

2000

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

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David M. McConkie; Merrill F. Nelson; Kirton and McConkie; D. Bruce Oliver; Attorneys for Appellee.

Affordable Legal Advocates; G. Brent Smith; Steven C. Russell; Attorney for Appellant.

Recommended Citation

Brief of Appellee, *Al-Bahadli v. LDS Family Services*, No. 20000605 (Utah Court of Appeals, 2000).
https://digitalcommons.law.byu.edu/byu_ca2/2832

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

MAHAOUD AL-BAHADLI,	:	Case No. 20000605-CA
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	Priority No. 4
	:	
LDS FAMILY SERVICES and	:	
JILL LECHEMINANT,	:	
	:	
Defendants/Appellees.	:	

BRIEF OF APPELLEE
LDS FAMILY SERVICES

Appeal from a Final Judgment of the Third District Court of
Salt Lake County, State of Utah
Judge William B. Bohling

G. Brent Smith
Steven C. Russell
AFFORDABLE LEGAL ADVOCATES
180 South 300 West, Suite 170
Salt Lake City, UT 84101
Telephone: (801) 532-5100

Attorneys for Plaintiff/Appellant

D. Bruce Oliver
180 South 300 West, Suite 210
Salt Lake City, UT 84111
Telephone: (801) 328-8888

Attorney for Defendant/Appellee
Jill LeCheminant

David M. McConkie (A2154)
Merrill F. Nelson (A3841)
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111-1004
Telephone: (801) 328-3600

Attorneys for Defendant/Appellee
LDS Family Services

FILED
Utah Court of Appeals

JUN 06 2001

Pauletta Stagg
Clerk of the Court

IN THE COURT OF APPEALS OF THE STATE OF UTAH

MAHAOUD AL-BAHADLI,	:	Case No. 20000605-CA
	:	
Plaintiff/Appellant,	:	
	:	
vs.	:	Priority No. 4
	:	
LDS FAMILY SERVICES and	:	
JILL LECHEMINANT,	:	
	:	
Defendants/Appellees.	:	

BRIEF OF APPELLEE
LDS FAMILY SERVICES

Appeal from a Final Judgment of the Third District Court of
Salt Lake County, State of Utah
Judge William B. Bohling

G. Brent Smith
Steven C. Russell
AFFORDABLE LEGAL ADVOCATES
180 South 300 West, Suite 170
Salt Lake City, UT 84101
Telephone: (801) 532-5100

Attorneys for Plaintiff/Appellant

D. Bruce Oliver
180 South 300 West, Suite 210
Salt Lake City, UT 84111
Telephone: (801) 328-8888

Attorney for Defendant/Appellee
Jill LeCheminant

David M. McConkie (A2154)
Merrill F. Nelson (A3841)
KIRTON & McCONKIE
60 East South Temple, Suite 1800
Salt Lake City, UT 84111-1004
Telephone: (801) 328-3600

Attorneys for Defendant/Appellee
LDS Family Services

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED	1
DETERMINATIVE LEGAL PROVISIONS	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	5
ARGUMENT	6
POINT I: THE DISTRICT COURT CORRECTLY RULED THAT PLAINTIFF HAS NO RIGHT TO CONTEST THE ADOPTION BECAUSE HE FAILED TO COMPLY WITH STATUTORY REQUIREMENTS AND DOES NOT MEET THE DUE PROCESS EXCEPTION TO THOSE REQUIREMENTS.	6
A. <u>Statutory Compliance</u>	6
B. <u>Due Process Exception</u>	10
1. Impossibility and Reasonable Opportunity.	10
2. Constructive and Actual Notice.	14
POINT II: THE DISTRICT COURT CORRECTLY RULED THAT PLAINTIFF LACKS STANDING TO CHALLENGE THE FACIAL CONSTITUTIONALITY OF SECTION 78-30-4.15(2).	17
CONCLUSION	18
ADDENDUM	19

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Beltran v. Allan</i> , 926 P.2d 892 (Utah App. 1996).	1, 10, 11, 15, 16
<i>Burns v. Summerhays</i> , 927 P.2d 197 (Utah App. 1996)	17
<i>Ellis v. Social Services Dept.</i> , 615 P.2d 1250 (Utah 1980)	10-12, 16
<i>In re Adoption of B.B.D.</i> , 1999 UT 70, 984 P.2d 967	9, 11, 13-16
<i>In re Adoption of Baby Boy Doe</i> , 717 P.2d 686 (Utah 1986)	10, 12-14, 16
<i>In re Adoption of W</i> , 904 P.2d 1113 (Utah App. 1995)	18
<i>Jenkins v. Swan</i> , 675 P.2d 1145 (Utah 1983)	17
<i>Sanchez v. L.D.S. Social Services</i> , 680 P.2d 753 (Utah 1984)	9, 14, 16
<i>State v. Yates</i> , 834 P.2d 599 (Utah App. 1992)	17
<i>Swayne v. L.D.S. Social Services</i> , 795 P.2d 637 (Utah 1990)	9, 12, 15, 16
<i>Webster v. Sill</i> , 675 P.2d 1170 (Utah 1983)	4
<i>Wells v. Children's Aid Society</i> , 681 P.2d 199 (Utah 1984)	11, 12, 14, 16

<i>York v. Unqualified Washington County Elected Officials</i> , 714 P.2d 679 (Utah 1986).	1, 17
---	-------

Statutes and Rules

Utah Code Annotated

§ 78-2a-3(2)(h)	1
§ 78-30-4.12	1
§ 78-30-4.12(2)	6
§ 78-30-4.12(3)(a)	7
§ 78-30-4.14	1
§ 78-30-4.14(2)	8
§ 78-30-4.14(5)	8, 9
§ 78-30-4.15(1)	17
§ 78-30-4.15(2)	1, 17

Utah Rules of Civil Procedure

Rule 9(b)	15
---------------------	----

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to U.C.A. § 78-2a-3(2)(h).

STATEMENT OF ISSUES PRESENTED

1. Whether the district court correctly ruled that plaintiff has no right to contest the child's adoption under governing statutes or due process.

Standard of Review: Correctness. *Beltran v. Allan*, 926 P.2d 892, 895 (Utah App. 1996).

Preservation of Issue: Raised by summary judgment motion. (R. 26-35.)

2. Whether the district court correctly ruled that plaintiff has no standing to challenge the facial constitutionality of U.C.A. § 78-30-4.15(2).

Standard of Review: Correctness. *York v. Unqualified Washington County Elected Officials*, 714 P.2d 679, 680 (Utah 1986).

Preservation of Issue: Raised on summary judgment. (R. 81-82.)

DETERMINATIVE LEGAL PROVISIONS

This case is governed by U.C.A. §§ 78-30-4.12 and -4.14, set forth verbatim in the Addendum. (Add. 20.)

STATEMENT OF THE CASE

This is a paternity action in which the plaintiff-appellant seeks custody of a nonmarital, infant child that the mother placed for adoption over one-and-a-half years ago. (R. 1.) The district court entered summary judgment for defendants on the grounds that plaintiff failed to establish his parental rights prior to the mother's relinquishment. The court held that by failing to comply with the statutory procedures to establish his

rights, plaintiff forfeited any right to custody or adoption consent. Moreover, the court found that the mother's silence on the subject of adoption did not violate plaintiff's due process rights because the mother has a right of privacy, and plaintiff had a reasonable opportunity to protect his own rights. (R. 112, Add. 1.) Plaintiff filed this appeal. (R. 116.) This Court denied cross-motions for summary disposition and defendant's motion to expedite briefing. (Add. 4-5.)¹

STATEMENT OF FACTS

Plaintiff, Mahaoud Al-Bahadli, is a 31-year-old single man. Defendant Jill LeCheminant is a 19-year-old single woman. They began dating and engaging in sexual relations in October 1998. In February 1999, Jill learned that she was pregnant and informed plaintiff of his paternity. (Affidavit of Jill LeCheminant, ¶¶ 2-4, R. 39, Add. 6; Affidavit of Mahaoud Al-Bahadli, ¶ 1, R. 50, Add. 18.)

