT THROUGH THE 2000 SUPPLEMENT \*\*\*  
\*\*\* ANNOTATIONS THROUGH 2000 UT 35 AND 2000 UT APP 86 \*\*\*  
\*\*\* (2000 GENERAL SESSION) \*\*\*

CONSTITUTION OF UTAH

ARTICLE I. DECLARATION OF RIGHTS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Utah Const. Art. I, § 7 (2000)

§ 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without **due process** of law.

HISTORY: Const. 1896.

25 of 43 DOCUMENTS

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CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS

AMENDMENT 5

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

USCS Const. Amend. 5 (2000)

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 4 DOCUMENTS.  
THIS IS PART 4.  
USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

Criminal actions--Provisions concerning--Due process of law and just  
compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime,  
unless on a presentment or indictment of a Grand Jury, except in cases arising  
in the land or naval forces, or in the Militia, when in actual service in time  
of War or public danger; nor shall any person be subject for the same offence to  
be twice put in jeopardy of life or limb; nor shall be compelled in any criminal  
case to be a witness against himself, nor be deprived of life, liberty, or  
property, without due process of law; nor shall private property be taken for  
public use, without just compensation.



## **ADDENDUM B**

Findings of Fact Dated June 29, 1999

JUN 28 1999

SALT LAKE COUNTY

By \_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

In re the Adoption of:	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
Baby Boy Vedadi, 2-14-99	:	
-----	:	CASE NO. 990900018
SCOTT ALLEN HARTWIG,	:	
Petitioner,	:	
vs.	:	
WENDY VEDADI, aka LINDSEY,	:	
Respondent.	:	

-----

The above-entitled cause came on for hearing on June 23, 1999, with Sharon Preston appearing as attorney for petitioner, Scott Allen Hartwig, and Gary Bell appearing as attorney for respondent, Wendy Vedadi, and Candice Ragsdale-Pollock appearing as attorney for Marc Greeley and Genevieve Greeley, adoption petitioners.

The hearing was held for the purpose of determining whether Scott Allen Hartwig (hereinafter "Hartwig") complied with the provisions of Section 78-30-4.14(2)(b)(iii), thus making his consent necessary for the adoption of Baby Boy Vedadi, pursuant to the Order in this matter dated June 23, 1999.

Petitioner argues that he has sufficiently complied with the provisions of Section 78-30-4.14(2)(b)(iii), thus making his consent necessary for the adoption. Respondent and adoption

petitioners argue that petitioner did not in fact comply with the relevant provisions and hence the consent of petitioner is not required for the adoption.

After hearing the evidence and the arguments of counsel, and being fully advised, the Court makes and enters the following Findings of Fact and Conclusions of Law.

#### **FINDINGS OF FACT**

1. That Hartwig is the biological father of Baby Boy Vedadi.
2. That on June 25, 1998, Hartwig learned that Wendy Vedadi (hereinafter "Vedadi") was pregnant with his child.
3. That during July 1998, Hartwig was told by Vedadi of the potential placement of her unborn child for adoption.
4. That during the entire pregnancy of Vedadi, Hartwig maintained a separate residence.
5. That Vedadi lived at the same residence from the beginning of her pregnancy until approximately February 2, 1998, at which time she moved.
6. That Hartwig had knowledge of Vedadi's whereabouts from the beginning of her pregnancy until approximately February 2, 1998, 12 days before Baby Boy Vedadi was born.

7. That Hartwig knew the name and address of Vedadi's attending physician and he attended one of Vedadi's regularly scheduled office visits during her pregnancy.

8. That during July 1998, Vedadi invited Hartwig to participate in the insurance coverage and medical expenses for her pregnancy and the birth of Baby Boy Vedadi.

9. That during July 1998, Vedadi told Hartwig that if he refused to participate in the medical expenses of her pregnancy that she would be forced to obtain insurance coverage through Medicaid.

