IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
FAMILY COURT DIVISION

John Doe, Parent, Natural Father Next Friend of BABY DOE, a minor child Plaintiffs, v. Jane Doe , Defendant. And IN RE THE ADOPTION OF: BABY DOE D.O.B. April X, 20X Dr. Doe and Drs. Doe (Does) Petitioners,	)	Case No. 3 consolidated with Case No. XXXX-FCXXXX Division 16

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

On April 25, 26, 29, and May 2 and 3, 2011, this matter came to trial upon Petitioners' Does Petition for Adoption April 6, 2010. By order of the Court the adoption and paternity were consolidated. The Court ordered that the adoption be tried in phase I of a trial and the Paternity action would be tried in phase II of the trial. Petitioners Dr. Doe and Drs. Doe were present in person and were represented by Mr. Doe. Natural Father was present in person and was represented by Mr. Doe and Mr. Doe. The child was not present but was represented by Guardian Ad Litem Mr. GAL.

The Court heard the evidence and took the matter under advisement. Now on this day the Court enters the following Findings of Fact and Conclusions of Law.

INTRODUCTION

1. The facts of this case shock the justice system that the people of Missouri enjoy. The Court finds the actions of officers of this Court to be at minimum disturbing to the administration of justice.
2. Mr. Doe, attorney for the biological mother, by his own sworn testimony, admits that a plan and strategy was followed by counsel and the parties not to tell John Doe, the natural father, the following: (1) about the birth of his child, (2) that an adoptive resource had been selected, (3) that the parties proceeded to court to terminate mother's parental rights, and (4) to transfer custody of John Doe's child to the adoptive resource.
3. The justification of Mr. Doe, by his own testimony under oath, was that the law did not require that a putative father be notified. In addition, by not giving the father notice, the parties hoped that the statutory timelines, detrimental to father, would run against John Doe, the natural father.
4. These actions took place despite these facts: (1) that this child was from a three-year college relationship of mother and father, (2) that John Doe retained an attorney, before birth, to advise Mr. Doe, attorney for biological mother, that John Doe would not consent to an adoption, (3) that at every opportunity John Doe, natural father, asserted that he would not consent to an adoption and (4) that before birth and after birth John Doe was in almost daily contact with the mother, by text messages, and was deceived so he would not know his child had been born
5. The results of these actions were: (1) that a natural father, John Doe, would not know to be present at the birth of his child, (2) would not see his child until the child was

two months old, for one hour supervised, (3) would not see the child for a second time until the child was five months old, and then (4) would not have unsupervised visits with his child until by order of this Court when the child was eight months old.

PROCEDURAL HISTORY

6. On April 5, 2010 a Petition for Transfer of Custody and Adoption was filed by the Petitioners Does. An Order entered April 6, 2011 by Commissioner Doe granting Temporary Transfer of Custody to the Petitioners Does.
7. On April 6, 2010, biological mother, Jane Doe also appeared before Commissioner Doe and consented to the Termination of her Parental Rights and adoption in Case No. XXXX-JUXXXXX.
8. On May 25, 2010 natural father John Doe filed a Motion to intervene. The motion to intervene was granted by Commissioner Doe on May 26, 2010.
9. On May 28, 2010 a Motion for Change of Judge was filed by John Doe.
10. On June 2, 2010 Commissioner Doe-2, Division 41, was assigned the case.
11. On August 26, 2010 a Motion for Change of Judge was filed by Does.
12. After a recusal by Division XX, on October 18, 2010 this Court was assigned.
13. On November 5, 2010 the matter came before the Court for a Trial Setting. The matter was set for trial on March 3 and 4, 2011.
14. On March 3, 2011 the matter was continued by the Court because of the issues in the case that were now controlled by the Missouri Supreme Court decision decided in February of 2011. *C.M.B.R. v. E.M.B.R.*, No. SC91141 (opinion issued January 25, 2011).
15. The trial was reset for April 25, 2011. The Court ordered the trial of the consolidated

cases in two phases: Phase I, the adoption, Case No. 1016-FC03025; Phase II, the Paternity, if needed, Case No. 1016-FC04965.