Early in the pregnancy, Jill and plaintiff discussed how to deal with the pregnancy and the child. Throughout the pregnancy, Jill attended counseling sessions and parenting classes with LDS Family Services ("Agency") to consider her options, including possible adoption. Plaintiff knew Jill was attending these classes, but denies knowing they included discussion of adoption. Plaintiff denies discussing adoption, but it is undisputed that Jill never told plaintiff she would not place the child for adoption. (LeCheminant Aff't, ¶¶ 5-7; Al-Bahadli Aff't, ¶¶ 3-4.)

¹ Contrary to plaintiff's unsupported assertions (Br. of App. 4-5), the mother has made no admission that she misled plaintiff concerning the adoption

The baby was born August 10, 1999. Jill informed plaintiff of the birth, and plaintiff visited the mother and child in the hospital. Because of medical complications, the child remained in the hospital for three months, until November 9, 1999. Jill and plaintiff discussed marriage plans, but never carried them out. In any event, it is undisputed that Jill never told plaintiff she and the baby would live with him. Plaintiff paid none of the expenses of Jill's pregnancy or of the child's birth. (LeCheminant Aff't, ¶¶ 8, 12; R. 4.)

On October 18, 1999, two months after the birth, Carolyn Chudley, Jill's Agency social worker, telephoned plaintiff to verify that he was aware of the child's possible adoption. Carolyn explained that Jill had decided not to marry plaintiff and that Jill was still considering placing the child for adoption. Plaintiff responded that he did not believe Jill would place the child for adoption because "she loves the baby too much," and she knew plaintiff opposed adoption. (Affidavit of Carolyn Chudley, ¶¶ 6-7, R. 42, Add. 9; Al-Bahadli Aff't, ¶ 6.)²

² Plaintiff concedes that Carolyn discussed Jill's "placing the child," but now denies that she used the word "adoption." (Al-Bahadli Aff't, ¶ 6.) However, as presented at the summary judgment hearing (Tr. 52-53), plaintiff previously testified in his deposition that Carolyn may have used the word "adoption," but he could not remember:

Q. Did you ever receive a call from the adoption agency telling you that Jill was considering adoption?

A. No. Carolyn, she called me. She called my house.

....

Q. Didn't she mention adoption when she called you?

[cont.]

On November 9, 1999, the hospital discharged the baby to Jill's custody, and she informed plaintiff and the Agency of her decision to place the child for adoption. Jill took the baby to the Agency, which verified that plaintiff had not filed notice of a paternity action with the Utah Department of Health. Jill then signed the relinquishment and consent to adoption. The Agency immediately placed the child with adoptive parents, with whom the child has continuously resided. (LeCheminant Aff't, ¶¶ 9-11; Chudley Aff't, ¶¶ 8-10.)

Plaintiff commenced this action on December 1, 1999, seeking custody of the child and support payments from Jill. (R. 1-3.) The complaint makes no reference to any misrepresentation. As of the motion for summary judgment, plaintiff had not filed notice of his paternity action with the Utah Department of Health. (Chudley Aff't, ¶ 11.) Plaintiff claims to have filed the notice on January 14, 2000, but no certificate of filing appears in the record. (Al-Bahadli Aff't, ¶ 8.)

Defendants filed a motion for summary judgment on the grounds that plaintiff failed to establish his paternal rights according to statutory requirements prior to Jill's

A. No. No. No. I don't understand adoption. . . .

Q. So Carolyn never used the word "adoption"?

A. I don't know. I can't remember

....

A. . . . *I'm not sure if Carolyn said that word "adoption" or not. I can't tell you if she said, Think about adoption or not. If she did ask me about adoption, I mean I don't know.* [Al-Bahadli Dep. 51-54, emp. added.]

Plaintiff's deposition prevails over his subsequent affidavit to the contrary. *See, e.g., Webster v. Sill*, 675 P.2d 1170, 1172-73 (Utah 1983).

relinquishment. (R. 26-49.) In response to the motion, plaintiff identified no material issue of fact, arguing only that he was “misled” by Jill’s failure to inform him of the possible adoption. He also challenged the constitutionality of an unrelated fraud provision in the adoption statute. (R. 54-58.) The district court granted summary judgment for defendants on the grounds asserted, concluding that plaintiff failed to comply with statutory requirements, that compliance was possible, and that Jill was not obligated to inform plaintiff of her planned adoption. Therefore, plaintiff has no right to custody or to contest the adoption. The court also held that the fraud provision of the statute was not at issue and was not properly raised. (R. 112-14, Add. 3.) Plaintiff appeals from that order. (R. 116.) This Court denied cross-motions for summary disposition, deferring the issues until completion of briefing and argument. (Add. 4.)

SUMMARY OF ARGUMENT

Utah law requires an unwed father to comply with certain statutory procedures in order to establish his rights and oppose the adoption. Plaintiff concedes that he failed to comply with those required procedures; therefore, he has no statutory right to contest the child’s adoption.

The due process exception applies only when the father demonstrates, first, that it was “impossible” to comply with the statutes because of ignorance of when and where the child was born; and, second, that he had no “reasonable opportunity” to protect his interests because of misrepresentations by the mother. The reasonable opportunity analysis does not apply unless impossibility is shown first.

It was not “impossible” for plaintiff to comply with Utah law because he and the mother are Utah residents, were at all times present in Utah, and plaintiff knew that the child would be, or had been, born in Utah. Absent impossibility, no inquiry into reasonable opportunity is required. However, even if applied, plaintiff had a “reasonable opportunity” to protect his rights because he was not misled by the mother. The mother had no legal obligation to inform plaintiff of her adoption plans. Moreover, her statements that she was attending parenting classes and would marry plaintiff were true and did not preclude a possible adoption. The mother never told plaintiff that she would not place the child for adoption, or that she and the child would live with him. In any event, plaintiff is presumed to know of the possibility of adoption, and the Agency gave plaintiff actual notice that the mother was considering adoption. Therefore, plaintiff should have been aware of the need to protect his rights.

Plaintiff has no standing to challenge the constitutionality of the statutory fraud provision because that provision was not applied in this case.

ARGUMENT

POINT I: THE DISTRICT COURT CORRECTLY RULED THAT PLAINTIFF HAS NO RIGHT TO CONTEST THE ADOPTION BECAUSE HE FAILED TO COMPLY WITH STATUTORY REQUIREMENTS AND DOES NOT MEET THE DUE PROCESS EXCEPTION TO THOSE REQUIREMENTS.

B. Statutory Compliance.

The rights and responsibilities of the various parties involved in the adoption of an out-of-wedlock child are set forth in U.C.A. § 78-30-4.12(2). “[T]he 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.” Subsection (a). The “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.” Subsection (b). The child has “a right to permanence and stability in adoptive placements.” Subsection (c). The “adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child.” Subsection (d). However, the unmarried father has only “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.” Subsection (e). Accordingly, the “state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment . . . by establishing legal paternity, in accordance with the requirements of this chapter.” *Id.*

Section 78-30-4.12(3)(a) states that statutory standards are applied to determine whether the unwed father’s action “is sufficiently prompt and substantial to require constitutional protection.” If the father fails timely to grasp his opportunity for legal rights through strict compliance with statutory procedures, “his biological parental interest may be lost entirely.” Subsection (b). “A certain degree of finality is necessary in order to facilitate the state’s compelling interest” in providing prompt and permanent

placements for adoptive children. Therefore, “the interests of the state, the mother, the child, and the adoptive parents . . . outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish” his parental rights in accordance with statutory requirements. Subsection (c). The unmarried father “has the primary responsibility to protect his rights,” and he “is presumed to know that the child may be adopted without his consent unless he strictly complies with” statutory requirements to establish his paternal rights. Subsections (d) and (e).

