

2006

# Miguel David Gedo v. Shacke' Rose : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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MIGUEL DAVID GEDO,	)	Case No. 20060147
	)	
Petitioner and Appellee,	)	
	)	Civil No. 054400798
vs.	)	
	)	Judge Anthony W. Schofield
SHACKE' ROSE	)	
	)	
Respondent and Appellant.	)	

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BRIEF OF APPELLANT

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ON APPEAL FROM THE FOURTH DISTRICT COURT

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UTAH APPELLATE COURTS  
AUG 18 2006

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## **STATEMENT OF JURISDICTION**

The Court of Appeals has appellate jurisdiction, including regarding interlocutory appeals, over appeals from the district court involving domestic relations cases including paternity. Utah Code Ann. §78-2a-3(2)(h). This is an interlocutory appeal from the Fourth District Court's order for genetic testing in an action to establish paternity.

## **STATEMENT OF THE ISSUES**

1) Under Utah Code Annotated §78-45g-502, did the trial court err in ordering genetic testing without considering the presumption of paternity exception in §78-45g-204 when the child was born during the marriage of the mother and the presumed father, and the presumed father has supported and nurtured the child for over 8 years; when the presumed father is the only father the child has known, when the alleged father filed no declaration of paternity; when the alleged father has had limited contact with the child since birth and none in the past three years; and when the presumed father has not yet been made a party to the action?

This issue requires statutory interpretation which this Court reviews for “correctness, giving no deference to the trial court.” *In re Adoption of S.L.F.*, 2001 UT App 183, ¶ 9, 27 P.3d 583, *cert. denied* by *Sanchez v. Fluhman*, 40 P.3d 1135 (Utah 2001) (citing *In re K.M.*, 965 P.2d 576, 578 (Utah App. 1998)). This issue was preserved in the following documents: Memorandum in Support of Respondent's Motion to Dismiss Verified Petition For Paternity and Custody and Motion to Terminate Parental Rights, (R. 21), Reply Memorandum to Petitioner's Motion for Genetic Testing, and a post-judgment Motion for Reconsideration. The issue was also preserved in oral

arguments before the trial court on January 12, 2006.

2) Did the trial court err in ordering genetic testing without considering whether the alleged father has standing to petition for paternity and genetic testing under Utah Code Annotated §78-45g-602 when a presumed father has established a father-child relationship with the child and when the trial court made no findings that the alleged father has rebutted the presumption outlined in Utah Code Annotated §78-45g-01(2)(a)?

The question of standing presents a question of law. *Pearson v. Pearson*, 2006 UT App 128, ¶12, 134 P.3d 173. Where factual findings inform the issue of standing, factual determinations made by a trial court are reviewed with deference. *Id.* However, the appellate court will give minimal discretion to the trial court's determination of whether a given set of facts fits the legal requirements for standing. *Id.* This issue was preserved in the following documents: Memorandum in Support of Respondent's Motion to Dismiss Verified Petition For Paternity and Custody and Motion to Terminate Parental Rights, (R. 21), Reply Memorandum to Petitioner's Motion for Genetic Testing, and a post-judgment Motion for Reconsideration. The issue was also preserved in oral arguments before the trial court on January 12, 2006.

3) Did the trial court err in refusing to deny genetic testing under Utah Code Annotated §78-45g-608 when undisputed evidence, including that of an expert, indicated that genetic testing would not be in the child's best interest and would inequitably disrupt the father-child relationship between the child and the presumed father?

This issue requires review of the trial court's findings of fact. Appellate courts will not set aside findings of fact unless they are against the clear weight of evidence. *Glauser*



*Storage, L.L.C. v. Smedley*, 27 P.3d 565, 571 (Utah App. 2001) (citing *Coaville City v. Lundgren*, 930 P.2d 1206, 1209-10 (Utah App. 1997)). In addition, the appellate courts give due consideration to the trial court to judge the credibility of witnesses. *Id.* This issue was preserved in the following documents: Memorandum in Support of Respondent's Motion to Dismiss Verified Petition For Paternity and Custody and Motion to Terminate Parental Rights, Reply Memorandum to Petitioner's Motion for Genetic Testing, and a post-judgment Motion for Reconsideration. The issue was also preserved in oral arguments before the trial court on January 12, 2006.

### **CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS**

Utah Code Ann. §78-45g-101, et. al. (Westlaw current through 2006 3rd Spec. Sess.) (Utah Uniform Parentage Act) is set forth in the Addendum.

Utah Code Ann. §78-30-4.13 (Westlaw current through 2006 3rd Spec. Sess.) (notice of adoption proceedings) is set forth in the Addendum.

### **STATEMENT OF THE CASE**

This case was initiated by Miguel David Gedo when he filed a Petition for Paternity on April 20, 2005 asking the court to adjudicate the paternity of J.R. (R. 7.) Gedo filed his petition seven years after J.R. was born into the marriage of Douglas and Shacké Rose. (R. 7, 254.) Mr. and Mrs. Rose have been married 18 years, and J.R. has lived with them since birth. R. 254-55. In Gedo's Petition, he alleged that he had only seen J.R. about 10 times in J.R.'s life for about one hour each time. (R.5.) Mrs. Rose filed a Motion to Dismiss arguing that Gedo had no standing to bring the paternity claim. (R. 26.) The trial court denied Mrs. Rose's Motion. (R. 100, 151.) Gedo filed a Motion for

Genetic Testing which Mrs. Rose opposed. (R. 29, 53.) Both parties filed supporting affidavits. (R. 32, 79, 221, 255, 301, 306, 313.) At oral argument on Gedo's Motion for Genetic Testing, Gedo claimed he had exercised visitation with J.R. pursuant to an agreement with Mrs. Rose, but that he had not seen J.R. for two years. *See* Addendum, Transcript of Oral Argument, December 6, 2005, pg. 7. Mrs. Rose strongly contested Gedo's version of the facts and his claims. *Id.* at 5. From the bench, the trial judge granted Gedo's motion for Genetic testing based on two findings: 1) for a long time, Gedo had considerable contact with the child and 2) there was an allegation that Mrs. Rose had acknowledged Gedo's possible paternity. *Id.* at 9.

Mrs. Rose filed a verified Motion for Reconsideration asking the court to reconsider based on her testimony that Gedo had limited contact with J.R. until he was four years old and no contact in the last three years. (R. 322-23.) Mrs. Rose also asked the court to reconsider the expert testimony of Dr. Darin Featherstone who concluded that introducing another father figure into J.R.'s life would not be in J.R.'s best interest. (R. 324, 219.) Mrs. Rose also asked the court to reconsider the testimony of Mr. Rose that he has assumed responsibility for J.R. since before his birth and has had a paternal bond with J.R. for J.R.'s entire life. (R. 324, 255.) The court denied Mrs. Rose's Motion for Reconsideration. (R. 353.) Mr. Rose filed a Motion for Intervention and for Order Staying Proceedings asking the court to allow him to intervene in the paternity action. (R. 485.) The trial court has not yet ruled on Mr. Rose's Motion. Mrs. Rose is now appealing the trial court's order for genetic testing, and this Court granted her request to stay the trial court's order pending the appeal. (R. 527.)

## **STATEMENT OF THE FACTS**

J.R., an eight (8) year old child, was born to Douglas and Shacké Rose on April 23, 1998, the fourth of five children. (R. 254.) The Roses have been married for over 18 years and were married at the time of J.R.'s conception and birth. Mr. Rose is listed as the "father" on J.R.'s birth certificate. The Roses and their five children are a strongly bonded family. (R. 13, 23, 248.) Since J.R.'s birth, Mr. Rose has been one of J.R.'s primary caretakers, has provided financial, emotional and physical support to J.R., and has formed a strong parental bond with J.R. (R. 250-55.) Mr. Rose has assisted with J.R.'s moral and religious development and has provided J.R. with stability, predictability and consistency. (R. 253-54, 217.) Mr. Rose has been available as a strong male role model and nurturing father figure to J.R. (R. 214-16.)

In addition, Mr. and Mrs. Rose have no significant history of domestic problems requiring outside intervention and no separations since the time of their marriage on December 17, 1988. (R. 218.) They live in an established neighborhood with their five children where they attend church and where J.R. achieves at a high level in his 1<sup>st</sup> grade class at a private school. (R. 217-18.) The Roses enjoy the support and love of many extended family members and regularly participate in recreational, religious, and educational experiences with J.R. and their other children. (R. 251-54.)

Now, seven (7) years after J.R.'s birth, Miguel Gedo ("Gedo") alleges he is the biological father of J.R. because he and Mrs. Rose were involved in a relationship nearly nine (9) years ago. (R. 6-7.) Their involvement occurred during the Roses' marriage. When Mrs. Rose became pregnant with J.R., she told Gedo that he may be the biological

father. (R. 207-08); *See also* Addendum, Transcript of Oral Argument, December 6, 2005, p. 6. Gedo did nothing to take responsibility or establish paternity. Mr. and Mrs. Rose stayed together and agreed that Mr. Rose would raise J.R. as his own. (R. 254). Mr. Rose paid for the costs of J.R.'s birth, for his medical and dental care, clothing, food, and other costs. (R. 251, 254.) Mr. Rose nurtured and cared for J.R. and became bonded with J.R. (R. 251-54.) Throughout this time, Gedo did nothing to establish paternity and acquiesced in Mr. Rose's role as father. *See* Addendum, Transcript of Oral Argument, December 6, 2005, p. 6, R. 51, 254. For over seven years, Gedo never executed or filed a declaration of paternity with the State Registrar of Vital Statistics as required by Utah law and never took legal action to establish parentage. R. 51, 6-7. Gedo paid no child support, medical bills, or costs at birth. R. 251, 254. Gedo never assumed the role of father to J.R. and never performed parental functions or formed a parent child bond with J.R. R. 337-38, 94, 78. Gedo has not had a significant or substantial relationship with J.R. and admits he has had contact with J.R. only about 10 times in J.R.'s life for about one hour each time. R. 5, 337-38. The contact with J.R. occurred mainly during the early years of J.R.'s life and no contact has occurred in the last three years. R. 337, *See also* transcript of Oral Argument, December 6, 2005, pg. 8. Although Gedo claims to have given Mrs. Rose a piece of real property for J.R.'s support, *Id.* Gedo has never deeded property to Mrs. Rose. (R. 78, 11-12.)

Significantly, J.R. has never been informed that Gedo might be his father, and Mr. Rose is the only father J.R. has ever known. (R. 237.) An expert witness, Dr. Darin Featherstone, a licensed psychologist, testified that J.R.'s primary male attachment figure

is his father, Mr. Rose to whom J.R. turns to for advice and nurturing. (R. 216.) J.R. willingly obeys Mr. Rose and is emotionally connected to Mr. Rose. (R. 214, 216.) Dr. Featherstone indicated that J.R. enjoys spending time with Mr. Rose and relies on Mr. Rose for his psychological, emotional, physical, and developmental needs. (R. 214.) Further, Dr. Featherstone observed that J.R. is a happy, well-adjusted child who is free from emotional dysfunction or behavior problems, and that overall, J.R. feels a sense of peace and security within the home and is completely bonded and attached to Mr. Rose. (R. 214.)

Dr. Featherstone evaluated J.R.'s attachments to Mr. Rose and the efficacy of introducing a new "parent" into J.R.'s concept of family. Dr. Featherstone concluded that interruption of the father-son relationship between J.R. and Mr. Rose would only "act to destabilize J.R.'s emotions and developmental needs." (R. 214.) Dr. Featherstone further opined that it would not be in J.R.'s best interest "to disrupt his developmental, psychological, emotional, and physical stability by introducing another alleged 'father figure' at this time." (R. 214.) Dr. Featherstone also indicated that through Mr. and Mrs. Rose's substantial efforts, they have maintained their marriage since J.R.'s birth and created a close and bonded family together with their five children. (R. 216-18.) Nevertheless, the trial court failed to consider the effect on the marriage and whether Gedo's challenge to paternity is disruptive and unnecessary. *See* transcript of Oral Argument, December 6, 2005, p. 9. It disregarded Dr. Featherstone's advice and in direct contradiction to his recommendation, ordered genetic testing on Gedo and J.R. Mrs. Rose now appeals the trial court's order. *Id.*

## **SUMMARY OF ARGUMENTS**

The trial Court erred in ordering genetic testing on J.R. and Gedo, the alleged father, because J.R. was born into the marriage of Mr. and Mrs. Rose and under Utah Code Ann. 78-45g-204(1)(a), Mr. Rose is the presumed father of J.R. Section 78-45g-607(1) limits those who can rebut this presumption of paternity to the presumed father and the mother. If that presumption goes un rebutted, a legal father-child relationship is established between the man and the child. However, even if Gedo were allowed to rebut Mr. Rose's presumption of paternity, he has failed to rebut it because he submitted no evidence that Mr. and Mrs. Rose did not cohabit or engage in sexual intercourse during the probable time of conception.

Additionally, the trial court prematurely ordered genetic testing prior to joining Mr. Rose as a party. The order for genetic testing in Mr. Rose's absence impairs and impedes Mr. Rose's ability to protect his right as the presumed father to care for and parent J.R, and Mr. Rose would be subjected to inconsistent obligations.

