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SUPREME COURT

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THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of

Richell Chrestensen (Stiles)

and

Sean Pearson

Case # 2018-0061

Appeal of order on Appellee's motion to dismiss
Appellant's Motion to Establish Parenting Plan

BRIEF FOR SEAN PEARSON

APPELLANT

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QUESTIONS PRESENTED

1. Whether the trial court improperly distinguished the facts of this case from the holding in In the Matter of JB and JG, 157 NH 577 (2008), (hereinafter "JB and JG") which stands for the proposition that even a parent who is not a child's biological parent can maintain an parenting petition pursuant to RSA 461-A "so long as he alleges sufficient facts to establish his status as a parent by other means." Id at 580.
2. Whether the trial court erred in ruling that Sean Pearson failed to establish any "parental status" on which any request for parental rights under RSA 461-A can be pursued.
3. Whether the trial court improperly considered the facts before it in reaching that conclusion.

STATEMENT OF THE CASE

The underlying dispute is between two biological parents of a minor child, Lucas, whose date of birth is March 17, 2010. The Petitioner/mother is Richell Chrestensen, now Richell Stiles. The Respondent/father is Sean Pearson. The child has always primarily resided with the Mother.

Father testified that his understanding in 2012 was that after the Father surrendered his parenting rights over Lucas that he would be able to see his boy, and he has done so.

There was an order in 2012 (Case number 318-2012-SU-26; See Supp at 2) in which Father surrendered his rights. ("Surrender")

Father contributed financially to Mother after the Surrender, but the Parties disagree as to how much. The Father continued to have contact with Lucas after the Surrender, and Lucas always identified the Father as his Dad. After mid-2013 (approximately mid-September), the Father's parenting time with Lucas was unilaterally terminated by the Mother. (A at 211: RS 136)[1] This resulted in the Father filing a motion to "open termination of parental rights matter." That motion was denied. (See Supp at 2 re: March 31, 2014 Order; hereinafter 2014 Order.) The Father acknowledges the existence of both of the Surrender Orders, the last of which was dated March 31, 2014.

The Parties differ as to how <u>much</u> time Father has with the child after the 2014 Order, but even Mother admits there was time spent between Father and his son and that the amount of time was unilaterally controlled by her. (A at 209: RS 126) Even Mother admits the child refers to Father as "Dad" and that it is only recently (September 2017) that Lucas started referring to him as "the Dad I don't see" (A at 189: RS 46) and that he loves his Dad. (A at 226: RS 195)

The Court held a hearing on October 5, 2017 on Mother's Motion to Dismiss the Father's Motion to Establish Parenting Plan and the Circuit Court

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[1] Because two of the transcripts that were entered at trial include "4-in-1" format, each time they are cited, an additional page reference is inserted. For Richell Stiles' deposition, those will be "RS" and for William Whitney they will be "WW" followed by the page number.

dismissed the Father's motion and ruled that Father had "not established any 'parental status' on which any request for parental rights under RSA 461-A can be pursued". (Supp at 5)

STATEMENT OF FACTS

The Parties' son, Lucas, was born on March 17, 2010. (A at 12:22)

Sean Pearson surrendered his parental rights in 2012. (A at 13:16)

Evidence was excluded as to the Parties having made a deal as to what would happen after the Surrender. (A at 13:16-17, 13:23-24) But Sean was allowed to testify that his understanding was that post-Surrender he was going to be able to see his boy (A at 14:11) and he has done so (A at 14:20).

Father's testimony:

Sean testified that his contact with his son included: seeing his son twice a week at church, it was unlimited at certain points, he took his son to dinners and that Mother would come, he had sleepovers with his son, first Mondays of every month during women's meetings, and that there was never a time that Mother needed Sean to take Lucas where Sean didn't make himself available. (A at 15) The meals included meals at restaurants and in his home, with Father paying and Mother picking up the take out. He would see his son after church on Sundays and Wednesdays. (A at 16) He would bring his son back whenever he was asked and other members of the Parties' common church witnessed some of his parenting time. (A at17)

Mother would facilitate the contact between Father and son, and Father was never in a position to dictate the terms of his engagement with his son because Mother was "the boss" and because of the Surrender. (A at 18)

Starting in 2013 Father saw his son for a couple of overnights but mostly day trips. They were never inside and always on the move, including birthday parties (A at 20-21). The Parties are total opposites on risk, with Father not allowing the word "can't" and telling his son "If you fail, that's great. So who cares? We'll try it again next time." (A at 22-23) In contrast, Mother testified that going ice fishing was placing their son's life at risk, even though she personally checked the ice for safety and found that it was safe. (A at 198:RS 84)

Mother moved back in briefly during 2013 (A at 25). Father entered pictures of him and his son engaged in various activities since the Surrender (A at 161-170) including a trip to an amusement park with the Mother in 2016 (see also A at 34).

Father described the day he went ice fishing with his son in great detail (A at 28-31) in which the son kept feeding the bait to the seagulls. Some of the pictures included their overnights during 2015-2016 (A at 33). He also describes his rock climbing adventures, trampoline park and Blitz. (A at 35)

In 2014, Mother helped Father organize a birthday party for their son, which she attended (A at 36-37). If Father was at church, he was seeing his son 2-4 times a week. (A at 38).

In 2015, Father hosted a birthday party at his house but Mother did not attend. (A at 38). Father took his son to other birthday parties and took his son when Mother was engaged in other activities, (A at 39) spent time with him during women's meetings once a month, when Mother worked on Sundays, and rock climbing (A at 40) which his son loved. Son was passive about rock climbing at first, but Father encouraged son by saying "we don't do the word can't" which support enabled son to climb to the top, about which son was excited and which gave son confidence. (A at 41, 162) Other activities included fishing and the trampoline park, including playdates (A at 42) which one time included Mother's step-son in 2016 (A at 43). Father bought his son a puppy, which Mother later sold. (A at 45-46).