Section 78-30-4.14(2) sets forth the statutory requirements for an unwed father to assert his parental rights. An unwed father of a newborn child may contest the child’s adoption “only if the father has strictly complied with the requirements of” subsection (b). Subsection (b) requires the father to “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.*” (Emp. added.) The father must: (i) initiate a paternity action, setting forth his ability, desire, and plan to care for and financially support the child; (ii) file notice of that paternity action with the Department of Health; and (iii) have paid “a fair and reasonable amount of the expenses incurred in connection with the mother’s pregnancy and the child’s birth.”

Most importantly, section 78-30-4.14(5) states that an unwed father who fails timely to comply with these statutory requirements is deemed to have waived his paternal rights, including any right to contest the adoption:

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.

Accordingly, an unwed father who fails to file notice of commencement of a paternity action “prior to the time the mother executes her consent for adoption” forfeits his parental rights and is barred from contesting the adoption.

Plaintiff conceded in the district court, and does not dispute on appeal, that he failed to comply with the foregoing statutory requirements. (Tr. 24, 32.) His paternity action was not filed until three weeks after Jill’s relinquishment. His complaint fails to demonstrate his ability and plan to care for and financially support the child; rather, he seeks financial support from Jill. The record contains no proof that he filed notice of his paternity action with the Department of Health. Moreover, plaintiff paid none of the expenses of Jill’s pregnancy or of the child’s birth. Therefore, plaintiff “is deemed to have waived and surrendered any right in relation to the child, . . . and his consent to the adoption of the child is not required.” 78-30-4.14(5). *See, e.g., In re Adoption of B.B.D.*, 1999 UT 70, ¶¶ 17, 26, 984 P.2d 967 (unwed father “failed to comply with any of the foregoing requirements of the law; and he has therefore forfeited any parental rights to the child”); *Swayne v. L.D.S. Social Services*, 795 P.2d 637, 640 (Utah 1990) (rights of noncomplying unwed father are “automatically terminated” with the mother’s relinquishment); *Sanchez v. L.D.S. Social Services*, 680 P.2d 753, 756 (Utah 1984) (it is “not too harsh” to require an unwed father either to comply with the statutes or “to yield”

to the adoption); *Beltran v. Allan*, 926 P.2d 892, 898 (Utah App. 1996) (ignorance of the law is no excuse from strict statutory compliance).

C. Due Process Exception.

Plaintiff argues that the foregoing statutes are unconstitutional as applied to him because he had no reasonable opportunity to comply. (Br. of App. 7.) Plaintiff relies exclusively on *Ellis v. Social Services Dept.*, 615 P.2d 1250 (Utah 1980), and *In re Adoption of Baby Boy Doe*, 717 P.2d 686 (Utah 1986), attempting to conform the facts here to the facts of those cases. However, those cases are factually very different from the present case, and plaintiff has misapplied the “reasonable opportunity” standard.

I. Impossibility and Reasonable Opportunity.

In *Ellis, supra*, the unwed parents resided in California and were engaged to be married. Several days before the birth, the mother came to Utah without notifying the father, gave birth, represented that the father was unknown, and relinquished the child for adoption. 615 P.2d at 1252-53. Some days later, after discovering what had happened, the father filed the required notice of paternity and law suit, claiming violation of due process for lack of notice. The court noted that “[i]n the usual case, the putative father would either know or reasonably should know approximately *when and where* his child was born.” *Id.* at 1256 (emp. added). However, if the father could show that it was “impossible” to comply with the statute, “through no fault of his own,” based on lack of notice of “*when and where*” his child was born, he should “be permitted to show that he was not afforded a reasonable opportunity to comply with the statute.” *Id.* (emp. added).

The case was remanded to give the father an opportunity “to show as a factual matter that he could not reasonably have expected his baby to be born in Utah.” *Id.*

The Utah Supreme Court clarified this “reasonable opportunity” standard in *Wells v. Children’s Aid Society*, 681 P.2d 199 (Utah 1984). As the *Wells* court emphasized, “Due process does not require that the father of an illegitimate child be identified and personally notified before his parental right can be terminated.” *Id.* at 207. “[S]uch a requirement would frustrate the compelling state interest in the speedy determination” of parental responsibility for the child, as well as “threaten the privacy interests of unwed mothers.” *Id.* The “reasonable opportunity” standard applies only “when it is first shown that it was ‘impossible’ for the father to file ‘through no fault of his own.’” *Id.* at 208. “Otherwise, the need to prove in each adoption case that the unwed father . . . had a ‘reasonable opportunity’ to file the required notice of paternity would frustrate the statute’s purpose to facilitate secure adoptions by early clarification of status.” *Id.* Statutory compliance is *not* “impossible” as long as the father knows the child is to be born in Utah. *Id.* at 207. *See also In re Adoption of B.B.D.*, 1999 UT 70, ¶ 17, 984 P.2d 967 (father was required to comply with the Utah statute because he knew the baby was in Utah); *Beltran v. Allan*, 926 P.2d 892, 896 (Utah App. 1996) (father was subject to Utah statutory requirements because he knew the child was in Utah).

The *Ellis* “reasonable opportunity” standard does not apply in the present case because plaintiff has failed to make the threshold showing that it was “impossible” for him to comply with the statute “through no fault of his own.” Plaintiff and Jill are Utah

residents, and plaintiff knew throughout the pregnancy that the baby would be born in Utah. In fact, he knew for three months following the birth that the baby *had been* born in Utah. Accordingly, unlike the California father in *Ellis*, who had no idea the mother was in Utah, plaintiff always knew that Jill was here and, consequently, that Utah law would apply. Because plaintiff could reasonably expect the child to be born in Utah, it was not “impossible” for him to comply with Utah law. Absent a prior showing of impossibility, the “reasonable opportunity” standard does not even come into play. *Ellis*, *supra*, at 1256; *Wells*, *supra*, at 208; *see also Swayne v. L.D.S. Social Services*, 795 P.2d 637, 642 (Utah 1990) (“the reasonable opportunity standard adopted in *Ellis* [i]s applicable [only] when ‘it was ‘impossible’ for the father to file ‘through no fault of his own’”).

The case of *Baby Boy Doe*, cited by plaintiff, is also easily distinguishable. There, the unwed parents were, again, California residents, and the mother came to Utah during the pregnancy. A few weeks prior to the birth, the mother told the father that she would move to Arizona *prior to the birth and that she and the baby would live there with him*. In reliance on the mother’s statement, the father went to Arizona to prepare living arrangements. Meanwhile, the baby was born early in Utah, without the father’s knowledge, and two days later the mother relinquished the child for adoption in Utah. The father learned of the birth and relinquishment the following day, and he filed the required claim of paternity one day later. 717 P.2d at 687-88, 690. In a 3-2 decision, the court held that the statute, as applied, violated due process. Under the first prong of

analysis, compliance with Utah law was deemed “impossible” because the father reasonably expected the child to be born in Arizona; he did not know of the birth in Utah; and he was absent from Utah before and during the birth. Under the second prong, the father had no “reasonable opportunity” to comply with Utah adoption statutes because of the mother’s representations to the father that she *and the child* would live with him in Arizona. *Id.* at 690-91. While the mother was not required to give the father actual notice of the planned adoption, neither could she misrepresent that there would be no adoption. *Id.* at 690.

In sharp contrast to those facts, as noted above, plaintiff and Jill are Utah residents; they never left Utah; and plaintiff knew of the birth in Utah. Accordingly, under the first prong of analysis, plaintiff never had any reason to expect that another state’s law would apply, and compliance with Utah law was not “impossible.” That ends the analysis, but even if the second prong were applicable, plaintiff has not shown that he was denied a “reasonable opportunity” to comply with the adoption statutes. Unlike the father in *Baby Boy Doe*, plaintiff was not misled to believe there would be no adoption. Contrary to plaintiff’s unsupported assertions, *the record contains no evidence of any such statement*. See *Adoption of B.B.D., supra*, at ¶¶ 31-32 (unwed father “misstates the record” and makes assertions not found in the record).

