

**IN THE SUPREME COURT  
STATE OF ARIZONA**

IN RE TERMINATION OF  
PARENTAL RIGHTS AS TO  
M.N.

Supreme Court No. CV-24-0114-PR

Court of Appeals Division One  
No. 1 CA-JV 22-0227

Coconino County Superior Court  
No. S0300SV202100003

**APPELLANT'S SUPPLEMENTAL CITATIONS TO LEGAL AUTHORITY**

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**FAILING TO REGISTER IS NOT A “GOTCHA” TO  
A FATHER SERVED § 8-106(G) NOTICE**

*David C. v. Alexis S.*, 240 Ariz. 53, 58, 375 P.3d 945, 950 (2016) (“To the extent *Marco C.* suggests that failing to timely register with the putative fathers registry automatically bars a potential father from pursuing a paternity action and establishing paternity, or obviates the need for his consent to adoption, 218 Ariz. at 221 ¶ 18, 181 P.3d at 1142, we disagree.”).

*David C. v. Alexis S.*, 240 Ariz. 53, 58, 375 P.3d 945, 950 (2016) (Service of 8-106(G) notice by publication with a timely paternity action is sufficient to defend against failure to file a Notice of Claim of Paternity; personal service of 106(G) should also be sufficient).

Petitioners served Father by publication of a John Doe notice pursuant to § 8–106(G). By coincidence, Father complied with the statutory requirements set forth in that notice by timely filing his paternity action and serving Mother. Therefore, he did not lose his rights to notice of the adoption hearing or to decline his consent to the adoption. A.R.S. § 8–106(J). Because Father ultimately established paternity, per § 8–106(A)(2)(c), the juvenile court correctly set aside the adoption order.

**THE DEFINITIONS OF PARENT IN THE A.R.S. AND RULES SUPPORT  
THE COURT OF APPEALS RATIONALE IN § II OF ITS OPINION**

**AZ ST JUV CT Rule 102**

(v) “**Parent**” means the child’s *biological*, adoptive, or legal mother or father whose rights have not been terminated. “Parent” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814. (Emphasis added).

**AZ ST JUV CT Rule 302**

(a) “**Parent**” as used in Part III includes those defined as such in *Rule 102* and, except in termination proceedings, also includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian. (Emphasis added).

AZ ST JUV CT Rule 402

(3) “*Parent*” means the child’s ***biological***, adoptive, or legal mother or father whose rights have not been terminated. “*Parent*” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814. (Emphasis added).

AZ ST JUV CT Rule 501

(3) “*Parent*” means the child’s ***biological***, adoptive, or legal mother or father whose rights have not been terminated. “*Parent*” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814. (Emphasis added).

Ariz. Rev. Stat. Ann. § 8-501

10. “*Parent*” means the ***natural*** or adoptive mother or father of a child.

Ariz. Rev. Stat. Ann. § 8-531

10. “*Parent*” means the ***natural*** or adoptive mother or father of a child. (Emphasis added).

Dictionary Definition "**Natural**" Merriam-Webster (“connected by direct genetic relationship rather than by adoption or marriage.”).

Dictionary Definition "**Biological**" Merriam-Webster (“connected by direct genetic relationship rather than by adoption or marriage.”).

**SEVERANCE GROUNDS STATUTES DISTINGUISH BETWEEN STATUTORILY DEFINED PARENT, POTENTIAL FATHERS, AND PUTATIVE FATHERS**

Ariz. Rev. Stat. Ann. § 8-533

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the **parent** has abandoned the child.

2. That the **parent** has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.
3. That the **parent** is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
4. That the **parent** is deprived of civil liberties due to the conviction of a felony if the felony of which that parent was convicted is of such nature as to prove the unfitness of that parent to have future custody and control of the child, including murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.
5. That the ***potential father*** failed to file a paternity action within thirty days of completion of service of notice as prescribed in § 8-106, subsection G.
6. That the ***putative father*** failed to file a notice of claim of paternity as prescribed in § 8-106.01.
7. That the **parents** have relinquished their **rights** to a child to an agency or have consented to the adoption.
8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:
  - (a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to § 8-806 and the **parent** has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

(b) The child who is under three years of age has been in an out-of-home placement for a cumulative total period of six months or longer pursuant to court order and the **parent** has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department.