Father attended New England Christian Church, whose pastors were William Whitney and his wife, Sonya Whitney. Father had church parties from 2013-2016 at his home in September, which Mother attended, even giving son a bath in Father's home after one of them. (A at 48-50)

Mother worked Sundays and Father would have his son a lot of the times on those Sundays. (A at 49-50) The Parties went together with their son to LegoLand in the winter of 2016 spending the day together. (A at 51)

Father describes Mother as having rules for "just about everything." (A at 52) Father enrolled the son in swimming lessons, with Mother sometimes taking him and sometimes not, but the son loved it. (A at 53) Mother would not allow Father to take son to Disney (A at 53) or Story Land, although Mother later took son to Story Land. (A at 54)

Father never took his son back dirty or hungry, and even would take his son to his sister's salon and get him to smell "flowery." (A at 54-55)

Father testified to giving Mother $100 per week sporadically, and Mother would only accept cash because it would hurt free stuff she was getting. (A at 55-56). Father estimates giving Mother thousands of dollars. (A at 57)

The Whitneys mediated between Father and Mother, and Father attended church and sat in the front row, and would put his son on his shoulders. (A at 57-58) Fred Stiles called Father and told him he wasn't a good father and he was going to take care of it. Pastor Bill Whitney even stuck up for Father on that issue. (A at 58-59) Fred and Richell are now married. (A at 190: RS 49)

At Christmas 2016, Father tried to see his son and was told by Mother "You're all done; You're not going to give him any Christmas presents. You're never going to see your child." Mother then filed a restraining order on January 3, 2017, which was later withdrawn on January 20, 2017 before a hearing after Father's attorney entered an Appearance in that matter on January 9, 2017. (See stipulation, A at 60)

The son sees Father's father, Ronald Pearson, and calls him Grandpa. Son has never called Father anything but "Dad" and loves his Dad. (A at 61)

Father loves his son, and calls the Surrender the biggest mistake he ever made, that he regrets it very much (A at 62) and his understanding he had with Mother about seeing his son on an unlimited basis after the Surrender factored into his Surrender. (A at 88)

Father was asked to leave the church twice (A at 71) and during those times which lasted months Father did not see his son through Mother (A at 76) but testified as to seeing his son during those months at Ronald Pearson's house.

Father testified that he has provided no support since 2016, but that he doesn't know where Mother lives and she won't accept his money. He testified that "I would have no problem paying that is not my problem." (A at 86)

Mother's testimony:

Mother initially testified that Father had not testified at the MTD hearing accurately and that from her recollection Father only spent time with their son at church or a select few times after that, such as church events, barbeques or going to the park and that there was no substantial timeframe that Sean was ever involved with their son. (A at 90-91)

When pressed with the question "And in fact you agreed with me on the record under oath that those events have either occurred or you were not in a position to deny that they occurred; isn't that correct?" Mother's response was "Yes, if you're talking about ice fishing and rock climbing and hiking on a church event. Out of seven years it doesn't seem like a substantial amount of time." (A at 91) The entire deposition transcript of Richell Stiles' deposition was entered. (A at 94)

Mother's answers to Interrogatories were also entered as Exhibit K in which she admitted "I have never kept exacting or specific records of contacts between Sean Pearson and Lucas Chrestensen. In general, all contact since

surrender was restricted to occasions when the three of us were at church, more spontaneously than by agreement or prior arrangement and occurred on church grounds. I have neither recollection or [sic] record of who, other than myself was present during those times. The amount of time varied... Under my supervision Sean Pearson was usually appropriate. There were some exceptions to the general rule, prior to the time that Sean Pearson was required to leave the church, when a brief period of supervised parenting time occurred away from church property." (A at 174)

Mother testified that Lucas recently refers to Sean as the "dad he doesn't see" (A at 95-96) but prior to that just referred to him as Dad. (A at 97) Mother denies that Sean's involvement with Lucas since 2012 has been as a father, but rather as "a person we see at church." (A at 96)

Yet, Mother admits that "Sean was involved very much in Lucas' life including with [her]." (A at 97)

Mother claims there were no sleepovers (A at 98) and that Lucas is afraid to spend time with his Father due to erratic behavior (A at 98-99) and that he was verbally abusive. (A at 95)

Mother claims Father didn't see Lucas for 18 months to 2 years (A at 111) but admits that Father was asking to see his son, wanted to come back and wanted to be a part of his son's life. (A at 112)

Mother admitted that she filed a restraining order in January 2017 based on Father's alleged threats at Panera bread 3 months before. (A at 120)

[End of page]

Diane Kaplan's testimony:

Diane Kaplan was a youth teacher at the church (A at 128) and went to the same church as Father and would see Father with his son whenever she was at church. Father would take his son on the first Monday of every month. Kaplan saw Father with his son at church functions, birthday parties, Wednesdays at church in the front row, on his Father's shoulders, and Sundays at church. (A at 121-122). Kaplan testified she was a member of the church during 2016 (A at 126) and that over the course of her time at the church she saw Father with his son 20-40 times. (A at 129)

Kaplan testified that Father would see his son whenever Mother allowed it, but that there were many times when Mother wouldn't allow it, which had an effect on the son, which included many times (but not always) at church when Lucas was confused as to whether or not he could go to his Father. If he clearly knew he could go to his Father he went to his Father. When he did know he could go to his Father, he climbed all over him, and had a loving relationship with his Father. Father did whatever he could to see his son and tried not to upset Mother. Father even told Kaplan one time not to correct Lucas because if Mother got mad he would not get to see his son. (A at 122-123)

Kaplan testified that Father even went to church, whether or not he had permission to play with Lucas, just to make sure that Lucas saw Father there. (A at 124) Kaplan also testified that the manner in which Mother would talk to

Father and treated him was "very condescending" and in front of everyone, including in front of Lucas. (A at124)

Danielle Hamil's testimony:

Hamil has known Father for 5 years, has seen Father with his son, and trusts Father with her own children. Not only has Father always been appropriate with Lucas, but he was loving and Lucas knew he was his Dad. (A at 130) Hamil testified that Lucas enjoys being with his Dad and climbs all over him. (A at 131)

