Public Policy Position
Amicus Brief in the Case of
***In re MGR* (Case No. 157821)**

The Children's Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 459 members. The Children's Law Section is not the State Bar of Michigan and the position expressed herein is that of the Children's Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Children's Law Section has a public policy decision-making body with 19 members. On April 19, 2018, the Section adopted its position after a discussion and vote at a scheduled meeting. 10 members voted in favor of the Section submitting an amicus brief in the case of *In re MGR*, 0 members voted against this position, 0 members abstained, 9 members did not vote.

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IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
(Talbot, C.J., O'Brien and Murray, JJ.)

In re MGR, Minor.

Supreme Court No. 157821
Court of Appeals Nos. 338286; 340203
Oakland Circuit Court
Case No. 2016-842995-AD
Hon. Victoria Valentine

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BRIEF OF *AMICUS CURIAE* CHILDREN'S LAW SECTION OF THE STATE BAR OF MICHIGAN, IN SUPPORT OF APPELLANTS' PROSPECTIVE ADOPTIVE PARENTS' APPLICATION FOR LEAVE TO APPEAL

* * *

THIS CASE INVOLVES PROCEEDINGS UNDER THE ADOPTION CODE WHICH ARE GIVEN PRIORITY BY STATUTE

* * *

By: William E. Ladd (P30671)
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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases **Page**

Statutes

Rules

Other Authorities

STATEMENT OF JURISDICTIONAL BASIS

Amicus Curiae Children's Law Section concurs with the jurisdictional summary set forth in Appellants' Application for Leave to Appeal, and as supplemented in the Guardian Ad Litem's Answer to Application for Leave to Appeal. MCR 7.303(B)(1); MCR 7.305(A), (B); MCR 7.212(D)(2). (Appellants' Application, p 1; Guardian Ad Litem's Answer, p 1).

DATE AND NATURE OF THE ORDER ON APPEAL AND RELIEF SOUGHT

Amicus Curiae Children's Law Section concurs with the "Date and Nature of the Order On Appeal and Relief Sought" section of Appellants' Application for Leave to Appeal and as supplemented in the Guardian Ad Litem's Answer to Application for Leave to Appeal. MCR 7.303(B)(1). (Appellants' Application, pp 1-2; Guardian Ad Litem's Answer, pp 1-2).

STATEMENT OF GROUNDS FOR APPEAL AND WHY THIS COURT SHOULD GRANT LEAVE

Amicus Curiae Children's Law Section adopts the Statement of Grounds for Appeal and Why This Court Should Grant Leave, as set forth in Appellants' Application for Leave to Appeal, and as supplemented in the Guardian Ad Litem's Answer to Application for Leave to Appeal. MCR 7.305(A)(1)(d). (Appellants' Application, pp 2-7; Guardian Ad Litem's Answer, pp 2-7). Amicus Curiae Children's Law Section also urges this Court to grant leave to address the important questions presented by this appeal.

STATEMENT OF QUESTIONS INVOLVED

I. Should this Court grant leave to appeal to resolve the jurisprudentially significant issue that a trial court in paternity case can vitiate prospective adoptive parents' statutory right to appeal an erroneous adverse decision by allowing a paternity case to proceed to judgment prior to the completion of appellate review in the adoption case?

Appellants-Prospective Adoptive Parents state: YES

Guardian Ad Litem states: YES

Amicus Curiae Children's Law Section states: YES

II. Should this Court grant leave to appeal because jurists, practitioners, families, and adoptees in this State need direction from this Court on the impact of a paternity order on a pending adoption case, and further because this Court needs to unequivocally state that the Legislature intended to give priority to adoption cases by the plain language used in the Adoption Code and that elevating a paternity case above an adoption case violates the Legislative mandate contained in the Adoption Code – not only that an adoption case takes the highest priority, but also that "[i]f conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount"?

Appellants-Prospective Adoptive Parents states: YES

Guardian Ad Litem states: YES

Amicus Curiae Children's Law Section states: YES

III. Should this Court grant leave to appeal because the Court of Appeals committed clear legal error when it failed to address the father's failure to request custody at the Section 39 hearing because not requesting custody is tantamount to a denial in the interest of custody, and should have resulted in immediate termination?

