NOTE
WHO'S MY DADDY?! A CALL FOR EXPEDITING CONTESTED ADOPTION CASES IN UTAH

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INTRODUCTION

Sarah[1] was born in Utah on March 4, 2006.[2] Two days later, Sarah's mother surrendered her for adoption.[3] It did not matter that Sarah's father had already filed a paternity petition in the Arizona county where he resided, because he failed to properly serve Sarah's mother.[4] Sarah's father made another unsuccessful attempt at asserting his right to paternity in April 2006.[5] By then, Sarah's adoptive parents had filed a petition for "temporary custody and guardianship and a verified petition for adoption, asserting that '[p]ursuant to Utah Code Ann. § 78-30-4.14, the consent of the natural mother is the only consent required in order for the Court to grant the instant petition.'"[6]

Sarah's father, legally a "putative father,"[7] then filed a voluntary petition for order of paternity in the Superior Court of Arizona, which was signed by Sarah's birth mother.[8] The court, on August 2, 2006, found that the petition "resolv[ed] the paternity issue," but said it lacked jurisdiction to determine custody or child support and transferred the matter to Utah.[9] Not until April 17, 2007—shortly after Sarah's first birthday—did a Utah district court grant the adoptive parents' motion to dismiss.[10] It would take nearly two more years for the appeal filed by Sarah's father to work its way through the justice system. On February 10, 2009, shortly before Sarah's third birthday, the Utah Supreme Court affirmed the district court's decision. The ruling was based partially on the failure by Sarah's father to *strictly*

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[1] The Utah Supreme Court, in H.U.F. v. W.P.W., 2009 UT 10, 203 P.3d 943, referred to the child whose adoption was contested as "Baby Girl Stine." For purposes of this article, I have changed the name to Sarah.

[2] *H.U.F.*, 2009 UT at ¶ 9.

[3] *Id.*

[4] *Id.* at ¶ 8.

[5] *Id.* at ¶ 11.

[6] *Id.* at ¶ 10.

[7] A putative father is "the alleged biological father of a child born out of wedlock." BLACK'S LAW DICTIONARY 641 (8th ed. 2004).

[8] *H.U.F.*, 2009 UT at ¶ 12.

[9] *Id.*

[10] *Id.* at ¶ 16.

comply with Utah's law,[11] which provides "a declaration of paternity may not be signed or filed after consent to, or relinquishment for, adoption has been signed."[12]

Cases such as this make raise the question of whether an unwed biological father in Utah has any real parental rights. By the time his appeal works its way through the system, an unwed father will have lost his right to witness his child's first steps and to hear her first words. Meanwhile, the adoptive parents live in a cloud of worry and dread, not knowing if the child they have grown to love will still be in their lives when she starts grade school.

While Utah provides for a speedy court process in juvenile court shelter hearings and appeals from child welfare hearings,[13] there are no such provisions for contested adoptions. As *H.U.F. v. W.P.W.* illustrates, it can literally take years for a contested adoption case to work its way through the court system. Meanwhile, everyone involved—the biological father, the adoptive parents, and the child—faces an uncertain future.

While adoption is a vital way for children to find loving homes, the process of adoption should provide stability to children and fairness to the biological parents. This note examines Utah's requirement that unwed fathers promptly assert their parental rights, in a way that strictly complies with the law, or lose them forever. The note then advocates for a speedier and clearer judicial process for unwed fathers who attempt to assert their parental rights.

The Utah Legislature should clarify the process by which a father must assert his parental rights and create a less burdensome process of doing so. In addition, an expedited hearing and appeals process should be in place so that a child can have stability earlier in life. This would reduce the chance of drawn out court battles over infants. It would also make it more likely that children placed with adoptive parents would actually *need* the homes in which they are placed.

Part I evaluates unmarried fathers' rights under the U.S. Constitution and state law. Part II discusses the obstacles Utah's law places on unmarried fathers' ability to assert their parental rights and the predicament caused by the law's lack of clarity regarding what fathers must do to assert those rights. Part III explores the interests of the child and the birth mother and concludes with an analysis on ways to protect the rights of all parties involved.