The trial court also erred in ordering genetic testing because Gedo has no standing to bring a paternity action because although Gedo knew since before J.R.'s birth that he may be J.R.'s biological father, Gedo never assumed the role of father and never assumed responsibility for J.R. In addition, Gedo is not listed on J.R.'s birth certificate and Gedo did not file a declaration of paternity or bring a paternity action to adjudicate his parentage until J.R. was seven years old. In contrast, when Mr. Rose discovered the possibility that Gedo may be J.R.'s biological father, he and Mrs. Rose decided to remain married and treat J.R. as their own. Mr. Rose has always acted as J.R.'s parent and has

assumed the role of father and accepted responsibility for J.R. since before J.R.'s birth. For these reasons, allowing Gedo's challenge to Mr. Rose's paternity would disrupt the harmony of the Rose's 18 year marriage. In addition, under the *Schoolcraft* analysis, Gedo's attempt to challenge the paternal relationship between J.R. and Mr. Rose is both disruptive and unnecessary.

This argument was supported in the trial court by the affidavit of expert witness, Dr. Darin Featherstone. Dr. Featherstone testified that J.R. identifies Mr. Rose as his father and J.R.'s attachment to Mr. Rose is strong, healthy, and secure and that disrupting this paternal relationship would only act to destabilize J.R.'s emotions and developmental needs. This expert further testified that introducing another alleged father figure would disrupt J.R.'s developmental, psychological, emotional, and physical stability. Additionally, it would be against public policy to allow men such as Gedo who procreate with another's wife and then fail to assume the responsibilities of parenthood to come forward after nearly half the child's minority and attempt to establish his paternity and challenge a loving presumed father's de facto adoption of the child.

Further, Utah law encourages a court to deny a motion for genetic testing if a party's conduct estops him from challenging parentage and if the testing will inequitably disrupt a child's relationship with his presumed father and. First, Gedo should be estopped from challenging Mr. Rose's parentage because he did nothing for over seven years to establish his paternity. Gedo was on notice that J.R. may be his child, but did not file a declaration of paternity with the State, start a paternity action, or list himself of J.R.'s birth certificate. He also did nothing to assume the responsibilities of fatherhood.

He did not pay for the costs of J.R.'s birth or for any of the costs of raising J.R. for eight years after his birth. Gedo never publicly acknowledged J.R. as his child and never assumed the role of father toward J.R. Equally as important, Gedo acquiesced in Mr. Rose's paternal role as J.R.'s father. Gedo allowed Mr. Rose to assume the financial and paternal responsibility for J.R. and to carry out all parental responsibilities associated with J.R. Thus, Gedo's failure to act should estop him from now attempting to destroy the paternal bond between Mr. Rose and J.R.'s image of his family through genetic testing.

Second, genetic testing will inequitably disrupt J.R.'s relationship with his presumed father, Mr. Rose. The relationship between Mr. Rose and J.R. has been developing for eight years since J.R.'s birth. Mr. Rose is the only father J.R. has ever known and disrupting the continuing and critical paternal bonds between J.R. and Mr. Rose and introducing another father figure into J.R.'s life would be immediately disruptive to J.R.'s expectations as to who his father is.

In addition, the trial court failed to consider the statutory requirements to determine if genetic testing is in J.R.'s best interest. Genetic testing is not in J.R.'s best interest for the following reasons: 1) too much time has passed between the time Gedo knew he may be J.R.'s father and the time Gedo brought his paternity action. Gedo waited seven years and did nothing during that time to establish paternity; 2) Mr. Rose has assumed the role of J.R.'s father for over eight years; 3) the nature of the relationship between J.R. and Mr. Rose is that of a closely bonded child and father, and J.R.'s primary male attachment figure is to his Mr. Rose; 4) J.R. is eight years old and he has lived half of his minority believing that Mr. Rose is his only father; 5) the expert witness testified



that if Mr. Rose's paternity were successfully disestablished, it would be disruptive to J.R.'s stability, to his existing paternal relationship, and to his expectations as to who his father is. It would disrupt the entire family and J.R.'s sense of peace and security within the home; 6) disestablishing Mr. Rose's paternity would disrupt J.R.'s developmental, psychological, emotional and physical stability; 7) J.R. and Gedo do not have a relationship. J.R. has not seen Gedo for three years and before that, J.R.'s relationship with Gedo was only that of a distant family friend; 8) the passage of eight years reduces the chance of establishing Gedo's paternity and a resulting child-support obligation; 9) disestablishing Mr. Rose's paternity would disrupt J.R. sense of peace and security within the home and the sense of family that J.R. feels with Mr. and Mrs. Rose and his siblings. In addition, disrupting this relationship would be seriously detrimental to all of the children in the Rose family, especially J.R.

### **ARGUMENT**

Utah Code Annotated. §78-45g-502 (Westlaw current through 2006 3rd Spec. Sess.) provides that upon the motion of any party to a paternity action, the court shall order the child and other designated individuals to submit to genetic testing. However, this section is subject to Section 78-45g, Part 6. Part 6 sets forth the limitations on genetic testing when a presumed father exists. Part 6 also sets forth which parties must be joined as parties to a paternity proceeding and which individuals have standing to maintain a paternity proceeding. In addition, Part 6 gives the court authority to deny a motion for genetic testing based on 1) the conduct of the mother and 2) the presumed father, the inequitable disruption of the father-child relationship, and 3) the best interest

of the child.

- I. THE TRIAL COURT ERRED IN ORDERING GENETIC TESTING BECAUSE THE PRESUMPTION THAT MR. ROSE IS J.R.'S FATHER CANNOT BE REBUTTED AND BECAUSE MR. ROSE, THE PRESUMED FATHER HAS NOT YET BEEN JOINED AS A PARTY.

A man is presumed to be the father of a child if the child is born during the marriage of the presumed father and the mother. Utah Code Ann. 78-45g-204(1)(a). If that presumption goes un rebutted, a father-child relationship is established between the man and the child. Utah Code Ann. §78-45g-201(2)(a). Once established, Utah law does not allow the father-child relationship to be challenged. If the father-child relationship could be challenged, the presumed father would need to be joined as a party. Utah Code Ann. §78-45g-603(2); Utah R. Civ. P. 19.

- A. The trial court erred in ordering genetic testing because Gedo failed to rebut the presumption of paternity of Mr. Rose.

A man is presumed to be the father of a child if the child is born during the marriage of the mother and the presumed father. Utah Code Ann. §78-45g-204. This presumption may only be rebutted by evidence that the presumed father and the mother did not cohabitate or engage in sexual intercourse during the probable time of conception or by genetic test results that exclude the presumed father or identify another man as the father. Utah Code Ann. §78-45g-607. Further, Section 78-45g-607(1) limits those who can rebut the presumption of paternity. This section allows only the presumed father and the mother to rebut the presumption. *Id.* (See also *Pearson v. Pearson*, 2006 UT App 128, ¶35).

Neither Mr. Rose, the presumed father, nor Mrs. Rose, the mother, have opted to

rebut the presumption of paternity. Even if Gedo were legally allowed to rebut the presumption, he has failed to produce evidence proving that Mr. and Mrs. Rose were not married or did not engage in sexual intercourse during the probable time of conception. None of the parties has produced genetic testing that excludes Mr. Rose as J.R.'s father or identifies another man as J.R.'s father. Although the trial court may order genetic testing, the court's authority to do so is subject to the limitations set forth in 78-45g, Section 6 and argued below. Thus, because neither the presumed father nor the mother has opted to rebut the presumption of paternity and because no evidence was produced in the trial court that rebuts the assumption that Mr. Rose is J.R.'s father, Mr. Rose has established a legal father-child relationship as J.R.'s presumed father and the trial court's order for genetic testing should be reversed.

B. The trial court erred in ordering genetic testing because the presumed father, Mr. Rose, has not been joined as a party.

A man whose paternity is to be adjudicated must be joined as a party to a proceeding to adjudicate parentage. Utah Code Ann. §78-45g-603. In addition, Rule 19 of the Utah Rules of Civil Procedure provides the legal basis upon which Mr. Rose must be joined as a party to the proceeding to adjudicate parentage. It provides as follows:

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not so joined, the court shall order that he

be made a party.

J.R. was born during the marriage of Mr. and Mrs. Rose and neither Mr. Rose nor Mrs. Rose has rebutted that presumption. Therefore, Mr. Rose is J.R.'s presumed father. As such, Douglas Rose is J.R.'s legal and social father and should have been joined as a party to Gedo's paternity action before the court ordered genetic testing. Mr. Rose certainly has an interest relating to J.R. because Mr. Rose has physically, emotionally, and financially supported J.R. since his birth. R. 250-55. Mr. Rose has functioned as J.R.'s parent for eight (8) years. R. 250-55. Thus, they have a strong parent-child bond. R. 214. If the genetic testing were to result in the trial court awarding paternity rights to Gedo, the parental rights of Mr. Rose as they pertain to J.R. would be significantly and adversely affected. The order for genetic testing in Mr. Rose's absence impairs and impedes Mr. Rose's ability to protect his right to care for J.R., to direct his upbringing, to have uninterrupted parent time, and to be named as J.R.'s father on his birth certificate.

In addition, Mr. Rose has filed an action in Juvenile Court which seeks a finding of abandonment against Gedo and an order terminating Gedo's inchoate rights. A ruling by the juvenile court in Mr. Rose's favor would result in inconsistent rulings and subject Gedo and Mr. Rose to inconsistent obligations. Thus, the trial court erred when it prematurely ordered genetic testing prior to joining Mr. Rose as a party to the paternity proceedings, and therefore, the order for genetic testing should be reversed.

## II. THE TRIAL COURT ERRED IN ORDERING GENETIC TESTING BECAUSE GEDO HAS NO STANDING TO MAINTAIN THE PROCEEDING.

Utah Code Ann. §78-45g-602 provides in pertinent part that a proceeding to

adjudicate parentage may be maintained by the child, the mother of the child, and a man whose paternity of the child is to be adjudicated.<sup>1</sup> However, standing under Section 602 is subject to Part 3, Voluntary Declaration of Paternity and Sections 78-45g-607 and 78-5g-09. Thus, under §78-45g-607, a presumed father also has standing to maintain a proceeding to adjudicate parentage.<sup>2</sup> However, this Court recently held that where a husband is presumed to be the father of a child born during a marriage and the child has formed paternal bonds with the husband, neither a mother nor a man alleging to be the father have standing to challenge the paternity of the child. *Pearson v. Pearson*, 2006 UT App 128, ¶¶35-38. In deciding the issue of standing, courts should consider two policy considerations: “preserving the stability of the marriage and protecting children from disruptive and unnecessary attacks upon their paternity.” *Id.* at ¶6 (quoting *In re J.W.F.*, 799 P.2d 710 (Utah 1990)).

- A. Gedo’s challenge to J.R.’s paternity undermines the stability of the Rose’s marriage because J.R. has been acknowledge by the Roses as theirs and a paternity challenge would disrupt the harmony of an entire family.

In *Pearson*, Thanos, an alleged biological father challenged the paternity of a child who was born to Father and Mother (collectively “the Pearsons”) after six years of marriage. *Id.* at ¶¶2-3. During the Pearsons’ marriage, Mother and Thanos were involved in a sexual relationship, and early in the pregnancy, Mother told Thanos she believed he

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<sup>1</sup> This section also provides that a government agency, an adoption agency, a representative of a person who is deceased, incapacitated, or a minor, and an intended parent under a gestation agreement also have standing to adjudicate parentage.

<sup>2</sup> Section 78-45g-609 provides a time limit in which a signatory to the declaration of paternity or a support-enforcement agency may commence a proceeding and subjects such proceeding to the principles of estoppel established in §78-45g-608.

was the biological father. *Id.* at ¶¶3, 4. However, the Pearsons decided to make their marriage work, and Father agreed to raise the child as his own and listed his name on the child's birth certificate. *Id.* Thanos did not provide any monetary support for the child, acquiesced in Father's role as father, and in the first sixteen months of the child's life, saw the child only about 6 times. *Id.* When the child was about fifteen (15) months old, Father filed for divorce, and Thanos moved to intervene claiming he was the child's biological father. *Id.* at ¶5. At the same time, Mother denied Father's paternity. *Id.* After bifurcation, Thanos and Mother married and had another child. *Id.* at ¶3.

The trial court granted Thanos's motion to intervene and determined that Thanos was the child's biological father. This Court reversed holding that Father was the child's legal parent. This Court concluded that even with the Pearsons' divorce and the subsequent marriage of Thanos and Mother, the challenge to paternity came while the Pearsons' marriage was still in existence and would have undermined the stability of the marriage. *Id.* at ¶20. The Court so concluded because the Pearsons had made substantial efforts to maintain their marriage even knowing that Thanos was likely the biological father. *Id.*

The facts in this case are even more compelling than the facts in *Pearson* because the Rose family remained intact, and eight years passed before Gedo brought his claim. R. 255, 7. Like the Pearsons, the Roses decided to stay together and raise J.R. as Mr. Rose's son even though they suspected that Gedo may be J.R.'s biological father. R. 254, 207-08. Under the public policy considerations of the *Schoolcraft* analysis, Gedo's current attack on J.R.'s paternity would undermine the Rose's marriage. Even more

compelling than the Pearsons' situation, the Roses have been married for 18 years and remain happily married today. R. 255. Like the Pearsons, Mr. and Mrs. Rose made substantial efforts to maintain their marriage even knowing that Gedo may be J.R.'s biological father. R. 255, 207-08.

The United States Supreme Court's decisions have repeatedly protected marital situations like the Roses'. The Supreme Court's decisions "establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989) (quoting *Moore v. East Cleveland*, 431 U.S. at 503). These traditions have protected marital families from paternity claims where a child is born to the marital union and acknowledged as part of the family unit regardless of the circumstances of the child's conception. *Id.* Gedo's challenge to J.R.'s paternity would disrupt the harmony of an entire family and set a precedence that would undermine the sanctity of other families in the Roses' situation.