Appellants-Prospective Adoptive Parents states: YES

Guardian Ad Litem states: YES

Amicus Curiae Children's Law Section states: YES

STATEMENT OF INTEREST OF AMICUS CURIAE CHILDREN'S LAW SECTION OF THE STATE BAR OF MICHIGAN

The Children's Law Section (Section or CLS) is a recognized section of the State Bar of Michigan. The Section has over 400 members who are attorneys and judges working in Michigan's child welfare system. Working together, the Section's members make crucial decisions each day that directly and substantially affect the lives of children and families. The Section provides services to its membership in the form of educational seminars, advocating and commenting on proposed legislation relating to child welfare law topics, and filing *amicus curiae* briefs in selected child welfare law cases filed in Michigan Courts.

The Section works to advance the rights and interests of children and families who become involved in matters before the Probate Courts and Family Divisions of the Circuit Courts, in the State of Michigan, including in adoption and paternity matters. The Section strives to improve courts and agencies serving children and their families, through regular meetings among peers, organizing and attending relevant training events, active engagement by members on multi-disciplinary task forces convened by the Section itself, as well as by the Michigan Department of Health and Human Services (DHHS), the State Court Administrative Office (SCAO), Courts and other groups; and through the Section's participation as *amicus curiae* in cases with the potential for widespread impact in the field of child welfare law, such as the one before this Court.

The Section, because of its active and exclusive involvement in the field of child welfare/juvenile law, and as part of the State Bar of Michigan, has an interest in the development of sound legal principles in these legal areas. The instant case is of particular interest to members of the Children's Law Section because it concerns direct placement adoptions, and the paramount importance and priority that adoptions are to be given under Michigan Law. Left unchecked, the Court of Appeals ruling in this matter stands to create confusion, and will unfairly relegate

adoptions to a second fiddle status contrary to both federal and Michigan Law. As such, children and their potential adoptive parents will be left in a state of limbo with no recourse; this will have a detrimental effect on Michigan children and families for generations to come.

STATEMENT OF FACTS

Amicus Curiae Children's Law Section concurs with the Statement of Facts as set forth in Appellants' Application for Leave to Appeal, and as augmented by the Guardian Ad Litem's Answer to Appellants' Application and incorporates same into this brief. MCR 7.305(A)(1)(d). (Appellants' Application, pp 7-13; Guardian Ad Litem's Answer, pp 9-10).

ARGUMENTS

I. The Legislature intended that a putative father's parental rights in an ongoing adoption proceeding be determined by the Adoption Code, not by the Paternity Act, and allowing the Trial Court to preclude appellate review of its own adoption decision by entering an order of filiation violates that intent.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

A. A putative father has no constitutional right to parent his biological child unless he has established a substantial parent-child relationship with the child.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

B. The Michigan Legislature chose to limit the ability of a biological father to thwart an adoption where he has not established a custodial relationship with the child or provided substantial and regular support to the child or birth mother.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

Amicus Curiae Children's Law Section offers the following additional comments bearing upon Appellants' Arguments I, I-A, and I-B:

To begin with, each of the Appellants' arguments in their Application for Leave to Appeal to this Court is compelling, well-reasoned, and consistent with both the language and spirit of Michigan's Adoption Code. Appellants correctly point out that the focus in our Adoption Code – and all decisions stemming from that Code – must focus upon and must be guided by what is in the best interest of *the child*, the potential adoptee. Period. That is the crux of the trial court's errors here: that it instead focused upon perceived rights of a do-nothing father – who has provided no more than DNA to the child at issue – rather than to the paramount best interests of the child. The

trial court's decisions – and then the Court of Appeals' affirmance of same – consigned this small child to continuing limbo status, depriving him of the stability and permanency that both state and federal law mandate should be accorded each child at the earliest opportunity.