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the **parent** has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

9. That the identity of the **parent** is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.

10. That the **parent** has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

(a) The child was cared for in an out-of-home placement pursuant to court order.

(b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.

(c) The child, pursuant to court order, was returned to the legal custody of the **parent** from whom the child had been removed.

(d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that **parent's** legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

12. Clear and convincing evidence that the **parent** committed a sexual assault against the petitioning parent and the child was conceived as a result of the sexual assault. If the parent who is the subject of the petition pleads guilty to or is convicted of a violation of § 13-1406 or a violation of an offense in another jurisdiction that if committed in this state would be a violation of § 13-1406, the court may accept the guilty plea or conviction as evidence that the child was conceived as a result of a sexual assault by that parent. For the purposes of this paragraph:

(a) “Oral sexual contact” has the same meaning prescribed in § 13-1401.

(b) “Sexual assault” means intentionally or knowingly engaging in sexual intercourse or oral sexual contact with a person without the consent of that person.

(c) “Sexual intercourse” has the same meaning prescribed in § 13-1401.

### **CONSTITUTIONAL AVOIDANCE**

*McLaughlin v. Jones in & for Cnty. of Pima*, 243 Ariz. 29, 35, 401 P.3d 492, 498 (2017) (“When the Constitution conflicts with a statute, the former prevails. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178, 2 L.Ed. 60 (1803)”)

*Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 862–63, 97 S. Ct. 2094, 2119, 53 L. Ed. 2d 14 (1977) (“If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for ***the sole reason*** that to do so was thought to be in the ***children’s best interest***, I should have little doubt that the State would have intruded impermissibly on ‘the private realm of family life which the state cannot enter.’”) quoting *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (Emphasis added).

*Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 150, 425 P.3d 1089, 1093 (2018) (“Section 8-533(B) also lists three other grounds for termination ***that are facially procedural and thus potentially not indicative of unfitness***. These grounds address situations in which a parent has . . . waived her right to contest severance, and hence a finding of parental unfitness is not required. See § 8-533(B)(5) (a ‘potential father fail[s] to file a paternity action’ after receiving notice under A.R.S. § 8-106(G)’ ); § 8-533(B)(6) (a ‘putative father fail[s] to file a notice of claim of

paternity as prescribed in § 8-106.01’); § 8-533(B)(7) (“[T]he parents have relinquished their rights to a child to an agency or have consented to the adoption.’).”

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“If a statutory ground were not synonymous with unfitness, a contested severance based on such ground would be constitutionally infirm.” (Emphasis added).

*Kent K. v. Bobby M.*, 210 Ariz. 279, 285, 110 P.3d 1013, 1019 (2005) (“We now explicitly reiterate that conclusion, which ensures compliance with the due process requirement that a court find, by clear and convincing evidence, parental unfitness when a severance is contested.”) *quoting Santosky*, 455 U.S. at 769, 102 S.Ct. 1388 (1982)

*May v. Anderson*, 345 U.S. 528, 533, 73 S. Ct. 840, 843, 97 L. Ed. 1221 (1953) (The U.S. Supreme Court long ago noted that a parent’s right to “the companionship, care, custody, and management of his or her children” is an interest “far more precious” than any property right.).

*Troxel v. Granville*, 530 U.S. 57, 57, 120 S. Ct. 2054, 2056, 147 L. Ed. 2d 49 (2000)

The Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property, without due process of the law.” We have long recognized that the Amendment’s Due Process Clause like its Fifth Amendment counterpart, “guarantees more than fair process.” The Clause includes a substantive component that “provides heightened protection against governmental interference with certain fundamental rights and liberty interest”

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the liberty interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interest recognized by this Court.