- B. Gedo's challenge to paternity is disruptive to the paternal relationship between J.R. and Mr. Rose because J.R.'s attachment to Mr. Rose is strong and secure and the challenge is unnecessary because J.R. already has a father.

The *Pearson* court also concluded that Thanos had no standing because his challenge to paternity under the *Schoolcraft* analysis would have been both disruptive to the existing paternal relationship and unnecessary. 2006 UT App 128, ¶32, 134 P.3d 173. First, in holding that the challenge would have been disruptive, the Court followed the *Schoolcraft* analysis and focused on the relationship between the child and Father and the

child's "expectations as to who his father is." *Id.* at ¶26 (quoting *In re J.W.F.*, 799 P.2d at 713). Thus, because the child identified Father as his father and because the child's attachment to Father was strong, healthy, and secure, Thanos's challenge would have been disruptive. *Id.*

Second, the Court concluded that Thanos's challenge to paternity was unnecessary because the child already had a father. Thanos had allowed the child to develop a strong paternal relationship with a loving and willing presumed father. *Id.* at ¶¶31, 32. The paternal relationship between Father and the child was undisputed and ongoing. *Id.* at ¶24. Therefore, so long as that relationship continued, "[the child] had a father and was not in need of a different one." *Id.* at ¶30. The Court concluded that Thanos should be held to the same standard that an unmarried biological father is held; if either fails to establish his paternity in a timely fashion with a full commitment to the responsibilities of parenthood, then he is forever barred from establishing his paternity. *Id.* at ¶¶34, 35. The Court reasoned that "[e]ssentially, an illegitimate child born into a marriage is immediately subject to a de facto adoption by the mother's husband, and a man who chooses to procreate with the wife of another should not be granted latitude to challenge the husband's de facto adoption." *Id.* at ¶35.

Gedo's challenge to paternity under the *Schoolcraft* analysis is disruptive to the existing paternal relationship. Like the Pearsons, the Roses suspected that Gedo may be J.R.'s biological father and informed Gedo as such, but Gedo, like Thanos did nothing to establish his paternity and acquiesced in Mr. Rose's paternal relationship with J.R. R. 207-08. The undisputed expert testimony of Dr. Featherstone establishes that J.R.



identifies Mr. Rose as his father and J.R.'s attachment to Mr. Rose is strong, healthy, and secure. R. 214. Undisputed testimony also established that J.R. relies on Mr. Rose for his psychological, emotional, physical, and developmental needs, and he is completely bonded and attached to Mr. Rose. R. 214-17. Dr. Featherstone established that J.R. is a happy, well-adjusted child who is free from emotional dysfunction or behavior problems, and overall, J.R. feels a sense of peace and security within the home. R. 214-17. Therefore, Dr. Featherstone concluded that disrupting the paternal relationship J.R. has with Mr. Rose would only "act to destabilize J.R.'s emotions and developmental needs" and introducing another alleged father figure at this time would "disrupt his developmental, psychological, emotional, and physical stability." R. 214.

Further, under the *Schoolcraft* analysis, Gedo's challenge to paternity is unnecessary because J.R. has developed a strong paternal relationship with Mr. Rose who is a loving and willing presumed father. J.R. has never been informed that Gedo might be his father, and Mr. Rose is the only father J.R. has ever known. R. 337. Dr. Featherstone testified that J.R.'s primary male attachment figure is to Mr. Rose, and J.R. likes spending time with Mr. Rose. R. 216. J.R. turns to Mr. Rose for advice, willingly obeys Mr. Rose, and is emotionally connected to Mr. Rose. R. 216. The paternal relationship between Mr. Rose and J.R. is undisputed and ongoing and Gedo acquiesced in that relationship for seven years. Therefore, so long as that relationship continues, J.R. has a father and is not in need of a different one.

Like, Thanos, Gedo and others like him should be held to the same standard that an unmarried biological father is held because like the child in *Pearson*, J.R. was

immediately subject to a de facto adoption by Mr. Rose at his birth. Gedo failed to establish his paternity in a timely fashion by filing a declaration of paternity with the State Registrar of Vital Statistics and for seven years never took legal action to establish parentage. More importantly, Gedo failed to demonstrate a full commitment to the responsibilities of parenthood by paying child support, medical bills, and costs at birth. Gedo never assumed the role of father to J.R. and never performed parental functions or formed a parent child bond with J.R. R. 337-38. Gedo has not had a significant or substantial relationship with J.R. and admits he has had contact with J.R. only about 10 times in J.R.'s life for about one hour each time and no contact in the last three years. R. 5, 337-38.

It would be contrary to public policy to allow men such as Gedo who procreate with another's wife and then fail to assume the responsibilities of parenthood to come forward after nearly half the child's minority is completed and thereby attempt to establish his paternity and challenge a loving presumed father's de facto adoption of the child. Utah has held that the rights of a biological father "are commensurate with the responsibilities they have assumed." *B.B.D.*, 1999 UT 70, ¶10, 984 P.2d 967. As Gedo has done nothing to assume the responsibilities of parenthood, he should not have standing to undermine the stability of an 18 year marriage and disrupt the paternal relationship between a child and the only father he has ever known.

Both the United States Supreme Court and the Utah Supreme Court have held that a biological father such as Gedo is "not necessarily entitled to 'constitutionally protected parental rights'" if he fails to establish a parental relationship. *State Ex Rel. S.H.*, 2005

UT App 324, ¶16, 119 P.3d 309 (quoting *In re adoption of B.B.D.*, 1999 UT 70, ¶10, 984 P.2d 967 and citing *Lehr v. Robertson*, 463 U.S. 248, 257-60). Most states do not acknowledge an alleged biological father's claim to paternity where a presumed father exists. *Michael H. v. Gerald D.*, 491 U.S. 110, 126 (1989). Here, Gedo is not entitled to a constitutionally protected parental right because he failed to establish a parental relationship and acquiesced to J.R.'s loving paternal relationship with a presumed father who has assumed all paternal responsibilities for him since birth. Gedo should thus have no standing to challenge paternity because his paternity action would undermine the stability of the Roses' marriage and disrupt the paternal relationship between J.R. and Mr. Rose. Therefore, the trial court erred in ordering genetic testing on Gedo and J.R., and the order should be reversed.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO DENY THE MOTION FOR GENETIC TESTING BECAUSE GEDO'S CONDUCT ESTOPS HIM FROM CHALLENGING PARENTAGE, BECAUSE GENETIC TESTING WILL INEQUITABLY DISRUPT J.R.'S RELATIONSHIP WITH MR. ROSE, AND BECAUSE GENETIC TESTING IS NOT IN J.R.'S BEST INTEREST.

A court may deny a motion for genetic testing if the conduct of the mother or the presumed father estops that party from denying parentage and it would be inequitable to disrupt the father-child relationship between the presumed father and the child. Utah Code Annotated §78-45g-608(1)(a) and (b) (Westlaw current through 2006 3rd Spec. Sess.). In deciding whether to deny a motion for genetic testing, the court must consider the best interest of the child. Utah Code Ann. §78-45g-608(2). In this case, neither the mother nor the presumed father is attempting to deny parentage, but Gedo should be

estopped from challenging the presumed father's parentage. The trial court in this case failed to make determinations about whether it would be inequitable to allow genetic testing or whether Gedo should be estopped from asserting paternity. *See Transcript of Oral Argument*, December 6, 1005 (Transcript) p.9. The trial court also failed to consider the best interest of J.R. and to make findings regarding J.R.'s best interest. *See Transcript* p.9. It apparently failed to consider the undisputed evidence presented by the expert witness, Dr. Darin Featherstone that genetic testing would not be in J.R.'s best interest. R. 214. Therefore, the trial court abused its discretion in refusing to deny Gedo's motion for genetic testing.

- A. Gedo should be estopped from challenging Mr. Rose's parentage because Gedo did nothing to establish paternity for over seven (7) years of J.R.'s life.

The Utah Uniform Parentage Act requires courts to consider the principals of estoppel and equity in making paternity decisions where a presumed father exists. Utah Code Ann. §78-45g-608. Utah courts define equitable estoppel as (i) failure to act that is inconsistent with a claim later asserted; (ii) reasonable action taken on the basis of the failure to act; and (iii) injury resulting from a repudiation of such failure to act. *Dahl Inv. Co. v. Hughes*, 2004 UT App 391, ¶14, 101 P.3d 830 (citing *CECO Corp. v. Concrete Specialists, Inc.*, 772 P.2d 967, 969-79 (Utah 1989)). This court clarified in dicta in the *Pearson* decision that a person who fails to timely establish paternity may be barred by equitable estoppel from later challenging a child's paternity. 2006 UT App 128, n. 11. Other states also recognize "the availability of the doctrine of equitable estoppel as a defense in a paternity proceeding," *Id.*, and have made decisions similar to the Utah

*Pearson* decision discussed above.

For instance, in *Richard W. v. Roberta Y.*, 240 A.D.2d 812, 658 N.R.S.2d 506 (1997), a New York appellate court held that a biological father was equitably estopped from claiming paternity. During the mother's pregnancy, the biological father believed he was the father but did not file a paternity petition until four months after the child's birth and nine months after the mother married another man, "William." *Id.* At 813. Believing the child was his, William expended time, energy, and money to prepare for the child's birth and bonded in a parent-child relationship with the baby after she was born. *Id.* After genetic testing,<sup>3</sup> the family court found that the mother and husband had failed to rebut the presumption of paternity created by the blood test and entered an order of filiation. The appellate court reversed the family court finding that the biological father's "silence and acquiescence for a full year . . . in the face of William's open and obvious assumption of the role of father" led William to reasonably act in reliance on his belief that he was the father. *Id.* at 814. Thus, permitting the biological father to take over the parental role would be unjust and inequitable. *Id.*

Another New York case made a similar holding. In *Kristin D. v. Stephen D.*, 280 A.D.2d 717, 719 N.Y.S.2d 771, 772-73 (2002), the child was born eight months into the marriage of the mother and her husband. 280 A.D.2d at 717. When the child was about three years old, the mother told a former acquaintance that he may be the child's biological father. *Id.* After DNA testing indicated that the acquaintance was the child's

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<sup>3</sup> Significantly, the court noted that the family court should have addressed the issue of estoppel prior to ordering the genetic testing because the resolution of the estoppel issue in favor of William would have rendered the genetic testing results irrelevant.

biological father, mother and her husband separated and later filed for divorce. *Id.* The biological father waited until the child was more than six (6) years old to commence a paternity action. *Id.* at 718. The court dismissed the action finding that the husband had developed a strong, loving, and enduring relationship with the child and was identified as her father on the birth certificate. *Id.* Additionally, he had carried out all parental responsibilities associated with the child, *id.*, and the child had no reason to believe he was not her father. *Id.* at 718. Thus, the nature of the husband's relationship with the child and the three (3) year delay of the biological father in commencing a paternity proceeding estopped him from taking a parental role at that late juncture, *id.* at 719, because doing so would have "the inevitable effect of destroy the child's image of her family" which would be "catastrophic and [fraught] with lasting trauma." *Id.* (quoting *Matter of Ettore I. v. Angela D.*, 127 A.D.2d 6, 14).

Gedo, like the biological fathers in the above cases, was on notice for eight (8) years that J. R. may be his child. R. 207-08. Gedo alleged that he had intercourse in July of 1997, and by his alleged act, was put on notice that a pregnancy may occur and he has a duty to protect his own rights and interests. *See* Utah Code Ann. §78-30-4.13(1)(a). Gedo was further put on notice in the fall of 1997 when he and Respondent had a conversation regarding her pregnancy. R. 208.

However, Gedo failed to file a declaration of paternity with the State or initiate a paternity action. He also failed to list himself on J.R.'s birth certificate. R. 13. Gedo did nothing to assume the responsibilities of fatherhood. He did not pay for the costs of J.R.'s birth or for any of the costs of raising J.R. for eight years after his birth. R.251.

Gedo never publicly acknowledged J.R. as his child and never assumed the role of father toward J.R. From the time Mrs. Rose informed Gedo that J.R. may be his child, Gedo allowed Mr. Rose to expend time, energy, and money to prepare for J.R.'s birth and allowed Mr. Rose to be named on J.R.'s birth certificate as his father. R. 13, 251. Gedo acquiesced as Mr. Rose bonded in a parent-child relationship after J.R. was born and developed a strong, loving, and enduring relationship with J.R. R. 214-17. Gedo allowed Mr. Rose to assume the financial and paternal responsibility for J.R. and to carry out all parental responsibilities associated with J.R. Indeed, J.R. has no reason to believe that Mr. Rose is not his father. R. 337. For eight years, Gedo acquiesced to Mr. Rose's relationship with J.R.

Gedo's failure to act since before J.R.'s birth is inconsistent with his current claim of paternity and because Mr. Rose expended time, energy, and money and developed a paternal bond with J.R. in reliance on Gedo's failure to act, allowing Gedo to repudiate his failure act would cause significant injury to both Mr. Rose and J.R. by destroying the paternal bond between Mr. Rose and J.R.'s image of his family. Gedo should be estopped from challenging Mr. Rose's parentage through genetic testing.

- B. The order for genetic testing will inequitably disrupt J.R.'s relationship with Mr. Rose because J.R. and Mr. Rose are closely bonded, and Mr. Rose has assumed the role of father and accepted parental responsibilities for J.R. for over eight years.