Lisa Gaudet's testimony:

Gaudet ran the children's ministry for years and has known Lucas since he was born. She described the Father-son interaction as "rough and tumble play," that Lucas knows Sean is his Dad, that Father put his son on his shoulders during worship which was in front of the whole congregation and appropriate. (A at 133-134)

Gaudet doesn't believe throwing a child up in the air is appropriate but recognizes it might be for someone else. She says that Father was never physically inappropriate with his son. She does say he was verbally inappropriate, but doesn't describe how. (A at 135)

Gaudet testified that Lucas refers to Sean as Dad, that she's seen Father and son at church and at Father's home. When asked how many times she's observed Father and son together she answered "Plenty, a lot." When asked to clarify, she stated "I don't know. Hundreds of times I'll say if you need a number." (A at137)

William Whitney's testimony:

Whitney testified that Father's behavior would be that he would behave for a few days and then be back to combative, aggressive, violent behavior toward Richell, that he caused division in the church and that his advice to Sean was "be nice." (A at 140) He testified that this cycle would repeat "once every two weeks for seven years." (A at 141) He stated Father begged to come back to church so he could see his boy. (A at 142)

Whitney testified that he counseled Father that because he signed his rights away if Richell said he could have the boy for an hour he should say "thank you" and if she said he could see the boy for three days he should say "thank you." (A at 142)

Whitney testified at the MTD hearing that Sean has always been respectful to the Whitneys and everybody else in the church, and that Sean attended regularly unless there was a hunting event or job opportunity, including Sundays and Wednesdays. (A at 144)

Whitney testified that he doesn't question "one bit" that Father loves his son but characterized him as a "visitor" to Lucas, stating that "when it was convenient for him he was his son." (A at 145-146)

Whitney testified that "he did fairly well the first couple of three years listening to me about walking in love towards Richell" and that "she has no obligation, whatsoever, he signed away his rights." (A at 147)

Whitney testified that Richell is like a third daughter to him. (A at 277: WW 63) The trial court sustained the objection made when Whitney's

motivations in testifying were questioned as being related to seeing his grandchildren through Richell. (A at 152-154)

SUMMARY OF ARGUMENT

Father contends that the decision below conflicts with *In the Matter of JB and JG*.

1. Specifically, RSA 461-A:1(IV) makes the statute applicable to all rights and responsibilities parents have concerning their children.
2. The New Hampshire Supreme Court, *In The Matter of JB and JG*, 157 NH 577 (2008) tells us that even when a parent is not the child's biological parent, he/she may maintain a parenting action pursuant to RSA461-A "so long as he alleges sufficient facts to establish his status as a parent by other means." Id at 580.
3. In this case, while the Father admittedly surrendered his rights in a surrender action in 2012, he has acted as Lucas's father in the intervening five (5) years since the Court accepted the Surrender.
4. Moreover, even after attempting to reopen the Surrender case, Sean's role as the child's father was re-affirmed and encouraged by the Mother because he continued to have visits with the child and the child continued to refer to the Father as "Dad". Mother admits the child loves his Dad, the Father.
5. Indeed, since the child knows the Father as his father and loves him, and the facts established on the record establish the Father has

continued to be involved in his son's life, his status as a father should be declared pursuant to the *JB and JG* holding of 2008.

ARGUMENT

Constitutional Background:

The Supreme Court has repeatedly affirmed that the "rights of parents to make decisions concerning the care, custody, and control of their children" are "fundamental." Troxel v. Glanville, 530 U.S. 57, 66 (2000) (citing, e.g., Stanley v. Illinois, 405 U.S. 645, 651 (1972); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972); Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Parham v. J.R., 442 U.S. 584, 602 (1979); Santosky v. Kramer, 455 U.S. 745, 753 (1982)). This Court has also repeatedly affirmed that these fundamental parental rights are sacrosanct. See, e.g., State v. Robert H, 118 N.H. 713, 715 (1978); Appeal of Peirce, 122 N.H. 762, 768-69 (1982) (Douglas and Brock, JJ., concurring). "'The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition . . . .'" Id. at 768 (quoting Yoder, 406 U.S. at 232).

It is against that backdrop that the statutory framework and case law must be analyzed.

[End of page]

Mother's Motion to Dismiss:

The procedural posture of this case is that the trial was actually a hearing on Mother's Motion to Dismiss, as opposed to a substantive hearing on the Motion to Establish Parenting Plan. (A at 327) As such, it is important to understand the arguments made by Mother in her Motion to Dismiss (A at 320-322) and by Father in his Objection thereto (A at 323-326). Each Party also submitted a Memorandum (A at 329-336 and A at 337-344) in support of those motions.

Only some of the arguments that Mother made in her MTD and in her Memorandum were addressed in the Court's Notice of Decision dated December 4, 2017 ("December Order"), so only those are addressed here.

The December Order cites the Surrender record correctly, which includes citing the colloquy, showing Father's acknowledgement and waiver of rights. (Supp at 2.) The December Order also cites RSA 170-B:2,XII; RSA 170-C:2,VIII; RSA 170-B:5,I(c); RSA 170-B:5,I(d); RSA 170-C:12; RSA 170-B:21. (Supp at 4)

However, this misses the mark. Father is not challenging the Surrender, and is not seeking to adopt, but rather Sean is asserting his ability under case law, specifically JB and JG, to establish new facts post-Surrender in order to establish "parental status."

The December Order states that Father's "attempt to create a "parental status" by pursuing a petition under RSA 461-A after the finality of the surrender and the adoption is not legally viable" (Supp at 4) and that "the status of his parental rights were fully and finally resolved in those two proceedings. Mr. Pearson has no basis to pursue a parenting petition under RSA 461-A." (Supp at 5)

Ironically, if this were entirely true, there would have been no need for the Court to have engaged in any type of analysis under JB and JG. So JB and JG must be addressed head on.

