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Notes: Limitations On Who May Adopt: A Natural Mother May Not Adopt Her Own Natural Children Notwithstanding the Consent of the Natural Father and the Children. *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995)

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LIMITATIONS ON WHO MAY ADOPT: A NATURAL MOTHER MAY NOT ADOPT HER OWN NATURAL CHILDREN NOTWITHSTANDING THE CONSENT OF THE NATURAL FATHER AND THE CHILDREN. *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995).

I. INTRODUCTION

The right to raise a family is among those fundamental rights guaranteed by the Constitution.¹ This right, however, is not absolute.² In many cases, the state has a vested interest and may intervene in this relationship.³ This may be especially true in cases of adoption.⁴

Because adoption did not exist at common law, Maryland has developed a comprehensive statutory scheme governing adoption.⁵ Maryland law, however, leaves unsettled precisely who is permitted to adopt.⁶ Section 5-309 of the Family Law Article of the Annotated Code of Maryland states that “[a]ny adult may petition a court to decree an adoption.”⁷ Case law, however, reveals that the phrase “any adult” is subject to interpretation by the courts.⁸ The issue of

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1. See *Meyer v. Nebraska*, 262 U.S. 390 (1923). In *Meyer*, the Court held that constitutional liberty included not just freedom from bodily restraint, but also the right to marry, to establish a home, and to raise children. See *id.* at 399.
 2. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court recognized that “the family itself is not beyond regulation.” *Id.* at 166. The Court further reasoned that “[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. [A state] may secure this against impeding restraints and dangers, within a broad range of selection.” *Id.* at 168.
 3. Cf. *Lieberman v. Lieberman*, 81 Md. App. 575, 588, 568 A.2d 1157, 1163-64 (1990) (holding that the state has a strong interest in requiring a responsible parent to support his or her children because otherwise the state is responsible).
 4. Cf., e.g., MD. CODE ANN., FAM. LAW § 5-303(a) (1991) (“The General Assembly finds that the policies and procedure of this subtitle that concern adoption are socially necessary and desirable.”).
 5. See *id.* §§ 5-301 to -330; see also, e.g., *Beckman v. Boggs*, 337 Md. 688, 691, 655 A.2d 901, 902 (1995).
 6. See, e.g., FAM. LAW § 5-303(b) (specifying the purpose of the adoption law); *id.* § 5-308 (specifying the legal effect of an adoption).
 7. *Id.* § 5-309(a) (emphasis added).
 8. See, e.g., *Bridges v. Nicely*, 304 Md. 1, 497 A.2d 142 (1985) (holding that a natural father of a child born out of wedlock could adopt his own natural child); *Ex Parte Frantum*, 214 Md. 100, 133 A.2d 408, cert. denied, 355 U.S. 882 (1957) (holding that petition for adoption was properly denied on the grounds of prospective parents’ advanced age); *Venables v. Ayres*, 54 Md. App. 520, 459 A.2d 601 (1983) (holding that a deceased person cannot become an adoptive parent).

whether a child's natural mother is among "any adult" permitted to adopt the child was recently addressed in *Green v. Sollenberger*.⁹ The *Green* court held that "the General Assembly never intended for natural parents to be permitted to adopt their own *legitimate* children."¹⁰

When David Brian Lenick and Dorothy Mae Green divorced in 1983, Green, the natural mother, was awarded custody of her children, and Lenick, the natural father, was ordered to pay child support.¹¹ In May 1991, the Circuit Court for Carroll County allowed Green to adopt her children with their consent, as well as the consent of Lenick.¹² This order had the legal effect of terminating Lenick's parental rights.¹³ When Lenick petitioned a Pennsylvania court to relieve him of his obligation to pay child support, Maryland requested a stay pending a Maryland court's determination of whether the adoption decree was valid.¹⁴ The Pennsylvania court subsequently granted the requested stay.¹⁵

A Maryland trial court vacated the adoption, declaring it void *ab initio*,¹⁶ and the court of special appeals affirmed.¹⁷ In a unanimous decision, the Court of Appeals of Maryland affirmed the intermediate court's decision, holding that, despite the consent of the father and the children, the Circuit Court for Carroll County improperly allowed Green to adopt her three legitimate children.¹⁸ The court thus determined that such an adoption is legally ineffective and may be vacated more than one year after its making.¹⁹

In so holding, the court of appeals followed the express adoption policy of Maryland²⁰ as well as the majority of other jurisdictions.²¹

9. 338 Md. 118, 656 A.2d 773 (1995).