In both of the New York cases above, the court concluded that the relationship between the presumed father and the child born into his marriage would inequitably be interrupted if the biological father were allowed to assert his paternity. In *Kristen D.*, the

court concluded that given the nature, extent and duration of the presumed father's relationship with the child, it would be unjust and inequitable to disrupt that relationship. 280 A.D.2d 717, 719, 719 N.Y.S.2d 771. In *Richard W.*, the court concluded that even though the child was only four months old when the biological father brought his paternity action, the presumed father had bonded with the child and it would be inequitable not to preserve the paternal bond and relationship with the only father the child had ever known. 240 A.D.2d 812, 815, 658 N.R.S.2d 506.

Similarly, this court held in *Pearson* that the biological father's challenge to paternity would disrupt the continuing and critical paternal bonds between the child and the presumed father and that introducing another father figure into the child's life would be immediately disruptive to the child's "expectations as to who his father was." 2006 UT App 128, ¶26. In dicta, the court indicated that it would also be inequitable for the mother to deny paternity because she had acquiesced in the role that the presumed father had assumed. *Id.* at ¶38 n. 11. Additionally, the presumed father would also be estopped from disestablishing paternity should he choose to do so. *Id.*

A Kentucky court also concluded that it would be inequitable for a presumed father of nine (9) years to deny his role as parent. *S.R.D. v. T.L.B., Formerly T.L.D.*, 174 S.W.3d 502, 2005 WL 2105468 (Ky. App.). The presumed father had acknowledged his paternity, had played an integral part throughout the child's life, and had conducted himself as the child's father for over nine (9) years since the child's birth. *Id.* at 504. The court reasoned that the paternal relationship between a child and the presumed father is a vital and deep relationship that should not be breached or "thrown off like an old cloak."



*Id.* at 510.

In this case, the relationship between Mr. Rose and J.R. has been developing for eight (8) years since J.R.'s birth. R. 250-55. Mr. Rose accepted J.R. as his own even knowing that Gedo may be J.R.'s biological father. R. 250-55. Mr. Rose has assumed parental responsibilities for eight (8) years and established a close father-son relationship with J.R. R.. 214-15. Mr. Rose has played an integral part throughout J.R.'s life and has conducted himself as J.R.'s father for over eight years. R. 250-55. Given the nature, extent and duration of Mr. Rose's relationship with J.R., it would be unjust and inequitable to disrupt that relationship. It would be inequitable not to preserve the paternal bond and relationship with the only father J.R. has ever known because like the *Pearson* case, disrupting the continuing and critical paternal bonds between J.R. and Mr. Rose and introducing another father figure into J.R.'s life would be immediately disruptive to J.R.'s expectations as to who his father is. Like the presumed father in S.R.D., Mr. Rose has acknowledged his paternity, has played an integral part throughout J.R.'s life, and has conducted himself as J.R.'s father for eight (8) years. It would be inequitable at the deepest level to allow a biological father who has failed for eight years to assume responsibility and assert his rights to breach such a vital and deep relationship.

- C. The order for genetic testing is not in J.R.'s best interest because J.R. is closely bonded to Mr. Rose, Mr. Rose is J.R.'s primary male attachment figure, and introducing another father would disrupt J.R.'s sense of peace and security within his home.

Where a child has a presumed father, paternity may only be raised by the presumed father or the mother. Utah Code Ann. §78-45g-607. However, if an alleged

biological father were allowed to raise the issue of paternity and make a motion for genetic testing in a situation where a presumed father exists, the court may deny the motion for genetic testing. Utah Code Ann. §78-45g-608. In determining whether to deny such a motion, the court must consider the best interest of the child including the nine factors listed in Section 78-45g-608.<sup>4</sup>

In this case, the trial court first erred in allowing Gedo to bring an action where J.R. has a presumed father. The trial court next erred in failing to deny Gedo's motion for genetic testing because the court failed to consider whether genetic testing would be in J.R.'s best interest. In so doing, the court failed to consider the nine (9) statutory factors and failed to consider the undisputed expert witness testimony that genetic testing would not be in J.R.'s best interest. The evidence available in the record supports the claim that under the nine statutory factors, the order for genetic testing is not in J.R.'s

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<sup>4</sup> The factors are as follows:

- (a) the length of time between the proceeding to adjudicate parentage and the time that the presumed father was placed on notice that he might not be the genetic father;
- (b) the length of time during which the presumed or declarant father has assumed the role of father of the child;
- (c) the facts surrounding the presumed or declarant father's discovery of his possible nonpaternity;
- (d) the nature of the relationship between the child and the presumed or declarant father;
- (e) the age of the child;
- (f) the harm that may result to the child if presumed or declared paternity is successfully disestablished;
- (g) the nature of the relationship between the child and any alleged father;
- (h) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and
- (i) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or declarant father or the chance of other harm to the child.

best interest:

1. Genetic testing is not in J.R.'s best interest because too much time has passed between the proceeding to adjudicate parentage and the time that the parties were placed on notice that Gedo might be the genetic father.

In the *Pearson* case, *supra*, this court denied a biological father the right to challenge paternity where he brought a proceeding to adjudicate parentage two years after the alleged father discovered he may be the child's biological father. *Pearson v. Person*, 2006 UT App 128, but in the *J.W.F.* decision, *supra*, the Utah Supreme Court held that a presumed father had standing to seek custody of a child where he filed a custody petition in the same month that he found out about the child's birth, 799 P.2d 710 (Utah 1990). Other states have denied alleged biological father's rights to challenge paternity where they have waited too long to bring paternity actions. *See e.g. S.R.D. v. T.L.B.*, 174 S.W.3d 502, 510 *supra* (equitably estopping a presumed father from denying paternity where he waited seven years after he first learned his paternity was questionable); *Richard W. v. Roberta Y.*, 240 A.D.2d 812, *supra* (equitably estopping paternity claim by biological father who waited one year after being informed he may be father of child born to mother and presumed father); *Kristen D. v. Stephen D.*, 280 A.D.2d 717, *supra* (equitably estopping biological father from asserting paternity where he waited three years after learning he was biological father to child born to mother and presumed father). Additionally, the United States Supreme Court held as constitutional a California statute that denied a biological father rights to challenge the paternity of a presumed father where the biological father waited eighteen months after learning he was the child's biological father to bring a paternity action. *Michael H. v. Gerald D.*, 491 U.S.

110 (1989), *supra*.

In this case, Gedo and Mrs. Rose are alleged to have had intercourse in July of 1997. R. 7. Gedo, by his alleged act, was placed on notice that a pregnancy may occur and he has a duty to protect his own rights and interests. *See* Utah Code Ann. §78-30-4.13(1)(a). Gedo was further placed on notice in the Fall of 1997 when he and Mrs. Rose had a conversation regarding her pregnancy. R. 207-08. However, after that conversation, Gedo made no attempt to file a declaration of paternity, to be listed as father on J.R.'s birth certificate or to file an action for paternity. R. 13. He acquiesced in Mr. Rose's role as father for over seven (7) years before bringing his paternity action. R. 7. Gedo waited to bring his action well beyond the two years that the father in *Pearson* waited; beyond the one year that the father in *Richard W.* waited; beyond the eighteen months and the three (3) years that the fathers in *Michael H.* and *Kristin D.* waited. Gedo was placed on notice in the Fall of 1997 that he might be J.R.'s genetic father but waited until April 2005 to bring a proceeding to adjudicate his parentage. Gedo's Petition for Paternity comes over seven years too late and well after J.R. has established a loving parental relationship with his presumed father, Mr. Rose. R. 214. Like the fathers in the cases above, Gedo has waited too long, and therefore, this factor should weigh in favor of a conclusion that the order for genetic testing is not in J.R.'s best interest.

2. Genetic testing is not in J.R.'s best interest because the length of time that Mr. Rose has assumed the role of J.R.'s father is over eight years.

In each of the cases above, the child was born during the marriage or cohabitation of the mother and a presumed father, and in all but the *J.W.F.* case, the presumed father

assumed the role of the child's father. Gedo has never assumed the role of father to J.R. and from J.R.'s conception, Gedo has acquiesced in Mr. Rose's role as J.R.'s father. Over eight (8) years ago, Mr. Rose, like the presumed father in *Pearson*, became aware that J.R. may not be his child early in Mrs. Rose's pregnancy but agreed to treat J.R. as his own. R. 254. Like the *Pearson* father, Mr. Rose was present at the child's birth and provided financial support both before and after the birth. R. 254. Mr. Rose, like the father in *Pearson*, was for years a nurturing father figure to his child, and J.R. became completely bonded and attached to his father. R. 214. Mr. Rose has assumed the role of father significantly longer than the two years that the father in *Pearson* did; for over seven years prior to Gedo bringing his paternity claim. Mr. Rose fulfilled J.R.'s need for a nurturing care-giver and assumed the father role. R. 254. Therefore, this factor should also weigh in favor of a conclusion that genetic testing is not in J.R.'s best interest.

3. Genetic testing is not in J.R.'s best interest because both Gedo and Mr. Rose discovered Mr. Rose's possible nonpaternity prior to J.R.'s birth, but Gedo took no action to establish his paternity.

Both Mr. Rose and Gedo were informed in the fall of 1997 that Gedo may be J.R.'s biological father. Mr. Rose having been married to Mrs. Rose since 1988 freely and gladly claimed J.R. as his son, and Mrs. Rose and Mr. Rose are still married today. R. 251. Mr. Rose helped Mrs. Rose through the pregnancy and has always treated J.R. as his own child. R. 251. Conversely, Gedo took no action to establish his paternity, assumed no responsibility for J.R., and acquiesced in Mr. Rose's role as J.R.'s father. Thus, this factor should weigh against Gedo, since the presumed father, Mr. Rose, discovered his possible non-paternity before J.R. was even born and has held J.R. out as

his own child and in all respects wants to continue to act as J.R.'s father.

4. Genetic testing is not in J.R.'s best interest because the nature of the relationship between J.R. and Mr. Rose is that of a closely bonded child and father.

Dr. Darin Featherstone's affidavit presented evidence that in J.R.'s Kinetic Family Drawing, "J.R.'s relative positioning and close proximity to his father would indicate a strong son-father identification, which was also validated over the course of observing the interactions between this child and his father." R. 215. "J.R.'s primary male attachment figure is to his 'father,' Mr. Doug Rose." R. 216. Dr. Featherstone also noted, that "J.R. was observed to listen very intently to his father's instructions as he was coaching him on a new physical activity. R. 216. To that end, J.R. was very accepting of his father as a parenting figure or authority, as well as someone to whom he turned to for advise on interactive play." R. 216.

Additionally, Mr. Rose testified by affidavit that J.R. and Mr. Rose have been on numerous scouting and father-son campouts throughout Utah. R. 252. J.R. and his brothers attend scouting and youth activities with Mr. Rose. R. 252. J.R. has accompanied Mr. Rose on many trips out of state to see extended family. R. 251-52. J.R. has received LDS blessings from Mr. Rose and attends church with his dad, mom and siblings. R. 253. Mr. Rose has taught J.R. how to ride his bike and swim and has taken him to parks and the community swimming pool. R. 253. Mr. Rose helps plan and attends important events in J.R.'s life, such as birthdays and holiday celebrations. R. 252. Mr. Rose has spent time reading books to J.R. and helping him with his homework. (R. 252. Mr. Rose also assists in J.R.'s class at American Heritage school where he works

extra hours as a janitor to help pay for J.R.'s tuition. R. 252.

The above activities and the expert findings by Dr. Featherstone show a very strong father-son bond. J.R.'s relationship with Mr. Rose, his presumed father, is a healthy and stable relationship, which should weigh heavily in favor of a conclusion that genetic testing is not in J.R.'s best interest.

5. Genetic testing is not in J.R.'s best interest because J.R. is eight years old and testing would be disruptive to his life.

J.R. is currently eight (8) years old. From birth through nearly half of his minority, Mr. Rose has been J.R.'s only father figure. R. 217, 337. It would be extremely disruptive to an eight-year-old's life to disestablish the relationship with the only father he has ever known. In fact, Dr. Featherstone states: "Disruption of this father-son relationship would only act to destabilize his emotions and developmental needs." R. 214. Thus, this factor should weigh heavily in favor of a conclusion that genetic testing is not in J.R.'s best interest.

6. Genetic testing is not in J.R.'s best interest because of the harm that may result to J.R. Mr. Rose's paternity is successfully disestablished;

In denying the biological father's attack on the presumed father's paternity in the *Pearson* decision, this Court found that the presumed father was the "psychological father" of the child, and the child had become closely bonded with the father. 2006 UT App 128, ¶26. Further, the Court found that those bonds were critical, and to permit the biological father to disestablish the presumed father's paternity would be "immediately disruptive to the child's stability" and to his existing paternal relationship and his "expectations as to who his father was." *Id.* In the present case, the bonds are equally

close and equally critical. Dr. Featherstone's evaluation indicated that the attachment J.R. displayed toward Mr. Rose "is significantly healthy, and appropriate to his developmental phase. To that end, [J.R.] has managed a strong identification with his father. This is perhaps reflective of a father who has been available as a strong male role model and nurturing father figure. Clearly, disruption of this 'father-son' relationship would only act to destabilize his emotions and development needs." R. 214. Dr. Featherstone indicated that Mr. Rose has established himself as J.R.'s "psychological parent" and "by virtue of these parents's availability as well as their nurturing parenting capabilities, J.R. has come to rely upon his father and mother for his day-to-day needs, including his psychological, emotional, physical, and developmental needs." R. 214. As such, Dr. Featherstone concluded that "it does not appear to be in this child's best interest to disrupt his developmental, psychological, emotional and physical stability by introducing another alleged "father figure" at this time." R. 214.