10. That during the entire pregnancy, Hartwig failed to participate or otherwise provide any insurance coverage and also failed to participate in or pay any amounts whatsoever for any medical expenses relating to Vedadi's pregnancy and the birth of Baby Boy Vedadi.

11. As a result of Hartwig's failure to participate or provide insurance coverage and/or his failure to participate in or provide payment for medical expenses for the pregnancy and the birth of Baby Boy Vedadi, Vedadi was forced to obtain such insurance coverage through Medicaid.

12. That because Vedadi's pregnancy was high risk, she was required to see her doctor once per week for the first two months

of her pregnancy and then once every other week for the remainder of her pregnancy.

13. That from June 25, 1998 up to and including the hearing of this matter on June 23, 1999, Vedadi did not preclude or prevent Hartwig from performing his financial obligations as required by Utah law.

14. That from September 1998 through January 1999, Hartwig provided no financial support for Vedadi or Baby Boy Vedadi, nor did he make any payment for pregnancy or birth expenses.

15. That from February 1998 through August 1998, Hartwig purchased and/or gave Vedadi the following:

- a. One spandex jumper for Vedadi, costing \$18.
- b. One pair of overalls purchased from Deseret Industries, for Vedadi, costing \$5.
- c. One trenchcoat purchased from Deseret Industries for Vedadi, costing \$7.
- d. One bottle of prenatal vitamins, costing \$18.
- e. One package of disposable diapers, costing less than \$25.
- f. One tube of Desitin diaper rash ointment, costing \$2.

- g. One Hundred Dollars (\$100) for the registration of Brandon Lindsey, Vedadi's son, for soccer.
- h. Thirty Dollars (\$30) as a loan to Wendy Vedadi to pay for child care expenses for her younger daughter, Hope.

16. That in July 1998, at the request of Hartwig, Vedadi returned each item described in paragraph 11 to Hartwig, with the exception of the \$100 for soccer registration and the \$30 loan.

17. While Hartwig claims to have made various additional cash payments to Vedadi, Vedadi denies having received any such additional funds whatsoever. Hartwig has no receipts, documentation, or any corroboration whatsoever with respect to the alleged payments, and based upon the Court's assessment of the credibility of the witnesses and the totality of the evidence, it is the judgment and finding of the Court that Hartwig has failed to establish by a preponderance of the evidence that any additional payments were in fact made.

18. That it is questionable at best whether or not a \$30 loan or a \$100 gift for a different purpose qualify as payment for expenses incurred with pregnancy and birth. Assuming arguendo, however, that those expenditures are payment for pregnancy related

expenses they, together with the purchase of the other items set forth in paragraph 15, constitute only token contributions.

19. Hartwig claims that he has acquired, for himself and at his residence, certain furniture and other items which he asserts may be utilized by him in caring for the infant child. None of these items, however, were offered to or in any way made available to Vedadi. While Hartwig's actions in acquiring some child care items may demonstrate a bona fide subjective intent to establish parental rights, these actions do not constitute payment of fair and reasonable expenses incurred with the pregnancy or birth.

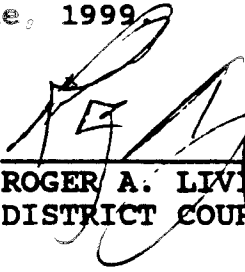
From the foregoing Findings of Fact, the Court now makes the enters the following:

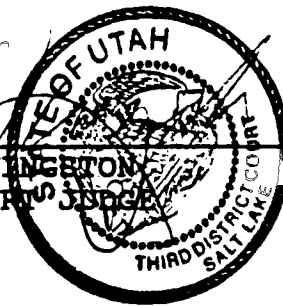
#### CONCLUSIONS OF LAW

1. Hartwig failed to strictly comply with the provisions of Utah Code Ann., Section 78-30-4.14(2)(iii).
2. That based on the failure of Hartwig to strictly comply with the provisions of Utah Code Ann., Section 78-30-4.14, his

consent is not required in the matter of In re: Adoption of Baby Boy Vedadi.

