

Frank R. v. Mother Goose Adoptions

Citation: 402 P.3d 996 (Ariz. 2017).

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Author: Justice Brutinel

Joined by: Chief Justice Bales, Vice Chief Justice Pelander, and Justices Timmer and Bolick

Facts: California residents Frank (21) and his former intimate partner Rachel (18) learned that Rachel was pregnant during the summer of 2013. Shortly thereafter, during the early pregnancy, the couple separated and Frank did not provide any financial or emotional support.

In December 2013, Rachel provided the Adoption Network Law Center (“ANLC”) with Frank’s name and phone number as the likely father with the hope of placing the baby up for adoption. ANLC subsequently declined to accept the baby for adoption after Frank told an ANLC attorney that if the baby is his, he will “100 percent take the baby and raise it.”¹

ANLC saw that the adoption would likely be contested and did not accept the baby. In 2014 Rachel contacted Mother Goose Adoptions in Arizona without Frank’s knowledge. She told Mother Goose that she did not know who the child’s father was and she did not disclose her previously rejected application with ANLC. Additionally, she falsely stated that “no man had acknowledged or claimed paternity of the child or had provided or promised to provide her support during the pregnancy, and there was no person she had reason to believe had an interest in the child.”²

Three days after Rachel gave birth to E.E. in Maricopa County on May 5, Rachel relinquished her rights to Mother Goose. The next day she informed Frank the baby is not his, at which time Frank once again said that if the baby is his, he is going to support it. Mother Goose filed a severance petition on May 14 in Pima County Superior Court alleging, among other things, that the identity of the child’s father was unknown. Mother Goose sought to terminate any potential father’s rights pursuant to A.R.S. § 8-533(B)(5), “claiming that no putative father had timely served Rachel with a paternity action after service of notice pursuant to A.R.S. § 8-106(G).”³ Rachel’s address on the notice was her Phoenix hotel rather than her permanent California address, and the notice purported to serve “John Doe” with no other identifying information.

On July 30, 2014, the juvenile court terminated “John Doe” and Rachel’s parental rights. On the same day, Rachel was served with a California petition that Frank had filed earlier that month to establish parental rights in California.

In late August, the court granted Mother Goose’s request to reassert jurisdiction and Mother Goose amended its petition to allege that “Frank had failed to file a notice of claim of paternity within thirty days of E.E.’s birth” and it sought to terminate Frank’s parental

¹ Mother Goose Adoptions, 402 P.3d 996, 997 (Ariz. 2017).

² *Id.* at 998.

³ *Id.*

rights under A.R.S. § 8-533(B)(6).⁴ Mother Goose did not inform the court of Frank's California paternity petition.

At a hearing on the California petition on August 28, Frank learned for the first time that E.E. was born in Arizona and it was the baby's home state under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), that "Mother Goose had filed a petition to terminate his parental rights in Arizona, and that the baby had been placed with prospective adoptive parents in Tennessee."⁵

Frank attended a hearing in Arizona on October 8 where the court ordered a paternity test which established Frank as E.E.'s father. The Arizona court asserted jurisdiction and conducted the initial severance hearing in December.

Mother Goose's second-amended petition on February 6, 2015 alleged abandonment as an additional ground for terminating Frank's rights and contained two factual misstatements, essentially that: (1) At the time of the initial filing, Rachel did not know of any person claiming rights to custody of E.E. when she knew Frank was doing so, and (2) that the birth father was unknown and Frank "may" be the father, when the DNA test already confirmed his biological paternity.

The juvenile court found that, despite Rachel's and Mother Goose's deceitful and fraudulent practices, Frank's failure to timely register with the putative fathers registry, despite his ability to do so, is a sole statutory ground for severing his rights.

The court of appeals affirmed the juvenile court's decision noting that Frank had the ability to register despite Rachel's fraudulent conduct and he chose not to do so.

