

Abstract

An increasingly large number of babies are born to unwed parents in the United States every year. This phenomenon is problematical for putative fathers in adoption proceedings because it is difficult to protect such a father's rights while advancing the child's best interests. Many states, such as Missouri, have responded by enacting putative father registries. An unwed father may file his intent to claim paternity with the Missouri Putative Father Registry in a postcard to insure notice of any proceeding that may affect his parental rights. However, a Missouri putative father who has not filed with the registry and taken affirmative steps to establish his paternity legally waives his right to consent to adoption in Missouri. As such, a juvenile officer's petitioning to terminate his parental rights prior to the filing of an adoption petition is unnecessary and serves only to prolong the process. Because a putative father who has not timely availed himself of the registry and affirmatively asserted his paternity has no legal rights or obligations concerning his child, this Note argues that the juvenile officer need only to petition for a declaration that the father has no right to grant or to withhold consent to an adoption proceeding at a particular point in time. Such a policy better fulfills the legislative goals of a putative father registry and is in the best interests of the children. Expediting the adoption process in this fashion has implications not only for Missouri putative fathers, but also unwed fathers in all states that have enacted putative father registries.

Putative Fathers Take Note! Revisiting In re Loveheart and Revising the Rule of Notice in Dependency Proceedings in Light of Missouri's Revised Statutes and Putative Father Registry.

I. INTRODUCTION

*“Out of wedlock births in the United States have climbed to an all-time high.”*¹

A recent government study indicates that nearly four in every ten babies born in the United States have unwed parents.² While natural mothers have a unilateral right to abort or to deliver the child, the nature of the unwed father's rights remains an unsettled area of the law.³ According to Martin Bauer, president of the American Academy of Adoption Attorneys who specializes in contested adoptions, the “most common contest is where the mom wants to place the baby [for adoption] and the dad objects.”⁴ Putative fathers’⁵ legal rights have become of increasing concern in conjunction with the expanding number of those unwed fathers who wish to play a role in their children's lives.

When the mother's rights are voluntarily or involuntarily terminated and the plan is adoption, the crucial issue becomes what rights a putative father has, and also what he must do to avail himself of them. The difficulty arises in balancing the weight of the father's biological ties when he has not assumed legal or custodial responsibilities for the child against the necessity of expeditiously placing the child in a stable adoptive home.⁶

¹ *Almost 4 in 10 Children Born Out of Wedlock in 2005*, USA Today, Nov. 21, 2006, available at http://www.usatoday.com/news/health/2006-11-21-births_x.htm.

² *Id.* The report also indicated that, while many people associate out-of-wedlock births with teen mothers, “births among unwed mothers rose most dramatically among women in their 20s.” *Id.*

³ Tamar Lewin, *Unwed Fathers Fight for Babies Placed for Adoption by Unwed Mothers*, N.Y Times, Mar. 19, 2006, at A10.

⁴ *Id.*

⁵ The term ‘putative father’ means “a man who has had sexual relations with a woman to whom he is not married and is therefore presumed to know that such woman may be pregnant as a result of such relations.” Protecting Rights of Unknowing Dads and Fostering Access to Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. §440(8) (2006). This note will use the term ‘putative father’ throughout to mean a biological father who is not a presumed father (by marriage), an acknowledged father (whose name is on the birth certificate), or an adjudicated father (one who has timely filed a paternity action).

⁶ Lewin, *supra* note 3.

Presumably because of the burgeoning number of babies born out of wedlock, courts in the last few decades have consistently held that a putative father's rights concerning his child are entitled to constitutional protection in certain situations.⁷ For instance, putative fathers in almost all states are entitled to notice of an adoption proceeding or of a hearing to terminate their parental rights.⁸ However, states generally require a putative father to take some action, such as registering with the state's putative father registry or taking steps to assert his paternity, in order to protect his rights and insure they are entitled to such constitutional protection.⁹ Thus, the constitutional protection of a putative father's rights concerning his child is not unlimited, and requires that he affirmatively "grasp the opportunity to develop a relationship with his child."¹⁰

This Note will elucidate why a putative father who has not registered timely with Missouri's Putative Father Registry and/or taken steps to establish his paternity does not have parental status under Missouri statutory or case law. Such a putative father's failure to protect his rights results in his having no legal rights or obligations concerning his child.¹¹ Because his parental rights have not legally sprung into being, they do not need to be terminated.¹² This Note will argue that such a father does not have standing to receive notice of a pending adoption and Missouri juvenile officers should petition for a declaration that the putative or unknown father

⁷ Child Welfare Information Gateway, *The Rights of Presumed (Putative) Fathers*, http://www.childwelfare.gov/systemwide/laws_policies/statutes/putative.cfm.

⁸ *Id.*

⁹ *Id.* Mailing in a postcard to the putative father registry assures the putative father that he will receive notice of termination of parental rights or adoption proceedings. See *Lehr v. Robertson*, 463 U.S. 248 (1983). States vary in the information they maintain in their registries, though commonly included are the name, address, social security number and date of birth of the putative father and natural mother, the name and address of any person adjudicated by a court to be the father, and the child's name, date of birth and registration number. Child Welfare Information Gateway, *supra* note 7.