As Appellants note, the decision of the United States Supreme Court, in *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), with similar facts to the instant case, highlights some of the substantial errors in the trial court's decisions. In *Lehr*, the putative father claimed that the New York Court had inappropriately denied him of a protected liberty interest. *Lehr* at 258. The *Lehr* Court held that a biological link alone is insufficient to preserve one's due process right to notice in adoption proceedings; rather, it takes more than mere DNA. *Lehr*, at 262. To preserve one's right to notice and due process, a putative father needs to be an *involved* father. Id. The *Lehr* Court noted that a substantial relationship between parent and child is a relevant criterion in evaluating both the rights of the parent and the best interests of the child. *Lehr* at 267. A putative father could show a substantial relationship with a child by doing those kinds of things that would be commonly expected of a father. A court presiding over such a matter, should therefore question whether the putative father has regularly seen the child, regularly provided financial support, attended important events in the child's life, to cite a few examples.[1] Absent a showing of such a substantial relationship, a putative father's due process rights can fall to the wayside.

> [A] biological father's interest exists only in those men who have "grasp[ed] that opportunity [to develop a relationship with their offspring] and accept[ed] some measure of responsibility for the child's future." *Lehr*, at 262, 103 S.Ct. at 2993, 77 L.Ed.2d at 627.

[1] Judge O'Brien correctly noted that for Appellee to be "considered 'a do-something' father under MCL 710.39(2)" Appellee must actually have done something "on a regular basis." (02/27/18 COA Opinion, Judge O'Brien dissenting, p 6).

Because the father in *Lehr* – as with Appellee in the case before this Court – was a non-involved father, the *Lehr* Court found that he had lost his due process interests in the adoption proceeding. For similar reasons, Appellee should not have been permitted to derail the adoption of MGR here.

Following *Lehr*, the Supreme Court of Utah applied *Lehr's* logical and just holding in *In the Matter of the Adoption of J.S.*, 358 P.3d 1009 (2014) (**Appendix A**). In *J.S.*, the Utah Supreme Court noted that:

> . . . [u]nder both federal and state law, *an unwed biological father has an inchoate interest in a parental relationship with his child that acquires full constitutional protection* ***only*** *when he demonstrates a full commitment to the responsibilities of parenthood by [coming] forward to participate in the rearing of his child.* [*J.S.*, at 1021, emphasis added, quoting *In re Adoption of Baby Girl T.*, 2012 UT 78, 298 P.3d 1251].

The Utah Supreme Court engaged in a detailed analysis of several Utah adoption decisions in affirming the District Court's decision to bar intervention of a putative father, who belatedly sought to establish his paternity, into a pending adoption proceeding. (Due Process analysis at J.S., pp 1014-1026).

The Court in *In re J.S.* further noted that the *Lehr* Court's approach was not simply to *assume* that a putative father's interests are fundamental, but that it was appropriate to question whether the interest is fundamental by seeking a clear indication that the interest is "deeply rooted in this Nation's history and tradition and in the history and culture of Western civilization." *J.S.*, at 1021. Deeply rooted in this Nation's history and tradition as well as the culture of Western civilization is the idea that fathers provide for their children's needs for food, clothing, and shelter, and who do something significant in a child's life that creates a bond of trust, dependence, and responsibility. These were not the qualities exhibited by Appellee, who, as detailed in Appellants' Application and the Guardian Ad Litem's Answer, rejected all offers *to even meet the child*

throughout the proceedings below. (Appellants' Application, pp 8-13; Guardian Ad Litem's Answer, pp 14-15).

Indeed, the Utah Supreme Court quoted *Lehr* for the proposition that:

> the "mere existence of a biological link does not merit equivalent constitutional protection," a putative father must "grasp [the] opportunity and accept some measure of responsibility". *Adoption of JS*, 358 P.3d at 1023, quoting *Lehr*, 463 U.S. at 261-62, 103 S.Ct. 2985.

