

2000

Mahaoud Al-Bahadli v. LDS Family Services, Jill Lecheminant : Brief of Appellant

Utah Court of Appeals

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Affordable Legal Advocates; Steven C. Russell; Attorney for D.A..

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IN THE UTAH COURT OF APPEALS

Mahaoud Al-Bahadli,

Plaintiff-Appellant,

v.

LDS Family Services; Jill Lecheminant,

Defendants-Appellants.

2000605-CA
Case no. ~~20000266-CA~~

Juvenile Court No. ~~978991~~

994 TO THZ

Priority number 4

BRIEF OF APPELLANT AL-BAHADLI

Mahaoud Al-Bahadli
Appeals from the Order of
William B. Bohling
Third District Court

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FILE
Utah Court of Appeals

Paulette Stagg
Clerk of the Court

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Mahaoud Al-Bahadli,

Plaintiff-Appellant,

v.

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction pursuant to § 78-2a-3(2)(h) of the Utah Code.

STATEMENT OF ISSUE PRESENTED FOR REVIEW AND STANDARD OF REVIEW

Whether Defendant Jill Lecheminant's admission that she misled Al-Bahadli regarding her intent to give up Al-Bahadli's child for adoption constituted an issue of material fact thus requiring that the Trial Court's Order granting Defendant LDS Family Services' Summary Judgment Motion be reversed. Standard of Review: Questions of law and constitutionality are reviewed for correctness. Erickson v. Schenkers Int'l Forwarders, Inc., 882 P.2d 1147 (Utah 1994); Society of Separationists, Inc. v. Whitehead, 870 P.2d 916 (Utah 1993). This issue was preserved by filing the Notice of Appeal within 30 days of the Trial Court's Order being entered Legal Index (hereinafter "R") p. 116.

DETERMINATIVE LAW

United States Constitution, 14th Amendment
UCA §78-30-4.13
UCA §78-30-4.14(5)
UCA §78-30-4.15
Rule 56, Utah Rules of Civil Procedure

STATEMENT OF THE CASE

This is an appeal from the Order of William B. Bohling, Third District Court Judge, which granted Defendant LDS Family Services' Motion for Summary Judgment. The issue in this case is whether the Utah Supreme Court's holding in In Re Adoption of Baby Doe, 717 P.2d 690 (Utah 1986) applies to the facts of this case. In Baby Doe, the Supreme Court held that when a biological father, through the misrepresentations of the natural mother, is denied a "reasonable

opportunity” to comply with the statutory requirements for protecting his rights (UCA §78-30-4-13), the statute (UCA §78-30-4.14(5)) is unconstitutional as applied. Baby Doe, at 690, 691. In this case, Al-Bahadli has alleged, and Defendant Lecheminant (the birth mother) has admitted, that Al-Bahadli was misled by the birth mother, and therefore, he was denied a reasonable opportunity to comply with the requirements of UCA §78-30-4.13. Therefore, UCA §78-30-4.14(5) is unconstitutional as applied in his case. The Trial Court granted Defendant LDS Family Services’ Motion for Summary Judgment, dismissing Al-Bahadli’s Complaint for Paternity, Custody and Support. In addition, UCA §78-30-4.15(2) is unconstitutional on its face and should be stricken by the Court.

STATEMENT OF THE FACTS

1. Al-Bahadli is the father of Adam Lecheminant, born August 10th, 1999. R 4, ¶1.
2. Defendant LeCheminant is Adam’s mother. R 2, ¶6.
3. Prior to Adam’s birth, Plaintiff Al-Bahadli and LeCheminant agreed to marry. Adam’s premature birth delayed the parties’ plans to marry. R 87, ¶17.
4. After Adam was conceived, and up until Adam was placed for adoption with Defendant LDS Family Services, Defendant LeCheminant never consulted with Al-Bahadli about the possibility of giving Al-Bahadli’s son away. R 86-88, ¶8, ¶10, ¶23, ¶24, ¶25.
5. Caroline Chudley, social worker for Defendant LDS Family Services told Defendant LeCheminant *not* to discuss adoption with Al-Bahadli. R 88, ¶23 and ¶27.
6. Caroline Chudley spoke with Al-Bahadli on October 18th, 1999, but never discussed adoption. R 51, ¶6.
7. During the pregnancy, LeCheminant attended several group meetings or classes regarding

options for the baby, including adoption. R 39, ¶6. However, LeCheminant misrepresented to Al-Bahadli the purpose of the classes she was attending. She told Al-Bahadli it was a class for new mothers, not a class for mothers who intend to give up their children for adoption. R 86 ¶9.