Like the father-child bonds in Pearson, J.R.'s bond with Mr. Rose is critical, and to permit Gedo to disestablish Mr. Rose's paternity would be immediately disruptive to J.R.'s stability and to his existing paternal relationship and his expectations as to who his father is. Genetic testing will disrupt the entire family and J.R.'s sense of peace and security within the home. Additionally, Dr. Featherstone indicated that J.R. appears "to be a healthy, happy and delightful young boy," but this significant impact and life changing event may cause J.R. to exhibit emotional or behavioral problems. R. 214.

Since disestablishing presumed paternity would negatively disrupt J.R.'s developmental, psychological, emotional and physical stability this factor should



seriously weigh in favor of a conclusion that genetic testing is not in J.R.'s best interest.

7. Genetic testing is not in J.R.'s best interest because the nature of the relationship between J.R. and Gedo is only that of a distant family friend.

In the United States Supreme Court case of *Michael H. v. Gerald D.*, the Court was “not aware of a single case, old or new,” that awarded “substantive parental rights to the natural father of a child conceived within, and born into, an extant marital union that wishes to embrace the child.” 491 U.S. 126, 127. Even where the biological father has developed a relationship with the child, Utah has denied a biological parent the right to disrupt the presumptive father’s paternal relationship with the child. *Pearson v. Pearson*, 2006 UT App 128. In *Pearson*, the mother and the presumed father separated after the child was eight months old, and the mother married the biological father 18 months later and they had another child. *Id.* at ¶3 n.1. The Court found that even though the child developed a relationship with his biological father and his new sibling and despite the paternal role that the biological father eventually took, the child continued to identify the assumed father as his father and “that attachment was secure, strong and healthy.” *Id.* at 27. Thus, this Court concluded that the biological father did not have the right to disrupt that relationship. *Id.* at ¶33.

In this case, J.R. knew Gedo only as an acquaintance, and there has never been a significant or substantial relationship with Gedo. R. 337. J.R. has not seen Gedo since 2002 and prior to that, the contact was extremely limited. R. 337. Additionally, J.R. has never been informed that there was even a possibility that Gedo was his father, and Mr. Rose is the only father figure J.R. has known. R. 337, 214-15. Furthermore, due to past

events, J.R. may be scared of Gedo as many times Mrs. Rose has had to move away from her home for fear of her life and the life of her children due to Gedo's actions. R. 78. For example, J.R. and Mrs. Rose accompanied Gedo and his wife and family to Mexico so Gedo's wife could visit her family. R. 225. While there, Mrs. Rose had to leave and meet her mother and husband in Tijuana because she feared for her and her son's life. R. 225. Gedo would not help them and they had to rely on others for help in getting out of Mexico. R. 225. There have also been other times when Mrs. Rose and her children have left their home to stay with other family members for fear of Gedo. R. 407. Thus, if there is any relationship at all between J.R. and Gedo, it is not a healthy relationship. However, even if a relationship did exist between J.R. and Gedo, J.R. still continues to identify Mr. Rose as his father and Dr. Featherstone's report indicates that "that attachment is significantly healthy, and appropriate to his developmental phase." R. 214. Therefore, under the *Pearson* decision, Gedo does not have a right to disrupt that relationship and doing so would not be in J.R.'s best interest.

8. Genetic testing is not in J.R.'s best interest because the passage of eight years reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child.

Since Gedo has not taken financial responsibility for J.R. since before J.R.'s birth, and has not assumed a paternal role in J.R.'s life for over eight years, and has acquiesced in Mr. Rose's paternal role for the same amount of time, and since Mr. Rose has assumed financial responsibility for J.R. and wants to continue to his role as J.R.'s father, the chances of establishing Gedo as the legal father for purposes of child support are greatly reduced. Additionally, the chances of disestablishing Mr. Rose as J.R.'s legal father are

also greatly reduced under the doctrine of equitable estoppel discussed above. *See S.R.D. v. T.L.B.*, 174 S.W.3d 502. Furthermore, Mr. and Mrs. Rose have never sought child support from Gedo, as they have always considered and treated J.R. as their own child. Thus, this factor also weighs in favor of denying genetic testing since denying genetic testing will have no effect on Mrs. Rose and her husband's ability to financially support J.R.

9. Genetic testing is not in J.R.'s best interest because there are other factors that may affect the equities arising from the disruption of the father-child relationship between J.R. and Mr. Rose and there is a high chance of other harm to J.R..

The bonded family group of which J.R. is an important part is an important factor that may affect the equities arising from the disruption of J.R. and Mr. Rose's relationship. The Kentucky case, *S.R.D.*, considered this factor when it held that consistent with the best interests of the child standard, any financial or emotional disruption of the parent-child relationship with the child at issue would be seriously detrimental to all of the children in the family. *S.R.D.*, 174 S.W.3d 502. In this case, it is also likely that any disruption of the parent-child relationship between Mr. Rose and J.R. would not only be seriously detrimental to J.R., but would be seriously detrimental to J.R.'s parents and his four other siblings.

J.R.'s relative concept of family includes: his mother, father, older brother Darius, sister Madeline, his younger sister Rebecca, and brother Daniel. R. 217. Dr. Featherstone indicated that Mr. and Mrs. Rose have provided stability, predictability, and consistency within their own relationship and within the home and as such, J.R. does not appear to

have any significant emotional or behavioral problems which may be attributed to extensive family disruption. R. 217. “J.R. feels a sense of peace and security within the home, and is not opposed to contributing to the family home in terms of up-keep. J.R. appear[s] to find joy while working side-by-side with his father in completion of those chores. This is not unusual given the healthy son-father identification observed by this evaluator throughout the case.” R. 217. Thus, it would be inequitable and harmful to disrupt both the father-son relationship between J.R. and Mr. Rose and the sense of family that J.R. feels with Mr. and Mrs. Rose and his siblings. In addition, disrupting this relationship would be seriously detrimental to all of the children in the Rose family.

When the evaluator, Dr. Featherstone, presented J.R. with three wishes, his first wish was to “[b]e a family forever.” R. 217. The expert witness observed that this is a bonded family group, with J.R. having appropriate attachments to his siblings as well as strong attachments as a son to his father. R. 216. If paternity is successfully disestablished, J.R.’s number one wish will no longer be capable. In essence, J.R.’s hopes and dreams and his concept of relative family will be destroyed.

## CONCLUSION

For the forgoing reasons, Appellant Shacké Rose requests that this Court reverse the trial court's order for genetic testing and conclude that Mr. Rose is J.R.'s father.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Ron D. Wilkinson', written over a horizontal line.

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**IN THE UTAH COURT OF APPEALS IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

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MIGUEL DAVID GEDO,

Petitioner, Appellee,

v.

SHACKE ROSE

Respondent, Appellant.

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**CERTIFICATE OF SERVICE**

Case No.: 20060147-CA

COMES now the Respondent, Appellant, by and through her attorney, Ron D. Wilkinson, and hereby certifies that a true and correct copy of this certificate, accompanied by Respondent, Appellant's, BRIEF OF APPELLANT ON APPEAL FROM THE FOURTH DISTRICT COURT were served by US POSTAL CERTIFIED return receipt requested on the following, this 15<sup>th</sup> day of August 2006:

Miguel David Gedo  
1451 S. 50 E.  
Orem, UT 84058



# **ADDENDUM**

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Utah Code –  
Title 78 –  
Chapter 45g – Utah  
Uniform Parentage  
Act

# Utah Code Ann. §78-45g-101, et. al. (Westlaw current through 2006 3rd Spec. Sess.)

## **78-45g-101. Title.**

This chapter is known as the "Utah Uniform Parentage Act."

## **78-45g-102. Definitions.**

As used in this chapter:

(1) "Adjudicated father" means a man who has been adjudicated by a tribunal to be the father of a child.

(2) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

(3) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

- (a) intrauterine insemination;
- (b) donation of eggs;
- (c) donation of embryos;
- (d) in vitro fertilization and transfer of embryos; and
- (e) intracytoplasmic sperm injection.

(4) "Birth expenses" means all medical costs associated with the birth of a child, including the related expenses for the biological mother during her pregnancy and delivery.

(5) "Birth mother" means the biological mother of a child.

(6) "Child" means an individual of any age whose parentage may be determined under this chapter.

(7) "Commence" means to file the initial pleading seeking an adjudication of parentage in the appropriate tribunal of this state.

(8) "Declarant father" means a male who, along with the biological mother claims to be the genetic father of a child, and signs a voluntary declaration of paternity to establish the man's paternity.

(9) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid declaration of paternity under Part 3, Voluntary Declaration of Paternity, or adjudication by a tribunal.

(10) "Donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

- (a) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;
- (b) a woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in Part 8, Gestational Agreement; or
- (c) a parent under Part 7, Child of Assisted Reproduction, or an intended parent under Part 8, Gestational Agreement.

(11) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

(12) "Financial support" means a base child support award as defined in Section **78-45-2**, all past-due support which accrues under an order for current periodic payments, and sum certain judgments for past-due support.

(13) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(a) deoxyribonucleic acid; or

(b) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(14) "Gestational mother" means an adult woman who gives birth to a child under a gestational agreement.

(15) "Man," as defined in this chapter, means a male individual of any age.

(16) "Medical support" means a provision in a support order that requires the purchase and maintenance of appropriate insurance for health and dental expenses of dependent children, and assigns responsibility for uninsured medical expenses.

(17) "Parent" means an individual who has established a parent-child relationship under Section **78-45g-201**.

(18) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(19) "Paternity index" means the likelihood of paternity calculated by computing the ratio between:

(a) the likelihood that the tested man is the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is the father of the child; and

(b) the likelihood that the tested man is not the father, based on the genetic markers of the tested man and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.

(20) "Presumed father" means a man who, by operation of law under Section **78-45g-204**, is recognized as the father of a child until that status is rebutted or confirmed as set forth in this chapter.

(21) "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Signatory" means an individual who authenticates a record and is bound by its terms.

(24) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory, Native American Tribe, or insular possession subject to the jurisdiction of the United States.

(25) "Support-enforcement agency" means a public official or agency authorized under Title IV-D of the Social Security Act which has the authority to seek:

- (a) enforcement of support orders or laws relating to the duty of support;
- (b) establishment or modification of child support;
- (c) determination of parentage; or
- (d) location of child-support obligors and their income and assets.

(26) "Tribunal" means a court of law, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

### **78-45g-103. Scope -- Choice of law.**

(1) This chapter applies to determinations of parentage in this state.

(2) The tribunal shall apply the law of this state to adjudicate the parent-child relationship. The applicable law may not depend upon:

- (a) the place of birth of the child; or
- (b) the past or present residence of the child.

(3) This chapter may not create, enlarge, or diminish parental rights or duties under other laws of this state.

(4) This chapter does not authorize or prohibit an agreement between a woman and a man and another woman in which the woman relinquishes all rights as a parent of a child conceived by means of assisted reproduction, and which provides that the man and other woman become the parents of the child. If a birth results under such an agreement and the agreement is unenforceable under the law of this state, the parent-child relationship is determined as provided in Part 2, Parent-child Relationship.

### **78-45g-104. Adjudication -- Jurisdiction.**

(1) The district court, the juvenile court, and the Office of Recovery Services in accordance with Section **62A-11-304.2** and Title 63, Chapter 46b, Administrative Procedures Act, are authorized to adjudicate parentage under Parts 1 through 6, and Part 9 of this chapter.

(2) The district court and the juvenile court have jurisdiction over proceedings under Parts 7 and 8.

### **78-45g-105. Protection of participants.**

Proceedings under this chapter are subject to other laws of this state governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, Social Security number, the child's day-care facility, or school.

**78-45g-106. Determination of maternity.**

Provisions of this chapter relating to determination of paternity also apply to determinations of maternity.

**78-45g-107. Effect.**

An adjudication or declaration of paternity shall be filed with the state registrar in accordance with Section 26-2-5.

**78-45g-108. Obligation to provide address.**

A party to an action under this chapter has a continuing obligation to keep the tribunal informed of the party's current address.

**78-45g-109. Limitation on recovery from the obligor.**

The obligor's liabilities for past support are limited to the period of four years preceding the commencement of an action.

**78-45g-110. Duty of attorney general and county attorney.**

Whenever the state commences an action under this chapter, it shall be the duty of the attorney general or the county attorney of the county where the obligee resides to represent the state. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out his responsibilities under this chapter.

**78-45g-111. Default judgment.**

Utah Rule of Civil Procedure 55, Default Judgment, shall apply to paternity actions commenced under this chapter.

**78-45g-112. Standard of proof.**

The standard of proof in a trial to determine paternity is "by clear and convincing evidence."

**78-45g-113. Parent-time rights of father.**

(1) If the tribunal determines that the alleged father is the father, it may upon its own motion or upon motion of the father, order parent-time rights in accordance with Sections 30-3-32 through 30-3-37 as it considers appropriate under the circumstances.

(2) Parent-time rights may not be granted to a father if the child has been subsequently adopted.

**78-45g-114. Social Security number in tribunal records.**

The Social Security number of any individual who is subject to a paternity determination shall be placed in the records relating to the matter.

**78-45g-115. Settlement agreements.**

An agreement of settlement with the alleged father is binding only when approved by the tribunal.

**78-45g-201. Establishment of parent-child relationship.**

(1) The mother-child relationship is established between a woman and a child by:

(a) the woman's having given birth to the child, except as otherwise provided in Part 8, Gestational Agreement;

(b) an adjudication of the woman's maternity;

(c) adoption of the child by the woman; or

(d) an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

(2) The father-child relationship is established between a man and a child by:

(a) an un rebutted presumption of the man's paternity of the child under Section **78-45g-204**;

(b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration of Paternity, unless the declaration has been rescinded or successfully challenged;

(c) an adjudication of the man's paternity;

(d) adoption of the child by the man;

(e) the man having consented to assisted reproduction by a woman under Part 7, Child of Assisted Reproduction, which resulted in the birth of the child; or

(f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

**78-45g-202. No discrimination based on marital status.**

A child born to parents who are not married to each other whose paternity has been determined under this chapter has the same rights under the law as a child born to parents who are married to each other.