The Utah Supreme Court observed that, in contrast to a mother – whose decision to carry a baby to term demonstrates some parental commitment to the child – an unwed or putative father must do something prescribed by state law to demonstrate his interest and obtain concomitant rights. In Utah, it is the filing of an affidavit; in Michigan, it is not only to file and proceed under Michigan's Paternity Act, but to show the substantial relationship and commitment to the child through actions, which were sorely lacking in Appellee's case. Though Appellee filed an intent to establish paternity, he then failed to appear for court proceedings, took an inordinate amount of time to even obtain DNA test results, ignored his court-appointed attorney's efforts to contact him, and virtually ignored the multiple appellate filings necessitated by the trial court's error in prioritizing the paternity action over the pending (and long overdue) adoption hearing. As the Utah Supreme Court noted in *J.S.*:

> Endorsement of a substantive right in this case would inevitably lead to a series of line-drawing problems going forward, requiring the courts to make policy judgments about whether the biological father before the court had done enough to properly justify the recognition of his parental rights.
>
> *Those policy judgments are matters for legislative action. Our legislature has spoken to this question, prescribing a series of prerequisites to an unmarried biological father's perfection of his inchoate interest in his child. Bolden asks us to second-guess those requirements (at least one of them). He asks us to establish a substantive due process right to perfect his parental rights on something less than the grounds prescribed by the legislature—by filing a paternity action but not the affidavit called for by statute. Doing so would put us in the problematic realm of making "due process innovations" dictated by "abstract formulae" and without*

any effective limiting principle. [*J.S.* at 1-25-1026, emphasis added].

As the unwed father in *J.S.* was found to have only an unperfected inchoate interest in the child in that case, so, too, it was the case that Appellee here never perfected any interest in MGR beyond that of mere DNA. And again, Michigan law and Supreme Court precedent makes clear that that is not enough. Appellants correctly detail the relevant U.S. Supreme Court cases and also correctly points out how the Michigan Legislature incorporated into our Adoption Code the requirements of doing something, beyond merely contributing some DNA.

The U.S. Supreme Court in *Caban v Mohammed,* 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979) likewise held that a father *acquires* his substantial due process protection; it is not an automatic, *carte blanche* protection. Unlike a mother whose due process interest in the child arises naturally at birth, a putative father must do something to acquire the protections the Constitution provides. The existence of a biological link by itself will not provide Due Process protection.[2] The Constitution will not automatically compel Due Process protections for a natural father who fails to grasp the opportunity to develop a relationship with his child. And Michigan's Adoption Code properly reflects this reality. See, *e.g.*, MCL 710.21a, specifically providing that in the event of a conflict arising between the rights of an adoptee and another, "the rights of the adoptee shall be paramount."

Much like the *Lehr* father, Appellee was a non-involved putative father for almost two full years – during which time he took no meaningful action to become involved in the life of the mother of the child, or of the child, as Appellants' Statement of Facts details. Rather, Appellee

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[2] Likewise, see the U.S. Supreme Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110, 123–30, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (holding that biological father who had an established relationship with his child did not have liberty interest sufficient to invalidate state statutory presumption that the mother's husband was the child's father).

only became involved in the proceedings below because the Trial Court bent over backwards to involve him. This included repeatedly adjourning the pending adoption case – without the requisite showing of good cause – to permit the do-nothing Appellee to pursue DNA testing.[3] The Trial Court's error inheres in the fact that Appellee never did any of the things that a father would do that would show that he wants to be a father. Appellee had no relationship with the child on which to hang his due process rights. Standing alone, the biological link between Appellee and the child is insufficient to create a relationship; Appellee needed to do something more than contribute some DNA to the child who deserves stability, nurturing, and permanency in home-life at the earliest opportunity possible. Nothing that Appellee did in this two-year period can be construed as developing any relationship with this child; nor as accepting some measure of responsibility for this child's well-being, support, and future. Appellee was a "do nothing father" and was therefore a non-party who should not have been invited to, and then permitted to, derail the ongoing adoption matter.