FINDINGS OF FACT

16. Baby Doe (hereafter referred to as the "Child"), is a minor male child, who was born on April X, 20XX, at XXXX o'clock p.m., at St. Luke's Hospital of Kansas City, located in the City of Kansas City, County of Jackson, State of Missouri.
17. The Petitioners, Dr. Doe and Drs. Doe are husband and wife, and residents of Clinton County, Missouri, residing at XXXXXXXX XXX, Missouri.
18. The birth mother of the Child is Jane Doe, an unmarried person over the age of eighteen (18) years, who resides in Jackson County, Missouri, at XXXXXXXX XXX, Missouri, with her parents, Mr. Doe and Mrs. Doe.
19. The intervenor/putative father of the Child is John Doe, who is over the age of eighteen (18) years, who resides in Johnson County, Kansas, at XXXXXXXX XXX, Kansas, with his parents, Mr. Doe and Mrs. Doe, and his sisters, Janet Doe and Janet Doe.
20. The Intervenor, John Doe, and the Petitioners Does have not participated in any capacity in any other litigation concerning the custody of Baby Doe in this or any other state; have no information of any custody proceeding concerning Baby Doe pending in this or any other state; and know of no other person not a party to these proceedings who has physical custody of Baby Doe or claims to have custody or visitation rights with respect to Baby Boy Doe.

21. Neither the Indian Child Welfare Act, 25 U.S.C. Section 1901, et. seq. nor the Interstate Compact on Placement of Children, RSMo Section 210.620, et seq. are applicable to these matters.
22. Jane Doe, Mother, was born November X, 19XX, and grew up in Kansas City, Missouri. She is a high-school graduate and has earned college credit hours from Baker University located in Baldwin, Kansas.
23. Jane Doe, Mother, is currently employed part-time by a veterinarian.
24. John Doe, Father, was born September XX, 19XX, grew up in Shawnee, Kansas, and is one of four siblings. He is a high school graduate and has earned a Bachelor of Science in Sports Administration from Baker University located in Baldwin, Kansas in May 2010.
25. John Doe is currently employed full-time by the Johnson County, Kansas Parks and Recreation Department. John Doe also works part-time for the Hy-Vee grocery store chain, a part-time job he has held since high school and through college.
26. Mother, Jane Doe and father, John Doe, had been involved in a monogamous relationship for over two and ½ years, beginning approximately January, 2007 and ending in March, 2010. During the course of this relationship, they periodically engaged in sexual relations.
27. As late as October or early November, or as early as September 2009, John Doe learned from Jane Doe that she was pregnant. Jane Doe never shared with John Doe what occasion of intercourse she felt resulted in conception. Neither Jane Doe nor John Doe shared that Jane Doe was pregnant with their parents or friends. Jane Doe hid her pregnancy from her parents and friends by wearing loose clothing.

28. Before John Doe had graduated from Baker University in the spring of 2010, Jane Doe had stayed with him in his apartment in Lawrence, Kansas. John Doe would also stay with Jane Doe at her parents' home, and he had been given a key to their house. The relationship was not casual, but rather one that became more and more serious. In January, 2010, John Doe moved back in with his parents. Jane Doe continued to live with her parents.
29. After learning of the pregnancy, John Doe and Jane Doe first discussed an abortion. When financial means would not permit an abortion, they planned on raising the child as an unmarried couple. Pursuant to this plan they went to look at baby clothing and furniture.
30. On March 5, 2010, Jane Doe's parents confronted Jane Doe and questioned if she was pregnant. Jane Doe admitted to her parents that she was pregnant. On March 5, 2010, John Doe also told his parents of Jane Doe's pregnancy on March 5, 2010.
31. On Friday, March 5, 2010, Jane Doe's parents discussed with John Doe and Jane Doe options of living together and raising the child.
32. On the same day, March 5, 2010, John Doe accompanied Jane Doe to her first prenatal visit. Jane Doe was not truthful about this to the Court in the adoption hearing on April 6, 2010 when she stated, in response to questioning by Mr. GAL, that Intervenor John Doe had never attended a medical appointment with her concerning the baby. Page 11, l. 25.
33. This initial meeting of John Doe and Jane Doe was followed by a meeting on (Saturday) March 6, 2010 between Jane Doe John Doe and their respective parents. The meeting was a complete failure in coming to an agreement as John Doe proposed

that he would parent and raise his child from his home and that Jane Doe could participate, if she wanted. When the subject of adoption was brought up by the Doe family, John Doe told the Doe family that he did not agree to the adoption of his unborn child.