¹⁰ *Lehr v. Robertson*, 463 U.S. 248 (1983).

¹¹ As will be illustrated, under Missouri law such a father has no standing to challenge an adoption proceeding and need not be served with notice of termination of parental rights. See Mo. Rev. Stat. § 453.030.2(a)-(c) (2000) (stating when a man's consent is required in adoption proceedings); *T.A.B. v. Corrigan*, 600 S.W.2d 87 (Mo.App. E.D. 1980) (holding that there is no requirement that notice of termination of parental rights proceedings be given to a putative father who has not acknowledged the child by affirmatively asserting paternity).

¹² See *Lehr*, 463 U.S. 261 n.7.

has waived his consent to adoption rather than for terminating parental rights that do not exist. Such an exception to the rule of notice of termination of parental rights is embodied in the 1988 Missouri Supreme Court case of *In re Loveheart*¹³ and in the Missouri Revised Statutes,¹⁴ and will better serve the underlying policy of the state.

The first section of this Note will examine the nature and genesis of parental rights as discussed in the landmark 1983 Supreme Court case of *Lehr v. Robertson*. The second portion will address the evolution of Missouri's termination of parental rights and adoption statutes, including their interaction with Missouri's Putative Father Registry. The next section will analyze the 1988 Missouri Supreme Court decision of *In re Loveheart*.¹⁵ Finally, the Note will synthesize the federal and state statutory and case law and advocate for Missouri juvenile officers to petition for a declaration that a putative father who has taken no steps to assert paternity or has not filed with the putative father registry has no standing in a lawsuit for adoption of his child and has waived his consent to any adoption proceeding.

II. BACKGROUND

*A. Lehr v. Robertson*¹⁶ and the Nature of Parental Rights

Lehr v. Robertson was a landmark case for the rights of putative fathers. In *Lehr* in 1983, the Supreme Court of the United States sustained an adoption order obtained without the consent of Lehr, the putative father.¹⁷ Lehr had filed a paternity action at the same time that an adoption proceeding was pending for his daughter, Jessica.¹⁸ When Lehr's attorney asked the judge for a stay of the adoption proceeding, the judge informed the attorney that he had already signed the

¹³ 762 S.W.2d 32 (Mo. 1988).

¹⁴ See Mo. Rev. Stat. § 453.060 (2000) (Missouri's notice provisions for termination of parental rights) .

¹⁵ 762 S.W.2d 32 (Mo. 1988).

¹⁶ *Lehr v. Robertson*, 463 U.S. 248 (1983).

¹⁷ *Id.* at 265.

¹⁸ *Id.* at 253.

adoption order.¹⁹ The judge stated that “he was aware of the pending paternity action but did not believe he was required to give notice to [Lehr] prior to the entry of the order of adoption.”²⁰

The Supreme Court upheld the constitutionality of the adoption and based its decision on the legal distinction between inchoate and fully developed parental rights.²¹ The Supreme Court held that because Lehr had never established a substantial relationship with his child and/or availed himself of New York’s Putative Father Registry, the judge’s failure to give him notice of his child’s pending adoption did not deny Lehr Due Process.²² The court noted that “parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.”²³ The significance of the Court’s distinction is that a putative father’s protected interest in his child does not exist merely through biology.²⁴ Rather, it is a result of the relationship he establishes with the child and the responsibility he assumes for her.²⁵

The *Lehr* court emphasized that the importance of the familial relationship derives from the emotional attachments therein, not “the mere existence of a biological link.”²⁶ Thus, only when an unwed father comes forward “to participate in the rearing of his child” will his interest in that child acquire due process protection.²⁷ The Court highlighted that, even absent active participation in raising his child, “the right to receive notice was completely within appellant’s control” because he could have mailed in a postcard to the putative father registry and been

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 261 n.1.

²² *Id.* at 249. The Court upheld the constitutionality of the adoption order despite the state’s knowledge of his whereabouts. *Id.* at 273.

²³ *Id.* (quoting *Caban v. Mohammad*, 441 U.S. 380, 397 (1979)).

²⁴ *Id.* at 261.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* (quoting *Caban*, 441 U.S. at 392).

guaranteed notice of any proceedings that might effect his parental rights.²⁸ Thus, New York's statutory scheme protected the child's best interests, and adequately balanced the biological father's interest in his child and the state's interest in a speedy adoption.²⁹

In sum, the *Lehr* Court established that, until a putative father takes substantial steps in demonstrating a commitment to creating a relationship with his child, the state will only protect his *opportunity* to develop a relationship with the child, and not the relationship itself.³⁰ In an adoption proceeding, this means that the Due Process and Equal Protection clauses of the Constitution "do not give a putative father an absolute right to notice and an opportunity to be heard before a child may be adopted."³¹

B. Evolution of the Putative Father's Rights in Missouri

1. Termination of Parental Rights

Even the putative father who had asserted his paternity in some form did not always have legal rights concerning his child prior to the *Lehr* decision. Not until 1972 in *Stanley v. Illinois* did the Supreme Court of the United States first directly address and recognize a putative father's rights.³² The putative father in *Stanley* had lived with his children all their lives and their mother for eighteen years.³³ He brought an Equal Protection challenge to an Illinois statute that automatically declared illegitimate children wards of the state when their mothers died, regardless of the relationship between the children and the unwed father.³⁴ The Court held that

²⁸ *Id.* at 264.