Jill’s statement that she was attending parenting classes at the Agency was *true*. Apparently, plaintiff never asked, and Jill never stated, whether she was also receiving private adoption counseling. Jill and plaintiff never discussed adoption at all, either way,

to say that it would or would not happen. Jill, herself, was undecided on adoption until the morning she took the child from the hospital. Under her right of privacy, Jill had no obligation to inform plaintiff that she was considering adoption. *Adoption of B.B.D.*, *supra*, at ¶ 15; *Wells*, *supra*, at 207; *Baby Boy Doe*, *supra*, at 691 (“actual notice is not required prior to termination of parental rights”). Most importantly, the record is undisputed that Jill never told plaintiff she would not place the child for adoption. (LeCheminant Aff’t, ¶ 7.)

Moreover, Jill’s statement that she intended to marry plaintiff was also *true*, as it included no express reference to the child and, therefore, did not preclude also placing the child for adoption. Marriage and adoption are separate, and not necessarily related, decisions. Jill wanted to continue her relationship with plaintiff without the responsibilities of motherhood. Jill never told plaintiff that she *and the child* would live with him after taking the child from the hospital. Plaintiff may have “assumed” that mother and child would live with him, as did the father in *Sanchez*, *supra*, 680 P.2d at 755; however, as held in *Sanchez*, that assumption does not protect the father’s rights. By merely assuming there will be no adoption, an unwed father also assumes the risk that there could be.

2. Constructive and Actual Notice.

Not only was plaintiff *not misled* concerning adoption, he was on legal and actual notice of possible adoption. As the Supreme Court stated in *Adoption of B.B.D.*, *supra*, after discussing the mother’s right of privacy concerning adoption:

An unmarried father, on the other hand, “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.” Because he is deemed to be on notice, it becomes his responsibility to protect his own rights of notice and consent according to the requirements of section 78-30-4.13 to -4.15. [1999 UT 70, ¶ 15, emp. added, citation omitted.]

In addition, even though not legally required, *see Beltran, supra*, at 898, the Agency provided actual notice of possible adoption to plaintiff when Carolyn Chudley phoned him, over two months after the birth and more than three weeks prior to the relinquishment, stating that Jill was considering placing the child for adoption. Plaintiff quibbles over the words used, but the meaning was clear, and if the meaning was not clear, he should have inquired of Carolyn or discussed the matter with Jill. Because plaintiff had notice, both constructive and actual, of possible adoption, he “cannot argue that he was deceived or lulled into believing he did not need to take proper steps to protect his rights.” *Beltran, supra*, at 897. *See also Adoption of B.B.D., supra*, ¶ 17 (father who knows of possibility of adoption cannot claim violation of due process); *Swayne, supra*, at 643 (father who knows of possible adoption “should have been aware of the need to protect his parental rights”).³

In summary, this case illustrates the conflicting rights and interests of unwed parents. The mother has the right to place the child for adoption consistent with her

³ As indicated previously, plaintiff’s complaint contains no allegation of, or reference to, fraud or misrepresentation of any kind. Therefore, such claims cannot be raised in a belated effort to avoid summary judgment. *See, e.g., Norton v. Blackham*, 669 P.2d 857, 858 (Utah 1983) (plaintiff who failed to plead fraud in the complaint cannot assert it for the first time in opposing summary judgment); *DeBry v. Noble*, 889 P.2d 428, 443 (Utah 1995) (upholding summary judgment on fraud claim for failure to plead it with particularity, as required by Utah R. Civ. P. 9(b)).

judgment of what is best for herself and the child. She has no obligation to involve the father in her decision. The mother, Agency, and adoptive parents must be able to rely on a definite procedure and measure of the father's rights in order to prevent the trauma of later disruption of the adoption. *See Wells, supra*, at 206-07 ("such determinations must also be final and irrevocable"); *Beltran, supra*, at 898 ("Utah law requires strict compliance to provide certainty and finality to adoptions"). Meanwhile, the father has the duty to protect his own rights. He can perfect his paternal rights and effectively veto the mother's adoption decision by simply complying with the statutory requirements. By failing to follow those requirements, the father assumes the risk of losing his parental rights. Moreover, informal expressions of interest in the child, gifts for the child, visits to the hospital, or statements of opposition to adoption are no substitute for strict compliance with the statutes. *E.g., Adoption of B.B.D., supra*, at ¶ 20; *Swayne, supra*, at 641; *Sanchez, supra*, at 755-56; *Beltran, supra*, at 896. Neither does plaintiff come within the due process exception established by *Ellis* and *Baby Boy Doe* because he knew of the birth here in Utah, and he was not misled concerning the possibility of adoption, having received actual notice of that possibility. Therefore, the district court correctly held that plaintiff has no rights in relation to the child.⁴

⁴ In passing, plaintiff asserts that material issues of fact preclude summary judgment. (Br. of App. 9.) However, the record discloses no such material issues. There is no dispute that Jill and plaintiff never discussed adoption, but did discuss marriage, as explained above. Plaintiff "misstates the record," as did the father in *B.B.D., supra*, at ¶ 32, by claiming that he and Jill also discussed "rais[ing] their son." No such statement appears in the record. Other claimed factual issues are not material to the legal analysis. In any event, plaintiff failed to identify any material issues of fact in opposing the motion for summary judgment in the district court. Therefore, "[a]ll material facts set forth in the movant's statement . . . shall be deemed admitted for the purpose of summary judgment." Rule 4-501(2)(B), Code of Jud. Admin. The district court so held. (Order, ¶ 1, Add. 2.)

POINT II: THE DISTRICT COURT CORRECTLY RULED THAT PLAINTIFF LACKS STANDING TO CHALLENGE THE FACIAL CONSTITUTIONALITY OF SECTION 78-30-4.15(2).

Plaintiff argues, without analysis or discussion of case law, that section 78-30-4.15(2) is unconstitutional on its face because it “contradicts” the “reasonable opportunity” standard discussed above. (Br. of App. 10.) However, as the district court concluded, plaintiff lacks standing to raise the issue. (Order, ¶ 9, Add. 3.)⁵

Section 78-30-4.15(2) provides that “[a] fraudulent representation is not a defense to strict compliance with the requirements of this chapter.” This provision merely emphasizes that unwed parents are expected to protect their own rights, rather than relying on assumptions or actions and statements of the other parent. *See* Subsection -4.15(1). However, this provision was never invoked or applied in this case because there was no fraud. As the district court held, plaintiff neither alleged nor proved any act of fraud by Jill. (Order, ¶ 2, Add. 2.) Therefore, the issue whether fraud is a defense to strict compliance with the statute never came up. Because this statute was not invoked to defeat plaintiff’s claims, he was not “injured” by it, and accordingly has no standing to challenge its validity. *See, e.g., Jenkins v. Swan*, 675 P.2d 1145, 1150 (Utah 1983) (“One who is not adversely affected has no standing.”); *York v. Unqualified Washington County Elected Officials*, 714 P.2d 679, 680 (Utah 1986) (action dismissed for lack of standing).

⁵ In addition, because the argument is presented without legal analysis or authority, this Court should decline to address it. *See, e.g., Burns v. Summerhays*, 927 P.2d 197, 199 (Utah App. 1996); *State v. Yates*, 834 P.2d 599, 602 (Utah App. 1992).

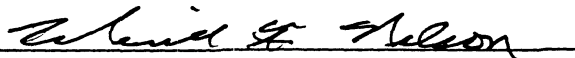
This Court does not address constitutional issues unnecessarily. *See In re Adoption of W*, 904 P.2d 1113, 1119 n.7 (Utah App. 1995).

CONCLUSION

Based on the foregoing, this Court should affirm the order of summary judgment for defendants.

Respectfully submitted this 6th day of June, 2001.

