



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**DAVID C., KIM C. v. ALEXIS S., A.C.  
CV-15-0302-PR**

**PARTIES:**

*Petitioners/Appellants:* David C. and Kim C. (“Adoptive Petitioners”)

*Respondent/Appellee:* Alexis S. (“Biological Father”)

**FACTS:**

Biological Father began a relationship with A.C.’s birth mother (“Biological Mother”) in October 2012, and they moved in together two months later. In January 2013, the couple learned that Biological Mother was pregnant. In early March, however, Biological Mother moved out. Biological Father tried to stay in touch with her and asked for updates about the pregnancy, but Biological Mother cut off all contact within days of leaving. Biological Father contacted Biological Mother’s relatives to inquire about the pregnancy and stated he was “not letting it go,” but the relatives did not respond.

A.C. was born on September 23, 2013. Biological Mother signed an affidavit of paternity falsely stating that A.C.’s biological father was unknown, and four days after the birth, she also signed a consent to adoption in favor of Adoptive Petitioners. A.C. was released from the hospital into Adoptive Petitioners’ care.

On October 8, 2013, one of Biological Mother’s relatives informed Biological Father of A.C.’s birth, and another relative informed him of Biological Mother’s address in Las Vegas, Nevada later that month. Meanwhile, Adoptive Petitioners requested a search of Arizona’s putative fathers registry; the Office of Vital Records returned a certification stating that, as of October 23, 2013 (30 days after A.C.’s birth), there were no notices of claims of paternity associated with A.C.

On November 7, 2013, Biological Father visited Biological Mother in Nevada and asked about the child. Biological Mother refused to disclose any information about A.C. other than falsely stating she had given the child to another man who had proven paternity. Biological Father checked with several Nevada hospitals, but did not find any information about A.C.’s birth.

Less than one week later, on November 12, 2013, Adoptive Petitioners filed a petition to adopt A.C. Given Biological Mother's affidavit stating she did not know the name of any potential father and in the absence of any putative father filing, Adoptive Petitioners served a John Doe notice of the pending adoption by publication beginning on November 25, 2013.

That same day, without knowing about the John Doe notice, Biological Father filed a paternity suit in family court seeking a finding of paternity and custody of the child. *See* A.R.S. Title 25, Ch. 6, Art. 1. Biological Father's petition listed as "unknown" the child's name, address, and place of birth, and listed her date of birth simply as "September 2013." Biological Father personally served Biological Mother two days later, but she never informed Adoptive Petitioners of the paternity suit. On January 6, 2014, Biological Father sought a default judgment after Biological Mother failed to respond to the petition, but the family court continued the case on the inactive calendar because the petition did not contain sufficient information about the child.

On January 15, 2014, the juvenile court granted A.C.'s adoption by Adoptive Petitioners. Adoptive Petitioners had not searched family court paternity filings, and there is no indication that they knew of Biological Father's paternity suit.

On February 26, 2014, Biological Father learned of the John Doe notice by publication, and he immediately filed a request for information in the adoption case. He also used the information in the John Doe notice to amend his petition in the paternity case. In the following months, Adoptive Petitioners intervened in the paternity case and moved to dismiss, Biological Father intervened in the adoption case and moved to set aside the adoption, and the juvenile court took temporary jurisdiction over the paternity case pending resolution of the motion to set aside the adoption. Paternity testing showed that Biological Father was in fact A.C.'s father.

After briefing and argument, the juvenile court granted Biological Father's motion to set aside the adoption and ordered the parties to initiate A.C.'s transition to his care. The court acknowledged that Biological Father had not filed a notice of claim of paternity with the putative fathers registry as required by A.R.S. § 8-106.01. Nevertheless, the court concluded that, because Biological Father had filed a paternity action and timely served Biological Mother while the adoption was pending, he was entitled to notice of the adoption proceedings under A.R.S. § 8-111(5), and that the lack of this statutory notice violated his due process right to seek to parent his child and deprived the court of jurisdiction to issue the adoption order.

Adoptive Petitioners timely appealed from the order setting aside the adoption. In an opinion filed August 27, 2015, the court of appeals affirmed. The court explained that "[a]lthough Biological Father did not file a notice of claim of paternity with Arizona's putative fathers registry, *see* Ariz. Rev. Stat. ("A.R.S.") § 8-106.01, he timely filed and actively pursued a paternity action

after Adoptive Petitioners served notice of the adoption proceedings. Accordingly, we affirm.” Op. ¶ 1.

The court also acknowledged that “in *Marco C.*, a different panel of [the court of appeals] reached a contrary conclusion, holding that registering a notice of claim of paternity one day late rendered a putative father’s consent to his child’s adoption unnecessary under § 8-106.01(E). 218 Ariz. at 218, 221, ¶¶ 3, 18, 181 P.3d at 1139, 1142. The *Marco C.* court held that the putative father could not be excused from strictly complying with the terms of the registry statute, despite his demonstration of his desire to assert his rights and establish a relationship with the child by filing a notice with the registry (albeit one day late) and by filing a paternity action. *Id.* at 219, ¶ 7, 181 P.3d at 1140.” Op. ¶ 20.

The court noted, however, “that the putative father in *Marco C.* failed to timely serve the paternity action on the mother. Thus, even if he had timely filed with the putative fathers registry, he would have been barred from pursuing the paternity action and establishing paternity. *See* 218 Ariz. at 218, 221, ¶¶ 3, 18, 181 P.3d at 1139, 1142; A.R.S. § 8-106(G)(7). Accordingly, the outcome in *Marco C.* would have been the same even if the court had not relied on the putative fathers waiver provision. Nevertheless, as explained above, we respectfully disagree with the reasoning of *Marco C.* insofar as it holds that filing with the putative fathers registry is a necessary precondition in all cases in which a father asserts his parental rights.” *Id.* ¶ 21.

Adoptive Petitioners sought review in this Court.

#### **ISSUE PRESENTED FOR REVIEW:**

Whether the juvenile court abused its discretion and committed reversible error in finding that the Appellee, who failed to comply with the Putative Father Registry requirements, had been denied due process by the Appellants’ failure to provide him notice of the adoption of the minor child and in setting aside the Appellants’ adoption of the child, and whether the Arizona Court of Appeals, Division 1, erred in affirming the setting aside of the Appellants’ adoption of the minor child.

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