8. Al-Bahadli was present at the hospital during LeCheminant's labor and during Adam's birth. R 87, ¶11.
9. Al-Bahadli provided money, clothing, toys and gifts for Adam. R 87, ¶19.
10. Adam was born pre-mature, and was in the hospital from August 10th, 1999, until November 9th, 1999. R 4, ¶2.
11. Al-Bahadli visited his son every day while Adam was in the hospital. R 4, ¶3.
12. During Al-Bahadli's visits with Adam, Defendant LeCheminant was usually present; often her parents were present. R 4, ¶4.
13. During the hospital visits, subsequent to Adam's birth, Al-Bahadli and LeCheminant continued to plan for their wedding. R 4, ¶5.
14. Upon learning that Adam had been placed for adoption, Al-Bahadli filed for paternity in the Third District Court, December 1st, 1999. R 1.
15. Al-Bahadli also registered with Bureau of Vital Statistics. R 51, ¶8.
16. On December 1st, 1999, Al-Bahadli moved to join Defendant LDS Family Services as a party, and for an order of temporary custody. R 9.
17. On January 7th, 2000, Defendant LDS Family Services moved for summary judgment alleging that Al-Bahadli had not complied with UCA 78-30-4.13 in a timely manner. R 26.
18. On May 16th, 2000, Judge William B. Bohling entered his order granting Defendant's motion

for Summary Judgment. Al-Bahadli now appeals. R 112.

SUMMARY OF THE ARGUMENT

Defendant LeCheminant admits that she misled Al-Bahadli about her intentions to give up their child for adoption. Baby Doe holds that such a misrepresentation effectively denies a father a “reasonable opportunity” to comply with the statutory requirements for protecting his rights (UCA §78-30-4.13), and that, in such a case, the statutory scheme (including UCA 78-30-4.14(5)) is unconstitutional as applied. The Trial Court ignored the Utah Supreme Court’s holding in Baby Doe and dismissed Al-Bahadli’s complaint for failure to comply with UCA §78-30-4.13. The Trial Court’s Order should be reversed and the case set for trial.

In addition, UCA §78-30-4.15 directly contradicts the principles enunciated in Baby Doe and should be stricken as unconstitutional on its face.

ARGUMENT

I. AL-BAHADLI DID NOT HAVE A REASONABLE OPPORTUNITY TO COMPLY WITH THE STATUTE, AND TO THEREBY PROTECT HIS RIGHTS, AND THEREFORE THE STATUTE IS UNCONSTITUTIONAL AS APPLIED IN HIS CASE.

Standard of Review

Questions of law and constitutionality are reviewed for correctness. Erickson v. Schenkers Int’l Forwarders, Inc., 882 P.2d 1147 (Utah 1994); Society of Separationists, Inc. v. Whitehead, 870 P.2d 916 (Utah 1993).

According to the Utah Supreme Court, although a statute may be constitutional on its face, it may also be unconstitutional as applied in a particular case. Ellis v. Social Services Department of the Church of Jesus Christ of Latter Day Saints, 615 P.2d 1250 (Utah 1980); In Re Adoption of Baby Doe, 717 P.2d 690 (Utah 1986). Furthermore, when a biological father,

through the misrepresentations of the natural mother, is denied a “reasonable opportunity” to comply with the statutory requirements for protecting his rights, the statute is unconstitutional as applied. In Re Adoption of Baby Doe, at 690, 691.¹ The father in this case now before the Court, was misled by the birth mother and was thus denied an opportunity to comply with the statute.

In Baby Doe, the parents resided in California. The natural mother told the father that she would move to Arizona with him and the plan was to move prior to the birth of the baby. Instead, the mother moved to Utah and placed the child for adoption. After learning of the pending adoption, the father filed a motion to set aside the order terminating his rights. The trial court denied his motion, and the father appealed.

On appeal, the Utah Supreme Court held that “[b]y making those representations, the child’s mother alleviated any concern appellant might otherwise have had as to his need to protect his parental rights because he had no reason to believe an adoption would be attempted.” *Id.* at 690. Additionally, the Court found that all parties were “distinctly aware of appellant’s intent and desire to rear the child, and the record indicates that the mother’s family deliberately withheld information in order to avoid potential ‘problems’ with appellant, who they knew would obstruct the adoption.” *Id.* The Utah Supreme Court held that, because the mother had misrepresented her intentions, the father did not have a reasonable opportunity to protect his rights, and the trial court’s decision was reversed.