JB and JG:

Who should be able to make JB and JG *claims?*

The Court did, in fact conduct an analysis of Father's claims under JB and JG, claiming that "JB and JG is distinguishable from this case and does not provide a basis for establishing that Mr. Pearson has parental status." (Supp at 3) First, the Court distinguishes this case from JB and JG by stating that the father in JB and JG (referred to as "AB"[2]) "was not the biological father or a stepparent to the minor child, although he was on the birth certificate." Father argues to this Court that same is a distinction without a difference. To the extent that same is a material distinction the holding in JB and JG, by logical extension, should apply to Sean Pearson all the more.

[2] The Court incorrectly refers to the father as AB. AB was the child and the non-biological father was JB. All references to the non-biological father here are switched to JB to avoid confusion.

Is distinguishing JB and JG *from this case fair?*

Second, the Court distinguishes this case from JB and JG stating that:

- JB had consistently maintained contact with the minor child;
- was a regular care giver for the minor child (3 or 4 days each week from 2003 through September 2006); and,
- the child's mother obtained a child support order against JB in 2004 which was continuing at the time of the filing of JB's parenting petition under RSA 461-A." (Supp at 3)

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Consistency/Regular Care Giver:

As to the "consistency" argument, the record shows that Sean Pearson was not in control of when he saw his son. This is so due to the Surrender and his lack of legal authority to insist on time with his son. As such, Sean had to take whatever time Richell would allow. (A at 18; 20; 209: RS 126) Same would preclude him from being a "regular care giver" in this sense of the word, so no separate analysis is given here on that issue.

The Court's conclusion that Sean was not consistent appears to have been heavily influenced by Richell's pastor, since the December Order states "but the pastor observed that Mr. Pearson's time with Lucas was usually only when it was convenient for Mr. Pearson." This contradicts not only the testimony of Sean Pearson, Dyan Kaplan and Daniell Hamil, but also of Richell

Stiles, who testified that Sean Pearson was "very involved" in Lucas' life (A at 97) and even William Whitney himself who testified that he saw Sean with Lucas "Because he came to church Sundays and Wednesdays when Lucas was there." (A at 282: WW 81)

Regrettably, the trial court did not allow inquiry as to the pastor's motivations for testifying in this case. (A at 152-154) This ruling was greatly prejudicial to Sean. The Pastor was deposed before the hearing on the MTD. His deposition established that the pastor's ability to see his grandchildren was through Richell Stiles. (A at 278; WW: 66-68) Thus, his veracity should have been able to be challenged by Sean. It was error for the Court to have ruled otherwise.

Further, William Whitney considers Richell Stiles as a third daughter (A at 277: WW 63) and that they have a close relationship (A at 214:RS 145) and that she has been going to their church for 17 years, gets paid to clean their home once a week, has them in her home, and spends holidays with them. (A at 214-216: RS 145-155)

Coupled with his motivation for his testimony, these facts should have heavily factored into the level of credibility given to William Whitney's testimony by the Court.

As to the level of contact that Sean had with his son after the Surrender, the Court regrettably failed to understand the full record. Some of this was pointed out to the Court in Sean's Motion for Reconsideration. (Supp at 7-13)

Unfortunately, since the Court's Notice of Decision dated January 2, 2018 simply states "Denied," (Supp at 12) there is no way of knowing that the Court understood the full record.

As the Motion for Reconsideration (Supp at 8-10) states, the Court:

a. Did not clarify ow much of the "limited contact" occurred at church; (this is important given the Court's later finding that Sean's contact with Lucas was not consistent)
b. Did not adequately consider Sean's testimony as to regular contact on Sundays and Wednesdays for dinner, sleepovers on a Saturday night when acceptable to Richell, and other regular time;
c. Did not adequately consider the testimony by third party witnesses that Sean's contact with his son was quite substantial;
d. Did not adequately consider the fact that Richell did not contradict Sean's testimony as to regular contact, and that she admitted at her deposition that she did not keep a record of the contact;
e. Ignored certain testimony on the record, such as rock climbing (A at 91; A at199: RS 85-86) and time spent at a church family day (A at 91; A at 201: RS 96);

f. Did not adequately consider Sean sharing his love of the outdoors with his son, and overlooked particularly Exhibit C and H, which are pictures of fishing, and not ice fishing;

g. Did not adequately consider that Richell and Sean spent time with Lucas at an amusement park (A at 97; A at 187: RS 40; A at 161, Exhibit A);

h. Did not adequately address the time Lucas spends with Sean's father, who Lucas calls Grandpa (A at 110; A at 224: RS 188), which further underscores Sean's role in Lucas' life;

i. Failed to establish a bright line threshold of "how much involvement is enough?" for Sean Pearson to have failed to maintain;

j. Failed to recognize that after the Surrender Richell herself failed to act consistently with someone trying to shut out a father from his son's life;

k. Failed to recognize that Sean Pearson lacked control in requesting time, particularly given the history of restraining orders by Richell, including those filed in response to Father wanting to deliver Christmas presents to the son, only for the matter to be withdrawn;

l. Failed to consider Bill Whitney's motivations and that he considers Richell a third daughter;

m. Failed to consider Sean's multiple legal efforts to remain in his son's life, including his attempt to undo the Surrender. (Supp at 8-11)

Child Support:

As to the mother in the JB and JG case having a child support order in place, the issue there was not that it was required to establish parental status, but rather just the opposite. The Court read into JB and JG more than it should have in this regard as to financial support being a requirement for parental status. To the contrary, JB and JG merely states that "the establishment of paternity is "an essential prerequisite to imposing the obligation for child support' " (Id, quoting In the Matter of Haller & Mills, 150 N.H. 427, 429 (2003))

The Court ruled that Sean's testimony as to his level of financial support was not credible, stating "He at one point indicated he had provided $25,000 in support since the surrender of his parental rights; but he later testified that he gave Ms. Stiles $100 approximately 7 times." (Supp at 3) but the Court confuses what the testimony was.