34. The next day, on Sunday, March 7, 2010, Jane Doe's father appeared at John Doe' workplace, the Hy-Vee grocery store. Mr. Doe threatened John Doe with a restraining order if he had further contact with Jane Doe or would come to their house. Mr. Doe demanded and received the key to his house. John Doe was notified that his number would be blocked and his calls would be prevented to the cell phone of Jane Doe. The Court notes that John Doe, following the request of Mr. Doe, never went to their home or spoke in person or by phone to Jane Doe. The only exception was going to the Doe house to pick up his belongings and to have a last conversation with Jane Doe.
35. Around March 16, 2010, Jane Doe's mother called Mrs. Doe, the mother of John Doe, and told her that Baby Doe's expected delivery date was April 8, 2010. Jane Doe's mother also called Mrs. Doe to ask if she and her husband would adopt the baby. When Mrs. Doe told Jane Doe's mother that they would not adopt the baby, because their son wanted to be the father of his son, Jane Doe's mother told her that they would no longer speak to the them, and any further communication would need to come through their lawyer, Mr. Doe
36. John Doe and his parents engaged attorney Mr. Doe on or about March 8, 2010. Attorney Doe contacted Attorney for Jane Doe, Mr. Doe, and told Mr. Doe that John

Doe did not consent to an adoption. Mr. Doe gave assurances to Attorney Zimmerman that there would be no adoption without John Doe' consent.

37. March 22, 2010, at the recommendation of Attorney Mr. Doe, Jane Doe and John Doe met with Hillary Doe, owner of Adoption XXXXX, Inc., for counseling. Attorney Mr. Doe did not advise Attorney Mr. Doe that Hillary Doe was an Adoption agency owner. At this counseling session, John Doe reiterated to Hillary Doe and Respondent Doe that he wanted to be a father, raise his child, and did not consent to the adoption of his child.

38. In late March 2010, through a text message, Jane Doe informed John Doe that the due date for the birth of Baby Doe had changed to May, 2010. She explained to John Doe that the doctor had told her that the baby's lungs were still not developed.

39. Jane Doe's statement of deceit regarding the extended due date of the child is corroborated by a number of circumstances: (1) On March 26, 2010 Jane Doe met and selected the Dr and Drs. Doe as the adoptive resource for the child, (2) As late as May 3, 2010, Jane Doe was asked by Janet Doe, sister of John Doe, when the due date was, Jane Doe responded that, based on ultrasounds, if the doctors thought she was ready, they would induce labor, (3) As late as May 3, 2010 Jane Doe admitted to Aaron Doe that she had not told John Doe of the child's birth and would not tell him until June 3, 2010 because that is when the adoption would be finalized, (4) as late as May 4, 2010, upon receipt of a letter from the attorney for John Doe, Jane Doe tells John Doe that this stress is not good for pregnant women, (5) on May 4, 2010 Jane Doe asks John Doe if he really thinks she would give the baby up for adoptions, and

(5) on April 19, 16 days after the birth of the child, Jane Doe emails Drs. Doe and tells her that she is sure that John Doe still thinks she is pregnant.

40. Baby Doe was born in Missouri on April X, 20XX, at St. Luke's Hospital in Kansas City. Jane Doe intentionally failed to identify John Doe as the father of her son on the birth certificate she completed.

41. Jane Doe sent and received text messages from John Doe daily in April, 2010 (except for the period from April 6, 2010 when Defendant Doe consented to the termination of her parental rights through April 9, 2010). There were text messages on April 3, 2010, the date that Baby Doe was born. Jane Doe never told John Doe that his son had been born. The failure to tell John Doe the date of the birth was at the advice of counsel Mr. Doe

42. At the hearing consenting to the termination of her parental rights, held on April 6, 2010, Jane Doe was not truthful or told half truths to the Court. Jane Doe told the Court that John Doe had not stepped forward since the birth of the child, P. 9, l. 8, knowing that she had misled John Doe about the due date and that he did not know the child had been born. Jane Doe, at p. 9, l. 21, that she had made no attempt to defraud or misled anyone in this matter when in fact she had mislead John Doe about the due date. At page 12, l. 3 of that same transcript, Defendant Jane Doe stated that Intervenor John Doe had failed to come to the hospital, suggesting that he knew of the birth of his child, when she knew to the contrary. At page 20, l. 8, Defendant Jane Doe represented that Intervenor John Doe had made no attempt to communicate with her since the baby was born, knowing that they were in constant text messaging communication.

