

**Juvenile Case Decided by  
North Carolina Supreme Court  
June 12, 2014**

**Adoption: Notice and Consent by Unwed Father**

- *Qualification for unwed father to be on notice of pregnancy and birth was not beyond his control as facts are applied in this case*

**In re S.D.W., \_\_\_ N.C. \_\_\_ (July 12, 2014)**

<http://appellate.nccourts.org/opinions/?c=1&pdf=31739>

**Facts:** Unwed mother and father had repeated unprotected intercourse during their May 2009 through February 2010 relationship and on three of four occasions after the relationship ended. Mother had a child previously from another relationship, and early in the relationship with father, she became pregnant despite his belief that she had an IUD. The couple decided she would have an abortion. After the abortion mother informed father that she changed her method of birth control to what he believed was a shot but may have been a patch. Mother eventually cut off contact with father, and she had a baby boy on October 10, 2010. The day after the baby was born, mother signed an Affidavit of Parentage that incorrectly identified father's last name and left the father's address blank. She also signed a relinquishment, and on a birth form provided by the adoption agency, she again incorrectly identified father's last name. A petition for adoption was filed November 2, 2010. Mother saw father on November 26, 2010 and did not notify him that she had had a baby. They did not communicate again until April 2011 after father heard mother had a baby, and in a phone call with father, mother confirmed she had his child and placed him for adoption. Afterwards, mother notified the adoption agency of father's correct name. Father took steps to assert his intention to obtain custody of the child, including filing a motion to intervene in the adoption proceeding. Adoption petitioners filed a motion for summary judgment.

**Procedural History:** The trial court granted summary judgment for petitioners and denied respondent's motion to intervene and motion to dismiss the adoption on the basis that his consent was not required for the adoption. Father appealed, and the NC Court of Appeals reversed on the grounds that the statute regarding who must consent [G.S. 48-3-601] may be unconstitutional as applied to the father as violating his due process rights. Without findings of fact regarding the father's actions to grasp the opportunity to develop a relationship with his child upon learning of the child's existence, the COA remanded the case for an evidentiary hearing on that issue. The NC Supreme Court granted discretionary review.

**Held: Reversed decision of Court of Appeals (thereby affirming the trial court decision)**

- Relying on the reasoning of the U.S. Supreme Court in *Lehr v. Robertson*, the court held an unwed father must grasp the opportunity to develop a relationship with his child for constitutional due process protections to apply.
- The court must determine if an unwed father grasps the opportunity to be on notice of the pregnancy and/or birth, and if that opportunity is beyond the father's control.
- In a fact specific analysis for this case, notice of the birth was not beyond father's control
  - He had knowledge mother was fertile
  - He continued to have intercourse with mother without using a condom, placing the responsibility for birth control solely with mother
  - He did not inquire of mother if she was pregnant