KIRTON & McCONKIE

By: 
David M. McConkie
Merrill F. Nelson
Attorneys for Defendant/Appellee
LDS Family Services

CERTIFICATE OF SERVICE

I hereby certify that I caused two true and correct copies of the foregoing **Brief of Appellee LDS Family Services** to be mailed through United States mail, postage prepaid, this 6th day of June, 2001, to the following:

G. Brent Smith
Steven C. Russell
AFFORDABLE LEGAL ADVOCATES
180 South 300 West, Suite 170
Salt Lake City, UT 84101

D. Bruce Oliver
180 south 300 West, Suite 210
Salt Lake City, UT 84101



ADDENDUM

Index

<u>Item</u>	<u>Page</u>
1. District Court Order (granting summary judgment)	1
2. Court of Appeals Order Denying Summary Disposition	4
3. Court of Appeals Order (denying motion to strike and to expedite briefing)	5
4. Affidavit of Jill LeCheminant	6
5. Affidavit of Carolyn Chudley (with exhibits)	9
6. Affidavit of Mahaoud Al-Bahadli	18
7. U.C.A. §§ 78-30-4.12 and -4.14	20

::ODMA\PCDOCS\DOCS\520130\]

David M. McConkie (#2154)
Merrill F. Nelson (#3841)
KIRTON & McCONKIE
Attorneys for Defendant
LDS Family Services
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84145-0120
Telephone: (801) 328-3600

FILED DISTRICT COURT
Third Judicial District

MAY 16 2000

By SALT LAKE COUNTY
W. Cole 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.

[illegible]

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:

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.

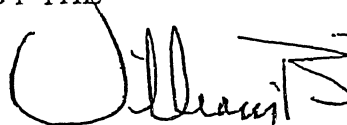
8. Plaintiff has no rights, and is entitled to no relief, in relation to the child.

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.

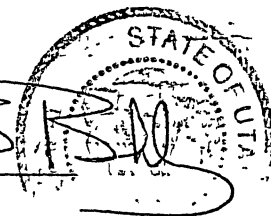
10. Defendants are entitled to judgment as a matter of law, and their motion for summary judgment is granted.

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

BY THE COURT



William B. Bohling
District Court Judge



THE UTAH COURT OF APPEALS

DEC 22 2000

-----ooOoo-----

Paulette Stagg
Clerk of the Court

Mahaoud Al-Bahaldi,
Plaintiff and Appellant,
v.
LDS Family Services and Jill
LeCheminant,
Defendant and Appellee.

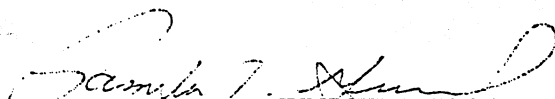
ORDER DENYING
SUMMARY DISPOSITION
Case No. 20000605-CA

This matter is before the court on Appellee LDS Family Services' motion for summary affirmance, and on Appellant's motion for summary reversal, both pursuant to Rule 10 of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the motions are each denied, and a ruling on the issues raised therein is deferred pursuant to Rule 10(f), Utah Rules of Appellate Procedure, pending plenary presentation and consideration of the appeal.

Dated this 22nd day of December, 2000.

FOR THE COURT:


Pamela T. Greenwood,
Presiding Judge

FILED
Utah Court of Appeals
JAN 29 2001

IN THE UTAH COURT OF APPEALS

Paulette Stagg
Clerk of the Court

---oo0oo---

Mahaoud Al-Bahadli,)	
)	
Plaintiff and Appellant,)	ORDER
)	
v.)	Case No. 20000605-CA
)	
LDS Family Services; Jill)	
Lechiminant,)	
)	
Defendant and Appellee.)	

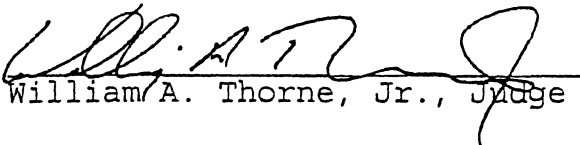
This matter is before the court upon appellee's motion, filed January 9, 2001, to strike transcript request and commence briefing. On January 23, 2001, appellant filed a memorandum in opposition to appellee's motion.

Appellant originally filed a request for transcript in the trial court on June 9, 2000. Subsequently, both parties filed motions for summary disposition in this court. Pursuant to Rule 10(d), Utah Rules of Appellate Procedure, once a motion for summary disposition is filed, the time for taking other steps in the appeal is suspended pending disposition of the motion. Following issuance of the court's order denying the motions for summary disposition, appellant promptly renewed his transcript request.

NOW, THEREFORE, IT IS HEREBY ORDERED that appellee's motion to strike transcript request and to commence briefing is denied. Upon completion and filing of the requested transcript, and this court's receipt of the record index, the briefing schedule will be set and the parties notified of the due date for appellant's brief.

Dated this 29 day of January, 2001.

FOR THE COURT:


William A. Thorne, Jr., Judge

David M. McConkie (#2154)
 Merrill F. Nelson (#3841)
 KIRTON & McCONKIE
 Attorneys for Defendants
 1800 Eagle Gate Tower
 60 East South Temple
 P.O. Box 45120
 Salt Lake City, Utah 84145-0120
 Telephone: (801) 328-3600

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

MAHAOUD AL-BAHADLI,	:	
	:	
Plaintiff,	:	AFFIDAVIT OF JILL
	:	LECHEMINANT
	:	
vs.	:	Civil No. 994907742
	:	
LDS FAMILY SERVICES and JILL	:	
LECHEMINANT,	:	Judge William B. Bohling
	:	
Defendants.	:	
	:	

STATE OF UTAH)
 :SS.
 COUNTY OF SALT LAKE)

I, Jill LeCheminant, hereby depose and affirm as follows:

1. I am the named individual defendant in this action and have personal knowledge of the matters here set forth.

2. I am 19 years old and have never been married. I am the birth mother of the child at issue in this case.

3. Plaintiff, Mahaoud Al-Bahadli, is the child's biological father. Mahaoud is 27 years old, is from Iraq, and has never been married. He learned English in Iraq and Saudi Arabia before coming to Utah; he has been in Utah four years. Mahaoud is very smart and has a good understanding of English.

4. I began dating and having sexual relations with Mahaoud in October 1998. In February 1999, I learned that I was pregnant and informed Mahaoud that he was the father.

5. Soon after learning of the pregnancy, I discussed with Mahaoud our various options to deal with the pregnancy and the child. I asked what he thought of adoption, Mahaoud responded that he does not believe in adoption.

6. Throughout the pregnancy, beginning in February 1999, I counseled with Carolyn Chudley, a social worker at LDS Family Services, regarding my options for the baby, including adoption. I attended several group meetings with other prospective unwed mothers to discuss planning and options, including adoption. I informed Mahaoud of these sessions and group meetings.

7. I never told Mahaoud that I would not place the child for adoption.

8. My baby was born August 10, 1999, in a Salt Lake County hospital. I informed Mahaoud of the birth that same day. The baby was premature and had to remain in the hospital for medical reasons until November 9, 1999.

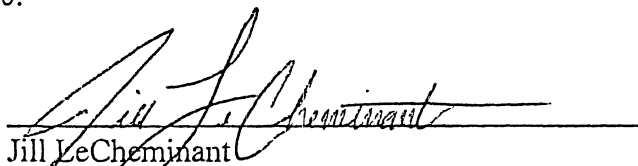
9. Sometime following the birth, I decided to place my child for adoption. The decision was very difficult, but I knew that I was not in a position to provide what he needed. I knew that adoption would be good for the baby. I made the decision because of my love for him.

10. I did not inform Mahaoud of my adoption decision at first because I feared he would be upset. Still, I never told Mahaoud that I would not place the child for adoption.

11. On November 9, 1999, I checked the baby out of the hospital and told Mahaoud of my plan to place the child for adoption. That afternoon, I signed the paper relinquishing my parental rights and consenting to my child's adoption.