**78-45g-203. Consequences of establishment of parentage.**

Unless parental rights are terminated, a parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state.

**78-45g-204. Presumption of paternity.**

(1) A man is presumed to be the father of a child if:

(a) he and the mother of the child are married to each other and the child is born during the marriage;

(b) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(c) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce or after a decree of separation; or

(d) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is, or could be declared, invalid, he voluntarily asserted his paternity of the child, and there is no other presumptive father of the child, and:

(i) the assertion is in a record filed with the Office of Vital Records;

(ii) he agreed to be and is named as the child's father on the child's birth certificate; or

(iii) he promised in a record to support the child as his own.

(2) A presumption of paternity established under this section may only be rebutted in accordance with Section **78-45g-607**.

(3) If a child has an adjudicated father, the results of genetic testing are inadmissible to challenge paternity except as set forth in Section **78-45g-607**

#### **78-45g-301. Declaration of paternity.**

The mother of a child and a man claiming to be the genetic father of the child may sign a declaration of paternity to establish the paternity of the child.

#### **78-45g-302. Execution of declaration of paternity.**

(1) A declaration of paternity must:

(a) be in a record;

(b) be signed, or otherwise authenticated, under penalty of perjury, by the mother and by the declarant father;

(c) be signed by the birth mother and declarant father in the presence of two witnesses who are not related by blood or marriage; and

(d) state that the child whose paternity is being declared:

(i) does not have a presumed father, or has a presumed father whose full name is stated; and

(ii) does not have another declarant or adjudicated father;

(e) state whether there has been genetic testing and, if so, that the declarant man's claim of paternity is consistent with the results of the testing; and

(f) state that the signatories understand that the declaration is the equivalent of a legal finding of paternity of the child and that a challenge to the declaration is permitted only under the limited circumstances described in Section **78-45g-307**.

(2) If either the birth mother or the declarant father is a minor, the voluntary declaration must also be signed by that minor's parent or legal guardian.

(3) A declaration of paternity is void if it:

(a) states that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the Office of Vital Records in accordance with Section **78-45g-303**;

(b) states that another man is a declarant or adjudicated father; or  
(c) falsely denies the existence of a presumed, declarant, or adjudicated father of the child.

(4) A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

(5) The declaration of paternity shall be in a form prescribed by the Office of Vital Records and shall be accompanied with a written and verbal notice of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.

(6) The Social Security number of any person who is subject to declaration of paternity shall be placed in the records relating to the matter.

(7) The declaration of paternity shall become an amendment to the original birth certificate. The original certificate and the declaration shall be marked as to be distinguishable. The declaration may be included as part of subsequently issued certified copies of the birth certificate. Alternatively, electronically issued copies of a certificate may reflect the amended information and the date of the amendment only.

(8) A declaration of paternity may be completed and signed any time after the birth of the child. A declaration of paternity may not be signed or filed after consent to or relinquishment for adoption has been signed.

(9) A declaration of paternity shall be considered effective when filed and entered into a database established and maintained by the Office of Vital Records.

#### **78-45g-303. Denial of paternity.**

A presumed or declarant father may sign a denial of his paternity. The denial is valid only if:

(1) a declaration of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section **78-45g-305**;

(2) the denial is in a form prescribed by and filed with the Office of Vital Records, and is signed, or otherwise authenticated, under penalty of perjury; and

(3) the presumed or declarant father has not previously:

(a) declared his paternity, unless the previous declaration has been rescinded pursuant to Section **78-45g-306** or successfully challenged pursuant to Section **78-45g-307**; or

(b) been adjudicated to be the father of the child.

#### **78-45g-304. Rules for declaration and denial of paternity.**

(1) A declaration of paternity and a denial of paternity shall be contained in a single document. If the declaration and denial are both necessary, neither is valid until both are signed and filed.

(2) A declaration of paternity or a denial of paternity may not be signed before the birth of the child.

(3) Subject to Subsection (1), a declaration of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the Office of Vital Records, whichever occurs later.



(4) A declaration of paternity or denial of paternity signed by a minor and by the minor's parent or legal guardian is valid if it is otherwise in compliance with this chapter.

**78-45g-305. Effect of declaration or denial of paternity.**

(1) Except as otherwise provided in Sections **78-45g-306** and **78-45g-307**, a valid declaration of paternity filed with the Office of Vital Records is equivalent to a legal finding of paternity of a child and confers upon the declarant father all of the rights and duties of a parent.

(2) When a declaration of paternity is filed, it shall be recognized as a basis for a child support order without any further requirement or proceeding regarding the establishment of paternity.

(a) The liabilities of the father include, but are not limited to, the reasonable expense of the mother's pregnancy and confinement and for the education, necessary support, and any funeral expenses for the child.

(b) When a father declares paternity, his liability for past amounts due is limited to the period of four years immediately preceding the date that the voluntary declaration of paternity was filed.

(3) Except as otherwise provided in Sections **78-45g-306** and **78-45g-307**, a valid denial of paternity by a presumed or declarant father filed with the Office of Vital Records in conjunction with a valid declaration of paternity is equivalent to a legal finding of the nonpaternity of the presumed or declarant father and discharges the presumed or declarant father from all rights and duties of a parent. If a valid denial of paternity is filed with the Office of Vital Records, the declarant or presumed father may not recover child support he paid prior to the time of filing.

**78-45g-306. Proceeding for rescission.**

(1) A signatory may rescind a declaration of paternity or denial of paternity by filing a voluntary rescission document with the Office of Vital Records in a form prescribed by the office before the earlier of:

(a) 60 days after the effective date of the declaration or denial, as provided in Sections **78-45g-303** and **78-45g-304**; or

(b) the date of notice of the first adjudicative proceeding to which the signatory is a party, before a tribunal to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) Upon receiving a voluntary rescission document from a signatory under Subsection (1), the Office of Vital Records shall provide notice of the rescission, by mail, to the other signatory at the last-known address of that signatory.

**78-45g-307. Challenge after expiration of period for rescission.**

(1) After the period for rescission under Section **78-45g-306** has expired, a signatory of a declaration of paternity or denial of paternity, or a support-enforcement agency, may commence a proceeding to challenge the declaration or denial only on the basis of fraud, duress, or material mistake of fact.

(2) A party challenging a declaration of paternity or denial of paternity has the burden of proof.

(3) A challenge brought on the basis of fraud or duress may be commenced at any time.

(4) A challenge brought on the basis of a material mistake of fact may be commenced within four years after the declaration is filed with the Office of Vital Records. For the purposes of this Subsection (4), if the declaration of paternity was filed with the Office of Vital Records prior to May 1, 2005, a challenge may be brought within four years after May 1, 2005.

(5) For purposes of Subsection (4), genetic test results that exclude a declarant father or that rebuttably identify another man as the father in accordance with Section **78-45g-505** constitute a material mistake of fact.

#### **78-45g-308. Procedure for rescission or challenge.**

(1) Every signatory to a declaration of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the declaration or denial.

(2) For the purpose of rescission of, or challenge to, a declaration of paternity or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the declaration or denial, effective upon the filing of the document with the Office of Vital Records.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge a declaration of paternity or denial of paternity, the tribunal may not suspend the legal responsibilities of a signatory arising from the declaration, including the duty to pay child support.

(4) A proceeding to rescind or to challenge a declaration of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under Part 6, Adjudication of Parentage.

(5) At the conclusion of a proceeding to rescind or challenge a declaration of paternity or denial of paternity, the tribunal shall order the Office of Vital Records to amend the birth record of the child, if appropriate.

(6) If the declaration is rescinded, the declarant father may not recover child support he paid prior to the entry of an order of rescission.

#### **78-45g-309. Ratification barred.**

A tribunal or administrative agency conducting a judicial or administrative proceeding may not ratify an unchallenged declaration of paternity.

#### **78-45g-310. Full faith and credit.**

A tribunal of this state shall give full faith and credit to a declaration of paternity or denial of paternity effective in another state if the declaration or denial has been signed and is otherwise in compliance with the law of the other state.

**78-45g-311. Forms for declaration and denial of paternity and for rescission of paternity.**

(1) To facilitate compliance with this part, the Office of Vital Records shall prescribe forms for the declaration, denial, and rescission of paternity.

(2) A valid declaration of paternity or denial of paternity is not affected by a later modification of the prescribed form.

**78-45g-312. Release of information.**

The Office of Vital Records may release information relating to the declaration of paternity or denial of paternity to a signatory of the declaration or denial and to tribunals and federal, tribal, and state support-enforcement agencies of this or another state.

**78-45g-313. Adoption of rules.**

The Office of Vital Records may adopt rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement this part.

**78-45g-401. Maintenance of records.**

(1) The Office of Vital Records shall register the following records which are filed with the office:

(a) all declarations of paternity;

(b) all judicial and administrative determinations of paternity; and

(c) all notices of proceedings to establish paternity which are filed pursuant to

Sections **78-30-4.13** and **78-30-4.14**.

(2) A notice of initiation of paternity proceedings may not be accepted into the registry unless accompanied by a copy of the pleading which has been filed with the court to establish paternity.

(3) A notice of initiation of paternity proceedings may not be filed if another man is the adjudicated or declarant father.

**78-45g-402. Effect of registration.**

(1) An unmarried biological father who desires to be notified of a proceeding for adoption of a child must file a notice of the initiation of paternity proceedings as required by Sections **78-30-4.13** and **78-30-4.14**.

(2) A registrant shall promptly notify the registry in a record of any change in the information registered. The Office of Vital Records shall incorporate all new information received into its records but need not affirmatively seek to obtain current information for incorporation in the registry.

**78-45g-403. Notice of proceeding.**

Notice of an adoption proceeding shall be given to unmarried biological fathers pursuant to Section **78-30-4.13**.

**78-45g-404. Required form.**

(1) The Office of Vital Records shall prepare a form to be filed with the agency. The

form shall require the signature of the registrant and state that the form is signed under penalty of perjury.

(2) The form shall also state that:

(a) a timely filing of notice of the initiation of paternity proceedings which is filed pursuant to Subsection **78-45g-402**(1) entitles the registrant to notice of a proceeding for adoption of the child;

(b) a timely filing does not commence a proceeding to establish paternity;

(c) the information disclosed on the form may be used against the registrant to establish paternity;

(d) services to assist in establishing paternity of a child who is not placed for adoption are available to the registrant through the Office of Recovery Services;

(e) the registrant should also file in another state if conception or birth of the child occurred in the other state;

(f) information on registries of other states is available from the Office of Vital Records; and

(g) procedures exist to remove the filing of a proceeding to establish paternity if the proceeding is dismissed, or if a finding of paternity is rescinded or set aside under this chapter.

#### **78-45g-405. Furnishing of information -- Confidentiality.**

(1) The Office of Vital Records shall send a copy of the filing to a person or entity set forth in Subsection (2), who has requested a copy. The copy of the filing shall be sent to the most recent address provided by the requestor.

(2) Information contained in records which are filed pursuant to Section **78-45g-401** is confidential and may be released on request only to:

(a) a tribunal or a person designated by the tribunal;

(b) the mother of the child who is the subject of the filing;

(c) an agency authorized by other law to receive the information;

(d) a licensed child-placing agency;

(e) the Office of Recovery Services, the Office of the Attorney General, or a support-enforcement agency of another state or tribe;

(f) a party or the party's attorney of record in a proceeding under this chapter or in a proceeding for adoption of, or for termination of parental rights regarding, a child who is the subject of the filing; and

(g) the registry of paternity in another state.

#### **78-45g-406. Penalty for releasing information.**

A person who, with malicious intent, releases confidential information from the Office of Vital Records which is filed pursuant to Section **78-45g-401** to a person or agency not authorized to receive the information under Section **78-45g-405** is guilty of a class B misdemeanor.

**78-45g-407. Removal of registration.**

The Office of Vital Records may remove a registration in accordance with rules adopted by the office in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

**78-45g-408. Fees for registry.**

- (1) A fee may not be charged to remove a registration.
- (2) Except as otherwise provided in Subsection (3), the Office of Vital Records may charge a reasonable fee for registering records pursuant to Section **78-45g-401**, making a search of the registry, and for furnishing a certificate.
- (3) The Office of Recovery Services, the Office of the Attorney General, and support-enforcement agencies of other states or tribes may not be required to pay the fee authorized by Subsection (2).

**78-45g-409. Search of records -- Certificate.**

(1) Upon the request of an individual, tribunal, or agency identified in Section **78-45g-405**, the Office of Vital Records shall search its records for any registration made pursuant to Section

**78-45g-401** and furnish to the requestor a certificate of search which shall be signed on behalf of the office and state that:

- (a) a search has been made of the records of the Office of Vital Records; and
  - (b) a registration containing the information required to identify the registrant:
    - (i) has been found and is attached to the certificate of search; or
    - (ii) has not been found.
- (2) A petitioner shall file the certificate of search with the tribunal in connection with a proceeding for adoption.

**78-45g-410. Admissibility of information.**

A certificate of search of the registry of paternity in this or another state is admissible in a proceeding for adoption of a child and, if relevant, in other legal proceedings.

**78-45g-501. Scope of part.**

This part governs genetic testing of an individual to determine parentage, whether the individual:

- (1) voluntarily submits to testing; or
- (2) is tested pursuant to an order of a tribunal or a support-enforcement agency.