Dated this 29<sup>th</sup> day of June, 1999

  
\_\_\_\_\_  
ROGER A. LIVINGSTON  
DISTRICT COURT JUDGE





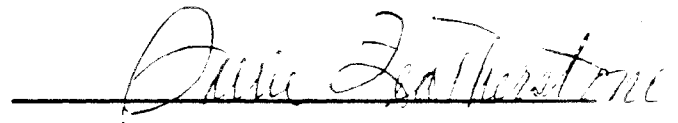
**MAILING CERTIFICATE**

I hereby certify that I mailed a true and correct copy of the foregoing Findings of Fact and Conclusions of Law, to the following, this 29 day of June, 1999:

Sharon Preston  
Attorney for Petitioner  
10 West 300 South, Suite 500  
Salt Lake City, Utah 84101

Gary Bell  
Attorney for Respondent  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84101

Candice Ragsdale-Pollock  
Attorney for Marc & Genevieve Greeley  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84101



## **ADDENDUM C**

Order Dated June 23, 1999

**FILED DISTRICT COURT**  
Third Judicial District

JUN 23 1999

Sharon L. Preston (#7960)  
Attorney for Petitioner  
10 West 300 South, Suite 500  
Salt Lake City, Utah 84101  
Telephone: (801) 366-4592

By SALT LAKE COUNTY  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

In Re Adoption of:

Baby Boy Vedadi, 2-14-99.

SCOTT ALLEN HARTWIG,

Petitioner,

VS.

WENDY VEDADI

aka WENDY LINDSEY,  
Respondent.

ORDER REGARDING TIME FOR  
COMPLIANCE UNDER UTAH CODE  
ANN. §78-30-4.14 (2) (b)

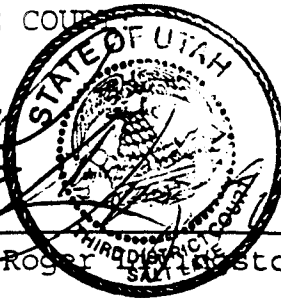
Civil No. 99-0900018  
Judge Livingston

A hearing was held before Judge Livingston on May 28, 1999 at 2:00 p.m. for the purpose of deciding the latest possible date upon which Scott Hartwig could have complied with the provisions of Section 78-30-4.14 (2)(b) of the Utah Code, thus making his consent necessary for the adoption of his son Baby Boy Vedadi. Counsel for Wendy Vedadi, Marc and Genevieve Greeley, and Scott Hartwig were present, and made arguments to the court. The court having heard the arguments of counsel, HEREBY ORDERS:

1. Scott Hartwig was required to comply with Section 78-30-4.14 (2)(b)(i) and (ii) by February 15, 1999 at the latest, this being the date upon which the mother properly executed her consent to the adoption.
2. Scott Hartwig complied with Section 78-30-4.14 (2)(b)(i) by filing a Complaint for Paternity on January 20, 1999.
3. Scott Hartwig complied with Section 78-30-4.14 (2)(b)(ii) by filing a Notice of Commencement of Paternity Action with the Department of Health on January 25, 1999.
4. With regards to Section 78-30-4.14 (2)(b)(iii), Scott Hartwig was required to comply with this provision, not by a particular cut-off date, but throughout the pregnancy beginning with the date he became aware of the pregnancy, that date being June 25, 1998.
5. An evidentiary hearing is required to determine whether Scott Hartwig in fact complied with Section 78-30-4.14 (2)(b)(iii).

DATED this 23<sup>rd</sup> day of June, 1999.

BY THE COURT

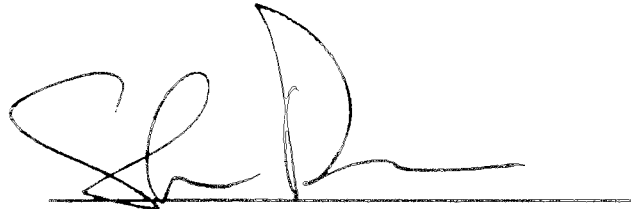
  
Judge Roger Salt Lake

MAILING CERTIFICATE

I hereby certify that on this 9<sup>th</sup> day of June, 1999, I deposited a copy of the foregoing Order in the U.S. Mail, postage prepaid, and addressed as follows:

Candice Ragsdale-Pollack  
Attorney for Mark & Genevieve Greeley  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

Gary Bell  
Attorney for Wendy Vedadi  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84401

A handwritten signature, likely of Gary Bell, is written over a horizontal line. The signature is stylized and cursive.

