No. _____

In The

Supreme Court of the United States

CRAIG REEVES,

Petitioner,

v.

JANE ROE and JOHN ROE,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether South Carolina Code § 63-9-310 denies the Petitioner Due Process by limiting his ability to establish and maintain parental rights as an unwed father in a contested adoption case.

2. Whether South Carolina Code § 63-9-310 denies the Petitioner Equal Protection by affording him less protection of his parental rights than other parents, including other unwed fathers.

3. Whether the Petitioner was entitled to have the State protect his parental rights where he had established a loving and caring relationship with his child and formed a strong parental bond.

4. Whether the State can constitutionally limit its consideration of evidence under *Lehr v. Robertson*, 463 U.S. 248 (1983) to specific financial issues to the exclusion of all other evidence.

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OPINION BELOW

The South Carolina Supreme Court selected its opinion in this case for publication. It is reported at *Roe v. Reeves*, 392 S.C. 143, 708 S.E.2d 778 (2011) and is included in the Appendix at 1-24. The Family Court issued several written orders in the case. Family Court orders in South Carolina are not published. The Family Court orders are included in the Appendix at 25-67.

JURISDICTION

The South Carolina Supreme Court issued its decision on May 2, 2011 and entered an order denying the Petitioner's petition for rehearing on May 18, 2011. This Court has jurisdiction under Rule 10(c) and 28 U.S.C. § 1257(1) to review a decision of the South Carolina Supreme Court on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

Amendment XIV § 1

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law,

nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

The Petitioner in this case is the 21-year-old biological father of a child born March 2, 2009. Petitioner and the mother of the child were never married. Each lived with his or her respective parent(s). The Respondents are unrelated adoptive parents. The mother signed a relinquishment of parental rights and although she testified at trial and was named in the caption of the case, she sought no relief as a party to this action. The Petitioner, the Respondents, the mother and the child are each residents of South Carolina.

The Petitioner and the mother had a tumultuous relationship and were no longer dating when the Petitioner discovered that she was pregnant. Although the Petitioner did not initially believe that the mother was pregnant, once he did he expressed a desire to have custody and raise his child. He remained consistent with this desire throughout the mother's pregnancy. He was in frequent contact with the mother while she was pregnant, during which time the mother vacillated as to her intentions with the adoption.

During the pregnancy, the Petitioner attempted to assist the mother financially. The Petitioner testified that most of his attempts were refused by the

mother: "She really wouldn't take anything from me. She advised me that Mr. Goodwin at the adoption agency told her that she should not take anything from me or should even be speaking to me." Trial Transcript pg. 245, l. 2-5.

The Petitioner testified he had offered her money a lot but that she only took money once from him for gas. When asked why she would not accept money offered by the Petitioner the mother's testimony was unambiguous:

> A. I didn't take the money.
>
> Q. Why not?
>
> A. The adoption agency did tell me not to accept any money from him and not to have contact with him, but I went to the adoption agency worried because he was threatening me that he had an attorney and he was going to get his child.
>
> Q. Why do you believe that's a bad thing?
>
> A. Because it was not fair what he did to me. Nobody deserves that.
>
> Q. What did he do to you?
>
> A. He left.

Trial Transcript pg. 177.

* * *

> Q. Isn't it true that – or is it true that there were time that you were offered money by [the Petitioner] after Ray Godwin [adoption

> agency attorney] talked to you about not taking money that you turned down money from [the Petitioner]?
>
> A. Yes, I did turn down money from [the Petitioner]. I'm not sure when it was. It was one time that he offered me $100.
>
> Q. Okay.
>
> A. And I didn't accept if from him because they told me not to.

Trial Transcript pg. 219, l. 21-pg. 220, l. 4.

While the South Carolina Supreme Court found that the adoption agency did not actually instruct the mother to reject support from the Petitioner, it is clear that she did. Whether her actions were based on actual advice from the adoption agency or a misperception on the part of the mother is irrelevant, as they both have the same effect as far as the Petitioner is concerned.

Although the mother resisted taking anything of substantial value, the Petitioner provided what she would allow. The Petitioner was asked to repair the mother's family car so that they would have a vehicle available in the event of an emergency. The mother also let the Petitioner buy diapers for her older child and gas for her car on at least one occasion. Other than that, based on what she at least believed to be the agency's instructions, the mother accepted little else of value from Petitioner during her pregnancy.

In addition to the mother's resistance in accepting support, there is no evidence in the record of bills which the Petitioner could have paid even if she had agreed to his support. The mother lived with her mother and paid no rent or utilities. She did not have to pay for food or make a car payment. She did not pay for insurance. She paid no taxes. And while she testified that she had some "maintenance" expenses (which most likely referred to the car repair) she testified that the Petitioner had paid for those. In addition to simply having no bills, the adoption agency provided the mother with a monthly allowance to cover any incidentals.

In addition to the mother's resistance in accepting support, and her not having any daily bills, she had no bills relating to either the pregnancy or the birth which the Petitioner could pay. All of the expenses relating to the pregnancy were covered by Medicaid. All of the expenses of the birth were covered either by Medicaid or the Respondent's insurance. Even if the mother would have accepted support, the record fails to show where there were any uncovered medical bills relating to the pregnancy or the birth which the Petitioner was aware of that he could have paid.

Although the Petitioner did not believe the mother when she first told him, once he realized that she was really pregnant he immediately expressed to her his desire to raise and be a parent to the child. At trial the mother testified that once she and the Petitioner had talked, it was clear that he did not want

her to have an abortion. Throughout the pregnancy and after the birth the Petitioner remained in frequent contact with the mother. The mother even admitted at trial to having lied to the guardian ad litem about the extent of the contact that she had with the Petitioner during the pregnancy. From the mother's testimony it is clear that throughout the pregnancy the Petitioner was expressing his desire that she not go through an adoption. The Petitioner expressed clearly to the mother that he wanted to raise the child.

During her pregnancy the mother never disclosed the name of the adoption agency, but through the mother the adoption agency was aware of the Petitioner's objection to a potential adoption. The agency was made aware of his objection during the pregnancy and well before the adoption litigation began. Prior to the initiation of the adoption proceedings the attorney for the adoption agency was aware that the Petitioner had expressed in writing through text messages to the mother his desire to be a father, and that he didn't want the mother to go through with the adoption.

Despite the agency's advice that the mother should not even be talking to the father, the mother continued to have frequent contact with the Petitioner throughout her pregnancy, vacillating between whether or not she should go through with the adoption. The Petitioner did not believe that she would ultimately proceed with an adoption and when the mother notified the Petitioner of the birth, he went

immediately to the hospital hoping to gain custody of his child. When he arrived at the hospital he was refused any information and not allowed to see either the mother or the baby. The next morning, without the Petitioner's knowledge or consent, the mother gave the baby to the Respondents (adoptive parents).

The Respondents were given the Petitioner's child on March 3, 2009. Aware that the Petitioner would object, the adoption agency advised the Respondents that they should proceed immediately with an action for adoption, which they did on March 6, 2009. The Petitioner immediately responded, seeking custody of his child and emergency temporary relief. On March 19, 2009, the family court heard the Petitioner's emergency motion for temporary relief. At the emergency hearing the Respondents were granted temporary custody with the Petitioner being granted regular weekly visitation. The court also set the Petitioner's child support obligation to the Respondents which was to be set up and paid through the clerk of court.

The Petitioner's expression of desire to have custody and raise his son continued unabated throughout the litigation of this case. He acted on every opportunity he was given to be with his child. He exercised regular weekly visitation for eight months throughout the pendency of the trial proceedings. The child's mother was present during some of Petitioner's visitations. She testified at trial to her observations: "I know that he, he wants [the child] and he loves [the child] and he cares a lot about him. It

shows every Saturday when he gets him, but I can't say that that's – I can't say that I want the same thing because I was comfortable with the adoptive parents." Trial Transcript pg. 201, l. 8-12. As a result of the Petitioner's desire and actions, a strong parental bond was formed.

In addition to the Petitioner's exercise of visitation at every opportunity given, he also paid child support during the litigation. Although child support was set and began accruing as of the date of the temporary order, there were some apparent difficulties within the clerk's office in setting up the child support account so that it could receive payments. By the time the clerk of court established the Petitioner's account on September 2, 2009, an arrearage had accrued in the amount of $999.60. During the time in which the clerk delayed setting up the Petitioner's account, the Petitioner offered to make payments directly to the Respondents. At trial the Respondents admitted that they had refused the Petitioner's offer. On September 20th the Petitioner paid $500.00 to the clerk's office. On October 5th he brought the account current. Subsequently, the account fell into arrears in the amount of $357.00. Just prior to the final hearing, the Petitioner again brought the account current.

By the time of trial the Petitioner had exercised every opportunity at visitation that he had been given. He had paid all of the support payments that had been ordered. And he had formed a close and loving parental bond with his child.

Beginning on November 12, 2009, a full evidentiary hearing was held in the family court. As a result of this hearing the trial judge found that the Petitioner had a close loving relationship with his child and that he had a desire to be a full time father. The trial judge found that the Petitioner was capable of being a full time father and had made appropriate arrangements for day care in the event that he should obtain custody. The trial judge also found that during the litigation the Petitioner had paid child support and exercised visitation "on every occasion allowed to him." The trial court recognized also that the Petitioner had fully participated in the litigation for his son, incurring over $17,000 in legal expenses in doing so. Based on these findings the trial court found that the Petitioner exhibited the desire to make the commitments and perform the responsibilities of a parent. The trial court further found that the Petitioner had established a personal and financial relationship with his child which was entitled to constitutional protection.

The trial judge also made a finding that the Petitioner had met the strict criteria set forth in South Carolina's adoption law thus making the Petitioner's consent for adoption mandatory. Based on the Petitioner's attempts to financially assist the mother prior to birth the trial court found that the Petitioner had met the necessary requirements for the adoption to require his consent. The trial court's analysis relied in part on a finding that the mother, at the instruction of the adoption agency, refused to

accept anything of significant value from the Petitioner to keep from "messing up" the adoption. As a result of the trial court's finding that the Petitioner had attempted in good faith to provide support prior to birth, the trial court found that he had complied with South Carolina Code § 63-9-310.

Having found that the Petitioner not only exhibited the desire, but had made the commitments and performed the responsibilities of being a parent, and that a close loving relationship had resulted, the trial denied the adoption and granted the Petitioner custody of his son. A written order was issued on February 17, 2010.

After the denial of post trial motions the Respondents appealed from the decision of the family court. Supersedeas was denied and on March 1, 2010, physical custody of the child was transferred to the Petitioner. The child remained with the Petitioner for fourteen months during the pendency of the appeal.

After oral argument, the South Carolina Supreme Court issued a written opinion on May 2, 2011, reversing the family court, granting the adoption, and terminating the Petitioner's parental rights. After having had weekly visitation during eight months of trial litigation, followed by full custody for approximately fourteen months during the appeal process, the Petitioner was ordered to turn his two-year-old son over to the Respondents.

REASONS FOR GRANTING THE PETITION

I. APPLICATION OF S.C. CODE § 63-9-310 UNCONSTITUTIONALLY LIMITED THE PETITIONER'S ABILITY TO DEMONSTRATE HIS FULL COMMITMENT TO THE RESPONSIBILITIES OF PARENTHOOD AND THAT HE HAD COME FORWARD TO PARTICIPATE IN THE REARING OF HIS CHILD SUFFICIENTLY TO REQUIRE PROTECTION OF HIS INTEREST IN PERSONAL CONTACT WITH HIS CHILD.

Despite the Petitioner having established his desire and ability to be a parent, as well as the existence of a close loving relationship between him and his child, the South Carolina Supreme Court terminated the Petitioner's parental rights in a contested adoption. Termination of the Petitioner's parental rights turned on the Court's finding that the Petitioner had not met the strict payment requirements set forth in South Carolina Code § 63-9-310.

In determining whether the Petitioner's consent was necessary for an adoption under South Carolina law, the South Carolina Supreme Court required strict compliance with S.C. Code § 63-9-310(A)(5)(b). As written and applied in the present case S.C. Code § 63-9-310(A)(5)(b) addresses only specific monetary issues and excludes any other evidence as to the Petitioner's desire or ability to be a parent to his child. As applied, S.C. Code § 63-9-310 not only blocked consideration of the Petitioner's desire and efforts to be a parent, but also of the actual existence of a close

loving relationship between the Petitioner and his child.

The only evidence that the Petitioner was allowed to establish a basis for the protection of his parental rights in a contested adoption was whether or not he made certain specific statutorily defined payments. As applied by the Supreme Court in this case, S.C. Code § 63-9-310 prohibited the consideration of any other competent evidence which would establish the factors set forth by this Court in determining whether the parental rights of an unwed father are entitled to constitutional protection. In failing to consider clear evidence in this case that the Petitioner has demonstrated a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, South Carolina has violated the Petitioner's right to Due Process. *See Caban v. Mohammed*, 441 U.S. 380, 392 (1979).