43. The extent of Jane Doe's intentional concealment of the birth of the child is further corroborated in her emails to Drs. Doe: (1) on April 10, 2010, seven days after the birth of the child, Jane Doe tells Drs. Doe that Doe (referring to her attorney Mr. Doe) says that if John Doe does not get on the registry, he is really going to have a really hard time winning in any court, especially with our judge, (2) on April 19, 2010, sixteen days after the birth, Jane Doe tells Drs. Doe that she has not heard any news. The messages she is receiving are not about the baby. Jane Doe confirms that sometimes John Doe asks how the baby is but that she is sure that John Doe still thinks she is pregnant, (3) on May 2, 2010, twenty nine days after the birth of the child, Jane Doe tells Drs. Doe that when John Doe finds out and processes everything that has happened, he will want to meet Drs. Doe and maybe be an adult about the situation or make the best of it even though he didn't get his way.
44. There was a disclosure by Jane Doe to Aaron Doe, on May 3, 2010, that the baby had been born and that she would not tell John Doe until June 3, 2010. Aaron Doe reached out to John Doe through his sister Janet Doe and informed them of the disclosure. John Doe immediately consulted with his attorney. A correspondence from Mr. Doe immediately went to Jane Doe on May 4, 2010; one day after John Doe discovered that his child might already be born.
45. Seven days later, on May 11, 2010, the attorney for the Petitioners Dr. and Drs. Doe responded to the letter written to Jane Doe from the attorney Mr. Doe. The letter admitted that John Doe' son had in fact been born on April 3, 2010 and then been placed for adoption with the Petitioners Dr. and Drs. Doe.

46. Only then did John Doe begin to learn that the adoption and termination of parental rights proceedings (XXXXXX) were initially filed on April 6, 2010. At the hearing held before this Family Court on April 6, 2010, Jane Doe's consent for termination of her parental rights was accepted by the Court (Case #XXXXXXXX).
47. There was testimony adduced at this April 6, 2010 hearing from Defendant Doe admitting to a strategy concerning Intervenor John Doe's refusal to consent to the adoption that had been developed between her, her parents, her attorney and later adopted by the Petitioners Dr. and Drs. Doe. Petitioner Drs. Doe testified concerning this apparent strategy and Petitioners' intent to terminate Intervenor John Doe's parental rights without his consent. This strategy was called a plan by Attorney mr. Doe in his testimony to the Court. The plan was not to allow Jane Doe to advise John Doe about the birth of the child, hoping he would not register with the Putative Father Registry and hoping that the 60 days would expire after the birth to claim that John Doe had abandoned his child.
48. The Petitioners Dr. and Drs. Doe were fully aware of the risks to them associated with the above strategy. In the April 6, 2010 hearing, Mr. Doe specifically advised Drs. Doe that he wanted to make sure she understood that if John Doe came forward within an appropriate time frame and is able to establish paternity, it would be unlikely that the Court would ever have the power or ability to terminate the parental rights of John Doe.
49. The strategy adopted by Jane Doe and the Petitioners Dr. and Drs. Doe was to conceal his son's birth from John Doe. They were successful in concealing the birth from him until it was finally admitted by the attorney for the Petitioners Dr. and Drs.

Doe by his call on May 11, 2010 to the attorney for John Doe and followed by his letter of May 12, 2010. The Court finds that John Doe did not learn of his son's birth within the meaning of the law as a result of the deception that was perpetrated upon him.

50. The Court finds that credible evidence establishes that Jane Doe and Petitioners Dr. and Drs. Doe by their specific actions, and acts of omission, misrepresented or concealed the birth of John Doe' son from John Doe.

51. Within one day of Mr. Doeconfirming the birth of his son, John Doe completed his Notice of Intent to Claim Paternity on May 13, 2010. This Notice of Intent to Claim Paternity was received by the Putative Father Registry on May 14, 2010. Within nine days of Mr. Doe confirming the birth of his son, John Doe, on May 21, 2010, filed his action styled Baby Doe, a minor child by and through John Doe, parent, natural father and next friend v. Jane Doe, (1016-FCO4965) asserting his paternity and rights as a parent of his son Baby Doe, including the right to the physical and legal custody of his son.