10. *Id.* at 127, 656 A.2d at 777. The court further held that, if such an adoption were permitted, it could be collaterally attacked at any time and, thus, vacated. *See id.* at 131, 656 A.2d at 779. This holding will not be addressed in this casenote. Note, however, that the court of appeals cites no authority for this proposition. A later Maryland case, *Montgomery County v. Revere National Corp.*, 341 Md. 366, 380, 671 A.2d 1, 7-8 (1996), cited *Green* for this proposition and added that the leading case in this area was *Kelley v. Town of Milan*, 127 U.S. 139 (1888).

11. *See Green*, 338 Md. at 122, 656 A.2d at 775.

12. *See id.* at 123, 656 A.2d at 775.

13. *See id.* Green was named the sole parent of the children and the children's surnames were changed from Lenick to Green. *See id.*

14. *See id.*

15. *See id.*

16. *See id.* at 124, 656 A.2d at 775. "Void *ab initio*" means void from its inception. *See BLACK'S LAW DICTIONARY* 6 (6th ed. 1990).

17. *See Green v. Sollenberger*, 100 Md. App. 686, 691, 642 A.2d 324, 327 (1994), *aff'd*, 338 Md. 118, 656 A.2d 773 (1995).

18. *See Green*, 338 Md. at 118-31, 656 A.2d at 773-79.

19. *See id.* at 131, 656 A.2d at 779.

20. *See MD. CODE ANN., FAM. LAW* § 5-303(b) (1991). Section 5-303(b) states that

There are, however, several troubling facets of the court's decision in *Green*: first, the court departed from the plain language of the statute;²² second, the holding suggested, without further analysis, that children could never benefit from the termination of their father's rights;²³ third, the court's decision espoused a rigid definition of family and gave the state the power to intervene to enforce it;²⁴ and fourth, the decision fostered a dual system of adoption — one for the poor and one for the rest of society.²⁵

the purpose behind Maryland's adoption law is, among other things, to protect "children from unnecessary separation from their natural parents." *Id.* § 5-303(b)(i).

21. See *Green*, 338 Md. at 130, 656 A.2d at 779; see also, e.g., *Marshall v. Marshall*, 239 P. 36, 38 (Cal. 1925); *In re Adoption of Kohorst*, 600 N.E.2d 843, 847 (Ohio Ct. App. 1992); *In re Adoption of Graham*, 409 N.E.2d 1067, 1069-70 (Ohio Ct. C.P. 1980); *Leake v. Grissom*, 614 P.2d 1107, 1109 (Okla. 1980); *In re Estate of Baxter*, 827 P.2d 184, 187 (Okla. Ct. App. 1992); *Campbell v. Kindred*, 554 P.2d 599, 600-01 (Or. Ct. App. 1976). But see *McDonald v. Hester*, 155 S.E.2d 720, 721 (Ga. Ct. App. 1967); *Petition of Curran*, 49 N.E.2d 432, 434 (Mass. 1943).
22. According to section 5-309(a), "[a]ny adult may petition a court to decree an adoption." FAM. LAW § 5-309(a) (1991). Yet in *Green*, the court held that "despite the broad unqualified language of Maryland's adoption statute, it was not the intention of the Legislature that any individual may be adopted by any adult." *Green*, 338 Md. at 124, 656 A.2d at 775 (quoting with approval the court of special appeals decision in that case) (emphasis added). This is contrary to the language in *Bridges v. Nicely*, 304 Md. 1, 12, 497 A.2d 142, 147 (1985), in which the court, interpreting this statute, held that "[i]n view of the broad, unqualified wording of Maryland's adoption statute . . . we are unable to conclude that the Legislature intended to prohibit adoption in all circumstances by a natural parent of a child born out of wedlock." *Id.* (emphasis added). The court relied on a rule of construction which states that "where the language of a statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form." *Id.* at 10-11, 497 A.2d at 147. Note, however, that the language in section 5-315 appears to place a restriction on the term "any adult" by requiring that a married petitioner join his or her spouse in a petition for adoption. This, however, was not the focus of the court's discussion. A discussion of the appropriateness of this provision is beyond the scope of this paper.
23. See *Green*, 338 Md. at 128, 656 A.2d at 777-78. Upon further analysis, however, the court may have been able to identify possible social benefits to the children of having their father's rights terminated. See *infra* notes 155-68 and accompanying text.
24. The court allowed the state to bring suit to invalidate an adoption decree that was consented to by all the parties involved. See *Green*, 338 Md. at 123, 656 A.2d at 775. In *Green*, the father and the children consented to the adoption, as did the mother by filing for the adoption. See *id.*; see also *infra* notes 169-88 and accompanying text.
25. Cf. Roger J.R. Levesque, *Targeting "Deadbeat" Dads: The Problem with the Direction of Welfare Reform*, 15 *HAMLIN J. PUB. L. & POL'Y*, Winter 1994, at 3 (suggesting that the current welfare system creates a "dual system of family law, one for poor fathers and one for the rest of society"). See

