

# Court Denies Father's Late Request to Overturn Adoption

By DENNIS HEVESI

A young man who did not know he had fathered a son until 18 months after the birth is not entitled to overturn the child's adoption, New York State's highest court ruled yesterday.

The man's former fiancée, who broke up with him without telling him she was pregnant, later gave the child up for adoption. And the man learned of the boy's birth only after he and the mother began dating again. They have since married.

In a 6-to-0 opinion, the Court of Appeals ruled that the father lost his right to consent to the adoption because he did not maintain a relationship with the child and did not immediately contest the adoption — even though he had not known of the boy's existence.

"It's illogical to say that my client did not exercise his rights in time, to require him to prove that he was a loving father when he didn't even know he was a father," the man's lawyer, Paul Brozdowski, said yesterday.

But the court ruled that the child's welfare, the rights of the adoptive parents, the attachments developed in that family and the state's interest in maintaining the integrity of adoptions must take precedence.

In a previous decision, called the Raquel Marie Case, the Court of Appeals overturned a state law that required a natural father contesting an adoption to show that he had publicly presented himself as the father, supported the child or the mother during pregnancy and had lived with the mother for six months preceding the adoption.

## Child's Interest

The Raquel Marie decision found the law unconstitutional because it did not account for a mother who asks the father to leave. Since then, "We have had to go by case law and be guided by the court until a new statute is enacted," said the chairman of the New York State Bar Association's Committee on Adoption, Aaron Britvan.

In the absence of a statute, Mr. Britvan said, yesterday's ruling "up-

holds the principle of the best interests of the children."

The requirement that fathers act promptly after a child is born, yesterday's decision said, is "a logical and necessary outgrowth of the state's legitimate interest in the child's need for permanence and stability."

"To conclude that petitioner acted promptly once he became aware of the child is to fundamentally misconstrue whose timetable is relevant," the court said. "Promptness is measured in terms of the baby's life, not by the onset of the father's awareness."

The case involves a man identified only as Bob O., the natural father; his wife, Carol, who is the natural mother, and the adoptive parents, Joanne and Russell K., all of Suffolk County.

## 3-Month Engagement

In December 1987, Bob and Carol became engaged. Three months later, the engagement ended. "In a nutshell, he wanted to wait and she wanted to

get married right away," Mr. Brozdowski said. "Without telling him she was pregnant, she arranged for a good friend to adopt the baby. The friend had had six miscarriages."

"It was the furthest thing from Bob's mind that the woman he intended to marry would conceal the existence of a child between them," Mr. Brozdowski added. The boy, born in October 1988, was given up for adoption in May 1989.

"Not until almost a year after his son was born did she contact him," Mr. Brozdowski said. "They dated for a few months, and then she told him." Bob immediately took action to contest the adoption.

The lawyer for the adoptive parents, Frederick Magovern, did not dispute those facts. "Robert O., to all appearances, is a fine fellow and may have been a good father," Mr. Magovern said. "However, the child can't wait.

"A child is not a static entity. The child's needs have to be met immediately," Mr. Magovern added. "The child is growing and forming attachments with the adoptive parents, and these attachments are crucial to the child's normal development and emotional well-being."

Mr. Britvan said the decision "will avoid creating havoc in bringing about adoptions."

"If a couple looking to adopt had to be concerned that a birth father could appear and upset the adoption months or years after they took custody, why would anyone put themselves in harm's way?" he said.

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*A man learns he's a father when the child is over a year old.*

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