## **ADDENDUM D**

Order Dated August 23, 1999



matter, having found and entered its Findings of Fact and Conclusions of Law and being otherwise fully advised,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED:**

1. Scott Hartwig failed to strictly comply with the provisions of the State of Utah's Adoption Act found in, U.C.A. §78-30-4.14(2)(b)(iii).
2. Based on Scott Hartwig's failure to strictly comply with those provisions, Scott Hartwig's consent is not required in the matter of *In Re: Adoption of Baby Boy Vedadi* and that matter may proceed.

DATED this 23 day of April, 1999.

BY THE COURT

  
\_\_\_\_\_  
The Honorable Roger A. Livingston  
DISTRICT COURT JUDGE



**CERTIFICATE OF DELIVERY**

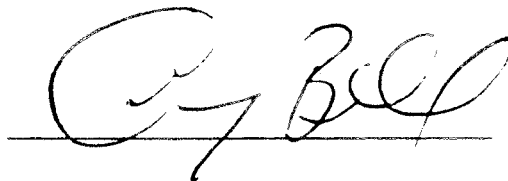
I hereby certify that on this <sup>16<sup>TH</sup></sup> ~~9<sup>th</sup>~~ day of <sup>AUGUST</sup> ~~July~~, 1999, I caused a true and correct

copy of the foregoing to be sent via first class mail, postage prepaid, to the following:

Sharon L. Preston, Esq.  
10 West 300 South, Suite 500  
Salt Lake City, UT 84101

Candice Ragsdale-Pollock  
254 West 400 South, Suite 320  
Salt Lake City, Utah 84101

Barton J. Warren, Jr.  
352 Denver Street, Suite 101  
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "C. J. Bell", is written over a horizontal line.

## **ADDENDUM E**

Complaint for Paternity

JAN 20 1999

By \_\_\_\_\_ Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

SCOTT ALLEN HARTWIG,

Petitioner,

vs.

WENDY VEDADI

aka WENDY LINDSEY,

Respondent .

VERIFIED COMPLAINT FOR  
PATERNITY AND CHILD CUSTODY

) Civil No. 994900384

1) Judge FREDRICK

Jones

Petitioner, through his attorney Sharon L. Preston, alleges as follows:

1. Both Petitioner and Respondent are a bona fide residents of Salt Lake County, State of Utah, and have been for three months immediately prior to the commencement of this action.

2. Petitioner and Respondent are the parents of an unborn minor child whose expected date of birth is February 2, 1999.

3. Petitioner and Respondent are not married, but were engaged to be married and were involved in a sexual relationship during the several months preceding the conception of the parties' unborn child.

4. Petitioner should be named as the biological father of the parties' minor child in a Decree of Paternity.

5. Petitioner should be awarded sole custody of the parties' minor child, subject to reasonable visitation by the Respondent, based upon the following:


- a. Respondent has expressed her intent to give the child up for adoption immediately after the child's birth.
- b. Petitioner has a strong interest in the child's well-being, and is strongly desirous of providing financial support and a stable loving home to child.
- c. Petitioner is a fit and proper person to be awarded custody of the child because he has a good job, a nice home, and a responsible and stable lifestyle.
- d. Petitioner has made every effort to provide financial support to Respondent during her pregnancy, but Respondent has adamantly refused Petitioner's offers of financial support. Nevertheless, Petitioner has now made it known to the medical providers that he is the father of the unborn child and that he will be responsible for his share of all related costs.

e. Petitioner has purchased baby furniture, clothing, blankets, and other things needed for the baby's care, but Respondent has refused to accept these things and even returned some of them after she initially accepted them.