II. BACKGROUND

A. Child Support Generally²⁶

The general rule is that parents must provide support for their children.²⁷ This duty continues even after divorce.²⁸ Adoption, however, severs all the legal duties and obligations of the living, natural parents.²⁹ The exception is that, in the case of adoption by a stepparent, the natural parent married to the stepparent is not relieved of his or her duties or obligations.³⁰ In such cases, however, the parent not married to the stepparent is no longer obligated to pay child support.³¹ During the process of a divorce, parents are often permitted to come to an agreement regarding custody and child support payments.³² The courts, however, have generally not allowed one natural parent to voluntarily waive their child's right to child support from the other parent.³³

generally Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status* (Part I), 15 STAN. L. REV. 257 (1964).

26. For the most part, child support is not within the scope of this casenote and will only be addressed in a cursory manner.
27. See MD. CODE ANN., FAM. LAW § 5-203(b) (Supp. 1996); *cf.* *Stambaugh v. Child Support Enforcement Admin.*, 323 Md. 106, 112, 591 A.2d 501, 504 (1991) ("Generally, the duty to support one's minor children may not be bargained away or waived.").
28. The court may issue child support orders upon the divorce of a child's parents. See, e.g., *Petrini v. Petrini*, 336 Md. 453, 459, 648 A.2d 1016, 1018 (1994); *Stambaugh*, 323 Md. at 108, 591 A.2d at 502.
29. See MD. CODE ANN., FAM. LAW § 5-308(b)(2) (1991).
30. See *supra* note 59.
31. *Cf. Stambaugh*, 323 Md. at 106-14, 591 A.2d at 501-05 (holding that while a decree of adoption eliminates the father's duty to support the minor child subsequent to the adoption, it does not relieve the father of his duty to pay arrearage).
32. See, e.g., ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMA OF CUSTODY* 134 (1992) (suggesting that approximately eighty to ninety percent of divorcing parents come to an agreement regarding custody and child support); see also Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 978-79 (1979) (suggesting that parents may even use custody as a bargaining chip in divorce agreements and that the parent who has a stronger desire for custody is often at a disadvantage in the bargaining process).
33. See *Stambaugh*, 323 Md. at 106-14, 591 A.2d at 501-05. The father in *Stambaugh* consented to the adoption of his children by their stepfather in exchange for the mother's promise to waive the father's liability for past child support. *Id.* at 108, 591 A.2d at 502. The court held that this agreement was invalid because it violated Maryland's public policy. See *id.* at 112, 591 A.2d at 504 (citing as authority § 5-327 which forbids compensation in exchange for adoption); see also *Lieberman v. Lieberman*, 81 Md. App. 575, 588, 568 A.2d 1157, 1163 (1990) (holding that "[a] parent cannot agree to preclude a child's right to support by the other parent, or right to have that support modified").