**78-45g-502. Order for testing.**

(1) Upon the motion of any party to the action, except as otherwise provided in this part and Part 6, Adjudication of Parentage, the tribunal shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(a) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(b) denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(2) If a request for genetic testing of a child is made before birth, the tribunal may not order in-utero testing.

(3) If two or more men are subject to an order for genetic testing, the testing may be ordered concurrently or sequentially.

#### **78-45g-503. Requirements for genetic testing.**

(1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(a) the American Association of Blood Banks, or a successor to its functions;

(b) the American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

(c) an accrediting body designated by the federal Secretary of Health and Human Services.

(2) A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

#### **78-45g-504. Report of genetic testing.**

(1) A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this part is self-authenticating.

(2) Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

(a) the names and photographs of the individuals whose specimens have been taken;

(b) the names of the individuals who collected the specimens;

(c) the places and dates the specimens were collected;

(d) the names of the individuals who received the specimens in the testing laboratory;

(e) the dates the specimens were received; and

(f) the finger prints of the individuals whose specimens have been taken.

#### **78-45g-505. Genetic testing results -- Rebuttal.**

(1) Under this chapter, a man is presumed to be identified as the father of a child if the genetic testing complies with this part and the results disclose that:

(a) the man has at least a 99% probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and

(b) a combined paternity index of at least 100 to 1.

(2) A man identified under Subsection (1) as the father of the child may rebut the

genetic testing results only by other genetic testing satisfying the requirements of this part which:

- (a) excludes the man as a genetic father of the child; or
- (b) identifies another man as the possible father of the child.
- (3) If an issue is raised as to whether the appropriate ethnic or racial group database was used by the testing laboratory, the testing laboratory will be asked to rerun the test using the correct ethnic or racial group database. If the testing laboratory does not have an adequate database, another testing laboratory may be engaged to perform the calculations.
- (4) If a presumption of paternity is not rebutted by a second test, the tribunal shall issue an order establishing paternity

**78-45g-506. Costs of genetic testing.**

(1) Subject to assessment of costs under Part 6, Adjudication of Parentage, the cost of initial genetic testing shall be advanced:

- (a) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;
- (b) by the individual who made the request;
- (c) as agreed by the parties; or
- (d) as ordered by the tribunal.

(2) In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

**78-45g-507. Additional genetic testing.**

The tribunal shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under Section **78-45g-505**, the tribunal may not order additional testing unless the party provides advance payment for the testing. If the tribunal orders a second genetic test in accordance with this section, the additional testing must be completed within 45 days of the tribunal's order or the requesting party's objection to the first test will be automatically denied. If failure to complete the test occurs because of noncooperation of the mother or unavailability of the child, the time will be tolled.

**78-45g-508. Genetic testing when specimens not available.**

(1) Subject to Subsection (2), if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under extraordinary circumstances the tribunal considers to be just, the tribunal may order the following individuals to submit specimens for genetic testing:

- (a) the parents of the man;
- (b) brothers and sisters of the man;
- (c) other children of the man and their mothers; and
- (d) other relatives of the man necessary to complete genetic testing.

(2) Issuance of an order under this section requires a finding that a need for genetic

testing outweighs the legitimate interests of the individual sought to be tested.

**78-45g-509. Deceased individual.**

For good cause shown, the tribunal may order genetic testing of a deceased individual.

**78-45g-510. Identical brothers.**

(1) The tribunal may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(2) If each brother satisfies the requirements as the identified father of the child under Section

**78-45g-505** without consideration of another identical brother being identified as the father of the child, the tribunal may rely on nongenetic evidence to adjudicate which brother is the father of the child.

**78-45g-511. Confidentiality of genetic testing.**

Release of the report of genetic testing for parentage is controlled by Title 63, Chapter 2, Government Records Access and Management Act.

**78-45g-601. Proceeding authorized -- Definition.**

(1) An adjudicative proceeding may be maintained to determine the parentage of a child. A judicial proceeding is governed by the rules of civil procedure. An administrative proceeding is governed by Title 63, Chapter 46b, Administrative Procedures Act.

(2) For the purposes of this part, "divorce" also includes an annulment.

**78-45g-602. Standing to maintain proceeding.**

Subject to Part 3, Voluntary Declaration of Paternity, and Sections **78-45g-607** and **78-45g-609**, a proceeding to adjudicate parentage may be maintained by:

- (1) the child;
- (2) the mother of the child;
- (3) a man whose paternity of the child is to be adjudicated;
- (4) the support-enforcement agency or other governmental agency authorized by other law;
- (5) an authorized adoption agency or licensed child-placing agency;
- (6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or
- (7) an intended parent under Part 8, Gestational Agreement.

**78-45g-603. Parties to proceeding.**

The following individuals shall be joined as parties in a proceeding to adjudicate parentage:

- (1) the mother of the child;



- (2) a man whose paternity of the child is to be adjudicated; and
- (3) the state pursuant to Section **78-45-9**.

**78-45g-604. Personal jurisdiction.**

- (1) An individual may not be adjudicated to be a parent unless the tribunal has personal jurisdiction over the individual.
- (2) A tribunal of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in Section **78-45f-201** are fulfilled, or the individual has signed a declaration of paternity.
- (3) Lack of jurisdiction over one individual does not preclude the tribunal from making an adjudication of parentage binding on another individual over whom the tribunal has personal jurisdiction.

**78-45g-605. Venue.**

Venue for a judicial proceeding to adjudicate parentage is in the county of this state in which:

- (1) the child resides or is found;
- (2) the respondent resides or is found if the child does not reside in this state; or
- (3) a proceeding for probate or administration of the presumed or alleged father's estate has been commenced.

**78-45g-606. No limitation -- Child having no declarant or adjudicated father.**

A proceeding to adjudicate the parentage of a child having no declarant or adjudicated father may be commenced at any time. If initiated after the child becomes an adult, only the child may initiate the proceeding.

**78-45g-607. Limitation -- Child having presumed father.**

(1) Paternity of a child conceived or born during a marriage with a presumed father as described in Subsection **78-45g-204**(1)(a), (b), or (c), may be raised by the presumed father or the mother at any time prior to filing an action for divorce or in the pleadings at the time of the divorce of the parents.

(a) If the issue is raised prior to the adjudication, genetic testing may be ordered by the tribunal in accordance with Section **78-45g-608**. Failure of the mother of the child to appear for testing may result in an order allowing a motherless calculation of paternity. Failure of the mother to make the child available may not result in a determination that the presumed father is not the father, but shall allow for appropriate proceedings to compel the cooperation of the mother. If the question of paternity has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact.

(b) If the presumed father seeks to rebut the presumption of paternity, then denial of a motion seeking an order for genetic testing or a decision to disregard genetic test results

shall be based on a preponderance of the evidence.

(c) If the mother seeks to rebut the presumption of paternity, the mother has the burden to show by a preponderance of the evidence that it would be in the best interests of the child to disestablish the parent-child relationship.

(2) For the presumption outside of marriage described in Subsection **78-45g-204(1)(d)**, the presumption may be rebutted at any time if the tribunal determines that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception.

(3) The presumption may be rebutted by:

(a) genetic test results that exclude the presumed father;

(b) genetic test results that rebuttably identify another man as the father in accordance with Section **78-45g-505**;

(c) evidence that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; or

(d) an adjudication under this part.

(4) There is no presumption to rebut if the presumed father was properly served and there has been a final adjudication of the issue.

**78-45g-608. Authority to deny motion for genetic testing or disregard test results.**

(1) In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having a declarant father, the tribunal may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or declarant father, or if testing has been completed, the tribunal may disregard genetic test results that exclude the presumed or declarant father if the tribunal determines that:

(a) the conduct of the mother or the presumed or declarant father estops that party from denying parentage; and

(b) it would be inequitable to disrupt the father-child relationship between the child and the presumed or declarant father.

(2) In determining whether to deny a motion seeking an order for genetic testing or to disregard genetic test results under this section, the tribunal shall consider the best interest of the child, including the following factors:

(a) the length of time between the proceeding to adjudicate parentage and the time that the presumed or declarant father was placed on notice that he might not be the genetic father;

(b) the length of time during which the presumed or declarant father has assumed the role of father of the child;

(c) the facts surrounding the presumed or declarant father's discovery of his possible nonpaternity;

(d) the nature of the relationship between the child and the presumed or declarant father;

(e) the age of the child;

(f) the harm that may result to the child if presumed or declared paternity is successfully disestablished;

- (g) the nature of the relationship between the child and any alleged father;
  - (h) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and
  - (i) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or declarant father or the chance of other harm to the child.
- (3) If the tribunal denies a motion seeking an order for genetic testing or disregards genetic test results that exclude the presumed or declarant father, it shall issue an order adjudicating the presumed or declarant father to be the father of the child.

**78-45g-609. Limitation -- Child having declarant father.**

- (1) If a child has a declarant father, a signatory to the declaration of paternity or denial of paternity or a support-enforcement agency may commence a proceeding seeking to rescind the declaration or denial or challenge the paternity of the child only within the time allowed under Section **78-45g-306** or **78-45g-307**.
- (2) A proceeding under this section is subject to the application of the principles of estoppel established in Section **78-45g-608**.

**78-45g-610. Joinder of judicial proceedings.**

- (1) Except as otherwise provided in Subsection (2), a judicial proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding.
- (2) A respondent may not join a proceeding described in Subsection (1) with a proceeding to adjudicate parentage brought under Title 78, Chapter 45f, Uniform Interstate Family Support Act.

**78-45g-611. Proceeding before birth.**

A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

- (1) service of process;
- (2) discovery; and
- (3) except as prohibited by Section **78-45g-502**, collection of specimens for genetic testing.

**78-45g-612. Child as party -- Representation.**

- (1) A minor child is a permissible party, but is not a necessary party to a proceeding under this part.
- (2) The tribunal may appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the tribunal finds that the interests of the child are not adequately represented.

**78-45g-613. Admissibility of results of genetic testing -- Expenses.**

(1) Except as otherwise provided in Subsection (3), a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within 14 days after its receipt by the objecting party and cites specific grounds for exclusion. Unless a party files a timely objection, testimony shall be in affidavit form. The admissibility of the report is not affected by whether the testing was performed:

- (a) voluntarily or pursuant to an order of the tribunal; or
- (b) before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, video conference, deposition, or another method approved by the tribunal. Unless otherwise ordered by the tribunal, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed or declarant father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

- (a) pursuant to Section **78-45g-503**;
- (b) within the time periods set forth in this chapter; and
- (c) pursuant to a tribunal order or administrative process; or
- (d) with the consent of both the mother and the presumed or declarant father.

(4) If a child has an adjudicated father, the results of genetic testing are inadmissible to challenge paternity except as set forth in Sections **78-45g-607** and **78-45g-608**.

(5) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

- (a) the amount of the charges billed; and
- (b) that the charges were reasonable, necessary, and customary.

**78-45g-614. Consequences of failing to submit to genetic testing.**

(1) An order for genetic testing is enforceable by contempt.

(2) If an individual whose paternity is being determined fails to submit to genetic testing ordered by the tribunal, the tribunal for that reason may adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or fails to submit to genetic testing, the tribunal may order the testing of the child and every man who is potentially the father of the child.

**78-45g-615. Admission of paternity authorized.**

(1) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(2) If the tribunal finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the tribunal shall

issue an order adjudicating the child to be the child of the man admitting paternity.

**78-45g-616. Temporary order.**

(1) In a proceeding under this part, the tribunal shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:

- (a) a presumed father of the child;
- (b) petitioning to have his paternity adjudicated;
- (c) identified as the father through genetic testing under Section **78-45g-505**;
- (d) an alleged father who has failed to submit to genetic testing;
- (e) shown by clear and convincing evidence to be the father of the child; or
- (f) the mother of the child.

(2) A temporary tribunal order may include provisions for custody and visitation as provided by other laws of this state.

**78-45g-617. Rules for adjudication of paternity.**

The tribunal shall apply the following rules to adjudicate the paternity of a child:

(1) The paternity of a child having a presumed, declarant, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section **78-45g-505** must be adjudicated the father of the child, unless an exception is granted under Section **78-45g-608**.

(3) If the tribunal finds that genetic testing under Section **78-45g-505** neither identifies nor excludes a man as the father of a child, the tribunal may not dismiss the proceeding. In that event, the tribunal shall order further testing.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man properly excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

**78-45g-618. Adjudication of parentage -- Jury trial prohibited.**

A jury trial is prohibited to adjudicate paternity of a child.

**78-45g-619. Adjudication of parentage -- Hearings -- Inspection of records.**

(1) On request of a party and for good cause shown, the tribunal may close a proceeding under this part.

(2) A final order in a proceeding under this part is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the tribunal for good cause.

**78-45g-620. Adjudication of parentage -- Order on default.**

The tribunal shall issue an order adjudicating the paternity of a man who:

- (1) after service of process, is in default; and

(2) is found by the tribunal to be the father of a child.

**78-45g-621. Adjudication of parentage -- Dismissal for want of prosecution.**

The tribunal may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

**78-45g-622. Order adjudicating parentage.**

(1) The tribunal shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

(2) An order adjudicating parentage must identify the child by name and date of birth.

(3) Except as otherwise provided in Subsection (4), the tribunal may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, necessary travel, and other reasonable expenses incurred in a proceeding under this part. The tribunal may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The tribunal may not assess fees, costs, or expenses against the support-enforcement agency of this state or another state, except as provided by law.

(5) On request of a party and for good cause shown, the tribunal may order that the name of the child be changed.