South Carolina clearly refused to recognize non-financial factors present in this case which constitutionally require the State to protect the Petitioner's parental rights from termination. The Supreme Court's opinion in this case makes clear that the application of S.C. Code § 63-9-310 requires the exclusion of any other competent evidence as to the father's commitment to the responsibilities of parenthood, or as in this case, even the very existence of an established loving parental bond between the parent and child.

In four cases this Court has examined the extent to which a natural father's biological relationship with his child receives protection under the Due Process Clause: *Stanley v. Illinois*, 405 U.S. 645 (1972), *Quilloin v. Walcott*, 434 U.S. 246 (1978), *Caban v. Mohammed*, 441 U.S. 380 (1979), and *Lehr v. Robertson*, 463 U.S. 248 (1983).

In Lehr this Court stated that when an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child, his interest in personal contact with his child acquires substantial protection under the Due Process Clause.

The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses – to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. *Lehr v. Robertson*, 463 U.S. 248, 262 (1983).

In the Petitioner's case, the adoption litigation began immediately after birth. This of course presents a significant hurdle to the Petitioner, as it limited his ability to establish a relationship with his child prior to the initiation of the litigation. Although the State may set forth criteria for an unwed father to meet which may entitle him to protection, as seen in this case, such legislation may, intentional or

unintentionally, end up limiting what the courts may consider in determining whether to protect an unwed father's parental rights.

This Court has not yet directly addressed the situation presented here where a State attempts to limit by statute what it will consider under Lehr in the application of state adoption law. As seen in this case, the application of an overly restrictive statutory scheme can deprive an unwed father of the substantial rights identified by this Court in Stanley and subsequent cases.

Because the Petitioner, as an unwed father, did not reside with the mother continuously for six months prior to the birth of their child, protection of his parental rights turned on a showing of whether or not he paid "a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses." S.C. Code § 63-9-310(A)(5)(b).

In this case, application of S.C. Code § 63-9-310 was not only interpreted as mandatory, but also as the exclusive means by which the Petitioner could be afforded protection of his parental rights. As the dissent in this case aptly noted, the Court "focused solely on the financial considerations that are to be made in determining whether a father's consent is required. In doing so, the majority fails to recognize

Father's offers of non-financial support." Justice Pleicones, dissenting.

The Court in this case rejected any evidence that it concluded was not within the strict statutory scheme of S.C. Code § 63-9-310(A)(5)(b), even though such evidence would otherwise establish the Petitioner's attempt to demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child. As Justice Pleicones noted in his dissent, such a limitation is contrary to this Court's holding in Stanley.

Because of the narrow interpretation it gave to S.C. Code § 63-9-310(A)(5)(b), the South Carolina Supreme Court refused to consider that the Petitioner had, outside of the scope of S.C. Code § 63-9-310, sufficiently established a personal and financial relationship with his child which was entitled to constitutional protection. The South Carolina Supreme Court in this case looked only for what it considered support or payments pursuant to statute and disregarded all other evidence, including the Petitioner's unabated desire to have custody of his child.

Finding the criteria of S.C. Code § 63-9-310(A)(5)(b) both mandatory and exclusive, the Court rejected evidence that the Petitioner offered the mother money, fixed her family's car, and bought diapers for her older child. In a footnote the Court rejected evidence that the Petitioner paid child support throughout the litigation without any discussion as to whether such understatement was material, or

why the child support that he did pay should not otherwise be considered as support under S.C. Code § 63-9-310(A)(5)(b).

While the application of S.C. Code § 63-9-310 prevented consideration of indirect financial support to establish standing under Lehr, the most egregious effect of its application is that it excluded consideration of any other competent evidence. Evidence that showed not only that the Petitioner had the desire to form a relationship with his child, but that one had in fact been established and was flourishing. The application of S.C. Code § 63-9-310 in this case barred the Court from considering all of the evidence offered by the Petitioner showing that he had made the commitments and performed the responsibilities of being a parent, and that a close loving relationship had thus resulted.

Because the Court addressed only limited financial considerations, it made absolutely no mention of the existence of the Petitioner's parental bond with his child, nor his fitness as a parent. This is because fitness and the existing parental bond, as other non-monetary considerations, are simply not appropriate considerations under the Court's interpretation and application of S.C. Code § 63-9-310.

South Carolina Code § 63-9-310(A)(5)(b) is constitutionally deficient. It's application, made without regard to the considerations or purpose behind this Court's decisions in Stanley and subsequent cases,

violates the Petitioner's rights under the Due Process Clause.

II. SOUTH CAROLINA'S APPLICATION OF S.C. CODE § 63-9-310 VIOLATES THE PETITIONER'S RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In determining the level of protection given to the rights of parents, the adoption law of South Carolina draws a distinction between groups of parents based on differences that are irrelevant to any legitimate State interest. In doing so, S.C. Code § 63-9-310 violates the Equal Protection Clause of the Fourteenth Amendment.

In South Carolina the rights of parents in regards to an adoption are determined by statute. Under S.C. Code § 63-9-310 of the State's adoption law parents are afforded different levels of protection based upon which group they fall in statutorily. If the parent happens to be a mother, consent is always required. If the parent is the father, consent is always required when the child is legitimate. An unwed father's rights however, turn on whether or not he lived with the mother of the child continuously for six months prior to the birth of the child. If so, all that is required of him for protection under S.C. Code § 63-9-310 is that he openly acknowledge the child as his own during the six months prior to the birth. If the parent falls within any of the foregoing classes, then

that parent is not required to make any showing of financial support or responsibility for any pregnancy, birth or similar expense.

If however, the parent is an unwed father who did not reside with the mother prior to birth of the child, then the only means by which he can protect his parental rights under South Carolina law is through payment of specific expenses set forth in S.C. Code § 63-9-310(A)(5)(b). A much greater burden is therefore placed on parents, such as the Petitioner in this case, due to their placement in this lower class of unwed fathers. In a contested adoption in South Carolina consent is required of:

> (5) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but only if:
>
> (a) the father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or
>
> (b) the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the

> child, including, but not limited to, medical, hospital, and nursing expenses.

S.C. Code § 63-9-310(A)(5).

This division between classes of unwed fathers clearly fails to afford the Petitioner, who did not reside with the mother of the child prior to birth, the same right to object to the adoption of his child as it does for unwed fathers who happen to reside with the mother of their child prior to birth. While the Petitioner was required to establish proof of certain payments under S.C. Code § 63-9-310(A)(5)(b) to establish parental rights, no evidence of support, payments, or financial responsibility of any kind is required of any other class of parent, including other unwed fathers.

Had the Petitioner simply resided with the mother prior to the birth of the child before the break up in their relationship, he would have fallen into a class afforded far greater protection. Had that been the case, all that would have been required of the Petitioner would be a showing that he had acknowledged paternity during the time that he resided with the mother. No further showing would have been required and he would have been entitled to protection of his parental rights under S.C. Code § 63-9-310(A)(5)(a).

This is because the class of unwed fathers that reside with the mother of the child prior to birth, have no requirement to show support for the child or mother, or financial responsibility of any kind. The

parental rights of this group of unwed fathers is afforded a much greater level of protection simply based on their having temporarily resided with the mother. Such distinction fails to bear a sufficient relation to any important State interest.

In Lehr this Court stated:

> The concept of equal justice under law requires the State to govern impartially. *New York City Transit Authority v. Beazer*, 440 U.S. 568, 587 (1979). The sovereign may not draw distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objective. *Reed v. Reed*, 404 U.S. 71, 76 (1971). Specifically, it may not subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose. *Ibid*.; *Craig v. Boren*, 429 U.S. 190, 197-199 (1976).

Lehr v. Robertson, 463 U.S. 248, 266 (1983).

In an adoption proceeding by strangers, an unwed father who has been physically unable to have a full custodial relationship with his newborn child is nevertheless entitled to the maximum protection of his relationship, so long as he promptly avails himself of all the possible mechanisms for forming a legal and emotional bond with his child. It is "the opportunity" the biological link offers the unwed father to develop an interest entitled to full constitutional protection. *Lehr v. Robertson*, 463 U.S. at 262, *supra*.

Here the Petitioner asserted his interest promptly, manifesting both his ability and willingness to assume custody of his child. The Petitioner is therefore entitled to the benefit of the maximum protection of the relationship – the right to consent to or veto an adoption. *Matter of Raquel Marie X.*, 76 N.Y.2d 387, 408 (1990).

In assessing the opportunity of an unmarried biological father to develop a relationship with his child, Courts have recognized that a difficult situation arises when a child is placed for adoption as a newborn because the father will have very little, if any, time in which to grasp the opportunity to develop this relationship.

Although this Court has yet to directly confront the issue of the interest of an unmarried biological father in his newborn child, the Court in *Heart of Adoptions v. J.A.*, SC07-738 (Fla. 7-12-2007) has identified a number of state courts which have considered this specific issue and interpreted Lehr to establish the principle that an unmarried biological father does have a constitutionally protected, inchoate interest in the opportunity to develop a relationship with his child:

> *See Adoption of Kelsey S.*, 823 P.2d 1216, 1229 (Cal. 1992) (*citing In re Raquel Marie X.*, 559 N.E.2d 418 (N.Y. 1990)), as establishing that unmarried biological fathers of children placed for adoption before any substantial relationship could develop have a protected constitutional interest in the

> opportunity to develop relationships with their children); *In re Petition of Steve B.D.*, 730 P.2d 942, 945 (Idaho 1986) ("*Lehr* indicated both that the state may not deny due process and equal protection to unwed fathers who enjoyed established relationships with their children, and that the state may not deny unwed fathers the opportunity to establish such relations – what the Court described as 'the inchoate interest in establishing a relationship with [the child].'"); *In re Adoption of B.G.S.*, 556 So. 2d 545, 551 (La. 1990) ("It may be more difficult for a recently born child's father to adduce objective proof of his commitment to parental responsibilities, but the due process guarantee is not so narrow as to permit a state to deny him the chance to do so."); *Smith v. Malouf*, 722 So. 2d 490, 496 (Miss. 1998) (relying on the New York decision in *Raquel Marie X.* as establishing that fathers have a constitutionally protected interest in the opportunity to develop a relationship with their children); *In re Raquel Marie X.*, 559 N.E.2d 418, 424 (N.Y. 1990) ("In the case of a child placed for adoption at birth, the father can have no more than a biological connection to the child, there having been no chance for a custodial relationship. Protection of his parental interest would depend, then, upon recognition of a constitutional right to the opportunity to develop a qualifying relationship with the infant.").

Heart of Adoptions v. J.A., SC07-738 (Fla. 7-12-2007).

Because the Petitioner in this case demonstrated that he was willing and able to enter into the fullest possible relationship with his under-six-month-old child, he should have an equally fully protected interest in preventing termination of the relationship by strangers, even if he had not as yet actually been able to form that relationship. *See Matter of Raquel Marie X.*, 76 N.Y.2d 387, 408 (1990).

In the Petitioner's case however, the facts go far beyond the mere demonstration of a willingness and show clearly that the Petitioner had actually established a loving and supportive parental relationship with his child prior to the trial of the case. Here the Petitioner not only paid child support, he exercised visitation on every occasion that it was provided during the litigation and, after being awarded custody at the final hearing, had full custody and raised his son as a single parent for fourteen months during the appeal of the case. The facts of this case show not only the willingness and ability to enter into a parenting role, it shows that the Petitioner fully embraced and exercised his role as a parent.

Where a fundamental interest on the magnitude of parental rights is at issue, any legislation limiting or burdening it at the very least must meet two tests: the statute must further a powerful countervailing State interest, and there must be a close fit between the governmental objective sought and the means chosen to achieve it. These standards would apply whether the analysis were undertaken as a matter

of due process or equal protection. *See Caban v. Mohammed*, 441 U.S. 380 (1979), *Stanley v. Illinois*, 405 U.S. 645 (1972).

While there are substantial State interests at stake in the adoption laws generally, and the consent provisions particularly, distinctions drawn in S.C. Code § 63-9-310 based on whether or not an unwed father resided with the mother prior to the birth of the their child are not substantially related to a State interest to justify the denial of unwed fathers, such as the Petitioner in this case, that have come forward to immediately assume their parental responsibilities.

In finding a provision of New York's adoption law similar to S.C. Code § 63-9-310 unconstitutional, the Court of Appeals for the State of New York held that unwed fathers who grasp the opportunity to shoulder the responsibilities of parenthood are entitled to as much protection of their rights in adoption proceedings as other parents. There the Court found that the "living together" requirement of Domestic Relations Law § 111(1)(e) – which cuts off their interest by imposing as an absolute condition an obligation only tangentially related to the parental relationship – cannot stand. *Matter of Raquel Marie X.*, 76 N.Y.2d 387, 408 (1990).