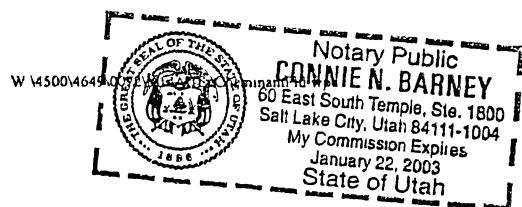
12. Mahaoud did not pay any of the expenses of my pregnancy or the child's birth.

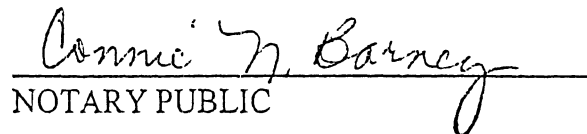
DATED this 17 day of January, 2000.


Jill LeCheminant

CERTIFICATE OF ACKNOWLEDGMENT

On this 7th day of January, 2000, before me, a notary public, personally appeared JILL LECEMINANT, who signed the foregoing document in my presence and who swore or affirmed to me that her signature is voluntary and the document truthful.




NOTARY PUBLIC

David M. McConkie (#2154)
 Merrill F. Nelson (#3841)
 KIRTON & McCONKIE
 Attorneys for Defendants
 1800 Eagle Gate Tower
 60 East South Temple
 P.O. Box 45120
 Salt Lake City, Utah 84145-0120
 Telephone: (801) 328-3600

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

MAHAOUD AL-BAHADLI,	:	
	:	
Plaintiff,	:	AFFIDAVIT OF CAROLYN
	:	CHUDLEY
	:	
vs.	:	Civil No. 994907742
	:	
LDS FAMILY SERVICES and JILL	:	
LECHEMINANT,	:	Judge William B. Bohling
	:	
Defendants.	:	
	:	

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

I, Carolyn Chudley, hereby depose and affirm as follows:

1. I am a social worker licensed by the State of Utah. I am employed by LDS Family Services ("Agency"), which is licensed as a child placing agency by the State of Utah.

2. Jill first came to the Agency in February 1999, and we discussed her pregnancy and the counseling and adoption services available from the Agency.

3. I subsequently had several counseling sessions with Jill at the Agency, in addition to several phone conversations, between February and November 1999. She also attended several group counseling sessions with other prospective unwed mothers.

4. At these individual and group counseling sessions, we discussed options for dealing with unwed pregnancy, including marriage, single parenting, parenting skills, and adoption.

5. Jill informed me of the premature birth of her child on August 10, 1999. I continued to counsel with Jill regarding adoption following the birth. She began to consider her selection of potential adoptive parents.

6. Jill informed me of the putative father's occasional inquiries on whether she intended to place the child for adoption, and of her responses that adoption was a possibility.

7. On October 18, 1999, with Jill's consent, I telephoned the putative father, Mahaoud Al-Bahadli, to verify his understanding of the possible adoption. I explained my role as Jill's adoption counselor. I understood from Jill that Mahaoud knew of her adoption counseling with the Agency. I explained that, because they had apparently decided not to get married, Jill had two options: to be a single parent or to place the child for adoption with a stable, loving family. He responded that he did not believe Jill would place the child for adoption because "she loves the baby too much," and "she knows that if she places for adoption that I will go and get the baby."

8. On the morning of November 9, 1999, Jill called to inform me that she was checking the baby out of the hospital. She said that she had informed Mahaoud of her decision to place the child for adoption, and that he responded that he was going to get an attorney.

9. Jill brought the baby to the Agency just after 2:00 p.m. on November 9, 1999. I checked the paternity registry at the Bureau of Vital Statistics and learned that no notice of paternity action had been filed with regard to Jill's baby. (Exhibit A.)

10. Jill signed the relinquishment of parental rights and consent to adoption at 2:55 p.m. on November 9, 1999. (Exhibit B.) The child was placed with adoptive parents later that same day, and the child has continuously resided with the adoptive parents to the present.

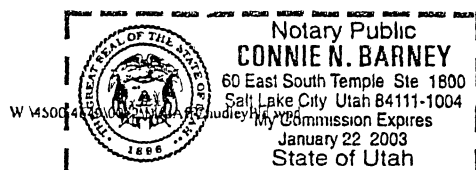
11. To the best of my information and belief, the putative father has never filed a notice of paternity action with the Bureau of Vital Statistics. (Exhibit C.)

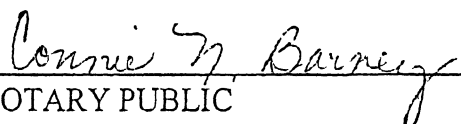
DATED this 7th day of January, 2000.


Carolyn Chudley

CERTIFICATE OF ACKNOWLEDGMENT

On this 7th day of January, 2000, before me, a notary public, personally appeared CAROLYN CHUDLEY, who signed the foregoing document in my presence and who swore or affirmed to me that her signature is voluntary and the document truthful.




NOTARY PUBLIC

UTAH DEPARTMENT OF HEALTH

CERTIFICATE OF SEARCH
FOR NOTICE OF THE INITIATION OF PROCEEDINGS TO ESTABLISH PATERNITY

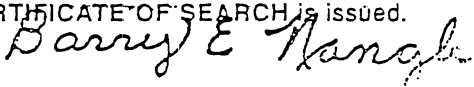
Name of Mother <div style="text-align: center;">JILL LECHEMINANT</div>		
Place of Child's Birth SALT LAKE CITY UTAH	Date of Child's Birth or Estimated Birth Date 08-10-99	Sex of Child MALE
<p>This is to certify that a search has been made of the file of Notices of the Initiation of Proceedings to Establish Paternity and/or the father's name is reported on the birth certificate with the Bureau of Vital Records, and no record was found to be on file.</p> <p>If a Notice of the Initiation of Proceedings to Establish Paternity is found on file or the father's name is reported on the birth certificate, a certified copy will be issued. If no record is on file, a CERTIFICATE OF SEARCH is issued.</p>		
<div style="text-align: center;">11-09-99</div> <div style="text-align: center;">Date</div>	<div style="text-align: center;">2:40 PM</div> <div style="text-align: center;">Time</div>	<div style="text-align: center;">  State Registrar </div>
UDH-BVR-23 Revised 5/95		

Exhibit A

RELINQUISHMENT OF PARENTAL RIGHTS, CONSENT TO ADOPTION
AND CONSENT TO TERMINATION OF PARENTAL RIGHTS
(BIRTH MOTHER - UTAH)

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

I, Jill LeCheminant, being first duly sworn on oath, depose and say:

1. I am the mother of a MALE child, who was born at 11:56 PM [time] on the 10th day of August, 1999,
at Salt Lake City, Salt Lake County, State of Utah.

2. This child was neither conceived nor born within a marriage.

3. I am not a member of an Indian Tribe and I am not an Alaska Native. To the best of my knowledge, the child's father is not a member of an Indian Tribe or an Alaska Native, and to the best of my knowledge, this child is not eligible for membership in an Indian Tribe or an Alaska Regional Corporation.

4. Because I feel that it is in this child's best interests to be placed for adoption, I hereby irrevocably release and relinquish this child to the care, custody, and control of LDS Social Services for placement for adoption.

5. I fully understand that by signing this Relinquishment, Consent to Adoption and Consent to Termination of Parental Rights, I am giving up all my parental rights to this child, and that my decision to place this child for adoption with LDS Social Services is final and I cannot change my mind.

6. I consent to the legal adoption of this child by the adoptive parents I have selected in consultation with LDS Social Services. If, after placing this child with the adoptive parents whom I have selected, LDS Social Services, in its sole and absolute discretion, decides that it is not in the child's best interest for the adoptive parents I have selected to complete the adoption, and removes the child from the home, LDS Social Services may, in its sole and absolute discretion, select another adoptive family with whom this child shall be placed for adoption, and I hereby consent to the legal adoption of this child by said family.

7. I consent to the absolute and final termination of my parental rights.

8. I hereby waive the right to notice of any and all legal proceedings which may be held in courts of the state of Utah, or elsewhere, in connection with the adoption of this child or the termination of my parental rights.