²⁹ *Id.* at 263. The Court held that New York's statutory scheme was not arbitrary because the state has legitimate interests in facilitating the adoption of young children, reducing the risk of adoption controversies, and ensuring the finality of adoption decrees. The Court held that New York's Putative Father Registry adequately protected the unwed father's inchoate interest in his child. *Id.* at 264-265.

³⁰ *Id.* at 263 (emphasis added).

³¹ *In re JF*, 719 S.W.2d 790, 792 (Mo. 1986).

³² 405 U.S. 645 (1972).

³³ *Id.* at 646.

³⁴ *Id.* at 645. The statute did not provide for a hearing on parental fitness or require proof of neglect, though both were required before children of married or divorced parents could be declared wards of the state. *Id.*

the statute violated the Equal Protection clause because it did not give a putative father the opportunity to prove his fitness as a parent before the children were made wards of the state.³⁵

After the *Stanley* decision, Missouri began recognizing the emerging status of the putative father. Prior to 1978, Missouri statutes did not define the term “parent” or address notice and termination of parental rights.³⁶ Because Missouri statutes did not recognize the putative father, the statutory scheme did not provide such an unwed father with any legally recognized parental rights. In 1978, however, the Missouri Supreme Court first addressed and recognized a putative father’s rights in the case of *State v. Edwards*.³⁷

The putative father in *Edwards* continuously visited his child in foster care and demanded custody of him.³⁸ Unbeknownst to him, the mother had unilaterally consented to termination of her parental rights and to a waiver of the necessity of consent in her son’s future adoption.³⁹ The juvenile officer petitioned to terminate the mother’s parental rights and to transfer legal custody of the child.⁴⁰

The putative father in *Edwards* brought Due Process and Equal Protection challenges against the Missouri adoption code and termination of parental rights statute because at that time they did not require that an unwed father receive notice of termination of his parental rights before an adoption proceeding.⁴¹ The Missouri Supreme Court agreed and held the statutes unconstitutional to the extent they permitted severance of all parental rights of an illegitimate

³⁵ *Id.*

³⁶ *State ex rel. T.A.B. v. Corrigan*, 600 S.W.2d 87, 90 (Mo.App. E.D. 1980).

³⁷ 574 S.W.2d 405 (Mo. 1978).

³⁸ *Id.* at 406 (Mo. 1978).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 408. The statute in effect at that time, provided that: “If the court terminate(s) the parental rights of both parents, (or) Of the mother if the child is illegitimate, . . . it may transfer the guardianship and legal custody of the child to a suitable person, or the state division of welfare (now the Division of Family Services), or a licensed child welfare agency.” Thus, for illegitimate children, this statute permitted severance of all parental rights though only the rights of the mother had been severed. Mo. Rev. Stat. § 211.501.2 (2000).

child though only the parental rights of the mother had been terminated.⁴² The court held that, “the same presumption of fitness afforded married fathers in parental termination proceedings [should] be afforded to natural fathers after a reasonable showing of fatherly concern in such cases.”⁴³

In response to *Edwards* and the overall increasing awareness of the “emerging status of the putative father,”⁴⁴ Missouri revised its termination of parental rights statutes to protect the putative father who has affirmatively asserted his paternity. RSMo section 211.444 now provides that a juvenile officer or court where an adoption proceeding is pending may terminate a parent’s rights if it is in the best interest of the child and the parent has consented in writing.⁴⁵ The most significant statutory revision for the putative father was the addition of the definition for “parent.”

RSMo section 211.442 now defines the term “parent” as both biological parents, and also the mother and the putative father of a child.⁴⁶ A qualification in the second sentence of the definition, however, requires that the putative father acknowledge the child as his own by “affirmatively asserting his paternity” in order to acquire a legal relationship to the child.⁴⁷ The result of the statute is that, unlike biological mothers, not all putative fathers are parents for purposes of the statute. Consistent with *Lehr*, Missouri courts have held that a putative father who does not take steps to care for or establish a relationship with his child, is not entitled to the

⁴² *Id.* at 409.

⁴³ *Id.* The court held that the state was free to require that the unwed father prove “a meaningful intent and a continuing capacity to assume responsibility with respect to the supervision, protection and care of the child” before he need receive the benefit of the same presumption of fitness enjoyed by other parents. *Id.*

⁴⁴ *T.A.B.*, 600 S.W.2d at 90.