B. Adoptions Generally

Because the concept of adoption did not exist at common law,³⁴ Maryland has developed a comprehensive statutory scheme to deal with adoption.³⁵ The primary consideration in an adoption proceeding is the best interest of the child.³⁶ The stated purpose of Maryland's adoption law, however, is to protect all of the parties involved: the children, natural parents, and adoptive parents.³⁷ One aspect of this is that the adoptive parents are to be protected "from a future disturbance of their relationship with the child by a natural parent."³⁸

C. Adoptions Permitted With or Without Consent

Generally, a child may be adopted with the consent of the natural parents and, in some cases, even without consent.³⁹ Section 5-311 of the Family Law Article of the Annotated Code of Maryland provides for adoptions with the consent of both natural parents and the child.⁴⁰ A child may be adopted without the consent of the natural parents if the natural parents' rights are terminated by a judicial proceeding.⁴¹ Section 5-312 provides that in certain circumstances an individual may be adopted even without either the consent of a natural parent or a judicial proceeding terminating the rights of the natural parents.⁴²

D. Effect of Adoption

The legal effect of an adoption is that the child is, for all intents and purposes, considered the child of the adoptive parents.⁴³ Fur-

34. See *Beckman v. Boggs*, 337 Md. 688, 691, 655 A.2d 901, 902 (1995).

35. See MD. CODE ANN., FAM. LAW §§ 5-301 to -330 (1991 & Supp. 1996).

36. See, e.g., *Green v. Sollenberger*, 338 Md. 118, 122, 656 A.2d 773, 774 (1995); *Petrini v. Petrini*, 336 Md. 453, 469-70, 648 A.2d 1016, 1023 (1994) ("[T]he controlling factor, or guiding principle, in . . . adoption cases is . . . what best serves the interest of the child; the paramount consideration is what will best promote the child's welfare, a consideration that is of 'transcendent importance.'"); *In re Adoption No. 10941*, 335 Md. 99, 113-14, 642 A.2d 201, 208-09 (1994); *In re Adoption No. A91-71A*, 334 Md. 538, 561, 640 A.2d 1085, 1096 (1994).

37. See FAM. LAW § 5-303(b).

38. *Id.* § 5-303(b)(3)(ii).

39. See *id.* §§ 5-311 to -313.

40. Section 5-311(b)(ii) calls for the consent of the individual to be adopted if the individual is at least 10 years old. See *id.* § 5-311(b)(ii).

41. See *Id.* § 5-311(b). In such cases, Maryland law requires the consent of the executive head of the child placement agency that has been awarded guardianship over the individual, as well as the consent of the individual to be adopted if the individual is at least 10 years old. See *id.*

42. See *id.* § 5-312.

43. See *id.* § 5-308(b). Section 5-308(b) provides that, "after a decree of adoption

thermore, "each living natural parent of the individual adopted is: (i) relieved of all parental duties and obligations to the individual adopted; and (ii) divested of all parental rights as to the individual adopted."⁴⁴ "Adoption decrees cut the child off from the natural parent, who is made a legal stranger to his offspring."⁴⁵

Given the drastic and permanent nature of the effect of an adoption on the ties between the child and the natural parents, Maryland law places a heavy burden on those seeking to adopt.⁴⁶ For example, section 5-313 requires a court to find by clear and convincing evidence that it is in the best interest of the child to terminate the natural parents' rights before an adoption is granted without the consent of the natural parents.⁴⁷

In *Dawson v. Eversberg*,⁴⁸ the Court of Appeals of Maryland remanded, without affirmance or reversal, a decree granting an adoption to the natural father while reserving the mother's parental rights.⁴⁹ The court of appeals determined that the trial judge was without "authority to decree the adoption and at the same time" reserve parental rights in the mother because the effect of an adoption is to sever the rights of all living parents not married to the adopting parent.⁵⁰ If the adoption were left in effect, the natural mother would have no rights to her children.⁵¹ Because it was unclear whether the trial judge would have granted the adoption had he been aware of the true effect it would have, the court remanded for reconsideration of the matter.⁵²

Because of the harsh consequences of an adoption recognized in both statutory and case law in Maryland, there is also great concern

is entered: (1) the individual adopted: (i) is the child of the petitioner for all intents and purposes; and (ii) is entitled to all the rights and privileges of and is subject to all the obligations of a child born to the petitioner in wedlock." See *id.*; see also *Beckman v. Boggs*, 337 Md. 668, 691, 655 A.2d 901, 902 (1995).