52. On May 25, 2010, Intervenor John Doe filed his entry of appearance, or in the alternative, his motion for leave to intervene and filed his answer in the adoption proceeding, which was granted on May 26, 2010 and was treated as filed as of the date of the order. On May 25, 2010, Intervenor John Doe also filed a motion for the custody, or in the alternative, for visitation, with his son. On May 28, Intervenor John Doe also filed a motion for expedited setting of a pretrial conference. A case management conference was set for July 22, 2010.

53. In the interim, Intervenor John Doe appealed to the Petitioners Dr. and Drs. Doe to allow him to see and visit with his son. On June 14, 2010, almost 2 and ½ months after the birth of the child, the Petitioners Dr. and Drs. Doe first allowed Intervenor Ohmes to see and hold his son for one hour at the office of Adoption Option, Inc.
54. At the case management conference held on July 22, 2010, the Court ordered visits between Intervenor John Doe and his son, as deemed appropriate by Mr. GAL, the guardian ad litem. Until his paternity was established by testing, the guardian ad litem allowed Intervenor John Doe only 1.5 hours of supervised visits on Tuesday of each week, for which he was to pay one-half of the expense of the supervisor, but told Intervenor John Doe that once his paternity was confirmed by testing, his visitation would then be unsupervised and more frequent.
55. After John Doe' paternity was established by test results received August 11, 2010, Intervenor John Doe repeatedly requested, without success, that the guardian ad litem allow him unsupervised, extended and more frequent visitation. These requests were: August 11, August 20, August 26, September 3, September 13, October 6, October 26, and November 15.
56. These requests to the guardian ad litem occurred with the backing of Mrs. Doe, the therapist who had supervised all initial visits of John Doe. By October she had given a recommendation that John Doe receive unsupervised visits.
57. After a hearing held on January 4, 2011, at the request of John Doe, the Court ordered John Doe receive unsupervised visitation from 10:00 a.m. to 5:00 p.m. each Saturday and on certain holidays pending the final hearing on these adoption and paternity

matters. John Doe would finally receive unsupervised visitation with his son for the first time when his child was eight months old.

58. John Doe has consistently and repeatedly demonstrated his desire to be involved and participate in parenting his son. John Doe has consistently contributed to the support of his son. Beginning the month of May 2010, when he first learned his son had been born, and each month thereafter Intervenor John Doe has paid Two Hundred Dollars ($200.00) to the Petitioners Dr. and Drs. Doe. The Petitioners Dr. and Drs. Doe have failed or refused to cash his checks.

59. Jane Doe has consented to the termination of her parental rights to Baby Doe. This consent was accepted by this Court on April 6, 2010, in case number 1016-JU000343. Defendant Doe has no parental rights concerning Baby Doe.

60. It is in the best interests of Baby Doe that his adoption by the Petitioners Dr. and Drs. Doe should be denied. It is in the best interests of Baby Doe that he be united with his father, John Doe.

61. The Court has considered the testimony of the bonding assessment presented by the Petitioners Dr. and Drs. Doe. The Court finds credible the testimony that the child has bonded with the Dr. and Drs. Doe. The Court does not find credible the testimony regarding future harm to the child.

62. Intervenor Ohmes has incurred expenses and paid or incurred attorney fees in these adoption proceedings for services provided by his attorney, Mr. Doe In assessing the attorney's fees the Court takes into consideration the following factors: (1) Petitioners Dr. and Drs. Doe were told by Jane Doe that John Doe was not told of the birth of the child, (2) by her own email, Drs. Doe emails Jane Doe that she prays

these next two months will pass uneventfully, acknowledging that she knew the concealment that Jane Doe was perpetrating on John Doe, (3) the Dr. and Drs. Doe knew of the risks of going forward trying to conceal from John Doe the birth of his son. This included knowing details about the Missouri Supreme Court case of *Lentz,* which dealt with the issue of the Putative Father Registry, (4) Petitioners Dr. and Drs. Doe were specifically advised by their attorney that if John Doe came forward at an appropriate time frame, the Court would not have any basis to terminate the parental rights of John Doe, (5) Petitioners chose to proceed with the adoption even though John Doe came forward thirty-one (31) days after the birth of his child, (6) the litigation that has now lasted eleven (11) months was a course that Petitioners chose to take, (7) John Doe has had to litigate and win even visitation with his son, (8) by the Petitioners' own testimony, they have paid attorney for Jane Doe Twenty Thousand Dollars ($20,000.00) for a minimal role in the litigation, and (9) the Petitioners Dr. and Drs. Doe' financial ability to pay.