9. I have read the foregoing Relinquishment of Parental Rights, Consent to Adoption and Consent to Termination of Parental Rights and I fully understand its terms and conditions. My decision to relinquish this child to LDS Social Services and to consent to the adoption of this child and termination of my parental rights has been made voluntarily and of my own free will and choice. I am signing this Relinquishment and Consent to Adoption freely and voluntarily, without any coercion, force or duress and without any payment or promise to pay any money or other thing of value for the purpose of inducing me to place this child for adoption, consent to an adoption and termination of my parental rights or cooperate in the completion of an adoption.

10. I am not under the influence of any medication, drug or substance which would impair my ability to reason and make decisions.

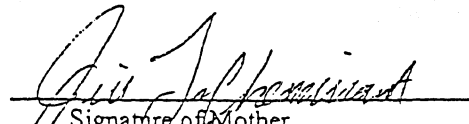
RELINQUISHMENT OF PARENTAL RIGHTS, CONSENT TO ADOPTION
AND CONSENT TO TERMINATION OF PARENTAL RIGHTS
(BIRTH MOTHER - UTAH)

11. More than twenty-four (24) hours have passed since the birth of this baby.

12. I agree that this Relinquishment, Consent to Adoption and Consent to Termination of Parental Rights shall be signed and interpreted according to the laws of the State of Utah, and I agree to submit myself to the jurisdiction of the State of Utah with regard to the subject matter of this Relinquishment, Consent to Adoption and consent to Termination of Parental Rights.

Date: 11/09/99

Time: 7:55 PM


Signature of Mother

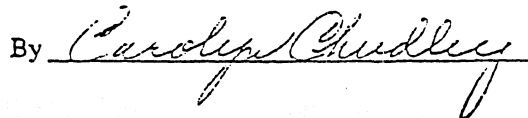
CERTIFICATION

I, Carolyn Chudley, hereby declare that:

1. I am a representative of LDS Social Services, a licensed child-placing agency, and I have been authorized to take relinquishments and consents to adoption.

2. I certify that, to the best of my information and belief, the person executing the foregoing Relinquishment of Parental Rights, Consent to Adoption and Consent to Termination of Parental Rights has read and understands said document and has signed it freely and voluntarily.

LDS SOCIAL SERVICES

By 

RELINQUISHMENT OF PARENTAL RIGHTS, CONSENT TO ADOPTION
AND CONSENT TO TERMINATION OF PARENTAL RIGHTS
(BIRTH MOTHER - UTAH)

NOTARIZATION

STATE OF UTAH)
COUNTY OF _____) :ss

On the _____ day of _____, 19____, personally appeared before me _____
_____ [birth mother], who signed the foregoing Relinquishment of Parental Rights in my presence and who
swore or affirmed to me that her signature is voluntary and the document truthful.

Notary Public

Residing at: _____

My commission expires:

WITNESSES

We, Kimberly Paetsch and Kira Kitzler, are witnesses to the foregoing
Relinquishment of Parental Rights, Consent to Adoption and Consent to Termination of Parental Rights signed by
Jill LeCheminant.

We do each hereby declare as follows:

1. I am not affiliated with LDS Social Services and I am not a member of the birth mother's family.
2. The birth mother has stated that she has read and understands the foregoing Relinquishment of Parental Rights, Consent to Adoption and Consent to Termination of Parental Rights and that the document is truthful.
3. To the best of my information and belief, the birth parent signed this document freely and voluntarily.

11/9/99
Date

Kimberly Paetsch
Witness

11/9/99
Date

Kira Kitzler
Witness

BMRelinq 98

UTAH DEPARTMENT OF HEALTH

CERTIFICATE OF SEARCH
FOR NOTICE OF THE INITIATION OF PROCEEDINGS TO ESTABLISH PATERNITY

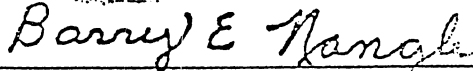
Name of Mother <div style="text-align: center; margin-top: 5px;">JILL LECHEMINANT</div>		
Place of Child's Birth <div style="text-align: center; margin-top: 5px;">SALT LAKE CITY UTAH</div>	Date of Child's Birth or Estimated Birth Date <div style="text-align: center; margin-top: 5px;">08-10-99</div>	Sex of Child <div style="text-align: center; margin-top: 5px;">MALE</div>
<p>This is to certify that a search has been made of the file of Notices of the Initiation of Proceedings to Establish Paternity and/or the father's name is reported on the birth certificate with the Bureau of Vital Records, and no record was found to be on file.</p> <p>If a Notice of the Initiation of Proceedings to Establish Paternity is found on file or the father's name is reported on the birth certificate, a certified copy will be issued. If no record is on file, a <u>CERTIFICATE OF SEARCH</u> is issued.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <div style="margin-bottom: 5px;">11-10-99</div> <div style="border-top: 1px solid black; width: 100%;"></div> <div style="font-size: small;">Date</div> </div> <div style="text-align: center;"> <div style="margin-bottom: 5px;">1:23 PM</div> <div style="border-top: 1px solid black; width: 100%;"></div> <div style="font-size: small;">Time</div> </div> <div style="text-align: center;"> <div style="margin-bottom: 5px;">  </div> <div style="border-top: 1px solid black; width: 100%;"></div> <div style="font-size: small;">State Registrar</div> </div> </div>		
UDH-BVR-23 Revised 5/95		

Exhibit C1

UTAH DEPARTMENT OF HEALTH

CERTIFICATE OF SEARCH FOR NOTICE OF THE INITIATION OF PROCEEDINGS TO ESTABLISH PATERNITY

Name of Mother		
Jill Le Cheminant		
Place of Child's Birth	Date of Child's Birth or Estimated Birth Date	Sex of Child
Salt Lake City, Utah	August 10, 1999	Male
<p>This is to certify that a search has been made of the file of Notices of the Initiation of Proceedings to Establish Paternity and/or the father's name is reported on the birth certificate with the Bureau of Vital Records, and no record was found to be on file.</p> <p>If a Notice of the Initiation of Proceedings to Establish Paternity is found on file or the father's name is reported on the birth certificate, a certified copy will be issued. If no record is on file, a CERTIFICATE OF SEARCH is issued.</p>		
December 13, 1999	1:37 PM	Barry E Nangle State Registrar
Date	Time	
UDH-BVR-23 Revised 5/95		

00049

00017

Affordable Legal Advocates
 G. Brent Smith #6657
 Steven C. Russell #6791
 Attorney for Plaintiff
 180 South 300 West Suite 170
 Salt Lake City, Utah 84101
 (801) 532-5100

FILED
 10 PM 20 PM 10:00
 [Signature]
 CLERK OF DISTRICT COURT

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

Mahaoud Al-Bahadli, Plaintiff, vs. LDS Family Services; Jill Lecheminant, Defendant.	AFFIDAVIT OF MAHAOUD AL- BAHADLI case no. 994907742 Judge Bohling Commissioner
---	--

Plaintiff answers the facts as alleged by Respondent in her Memorandum in Support of Motion for Summary Judgment, Statement of Undisputed Material Facts. Plaintiff states:

1. I am 31 years old. Jill is 19 years old.
2. I agree with ¶2.
3. Jill and I never, at any time, discussed adoption. Therefore, ¶3 is false. We did discuss abortion, briefly, and both agreed it was not an option.
4. I never knew that Jill was attending unwed-mother group sessions at LDS family services. I knew she was attending classes. But when I asked her what the classes were for, she told me that they were for new mothers, told help them learn how the care for a baby. I asked if I could attend, but she told me that she would teach me, and that I would not like the

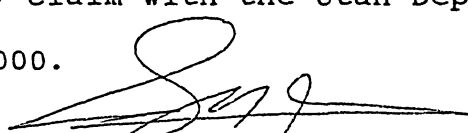
classes, because those in attendance were all female.