As observed by the Court in *In re Raquel Marie X.*, where the State interest is in determining the existence of a significant parental concern for a relationship with the child, the difficulty with the "living together" requirement stems from its focus on

the relationship between father and mother, rather than father and child. Under S.C. Code § 63-9-310 when a child is surrendered for adoption by the mother at birth, unless the father continuously lived with the mother for a full six months preceding the birth, he is afforded far less protection than other unwed fathers and faced with financial requirements to protect his parental rights not placed on mothers or other fathers.

In the Petitioner's case, the "living together" requirement of S.C. Code § 63-9-310 which triggered additional financial requirements created an unreasonable restriction to his parental rights, and permitted adoption despite the Petitioner's prompt objection and even though he had clearly formed a relationship with his child that would satisfy the State as substantial, continuous and meaningful by any other standard.

While depriving the Petitioner of the same protection afforded other unwed fathers, the "living together" requirement of S.C. Code § 63-9-310 fails to sufficiently further any substantial State interest. And although the State has a significant interest in fostering the well-being of the child by ensuring swift, permanent placement, the State's objective cannot be constitutionally accomplished at the sacrifice of the Petitioner's protected interest by imposing a test only incidentally related to the father-child relationship. Application of S.C. Code § 63-9-310 therefore denied

the Petitioner equal protection under the law as guaranteed by the Fourteenth Amendment.

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the decision of the South Carolina Supreme Court.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Jane Roe and John Roe, Appellants,

v.

Craig Reeves, Victoria A., John Doe, Biological Father and Baby Boy, an infant, Respondents.

Appeal From Greenville County
Alex Kinlaw, Jr., Family Court Judge

Opinion No. 26967
Heard December 2, 2010 – Filed May 2, 2011

REVERSED

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Andrea B. Williams, of Greenville, and Mary Alice H. Godfrey, Godfrey Law Firm, of Greenville, for Respondents.

Katherine H. Tiffany, Guardian Ad Litem, of Carter Smith Merriam Rogers & Traxler, of Greenville.

JUSTICE HEARN: In this case, Craig Reeves (Father) claims his consent was necessary prior to

another couple adopting his child. The family court agreed, finding that he met the requirements of Section 63-9-310(A)(5)(b) of the South Carolina Code (2010) and awarding him custody of the child. We find that Father did not undertake sufficient good faith efforts to assume parental responsibility and comply with section 63-9-310(A)(5)(b), and hold that his consent to the adoption is not required. Therefore, we reverse the family court and order that custody be immediately returned to the adoptive parents (Appellants).

FACTUAL/PROCEDURAL BACKGROUND

Father began a sexual relationship with Victoria A. (Mother) in July 2007, when he was nineteen years old and she was fifteen.[1] At that time, Mother already had one son from a previous relationship with another man. Mother and Father's relationship was not a stable one. Over the next several months, Mother and Father broke up and reconciled several times. However, in May 2008, Mother, then sixteen years old, discovered she was pregnant with Father's child. She first told him that she was pregnant in July, at which point he was in a relationship with another woman. His response was less than encouraging. He initially texted her, "We dnt hav a baby jstop txtn me and sendin me pics." Approximately twenty-four hours

[1] Father and Mother never lived together during their relationship or Mother's subsequent pregnancy.

later, apparently in response to another text from Mother, Father texted this: "Go hav an abortion or sumthn get a life stop txtn me damn."[2] Although Father maintains he did not believe Mother when she told him that she was pregnant,[3] he did not undertake any effort to see her or otherwise confirm if she was, in fact, pregnant.

Shortly after receiving these initial text messages, Mother contacted an adoption agency about placing the child for adoption. She settled on Appellants as the prospective adoptive parents. From that point on, Appellants drove Mother to all of her remaining doctor appointments until the child was born. Additionally, Appellants made regular payments to the adoption agency for an allowance that was distributed to Mother for pregnancy and other miscellaneous expenses. However, Mother's medical expenses were covered by Medicaid. During the term of her pregnancy, Mother lived at home with her mother and other child. Her living expenses were covered by her mother and the food stamps they received, and were supplemented by the payments made by Appellants through the adoption agency.

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[2] Father stated in an affidavit to the family court that he offered to pay for an abortion.

[3] During the course of their rocky relationship, Mother would use various excuses in an attempt to win Father back. For example, she told Father that her other son missed him, her cousin was in a car accident, and her grandfather was dying. Father therefore testified he initially believed Mother's pregnancy was another ruse to rekindle their relationship.

Father soon learned of Mother's plans to place their child up for adoption. When he found out, he texted her: "If ur putn it w people and ur hapy then f*kn stop begin me 2 cum b there its not gna hapn." Less than a month later, he texted Mother: "Leav me tha fkk alone im nt gna txt u bak and I want nothng 2 do w u so jus get out mx [sic] life already." He made no further effort to inquire about Mother or their unborn child until November of that year when Mother visited Father at his workplace. According to Father, it was only at that time he realized she was indeed pregnant. It was then, some five or six months into Mother's pregnancy, that Father first informed Mother he wanted custody of the child and asked that she stop the adoption. At this point, Mother began having some reservations about whether to proceed with the adoption. She changed her mind about her decision several times and acknowledged that Father expressed at least some desire to raise the child, telling him that she would consider it "if he was serious." When Father asked if he could speak with Appellants about calling off the adoption, she refused to give him their names. However, Father claims Mother told him that he would be able to take the child home from the hospital when it was born.

During the remainder of the pregnancy, Father bought some diapers for Mother's other son and made her a one-time offer of $100, which she refused. According to Father, Mother would not accept money for their child, but she would accept things for herself and her other son. In that vein, he paid eleven dollars

for a T-shirt and sweat pants for Mother at Old Navy. He did not pay any medical expenses because Mother was receiving Medicaid, nor did he pay living expenses because Mother lived with her mother and received food stamps. He did gratuitously repair Mother's family vehicle, which was owned by her mother.[4]

At this time, Father earned nine dollars per hour plus average monthly commissions of $900 working at an auto parts store. He also had a second job performing automobile repossessions. However, very little of his commissions and none of his income from repossessions were reported on his financial declaration. He had $4,000 in savings[5] and $34,000 in property, which included several cars and motorcycles he planned to sell for cash. Although he appears to own most of his vehicles, his car payments totaled $500 per month, and he listed an additional $80 per month expense just for tires. Like Mother, Father lived at home with his parents. He anticipated that should he have custody of the child, it would stay with him at his parents' house. To that end, he converted some space in his parents' house into a nursery and purchased diapers, clothes, blankets, bottles, and other similar items.

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[4] Had this work been performed at an automobile repair shop, Father estimated it would have cost approximately $750.

[5] His savings were not reported on his financial declaration, but rather in the report from the guardian ad litem.

After arranging the adoption, Mother had weekly meetings with the adoption agency to evaluate her progress. During one of these meetings in January 2009, Mother asked about Father's rights as the biological father of the child. One of the agency's employees told Mother what state law requires of a biological father and asked her whether Father had offered her any support. She told the employee of Father's one-time offer of $100, but said that he had made no other offers. The employee expressed her opinion that the offer was not legally sufficient to establish his rights as the father, but she told her to let the agency know if he made any more offers. At no point did the agency advise her to not accept any offers from Father; in fact, the agency specifically told her to not hide from Father. Despite this, she told Father the agency told her to refuse his offers of support and that she should not even be speaking to him.

In March 2009, Mother gave birth to a baby boy. Appellants drove Mother to the hospital and spent the night with her there. Mother did not contact Father when she went into labor, but after their son was born she sent him a text message with a picture of the baby, stating that he was "with his parents," referring to Appellants. Father then went to the hospital to see Mother and the child, but hospital staff informed him that Mother was a "no information" patient and would not accept his visit. When Father attempted to get in touch with Mother, she lied and said she was at her father's house. The next

day, Mother signed an adoption consent form, and Appellants took the child home.

Very soon thereafter, Father retained an attorney and moved for temporary emergency relief. The family court awarded Appellants temporary custody of the child. Once Father's paternity was established, the court awarded him weekly visitation and ordered him to pay child support.[6] During the period of time prior to the hearing on the issue of Father's consent to the adoption, Father exercised his right to visit the child, but he fell into arrears on his child support. In fact, it was not until the day before the consent hearing that this account was made current. At the hearing, Father testified that he "tried to be there" for Mother, but she refused his help and said he would never see his child. He also believed that Mother was jealous of his new relationship and did not want Father to raise the baby with another woman. On the other hand, Mother testified that she never believed Father was serious about raising their child and he "had his chance to step up . . . and he didn't." During the hearing, both Mother and Father acknowledged that they had not been truthful throughout these proceedings. Mother admitted she was untruthful to Father, Appellants, the adoption agency, and the guardian ad litem; Father admitted he lied in his deposition to make his relationship with Mother appear more

[6] Appellants refused to accept money from Father directly and requested that he pay the child support into the court.

stable. The family court found that Father had undertaken sufficient prompt and good faith efforts to assume parental responsibility as required by section 63-9-310(A)(5)(b). Accordingly, the court found his consent was required for Appellants to adopt the child and ordered that the child be returned into Father's custody. This appeal followed.

ISSUE PRESENTED

Did the family court err in finding Father was required to consent to the adoption of the child?

STANDARD OF REVIEW

"[A]doptions are equitable proceedings, and therefore, the Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence." *Adoptive Parents v. Biological Parents*, 315 S.C. 535, 542 n.6, 446 S.E.2d 404, 408 n.6 (1994) (citing S.C. Const. art 5, § 5). "This broad scope of review does not require the Court to disregard the findings of the family court judge, who saw and heard the witnesses and was in a better position to evaluate their credibility." *McCann v. Doe*, 377 S.C. 373, 382, 660 S.E.2d 500, 505 (2008).

LAW/ANALYSIS

Appellants argue the family court erred in finding Father undertook a sufficient effort to assume parental responsibility. We agree.

The relationship between an unwed father and his child is deserving of constitutional protection because the father possess an "opportunity no other male possesses to develop a relationship with his offspring" when the child is born. *Abernathy v. Baby Boy*, 313 S.C. 27, 31, 437 S.E.2d 25, 28 (1993).

> However, this opportunity interest is constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biology and custodial responsibility that the Constitution ultimately protects.

Id. Put differently, it is only "[i]f he grasps that opportunity and accepts some measure of responsibility for the child's future [may he] enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development." *Lehr v. Robertson*, 463 U.S. 248, 262 (1983). Accordingly, section 63-9-310(A)(5)(b), provides,

> (A) Consent or relinquishment for the purpose of adoption is required of the following persons:
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> . . . .
>
> (5) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but *only if:*
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> . . . .

> (b) the father *paid a fair and reasonable sum*, based on the father's financial ability, for the *support of the child* or for the expenses incurred *in connection with the mother's pregnancy or with the birth of the child*, including, but not limited to, medical, hospital, and nursing expenses.

(emphasis added). In enacting section 63-9-310(A)(5)(b), the General Assembly set the minimum standards an unwed father must meet in a timely fashion to "demonstrate his commitment to the child, and his desire to 'grasp the opportunity' to assume full responsibility for his child."[7] *Abernathy*, 313 S.C. at 32, 437 S.E.2d at 29 (quoting *Lehr*, 463 U.S. at 262). An unwed father must therefore demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child in order for this relationship to obtain constitutional protection. *Id.* at 31, 437 S.E.2d at 28.

However, we do not always require strict compliance with the literal requirements of section 63-9-310(A)(5)(b). For example, a father's ability to cultivate

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[7] Section 63-9-310(A)(5)(a) does not condition the necessity of the unwed Father's consent on financial contributions. That section provides his consent is required where he openly lived with the mother Or the child for a period of at least six months immediately preceding the adoption *and* he openly held himself out as the child's father during this time. S.C. Code Ann. § 63-9-310(A)(5)(a). Because the child was placed with Appellants immediately after his birth and Father and Mother never lived together, this section does not apply.

the sort of relationship we recognized in *Abernathy* can be thwarted by the mother's refusal to accept the father's expressions of interest in and commitment to the child. *Id.* at 32, 437 S.E.2d at 29. We therefore extend the constitutional protection of a father's relationship with his child "not only when he meets the literal requirements of section 63-9-310(A)(5)(b), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute." *Id.* Otherwise, a father's constitutional right to form a relationship with his child that receives constitutional protection is subject to the whim of the mother. *Id.* at 32-33, 437 S.E.2d at 29.