⁴⁵ Mo. Rev. Stat § 211.444.1 (2000).

⁴⁶ Mo. Rev. Stat § 211.442(3) (2000).

⁴⁷ Mo. Rev. Stat § 211.442(3) (2000). The statute in full defines a “parent” as: “a biological parent or parents of a child, as well as, the husband of a natural mother at the time the child was conceived, or a parent or parents of a child by adoption, including both the mother and the putative father of a child. The putative father of a child shall have no legal relationship unless he, prior to the entry of a decree under sections 211.442 to 211.487, has acknowledged the child as his own by affirmatively asserting his paternity.”

protection embodied in the notice provisions in the termination of parental rights statutes.⁴⁸

However, after 1978, Missouri affords a putative father who affirmatively asserts his paternity a right to notice of termination of his parental rights before an adoption might proceed.⁴⁹

T.A.B. v. Corrigan was decided in 1980, two years after the statutory amendments. *Corrigan* addressed the interpretation of newly-revised RSMo section 211.442 and the added definition of the term “parent.”⁵⁰ The unmarried mother in *T.A.B.* had consented to termination of her parental rights but refused to identify the putative father for the court so that he could be served with notice of termination of his parental rights as well.⁵¹ The juvenile court held the mother in contempt on the “erroneous belief that [211.442] required that notice be given to [the] putative father.”⁵²

The Missouri Court of Appeals held that the putative father in question was not a parent under the definition of RSMo section 211.442 and thus was not entitled to notice of termination of his parental rights.⁵³ The putative father in *T.A.B.* did not even know of the birth of the child and had not taken any steps to establish a “legal relationship” with his child by affirmatively asserting his paternity.⁵⁴ Therefore, he did not qualify as a parent under the statute.⁵⁵ In examining legislative intent in enacting RSMo section 211.442, the court stated:

Only a parent, that is, a putative father who acknowledges his child by affirmatively asserting his paternity, is entitled to be served. The legislature could properly have enacted a provision allowing any identified putative father, whether

⁴⁸ See *In re J.F.*, 719 S.W.2d 790 (Mo. 1986); *T.A.B. v. Corrigan*, 600 S.W.2d 87 (Mo.App. E.D. 1980).

⁴⁹ See *T.A.B.*, 600 S.W.2d 87 (holding that only the putative father who acknowledges his child by affirmatively asserting his paternity is entitled to notice prior to termination of parental rights for purposes of adoption).

⁵⁰ See *Id.*

⁵¹ *Id.* at 88-89.

⁵² *Id.* at 87.

⁵³ *Id.* at 93. Consequently, the Court of Appeals held that the juvenile court’s holding the mother in contempt was erroneous. *Id.* at 94.

⁵⁴ *Id.* at 92.

⁵⁵ *Id.* at 93.

or not he had acknowledged the child by affirmatively asserting paternity, to receive notice. It did not do so.⁵⁶

The Corrigan court distinguished between a “parent” and any identified putative father in order to fulfill legislative intent in the revised termination of parental rights and adoption statutes.⁵⁷ The primary goal of Missouri’s newly-revised statutes was to achieve a “complete and final divestment of all legal rights, privileges, duties and obligations of the parent and child.”⁵⁸ However, when the putative father in question had not even acknowledged his child, he did not meet the statutory definition of a parent.⁵⁹ Therefore, he was not within the statute’s scope and the court held that the notice of termination of parental rights statutes did not apply to him.

The Missouri Supreme Court reaffirmed the constitutionality of Missouri’s revised statutory scheme in 1986 in *In re J.F. v. Boone County Juvenile Officer*.⁶⁰ The J.F. court held that the notice of termination of parental rights statutes did not apply to a biological father who had not affirmatively asserted his paternity.⁶¹ The putative father in question was not a parent under the definition of RSMo section 211.442(3) because he had not acknowledged the child as his own by affirmatively asserting paternity.⁶² Like *Corrigan*, the J.F. court relied on several Supreme Court cases, including *Stanley v. Illinois*, for the proposition that a putative father who has not established a substantial relationship with his child was not entitled to certain procedural

⁵⁶ *Id.* at 92. The court indicated various ways in which the putative father could have identified himself, some of which it said would also satisfy the requirement of acknowledging the child. These included filing an affidavit stating he is the father, placing his name on the birth certificate, and seeking an admission of paternity with the mother and filing it with the court. It did not, however, clarify exactly what affirmative steps to establish paternity would be sufficient to meet the statutory definition of a parent. *See Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 719 S.W.2d 790 (Mo. 1986).

⁶¹ *Id.* at 792. The court referenced Missouri statutes 211.442 – 211.487 specifically.

⁶² *Id.* at 791. Though it is not entirely clear from the opinion, it does not appear that the putative father in *J.F.* had any relationship at all with his child. The opinion only says that the natural mother “did not tell the father of the pregnancy because she did not intend to carry the child to term.” *Id.* at 791.

due process protections, including notice of pending adoption proceedings.⁶³ Thus, Missouri’s “termination of parental rights statutes [. . .] do not apply,”⁶⁴ and waiver of service to the *J.F.* father was not unconstitutional.

