

SEMINAL CASE CITES FOR UNWED DADS

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Constitutional Issues:

Stanley v Illinois 405 US 645 (1972) – an unwed father who has had a relationship with a child has a right to be included in any proceeding that would terminate his rights

Caban v Mohammed 441 US 380 (1979) US Supreme court held that the prior NYS DRL 111 statute was unconstitutional as it did not allow for an unwed father who had substantial connections to a child to stop the adoption of that child

Lehr v Robinson 463 US 248 – Here the US Supreme Court upheld the New York Court of Appeals decision of **Jessica XX 54 NY 2d 417** and **found the provisions of the “notice” father statue to be constitutional.** An unwed father who has never established a relationship with a child is not entitled to notice of an adoption simply because he is the biological father. A putative father was not entitled to notice of an adoption where he was not listed in the notice categories of DRL 111-a. In this matter, the unwed mother deliberately failed to name the father as she did not want him to be involved. The NYS Court of Appeals held that the **mother had a constitutional right of privacy to not provide a name** and as he was not a “notice” father under the statute, she did not have to give the name to properly surrender the child.

Key “Seminal” NYS Cases:

Raquel Marie X., 76 NY 2d 387, 559 NYS 2d 855 (1990) and remand is reported at 173 AD2d 709 (2nd Dept. 1991) – sets a **judicial standard for the definition of a “consent father”** after ruling that portions of the statue are unconstitutional, finds that the issue of an unwed fathers’ right to refuse consent to an adoption of the child cannot hinge on the mother’s desire to continue a relationship and/or live with the father and must hinge on the father’s own behavior is demonstrating his willingness and readiness to care for the child. The Court of Appeals sets a standard for “consent” father of children placed for adoption at less than 6 months. He must be willing to assume full custody of the child himself and can not be merely seeking to block the adoption. He must demonstrate his intent to parent the child, be a fit parent and not have waived or abandoned his rights. He can “evince his intent” by such things as advising friends and family of the child’s existence, paying pregnancy or birth expenses (offering to pay for an abortion is not considered), making arrangements in his life to care for an infant and have taking legal steps to establish paternity . Marrying the mother after the child has been born is not in and of itself enough to make a man a consent father. The “interim” judicial standard has remained since the 1990 case as the legislature has never repaired the unconstitutional portion of the statute!

Robert O., 80 NY2d 254, 590 NYS2d 37 (1992) NYS Court of Appeals rules that **unwed father who does not know of baby can lose any rights if he does not act to try to find out about possible existence of baby.** Relationship had ended when mother discovered pregnancy. Mother did not tell father of pregnancy but also did not hide pregnancy. Father was not informed that child had been born or was placed for adoption.

Father only learns of child 18 months after child's birth and 10 months after adoption was finalized. Father should have acted "promptly" to discover child's existence and this is measured by child's life and not by father's awareness of child. The case also affirmed the rule that mother had a constitutional right not to name him during her surrender and apparently that she was under no obligation to tell him of the pregnancy. His failure to inquire promptly costs him his rights.

Consent Fathers for over 6 month old child:

Robin U., 106 Misc2d 828, 435 NYS2d 659 (Family Court, Orange County 1981) – unwed father was a consent father where he publicly acknowledged paternity, paid child support, visited when mother allowed it

Justin "Z" 114 AD2d 637, 494 NYS 2d 473 (3d Dept. 1985) – Unwed father's consent was necessary where he lived with child for over 2 years, visited when mother would allow, paid support albeit sporadically given his unemployment

Joseph LL., 63 NY2d 1014, 484 NYS2d 508 (1984) The Court of Appeals rules unwed father was not a consent father where he had lived with mother for five months after birth but had only minimal contact since then including missing visits due to intoxication, was in arrears on child support and was serving a long term prison sentence

Consent Fathers less than 6 months old child :