We begin our analysis by determining whether Mother thwarted Father's efforts to provide for her and their child in order to establish the proper standard under which we will evaluate Father's contributions. In the case before us, we find that Mother has not thwarted Father's attempts to form a relationship with their child as was the case in *Abernathy.* In *Abernathy,* both the mother and father of the child were on active duty in the Navy when they commenced a casual sexual relationship. *Id.* at 29, 437 S.E.2d at 27. In contrast to Father's actions here, when the mother, while she was on leave, informed the father by phone of her pregnancy, he begged her not to consider abortion, and she agreed. *Id.* When the mother returned, the father met her at the airport and offered to support her and the child. *Id.* The mother told him they would discuss the situation

when he returned from sea duty; nevertheless, when the father shipped out, he turned over his car and his bank account to the mother. *Id.* While the father was at sea, the mother determined she desired no further involvement with him. *Id.* When he returned, she rebuffed his advances and rejected his offer of marriage. *Id* She thereafter avoided contact with him, refused his telephone calls, and basically hid away from him. *Id.* When the father later learned of the birth and the pending adoption action, he sought to intervene and assert his parental rights. *Id.* at 30, 437 S.E.2d at 27. Under these compelling facts, this Court rightly concluded that literal compliance with the predecessor to section 63-9-310(A)(5)(b) was not necessary. *Id.* at 32-33, 437 S.E.2d at 29.

The facts of this case bear little resemblance to those presented in *Abernathy.* Here, Father not only advised Mother to have an abortion and stop bothering him when he was initially told of her pregnancy, he also told her several weeks later that if she was happy with giving up the baby for adoption, that was fine with him. It was when Mother was five or six months into her pregnancy and went to visit Father that he told her he wanted to raise the child, and he claims Mother told him that when the child was born, he would be able to take him home from the hospital. It was not until the child was born that Mother prevented Father from seeing the child and went through with the adoption. During her entire pregnancy, the only support Mother refused was Father's one-time offer of $100. Beyond that, the record contains

no evidence Mother actually hid herself from Father or refused his assistance. If this is sufficient to constitute thwarting, the exception to literal compliance with the requirements of section 63-9-310(A)(5)(b) has swallowed up the rule.

The situation before us therefore falls far short of the extraordinary factual scenario presented in *Abernathy* which prompted this Court to require less than literal compliance with the statutory provision in question.[8] Given that Father was an adult at the time this child was conceived, we are not persuaded he would have been so easily thwarted in his efforts to assume his parental responsibilities by this sixteen-year-old girl who did not hide from him as in *Abernathy,* but continued to live in the same house throughout her pregnancy and delivery. The Court of Appeals of Kansas summed up an unwed father's obligation as follows:

> He must [provide support] regardless of whether his relationship with the mother-to-be continues or ends. He must do this regardless of whether the mother-to-be is willing to have any type of contact with him

[8] Even if we were to agree with the dissent that the father in *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001), did less to assume parental responsibility than Father in this case, the dissent loses sight of the fact that the father in *Queen* was thwarted and was held to a lower standard. Because Father here was not thwarted, he must literally comply with the statute.

> whatsoever or to submit to his emotional or physical control in any way. . . .
>
> Even in the most acrimonious of situations, a father-to-be can fund a bank account in the mother-to-be's name. He can have property or money delivered to the mother-to-be by a neutral third party. He can – and must – be as creative as necessary in providing *material assistance* to the mother-to-be during the pregnancy and, the law thus assumes, to the child once it is born. He must not be deterred by the mother-to-be's lack of romantic interest in him, even by her outright hostility. If she justifiably or unjustifiably wants him to stay away, he must respect her wishes but be sure that his support does not remain equally distant.

In re Adoption of M.D.K., 58 P.3d 745, 750-51 (Kan. Ct. App. 2002) (Beier, J., concurring) (emphasis added). The thwarting recognized by this Court in *Abernathy* is far more severe than that referenced in the above-quoted passage from *Adoption of M.D.K.* In order for an unwed father to be thwarted, the mother must be more than acrimonious or hostile; she must actively hide and avoid the father's attempts to provide support. However, the situation before us today is more akin to that referenced in *Adoption of M.D.K.*, not what occurred in *Abernathy.* Accordingly, Mother did not sufficiently thwart Father's efforts to establish a relationship with his child such that literal compliance with section 63-9-310(A)(5)(b) is excused.

We turn now to whether Father has complied with the statutory requirements. Section 63-9-310(A)(5)(b) clearly "conditions the necessity of a father's acquiescence in an adoption on his payment of support or financial assistance to the birth mother." *Ex parte Black*, 330 S.C. 431, 435, 499 S.E.2d 229, 231 (Ct. App. 1998). It is not enough that the father simply have a desire to raise the child; he must act on that interest and make the material contributions to the child and the mother during her pregnancy required of a father-to-be. Accordingly, a father's attempts to assert his parental rights are insufficient to protect his relationship with the minor child "unless accompanied by a *prompt, good-faith effort* to assume responsibility for either a financial contribution to the child's welfare or assistance in paying for the birth mother's pregnancy or childbirth expenses." *Id.* (emphasis added). According to Father, it was only when Mother appeared at his place of work in November 2008 that he realized she was indeed pregnant; moreover, he then ostensibly realized that she had not followed his advice to have an abortion. However, even assuming *arguendo* that Father's initial responses to news of Mother's pregnancy and her decision to place the child for adoption were excusable, his actions to assume parental responsibility beginning in November 2008 were still insufficient to require his consent under our adoption statute. Even taking Father's testimony as true, we find that he did not pay "a fair and reasonable sum . . . for the support of the child or for expenses incurred in

connection with the mother's pregnancy or with the birth of the child."

First, Father's payments and purchases for Mother's older child and the repairs made to her mother's car are not within the purview of section 63-9-310(A)(5)(b). Payments made to other children in the family or repairs to the vehicle of the grandmother, which was not a necessary support for the pregnancy because the adoptive parents drove Mother to her doctor appointments, are not embraced by the statute and should not be considered. Furthermore, Father's actions in setting up a nursery at his parents' home – when the child already had a place to sleep at Mother's should he not reside with Appellants – and legal fees he incurred to challenge the adoption likewise are not valid considerations under the statute. Similar to the payments for Mother's older child and the repairs to her mother's vehicle, these expenditures are not for "the support of the minor child" or "expenses incurred in connection with mother's pregnancy or with the birth of the child" as required by section 63-9-310(A)(5)(b).

Father testified he paid eleven dollars for a T-shirt and sweatpants for Mother. This single payment represents the sole expenditure by Father which complies with section 63-9-310(A)(5)(b), assuming these clothing items were related to the pregnancy. He paid no medical expenses for Mother because she was on Medicaid, and did not pay any living expenses because Mother lived with her mother and received food stamps. However, this does not excuse Father

from contributing more than eleven dollars towards Mother's pregnancy. Simply because she was receiving some government benefits to cover her basic needs does not relieve Father of his obligation to provide for Mother during her pregnancy. Indeed, Appellants contributed regularly to Mother during her pregnancy despite the availability of these benefits. Even if Mother had accepted Father's offer of $100, the resulting $111 contribution would still be inadequate, especially in light of the money Father spent on himself during Mother's pregnancy; the payments Father made for tires on his car alone far exceeded that amount.

The record does not support the conclusion that Father undertook a sufficient effort to make the sacrifices fatherhood demands. Father had the means and opportunity to provide more, but he simply chose not to and to rely on others to provide for Mother. Even though she rebuked some of his efforts, that did not alleviate or in any way mitigate his obligation. *See Adoption of M.D.K.*, 58 P.3d at 750-51 (Beier, J., concurring). The fact that he now wishes to raise his son does not overcome his lack of support and contribution while Mother was carrying his child or after he was born. In short, he did not fully "grasp [the] opportunity" to come forward and demonstrate a full commitment to the responsibilities of parenthood through prompt and good faith efforts. We accordingly hold that Father's contributions were not sufficient

compliance with the statute to establish his right to consent to the adoption of this minor child.[9] Although we are not unmindful of the findings of the learned and able family judge in this case, our review of the record compels us to find that Father has not met the requirements imposed by section 63-9-310(A)(5)(b).

CONCLUSION

For the foregoing reasons, we reverse the order of the family court requiring Father's consent to the adoption of this child. Appellants are to obtain immediate custody of the child.

TOAL, C.J. and KITTREDGE, J., concur. PLEICONES, J., dissenting in a separate opinion in which BEATTY, J., concurs.

JUSTICE PLEICONES: I respectfully dissent. In my opinion, the family court correctly determined Father's consent was required for the adoption of the child because Father demonstrated sufficient and prompt good faith efforts to assume parental responsibility

[9] Father argues that his payment of child support per the family court's order is per se reasonable under the statute. Father's argument ignores that he understated his income on his financial declarations and was in arrears on the payments until the day before the hearing. We therefore decline to reach whether, in a proper case, payment of child support is per se reasonable.

such that his literal compliance with § 63-9-310(A)(5)(b) should be excused.

In appeals concerning adoption proceedings, as in any appeal from family court, this Court may find the facts in accordance with its own view of the preponderance of the evidence. *McCann v. Doe*, 377 S.C. 373, 382, 660 S.E.2d 500, 505 (2008). This broad scope of review does not require the Court to disregard the findings of the family court judge, who saw and heard the witnesses and was in a better position to evaluate their credibility. *Id*.

I disagree with the majority's conclusion that Mother did not thwart Father's attempts to form a relationship with the child because she did not actually hide herself and the only financial support she rejected was Father's "one-time offer of $100." In my opinion, the family court correctly found Mother thwarted Father's attempts to provide financial support based on the adoption agency's advice about birth father's rights. The majority states Father made Mother a one-time offer of $100, which she refused. Fathers testimony, however, contradicted this. Father testified he offered Mother money "a lot" but that Mother told him the agency advised her not to accept any offers of support or even speak to him. Father testified Mother would accept money for herself and her other son but wouldn't accept anything "immediately for [the child]." After assessing the credibility of the witnesses, the family court found Mother refused Father's offers of support based on the agency's advice about birth father's rights. Although we may find the facts

in accordance with our own view of the preponderance of the evidence, we are not required to disregard the findings of the family court, who saw and heard the witnesses and was in a better position to evaluate their credibility.

Further, the majority focuses solely on the financial considerations that are to be made in determining whether a father's consent is required. In doing so, the majority fails to recognize Fathers offers of non-financial support. "The United States Supreme Court has recognized that an unwed father may possess a relationship with his child that is entitled to constitutional protection." *Abernathy* at 31, 437 S.E.2d at 28 (citing *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)). However, "parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." *Id*. (quoting *Lehr v. Robertson*, 463 U.S. 248, 260 (1983)). Thus, an unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest in personal contact with his child acquires substantial constitutional protection. *Id*. The mere existence of a biological link does not merit equivalent constitutional protection. *Id*.

In my view, the constitutional protection afforded Father by virtue of his demonstrated commitment to the child far outweighs his failure to literally comply with the requirements of the statute. The majority states the facts favorable to Father in this case do not

rise to the level of those in *Abernathy.* The *Abernathy* Court considered not only father's offers of financial support, but also took into account the fact that father did not seek legal advice about how to protect his paternal interests because of mother's assurance that she would not place the child for adoption. *Abernathy* at 33, 437 S.E.2d at 29. The Court also noted the father "immediately manifested his willingness to assume sole custody of the child once he discovered adoption proceedings had commenced." *Id*.

Turning to the facts of the present case, once Father realized Mother was actually pregnant, he immediately manifested his willingness to raise the child. Father pleaded with Mother to stop the adoption process, even offering to call Appellants to discuss the matter. Father also relied on Mother's misrepresentations to him on several occasions that she would not go through with the adoption. In fact, Father believed he would be able to take the child home from the hospital after its birth. The record also clearly shows that Mother used the adoption process as leverage to try to lure Father back.

The majority focuses on distinguishing the facts of the present case from the "extraordinary factual scenario" presented in *Abernathy.* Although *Abernathy* is the seminal case on this issue, it is not the only case where the Court has determined a father was not required to literally comply with the statute. In *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001), the factual scenario presented certainly did not reach that of *Abernathy.* We nonetheless affirmed the

family court's ruling that the father demonstrated sufficient prompt and good faith efforts to assume parental responsibility such that his literal compliance with the statute was excused. In that case, the mother lied to the father and told him she had an abortion after he tried to convince her to keep the child. *Queen* at 6, 552 S.E.2d at 762. The mother also signed a criminal warrant against the father, which resulted in a bond condition that father have no contact with the mother. *Id*. The father was notified of the child's birth in November, approximately two months after the child was born. *Id*. When the adoptive parents requested the father sign the consent forms, the father obtained an attorney, but did not file responsive pleadings until the day of the hearing the next August. *Id*. The father began saving money, prepared a nursery, and arranged for medical insurance for the child. *Id*. We found the father's failure to provide support during the mother's pregnancy was no fault of his own, and that the father's actions subsequent to learning of the child's birth demonstrated sufficient prompt and good faith efforts to assume parental responsibility. *Queen* at 9, 552 S.E.2d at 764. If the father's actions in *Queen* constituted sufficient prompt and good faith efforts to assume parental responsibility, then Father has surely exceeded that standard here. In my view, the father in *Queen* did very little to support his child after learning of its birth. Here, Father exercised regular visitation and paid child support, in addition to preparing a nursery.