63. The Court finds the reasonable attorneys fees to be paid by the Dr. and Drs. Doe to John Doe, pursuant to Section 453.030.13. R.S.Mo., in the amount of Thirty-eight Thousand Dollars ($38,000.00).

64. John Doe has incurred expenses and paid or incurred attorney's fees in the paternity proceedings for services provided by his attorney, Mr. Doe The Court will take these attorney's fees in conjunction with the second phase of the trial in the Paternity action.

65. The Court finds that John Doe is a fit and willing father. The welfare and best interest of the child dictated that the child should be reunited with his father, John Doe.

CONCLUSIONS OF LAW

The Court makes the following conclusions of law:

66. John Doe was properly allowed to intervene in the adoption proceedings as declared by the Missouri Supreme Court in *In re Adoption of N.L.B. vs. Lentz*, 212 S.W.3d 123 (Mo. 2007). John Doe is not a mere biological parent that has not taken the opportunity to be part of his son's life. The credible evidence established that John Doe is the biological father of Baby Doe (see interlocutory order dated January 11, 2011) and that John Doe has made a reasonable showing of his fatherly concern for his son, *In re Adoption of N.L.B. vs. Lentz*, 212 S.W.3d 123 at 129 (Mo. 2007). The interest of parents in the care and custody of their children "is perhaps the oldest of the fundamental liberty interests recognized by the United States Supreme Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The U.S. Supreme Court has declared that a father, such as John Doe, that comes forward to participate in the rearing of his child is to be afforded substantial protection of his interest in personal contact with his child under the Due Process Clause of the U.S. Constitution, *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Lehr v. Robertson*, 463 U.S. 268, 103 S.Ct. 2985, 77 L.Ed2d 614 (1983; *Caban v. Mohammed*, 441 U.S. 380, 392, 99 S.Ct. 1760, 1768, 60 L.Ed.2d 297 (1979); *Quilloin v.Walcott, 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978).* The United States Supreme Court has recognized that a "natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right." *Santosky v. Kramer*, 455 U.S. 745, 758-759, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). It is an interest that "undeniably warrants deference and, absent a powerful

countervailing interest, protection." *Lassiter v. Department of Social Servs. of Durham Cty*., 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). Under our statutes, the birth family is required to be kept together whenever possible, and the constitutional rights of the child and parent are to be respected, *C.M.B.R. v. E.M.B.R.*, No. SC91141 (opinion issued January 25, 2011).

67. Jane Doe, through her attorney, Mr. Doe assured John Doe, through Jeff Zimmerman, that no adoption would take place without his consent, inducing him to forego protecting his parental rights under the statute, to file with the Putative Father Registry within fifteen (15) days after his child's birth, or to file a paternity action. It was reasonable for John Doe to have believed that there was going to be no adoption. Said fraud was of such a nature as to necessarily excuse John Doe from the timely filing required by the statute, based on the due process clause of the United States and Missouri Constitutions. The law recognizes that "[i]t is conceivable, however, that a situation may arise when it is impossible for the father to file the required notice of paternity prior to the statutory bar, through no fault of his own. In such a case, due process requires that he be permitted to show that he was not afforded a reasonable opportunity to comply with the statute." *Ellis v. Social Services Dept. of Church of Jesus Christ of Latter-Day Saints*, 615 P.2d 1250 at 1256 (Utah, 1980). The *Lentz* court further stated, "the fact that consent from those fathers need not be obtained does not necessarily mean that they are deemed to have consented to the adoption. Nothing in the statute precludes these putative fathers from otherwise [**13] timely challenging the adoption and the termination of their parental rights incident to the adoption, and the fact that they were not required to give consent to the adoption

because they failed to file an action for paternity or to file with the putative father registry is but one factor to be considered as part of the challenge." *In re Adoption of N.L.B. vs. Lentz*, 212 S.W.3d 123 at 127.