I. UNMARRIED FATHERS' LEGAL RIGHTS

The U.S. Supreme Court first recognized unmarried fathers' rights in 1972, by holding that an unmarried father has a constitutional right to a hearing on his fitness before the state can remove his children.[14] However, a father establishes a

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[11] *Id.* at ¶¶ 58-59.

[12] *Id.* at ¶ 48 n.34 (citing UTAH CODE ANN. § 78B-15-302(8) (2008)).

[13] UTAH CODE ANN. § 78A-6-306 (2009) requires a shelter hearing within three business days of a child's removal. The appeals process for child welfare cases is expedited by UTAH. R. APP. P. 52-60.

[14] Stanley v. Illinois, 405 U.S. 645, 649 (1972) (holding that due process required a hearing before removing children and that by denying such a hearing to just one class of

due process right to "personal contact" with his child, only if he meets a so-called "biology plus" standard by both acknowledging paternity and establishing a relationship with his child.[15] Biology merely offers an "opportunity . . . to develop a relationship."[16]

> If [a father] 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. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.[17]

The Supreme Court has not addressed the rights of an unmarried father when the child is a newborn.[18] In most states, fathers may preserve their right to notice of any adoption proceeding involving their child by following "specific formal statutory criteria, such as signing a putative father registry or filing an intent to claim paternity" within a statutory time period.[19] However, in order to acquire a right to veto the adoption, these fathers must meet the additional requirement of behaving in a parental way, such as by providing financial support or marrying the mother.[20]

Utah's statutory requirements are particularly stringent. Many states, including Utah, require unwed biological fathers to register their paternity before their child is placed for adoption.[21] Utah, however, places an added burden on unwed fathers by requiring them to file a statutorily outlined paternity action in court before the child is placed for adoption.[22]

Utah's unwed fathers are considered on notice that a "pregnancy and adoption" may occur merely by engaging in a "sexual relationship."[23] As such, in Utah, neither notice nor consent are required by an unwed father unless he strictly complies with the requirements outlined by statute, before his child under the age

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parent—unmarried fathers—the state also violated the equal protection clause of the Fourteenth Amendment).

[15] Lehr v. Robertson, 463 U.S. 248, 261 (1983); *see also* Caban v. Mohammed, 441 U.S. 380, 392-93 (1979).

[16] *Lehr*, 463 U.S. at 262.

[17] *Id.*

[18] 1-2 JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE § 2.04[1][b] (Matthew Bender 2009).

[19] *Id.* at §2.04[2].

[20] *Id.*; *see also* 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES § 3.11 (McGraw-Hill Companies 1983).

[21] *See generally* Nat'l Council for Adoption, *State Laws* (2008), http://www.adoption council.org/policy/state_law.html (providing a brief description of each state's requirements for putative fathers to preserve their parental rights).

[22] UTAH CODE ANN. § 78B-6-121(3) (2009).

[23] UTAH CODE ANN. § 78B-6-110(1)(a)(i) (2009).

of six months is relinquished for adoption or the mother consents to adoption.[24] These steps include initiating proceedings in district court to establish paternity, and also file with the presiding court a sworn affidavit asserting that he is "fully able and willing to have full custody of the child," "setting forth his plans for care of the child," and "agreeing to a court order of child support and the payment of [pregnancy and child birth] expenses."[25] The law does not allow a mother to surrender a newborn infant for adoption until twenty-four hours after birth.[26] Essentially, this means that an unwed father often has just twenty-four hours to assert his parental rights in court.[27]

Even if a father meets Utah's stringent deadline, his court challenge will not necessarily lead to his ability to be his child's legal father. Once a father's parental rights have been terminated, he is not likely to be granted visitation rights while his appeal of that termination is pending.[28] However, if he maintains his parental rights through the appeals process (such as an interlocutory appeal), a court may decide based on the best interest of the child, whether it is appropriate to order that the father be allowed custody or visitation rights.[29] Meanwhile, it can take years of court proceedings to determine whether or not he has properly complied with the statute.[30]