Moreover, in focusing on distinguishing the present case from *Abernathy*, the majority fails to recognize the numerous cases in our jurisprudence where our courts have determined the father's consent was not required. These cases are, in my opinion, instructive owing to their contrast with the factual scenario under consideration. *See Doe v. Roe*, 369 S.C. 351, 631 S.E.2d 317 (Ct. App. 2006) (father's contributions to mother were insubstantial and inconsistent, mother never refused father's help but, rather, requested it, mother attempted to reach father on several occasions but he avoided her); *Arscott v. Bacon*, 351 S.C. 44, 567 S.E.2d 898 (Ct. App. 2002) (mother informed father she had given birth, and even with this direct information from mother, father still did not believe that she had ever been pregnant and had given birth, and father did nothing, despite knowing that mother had a child and he could be the father); *Paraq v. Baby Boy Lovin*, 333 S.C. 221, 508 S.E.2d 590 (Ct. App. 1998) (father could have sought the exact location of his child and could have made efforts to cultivate a relationship with the child three months prior to taking any action; father never offered any financial support to mother in connection with the expenses of her pregnancy and birth; and father never offered any financial support for the child after learning of his birth); and *Ex parte Black*, 330 S.C. 431, 499 S.E.2d 229 (Ct. App.1998) (assuming unwed father took prompt measures to determine paternity and assert parental rights after biological mother informed father of child's existence, where father failed to offer

to support child or assist in medical expenses, his consent to adoption was not required).

In my opinion, the present case is distinguishable from those cases in which our courts have determined a father's consent was not required. Mother never requested assistance from Father, but rather, told him she did not want to "mess up the adoption" by accepting money from him. After the child's birth, Father showed his commitment to the child by immediately moving for temporary relief, preparing a nursery, regularly exercising his visitation rights, and paying child support. Father also offered to reimburse Appellants for all of their expenses incurred during Mother's pregnancy.

In my opinion, Father timely demonstrated his willingness to develop a relationship with his child and therefore acquired constitutional protection. I would therefore affirm the family court's finding that Father's consent was required and find that custody of the child should remain with the Father.

BEATTY, J., concurs.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Jane Roe and John Roe, Plaintiffs, vs. Craig Reeves, Victoria A[redacted], John Doe Biological Father and Baby Boy, an infant, Defendants.	IN THE FAMILY COURT THIRTEENTH JUDICIAL CIRCUIT CA# 2009-DR-23-0975 FINAL ORDER (Filed Feb. 17, 2010)

Date of Hearing:	November 12-13, 2009
Presiding Judge:	The Honorable Alex Kinlaw, Jr.
Plaintiff's Attorney:	Philip J. Temple
Defendant Reeves' Attorney:	Mary Alice Godfrey
Defendant A[redacted] Attorney:	Andrea B. Williams
Guardian *ad Litem*:	Katherine Tiffany
Court Reporter:	Maria Smith

This matter was before me for a final hearing. Present at the call of the case were Plaintiffs and their attorney, Philip J. Temple, of the Greenville County Bar; Defendant Craig Reeves and his attorney, Mary Alice Godfrey, of the Greenville County Bar; Defendant Victoria A[redacted] and her attorney, Andrea B. Williams, of the Greenville County Bar; and Guardian *ad Litem* Katherine Tiffany.

The Plaintiffs filed this action for termination of Defendants' parental rights and adoption. Defendant

Craig Reeves timely filed his Answer and Counterclaim seeking custody of his child. The minor child, Defendant Victoria A[redacted] has not filed responsive pleadings.

At the outset of the hearing in this matter, the Court granted, without objection from the other parties, the Motion filed by the Guardian *ad Litem* on November 5, 2009, seeking an increase in the cap on guardian's fees and/or authorizing payment of fees in addition to what was set forth in the June 1, 2009, Consent Order which appointed guardian.

JURISDICTION

The Court has exclusive jurisdiction over the parties as well as the subject matter of this action.

FINDINGS OF FACT

After having reviewed thoroughly the pleadings filed, the testimony presented, as well as the briefs filed by both sides, the Court is prepared to make the following findings:

1. Plaintiffs are identified as Jane Roe and John Roe pursuant to Section 23-9-710(D) of the Code of Laws of South Carolina, 1976, as amended, to protect their identity. The true identity of Plaintiffs is set out in an affidavit filed with the Complaint which was filed March 6, 2009.

2. Plaintiffs are husband and wife, having been married in Coloma, California, on May 16, 1992; Plaintiff John Roe was born on October 9, 1965; Plaintiff Jane Roe was born on September 10, 1972; Plaintiffs are residents of the State of South Carolina and reside at the address provided to the Court in the affidavit referenced above.

3. Defendant Craig Reeves, is the biological father of the minor child the minor child [sic] Chase, born March 2, 2009, who is the subject of this action. Defendant Reeves is a resident of Greenville County, South Carolina.

4. Craig Reeves works full time at O'Reilly's Auto Parts and attends Greenville Technical College seeking certification as a mechanic. Defendant Reeves is 21 years of age. He lives in a 3 bedroom residence with his parents.

5. Defendant Victoria A[redacted] is the biological mother of the minor child who is the subject of this action. Defendant is a resident of Greenville County, South Carolina. She is 17 years of age. Victoria A[redacted] and her other child, 2 year old son Tyler, live with her mother and younger brother.

6. Plaintiffs seek the issuance of an order from this Court granting to Plaintiffs the right to adopt the minor child Chase, born March 2, 2009, who is the subject of this action.

7. The named Defendants, Craig Reeves and Victoria A[redacted] have never been married but are the biological parents of the minor child.

8. Prior to A[redacted] pregnancy with the child who is the subject of this action, A[redacted] and Reeves were involved in a romantic relationship even though they at no time cohabitated together.

9. Both Defendants in open court testified that their relationship, at best, was a very rocky one that included many breakups, jealous arguments and untruths that went back and forth between them.

10. It is undisputed that on numerous occasions when A[redacted] and Reeves were broken up, A[redacted] used tales of woe concerning different things to entice Reeves to come back to her. Once A[redacted] told Reeves that a friend of hers was in a car wreck and that A[redacted] needed Reeves with her. On more than one occasion A[redacted] told Reeves that her grandfather was dying and that A[redacted] needed Reeves with her. On several occasions A[redacted] told Reeves that her other child, Tyler, missed Reeves and that Reeves needed to come over because A[redacted] needed Reeves. During their relationship, Reeves developed the belief that A[redacted] was not truthful and was not to be believed. Theirs was a jealous and untrusting relationship.

11. I find from the testimony presented that during one the parties' breakups at the end of May or first of June 2008, A[redacted] became aware she was pregnant. I find that Reeves was told by A[redacted] that

she was pregnant, but that he did not believe her because of her past pattern of being untruthful.

12. Because of A[redacted] prior history of being less than truthful, Reeves didn't believe A[redacted] when she texted him that she was pregnant. I find that Reeves told A[redacted] that the parties didn't have a baby and that he was not interested in returning to a relationship with her. It is undisputed by all the parties that he told her to have an abortion and to leave him alone.

13. I find that in fall of 2008 A[redacted] contacted the Carolina Hope Christian Adoption Agency to place the unborn child for adoption. According to the testimony, A[redacted] had another child, Tyler, and was able to financially care for another child. Plaintiffs were then selected by A[redacted] and the agency as the prospective adoptive parents.

14. A[redacted] gave Reeves's name and address to the Adoption Agency as the birthfather.

15. A[redacted] asked the Adoption Agency questions regarding the birthfather's rights to the unborn baby.

16. A[redacted] was instructed early on that in order for the adoption to happen, A[redacted] was not to accept money or anything of significant value from Reeves.

17. I find that it was not until November of 2008 (when A[redacted] was 5-6 months pregnant) that Reeves saw A[redacted] for the first time since she told him she was pregnant. Reeves testified that he then knew for certain that A[redacted] was pregnant and the two began to communicate via test [sic] messages on a

regular basis. Reeves told A[redacted] he wanted the child and requested that she stop the adoption. Reeves and A[redacted] maintained contact throughout the latter part of her pregnancy.

18. A[redacted] went back and forth, changing her mind, as to whether she was going to continue with her planned adoption of the unborn child or whether she was going to let Reeves raise his child. A[redacted] and Reeves had numerous conversations and text messages about these options.

19. Reeves testified that he never believed that A[redacted] would really go through with putting the baby up for adoption when she knew he wanted the baby. A[redacted] had told him on more than one occasion that she was going to let the baby go home with Reeves from the hospital.

20. A[redacted] continued to vacillate during the late second trimester and third trimester of her pregnancy about what to do with the unborn baby. She vacillated between telling Reeves that he could raise their child and telling Reeves that she didn't want to disappoint the prospective adoptive parents by stopping the adoption. At one point Reeves offered to call the prospective adoptive parents himself to terminate their adoption process but A[redacted] would not tell him the prospective adoptive parents' last name or the name of the adoption agency.

21. The fact that Reeves did not want a relationship with A[redacted] played a significant role in whether A[redacted] would allow Reeves to have the baby

by calling off the adoption. This caused much conflict between A[redacted] and Reeves.

22. A[redacted] responded to questioning by the Guardian *ad Litem* that "it wasn't fair for Craig to get the baby" if he didn't want to be with her.

23. I find that the testimony is unrefuted that A[redacted] and Reeves worked together on preparing a nursery at Reeves' home which was Reeves mother's house for the arrival of the child. Work on the nursery was also done by the parties during the pendency of this case after the birth of the baby. I find that Reeves stocked the nursery prior to the birth with various nonperishable items such as diapers, wipes, clothes, etc.

24. Although the testimony was conflicting as to the extent of Reeves's efforts to provide support for the birth mother during her pregnancy, I find that Reeves offered A[redacted] $100 toward expenses connected with her pregnancy. It is unclear as to whether A[redacted] accepted the same. At trial, Reeves provided copies of receipts for clothes he bought for A[redacted], but this was [sic] contribution on his part was disputed by A[redacted]. Any and all other direct contributions for the baby were refused.

25. A[redacted] told Reeves she could not accept any money from him during the pregnancy because that would "mess up the adoption."

26. I find from both parties' testimony that Reeves did extend monies to repair the vehicle used

by A[redacted] during her pregnancy. This was a significant repair. The costs of the repair combined with the other amounts he spent on A[redacted] during her pregnancy constitute a fair and reasonable sum for Reeves to contribute to the transportation and other needs of A[redacted] during her pregnancy.

27. I also find that both parties acknowledged that A[redacted] was on Medicaid during her pregnancy and had no medical expenses during her pregnancy. A[redacted] had no living expenses because she was 16 years old living with her mother. She did not pay rent, mortgage payments, or utilities. She had no other expenses. She had food stamps. Considering that Reeves' income is $9 per hour, Reeves' known contribution to the only financial needs A[redacted] had and would allow him to contribute to was significant.

28. Reeves attempted to get the name of the adoption agency as well as the names of the prospective adoptive parents from A[redacted] but was denied this information. There is nothing in the record that would indicate that A[redacted] gave Reeves this information prior to the birth of the child. I find that the Plaintiffs, the prospective adoptive parents, acknowledged in their testimony that Reeves was in frequent contact with A[redacted] during the later part of her pregnancy and that they were aware of contact between them contemporaneously.

29. In January 2009, A[redacted] was concerned that Reeves could stop the adoption. At that time, she had been communicating with Reeves regarding

placement of the yet unborn child. Reeves had also at that time just repaired the family car. A[redacted] met with the Adoption Agency social worker and the Adoption Agency attorney. Both of these individuals testified at the trial concerning the substance of that meeting. The biological mother, A[redacted], inquired as to whether the birth father could "mess up" the adoption. The Adoption Agency and its attorney told her of the provisions regarding birthfather's right in South Carolina law. The Agency asked A[redacted] whether the birthfather had provided financial support to her and she told them no, except for $100 one time. She was told to not allow Reeves to give her anything. They told her that the onetime acceptance of $100 was not enough to "mess up" the adoption.

30. A[redacted] informed the adoption agency on January 9, 2009, that the biological father was making threats that he wanted to stop the adoption and get the baby. A[redacted] was told by the Adoption Agency that a lot of birthfathers do this but that she should not to be concerned because they usually don't follow through. She was asked if she had accepted money from the birthfather and she stated no. Both the Adoption Agency counselor and its attorney testified that they did tell Victoria this and that no independent investigation of the father was done even though they had his name and knew his whereabouts to be in the local Greenville area. The Adoption Agency relied solely on the truthfulness of Defendant A[redacted] as to what she said she had accepted from Reeves.