Sean testified that since 2014 he paid sporadic payments of a hundred dollars a week (A at 55). He estimated the total at thousands of dollars (A at 57). Richell testified that this amount was more like the hundred dollars being given "probably seven times" (A at 113) and that same was "in no[body's] presence. It was just between me and Sean. He'd hand an envelope every so

often." (A at 93: RS 64) So there's not really a huge difference between the Parties' memories.

No $25,000 claim was made as to the hundred dollar payments. Where the Court appears to misunderstand the record occurred in an exchange between Sean and Counsel for Richell. Sean initially misunderstood the timeframe about which he was being questioned and claimed $25,000 until he understood the question properly. (A at 86)

Further, the lines of questioning were different. Attorney Simmons questioned the witness in terms of $100 payments. (A at 57) Attorney Kenyon simply stated "how much have you paid." (A at 86)

As to the $25,000 claim, Sean was referring to procedures for which he had paid for Richell around the time of the surrender. (Supp at 10 and 13) See also Richell's refusal to testify as to same. (A at 194-195: RS 66-72)

Assuming arguendo that there is such a requirement, the December Order does not establish what level of support would theoretically be required to help establish parental status.

CONCLUSION

The facts here establish Sean's "parental status" in the vein of JB and JG. As such, this Honorable Court should remand this matter to the Circuit Court for further proceedings consistent with its order herein.

For the reasons set forth above, Sean Pearson requests that this Court: (i) reverse the trial court's decision that Sean Pearson has failed to establish "parental status"; (ii) vacate the trial court's decision granting the Motion to Dismiss; and, (iii) remand this case to the trial court for further hearings on Sean Pearson's Motion to Establish Parenting Plan.

REQUEST FOR ORAL ARGUMENT

Sean Pearson requests that he be permitted 15 minutes for oral argument.

CERTIFICATE OF ATTACHMENT OF APPEALED DECISIONS

Counsel for Sean Pearson hereby certifies that the appealed decisions or orders are in writing and are found in the Supplement appended to this brief.

Respectfully submitted,
SEAN PEARSON
By his Legal Counsel,

Date: July 20, 2018

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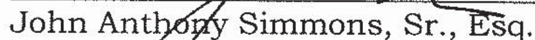
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed by first-class mail this day to Brian D. Kenyon, Counsel for the Mother.



John Anthony Simmons, Sr., Esq.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

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SUPPLEMENT TO BRIEF FOR SEAN PEARSON

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THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

DEC - 6 2017

10th Circuit - Family Division - Brentwood
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NOTICE OF DECISION

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SIMMONS & ORTLIEB PLLC
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HAMPTON NH 03842

Case Name: **In the Matter of Richell Chrestensen and Sean Pearson**
Case Number: **618-2011-DM-00252**

Enclosed please find a copy of the Court's Order dated December 01, 2017 relative to:

Order on Petitioners Motion to Dismiss

December 04, 2017

LoriAnne Hensel
Clerk of Court

(618770)
C: Brian D. Kenyon, ESQ

NHJB-2207-DF (07/01/2011)

DEC - 6 2017

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

COUNTY OF ROCKINGHAM 10TH CIRCUIT – FAMILY DIVISION - BRENTWOOD

In the Matter of:
Richell Stiles (Chrestensen) and Sean Pearson

Case No. 618 – 2011 – DM – 252

ORDER ON PETITIONER'S MOTION TO DISMISS (INDEX NUMBER 49)

Both parties appeared with counsel on October 5, 2017 on petitioner's Motion to Dismiss (Index number 49) respondent's Petition to Bring Forward and Change Parenting Plan (Index number 42 and 43) and Motion to Establish Parenting Plan (Index number 52). Based on the offers of proof and evidence presented, the court grants the motion to dismiss for the following reasons.

FINDINGS OF FACT

Ms. Stiles is the biological mother of Lucas Troy Pearson (date of birth March 17, 2010). Mr. Pearson is the biological father of Lucas. A final parenting decree as amended was issued by Notice of Decision dated December 14, 2011, which provided that Ms. Stiles had sole decision-making and sole residential responsibility for Lucas. Mr. Pearson had parenting time on Saturdays based on certain conditions (Index number 21).

Mr. Pearson surrendered his parental rights over Lucas in 2012 (case number 318 – 2012 – SU – 26). By order dated March 31, 2014, Mr. Pearson's motion to reopen the surrender of his parental rights was denied. In his motion to reopen the surrender, Mr. Pearson alleged that he had agreed to the surrender based on several promises made by the mother of the child regarding visitation and reduced child support. He claimed that the mother failed to abide by those promises and that he was fraudulently induced and coerced into surrendering his parental rights. In denying the motion to reopen the surrender, the court made the following findings:

At no time during this colloquy [of Mr. Pearson during the surrender hearing] *did the Movant ever indicate or ask about parenting time. Indeed, he acknowledged that he was no longer going to be a parent to the child. In addition, his questions about child support show that at the time of the hearing, he was keenly aware of the child support issue, and that he was anxious to know when his child support payments would end. The recording of the hearing shows no hesitation or influence on the part of Mr. Pearson, and Mr. Pearson seemed pleased with the proceedings.*

Given this, there is no basis to reopen the case as Mr. Pearson was fully advised of his rights at the time of the proceeding. He knowingly and voluntarily waived those rights, and freely and voluntarily acknowledged that he was no longer going to be a parent to the minor. Therefore, the Motion is Denied.

On June 27, 2012, Lucas was adopted by Ms. Stiles (formerly known as Ms. Chrestensen). (Case number 318 – 2012 – AD – 27).

The testimony presented at the hearing included Mr. Pearson, Ms. Stiles and several other witnesses who observed interactions of Mr. Pearson with Ms. Stiles and Lucas during periods of time between 2012 and 2016. Weighing the credibility of the witnesses, the credible evidence established that after the surrender of parental rights by Mr. Pearson, Ms. Stiles allowed some limited contact between Mr. Pearson and Lucas, usually at church and usually supervised. The evidence also established that Ms. Stiles also allowed a few visits outside of church, usually but not always with Ms. Stiles present, including such things as one ice fishing event, several birthday parties, and one church barbecue.