**PRIMARY PURPOSE OF PROCEDURAL TERMINATION GROUNDS—  
FREEING CHILDREN FOR OUT OF STATE ADOPTIONS**

Ariz. Rev. Stat. Ann. § 8-103

A. Any adult ***resident of this state***, whether married, unmarried or legally separated, is eligible to qualify to adopt children. A husband and wife may jointly adopt children.

B. An adult nonresident of this state, whether married, unmarried or legally separated, is eligible to qualify to adopt a child if all of the following apply:

1. The child is a dependent child and currently under the jurisdiction of the juvenile court in this state.
2. The child currently resides in the home of the applicant.
3. The department placed the child in the home of the applicant pursuant to § 8-548.
4. The department recommends the adoption of the child by the applicant.
5. The foster care review board has reviewed the child's case as required by § 8-515.03, except that the court may not delay the child's adoption if the foster care review board has not reviewed the child's case.

(Emphasis added).

*David C. v. Alexis S.*, 240 Ariz. 53, 55, 375 P.3d 945, 947 (2016) (An adoption matter) (“Unaware of the pending paternity action, ***the [Arizona] juvenile court*** granted A.C.'s ***adoption*** by Petitioners.”) (Emphasis added).

*Marco C. v. Sean C.*, 218 Ariz. 216, 218, 181 P.3d 1137, 1139 (Ct. App. 2008) (An adoption matter) (“On October 5, Sean and Colleen filed a ***petition to adopt*** Baby G. in ***Pima County Juvenile Court.***”) (Emphasis added).

*Cox v. Ponce in & for Cnty. of Maricopa*, 251 Ariz. 302, 304, 491 P.3d 1109, 1111 (2021). (An adoption matter) (“**In Arizona, statutory adoption proceedings** require a mother to notify the potential father of her intention to place the child for adoption. The potential father must file a paternity action and serve the mother within thirty days of receiving the mother's notice if he wishes to be notified of proceedings related to the child's adoption or the termination of his parental rights.”) (Emphasis added).

*Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111, 113, 402 P.3d 996, 998 (2017), as amended (Oct. 31, 2017) (A termination matter) (“On July 30, 2014, the juvenile court terminated the parental rights of “John Doe” and Rachel and **relinquished jurisdiction to Tennessee, the adoptive parents’ home state**, pursuant to A.R.S. § 25–1032(A)(2).”) (Emphasis added).

*Richard M. v. Patrick M.*, 248 Ariz. 492, 495, 462 P.3d 569, 572 (Ct. App. 2020) (A termination matter) (“**Hoping to adopt M.M. in the State of Washington**, where they lived, but recognizing Arizona was M.M.’s home state, Appellees petitioned the Maricopa County Superior Court for termination of Richard M.’s potential parental rights.<sup>1</sup> The petition alleged Richard M. failed to file a paternity action within thirty days of being served with notice of the adoption, a ground for termination pursuant to A.R.S. § 8-533(B)(5)).”

*In re M.N.*, 549 P.3d 200, 201 (Ariz. Ct. App. 2024), review granted in part (Oct. 15, 2024) (A termination matter) (Child was placed in **Texas**).

## **WHO HAS ACCESS TO THE PUTATIVE FATHER REGISTRY**

Ariz. Rev. Stat. Ann. § 8-106.01(A)

. . . The department of health services shall maintain a **confidential registry** for this purpose. The department **shall only respond to written inquiries** of the confidential registry that are received **from the court, the division, a licensed adoption agency or a licensed attorney participating or assisting in a direct placement adoption**. The department shall provide a certificate signed by the state registrar of vital statistics stating that a diligent search has been made of the registry of notices of claims of paternity from putative fathers listing all filings found or stating that no filing has been found pertaining to the father of the child in question.