2. Adoption Proceedings

RSMo section 453.030 delineates whose consent is required in an adoption proceeding.⁶⁵ These persons include the mother, certain fathers, and a putative father.⁶⁶ The father’s consent is required only if 1) he is presumed to be the father pursuant to RSMo sections 210.822(1), (2) or (3),⁶⁷ 2) he has filed an action to establish paternity within fifteen days of the baby’s birth, or 3) he has registered with the putative father registry within fifteen days of the baby’s birth and has filed an action to establish paternity.⁶⁸

RSMo section 453.030 states its consent-to-adoption requirement is subject to the exceptions provided for in 453.040.⁶⁹ The most pertinent exception for purposes of this Note is that a parent whose parental rights have been terminated pursuant to law⁷⁰ need not give consent before an adoption can proceed.⁷¹ Thus, in Missouri, a putative father who is not a presumed, acknowledged, or adjudicated father and who fails to register with the Putative Father Registry

⁶³ *Id.*

⁶⁴ *Id.* at 791.

⁶⁵ Mo. Rev. Stat. § 453.030 (2000).

⁶⁶ § 453.030.3(1)-(2).

⁶⁷ These subsections indicate that a man will be presumed to be the father if: (1) he and the child’s natural mother are or have been married to each other and the child is born during the marriage or within 300 days of its being terminated; (2) before the child’s birth he and the natural mother have attempted to marry; and (3) after the child’s birth he and the natural mother have attempted to marry. Mo. Rev. Stat. § 210.822.1(1)-(3) (2000).

⁶⁸ § 453.030.2(a)-(c).

⁶⁹ § 453.030.3.

⁷⁰ RSMo § 211.447 addresses when a juvenile court may petition to terminate parental rights without the parental consent. These situations include, but are not limited to, when a child is found to be an abandoned infant or has been in foster care for at least fifteen of the most recent twenty two months. *See* Mo. Rev. Stat. § 211.444.2-6 (2000).

⁷¹ § 453.040(1). Other pertinent exceptions to the consent requirement include a parent whose identity is unknown and cannot be ascertained at the time of filing the petition and a parent who fails to make an appearance in an adoption proceeding or for termination of parental rights. *See* Mo. Rev. Stat. § 453.040(3), (5) (2001).

or otherwise affirmatively assert paternity, or a father whose parental rights have been terminated pursuant to law waives rights to consent to an adoption.

J.B.B. & B.L.B. v. Baby Girl S. was decided shortly after *Corrigan* and extended its holding regarding notice of termination of parental rights to adoption proceedings.⁷² In *J.B.B.*, the circuit court had terminated the rights of the natural mother and found that the natural father was unknown.⁷³ The court subsequently placed the baby in foster care and decreed her adoption eight months later, without the consent of either of the natural parents.⁷⁴

The father challenged the constitutionality of RSMo section 453.030 on Due Process and Equal Protection grounds to the extent that it allowed an adoption to proceed without his consent after a termination of parental rights hearing of which he had no notice.⁷⁵ The Missouri Court of Appeals relied on *Corrigan* in upholding the validity of the statute, stating “[t]here is nothing in the record to show that he has taken any affirmative steps to assert his paternity. It follows that the unknown father here was not a ‘parent’ under the statute and was not entitled to notice.”⁷⁶

3. Putative Father Registry

The creation of a putative father registry and its effects are two different things.⁷⁷ Normally the effects of the registry represent a complex interaction between a state’s adoption and termination of parental rights statutes. In some states, an unwed father has no right to withhold consent to an adoption if he has not registered with that state’s registry.⁷⁸ In other

⁷² *J.B.B. & B.L.B. v. Baby Girl S.*, 611 S.W.2d 359 (Mo.App. E.D. 1980). *J.B.B.* was decided in 1980, prior to Missouri’s establishing its putative father registry in 1988.

⁷³ *Id.* at 360.

⁷⁴ *Id.*

⁷⁵ *Id.* The court points out that, because it could not locate him, it did not terminate the putative father’s rights but rather made a finding only that he was unknown. *Id.*

⁷⁶ *Id.* at 362.

⁷⁷ Lewin, *supra* note 3.