5. I agree with ¶5.

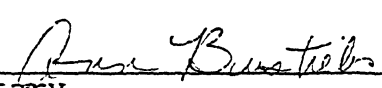
6. On October 18th, 1999, Carolyn Chudley did call me. She asked how the baby was doing. She asked if Jill was going to "place the child." I did not understand what she meant by "place." Never, at any time during the conversation, did Carolyn Chudley use the word "adoption." I am from Iraq, and prior to my child being adopted, I had never heard of the word "adoption;" I had no idea as to what it meant. To this day, I cannot understand why anyone would want to give away their own child. This is contrary to everything that my culture and my religion have taught me. While speaking with Carolyn, I assumed she was asking where the child and Jill and I would be living, or whether the child would be living with Jill at her parents' home, temporarily.

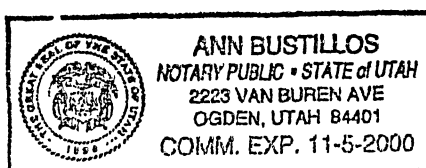
7. I agree with ¶7.

8. I filed a notice of paternity claim with the Utah Department of Health, on January 14th, 2000.


Mahaoud Al-Bahadli
Plaintiff

Subscribed and sworn before me this 18 day of
January, 2000.


Notary



78-30-4

JUDICIAL CODE

78-30-4, 78-30-4.1. Repealed.

Repeals. — Laws 1990, ch. 245, § 24 repeals this section, as repealed and reenacted by L. 1981, ch. 126, § 61, relating to consent to adoption and paternity claims, effective April 23, 1990. For present comparable provisions, see § 78-30-4.14 et seq.

Laws 1995, ch. 168, § 15 repeals § 78-30-4.1, as last amended by Laws 1993, ch. 4, § 125, requiring relinquishment or consent from various parties prior to adoption, effective May 1, 1995. For present comparable provisions, see § 78-30-4.14.

78-30-4.2 to 78-30-4.5. Renumbered.

Renumbered. — Laws 1995, ch. 168, §§ 8 to 11 renumber former §§ 78-30-4.2 to 78-30-4.5, relating to consents and relinquishments,

as §§ 78-30-4.18, 78-30-4.20, 78-30-4.21, and 78-30-4.19, effective May 1, 1995.

78-30-4.6 to 78-30-4.8. Repealed.

Repeals. — Laws 1995, ch. 168, § 15 repeals former §§ 78-30-4.6 to 78-30-4.8, as enacted by Laws 1990, ch. 245, §§ 10 and 11 and as last amended by Laws 1994, ch. 12, § 119, each of which described individuals who must be notified of and/or consent to adoption proceedings,

effective May 1, 1995. For present comparable provisions, see §§ 78-30-4.13 and 78-30-4.14. Laws 1995, ch. 20 attempted to amend § 78-30-4.8 but this repeal made that amendment ineffective.

78-30-4.9. Renumbered.

Renumbered. — Laws 1995, ch. 168, § 12 rennumbers former § 78-30-4.9, providing for

custody pending final decree, as § 78-30-4.22, effective May 1, 1995.

78-30-4.10. Repealed.

Repeals. — Laws 1995, ch. 168, § 15 repeals § 78-30-4.10, as enacted by Laws 1990, ch. 245, § 14, relating to contested adoptions, effective

May 1, 1995. For present comparable provisions, see § 78-30-4.16.

78-30-4.11. Definition.

For purposes of this chapter, “unmarried biological father” means a child’s biological father who is not married to the child’s mother at the time of the conception or birth of that child.

History: C. 1953, 78-30-4.11, enacted by L. 1995, ch. 168, § 1.

Severability Clauses. — Laws 1995, ch. 168, which created §§ 78-30-4.11 to 78-30-4.24, directs in § 16: “If any provision of this act, or the application of any provision to any person

or circumstance, is held invalid, the remainder of this act is given effect without the invalid provision or application.”

Effective Dates. — Laws 1995, ch. 168 became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

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.

Effective Dates. — Laws 1995, ch. 168

became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

(Utah Ct. App.), aff'd, 795 P.2d 637 (Utah 1990).

For case establishing due process requirements relating to notice of paternity filing, see *Ellis v. Social Servs. Dep't of Church of Jesus Christ of Latter-Day Saints*, 615 P.2d 1250 (Utah 1980).

Father's rights.

Dismissal of petition by mother and maternal grandfather to allow the grandfather to adopt the child was proper since, even though the father of the child failed to file an acknowledgement of paternity before the filing of the adoption petition, the parties were on notice that the issue of the father's rights and his entitlement to a hearing had been raised previously and the father had standing to ob-

ject to the petition. *R.J.G. v. M.J.M.*, 869 P.2d 997 (Utah Ct. App. 1994).

Wrongful termination of parental rights.

Termination of a non-resident father's parental rights to his illegitimate son violated due process, where although a petition for adoption was filed two days prior to the father's filing of a notice of paternity, all parties were distinctly aware of the father's intent and desire to rear the child, and the record indicated that the mother's family deliberately withheld information in order to avoid potential "problems" with the father, who they knew would obstruct the adoption. In *re Baby Boy Doe*, 717 P.2d 686 (Utah 1986) (decided under former § 78-30-4.8).

COLLATERAL REFERENCES

Brigham Young Law Review. — Note, The Putative Father's Due Process Rights to Notice

and a Hearing: In *re Baby Boy Doe*, 1986 B.Y.U. L. Rev. 1081.

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.

Effective Dates. — Laws 1995, ch. 168

became effective on May 1, 1995, pursuant to Utah Const., Art. VI, Sec. 25.

NOTES TO DECISIONS

Compiler's Notes. — The following notes include those taken under former § 78-30-4.1

ANALYSIS

Abandonment.

Consent.

Construction of statute.

Duress.

Duty and ability to provide support.

Finding of abandonment.

Grandparents.

Judicial termination of rights.

Review of district court determination.

Welfare of child.

Wrongful termination of parental rights.

Abandonment.

Where wife earlier had brought an action seeking custody of children, alleging desertion and nonsupport, and court awarded custody to wife to the exclusion of the husband "who shall have no right to see, visit or otherwise exercise any parental rights to such children unless and until the husband shall have made application to this court for permission so to do and shall have made proper provision for the support and maintenance of said minor children," the decree did not constitute a judicial determination of desertion dispensing with the husband's consent to an adoption. The decree was conditional, and recognized parental rights in the husband, who, by its terms, could assert such rights by performance of the conditions. The divestment of paternal rights by desertion must be of all such rights. In re Walton, 123 Utah 380, 259 P.2d 881 (1953).

Evidence that the husband, after a divorce, had sent occasional money for his children, and had visited them at times and had the children at his home at times, but had never furnished

full support does not establish the necessary intent to desert a child. In re Walton, 123 Utah 380, 259 P.2d 881 (1953).

Mother did not "desert" children within meaning of statute when she was sentenced to prison for issuing a fraudulent check since, in such case, she had not intentionally abandoned them even though she committed a second felony knowing full well that she might be incarcerated therefor. In re Jameson, 20 Utah 2d 53, 432 P.2d 881 (1967).

Evidence was sufficient to support a finding of abandonment and permit adoption without the consent of the mother where during an interval of four years the mother failed to communicate or attempt to communicate with her children, failed to exercise her rights of visitation pursuant to a divorce decree, and showed little interest in her children's welfare. In re Adoption of Guzman, 586 P.2d 418 (Utah 1978).

Consent.

Adoption consent which failed to meet statutory requirements could not be given any legal effect. In re Morse, 7 Utah 2d 312, 324 P.2d 773 (1958).

Natural parents may execute a valid consent for adoption prior to the completion of the investigative report conducted by the division of family services. In re S., 572 P.2d 1370 (Utah 1977).

Construction of statute.

Adoption proceedings are statutory and based on consent. So where statutes dispense with the consent of a legitimate natural parent who for some misconduct has been deprived of the custody of his child, a strict construction is given such statutes in cases in which the natural parent contests the adoption. Deveraux'