John E., 164 AD2d 375, 564 NYS 349 (2nd Dept. 1990) – unwed father not a consent father as he only wanted to block adoption, not assume custody himself. He offered no support, made no public statements about paternity. He made no effort to do anything as among as he knew mother and her current husband were going to raise the baby and only acted when he learned that the mother was placing the child for adoption

Kiran Chandini S., 166 AD2d 599, 560 NYS2d 886 (2nd Dept. 1990) – unwed father was consent father where he publicly acknowledged his paternity, offered to pay for pregnancy and birth expenses although the mother would not accept them, and was not informed by anyone that child had been placed for adoption, when he was informed of the adoption plans, he filed for custody

Stephen C., 170 AD2d 1035, 566 NYS2d 178 (4th Dept. 1991) – unwed father not a consent father even where he filed for custody where he tried to convince birth mother to raise the child herself and only offered his mother or his sister, not himself, as alternatives caretakers of the child

Kailee CC., 179 AD2d 437, 579 NYS2d 191 (3rd Dept. 1992) – unwed father not a consent father as he was not in a position to assume custody of child himself, he had no home and was a drug abuser, failed to follow up when given the mother's attorneys name and only filed for paternity and custody at urging of his parents and then failed to appear in court

Raymond AA 217 AD2d 757, 629 NYS2d 321 (1995) – it is the unwed father’s activities during the 6 month period prior to the child’s placement for adoption that will control

Notice Father:

Female Infant F., 191 AD2d 437, 594 NYS2d 203 (2nd Dept. 1993) – since the unwed father had filed a paternity action, he was a notice father but he was not a consent father as this was all he had done

Baby Girl R., 105 AD2d 575, 481 NYS2d 516 (3rd Dept. 1984)- the unwed father had filed with the putative father registry so he was a notice father but when he appeared for a best interest hearing, the court found it was in the child’s best interests to be adopted

Robert Z., 199 AD2d 19, 605 NYS2d 29 (1st Dept. 1993)

No Rights Fathers:

Emily Ann 137 Misc2d 726, 522 NYS 2d 786 (Family Court, Kings County 1987) – unwed father was unhappy about the pregnancy, wanted an abortion, ended his relationship with the mother, the mother had gotten an order of protection against him, he was not a man whose consent was needed for the mother’s husband to adopt

Eugene MM 132 Ad2d 780, 517 NYS 326 (3rd Dept. 1987) – unwed father had been in jail almost since birth, had only seen child 5 times in 4 years and did not support child m- consent not needed

Stephen C., 566 NYS2d 178 (4th Dept. 1991)

Christy R., 183 AD2d 434, 583 NYS2d 380 (1st Dept. 1992) – abandonment petition not needed where consent is not required, unwed father had not known of child’s existence of 11 years and was not a man whose consent was needed

Kasiem H., 230 AD2d 796 (2nd Dept, 1996)

Baby Girl U. 224 AD2d 869, 638 NYS 253 (3rd Dept.) – Father had no rights to stop adoption and obtain custody where he was informed at time of birth of child’s existence (although being told conflicting information during pregnancy) and failed to seek paternity, failed to indicate his desire and ability to raise child, failed to offer any financial support – he only wanted to “black” adoption, not claim custody

Micah HH 261 AD2d 723, 690 NYS2d 309 (3rd Dept. 1999)

James Q., 240 AD2d 841, 658 NYS2d 535 (3rd Dept. 1997)

Stephen 239 AD 963, 659 NYS 2d 588 (4th Dept. 1997) - Mother was legally married at time of conception and both she had husband consented to the adoption. Child had been fathered by another and Family Court erred in ordering the parties to bring the mother before the court to inquire if she would name the alleged biological father. The biological father had shown no parental interest and would not even have been a notice father in an unwed situation.

Jarell Lee C., 225 AD2d 544, 638 NYS2d 754 (2nd Dept. 1996)

Ravon Carol L. 295 AD2d 610 (2nd Dept. 2002)

Carrie GG., 273 AD2d 561 (3rd Dept. 2000)