5. Petitioner has executed and filed an affidavit consenting to a court order of child support and payment of expenses incurred during Respondent's pregnancy and the child's birth, as required by Section 78-30-4.14 of the Utah Code.

BASED ON THE FOREGOING, Petitioner requests that he be awarded an order consistent with the terms set forth in this complaint.

DATED this 18<sup>th</sup> day of January, 1999.

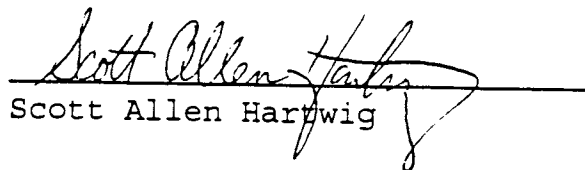
  
SHARON L. PRESTON  
Attorney at Law

VERIFICATION

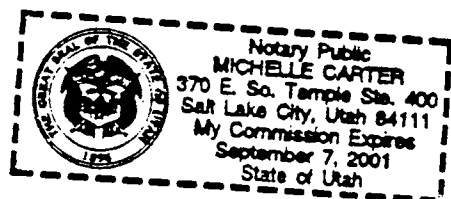
STATE OF UTAH            )  
                                  ) ss.  
COUNTY OF SALT LAKE )


SCOTT ALLEN HARTWIG, having been first duly sworn upon oath, deposes and states: That he is the Petitioner in the above-named Complaint for Paternity, and that the matters stated in the

foregoing Complaint are true and correct to the best of his knowledge, belief, and information.

  
\_\_\_\_\_  
Scott Allen Hartwig

SUBSCRIBED and SWORN to before me this 19<sup>th</sup> day of January, 1999.

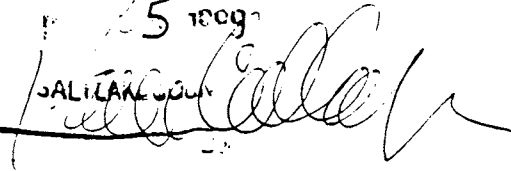


  
\_\_\_\_\_  
NOTARY PUBLIC

## **ADDENDUM F**

Affidavit of Scott Hartwig in Support of  
Motion for Temporary Order

Sharon L. Preston (#7960)  
Attorney for Petitioner  
10 West 300 South, Suite 500  
Salt Lake City, Utah 84101  
Telephone: (801) 366-4592

FILED  
JAN 15 1999  
SALT LAKE COUNTY  
By 

---

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

SCOTT ALLEN HARTWIG,	)	
	)	
Petitioner,	)	AFFIDAVIT OF SCOTT HARTWIG
	)	IN SUPPORT OF
vs.	)	ORDER TO SHOW CAUSE
	)	
WENDY VEDADI	)	
aka WENDY LINDSEY,	)	
	)	Civil No. 99-4900384
Respondent.	)	Judge J. Dennis Frederick
	)	

---

STATE OF UTAH            )  
                                  ) ss.  
COUNTY OF SALT LAKE )

SCOTT ALLEN HARTWIG, having been first duly sworn upon  
oath, deposes and states:

1. I am the biological father of an "BABY BOY VEDADI," who was  
born on February 14, 1999, and who has been placed for  
adoption by his mother.
2. From the time I first found out about the pregnancy, I have  
consistently expressed my sincere interest in being involved  
in the child's life to the child's mother and to every one  
else in my life. (See attached Affidavits).