Utah's strict guidelines are reflected statutorily as advancing a "compelling interest in providing stable and permanent homes for adoptive children in a prompt manner" and in ensuring adopted children have "stable and permanent homes."[31] It follows that "the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not 'timely grasp' the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter."[32] By setting an unusually high hurdle for unmarried fathers, the Legislature is indicating its preference for two-parent households. This may be a reflection of the state's predominant faith, The Church of Jesus Christ of Latter-day Saints (LDS), which encourages traditional families, in which children are raised by married mothers and fathers. Many of the state's adoptions are facilitated by LDS Family Services, which states that unmarried mothers who place their child for adoption

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[24] UTAH CODE ANN. § 78B-6-121(3) (2009). There are limited exceptions provided to out-of-state fathers in UTAH CODE ANN. § 78B-6-122 (2009).

[25] UTAH CODE ANN. § 78B-6-121(3) (2009).

[26] UTAH CODE ANN. § 78B-6-125(1) (2009).

[27] It should be noted, however, that unwed fathers may also take these steps before their child's birth. *See* UTAH CODE ANN. § 78B-6-110(3)(d)(i) (2009).

[28] Telephone interview with Rick Smith, director of the Utah Office of Guardian ad Litem, Salt Lake City, Utah (Oct. 13, 2009).

[29] *Id.*

[30] *See, e.g.*, *In re* Adoption of Doe, 2008 UT. App. 449, 199 P.3d 368 (final termination of biological father's parental rights took place when his child was four years old).

[31] UTAH CODE ANN. § 78B-6-102(5)(a) (2009).

[32] UTAH CODE ANN. § 78B-6-102(6)(c) (2009).

"have provided a bright future for their child, one that includes a mom and a dad who cherish that child. And they, in return, have been able to face their own future with courage and hope."[33]

Regardless of its origin, the state's complex statutory scheme sets an unusually high hurdle for unwed fathers and is an open invitation for litigation by those who are determined to assert their parental rights. Litigation is perhaps also motivated by regular revisions to Utah's adoption code. Most recently, the statutes were recodified and many were revised in 2008. The potential for lengthy litigation seems contrary to the legislative purpose that unwed fathers promptly assert their rights of providing "stable and permanent homes for adoptive children," and preventing disruption of adoptive placements.[34] It is true that there needs to be a statutory time limit to protect children whose biological fathers have no interest in maintaining a parent-child relationship. However, the lengthy litigation that results from Utah's law often fails to serve the best interest of the child.

II. THE NEED FOR MORE THAN A DESIRE TO BE A DAD

Nikolas was not notified that his baby, Bobby,[35] was born prematurely on September 4, 2004.[36] When Nikolas found out from a co-worker that his son had been born, he rushed to the hospital, only to find out that his baby was being placed for adoption.[37] Worse, his girlfriend refused to see Nikolas, and would not allow him to see the couples' newborn son.[38] While the couple had considered adoption as an option, Nikolas was apparently under the impression that he and his girlfriend would raise the child together.[39] They had been in a three-year relationship, and Nikolas had gone to most of his girlfriend's doctor's appointments, and he had also purchased "several outfits . . . a car seat, bassinet, crib, diaper bag, diapers, and some blankets."[40] The couple had also held a baby shower.[41] Nikolas had even considered joining the military to provide a stable source of income and family insurance.[42]

Nikolas learned over the Labor Day weekend that Bobby's mother had relinquished Bobby for adoption the day after his birth. He immediately contacted

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[33] LDS Family Services, *Considering Adoption?* (2009), https://www.itsaboutlove.org/ial/ct/eng/site/pregnant/what-are-my-options/adoption/.

[34] UTAH CODE ANN. § 78B-6-102(5)(a) (2009).