31. Plaintiffs were aware that the biological father still had legal rights as acknowledged by them in the "At Risk Statement" they signed which was admitted into evidence. Throughout this entire adoption process, the Plaintiffs have been aware that until a judge orders the birthfather's rights terminated that there is risk for them that the biological father may exercise his rights and they might not be terminated.

32. On Mary [sic] 2, 2009, Plaintiffs drove A[redacted] to the St. Francis Hospital, at which time the minor child, The minor child [sic], was born. The Plaintiffs stayed in the hospital room with during her one overnight stay in the hospital following the birth.

33. I find that Reeves was not informed of the St. Francis Hospital trip by A[redacted] and he did not know anything about the birth of the child until he received a text from A[redacted] late in the evening of the babies' birth with a picture of the baby. Reeves received a text from A[redacted] about midnight on March 2-3, 2009, with a picture of the new baby, the minor child. The accompanying text from A[redacted] to Reeves indicated that the baby was born and that this would be the last time Reeves would ever see his son.

34. Reeves indicated that he, along with his mother and brother, went immediately to the hospital looking for his son but was refused any information by the hospital staff since A[redacted] was on a "No Information" patient list.

35. Plaintiffs testified that A[redacted] showed them a text message Reeves sent that night around midnight requesting the number of the hospital room where A[redacted] and the baby were. The testimony is unrefuted by A[redacted] that she texted Reeves stating that she was at her father's house hoping that Reeves would leave the hospital.

36. Plaintiff Jane Roe testified that A[redacted] told her that evening that she had sent a picture of the baby to a friend who in turn must have sent it to Reeves. In testimony at trial, A[redacted] admitted that she had lied to Plaintiff Jane Roe and that she herself had actually sent the picture of the baby to Reeves directly.

37. A[redacted] acknowledged that she texted Reeves that she was at her father's house (not at the hospital) and that the baby was with his "parents" (Plaintiff Roes) in hopes that Reeves would leave the hospital.

38. Reeves, along with his mother and brother, went to the hospital looking for A[redacted] and his newborn son. The hospital staff would not give Reeves any information about A[redacted] or his baby. First a nurse checked to see if she wanted visitors, then the nurse reported that A[redacted] was not a patient in that hospital. After looking through the hospital and talking to various nurses for hours during that night, he was referred to a hospital social worker who would be available the next morning.

39. The following morning, March 3, 2009, the hospital social worker told Reeves that A[redacted] was on a "No Information" patient list. The social worker gave Reeves and his mother, Ginger Reeves, the name of the agency handling the adoption.

40 42. [sic] That morning, the Plaintiffs took the newborn baby home from the hospital. The Adoption Agency employee took A[redacted] home from the hospital.

41. The record reflects Plaintiffs filed a Summons and Complaint on March 6, 2009. Reeves filed an Answer and Counterclaim in the instant action on March 12, 2009, and an Amended Answer and Counterclaim on March 13, 2009. Reeves also filed a Motion for Emergency Hearing with the Court on March 13, 2009, seeking custody of the minor child. A hearing was held on March 19, 2009, wherein after passing a paternity test, Reeves was ordered to pay child support and was granted visitation with the minor child, which was arranged with the Plaintiffs. According to the Court's records, Reeves is currently paying, through the Clerk of Court's Office, support for the minor child. He further indicated that he is consistent in his exercise of visitation with the child for 4 hours each Saturday afternoon.

42. Reeves acknowledged that he attempted to rekindle a relationship with A[redacted] in an effort to get her to stop the adoption. He later then changed his mind.

43. By Consent Order dated June 1, 2009, the Guardian *ad Litem* was appointed to represent the interests of the minor child in this matter. I find that the appointment and services of the Guardian *ad Litem* were both necessary and also required by §63-90-720 of the South Carolina Code of Laws. I find that the Guardian *ad Litem* conducted a thorough, balanced, independent and impartial investigation in this matter; that she has represented the best interests of the minor child; that she has submitted a written report detailing her investigation; that she actively participated in the Final Hearing in this matter by way of cross-examining witnesses and presenting her own testimony; and that she has otherwise fulfilled all duties and obligations imposed by §63-3-810 *et. seq*. as well as all other prevailing statutory and case law.

44. The Court appointed Guardian *ad Litem* thought the relationship between A[redacted] and Reeves was confusing. This is set forth in her written report.

45. The GAL testified as to A[redacted]s self centered and self serving ambivalence about whether Reeves should be allowed to take parental responsibility or whether she would continue with the adoption.

46. Reeves met with the Guardian *ad Litem* on many occasions. The Guardian *ad Litem* testified that they have spoken for hours.

47. I find that Reeves has a close and loving relationship with his child. He has exhibited that he wants to be a full time father and is capable of being

a full time father. Reeves has exercised his visitation with his son on every occasion allowed to him. Every Saturday from noon until 4 pm he has gotten his son since the Plaintiffs took the child to the DNA Paternity testing in May 2009. Reeves has established day care for his son in the event he is granted custody by the court. Craig Reeves has participated fully in this litigation, at depositions and by seeking all of the hearings that have been held in this matter prior to the final and the final hearing itself. Reeves has incurred more than $17,000 in legal fees and expenses in seeking to prevent the termination of parental rights and adoption and seeking custody of his child.

48. The Court must then make a determination as to whether the consent of the biological father is required pursuant to Section 63-9-310(A)(5)(b).

APPLICABLE STATUTE

In the instant case, the controlling statute is Section 63-9-310 South Carolina Code of Laws, as amended, which provides in pertinent part:

> (A) Consent or relinquishment for the purpose of Adoption is required of the following persons:
>
> > (5) The father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six (6) months or less after the child's birth, but only if:

(a) The father openly lived with the child or the child's mother for a continuous period of six (6) months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six (6) month period, or

(b) **The father paid a fair and reasonable sum based upon the father's financial ability for the support of the child, or for the expenses incurred in connection with the mother's pregnancy, or with the birth of the child including, but not limited to, medical, hospital and nursing expenses. (Emphasis added).**

In analyzing the father's right to consent to the adoption in the instant case, the Court is guided by Section 63-9-310(A)(5)(b) and the underlying case law.

COURT ANALYSIS, FINDINGS OF FACT, AND APPLICABLE CASE LAW

The consent of the biological father to an adoption is required under the aforementioned code section if:

The father paid a fair and reasonable sum based on the father's financial ability for the support of the child or for the expenses incurred in connection with the mother's pregnancy or with the birth of the child including, but not limited to, medical, hospital and nursing expenses. **(Emphasis added).**

Reeves worked at an auto parts store earning $9 per hour. A[redacted] was unemployed and was a recipient of Medicaid for the minor child.

Based upon the testimony presented, the Court is satisfied that Reeves did, in fact, provide reasonable support to the child as soon as he could after the minor child's birth.

This Court, obviously, has the dubious task of assessing the credibility of the testimony presented before it, and I am satisfied that Reeves provided financial assistance to A[redacted] to the extent she would accept it. A[redacted] and Reeves both agreed that $100 was offered to A[redacted] by Reeves. The testimony, however, was conflicting as to whether A[redacted] accepted it or not. A[redacted] did indicate in her testimony that she was advised by the adoption agency not to accept any more money.

The testimony is further unrefuted that Reeves, along with A[redacted] prepared a nursery at the home of Reeves' mother to be ready for the child upon arrival. Reeves indicated that he spent monies for diapers, wipes, etc., in anticipation of the child living with him.

In addition, the record reflects that Reeves incurred expenses for the repair of the vehicle that A[redacted] was driving during her pregnancy.

Based upon the testimony and witnesses presented, the Court finds that Reeves did, in fact, purchase some clothes for A[redacted], but the Court is unable from the testimony to attach a monetary value to the purchase.

Since A[redacted] was on Medicaid, Reeves was never presented any expenses incurred as a result of the hospital stay of A[redacted] or the bills of any medical providers.

In reviewing the case law in *Lehr vs. Robertson* 463 U.S. 248 (1983), the United State [sic] Supreme Court recognized that an unwed father may possess a relationship with his child that is entitled to constitutional protection.

An unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest is [sic] personal contact with his child acquires substantial constitutional protection. *Id.*, 463 U.S. at 261, 103 S.Ct. at 2993, 77

L.Ed.2d at 626; *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

When a child is first born, an unwed father possesses an "opportunity no other male possesses to develop a relationship with his offspring." *Id.* at 261, 103 S.Ct. at 2993, 77 L.Ed.2d at 626; *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006). However, this opportunity interest in [sic] constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biological and custodial responsibility that the Constitution ultimately protects. *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

In the *Lehr* case cited above, the appellant unwed father never had any significant custodial, personal, or financial relationship with the child and did not seek to establish a legal tie until after the child was two (2) years old. In the case at hand, the Court is of the opinion that Reeves does have a personal and financial relationship with the child.

It has been recognized that an unwed father's attempts to cultivate his opportunity interest in his child can be thwarted by the refusal of the mother to accept the father's expressions of interest in and commitment to the child. Accordingly, an unwed father is entitled to constitutional protection not only when he meets the literal requirement of Section 20-7-1690(A)(5)(b) (now Section 63-9-310), but also when

he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute. *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

The Court finds that Reeves is entitled to constitutional protection because he did meet the literal requirement of Section 63-9-310. He undertook sufficient prompt and good faith efforts to assume parental responsibility. I find that he sought to provide financial assistance to A halfway through the pregnancy and up to the end of it. She did accept contribution by Reeves, relative to his income, of fixing her car, her only means of transportation during her pregnancy, free of charge. He was in near constant contact with her asking her to stop the adoption and offering to assist her by calling the adoptive parents for her. He tried, but he was rejected. These were good faith efforts on his part, and in this Court's opinion, he was thwarted at almost every turn. He immediately came to the hospital in the middle of the night when the baby was born, believing that he could get his baby. He was prevented from even seeing the baby because A[redacted] had made herself a "No Information" patient. Further, A[redacted] texted him that night that she was not still in the hospital, and that the baby was already with the adoptive parents. Not until the next morning was Reeves informed by the social worker at the hospital of the name of the adoption agency A[redacted] had employed.

An unwed father's ability to cultivate his opportunity interest in his child can be thwarted by the

refusal of the mother to accept the father's expressions of interest in and commitment to the child. Accordingly, an unwed father is entitled to constitutional protection not only when he meets the literal requirements of Section 20-7-1690(A)(5)(b) (now Section 63-9-310), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute. See *In re Chandini*, 166 A.D.2d 599, 560 N.Y.S.2d 866 (1990); *In re Adoption of Baby Girl S.*, 141 Misc.2d 905, 535 N.Y.S.2d 676 (N.Y. Surr. 1988); *In re Baby Girl Easton*, 257 Ga. 292, 358 S.E.2d 459 (1987); *In re Riggs*, 612 S.W.2d 461 (Tenn.Ct.App. 1980), *cert. denied*, 450 U.S. 921, 101 S.Ct. 1370, 67 L.Ed.2d 349 (1981).

To mandate strict or perfect compliance with Section 20-7-1960(A)(5)(b) (now Section 63-9310) would make an unwed father's right to withhold his consent to adoption dependent upon the whim of the unwed mother. See *In re Adoption of Baby Girl S.*, 141 Misc.2d 905, 535 N.Y.S.2d 676 (N.Y.Surr.1988), 313 S.C. at 31-33, 437 S.E2d at 28-29.

Thus it is incumbent upon the unwed father to demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of the child before he may acquire substantial constitutional protection and the mere existence of a biological link does not merit equivalent constitutional protection. The Court finds that Reeves demonstrated that in the instant case.

Reeves falls into the category [persons whose consent or relinquishment is required for adoption] pursuant to Section 63-9-310(A)(5)(b). He has provided financial support both to the child, The minor child, since birth and to A[redacted] during her pregnancy.

I find that Reeves provided a fair and reasonable sum for the support of the child based upon his income. He has also paid child support in an amount as calculated pursuant to the South Carolina Child Support Guidelines.

Reeves' payment for support for his child is a literal compliance with the statute and, therefore, qualifies Reeves for protection of his rights as a father under the plain meaning of Section 63-9-310(A)(5)(b).

The Court would again reiterate its findings that Reeves paid expenses incurred in connection with A[redacted] pregnancy as outlined in the statute. He offered at least $100 in cash to A[redacted], he paid for her gas, and he paid for items for her other son Tyler and, in this Court's opinion, for A[redacted]. I find that she intentionally disallowed any other offers made by Reeves because she had been told not to allow Reeves to give her money by the adoption agency.