3. I am ready, willing, and able to assume custody of my son, and desire to do so immediately. I have made all of the necessary preparations for his arrival. I have checked into health insurance for him, I have asked for help from friends and family, I have received advice and guidance from other parents, and I have obtained everything necessary for his care. (See Attached Affidavits, plus Attachment A). Most importantly my heart is filled with deep love and concern for my son. Ultimately, I believe it is in his best interest to be in the custody of his biological father who loves him and is committed to his well-being.
4. The allegations made in Wendy's affidavit regarding my unfitness as a parent are completely false, as follows:
- a. I do not use drink alcohol excessively, or use drugs, both of which would be inconsistent with my stable employment history, my strong relationships with family and friends, and my interest and participation in sports.
  - b. I have a very stable employment history, and have been an honest and dedicated employee of Garden Decor for almost six years. (See Attachment B).
  - c. I have no criminal history and have never been violent towards anyone. (See Attachment C).

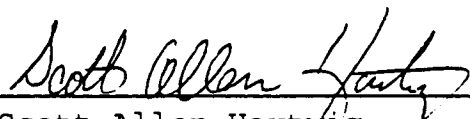
- d. I had a stable upbringing in a good home, and have normal loving relationships with all of my family members. (See Affidavit of Carol Hartwig).
- e. It is absolutely not true that I have impregnated five other women. I have also never demanded that anyone get an abortion, and Wendy's claims that I have done so is inconsistent with her claims that I want a child at all costs for the purpose of appeasing my mother.
- f. In fact, my mother is excited and happy about the birth of her grandchild, and has offered her loving support, but she does not even live in Utah and it is simply untrue that my interest in my child is based solely on my desire to appease my mother.
- g. I had a loving relationship with all of Wendy's children, at least to the extent that Wendy allowed me to. I didn't want to start disciplining them as Wendy demanded, because I felt it was way too soon in my relationship with them to assume that kind of role. I played with the children a lot, and tried to give a little advice and guidance to them when I saw an opportunity to do so. I never left the children alone when they were in my care, nor was I ever intoxicated in their presence. (See

Affidavits of Lennette Vigil, Sam Vigil, Kathy and Rick Medina).

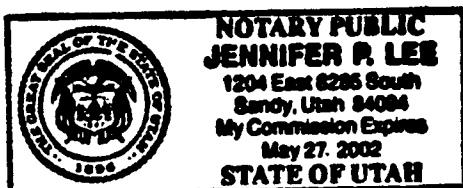
- h. My friends are not drug users or gang members. In fact, I have a very strong circle of friends with whom I play softball. Most of them are married and have children, and all of them of decent, hardworking, honest people. (See Affidavits of Lennette Vigil, Sam Vigil, Kathy and Rick Medina).
  - i. I do not devote myself to softball in a manner that would cause me to neglect loved ones or other responsibilities. In fact, because most of my friends have families, we all sit down together and plan our softball schedule so that it will not interfere with important family events. Also, my friends' wives and children come to the softball practices and games, and we all socialize together and the children play together. (See Affidavit of Dale and Andrea Ashton).
- 5. At the time Wendy became pregnant, we were engaged to be married, and had decided to share our lives together. It was Wendy's decision to terminate our relationship, and not my irresponsibility or lack of commitment.
- 6. I do not feel any kind of bitterness toward Wendy, and it is

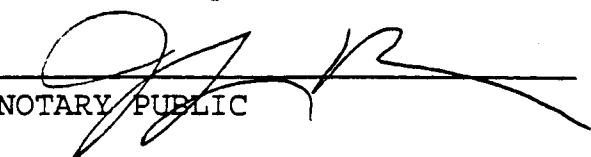
untrue that my interest in my child is motivated by a desire to hurt Wendy. In fact, if I receive custody of our child, I hope that Wendy would want to participate in the child's life to some extent and I would encourage her to do so.

7. I am truly sorry for the anxiety this matter must be causing to the prospective adoptive parents. I do not know if Wendy was forthright with prospective adoptive parents about my expression of interest in the child, but Wendy knew from the beginning that I was very interested in being a father to my child and that I would not consent to this adoption. The only reason I did not file papers earlier was because I did not know that Wendy intended to give the child up for adoption, and it was my belief that I could not file a paternity suit until after the child's birth.
8. In conclusion, I am ready and capable of assuming custody of my son, and I hope I will be able to do so right away in order to prevent any additional suffering to the prospective adoptive parents or to my son.