[35] Utah courts referred to the child as "Baby Boy Doe." For purposes of this article, I have changed the name to Bobby.

[36] Thurnwald v. A.E., 2007 UT 38, ¶ 13,163 P.3d 623, *rev'd sub nom. In re* Adoption of Doe, 2008 UT App 449, 199 P.3d 368.

[37] *Id.* at ¶ 14.

[38] *Id.* at ¶ 14.

[39] *Id.* at ¶ 11.

[40] *Id.* at ¶ 9.

[41] *Id.* at ¶ 12.

[42] *Id.* at ¶ 8.

a lawyer, who took steps to assert Nikolas's parental rights.[43] But, by the time the court opened on Tuesday, Bobby had already been placed for adoption by LDS Family Services.[44] Still, Nikolas was determined to assert his rights. He fought for four years, through two appeals. First, he fought—and won—on the issue of whether he had met the strict deadline of asserting his parental rights before his son had been placed for adoption just a day after birth.[45]

Because courts were closed when Bobby was born on a holiday weekend, Nikolas could not possibly have asserted his rights in court until the court opened on Tuesday.[46] This impossibility led the Court to grant a father one business day after his child's birth to assert his parental rights, finding "the addition of a single business day in which the father may file does not unduly burden the state's compelling interest in prompt resolution of parental rights."[47] However, the ruling did not mean that Nikolas had successfully protected his parental rights. The Utah Supreme Court remanded, and the trial court found that even though Nikolas had asserted his rights in time, he hadn't strictly complied with the law. Finally, on December 11, 2008, the Utah Court of Appeals affirmed the trial court's denial of Nikolas' petition to be Bobby's father.[48] The court noted that Nikolas had failed to "at least specify that he has a source of income and identify who will care for the child while he is working to earn that income."[49]

In a concurring opinion, Judge James Davis criticized what he saw as statutory vagueness in Utah's requirement that a biological father file a plan to "care for the child" with the district court where he asserts his paternity.[50] The affidavit requirement "seems illusory at best and, at worst, invites fabrication."[51] Judge Davis pointed out that "many, if not most, parents do not know their daily child care plans at the time their child is born," and even if they do, "plans change."[52]

> Severing an unmarried biological father's rights because the substance of his sworn affidavit does not strictly comply with a vague and illusory statutory guideline promotes, in my opinion, "the unconditional respect for the relatively exclusive maternal decision-making about newborns, regardless of children's best interests, of any

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[43] *Id.* at ¶ 15.
[44] *Id.* at ¶ 16.
[45] UTAH CODE ANN. § 78B-6-121(3) (2009).
[46] *Thurnwald*, 2007 UT at ¶ 39.
[47] *Id.*
[48] *In re* Adoption of Doe, 2008 UT App 449, ¶ 6, 199 P.3d 368.
[49] *Id.* at ¶ 5, n.2.
[50] *Id.* at ¶ 11 (Davis, J., concurring) (citing UTAH CODE ANN. § 78B-6-121(3)(b)(ii) (2009)).
[51] *Id.*
[52] *Id.*

> legal paternity interests, and of strong social policy favoring two parents for each child born as a result of consensual sex."[53]

In re Adoption of Doe illustrates several issues with Utah's adoption policy. As Judge Davis illustrates, the statute requires *strict compliance* but does not spell out what a father must do to strictly comply. Also, since all issues were not litigated at once, Nikolas's rights remained in limbo for a prolonged period through two appeals, when all the issues could have been considered together. Considering whether Nikolas had strictly complied as a separate issue, added a year to the litigation.