68. The Petitioners and Jane Doe intentionally concealed from John Doe the filing of the adoption petition, and the birth of his child, to prevent him from exercising his rights under §192.016.7(1) R.S.Mo. Thus, as in *Ellis, supra*, a statute which may facially comply with due process requirements was manipulated by the mother and adoptive parents who conspired against the natural father so as to deny Intervenor John Doe his due process rights.

69. The Court also finds that even upon an untimely filing with the Putative Father Registry, the Supreme Court of this state has ruled such circumstances are just one factor to be considered in conjunction will all the evidence. The Missouri Supreme Court has stated that the trial court should permit all evidence pertaining to the ultimate and overriding ground for adoption required in *section 453.030* R.S.Mo - "the welfare of the person sought to be adopted." And in that regard, the notion of the welfare of the person sought to be adopted - the child – is informed by the fundamental proposition [**15] and presumption that maintaining the natural parent-child relationship is in the best interests of the child. *In the Interest of C.L.M., 625 S.W.2d 613, 617 (Mo. banc 1981)*. The notion is further informed by this Court's holding, based on *Article I, Sections 2* and *10, of the Missouri Constitution*, that "the same presumption of fitness afforded married fathers in parental termination proceedings be afforded to natural fathers after a reasonable showing of fatherly concern in such cases." *State ex rel. J.D.S. and J.D.M. v. Edwards, 574 S.W.2d 405,*

409 (Mo. banc 1978). Thus, the adoption hearing must accommodate all of these concerns. *In re the adoption of: N.L.B., M.T. and S.T. v. Lentz*, 212 S.W.3d 123 (Mo.2007).

70. The rules of equity apply to proceedings before the Juvenile Division of the Family Court, S.Ct. Rule 110.03. The Petitioners Dr. and Drs. Doe were without clean hands in gaining custody of John Doe' son by representing that John Doe' consent to the adoption was anticipated, when it was known that such was not true, and by their participation and acquiescence in Jane Doe's active concealment of his son's birth. Jane Doe was not truthful to this Court about her communications with John Doe. On the date of the child's birth, Jane Doe was communicating with John Doe, and she did not tell him that he had a son. This Court also has the inherent power to remedy a fraud practiced on the Court, and the fraud exceptions set forth in §192.016.7(1) R.S.Mo of the statutory framework for the Putative Father Registry do not preclude the consideration by the Court of other instances of fraud or misrepresentation. The Missouri Supreme Court has held that statutes which are remedial in nature must be liberally construed so as to effect their beneficial purpose. *Abrams v. Ohio Pacific Express*, 819 S.W.2d 338, 341 (Mo., 1991); *Martinez v. State*, 24 S.W.3d 10 (Mo. App. E.D., 2000). Just because the fraud practiced upon the natural father and this Court by the mother and the Dr. and Drs. Doe does not fit neatly into one of the statutory exceptions does not mean this Court cannot remedy that fraud. "Remedial," as defined by Black's Law Dictionary is "intended to remedy wrongs or abuses, abate faults, or supply defects." A "liberal" construction is ordinarily one that makes the

statutory rule or principle apply to more things or in more situations than would be the case under a strict construction. *Martinez v. State*, 24 S.W.3d 10 at 19.

71. Petitioners Dr. and Drs. Doe' reliance on §453.061 R.S.Mo. is misplaced. §453.061 R.S.Mo. provides that a putative father is presumed to know the approximate nine (9) month human gestation period from the date of intercourse. This presumption should not apply in this case because John Doe and Jane Doe frequently engaged in intercourse. On any one of these occasions the conception may have occurred. Father did not learn of the pregnancy until October/November, 2009. When the human gestation period is two hundred eighty (280) days, the expected delivery date could have been in either April or May, 2010. The fifteen (15) day period should not apply because of the deception practiced here when Father continuously communicated with Jane Doe, prior to and after the birth of his son, and in each communication she concealed his son's birth from him. The participation and acquiescence by Petitioners Dr. and Drs. Doe in Defendant Doe's fraud concerning the birth of Father's son, that is, that she was still pregnant in May 2010, when in fact she had given birth on April 3, 2010 cannot be overcome by the §453.061 R.S.Mo. presumption concerning a putative father's notice of conception where, as here, the purpose of such statute is frustrated by the fraud and deception that was practiced on John Doe. The putative father statute should not reward a birth mother or adoptive parents who mislead or refuse to notify the father of the either his child's birth and adoption so that he then unknowingly fails to file with the Putative Father Registry or to file his paternity action in a timely fashion. In every other area of the law, due process of law is a sacred right – notice of pending proceedings. It should be no