In the case now before this Court, after the Al-Bahadi and LeCheminant learned

¹ This principle was reaffirmed in Swayne v. L.D.S Social Services, 795 P.2d 637, 642 (Utah 1990), wherein the Utah Supreme Court held that if the father was unaware of the need to protect his parental rights, and if he had been misled concerning the need to protect those rights, then the statute is unconstitutional as applied to that father.

LeCheminant was pregnant, they agreed to marry, all the while she was attending classes and planning to place the child for adoption. LeCheminant, her family, and her Social Worker, Carolyn Chudley, conspired to withhold the truth from Al-Bahadli about LeCheminant's intention to place the child for adoption. When confronted by Al-Bahadli as to the nature of the adoption classes she was attending, LeCheminant misled Al-Bahadli as to their purpose, and dissuaded him from attending. She never discussed adoption with Al-Bahadli. She also knew that he was from Iraq, and that his cultural background would cause him to oppose the idea.

After the child's pre-mature birth, and while the child was in the hospital due to complications, Al-Bahadli visited the child every day, and visited with LeCheminant and her parents at the hospital. During this time, LeCheminant never informed Al-Bahadli of her intentions to give away their son. They continued to discuss their plans to marry and to raise Adam, and she thus "alleviated" any concerns he might have had about protecting his rights. Because of LeCheminant's actions, and misrepresentations, Al-Bahadli believed they would marry and raise their son. Moreover, LeCheminant's family was distinctly aware of Al-Bahadli's intent and desire to raise his son, and the record indicates that the LeCheminant's family deliberately withheld information from Al-Bahadli regarding the pending adoption. Al-Bahadli, therefore, never had a reasonable opportunity to comply with UCA §78-30-4.13 and protect his rights. The statutory scheme, therefore, is unconstitutional as applied to Al-Bahadli. These are material facts supporting genuine issues. Defendant LDS Family Services was not entitled to judgment as a matter of law. The Trial Court's Order dismissing Al-Bahadli's complaint should be reversed, and the case should be set for trial.

II. UCA §78-30-4.15 IS UNCONSTITUTIONAL ON ITS FACE IN THAT IT PERMITS FATHERS TO BE DENIED A REASONABLE OPPORTUNITY

TO COMPLY WITH UCA §78-30-4.13 BY ALLOWING THE MOTHER TO COMMIT FRAUD.

Questions of law and constitutionality are reviewed for correctness. Erickson v. Schenkers Int'l Forwarders, Inc., 882 P.2d 1147 (Utah 1994); Society of Separationists, Inc. v. Whitehead, 870 P.2d 916 (Utah 1993).

UCA §78-30-4.15 is in direct violation of the principles enunciated in Baby Doe. The statute states:

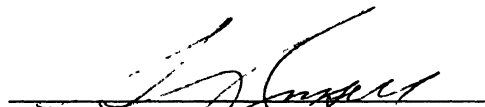
Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party.

UCA §78-30-4.15(2). The above statute directly contradicts the Supreme Court's guarantee of a "reasonable opportunity" to comply with the provisions of §78-30-4.13, and is, therefore, unconstitutional on its face. The statute should be stricken.

CONCLUSION

There exist genuine issues of material fact, which are in dispute. LeCheminant's admission that misrepresented her intentions to Al-Bahadli should have been enough to defeat Defendant LDS Family Services' Motion for Summary Judgment. It is clear from the affidavits and pleadings filed in this action that there are genuine issues of material fact, and Al-Bahadli deserves to be heard.

DATED this 2 day of May, 2001.

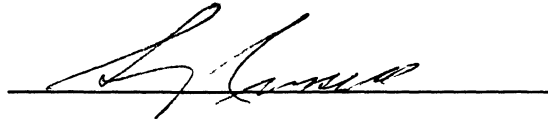

Steven C. Russell
Attorney for Plaintiff/Appellant

CERTIFICATE OF MAILING

I certify that on the 51 day of May, 2001, I did deliver a true and correct copy of the foregoing to the following persons, postage prepaid:

Merrill F. Nelson
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60 E South Temple #1800
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D. Bruce Oliver
180 S 300 W, Suite 210
Salt Lake City, UT 84101

A handwritten signature in dark ink, appearing to read "D. Bruce Oliver", is written over a horizontal line.