Regardless of the outcome, it should not have taken more than four years to determine whether Bobby's biological father had legal parental rights. By that time, even if Nikolas had initially asserted a "proper" legal claim, a court may have been reluctant to remove a walking, talking toddler from his adoptive parents—the only parents he had ever known. The length of time it can take to contest an adoption also frustrates the legislative intent to provide children "permanence and stability in adoptive placements"; and to protect adoptive parents' "constitutionally protected liberty and privacy interest in retaining custody of an adopted child."[54]

Currently, Rule 31 of the Utah Rules of Appellate Procedure allows for a party to petition for an expedited appeals process, but only after filing all briefs. [55] In order to qualify for an expedited decision, the case must involve at least one of the following enumerated conditions: "uncomplicated factual issues based primarily on documents; summary judgments; dismissals for failure to state a claim; dismissals for lack of personal or subject matter jurisdiction; [or] judgments or orders based on uncomplicated issues of law."[56] A putative father cannot expedite his appeal unless one of those conditions is met. The lack of a specific rule for expediting contested adoption cases means that appeals take years.

In a sample of six Utah cases decided since 1999, the average time was nearly three years from the mother's relinquishment of an infant for adoption to the final ruling in the case.[57] An earlier case dragged on for nearly six years through two appeals, during which time a father's parental rights were re-instated and then later

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[53] *Id.* at ¶ 12 (Davis, J., concurring) (quoting Jeffrey A. Parness, *Lost Paternity in the Culture of Motherhood: A Different View of Safe Haven Laws*, 42 VAL. U. L. REV. 81, 97 (2007)).

[54] UTAH CODE ANN. § 78-30-4.2 (2006), *repealed by* UTAH CODE ANN. § 78B-6-102 (2008).

[55] UTAH. R. APP. P. 31.

[56] *Id*.

[57] *See In re* Adoption of B.B.D., 1999 UT 70, 984 P.2d 967 (pending October 28, 1996 to July 22, 1999); H.U.F. v. W.P.W., 2009 UT 10, 203 P.3d 943 (pending from March 4, 2006 to February 10, 2009); O'Dea v. Olea, 2009 UT 46, 217 P.3d 704 (pending from June 15, 2006 to July, 28 2009); *In re* Adoption of I.K., 2009 UT 70, 2009 WL 3426609 (pending from November 11, 2007 until Oct. 27, 2009, and decided on direct appeal); *In re* Adoption of Doe, 2008 UT App 449, 199 P.3d 368 (pending from Sept. 11, 2004 until Dec. 11, 2008).

terminated on fitness grounds.[58] In cases where an infant is placed for adoption some time after birth, an unwed father is likely to find himself in the position of having a child he has loved and supported ripped from his life. In one such case, a North Carolina mother travelled to Utah where she relinquished her five-month-old child for adoption.[59]

In contrast to Utah's procedure for putative fathers to assert their rights, the state has an expedited court process for juvenile cases in which parental rights are on the line after a child has been removed from her home because of alleged abuse or neglect. In such cases, a shelter hearing is required within three business days.[60] Additionally the Utah Rules of Appellate Procedure were modified in 2004 to step up the process of appeals in child welfare cases.[61]

Parents challenged these rules saying the expedited process placed too great of a burden on them, in part by requiring parents to file a notice of appeal within fifteen days of termination of parental rights, and limiting extensions to ten days.[62] The Utah Supreme Court upheld the expedited appeals process for child welfare cases, saying "those restrictions are consistent with the policy of providing children and parents with swifter resolution and permanency in their family relations."[63] The ruling was issued on November 7, 2006, just sixteen months after one challenger's parental rights were terminated by court order on July 7, 2005;[64] the other parent's rights had been initially terminated on March 25, 2005.[65] Some cases have worked their way through the system even more quickly.[66] Fewer than one-in-ten of the 881 cases of termination and voluntary relinquishment cases in Utah's juvenile court system from October 1, 2008 to September 30, 2009 were pending at the end of the year.[67]

A similar expedited timeframe for contested adoption cases would better serve the best interests of the child, the father and the adoptive parents. If the interest of the state is in expediting petitions to make for more stable families, it would make sense to expedite contested adoptions. This would be slow enough to

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[58] State in Interest of M.W.H. v. Aguilar, 794 P.2d 27, 29 (Utah Ct. App. 1990) (affirming termination of parental rights based on "objective abandonment" after biological father had failed to establish a bond with the child after his rights were reinstated).