  
\_\_\_\_\_  
Scott Allen Hartwig

SUBSCRIBED and SWORN to before me this 6<sup>th</sup> day of March, 1999.



  
\_\_\_\_\_  
NOTARY PUBLIC

## **ADDENDUM G**

Affidavit of Scott Hartwig in Support of  
Complaint for Paternity

FILED DISTRICT COURT  
Third Judicial District

Sharon L. Preston (#7960)  
Attorney for Petitioner  
10 West 300 South, Suite 500  
Salt Lake City, Utah 84101  
Telephone: (801) 366-4592

JAN 20 1999

SALT LAKE COUNTY

By [Signature] Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SCOTT ALLEN HARTWIG,

Petitioner,

vs.

WENDY VEDADI

aka WENDY LINDSEY,

Respondent.

)

)

) AFFIDAVIT OF PUTATIVE FATHER

) PURSUANT TO U.C.A. 78-30-4.14

)

)

)

)

)

) Civil No. 994900384

) Judge FREDERICK

)

JONES

STATE OF UTAH )

) ss.

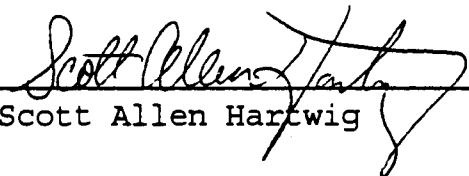
COUNTY OF SALT LAKE )

SCOTT ALLEN HARTWIG, having been first duly sworn upon  
oath, deposes and states:

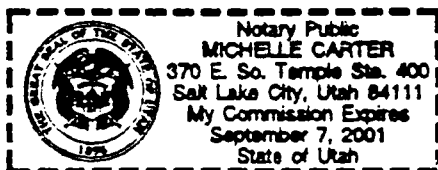
1. I am the biological father of an unborn child whose expected date of birth is February 22, 1999. The mother of the child is Wendy Vedadi (nee Lindsey).
2. The child's mother has expressed her intent of giving the child up for adoption as soon as it is born.

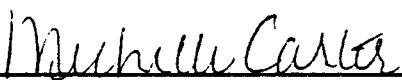
3. I desire to have full custody of the child, and I am capable of providing financial support, a stable and loving home, and most importantly, love and day-to-day care for the child.
4. My plans for taking care of the child are as follows:
  - a. The baby will live with me at my apartment located at 4477 S. 300 W., Murray, Utah.
  - b. I plan to take a leave-of-absence from my employment to care for the baby during the month or two after the birth.
  - c. I will be the sole provider of the child's day-to-day care, such as bathing, feeding, diapers, etc.
  - d. I will be taking the child to all medical check-ups and doctor's appointments.
  - e. I have already purchased clothing, blankets, furniture, and other items needed to care for the baby.
  - f. I have a close circle of friends, many of whom are parents of young children and infants, and these friends have offered to assist me with advice and babysitting, and to recommend a qualified daycare provider.
  - g. I earn \$13.50 an hour at my current employment and will be able to support the baby with my income, especially since I have no other dependents.

5. I consent to a court order requiring me to pay child support or my share of expenses related to Respondent's pregnancy and the child's birth, as provided by law.
6. I have offered to pay expenses related to Respondent's pregnancy and the child's birth, but Respondent has refused to allow me to do so, or to provide me with information regarding such expenses. I also purchased many items necessary for the baby's care (e.g. furniture, clothing, bottles, diapers, etc.), but Respondent either refused to accept or returned to me all of the items I had purchased.
7. At this time, I have taken the additional step of contacting the University of Utah, and others who I believe may be providing medical care to the Respondent, to inform them that I am the father of the child and that I am willing to pay my share of the related expenses. (See Attachment A).

  
\_\_\_\_\_  
Scott Allen Hartwig

SUBSCRIBED and SWORN to before me this 19<sup>th</sup> day of January, 1999.



  
\_\_\_\_\_  
NOTARY PUBLIC