**LEGISLATURE’S EXPRESS CONSEQUENCES FOR FAILURE  
TO STRICTLY COMPLY WITH IN § 8-106 AND -106.01**

Ariz. Rev. Stat. Ann. § 8-106.01(E)

**E.** A putative father who does not file a notice of a claim of paternity as required under this section waives his right to be notified of any judicial hearing regarding the child's adoption and his consent to the adoption is not required . . .

Ariz. Rev. Stat. Ann. § 8-106.01(G)

**G.** When a certificate provided pursuant to subsection B of this section is received by the court, the division, a licensed adoption agency or a licensed attorney participating or assisting in a direct placement adoption from the department that lists filings of a putative father or fathers, the putative father or fathers who filed timely notices of claims of paternity and who have not previously been served shall be served with the notice prescribed in § 8-106, subsection G. A putative father who fails to file a paternity action pursuant to title 25, chapter 6, article 1<sup>1</sup> within thirty days of completion of service of the notice prescribed in § 8-106 is barred from bringing or maintaining any action to assert any interest in the child.

Ariz. Rev. Stat. Ann. § 8-106(J)

**J.** A potential father who fails to file a paternity action and who does not serve the mother within thirty days after completion of service on the potential father as prescribed in subsection G of this section waives his right to be notified of any judicial hearing regarding the child's adoption or the termination of parental rights and his consent to the adoption or termination is not required.

Ariz. Rev. Stat. Ann. § 8-535(H)

**H.** A potential father who fails to file a paternity action within thirty days after completion of service of the notice prescribed in § 8-106, subsection G waives his right to be

*notified regarding the termination of parental rights and his consent* to the termination of parental rights is *not required*.

**OVERINCLUSIVE OMNIBUS NOTIFICATION  
LANGUAGE IS NOT SUBSTANTIVE**

*Marianne N. v. Dep't of Child Safety*, 243 Ariz. 53, 63-64, 401 P.3d 1002, 1012-1013 (2017) (Eckstrom dissenting)

[I]t is subject to two plausible interpretations: that it conflicts with the statute by adding types of hearings the legislature deliberately omitted, or that it can be harmonized with the statute because it is an over-inclusive, omnibus notice provision, subject to the limitations of the statute. For the reasons that follow, it is best understood as the latter.

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The remaining language in Rule 64(C) comprehensively addresses every possible default scenario: the notice must include advisories for terminations by “motion or petition,” it must be served on “parent[s], guardian[s] or Indian custodian[s],” and it must contain the “location, date and time” of the initial termination hearing. In that context, one can view the rule as *an omnibus notice provision, harmlessly over-inclusive in an effort to provide an exhaustive warning to parents whose rights may be terminated in their absence.*

Ariz. Rev. Stat. Ann. § 8-106(G)

**G.** Notice shall be served on each potential father as provided for the service of process in civil actions. The notice shall be *substantially in the form prescribed in subsection I* of this section . . .

Ariz. Rev. Stat. Ann. § 8-106(I)

**I.** The notice required pursuant to subsection G of this section shall be *in substantially the following form*: . . .

**STATUTES AND RULES REGARDING NOTICE AND SERVICE**

AZ ST JUV CT Rule 351

AZ ST JUV CT Rule 411

AZ ST JUV CT Rule 415

Ariz. Rev. Stat. Ann. § 8-535

Ariz. Rev. Stat. Ann. § 8-535

**PETITIONER’S ARGUMENT REGARDING REMAND IS FRIVOLOUS**

Ariz. Rev. Stat. Ann. § 1-243

A. Except as provided in subsection B, the time in which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is a holiday, and then it is also excluded.

B. In cases in which notice of a decision by the state, any agency thereof or any political subdivision must be given to a petitioner and in which the petitioner must file a notice of appeal of such decision within a time certain of less than ten days, such time shall be computed starting with the day after the day during which the notice of decision is received by the petitioner by personal service or registered or certified mail.

Ariz. Rev. Stat. Ann. § 1-301

A. The following days shall be holidays:

1. Sunday of each week . . .