44. FAM. LAW § 5-308(b)(2).

45. *In re Adoption No. 10941*, 335 Md. 99, 113, 642 A.2d 201, 208 (1994) (quoting *Walker v. Gardner*, 221 Md. 280, 284, 157 A.2d 273, 275-76 (1960)); accord *Dawson v. Eversberg*, 257 Md. 308, 313, 262 A.2d 729, 732 (1970).

46. See, e.g., *Dawson*, 257 Md. at 313, 262 A.2d at 732. This is particularly true if the natural parent whose rights are being severed has not consented to the adoption. See *id.* (citing with approval *Walker*, 221 Md. at 284, 157 A.2d at 275-76).

47. See FAM. LAW § 5-313.

48. 257 Md. 308, 262 A.2d 729 (1970).

49. *Id.* at 315, 262 A.2d at 733. In *Dawson*, the adoption decree included the phrase "nothing in this decree shall affect . . . [the natural mother's] parental rights . . . as the natural mother of said infants." *Id.* at 312, 262 A.2d at 731.

50. *Id.* at 312-14, 262 A.2d at 731-32.

51. See *id.*

52. See *id.* at 314, 262 A.2d at 732.

regarding who may adopt a child and precisely what effect an adoption will have on a child's ties to his or her natural parents.

E. Who May Adopt

Section 5-309 governs who may adopt a child.⁵³ "Any adult" is said to have the right to "petition a court to decree an adoption."⁵⁴ The provision in section 5-309(b) which expressly permits adoption by a single person is significant because it suggests that two people are not needed to adopt a child.⁵⁵ While the language of this section appears to be broad and unqualified,⁵⁶ courts have provided a much narrower interpretation.⁵⁷

F. Effect of Adoption on Other Relationships

While adoption generally terminates the parental rights of all living parents,⁵⁸ there are exceptions. When a stepparent adopts a child, the rights of the stepparent's spouse are not terminated.⁵⁹ Some

53. See MD. CODE ANN., FAM. LAW § 5-309 (1991).

54. *Id.* § 5-309(a).

55. See *id.* § 5-309(b); see also *Ex parte* Libertini, 244 Md. 542, 224 A.2d 443 (1966); *In re* Adoption No. 90072022, 87 Md. App. 630, 590 A.2d 1094 (1991). Note, however, that language in section 5-315 appears to place a restriction on the term "any adult" by requiring that a married petitioner join their spouse in a petition for adoption. This, however, was not the focus of the court's discussion in *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995), and thus, a discussion of the appropriateness of this provision is beyond the scope of this paper.

56. See, e.g., *Green*, 338 Md. at 127, 656 A.2d at 777; *Bridges v. Nicely*, 304 Md. 1, 12, 497 A.2d 142, 147 (1985).

57. See, e.g., *Ex parte* Frantum, 214 Md. 100, 103-04, 133 A.2d 408, 410 (1956), *cert. denied*, 355 U.S. 882 (1957) (holding that while the age of prospective adoptive parents was not a disqualifying factor, it was an appropriate consideration); *Venables v. Ayres*, 54 Md. App. 520, 533, 459 A.2d 601, 608 (1983). *But see* *Bridges*, 304 Md. at 13, 497 A.2d at 148 (holding that FAM. LAW § 5-312 permits adoption by natural father of a child born out of wedlock); *Libertini*, 244 Md. at 543, 224 A.2d at 444 (holding that the law does not require adopting person to be married or have been married).

58. See *supra* notes 43-52 and accompanying text.

59. See MD. CODE ANN., EST. & TRUSTS § 1-207(a) (1991 & Supp. 1996). According to section 1-207(a),

[a]n adopted child shall be treated as a natural child of his adopting parent or parents. On adoption, a child no longer shall be considered a child of either natural parent, except that upon adoption by the spouse of a natural parent, the child shall still be considered the child of that natural parent.