To further reiterate this Court's finding set forth above, I find that A[redacted] did not have any medical expenses related to pregnancy, she was on Medicaid, so no expenses were incurred or paid for by any individual. A[redacted] did not incur expenses in connection

with her pregnancy or with the birth of the child that Reeves could have paid for.

Additionally, A[redacted] had no living expenses since she was a minor herself, living with her own mother. There is no evidence in the record of any living expenses A[redacted] incurred that Reeves could have paid for.

Additionally, Reeves testified that he could have provided more support to A[redacted] if she had not prevented him from doing so by her refusing his financial assistance. Her prevention of Reeves to father his own child was based upon her own selfish and childish motives and whims.

In *Abernathy v. Baby Boy*, 313 S.C. 27, 437 S.E.2d 25 (1993), our Supreme Court held that an unwed father's consent to adoption is required even where he does not meet the literal requirement of the statute when his attempts to comply with the statute have been thwarted by the child's mother. The Court held that "an unwed father is entitled to constitutional protection not only when he meets the literal requirements of [the statute] but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute."

The preponderance of the evidence amply demonstrates that Reeves' failure to provide more support than he provided during the pregnancy was through no fault of his own. Accordingly, a literal and perfect compliance with the statute should not be required. *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001)

(Father's actions were sufficient prompt and good faith efforts to assume parental responsibility).

Midway the pregnancy, Reeves began trying to contribute to A[redacted] needs. He offered A[redacted] money. A[redacted] did allow Reeves to pay for items she needed for her other child and allowed Reeves to fix the family vehicle. Reeves prepared a nursery for the baby and anticipated bringing the baby home from the hospital.

Reeves' actions, subsequent to learning of the baby's birth, demonstrate "sufficient prompt and good faith efforts to assume parental responsibility" as well. When he received a photograph of the baby on his cell from A[redacted], he immediately began texting her and went to the hospital. He tried to see A[redacted] and the baby but was not allowed to because A[redacted] had been registered as a "No Information" patient.

I reiterate that the instant case is a thwarted father case, similar to *Abernathy v. Baby Boy*, 313 S.C. 27 (1993). *Reeves*, like the biological in *Abernathy*, timely demonstrated a willingness to develop a full custodial relationship with the child. Reeves, like the biological father in *Abernathy*, underwent unusual facts. In *Abernathy* the birth mother rejected attempts by the birth father to support prior to birth just like A[redacted] did to Reeves. Although A[redacted] did not shield herself from Reeves physically, as the mother in *Abernathy* did, she did shield herself with knowledge as to how to thwart the meaningful involvement of Reeves in the life of the child by refusing money, direct compensation, from him for the

unborn baby. The father in *Abernathy* timely demonstrated, as has Reeves, a willingness to develop a full custodial relationship with his child.

The cases in this state wherein it has been determined that the consent of the birth father is not necessary are distinguishable from the case at bar. In *Doe v. Roe*, the birth father failed to evince a commitment to the child deserving of protection. To the contrary, I find that Reeves has shown commitment to the minor child since before his birth. In *Doe*, the mother never demonstrated an interest in having the father involved and supportive during the pregnancy. To the contrary, A[redacted] consistently stated that she didn't want the father involved and "messing up" the adoption. In *Doe*, during the last half of pregnancy, the father only saw the mother for only fifteen minutes and contributed nothing to her except a pillow. To the contrary, Reeves constantly met with, spoke to, texted and dined with A[redacted] and gave her money, things for her other child, and a free auto repair job. In *Doe*, the father's failure to support during pregnancy fell on the father; in the instant case, it falls on the mother who took the position that it was "not fair" for The minor child to be with Reeves. In *Doe*, the father hid from the mother and didn't prepare for having the child. To the contrary, Reeves actively tried to be involved to the point that A[redacted] sought advice from the agency to be sure that Reeves could not be involved. In *Doe*, the father only purchased some few items for the baby over a month after he learned of the suit of adoption. To the

contrary, Reeves made prompt, good faith efforts through communication with A[redacted] and her mother and prepared a nursery for The minor child to come home to.

In *Ex Parte Black*, 330 S.C. 431, 499 S.E.2d 299 (Ct. App. 1998), the father's consent for the adoption was not necessary because of his failure to timely demonstrate a willingness to develop a custodial relationship with the child. In that case, the father never offered to support the child even after receiving results of the paternity test. Reeves' behavior toward his responsibilities of fatherhood are readily distinguishable.

In *Parag v. Baby Boy Lovin*, 333 S.C. 221, 508 S.E.2d 590 (Ct. App. 1998), the father knew that the baby was born and he didn't take any action until the adoption agency contacted him 3 months later. The father also never offered to pay support for the child. Reeves' behavior is, once again, readily distinguishable in that Reeves has paid child support pursuant to South Carolina Child Support Guidelines. Reeves was never contacted by the adoption agency. He came to the hospital the night of The minor child's birth trying to find The minor child and A[redacted] but was not allowed information or access to his sort.

Based upon the statutory authority and applicable case, as well as the Constitution of the United States and federal law, as well as the best interest of the child, I find that Craig Reeves's, the birth father's, consent is required in order for this adoption to

take place. I find that the Plaintiffs' action for termination of Defendant Reeves' parental rights should be, and hereby is, dismissed. The Court directs that custody of the minor child be granted to Defendant Reeves immediately.

I will allow Plaintiffs a five (5) day period from the date this order is filed to transfer the child to Mr. Reeves. I am requesting that the attorneys and the guardian agree on a place for the transfer to take place. However, if no agreement can be reached, the only other alternative would be the Greenville County Law Enforcement Center.

As noted hereinabove, the Guardian *ad Litem* for the minor child has conducted an investigation and represented the interests of the minor child in this matter and has actively participated in these proceedings. Her services were necessary and required by the statutory and case law of this state.

By Consent Order dated June 1, 2009, the Guardian *ad Litem* was permitted to charge reasonable fees (based on an hourly rate of $175 per hour) and costs for her services not to exceed $5,000. On November 5, 2009, the Guardian *ad Litem* filed a Motion with this Court requesting that the initial cap on her fees and costs be increased to $12,000. This Motion was heard at the outset of the Final Hearing in this matter and was granted without objection by any of the parties.

The Guardian *ad Litem* has submitted an affidavit attesting to the fees and costs incurred or charged

in connection with her services in this matter, which totaled $8,838.10 at the conclusion of the Final Hearing. The Plaintiff [sic] have paid $1,908.35, and Defendant Reeves as [sic] paid $1,050, to the Guardian *ad Litem*, leaving a balance due at the conclusion of the Final Hearing of $5,879.75.

I find that the services rendered by the Guardian *ad Litem* were required by statute and further necessary in light of the issues before this Court and for the benefit of the minor child. I find that the hourly rate charged by the Guardian *ad Litem*, which was reduced from her regular rate of $250 per hour, is comparable to rates charged for similar services in the legal community; that the time devoted and the fees and costs charged by the Guardian *ad Litem* in her investigation and representation of the minor child's interests was reasonable, especially in light of the issues before the Court. I further find that the Guardian *ad Litem* enjoys good standing in the legal community for both her work as a Guardian *ad Litem* and as an attorney.

I find that the overall fees and costs incurred by and charged by the Guardian *ad Litem* shall be equally divided between Plaintiffs and Defendant Reeves, with Plaintiffs being responsible for 50% and Defendant Reeves being responsible for 50%. No fee shall be assessed against Defendant A[redacted]. Of the remaining balance due ($5,879.76) to the Guardian *ad Litem*, Plaintiffs shall be responsible for $2,510.70 and Defendant Reeves shall be responsible for $3,369.06. Each party their/his portion of the balance

due directly to the Guardian *ad Litem* no later than thirty (30) days following the date of this Final Order.

I find that the best interests of the minor child dictate that the child's birth certificate should be amended to reflect that Defendant Reeves is the child's father. Additionally, the child's surname should be changed to that of Defendant Reeves. The State Department of Health and Environmental Control shall amend the minor child's birth certificate to reflect Defendant Reeves as the named father of the child. In addition, the child's surname should be, and hereby is, changed to Reeves.

CONCLUSIONS OF LAW

1. SECTION 63-9-40. Jurisdiction; venue.

(A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article. Proceedings for adoption by residents of this State may be brought in the family court of the county in which the petitioner resides or is in military service, or in the county in which the child resides or is born. For nonresidents of this State proceedings for adoption must be brought in the county in which the child resides, in which the child is born, or in which the agency having custody of the child is located.

2. Section 63-9-310 South Carolina Code of Laws, as amended, which provides in pertinent part:

(A) Consent or relinquishment for the purpose of Adoption is required of the following persons:

(5) The father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six (6) months or less after the child's birth, but only if:

(a) The father openly lived with the child or the child's mother for a continuous period of six (6) months immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six (6) month period, or

(b) *The father paid a fair and reasonable sum based upon the father's financial ability for the support of the child, or for the expenses incurred in connection with the mother's pregnancy, or with the birth of the child including, but not limited to, medical, hospital and nursing expenses.*

3. An unwed father must demonstrate a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child before his interest is personal contact with his child acquires substantial constitutional protection. *Id.*, 463 U.S. at 261, 103 S.Ct. at 2993, 77

L.Ed.2d at 626; *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

4. When a child is first born, an unwed father possesses an "opportunity no other male possesses to develop a relationship with his offspring." *Id.* at 261, 103 S.Ct. at 2993, 77 L.Ed.2d at 626; *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006). However, this opportunity interest in [sic] constitutionally protected only to the extent that the biological father who claims protection wants to make the commitments and perform the responsibilities that give rise to a developed relationship, because it is only the combination of biological and custodial responsibility that the Constitution ultimately protects. *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

5. It has been recognized that an unwed father's attempts to cultivate his opportunity interest in his child can be thwarted by the refusal of the mother to accept the father's expressions of interest in and commitment to the child. Accordingly, an unwed father is entitled to constitutional protection not only when he meets the literal requirement of Section 20-7-1690(A)(5)(b) (now Section 63-9-310), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute. *Doe v. Roe*, 369 S.C. 351, 363, (Ct. App. 2006).

6. An unwed father's ability to cultivate his opportunity interest in his child can be thwarted by

the refusal of the mother to accept the father's expressions of interest in and commitment to the child. Accordingly, an unwed father is entitled to constitutional protection not only when he meets the literal requirements of Section 20-7-1690(A)(5)(b) (now Section 63-9-310), but also when he undertakes sufficient prompt and good faith efforts to assume parental responsibility and to comply with the statute. See *In re Chandini*, 166 A.D.2d 599, 560 N.Y.S.2d 866 (1990); *In re Adoption of Baby Girl S.*, 141 Misc.2d 905, 535 N.Y.S.2d 676 (N.Y. Surr. 1988); *In re Baby Girl Easton*, 257 Ga. 292, 358 S.E.2d 459 (1987); *In re Riggs*, 612 S.W.2d 461 (Tenn.Ct.App. 1980), *cert. denied*, 450 U.S. 921, 101 S.Ct. 1370, 67 L.Ed.2d 349 (1981).

To mandate strict or perfect compliance with Section 20-7-1960(A)(5)(b) [*sic*] (now Section 63-9-310) would make an unwed father's right to withhold his consent to adoption dependent upon the whim of the unwed mother. See *In re Adoption of Baby Girl S.*, 141 Misc.2d 905, 535 N.Y.S.2d 676 (N.Y.Surr.1988), 313 S.C. at 31-33, 437 S.E.2d at 28-29.

8. An unwed father's consent to adoption is required even where he does not meet the literal requirement of the statute when his attempts to comply with the statute have been thwarted by the child's mother. *Abernathy v. Baby Boy*, 313 S.C. 27, 437 S.E.2d 25 (1993).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The consent of Defendant Craig Reeves, the birth father, is required in order for the adoption sought by Plaintiffs to take place;

2. Plaintiffs' action for termination of Defendant Reeves' parental rights is dismissed;

3. The Court directs that custody of the minor child, The minor child, shall be granted to Defendant Reeves immediately.

4. The Court allows Plaintiffs a five (5) day period from the date the order is filed to transfer the child to Mr. Reeves. In the event the attorneys and the guardian do not agree on a place for the transfer to take place, the exchange shall take place in the parking lot of the Greenville County Law Enforcement Center.

5. Plaintiffs will pay $2,510.70 and Defendant will pay $3,369.05 to the Guardian *ad Litem* within thirty (30) days following the date of this Order in order to satisfy the balance due on the fees and costs incurred and charged by her in connection with this matter.

6. The State Department of Health and Environmental DHEC shall amend the minor child's birth certificate to reflect Defendant Reeves as the named father of the child. In addition, the child's surname should now be changed to Reeves.

AND IT IS ORDERED.