ADDENDUM

- 1. ORDER**
- 2. UCA §78-30-4.13; 4.14; 4.15**

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FILED DISTRICT COURT
Third Judicial District

MAY 16 2000

By *[Signature]* SALT LAKE COUNTY
Deputy Clerk

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

MAHAOUD AL-BAHADLI,

Plaintiff,

vs.

LDS FAMILY SERVICES and JILL
LECHEMINANT,

Defendants.

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ORDER

Civil No. 994907742

Judge William B. Bohling

Defendants' motion for summary judgment came on for hearing on March 31, 2000. Plaintiff was represented by Steven C. Russell; defendant LDS Family Services was represented by Merrill F. Nelson; and defendant Jill LeCheminant was represented by D. Bruce Oliver. The Court, having fully considered the written memoranda and oral arguments of the parties, hereby enters the following order:

00112

1. There is no genuine issue as to any material fact. The material facts in defendants' statement of undisputed material facts are deemed admitted because plaintiff failed to specifically controvert any of those facts in his opposing memorandum.

2. Plaintiff did not properly allege fraud by defendant Jill LeCheminant. Alternatively, plaintiff presented no evidence of fraud.

3. Plaintiff failed to comply with the requirements of U.C.A. § 78-30-4.14(2)(b).

4. Section 78-30-4.14(2)(b) is constitutional as applied to plaintiff. Plaintiff had adequate opportunity to comply with the statute, and statutory compliance was not impossible.

5. Plaintiff is presumed to know the law, including his rights and obligations under the law. Plaintiff's asserted ignorance of the law does not excuse him from compliance with the law.

6. Utah law provides a fair and reasonable balance of the competing rights and interests of the various participants in the adoption of a nonmarital child. The state has a compelling interest in the prompt and permanent placement of such a child with adoptive parents who will assume parental responsibility for the child and provide the needs of the child. The unwed mother, Jill LeCheminant, has a constitutional right of privacy to make timely and appropriate decisions regarding herself and the future of the child. The child has a right to stability and permanence in the adoptive placement. Plaintiff, an unwed father, has an inchoate, opportunity interest that may be lost by his failure to comply strictly with statutory requirements. Those requirements are clear and definitive, and plaintiff has the duty to protect his own rights and interests. The mother, the adoption agency, and the adoptive parents are entitled to rely on those

clear statutory procedures in determining the rights of the unwed father and deciding whether to proceed with an adoption of the child.

7. By failing to comply with the requirements of section 78-30-4.14(2)(b), plaintiff is deemed to have waived and surrendered any right in relation to the child, and his consent to adoption of the child is not required.

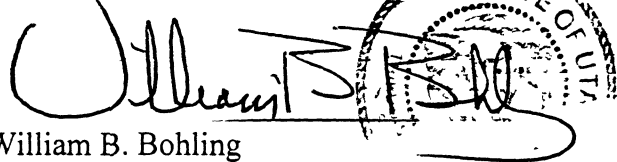
8. Plaintiff has no rights, and is entitled to no relief, in relation to the child.

9. The facial constitutionality of section 78-30-4.15(2) is not properly raised, is not in issue, and plaintiff has no standing to raise the issue.

10. Defendants are entitled to judgment as a matter of law, and their motion for summary judgment is granted.

DATED this 16 day of ^{May}~~April~~, 2000.

BY THE COURT

A handwritten signature in black ink, appearing to read "William B. Bohling", is written over a circular court seal. The seal contains the text "STATE OF UTAH" around the perimeter and "DISTRICT COURT" in the center.

William B. Bohling
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of April, 2000, I caused a true and correct copy of the foregoing **Order** to be mailed through United States mail, postage prepaid, to the following:

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AFFORDABLE LEGAL ADVOCATES
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D. Bruce Oliver
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Salt Lake City, UT 84101

Connie Barney

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(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. 1995

78-30-4.13. Notice of adoption proceedings.

(1) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78-30-4.14 unless that right has been terminated by waiver, relinquishment, consent, or judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if he has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) any person who is openly living in the same household with the child at the time the consent is executed or relinquishment made, and who is holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(3) (a) In order to preserve any right to notice and consent, an unmarried biological father may initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file a notice of the initiation of those proceedings with the state registrar of vital statistics within the Department of Health prior to the mother's execution of consent or her relinquishment to an agency. That action and notice may also be filed prior to the child's birth.