The Arizona Supreme Court granted review to determine "[w]hether compliance with A.R.S. § 8-106.01 may be excused, allowing the father to avoid severance under A.R.S. § 8-533(B)(6)."⁶

Issue: To preserve a paternity action under A.R.S. § 8-533(B)(6), the father must register with Arizona's putative fathers registry in compliance with A.R.S. § 8-106.01. The issue presented to the Court asks whether a juvenile court's order terminating a father's parental rights is an abuse of discretion when the father fails to comply with A.R.S. § 8-106.01 requiring the father to register with the putative fathers registry? The Arizona Supreme Court is determining whether compliance with A.R.S. § 8-106.01 may be excused, thus allowing the father to avoid severance under A.R.S. § 8-533(B)(6).

Holding: No, compliance with A.R.S. § 8-106.01 may not be excused. In other words, Under A.R.S. § 8-533(B)(6), a father must comply with A.R.S. § 8-106.01's requirement to register with the Arizona's putative fathers registry.

Disposition: The juvenile court did not abuse its discretion, and the termination is affirmed, but paragraphs 28–56 of the court of appeals' opinion, discussing the

⁴ *Id.*

⁵ *Id.* at 999.

⁶ *Id.*

jurisdictional inquiry and whether or not the putative fathers registry requirement applies to out-of-state fathers, is vacated.

Rule: A father's failure to register as required by A.R.S. § 8-106.01 constitutes a statutory ground for severance under A.R.S. § 8-533(B)(6).

Reasoning:

- **Arizona's Putative Fathers Registry & Case Law:** The registry was established in 1994 and requires that a claim of paternity be filed within thirty days after the birth of the child⁷. In *Lehr v. Robertson*, the United States Supreme Court upheld New York's putative father registry, finding that it was a "constitutional means of expediting adoption procedures."⁸ The outcome in *Stanley v. Illinois* was different as the Court found that a law that "conclusively presumed every father of a child born out of wedlock was unfit to have custody of his children" violated the Equal Protection Clause and was unconstitutional.⁹ Arizona's law was created to "avoid protracted legal disputes between unwed fathers and potential adoptive parents."¹⁰ Further, at least twenty-five states have similar registries.¹¹
- **Policy & Legislative Intent:** The court noted the paramount importance of prompt finality protecting the child's interest in a stable, permanent home.¹² The court rejects Frank's argument that by notifying the parties of his intent to assert his parental rights, he fulfills the underlying policy of the statute because substantial compliance is irrelevant—the statute requires strict compliance.¹³ The strict bright-line rule is the legislature's attempt at balancing all of the interests involved.¹⁴ Further, requiring courts to determine on a case-by-case basis whether the father's conduct complied with the statute's purpose would undermine the finality of adoptions.¹⁵ Finally, nothing in the statute suggests that filing a paternity action replaces the father's obligation to file notice under the putative fathers registry.¹⁶
- **Severance Action vs. Paternity Action:** Frank cites *David C. v. Alexis S.*¹⁷ where the father's timely paternity action preserved his right to establish paternity even though he did not comply with the putative father registration requirement.¹⁸ The Court distinguishes this case because they involve different

⁷ *Id.* at 1000

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1000-01.

¹⁴ *Id.* at 1001.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1002.

¹⁸ *Id.*

statutes.¹⁹ A.R.S. § 8-106 does not require compliance with the registry to maintain a paternity action.²⁰ However, the severance action in this case specifically requires such compliance.²¹

- **Due Process Considerations:** Although Rachel and Mother Goose both used misrepresentations to prevent Frank from ever being properly served, he still received notice via the first-amended severance petition alleging his failure to register with the putative fathers registry is grounds for severance under A.R.S. § 8-533(B)(6).²²
- Of final note, the Court deplored the deceitful conduct of Mother Goose and Rachel, but determined that the language of A.R.S. § 8-533(B)(6) does not allow them to disregard the child's best interest simply to punish Rachel and Mother Goose's "unconscionable behavior."²³

¹⁹ *Id.* 1002.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1002-03.

²³ *Id.* at 1003.