⁷⁸ See, e.g., Ariz. Rev. Stat. § 8-106.01 (2001) (stating that a putative father who wants to receive notice of adoption proceedings and who is the father or claims to be the father shall file notice of a claim of paternity and willingness to support the child to the best of his ability *within 30 days of the child’s birth*) (emphasis added).

states, failure to register timely with the putative father registry results in termination of all parental rights and obligations towards the child.⁷⁹ Currently, thirty two states have erected some form of putative father registry,⁸⁰ and the necessary legislation has been passed in one other.⁸¹ The allotted time period for filing with states' registries varies anywhere from prior to the baby's birth or immediately thereafter,⁸² to sixty days after receiving notice of termination of parental rights proceedings.⁸³

Missouri enacted its putative father registry in 1988.⁸⁴ A putative father in Missouri must file a notice of intent to claim paternity with the Registry during the pregnancy or within fifteen days of the baby's birth in order to retain rights to consent to an adoption proceeding.⁸⁵ In 2004, Missouri amended its Putative Father Registry statute⁸⁶ to provide that failure to register timely with the Registry waives a putative father's ability to withhold consent to an adoption.⁸⁷

⁷⁹ See, e.g., N.H. Rev. Stat. Ann. § 170-B:6(I)(c) (2001) (stating that failure to file timely with registry shall bar the alleged father from thereafter bringing an action to establish paternity and shall constitute an abandonment of the child and a waiver of any right to receive notice of a hearing in an adoption proceeding).

⁸⁰ See Lindsay Biesterfield, *Analysis of State Laws Allowing Men to Register Paternity Claims*, Spring 2006 (unpublished table, Professor Mary Beck's Family Violence Clinic, University of Missouri-Columbia School of Law). The effects of states' putative father registry statutes vary from being an almost meaningless registry to those that seriously effect substantive parental rights. See *Id.*

⁸¹ Virginia's legislature has passed putative father legislation, and the registry will be established in 2007. *Id.*

⁸² See MCLA § 710.33(1) (stating that, before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the court in any county of this state); Mont. Code Ann. § 42-2-202 (stating a putative father must file with the registry within seventy two hours of the baby's birth);

⁸³ See Conn. Gen. Stat. § 45a-716(b) (stating that a putative father must file a claim for paternity no later than sixty days after receiving notice of termination of parental rights proceedings).

⁸⁴ Biesterfield, *supra* note 80.

⁸⁵ Mo. Rev. Stat. § 453.030.3(c) (2000). While Missouri's rule may seem strict, some other states' registries are not as generous as Missouri's. For example, the Supreme Court of Nebraska upheld the constitutionality of its putative father statute, which requires a putative father both to file with the registry within five days of the baby's birth and to assume financial responsibility for the child. Failure to do so results in termination of the putative father's parental rights. The statute does not provide for notification to the father of the baby's birth and a putative father's lack of knowledge of the birth is not a defense for failure to register. See *Shoecraft v. Catholic Soc. Serv. Bureau, Inc.*, 222 Neb. 574 (Neb. 1986).

⁸⁶ Mo. Rev. Stat. § 192.016 (2000).

⁸⁷ In re P.G.M. v. Jasper County Juvenile Office, 149 S.W.3d 507, 514 n.9 (Mo.App. S.D. 2004). Missouri's putative father registry statute provides that failure to register results in loss of ability to withhold consent to an adoption unless the man was led to believe through the mother's fraud or misrepresentation that: (a) she was not actually pregnant when she in fact was; (b) the pregnancy was terminated when in fact the baby was born; or (c) that the baby died after birth when the baby is in fact alive. Mo. Rev. Stat. § 192.016.7(1) (2000).

Therefore, pursuant to the effects of RSMo section 192.016, establishing Missouri's Putative Father Registry, and RSMo section 453.030, defining whose consent is necessary in an adoption proceeding, unmarried fathers in Missouri who are not presumed to be the father essentially waive their rights to withhold consent to an adoption if they fail to file a paternity action, register timely with the Putative Father Registry, or otherwise affirmatively assert their paternity.

III. STATEMENT OF THE CASE

In re Loveheart

The appellant mother of *In re Loveheart* was a minor, and therefore her biological daughter was made a ward of the court four months after the baby's birth.⁸⁸ Two months later the juvenile court filed a petition to terminate appellant's parental rights pursuant to RSMo sections 211.453 and 506.160.⁸⁹ Appellant, however, was not notified in person or via publication of the termination of her parental rights because the court could not locate her.⁹⁰ The trial court nonetheless terminated the appellant's parental rights as to her biological daughter and waived the necessity of service to her pursuant to RSMo section 211.453.⁹¹ The appellant mother appealed and challenged the constitutionality of RSMo section 211.453 on due process grounds to the extent that it allowed for termination of her parental rights without notice to her.⁹²

The Loveheart court held RSMo section 211.453 unconstitutional as violative of appellant's due process rights "insofar as it removes the necessity of notice by publication to a parent whose identity is unknown and cannot be ascertained or cannot be located."⁹³ The court distinguished the case at bar from *Lehr* on the basis that New York, unlike Missouri, had a

⁸⁸ *In re Loveheart v. Long*, 762 S.W.2d 32, 33 (Mo. 1988).

⁸⁹ *Id.* RSMo section 211.453 was the statute pertaining to termination of parental rights and section 506.150 addressed the procedure for service of summons. *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* RSMo section 211.453.3 provides that: "The court shall not require service in the case of a parent whose identity is unknown and cannot be ascertained, or cannot be located." Mo. Rev. Stat. § 211.453.3 (2000).

⁹² *Id.*

⁹³ *Id.* at 34.