lesser of a standard when, as here, the fundamental right is the declared public policy of this state, that is, the birth family is required to be kept together whenever possible, and the constitutional rights of the child and parent are to be respected, *C.M.B.R. v. E.M.B.R.*, *supra*.

72. Attorney for John Doe, Mr. Doe, was told there would be no adoption without the consent of John Doe by Attorney for Jane Doe, Mr. Doe. The failure to correct this representation because there was a strategy or change in strategy to remain silent as to the birth and adoption because the statutory framework created no such affirmative obligation contradicts and frustrates notions of due process.

73. John Doe has exhibited his parental concern and he should be reunified with his son consistent with the public policy of this state, which is that a determination of the best interest of the child is driven by the fundamental proposition and presumption that "maintaining the natural parent-child relationship is in the best interests of the child and that "the same presumption of fitness afforded married fathers in parental termination proceedings be afforded to natural fathers after a reasonable showing of fatherly concern in such cases. *In re Adoption of N.L.B. vs. Lentz*, 212 S.W.3d 123 at 129.

74. It is in the best interests of Baby Doe that his adoption by the Petitioners Dr. and Drs. Doe be denied and legal and physical custody is awarded to John Doe.

75. The best interests of Baby Doe are served by his immediate and continuing contact with his father and his custody should be immediately transferred from the Petitioners Dr. and Drs. Doe to John Doe. This Court is also mindful that Missouri cases have consistently declared that third -party custodians should not be rewarded for limiting a biological

parent's contact with his son, *In re the Adoption of N.L.B*, 274 S.W.3d 619 (Mo. App. W.D. 2009) at fn. 6 (citations omitted).

76. John Doe should recover the expenses and fees of Mr. Doe from the Petitioners Dr. and Drs. Doe. John Doe' right to recovery of these fees and expenses from Petitioners Dr. and Drs. Doe is statutorily established under the law applicable to proceedings for adoption. §453.030 R.S.Mo.12. provides that a birth parent "shall have the right to legal representation and payment of any reasonable attorney's fees incurred throughout the adoption process." §453.030.13. R.S.Mo. provides that the "court shall order the costs of the attorney fees incurred pursuant to subsection 12" of this section (§453.030 R.S.Mo) to be paid by the prospective adoptive parents …". The Petitioners Dr. and Drs. Doe have the ability to pay these fees within the meaning and intent of Section §453.030.13. R.S.Mo.

IT IS THEREFORE ORDERED AND ADJUDGED that the Second Amended Petition For Adoption by Dr. and Drs. Doe for the adoption of Baby Doe is denied;

IT IS FURTHER ORDERED AND ADJUDGED that the temporary transfer of custody to Petitioners Dr. and Drs. Doe is herein set aside;

IT IS FURTHER ORDERED AND ADJUDGED that upon receipt of this Judgment, the Petitioners Dr. and Drs. Doe shall deliver and turn over Baby Doe to the care and custody of John Doe;

IT IS FURTHER ORDERED AND ADJUDGED that the transfer of custody shall occur on Wednesday, May XX, 2011 at 6:00pm in the lobby of the Kansas City Missouri Police North Patrol Division, 1001 N.W. Barry Road, Kansas City, Missouri 64155;

IT IS FURTHER ORDERED AND ADJUDGED that John Doe shall have legal and physical custody of the child as the natural biological father of the child pursuant to an Amended Interlocutory Judgment in case number XXXXXXXX;

IT IS FURTHER ORDERED AND ADJUDGED that John Doe be and is hereby awarded judgment, jointly and severally, against Petitioners Dr. and Drs. Doe for the sum of Thirty Eight Thousand Dollars ($38,000.00) for attorney's fees plus his costs, for which let execution issue;

IT IS SO ORDERED

DATED: _____, 2011

_____
MARCO ROLDAN, JUDGE