(6) If the order of the tribunal is at variance with the child's birth certificate, the tribunal shall order the Office of Vital Records to issue an amended birth registration.

**78-45g-623. Binding effect of determination of parentage.**

(1) Except as otherwise provided in Subsection (2), a determination of parentage is binding on:

(a) all signatories to a declaration or denial of paternity as provided in Part 3, Voluntary Declaration of Paternity; and

(b) all parties to an adjudication by a tribunal acting under circumstances that satisfy the jurisdictional requirements of Section **78-45f-201**.

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) the determination was based on an unrescinded declaration of paternity and the declaration is consistent with the results of genetic testing;

(b) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

(c) the child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage, the tribunal is considered to have made an adjudication of the parentage of a child if the question of paternity is raised and the tribunal adjudicates according to Part 6, Adjudication of Parentage, and the final order:

(a) expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the husband is the father of the child; or

(b) provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

(4) The tribunal is not considered to have made an adjudication of the parentage of a child if the child was born at the time of entry of the order and other children are named as children of the marriage, but that child is specifically not named.

(5) Once the paternity of a child has been adjudicated, an individual who was not a party to the paternity proceeding may not challenge the paternity, unless:

- (a) the party seeking to challenge can demonstrate a fraud upon the tribunal;
- (b) the challenger can demonstrate by clear and convincing evidence that the challenger did not know about the adjudicatory proceeding or did not have a reasonable opportunity to know of the proceeding; and
- (c) there would be harm to the child to leave the order in place.

(6) A party to an adjudication of paternity may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review.

Utah Code Ann.  
§78-30-4.13.  
Notice of adoption  
proceedings.



**Utah Code Ann. §78-30-4.13. Notice of adoption proceedings.**

(1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and

(ii) has a duty to protect his own rights and interests.

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his 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:

(i) waiver;

(ii) relinquishment;

(iii) consent; or

(iv) 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 the petitioner's spouse has not joined in the petition;

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

(f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) any person who is:

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and

(ii) 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, consistent with Subsection (3)(d):

(i) initiate proceedings to establish paternity under Title 78, Chapter 45g, Utah Uniform Parentage Act; and

(ii) file a notice of the initiation of the proceedings described in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health.

(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)(ii), and make those forms available in the office of the county health department in each county.

- (d) The action and notice described in Subsection (3)(a):
    - (i) may be filed before or after the child's birth; and
    - (ii) shall be filed prior to the mother's:
      - (A) execution of consent to adoption of the child; or
      - (B) relinquishment of the child for adoption.
  - (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:
    - (a) may be served immediately after relinquishment or execution of consent;
    - (b) shall be served at least 30 days prior to the final dispositional hearing; and
    - (c) 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:
    - (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;
    - (ii) that shall set forth specific relief sought; and
    - (iii) that shall 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 the day on which the person was served with notice of the adoption proceeding:
    - (i) waives any right to further notice in connection with the adoption;
    - (ii) forfeits all rights in relation to the adoptee; and
    - (iii) 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) (i) 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.
    - (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.
    - (iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.
  - (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.
  - (ii) If the service described in Subsection (7)(b)(i) 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:

- (a) intervene in the adoption; and
- (b) present evidence to the court relevant to the best interest of the child.

Utah Rules of Civil  
Procedure, Rule 19.  
Joinder of persons  
needed for just  
adjudication.

**Utah Rules of Civil Procedure, Rule 19. Joinder of persons needed for just adjudication.**

(a) Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. If a person as described in Subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in Subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. This rule is subject to the provisions of Rule 23.

Transcription of  
Oral Arguments,  
December 6, 2005

IN THE FOURTH DISTRICT COURT OF PROVO  
UTAH COUNTY, STATE OF UTAH

\_\_\_\_\_  
MIGUEL DAVID GEDO,

Petitioner,

vs.

SHACKE ROSE,

Respondent.  
\_\_\_\_\_

COPY

Case No. 054400798

Oral Argument  
Electronically Recorded on  
December 6, 2005

BEFORE: THE HONORABLE ANTHONY SCHOFIELD  
Fourth District Court Judge

APPEARANCES

For the Petitioner: Miguel David Gedo  
(Appearing pro se)  
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(No phone number provided)

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P R O C E E D I N G S

(Electronically recorded on December 6, 2005)

THE COURT: I have the matter of Gedo against Rose.  
Mr. Gedo, you're representing yourself in this matter?

MR. GEDO: Yes, your Honor.

MR. WILKINSON: Ron Wilkinson appearing on behalf of  
Shacke Rose. Her husband, Doug Rose, is also present in the  
Court.

THE COURT: Thank you. This matter is before the  
Court on the petitioners motion for genetic testing. Now,  
we heard -- we were together a while back. I think it's time  
to hear argument on this motion, and I'd be happy to hear your  
argument. Mr. Gedo.

MR. GEDO: Are we going to address first this -- the  
genetic testing, then, your Honor?

THE COURT: That's the only issue I think we're going  
to address today, is whether I should order genetic testing.

MR. GEDO: Okay. I've filed several affidavits in  
support of my order for genetic testing --

THE COURT: I have that.

MR. GEDO: -- which is prima fascie evidence by the  
photographs and the testimony of my witnesses that the child  
has been in -- with us for quite a few years prior to the  
taking him away from us by the respondent.

The law is quite clear on the genetic testing, and I'm

1 going to have to object now to the presence of Doug Rose  
2 in the courtroom, because he -- throughout this whole case,  
3 your Honor, I've been calling the errors on the respondent's  
4 attorney, and he seems to be able to fix them nunc pro tunc,  
5 you now, always repairs his problems that I pull from the case,  
6 and he continues to fix them instead of losing the case for his  
7 improper procedure.

8           The evidence which is now on the record should be  
9 sufficient evidence to support a genetic testing. I understand  
10 that if the genetic testing is -- if the Court does approve  
11 the genetic testing and the results come back positive, then  
12 the respondent's -- in her affidavit that she said that the  
13 child wasn't mine, those could bring some repercussions to the  
14 respondent. I understand that the Court may look at that issue  
15 in denying the genetic testing.

16           The petitioner's lawyer brings up the issues of public  
17 interest, but since the case has been sealed, your Honor, I  
18 believe that that issue is moot for public interest, public  
19 policy in this case. This is a private case, and it doesn't  
20 effect the public whatsoever.

21           All of the respondent's arguments in his motion for  
22 objection are all the same arguments that he continues to  
23 bring up that the Court has already ruled that have been  
24 stricken from the record, but he doesn't seem to produce any  
25 new evidence to the case for objection of the genetic testing.

1           So it would be my position that the Court grant the  
2 genetic testing to see if, in fact, this is my child. It's  
3 not like it's anything he -- the Counsel's -- the respondent's  
4 attorney brings up the issue that it would be like some kind of  
5 a painful process, but it's only a cheap -- it's only a Q-tip  
6 swab wiped inside the mouth. It's not something that would  
7 detriment the child or make him -- or traumatize him in just  
8 taking a sample of the -- of his saliva for the DNA testing.

9           So it would be my position that all the respondent's  
10 arguments for the objection of this are irrelevant without  
11 foundation, and specious, your Honor, for them to object to the  
12 genetic testing.

13           THE COURT: Thank you. Mr. Wilkinson.

14           MR. WILKINSON: Thank you, your Honor. My client  
15 strongly contests many of the facts that were contained in the  
16 affidavits provided by the petitioner. However, even if this  
17 Court were to assume each and every fact contained within those  
18 affidavits were accurate, it does not change the status of Utah  
19 law.

20           As the Court's very well aware, in 78-45(g)-608, there  
21 are factors that the Court must consider. Those factors are  
22 ignored or not addressed by the petitioner. At 1(b) talks  
23 about the equities in the affidavit of Mr. Rose. In our  
24 argument we set forth (inaudible) as this child's father who  
25 has paid and provided for the family prior to his birth, during

1 his birth, and upon his birth, and since. We now have over  
2 seven-and-a-half years have passed, really over eight years if  
3 you include the period that the mother was expecting the child.

4 You also, then, your Honor, look at the factors  
5 contained in subparagraph 2(a), the time for notice to the  
6 purported father and Mr. Gedo, indicates he knew relatively  
7 quickly that there was a possibility, and yet he has waited an  
8 extensive amount of time.

9 The next factor is Mr. Rose and the time that he has  
10 presumed the role of his father. Again, we have in excess of  
11 seven-and-a-half years that he's done that. There's also the  
12 relationship, the age of the child, who has now experienced  
13 almost half of his minority before Mr. Gedo comes forward,  
14 and certainly the harm and the relationship that are addressed  
15 in the affidavit of Dr. Featherstone, and the other factors  
16 addressed in those affidavits

17 Your Honor, I'm not going to belabor the arguments  
18 that have been set forward in the memorandum and the affidavit  
19 that I'm your Honor is familiar with, but we feel that it is a  
20 case such as this that Utah law has been established, and it is  
21 a case where very clearly it would be inequitable and would be  
22 a disruption to the family unit.

23 THE COURT: Let me ask Mr. Gedo, what do you do with  
24 Mr. Wilkinson's argument that the child is seven-and-a-half  
25 months old, and that you didn't bring this proceeding until

1 the child was near -- was seven or nearly seven years old,  
2 and yet all your affidavits seem to leave the impression that  
3 you've known since the child was born that there was a possible  
4 claim of parentage for you?

5 MR. GEDO: Yes, your Honor. During the time that the  
6 child was born until just I think about a year and a half ago  
7 or two years ago, when Shacke had taken him from our presence,  
8 we had no -- there was no trouble. We thought everything was  
9 working smoothly. Every -- the child was coming over. He was  
10 visiting. He'd be over for the holidays. He'd come and spend  
11 the night. He'd come and interact with us, and there was no  
12 problem. When the respondent --

13 THE COURT: So you -- well, may I interrupt?

14 MR. GEDO: Okay.

15 THE COURT: You were exercising some sort of visitation  
16 at that time?

17 MR. GEDO: That's right.

18 THE COURT: Not pursuant to an order of the Court, but  
19 pursuant to an agreement that you worked out with Mr. Rose?

20 MR. GEDO: That's right.

21 THE COURT: And you did that until about two years ago?

22 MR. GEDO: Right.

23 THE COURT: All right. Any other thing that you want  
24 to say in response to Mr. Wilkinson's objection?

25 MR. GEDO: Yes, that he continues to argue the fact

1 that this is eight years that this case -- I had eight years to  
2 file this, but that's not true, because we had no trouble with  
3 the respondent until approximately two years ago, when she took  
4 the child from us.

5 So he continues to bring that as one of his arguments  
6 that it's been eight years that I had time to do this, but  
7 there was no reason to do any of this, because everything was  
8 fine up until a couple of years ago.

9 He brings up the issue that her supposed husband had  
10 been taking care of the child, but that is untrue; and if I can  
11 get him on the stand, I will prove that he consistently works  
12 out of state. Most of the time he's gone for six, seven, eight  
13 and nine months at a time. He hasn't been around the child  
14 during the stages that I had him with me.

15 They keep bringing up the issue that he has supported  
16 and gave them money and everything, but I've done the same  
17 thing. You know, I've given the respondent a piece of real  
18 property for the child support of the child, which she did not  
19 object when she accepted it for -- to help support the child.

20 So his arguments that he's bringing this up for money  
21 and for -- that the case has been eight years too late, and  
22 for her husband being there all the time with the child, your  
23 Honor, I object to that.

24 THE COURT: Thank you. I'm going to take a brief  
25 recess. I'll come back and I'll give you a ruling this

1 afternoon on Mr. Gedo's motion.

2 THE CLERK: All rise. The Court is in recess.

3 (Recess taken)

4 THE COURT: Please be seated. In this matter I have  
5 reviewed the statute that governs the issue of the establishing  
6 of parentage. It's a statute was adopted by the legislature in  
7 this last legislative session. The 78-45(g)-608 is the one  
8 most at issue, although other related sections apply.

9 I've also reviewed a number of affidavits filed by  
10 both sides. This much they demonstrate. For a long time  
11 Mr. Gedo has had some relationship with the child. It's not  
12 something that -- he is not someone just dropping in out of  
13 the -- out of nowhere saying, "I claim to be the father of the  
14 child." Rather, for a long time he's had considerable contact  
15 with the child.

16 I simply believe that given that -- the extent of that  
17 contact, and the fact that there's at least allegation made  
18 that the natural mom has acknowledged paternity to -- has  
19 acknowledged possibility of or paternity, I think that it's  
20 inappropriate not to order a genetic testing in this matter.

21 I'm going to order that there be genetic testing, and  
22 that mother and Mr. Gedo and the child participate in that.  
23 If Mr. Rose wishes to participate in it as well, I'm happy to  
24 have him be tested as well, but I'm not ordering that. I will  
25 order that Mr. Gedo and the mother and the child participate in

1 testing.

2 MR. GEDO: All right. Thank you, your Honor.

3 THE COURT: And I'm going to ask, Mr. Gedo, that  
4 you prepare an appropriate order that does that. My view  
5 is it ought to be done in the reasonably foreseeable future.  
6 Whether it's done now or right after the first of the year is  
7 irrelevant to me, but it needs to be done reasonably promptly.

8 MR. WILKINSON: Thank you.

9 (Hearing concluded)



REPORTER'S CERTIFICATE

STATE OF UTAH       )  
                          ) ss.  
COUNTY OF UTAH     )

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.


That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 20<sup>th</sup> day of March 2006.

My commission expires:  
February 24, 2008

  
\_\_\_\_\_  
Beverly Lowe  
NOTARY PUBLIC  
Residing in Utah County