Putative Father Registry.⁹⁴ The putative father in *Lehr* could have availed himself of New York's Putative Father Registry and been ensured of notice of termination of his parental rights.⁹⁵ The mother in *Loveheart* did not have access to a putative father registry in 1988 in Missouri because Missouri's registry, established in 1988, presumably was not yet operative and pertains to fathers only. Thus, *In re Loveheart* stood for the proposition that Due Process requires that a known natural parent must receive notice of termination of parental rights, absent a parental registry.

The concept of notice is a fundamental component of due process and was central to the *Loveheart* court's holding. The appellant mother did not receive notice of proceedings that effected her substantive parental rights and therefore was denied due process. However, through its discussion of *Lehr*, the *Loveheart* court acknowledged that notice would not necessarily have been required if Missouri had a Putative Father Registry in place. The court stated, "Missouri provides no statutory mechanism by which appellant could have entered her name on a registry so as to acquire the right to receive notice of proceedings affecting her parental rights."⁹⁶

In fact, Missouri enacted its putative father registry in 1988, the same year that *Loveheart* was decided. The Missouri Supreme Court did not seem to know of the existence of the Registry, and in any case Missouri's Registry is for fathers only, and *Loveheart's* appellant was a mother. However, through its holding, the *Loveheart* court explicitly left open the possibility that the lessons of notice contained in the decision might not apply to fathers once Missouri had a Putative Father Registry in place.

⁹⁴ *Id.*

⁹⁵ It is important to note that Missouri's Putative Father Registry was enacted in 1988, which is the same year that *Loveheart* was decided. Apparently the Registry had not taken effect at the time this opinion was written or, if it had taken effect, the court was not aware of it.

⁹⁶ *In re Loveheart*, 762 S.W.2d at 34.

IV. COMMENT

Adoption proceedings of dependent children typically are a bifurcated process. Either both parents are known and have voluntarily terminated their parental rights or the juvenile officer seeks to involuntarily terminate both sets of parental rights.⁹⁷ Afterwards, the adoptive parents file a separate petition for transfer of custody and adoption.⁹⁸

The *Loveheart* court established that a known natural parent, even one who cannot be located, is entitled to notice of termination of parental rights and acknowledged the additional protection available for those unwed fathers in states with putative father registries who could arrange to receive notice themselves.⁹⁹ After 1988, an unwed biological father in Missouri can insure notice of adoption per Missouri's Putative Father Registry, RSMo section 192.016.¹⁰⁰ Furthermore, RSMo section 453.030.2(b) states that an unwed father who has filed a paternity action or acknowledged paternity pursuant to RSMo section 210.823 is entitled to notice as well.

Thus, Missouri case law and statutory scheme stand for the proposition that a putative father is entitled to notice in termination of parental rights and that his consent is necessary to an adoption if he has affirmatively asserted his paternity, availed himself of the Registry, filed a paternity action, or is a presumed,¹⁰¹ adjudicated,¹⁰² or acknowledged¹⁰³ father.

Voluntary or involuntary, termination of parental rights and adoption proceedings are serious processes that are necessary for the child's protection and welfare. The result of

⁹⁷ Clare Dalton & Elizabeth M. Schneider, *Battered Women and the Law* 280 (2001).

⁹⁸ *Id.*

⁹⁹ In the case of a parent who cannot be located because he or she is missing or unknown, the court should use notice by publication. *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)).

¹⁰⁰ Missouri law requires the consent of a man who has filed with the registry before fifteen days after the baby's birth. Mo. Rev. Stat. § 453.030.2(c) (2000).

¹⁰¹ Mo. Rev. Stat. § 210.822 (2000).

¹⁰² § 210.817.

¹⁰³ § 210.823.

termination of parental rights is often the severance of all ties between the parent and child.¹⁰⁴ The biological parent is no longer a parent in the eyes of the law and has no further legal rights or obligations to the child.¹⁰⁵ Subsequently, the result of adoption proceedings are the reverse for the adoptive parents. Adoption statutes embody the notion that, even without blood ties, a parent/child relationship may be established through law.¹⁰⁶ Thus, the resulting relationship for the adoptive parents and child is treated no differently from that of a natural parent/child relationship under the law.

Keeping these serious consequences in mind, the issue of notice in terminating a putative father's parental rights and obtaining his consent in adoption proceedings assumes different connotations where the father has not filed a paternity action, registered with the state's putative father registry, or taken any other affirmative steps to assert his paternity. Such a putative father is not 'parent' under the Missouri statutes¹⁰⁷ and Missouri case law and RSMo section 453.060 hold that due process does not require notice of termination of parental rights or adoption proceedings to this identified father.¹⁰⁸ This fact relieves the juvenile officer of the need to terminate such putative father's parental rights before the filing of a petition for adoption.