Appellee needed to preserve his due process rights by demonstrating that he had made some effort to create a meaningful relationship to this child, a child who is now over two years old, and who has resided nearly his entire life with Appellants. Appellee had multiple methods available to him to create a substantial relationship to this child. For example, Appellee could have acknowledged his paternity at the child's birth. Appellee could have provided financial and

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[3] The fact that Appellee took months to obtain even DNA test results (Appellants' Application, p 15, n 3), should certainly have been crystal clear confirmation of what his own attorney had to admit to the trial court: that Appellee "had not shown a lot of interest in progressing with the case." (Guardian Ad Litem's Answer, p 13). This disinterest has been further demonstrated by Appellee's utter failure to support the minor child, or even to bother seeing him (Appellants' Application, p 12, n 2), and in Appellee's failing to answer any of Appellants' appellate motions, and Appellee's failure to file a brief in either of the previous appeals to the Court of Appeals. (Appellants' Application, p 10).

emotional support to the child. Appellee could have sought parenting time with the child. Instead, Appellee did nothing (Appellants' Application, pp 8-13; Guardian Ad Litem's Answer, pp 13-14); and, because he did nothing, Appellee failed to preserve his right to due process.

The crux of the problem with the trial court's rulings is that by bending over backwards to include Appellee in the adoption proceeding, the trial court erroneously stalled the adoption proceedings, notwithstanding the Adoption Code's clear mandate to prioritize them. MCL 710.21a; MCL 710.25(1).[4]

The *Lehr* Court noted that the state has a legitimate interest in facilitating adoptions, and having the adoption proceeding completed quickly. The purpose of Michigan's Section 39 hearing is to finalize adoptions for children to assure the adoptee is free for adoptive placement at the earliest possible time. MCL 710.21a(c). Throughout the adoption proceeding, the trial court must always be cognizant of the best interests of the child. That awareness carries through every stage of the adoption proceeding; in fact, the best interest of the child is the very reason the legislature makes permanency for children so important, insisting that all other proceedings take less priority. MCL 710.25(1). In this instant case, Appellee was fully capable of asserting and protecting his own rights, yet for two years he did nothing to establish and protect them.[5] By allowing Appellee to pursue the paternity action and establish legal parentage, the trial court essentially gave Appellee the unfettered ability to thwart the clear language and intent of both state and federal law, and to

[4] Appellants correctly point out that the trial court's focus on Appellee's perceived constitutional right was misguided when the focus properly should have been on the best interests of MGR.

[5] Indeed, Appellee could not even be bothered to communicate with his appointed trial court counsel in response to that counsel's myriad attempts to reach Appellee (see, *e.g.*, Guardian Ad Litem's Answer, p 13, noting trial counsel's seven attempts to contact Appellee and Appellee's failure to appear before the trial court).

circumvent a recognized state interest in facilitating and quickly completing adoptions as mandated by the general purposes of the adoption code delineated in MCL 710.21a.

Generally, the adoption of children has been largely left to the states to craft and enforce laws. However, the federal government does play a significant role in assisting the state in accomplishing permanency and stability for children. The Preamble of 42 U.S. Code § 670, commonly referred to as Title IV-E, for example, states that under both federal and State laws courts play an essential role in the child welfare system by ensuring stability and permanency for abused children under that system. 42 USC 670. The Adoption and Safe Families Act of 1997 (P.L. 105-89) explicitly states that a child's health and safety must be the primary concern when any decision is made regarding a child in the child welfare system. The Adoption and Safe Families Act of 1997 goes even further by requiring timely decision-making in determining if an abused child should go home, or should be moved into an adoptive home. *Id.* The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) provides financial incentives to finalize adoptions. 42 U.S. Code § 673 creates additional financial incentives toward finalizing adoptions for special needs children.

The clear intention of each of these federal acts – just as in our State's Adoption Code – is to make finalizing adoptions for children a priority. Each of these laws is in large part inspired by the recognition that children have a special need for permanency and stability at the earliest possible opportunity. Again, the U.S. Supreme Court has provided our Legislature guidance in these regards:

> It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current "home," under the care of his parents or foster parents, especially when such uncertainty is prolonged. *Lehman v Lycoming County Children's Services Agency*, 458 U.S. 502, 513 (1982).