Mr. Pearson called several witnesses who testified about their observations of interactions between Lucas and Mr. Pearson, primarily at church functions, as being loving and playful. Ms. Stiles called several witnesses who testified about father speaking inappropriately to Lucas and to Ms. Stiles in front of Lucas. The pastor of the church both parties attended testified that Ms. Stiles agreed to try to give Mr. Pearson some time with Lucas at church, based on the pastor's counseling, but the pastor observed that Mr. Pearson's time with Lucas was usually only when it was convenient for Mr. Pearson.

The contact with Lucas ended in 2016 as a result of Mr. Pearson's improper conduct toward Ms. Stiles at church, which resulted in Mr. Pearson being asked to leave the church congregation by the pastor.

Mr. Pearson's testimony that he provided substantial financial support to Ms. Stiles for Lucas was not credible. He at one point indicated that he had provided $25,000 in support since the surrender of his parental rights; but he later testified that he gave Ms. Stiles $100 approximately 7 times.

RULINGS OF LAW

In her motion to dismiss, Ms. Stiles argues that Mr. Pearson is not a "parent" under RSA 461 – A because Mr. Pearson surrendered his parental rights in 2012 and therefore has no standing to pursue parental rights under the parenting statute. She also argues that the doctrines of res judicata and collateral estoppel apply because the prior determinations in the surrender case and adoption case prohibit him from bringing another action relating to parental rights after a final determination of his parenting rights had been previously made.

Mr. Pearson argues that RSA 461 – A does not define "parent", that there are various ways for a person to establish parental status, and that his interactions with Lucas between 2012, after his surrender of parental rights, and 2016, when Ms. Stiles ended any interaction between Mr. Pearson and Lucas, make him a "parent" for purposes of requesting parental rights under RSA 461 – A. He relies on In the Matter of JB and JG, 157 N.H. 577 (2008) as authority for the proposition that there are multiple alternate routes to establish parental status.

JB and JG is distinguishable from this case and does not provide a basis for establishing that Mr. Pearson has parental status. In JB and JG, the petitioner, AB, was not the biological father or a stepparent to the minor child, although he was on the birth certificate. AB, however, had consistently maintained contact with the minor child, he was a regular care giver for the minor child (3 or 4 days each week from 2003 through September 2006), and the child's mother obtained a child support

order against AB in 2004 which was continuing at the time of the filing of AB's parenting petition under RSA 461 – A.

In contrast, Mr. Pearson did not maintain contact with Lucas. Quite the opposite, he intentionally surrendered his parental rights in 2012 when Lucas was 2 years old. Mr. Pearson acknowledged that he was no longer going to be a parent to Lucas and he was anxious to know when his child support payments would end. After the surrender, Ms. Stiles adopted Lucas. Ms. Stiles was the sole parent for Lucas.

In addition, Mr. Pearson's limited contact with Lucas after the surrender in 2012 to the fall of 2016 was nothing like the constant and regular contact by AB in JB and JG. Mr. Pearson's contact with Lucas was permitted by Ms. Stiles on a very limited basis, usually connected with church, usually supervised, and based on her pastor's counseling sessions. Ms. Stiles, as Lucas's parent, certainly could make a decision that some contact by Lucas with Mr. Pearson was in Lucas's best interest, but her actions did not in any way create a parent status for Mr. Pearson.

Likewise, Mr. Pearson's contribution to Ms. Stiles of approximately seven $100 payments over the course of several years does not establish that Mr. Pearson was supporting Lucas as a parent.

Therefore, Mr. Pearson has not established a status as parent to Lucas based on the evidence presented.

Although RSA 461 – A does not define "parent", the adoption statute, RSA 170 – B: 2 XII defines "parent" as *"mother, birth father, legal father, or adoptive parent, but such term shall not include the parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary surrender."* As well, the termination of parental rights statute, RSA 170 – C: 2 VIII defines "parent" as *"(a) the mother, (b) a father as to whom a child is legitimate, (c) a person as to whom a child is presumed to be a legitimate child, (d) and alleged father who is living with the mother and child or who has complied with the provisions of RSA 170 – B: 5, I (c), or (d) an adoptive parent. Such term does not include a parent as to whom the parent-child relationship has been terminated by judicial decree."*

When Ms. Stiles adopted Lucas in 2012, Mr. Pearson was not a parent. His limited contact with Lucas thereafter which was allowed by Ms. Stiles as Lucas's only parent does not undo the surrender of parental rights by Mr. Pearson which *"shall divest the parent and the child of all legal rights, privileges, duties and obligations"* (except for *[t]he rights of inheritance of both the parent and the child which shall not be divested until the adoption of said child")*, RSA 170 – C: 12. Upon the expiration of one year after the adoption decree was issued, *"the decree cannot be challenged by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter." RSA 170 – B: 21.* Mr. Pearson's only possible parental rights relating to Lucas after the surrender related to inheritance rights which were extinguished with the decree of adoption.

Mr. Pearson's attempt to create a "parental status" by pursuing a petition under RSA 461 – A after the finality of the surrender and the adoption is not legally viable. Mr. Pearson unsuccessfully attempted to reopen the surrender. Although he requested to be notified of the adoption (so that he would know when the child support payments would stop being taken out of his paycheck) he took no action in connection with the adoption when it was granted. His parental rights were at issue in the

surrender proceeding and the adoption proceeding. Mr. Pearson and Ms. Stiles were parties in the surrender proceeding, Mr. Pearson requested notice of the adoption proceeding, and the status of his parental rights were fully and finally resolved in those two proceedings. Mr. Pearson has no basis to pursue a parenting petition under RSA 461 – A.