Rather than continuing to petition to terminate the parental rights of such a putative father before allowing an adoption to proceed, the juvenile officer needs only to petition for a declaration that this father has no rights to withhold consent to an adoption. Such a procedure would be consistent with the lessons of notice embodied in *Loveheart*. As mentioned, *Loveheart* acknowledged that if Missouri had a Putative Father Registry in place, whereby an unwed father

¹⁰⁴ See, e.g. Wis. Stat. Ann. § 48.43(2) (West 2003).

¹⁰⁵ *Id.*

¹⁰⁶ This concept is known as "adoption naturam imitatur," or, adoption imitates nature, and has been universally adopted. 32 Am. Jur. 3d *Proof of Facts* § 83 (2006).

¹⁰⁷ See Mo. Rev. Stat. § 453.030.3(b)-(c); § 211.442(3) (2000) (stating that a putative father has no legal relationship with his child if he has not affirmatively asserted paternity).

¹⁰⁸ See, e.g., *In re J.F.*, 719 S.W.2d 790 (Mo. 1986).

could protect his own right to notice of termination of parental rights, a father who did not meet Missouri's statutory definition of a "parent" would not be entitled to the due process protection of notice.¹⁰⁹

Furthermore, such a policy is consistent with the consent to adoption requirement embodied in RSMo section 453.030. This statute clearly establishes that only a man who has filed a paternity action, affirmatively asserted paternity, filed with the Putative Father Registry, or constitutes a presumed, acknowledged, or adjudicated father must consent before an adoption may proceed. Thus, because Missouri statutory and case law does not recognize a putative father who has not taken affirmative steps to assert his paternity, it is clearly established that neither affords him any legal rights or obligations concerning the child. Therefore, juvenile officers' petitioning to terminate his parental rights is superfluous.

Guaranteeing notice to the man registered with the putative father registry and eliminating the notice requirement for an identified *or* unknown putative father who has not registered or otherwise asserted his paternity has serious implications for all the parties involved. Such a policy benefits the earnest unwed putative father, but at a price of cutting off the rights of lackadaisical and uninvolved biological dads. Any putative father may protect his own rights by mailing a postcard indicating a notice of intent to claim paternity to the Bureau of Vital Records in Missouri. Doing so assures him of receiving notice of all proceedings which may affect his substantive parental rights, such as an adoption proceeding or termination of his parental rights. However, the policy has extreme repercussions for the absent putative father who has taken no steps to assert his paternity and/or does not know of the existence of the putative father registry whereby he can protect his constitutional rights. Such a putative father is susceptible to losing his ability to assert parental rights, even without notice to him.

¹⁰⁹ See *In re Loveheart*, 762 S.W.2d 32, 34 (Mo. 1988).

The policy assumes that unwed fathers who are not involved in their children's lives but nonetheless wish to retain parental rights will register and establish paternity legally. Such an unwed man is on notice of the possibility of becoming a father because of his having had sexual relations with a woman.¹¹⁰ In many states, less than 100 men register each year, primarily because the men do not know about the registries.¹¹¹ Over 89,000 babies were born out of wedlock in Florida alone in 2004,¹¹² and the state's failure to protect parental rights of so many putative fathers may seem facially unfair.

However, when the child's interests in being expeditiously placed in a stable home is balanced against the interests of an apathetic putative father who has not mailed in a postcard to the registry, the balance should favor the child's need for permanency and stability. The potential for unfairness to the putative father is mitigated when one considers that only the father who has taken no affirmative steps to assert his paternity or to provide custodial or financial assistance to his child will be excluded from notice of proceedings that affect his parental rights.¹¹³ As indicated, the Supreme Court has held that Due Process requires that the putative father who has taken affirmative steps to acknowledge his paternity receive notice of termination of parental rights and adoption proceedings.

Above all, courts' utmost concern should remain focused on securing a child's best interests. Sometimes that best interest is not satisfied by a child's staying with his or her biological parents. In these instances, adoption proceedings must be conducted so as to protect the rights of biological parents first. Where the putative fathers have neglected their parental

¹¹⁰ Lewin, *supra* note 3.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ The unfairness is further mitigated by the fact that Missouri's Putative Father Registry statute contains an exception for failure register or assert paternity due to the mother's fraudulent behavior. *See* Mo. Rev. Stat. § 192.016.7(1) (2000).

duties, court proceedings must strive to be expeditious and avoid long and heart-wrenching battles between the natural and adoptive parents.¹¹⁴

V. CONCLUSION

Missouri's statutory scheme and case law provide ample protection for the earnest and vigilant putative father. Thus, expediting the adoption process when an unwed father has shunned his parental responsibility and failed to assert his rights is fair and best serves the child's best interests. Dependency proceedings have serious and lifelong consequences for both natural parents and their children. Missouri's putative father registry policy is the best way to conduct such proceedings so as to protect an unwed father's rights to his child, while insuring that the child is promptly placed in a stable adoptive home.

LAUREN STANDLEE

¹¹⁴ Many people are all too familiar with the battles over Babies Jessica and Richard. These were respectively two and four year court battles over custody of the children. Both children were eventually returned to their natural parents due to the adoptive parents' defective proceedings at early stages of the adoption process.