The important state interest at issue in the case before this Court is that of the best interest of children. Countless Michigan and federal cases and laws acknowledge that permanency and stability are always in the child's best interest. It is with the goal of creating permanency for children that the federal laws protect the best interests of children by helping to remove potential barriers to adoptions that the states may encounter. As noted, the Fostering Connections to Success and Increasing Adoptions Act of 2008 amended the Adoption and Safe Families Act of 1997 by creating additional financial incentives to finalize adoptions for children.

The federal government has enacted various laws to reflect the policy that adoption and permanency is so important for a child, so much in the best interests of a child, that the federal government is willing to assist the states to remove potential roadblocks to finalizing adoptions. Furthermore, as noted above, the federal government has taken the additional step of monitoring and rewarding States that comply with prioritizing and finalizing adoptions. That prioritization is mirrored in Michigan's Adoption Code. The plain, unambiguous language of both MCL 710.21a and MCL 710.25(1) states that an adoption is to be given the highest priority over all other matters. Indeed, as Appellants' correctly point out, the Michigan Legislature has codified the federal mandates to achieve permanency and stability for children by finalizing adoptions as quickly as possible. *Id.*

While much of the federal law addresses children in foster care settings, it still has applicability to this case. The balance the federal and State laws attempt to strike for foster children, is protecting their best interests by giving them permanency. However, whether the child is a foster child, or a child directly placed for adoption, or any other child for that matter, the one constant is that a child's best interest is always a protected state interest. The core issue at stake is the best interest of the child. It cannot be doubted that MGR's best interest was in having the

Section 39 hearing proceed to conclusion as soon as possible; not waiting for a "do-nothing" father to do something he very clearly did not want to do, or was incapable of doing.

Again, when the trial court erroneously prioritized Appellee's lackadaisical and belated "efforts" to establish paternity, the trial court improperly injected Appellee into the adoption proceeding and allowed Appellee to derail it with no good reason. Again, Appellants' Application and Guardian Ad Litem's Answer extensively detail Appellee's do-nothing status, including his refusal of multiple offers to meet the child and providing the child no financial or other support of any kind. (Guardian Ad Litem's Answer, pp 13-14; Appellants' Application, pp 8-13). By interjecting Appellee into the proceedings, the trial court compromised the child's best interests by delaying the permanency and stability the adoption proceeding would have afforded the child. Because of the trial court's delays and inaction in the Section 39 hearing, the child has had to unnecessarily wait for permanency and stability to his detriment.

In *In re LaFlure*, 48 Mich App 377; 210 NW 2d 482 (1973), the Court of Appeals aptly noted that time for a child is measured very differently than for an adult. Referencing Wayne County Probate Judge James H. Lincoln's *Judicial Considerations in Child Care Cases,* 11 Wayne L Rev 709 (1965), the *LaFlure* Court observed that custody decisions for a child need to be resolved with all possible speed. For a child, a year can be like an eternity. In this case, it is no exaggeration to say that MGR has been waiting *his entire lifetime* for permanency and stability, due to the trial court improperly and incorrectly elevating Appellee's rights over those of the child in contravention of the clear language and intent of MCL 710.21a and MCL 710.25(1).

By delaying the Section 39 hearing, the trial court unfairly made this child wait for a period that would seem like an eternity to a child by ignoring the plain language of MCL 710.21a[6] and

[6] MCL 710.21a provides in pertinent part that "The general purposes of this chapter are:

MCL 710.25(1)[7] which states that the adoption proceeding is to be given priority over all other proceedings by giving priority to the paternity proceeding.

This child's life has been left in limbo by the actions and decisions of the trial court which favored a man who had demonstrated no interest in being a parent, and allowed him to pursue paternity at his own dilatory speed, as demonstrated in the multiple appellate proceedings required to force the trial court to commence and then to complete the Section 39 proceedings. This was all not only clearly contrary to the child's best interests, it was also all clear legal error. The trial court judge ignored the clear and unambiguous statutory language and unnecessarily bent over backwards to help this do-nothing father out of a mistaken belief that he was entitled to constitutional protections that he had made no efforts to preserve. The tragic – and entirely avoidable – result is that this "do nothing" father was permitted to thwart this child's opportunity and need to achieve permanency and stability. What is worse, the Court of Appeals' decision affirmed the trial court and, by refusing to review the merits, created legal precedent that will enable other do-nothing fathers to disrupt permanency for many of Michigan's children awaiting adoptions.