Based on all of the above, Mr. Pearson has not established any "parental status" on which any request for parental rights under RSA 461 – A can be pursued. Accordingly, Ms. Stiles' motion to dismiss Mr. Pearson's pleadings is granted.

So Ordered.

December 1, 2017
Date

Hon. David G. LeFrancois, Justice

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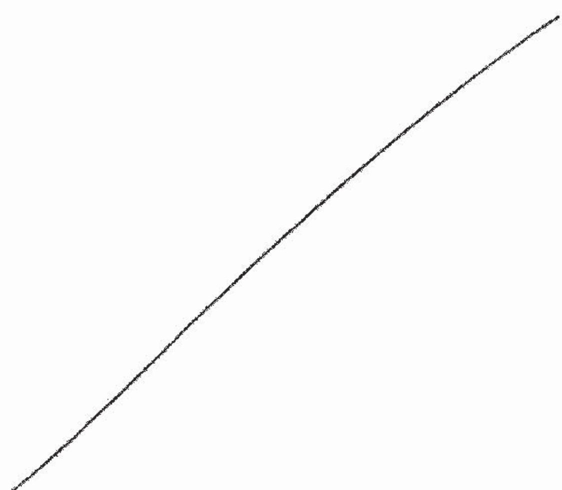

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Case Name: **In the Matter of Richell Chrestensen and Sean Pearson**
Case Number: **618-2011-DM-00252**

Enclosed please find a copy of the Court's Order dated January 02, 2018 relative to:

Motion for Reconsideration

January 02, 2018

LoriAnne Hensel
Clerk of Court

(618770)
C: Brian D. Kenyon, ESQ

NHJB-2207-DF (07/01/2011)

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS 10th CIRCUIT – BRENTWOOD - FAMILY

In The Matter Of
RICHELL CHRESTENSEN(Stiles)

And

SEAN PEARSON

Docket No. 618-2011-DM-00252

MOTION FOR RECONSIDERATION

NOW COMES the Respondent, Sean Pearson, by and through Legal Counsel, and respectfully requests this Honorable Court reconsider it Notice of Decision dated December 4, 2017 ("Order"), and in support thereof states as follows:

The Record:

Frequency/Quantity of Contact:

1. The Order cites several aspects of the record which do not appear to accurately reflect the fullness of the record before the Court.
2. For instance, the Order states that "Ms. Stiles allowed some limited contact between Mr. Pearson and Lucas, usually at church and usually supervised." (Order at page 2, paragraph 1.)
3. The Court does not clarify how much of this limited contact occurred. This is important given the Court's later finding that Sean's contact with Lucas was not consistent (Order at p.2, para.7).
4. Sean Pearson testified as to regular contact on Sundays and Wednesdays for dinner, sleepovers on a Saturday night when it was acceptable to Richell, and other regular time. He also testified to end of summer parties at his home for the church community. The transcript is not yet available for the full testimony as to all contact.
5. There is ample evidence in the record, given by third party witnesses (particularly Dyan Kaplan and Danielle Hammel), that the amount of contact that Sean Pearson had with his son was quite substantial.
6. Sean Pearson also testified to regular contact with his son, which was not contradicted by Richell. (Richell, in fact, testified at her deposition that she did not keep a record of the contact. RS 31:13-14)
7. The Order further states "The evidence also established that Ms. Stiles allowed a few visits outside of church, usually but not always with Ms. Stiles present, including such things as one ice fishing event, several birthday parties, and one church barbecue." (Order at p.2, para.7.)

8. There was more than this established in the record. See above; see also Richell Stiles' deposition transcript and hearing testimony. As to the latter, obviously the transcript is not yet available. See also all other trial testimony.
9. Richell's full deposition transcript[1] was made part of the record and even that establishes: Sean took Lucas rock climbing twice[2] (RS 85:4-5; RS 86:10-15) and trail walking at a church family day (RS 96:18).
10. The record also established that Sean shares his love of the outdoors with Lucas, which also includes fishing, which the Court overlooked. (See Exhibits C and H.)
11. Of particular and salient mention is the day that Richell and Sean spent together with Lucas going to an amusement park (LegoLand; RS 40:4, Exhibit A).
12. Lucas even sees Sean's dad, Lucas' "Grandpa" seven or eight times a year, further underscoring Sean's roll in Lucas' life. (RS 188:8)
13. Such examples are glaring examples of the message sent to young Lucas about who his father is. (See also argument, below.)

Testimony of Bill Whitney:

14. The Court quotes from testimony from Bill Whitney, and appears to give said testimony considerable weight, since the Court finds: "...the pastor observed that Mr. Pearson's time with Lucas was usually only when it was convenient for Mr. Pearson."
15. First, even if same were true, it would still not obviate the need to look at the emotional needs of Lucas. Whether Sean is presumed to be a "fair weather" father or not, Lucas' need for the continued involvement of his father in his life is paramount to his well-being and future development.
16. Second, even if same were true, the Court establishes no bright line threshold of "how much involvement is enough?" for Sean Pearson to have failed to maintain. Most importantly, this case is not about how good a father Sean Pearson has been, it is about whether or not he is a father to his son, Lucas, given his involvement with Lucas post-Surrender.
17. These matters point to the real issue: Richell Stiles, **after the termination and after legally adopting Lucas** failed to act consistently with someone who is trying to shut out a father from his son's life. Certainly Sean Pearson did not act like someone who didn't want to be involved in his son's life.
18. Third, the Court seems to have ignored that Mr. Pearson is trying to navigate a relationship that has a legal history: Richell Stiles had a past restraining order against Sean Pearson.
19. Even given that legal history, Sean Pearson persisted as best he could in trying to be involved. The Court seems to not fully apprehend just what kind of a position Sean Pearson was in with regard to asking for time with Lucas.
20. In fact, the record established at the hearing that when Sean tried to get Christmas presents to Lucas, he was met with Richell filing a restraining order

---

[1] Transcript references will be made by the initials of the deponent (RS for Richell Stiles and BW for Bill Whitney). Bill Whitney's full transcript was also made part of the record.
[2] Sean's testimony was that it was several times.

against him. When Undersigned Counsel entered an Appearance in that matter, the restraining order was withdrawn.