[59] Osborne v. Adoption Ctr. of Choice, 2003 UT 15, ¶ 6, 70 P.3d 58 (denying unwed father's petition for extraordinary relief and upholding adoption nearly a year and a half after the five-month-old child was placed for adoption).

[60] UTAH CODE ANN. § 78A-6-306(1) (2009) (requiring a shelter hearing in three business days after removal with an extension of up to two days allowed under certain circumstances).

[61] UTAH R. APP. P. 52-59 (2009).

[62] UTAH R. APP. P. 52(a) (2009).

[63] State *ex rel*. B.A.P., 2006 UT 68 ¶ 20, 148 P.3d 934.

[64] *Id.* at ¶ 3.

[65] *Id.* at ¶ 2.

[66] *See, e.g.*, State *ex rel*. A.H., 2009 UT App 232, 217 P.3d 278 (May 13, 2008 termination order affirmed by Utah Court of Appeals on Aug. 27, 2009, based on mother's inability to care for her children).

[67] Data from the Utah State Courts (on file with the author).

give parents time to assert their rights, yet swift enough to establish stability in children's lives. Given that Utah has stated an interest in quickly resolving unwed fathers' contests to adoptions by requiring them to assert their rights in court *before* their child is placed, it would make sense to speed up the process once a father has gone to court. Expediting the process would foster stability because the child would be placed with permanency at an earlier phase in her bonding with either her biological father or adoptive parents.

Given the compelling liberty interests involved, it seems as though courts would want to conclude cases as quickly as possible. Perhaps Utah's policy makers should take a lesson from the U.S. Supreme Court, which found that "allowing those fathers who remain with their families a right to object to the termination of their parental rights will pose little threat to the State's ability to order adoption in most cases."[68] Of course, the father is not the only interested party in these actions. Any policy that the legislature adopts should also consider the interests of the child and the mother.

III. THE INTERESTS OF THE CHILD

The need for expedited hearings is perhaps more important for the child than any adult involved. By age seven months (or earlier), an infant develops specific attachment to one individual, commonly her mother.[69] During this stage of development, an infant develops a fear of strangers and shows distress when the person with whom she has bonded is absent.[70] The child then begins to bond with other individuals, and by eighteen months will likely become attached to several familiar people.[71] By this age, children develop a capacity for "empathy and sharing behaviors" which are needed to form relationships.[72] However, if the child's future is tied up in court, her biological father, who may or may not have visitation rights, has little chance of bonding with her. This influences a child's ability to thrive as she grows. Whether a child develops a secure attachment to her parents in her first two years of life has been related to "heightened sociability, greater compliance, and more effective emotion regulation."[73] In other words, once a child has bonded with her adoptive parents—as parents—it may be detrimental to place her with her biological father.

While most people, including judges, are attuned to the importance of furthering a child's best interest, there is "not a clear consensus about what is

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[68] Caban v. Mohammed, 441 U.S. 380, 393 n.13 (1979).

[69] HELEN L. BEE, THE DEVELOPING CHILD 240 (HarperCollins Publishers 1975) (citing H. Schaffer & P. Emerson, *Longitudinal Study of Babies in Glasgow* (1964) (unpublished study concerning a group of sixty Scottish babies and their mothers)).

[70] *Id.*

[71] *Id.*

[72] ALAN SLATER & MICHAEL LEWIS, INTRODUCTION TO INFANT DEVELOPMENT 223 (Alan Slater & Michael Lewis eds., Oxford Univ. Press 2002).