(b) To provide procedures and services that will safeguard and promote the best interests of each adoptee in need of adoption and that will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.
(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.
(d) To achieve permanency and stability for adoptees as quickly as possible.
(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee."

[7] MCL 710.25(1) provides: "All proceedings under this chapter shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition." And subsection 2 provides: "(2) An adjournment or continuance of a proceeding under this chapter shall not be granted without a showing of good cause."

Under federal and state law, MGR's adoption needed to proceed without regard to the belated and half-hearted paternity action. Appellee sat on his heels doing nothing for this child for some two years; again, that span of time is quite literally a lifetime for MGR. Because the Court of Appeals affirmed the trial court's erroneous procedures, future adoptions will be compromised by do-nothing fathers, with the result that children will be harmed because adoptions that should be finalized promptly will take a back seat to, and be delayed by, other proceedings: this is clearly not in the best interests of adoptees. Furthermore, do-nothing fathers like Appellee will be rewarded for inaction and frankly irresponsible behavior. As a matter of policy, this Court should grant leave and reverse the lower courts' erroneous decisions. It is only by granting leave and reversing the Court of Appeal's decision that the proper and intended focus on the best interests of adoptees can be restored, and the priority status that adoptions are meant to hold in court proceedings can be restored.

C. The Legislature chose to prioritize adoption proceedings with full knowledge of the Paternity Act and without providing any exception for a paternity case.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

D. Concurrent, and often prioritized, paternity proceedings thwart the intent of the Legislature that only a putative father who has supported his child, or who can demonstrate that he is not only fit and able to parent but that placing the child in his care will serve the child's best interests should be able to prevent adoption of the child.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

E. Entry of an order of filiation prior to the resolution of an adoption appeal deprives parties of their statutory right to appeal, and deprives an adoptee of any interest he or she has in remaining with Prospective Adoptive Parents.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

II. The Court of Appeals' decision erroneously treats an order of filiation as if it is an irreversible event, whereas this Court should hold that an order of filiation that is only entered due to an erroneous failure to terminate parental rights or an erroneous refusal to grant the adoption case the highest priority may be vacated on either basis.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief.

III. The Court of Appeals' decision in *In re MKK* is merely a judicially created bypass of the Legislative mandates of the Adoption Code, and the Court of Appeals erred when it relied on *MKK* as support for its decision without analyzing the "good cause" requirement of *MKK*.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief. Amicus Curiae Children's Law Section further concurs with the statements of the Guardian Ad Litem on this Argument in the Guardian Ad Litem's Answer to Appellants' Application (pp 12-14, Answer to Application).

IV. The Court of Appeals erred when it failed to address Appellee Father's failure to request custody at the Section 39 hearing because not requesting custody is tantamount to a denial in the interest of custody, and should have resulted in immediate termination.

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Argument and incorporates it into this brief. Amicus Curiae Children's Law Section further concurs with the statements of the Guardian Ad Litem on this Argument in the Guardian Ad Litem's Answer to Appellants' Application (pp 14-15, Answer to Application).

CONCLUSION

Amicus Curiae Children's Law Section concurs with the Appellants-Prospective Adoptive Parents' Conclusion and incorporates it into this brief.

RELIEF REQUESTED

WHEREFORE, Amicus Curiae Children's Law Section respectfully requests that this Honorable Court grant leave to appeal to the Appellants, reverse the Court of Appeals' decision, remand to the Court of Appeals for a decision on the merits of these two consolidated adoption appeals, and to grant any and all other relief appropriate under the circumstances.

Respectfully submitted,

Dated: July 26, 2018

William E. Ladd *
William E. Ladd (P30671)
Chair, Amicus Committee of the
State Bar of Michigan Children's Law Section

* (Signed with permission by Paula A. Aylward (P60757), Chair-Elect/Amicus Committee, Children's Law Section)