21. Given this sort of legal climate, coupled with the Surrender status[3], it should never be forgotten that Sean Pearson was in no position to demand time with his son.

22. Fourth, though the Court quotes Bill Whitney as to the "only when convenient" part of his testimony, the Court does not mention that Bill Whitney also told Sean Pearson "do whatever she says."

23. The fact is, Sean Pearson held none of the cards and had to walk a very fine line if he wanted to be involved in Lucas' life. This was so because Richell controlled when Sean saw Lucas. (RS 125:18-126:13)

24. Fifth, the Court fails to balance all of Bill Whitney's testimony against his **motivation** for testifying on behalf of Richell Stiles, namely that there is something very important to him in it for him if he toes the company line.

25. Bill Whitney was asked about his motivations in this case during his deposition.

26. Bill Whitney was not allowed to be able to see his grandchildren and was doing so through Richell Stiles. (BW 22:3-4; 66:17 to 68:19) and considers Richell his third daughter (BW 63:9).

Financial Support:

27. Though the case of In the Matter of JB and JG, 157 N.H. 577 (2009) (hereinafter "JB and JG") does mention a child support order as part of the fact pattern, it is mentioned in terms of the equities of the mother in that case not being able to deny fatherly involvement. Among those reasons was the mother having obtained a child support against him. JB and JG should not be read to, and does not require, financial support to be paid to be considered a parent.

28. Likewise, no Family Court would entertain a motion to suspend parenting time due to an obligor's lack of paying child support. Family Courts routinely educate litigants that the two issues are not linked.

29. This Court has overlooked or misapprehended this aspect of JB and JG.

30. Further, the Court seems to be concerned about what it perceives to be an inconsistency in Sean's testimony regarding the amounts paid to Richell.

31. The $25,000 Sean spoke of was in relation to procedures of hers that he had paid for in the past, around the time of the Surrender. Trial transcript not yet available.

[END OF PAGE]

[3] The Court quotes from the colloquy of the Surrender to point to Sean's alleged motivations. However, this is not the whole picture. As is a matter of record, Sean tried to undo the Surrender. Despite the legal reality that this was not allowed, it does speak to his consistent efforts to re-establish contact with his son, not just in fact, but in court.

Parental Status:

32. The Court also quotes the legal history involving Sean's Surrender of his parental rights.
33. It is wholly proper to do so in this context and Sean does not believe the Court acted improperly in doing so.
34. However, this case is about a fundamentally different question:

    what do you do when a mother who has "adopted" her son after a Surrender does not act consistently with the Surrender but rather allows her son's father back into her son's life?
35. Richell does not deny that she did so. See above.
36. Richell admits that Lucas loves Sean. (RS 195:7)
37. Richell admits that Lucas calls Sean "Dad" (RS 46:3) and his "father" (RS 194:23)
38. Even Bill Whitney testified as to the love that Sean Pearson gave to Lucas when testifying about Sean putting Lucas on his shoulders a lot, including in the front row of the church service. (BW 82:23 to 83:7)
39. So the question that needs deciding is:

    if a man who is not related by blood can insist on being involved in the life of a boy who knows him to be his father (as in JB and JG), then

    why can't a blood father who has Surrendered re-establish his "parental status" given the actions of the mother to allow him back into his son's life (as in this case)?
40. Sean was referred to in pleadings in this case as a "legal stranger" to Lucas.
41. However, JB and JG stands for the proposition that people with no proper legal status can obtain parental rights as a result of their ongoing relationship with their child.
42. Sean Pearson asks that he be treated no differently, and that his son Lucas be allowed to see and be involved with the father whom he knows, loves and calls "Dad."

WHEREFORE, the Respondent respectfully requests that the Court immediately:

A. RECONSIDER its order;
B. VACATE the Order;
C. SCHEDULE a hearing on Sean Pearson's pending motion to establish a Parenting Plan;
D. ORDER such other and further relief as may be just and equitable.

[SIGNATURE PAGE TO FOLLOW]

Dated: December 14, 2017

Respectfully submitted,

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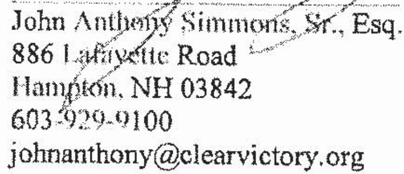
By: 

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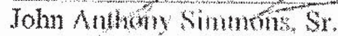
CERTIFICATION

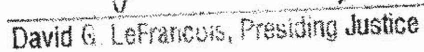
I hereby certify that I have this day given a copy of the foregoing to Counsel for Richell (Chrestensen) Stiles via email.



John Anthony Simmons, Sr.

Motion ~~Granted~~/Denied

1/2/18



David G. LeFrancois, Presiding Justice

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS 10th CIRCUIT – BRENTWOOD – FAMILY

In The Matter Of

RICHELL CHRESTENSEN(Stiles)

And

SEAN PEARSON

Docket No. 618-2011-DM-00252

Affidavit of Sean Pearson

Now Comes Sean Pearson and on oath deposes and says as follows:

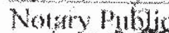
1. I have read the attached Motion and everything in it is true and accurate to the best of my knowledge.
2. As to paragraph 31 of this motion, because the trial transcript is not available, I can't say for sure, but the $25,000 would have been a reference to all of the medical procedures for which I paid for Richell in the past, roughly coinciding with the timeframe of the Surrender.

Sean Pearson

STATE OF NEW HAMPSHIRE
Rockingham, ss

Then appeared before me Sean Pearson, to me known, and made oath that all of the statements contained in this Affidavit are true to the best of his knowledge and belief.

December 14, 2017



Notary Public

KATHERYN Y. PARADISO
Notary Public, New Hampshire
My Commission Expires Apr. 06, 2021