(b) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78-13-7.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a), and make those forms available in the office of the county clerk in each county, every health care facility, as defined in Section 26-21-2, and licensed child-placing agency.

(4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section may be served immediately after relinquishment or execution of consent, but shall be served at least 30 days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption.

(6) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion in the adoption proceeding within 30 days after service. The motion shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) Any person who fails to file a motion for relief within 30 days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary under Section 78-30-4.14, service shall be in accordance with the provisions of the Utah Rules of Civil Procedure. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78-30-4.14, the sole purpose of notice under this section is to enable the person served to intervene in the adoption and present evidence to the court relevant to the best interest of the child. 1996

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.

1995

78-30-4.15. Responsibility of each party for their own actions — Fraud or misrepresentation — Statutory compliance.

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interest of the child, in accordance with the provisions of Section 78-30-4.16.

(3) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

(4) The Legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore when all of the following requirements have been met, that unmarried biological father may contest an adoption, prior to finalization of the decree of adoption, and assert his interest in the

child; the court may then, in its discretion, proceed with an evidentiary hearing under Subsection 78-30-4.16(2):

(a) the unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) the mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Utah;

(c) the unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Utah; and

(d) the unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and right in the child in cases of adoption. 1998

78-30-4.16. Contested adoptions — Rights of parties — Determination of custody.

(1) Whenever any party contests an adoption, the court shall first determine whether the provisions of this chapter have been complied with. If a party who was entitled to notice and consent under the provisions of this chapter, was denied that right, and did not otherwise waive or forfeit that right under the terms of this chapter, the court may:

(a) enjoin the adoption, or dismiss the adoption petition, and proceed in accordance with Subsection (2); or

(b) determine whether proper grounds for termination of that parent's rights exist and, if so, order that the parent's rights be terminated in accordance with the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) (a) In any case, and under any circumstance, if a court determines that a petition for adoption may not be granted, the court may not automatically grant custody of a child to a challenging biological parent, but shall conduct an evidentiary hearing in each case, in order to determine who should have custody of the child, in accordance with the child's best interest.

(b) Evidence considered at that hearing may include, but is not limited to, evidence of psychological or emotional bonds that the child had formed with third parties and any detriment that a change in custody may cause to the child. The fact that a person relinquished a child to a licensed child placing agency or executed a consent for adoption may not be considered by the court as evidence of neglect or abandonment.

(c) Any custody order entered pursuant to this section may also include provisions for visitation by a biological parent or interested third party, and provide for the financial support of the child.

(3) An adoption may not be contested after the final decree of adoption is entered. 1995

78-30-4.17. Parents whose rights have been terminated.

Neither notice nor consent to adoption or relinquishment for adoption is required from a parent whose rights with regard to an adoptee have been terminated by a court. 1995

78-30-4.18. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed or confirmed under oath before:

(a) a judge of any court that has jurisdiction over adoption proceedings, or a public officer appointed by that judge for the purpose of taking consents or relinquishments; or

(b) a person who is authorized by a licensed child-placing agency to take consents or relinquishments so long as the signature is notarized or witnessed by two individuals who are not members of the birth mother's immediate family and who are not affiliated with the licensed child-placing agency.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed or confirmed under oath before:

(a) a person who is authorized by a child-placing agency licensed by that state to take consents or relinquishments; or

(b) a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings, or a court of that state that has jurisdiction over adoption proceedings.

(3) The consent or relinquishment of any other person or agency as required by Section 78-30-4.14 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to a copy of the consent or relinquishment. 1995

78-30-4.19. Time period prior to birth mother's consent.

A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child. 1995

78-30-4.20. When consent or relinquishment effective.

A consent or relinquishment is effective when it is signed and may not be revoked. 1995

78-30-4.21. Power of a minor to consent or relinquish.

A minor parent has the power to consent to the adoption of his or her child and has the power to relinquish his or her control or custody of the child to a licensed child-placing agency. That consent or relinquishment is valid and has the same force and effect as a consent or relinquishment executed by an adult parent. A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated. 1995

78-30-4.22. Custody pending final decree.

(1) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.

(2) Once a child has been placed with, relinquished to, or ordered into the custody of a licensed child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child. 1995

78-30-4.23. Criminal sexual offenses.

The notice and consent provisions of this chapter do not apply in cases where the child is conceived as a result of any sexual offense described in Title 76, Chapter 5, Part 4. 1995