/s/ Alex Kinlaw, Jr.
Alex Kinlaw, Jr.
Family Court Judge
Thirteenth Judicial Circuit

2/17, 2010
Greenville, South Carolina

Certified Copy [SEAL]
/s/ Paul B. Wickensimer
Clerk of Court C.P., G.S.
& Family Court
Ex-Officio Clerk County Court
Greenville, SC
Dated 2-17-10

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE FAMILY COURT THIRTEENTH JUDICIAL CIRCUIT 2009-DR-23-0975
Jane Roe and John Roe, Plaintiff, vs. Craig Reeves, Victoria A[redacted], and Baby Boy, an infant, Defendants.	**ORDER ON MOTION TO ALTER OR AMEND THE FINAL ORDER AND MOTIONS TO STAY ENFORCEMENT OF FINAL ORDER** (Filed Mar. 1, 2010)

Hearing Date:	February 22, 2010 by Phone Conference
Judge:	Alex Kinlaw, Jr.
Plaintiff's Attorney:	Philip Temple
Defendant Craig Reeves' Attorney:	Mary Alice Godfrey
Defendant Victoria A[redacted] Attorney:	Andrea Williams
Guardian *ad Litem*:	Katherine Tiffany
Court Reporter:	None

This matter is before me in a phone conference with the above referenced involved in the telephone conference to hear and resolve post trial motions that have been filed and served in this case. Specifically, subsequent to the filing of the Final Order, Plaintiffs, by and through their attorney of record, filed a Motion to Alter or Amend a Judgment and a Motion to Stay Enforcement of the Final Order and Motion for

Supersedeas pending appeal. The Guardian *ad Litem* also filed a Motion to Stay Enforcement of the Final Order. Based upon the statements of the Guardian *ad Litem* in the conference call, the Guaradian [sic] ad Litem acknowledges that the issues raised in her Motion are encompassed in the Motion to Stay Enforcement filed by the Plaintiffs.

After consideration of the positions of all parties and the Guardian *ad Litem,* this court denies the Plaintiffs' Motion to Alter or Amend the Final Order. This court also denies the Plaintiffs' Motion to Stay Enforcement of the Final Order, the Motion for Supersedeas, and the Motion to Stay Enforcement of the Final Order filed by the Guardian *ad Litem* except as hereinbelow specified.

The Court does hereby grant an extension of time within which the minor child, Chace, shall be transferred pursuant to the Final Order. The deadline for transferring custody of the minor child is hereby extended so that the transfer of the child from Plaintiffs' to Defendant Craig Reeves' care, custody and control must now occur by 6 p.m on Monday, March 1, 2010.

Upon discussion in the phone conference regarding the birth certificate of the minor child, all parties agreed that no party is aware of the current location of the child's birth certificate. Further, it is unknown as to who are listed as parents on said birth certificate.

I therefore find that the birth certificate of the minor child shall be amended to reflect not only the changes included in the Final Order but also to reflect that the mother of the child is Victoria A[redacted] and the father is Craig Reeves.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that:

1. The Plaintiffs' Motion to Alter or Amend the Final Order is denied.

2. The Plaintiffs' Motion to Stay Enforcement of the Final Order and the Motion for Supersedeas is denied.

3. The Guardian *ad Litem's* Motion to Stay Enforcement of the Final Order is denied.

4. The deadline for transferring custody of the minor child is hereby extended so that the transfer of the child from Plaintiffs' to Defendant Craig Reeves' care, custody and control must now occur by 6 p.m on Monday, March 1, 2009 [sic].

5. The birth certificate of the minor child shall be amended to reflect not only the changes included in the Final Order but also to reflect that the mother of the child is Victoria A[redacted] land the father is Craig Reeves.

/s/ Alex Kinlaw, Jr.
Alex Kinlaw, Jr.

Greenville, South Carolina
~~February 23, 2010~~ March 1, 2010

A Certified Copy
Paul B. Wickersimes
Clerk of Court C.P., G.S. & Family Court
Ex-Officio Clerk County Court
Greenville, SC
Dated 3-1-2010

[Identifying Information Sheet Omitted In Printing]

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Jane Roe and John Roe, Plaintiffs, vs. Craig Reeves, John Doe Biological Father and Baby Boy, an infant, Defendants.	IN THE FAMILY COURT THIRTEENTH JUDICIAL CIRCUIT C.A. No. 2009 DR 23-0975 TEMPORARY ORDER (Filed Mar. 31, 2009)

Date of Hearing:	March 19, 2009
Presiding Judge:	Honorable Rochelle Y. Conits
Attorney for Plaintiff:	Phillip J. Temple
Attorney for Defendant:	David M. Collins, Jr.
Court Reporter:	Mary Best

This matter comes before the Court for a hearing on Defendant Craig Reeves's Motion for Emergency Temporary Relief, Plaintiffs filed a Complaint on March 6, 2009 seeking the adoption of a minor child born to Victoria A[redacted] on March 2, 2009. Victoria A[redacted] executed a consent/relinquishment in favor of Plaintiffs on March 3, 2009 and placed the baby with Plaintiffs the same day.

The Complaint alleged that the birth mother identified Defendant Reeves as the biological father of the minor child, but that his consent was not required

under SC Code Ann. Section 63-9-310. Attorney David M. Collins, Jr., accepted service of the Complaint on behalf of Defendant Reeves and filed his Answer and Counterclaim seeking custody of the child. He also filed the motion seeking emergency temporary relief simultaneously with the Answer and Counterclaim, His motion is seeking temporary custody, child support and attorneys fees and costs. At the hearing, Defendant Reeves asked for visitation in the event custody was denied. Plaintiffs filed a Return to the Motion opposing the granting of the relief requested and seeking temporary attorneys fees and costs.

Based on the pleadings, affidavits and argument of counsel, the court makes the following finding of facts and conclusions of law. Plaintiffs have temporary legal custody of the minor child pursuant to SC Code. Ann. Section 63-9-510. There has been no judicial or medical determination that Defendant Reeves is the biological father of the child. Until such determination is made, any relief is premature. There should, therefore, be a genetic test to determine paternity as soon as possible. Defendant Reeves shall bear the cost of such test. If he is the biological father, a hearing on the merits to determine whether his consent to the adoption is required should be held on an expedited basis. Also, in the event Defendant Reeves is the biological father of the child, he shall be entitled to visit with the child on a temporary basis pending the hearing on the merits and shall pay child support pursuant to the Child Support Guidelines.

The appointment of a Guardian ad Litem is necessary. Katherine H. Tiffany is a person in good

standing with the Bar and suitable to act as Guardian ad Litem for the minor child. She shall conduct an investigation and issue a report prior to the hearing on the merits of this matter.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. Temporary custody of the minor defendant shall remain with Plaintiffs.

2. Defendant Reeves shall take the appropriate steps as soon as practicable to obtain genetic testing from Accurate Diagnostics, Inc., or some comparable lab, to determine if he is the biological father of the minor child born to Victoria A[redacted] on March 2, 2009. Plaintiffs shall make the child available for such test at the direction of the lab administering the test. The result of the test shall be filed with the Court and a copy sent to each attorney and to the Guardian ad Litem. Defendant Reeves shall bear the cost of the test.

3. In the event the genetic test determines that Defendant Reeves is the biological father of the child, he shall be entitled to visitation pending a hearing on the merits each Saturday from 12:00 o'clock, noon until 4:00 o'clock P.M., unless otherwise agreed upon between the parties. The parties shall meet to exchange the child for visitation at a location arranged between counsel for the parties. Such visitation shall commence on the first Saturday after the result of the genetic test is filed with the Court.

4. In the event the genetic test determines that Defendant Reeves is the biological father of the child,

he shall pay child support through the Greenville County Family Court in the amount of $68.00 per week together with five percent for the cost of collection for a total of $71.40 per week. This support shall commence on the first Friday after the result of the genetic test is filed with the Court and shall continue on each Friday thereafter until an order has been entered after the hearing on the merits.

5. The parties shall engage in mutual discovery pursuant to the SC Rules of Civil Procedure.

6. Katherine H. Tiffany is hereby appointed Guardian ad Litem for the benefit of the minor child.

7. This matter shall be set for a hearing on the merits on an expedited basis to determine whether Defendant Reeves's consent to the adoption is required.

8. Attorneys fees and costs shall be held in abeyance pending a hearing on the merits.

9. This order is without prejudice to either party.

AND IT IS ORDERED.

/s/ R Y Conits
Rochelle Y. Conits
Judge, Thirteenth Judicial Circuit

Greenville, South Dakota
Date: 3/31/09

The Supreme Court of South Carolina

Jane Roe and John Roe, Appellants,

v.

Craig Reeves, Victoria A., John Doe, Biological Father and Baby Boy, an infant, Respondents.

The Honorable Alex Kinlaw, Jr.
Greenville County
Trial Court Case No. 2009-DR-23-0975

ORDER

Respondent Craig Reeves has filed a petition for rehearing in this matter. The petition is denied.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

We would grant rehearing.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina

May 18, 2011

cc: Philip J. Temple, Esquire
Robert Norris Hill, Esquire
Andrea B. Williams, Esquire
Mary Alice H. Godfrey, Esquire
Katherine H. Tiffany, Esquire

§ 63-9-310. Persons who must give consent or relinquishment.

(A) Consent or relinquishment for the purpose of adoption is required of the following persons:

(1) the adoptee, if over fourteen years of age, except where the court finds that the adoptee does not have the mental capacity to give consent, or that the best interests of the adoptee are served by not requiring consent; and either

(2) the parents or surviving parent of a child conceived or born during the marriage of the parents; or

(3) the mother of a child born when the mother was not married; and either

(4) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents more than six months after the child's birth, but only if the father has maintained substantial and continuous or repeated contact with the child as demonstrated by:

(a) payment by the father toward the support of the child of a fair and reasonable sum, based on the father's financial ability; and either

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

(c) regular communication by the father with the child or with the person or agency having lawful custody of the child, when the father is physically and financially unable to visit the child, or when the father is prevented from visiting the child by the person or agency having lawful custody of the child.

The subjective intent of the father, if unsupported by evidence of the acts specified in subitems (a), (b), and (c) of this item (4) of subsection (A) of this section, does not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making this determination, the court may not require a showing of diligent efforts by any person or agency having lawful custody of the child to encourage the father to perform the acts. A father of a child born when the father was not married to the child's mother, who openly lived with the child for a period of six months within the one-year period immediately preceding the placement of the child for adoption, and who during the six-months period openly held himself out to be the father of the child is considered to have maintained substantial and continuous or repeated contact with the child for the purpose of this item (4) of subsection (A) of this section; or

(5) the father of a child born when the father was not married to the child's mother, if the child was placed with the prospective adoptive parents six months or less after the child's birth, but only if:

(a) the father openly lived with the child or the child's mother for a continuous period of six months

immediately preceding the placement of the child for adoption, and the father openly held himself out to be the father of the child during the six months period; or

(b) the father paid a fair and reasonable sum, based on the father's financial ability, for the support of the child or for expenses incurred in connection with the mother's pregnancy or with the birth of the child, including, but not limited to, medical, hospital, and nursing expenses.

(B) Consent or relinquishment for the purpose of adoption is required of the legal guardian, child placing agency, or legal custodian of the child if authority to execute a consent or relinquishment has been vested legally in the agency or person and:

(1) both the parents of the child are deceased; or

(2) the parental rights of both the parents have been judicially terminated.

(C) Consent is required of the child placing agency or person facilitating the placement of the child for adoption if the child has been relinquished for adoption to the agency or person.

(D) If the consent of a child placing agency required by this subsection is not provided to any person eligible under Section 63-9-60, the agency has an affirmative duty to inform the person who is denied consent of all of his rights for judicial review of the denial.

(E) Consent or relinquishment for the purpose of adoption given by a parent who is a child is not subject to revocation by reason of the parent's minority.

(F) Under no circumstances may a child-placing agency or any person receive a fee, compensation, or any other thing of value as consideration for giving a consent or relinquishment of a child for the purpose of adoption and no child-placing agency or person may receive a child for payment of such fee, compensation, or any other thing of value.

However, costs may be assessed and payment made, subject to the court's approval, for the following:

(1) reimbursements for necessary, actual medical, and reasonable living expenses incurred by the mother and child for a reasonable period of time;

(2) the fee for obtaining investigations and reports as required by Section 63-9-520;

(3) the fee of the individuals required to take the consent or relinquishment, as required by Section 63-9-340(A);

(4) the fee of a guardian ad litem appointed pursuant to Section 63-9-720;

(5) reasonable attorney's fees and costs for actual services rendered;

(6) reasonable fees to child-placing agencies; and

(7) reasonable fees to sending agencies as defined in Section 63-9-2200(2)(b), the Interstate Compact on the Placement of Children.

The court may approve an adoption while not approving unreasonable fees and costs.

HISTORY: 2008 Act No. 361, § 2.