[73] Jessica Vando et al., *Examining the Link Between Infant Attachment and Child Conduct Problems in Grade 1*, 17 J. CHILD & FAM. STUD. 615, 616 (2008).

specifically *in* children's best interests."[74] In one study, participants recognized the "importance of the child's attachment with the adoptive parents . . . . [Study participants] seem to be aware that early attachment is important and that its disruption is harmful."[75]

Beyond a general dislike for fragmenting the family structure, putative fathers also face the hurdle of violating the mother's right to control her baby's destiny. Women may have good reason for not involving the father, and they have a constitutional right to privacy in child rearing decisions.[76] Unmarried mothers also have a compelling privacy interest. A Florida adoption law, which required the publication in newspapers of pending adoptions when the father or his location was not known, was overturned as violating a mother's right to privacy, and was then repealed.[77] Before its 2003 repeal, this law was harshly criticized as the "Scarlet Letter" law because it required unwed mothers to "suffer the public humiliation of putting their sexual history in the newspaper."[78]

While mothers do have an important privacy interest, those fathers who affirmatively assert their paternity also have a constitutional liberty interest in maintaining parental rights. In order to preserve his constitutional right to fatherhood, an unwed father must show "a full commitment to the responsibilities of parenthood by '[coming] forward to participate in the rearing of his child.'"[79] In recognizing a father's due process rights, the Supreme Court also acknowledged "the emotional attachments that derive from the intimacy of daily association, and from the role it plays in '[promoting] a way of life' through the instruction of children . . . as well as from the fact of blood relationship."[80]

One key purpose of Utah's law is to "speedily" identify "fathers who will assume a parental role" and in holding them financially accountable.[81] However, the lack of any expedited process means that those fathers who attempt to assert their parental rights often have no choice but to be disruptive. The process is too slow and complicated to provide due process to the putative father or his child. Rather than spending years deciding whether an unwed father has strictly complied with Utah's law, the better approach would be to recognize the factors related to a

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[74] Eleanor W. Willemsen et al., *Factors Influencing Custody Decisions in Contested Adoption Cases*, 16 CHILD & ADOLESCENT SOC. WORK J. 127, 131 (1999).

[75] *Id.* at 143.

[76] *Id.* at 128.

[77] Alison S. Pally, Comment, *Father by Newspaper Ad: The Impact of In Re the Adoption of a Minor Child on the Definition of Fatherhood*, 13 COLUM. J. GENDER & L. 169, 170 (2004).

[78] *Id.* at 191-92.

[79] Lehr v. Robertson, 463 U.S. 248, 261 (1983) (quoting Caban v. Mohammad, 441 U.S. 380, 392 (1979)).

[80] *Id.*

[81] *In re* Adoption of B.V., 2001 UT App 290, ¶ 31, 33 P.3d 1083 (overturning termination of parental rights based on steps father took before and after child's birth to provide financial support, establish a relationship, and comply with state law).

child's well-being at the outset. By expediting the contested adoption process, a judge's decision on custody could be based on the unwed father's fitness and *not* on the fact that a child has spent years developing a bond with an adoptive family while her father has spent years waiting to find out if he has strictly complied with Utah's law.

CONCLUSION

If the child welfare standard for speedy hearings and appeals were applied to contested adoptions, putative fathers who promptly asserted their rights under Utah law would be entitled to a prompt hearing. This process would allow a putative father, as the legislature intends, to "timely grasp" his parental rights. Further, if the father's rights are terminated, he should be entitled to an expedited appeal in a process similar to that provided for child welfare cases. However, expediting the judicial process isn't the only step toward ensuring unwed fathers' constitutional rights are preserved. The legislature should clarify the law as far as what an unwed father must do in order to "strictly comply." Laws should also require that, when feasible, all issues in a contested adoption be handled at the same time. Ultimately, this solution would give unmarried fathers a fairer chance of asserting their rights, while also maintaining Utah's interest in providing children with stability in adoptive homes. Doing so would minimize the risk that the "bonding of adopted children, and the psychological security of adoptive parents will be subject to being torn asunder."[82]

[82] *In re* Adoption of Baby Boy Doe, 717 P.2d 686, 695 (Utah 1986) (Stewart, J., dissenting).