Id.; cf. FAM. LAW § 5-315(a) (stating that the spouse of an adoptive parent need not be joined in a petition for adoption if the spouse is a natural parent of the individual to be adopted and has consented to the adoption).

states recognize similar exceptions following the adoption of a child by a lesbian or gay partner.⁶⁰ Some states also allow a natural father to use the adoption process to legitimate his child.⁶¹ These states extend the stepparent exception, thereby allowing the natural mother to retain her rights following the adoption of her child by the natural father.⁶² For example, in *In re Jessica W.*,⁶³ a New Hampshire court held that a natural mother could retain rights to her child following the adoption of the child by the natural father.⁶⁴ Other states expressly permit an adoption by the unmarried father or mother of the individual to be adopted.⁶⁵ Maryland, however, has not granted specific adoption rights to the fathers of illegitimate children.⁶⁶

G. *The Current Debate*

While other states generally have not permitted a natural parent to adopt his or her own child,⁶⁷ the court of appeals seemingly left this issue open in *Bridges v. Nicely*.⁶⁸ In *Bridges*, the Court of Appeals of Maryland held that an adoption that would cut off the mother's rights might be permitted despite the mother's refusal to consent where the father had already legitimated the child.⁶⁹ In *Bridges*, Beverly Ann Nicely and Jerry Wayne Bridges, Sr. had a son out of wedlock.⁷⁰ Bridges, the natural father, appeared on the

60. See, e.g., *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); cf. *In re M.M.D.*, 662 A.2d 837 (D.C. 1995) (extending stepparent exception to homosexual couple living together in committed personal relationship despite the fact that they were not married). But see *In re Jason C.*, 533 A.2d 32 (N.H. 1987) (holding that two unmarried adults could not jointly petition to adopt a child).

61. See, e.g., *In re Jessica W.*, 453 A.2d 1297 (N.H. 1982); *In re Adoption of a Child by A.R.*, 378 A.2d 87 (N.J. 1977); *In re A.J.J.*, 438 N.Y.S.2d 444 (N.Y. Sur. Ct. 1981). But cf. *Dawson v. Eversberg*, 257 Md. 308, 313-15, 262 A.2d 729, 732-33 (1970) (recognizing the statute currently codified as MD. CODE ANN., EST. & TRUSTS § 1-207 (Supp. 1996) as a less traumatic approach to legitimation under Maryland law); see also *Bridges v. Nicely*, 304 Md. 1, 6, 497 A.2d 142, 144 (citing *Dawson*, 257 Md. at 308-15, 262 A.2d at 729-33)); *infra* note 74 (discussing Maryland's legitimation statute).

62. See *supra* note 61.

63. 453 A.2d 1297 (N.H. 1982).

64. *Id.* at 1300.

65. See, e.g., ALASKA STAT. § 25.23.020(3) (Michie 1995); ARK. CODE ANN. § 9-9-204(3) (Michie 1993); MONT. CODE ANN. § 40-8-106(4) (1995); N.D. CENT. CODE § 14-15-03(3) (1981); OKLA. STAT. ANN. tit. 10, § 60.3(4) (West 1987).

66. See, e.g., *In re Malmstedt*, 243 Md. 92, 94, 220 A.2d 147, 149 (1966); *Dawson*, 257 Md. at 308-15, 262 A.2d at 729-33 (assuming, without deciding, that a father could adopt the illegitimate child).

67. See *supra* notes 77-84 and accompanying text.

68. 304 Md. 1, 497 A.2d 142 (1985).

69. See *id.* at 12-13, 497 A.2d at 147-48.

70. See *id.* at 2, 497 A.2d at 142.

birth certificate as the father.⁷¹ Soon after the birth of their son, Bridges acknowledged in writing that he was the father and a paternity decree was issued.⁷² When the couple later separated and a custody dispute ensued, Bridges attempted to adopt his son and thereby cut off Nicely's ties to the child.⁷³ The court suggested that despite the fact that the effect of an adoption might not be precisely the same as the effect of legitimation, Maryland's legitimation statute⁷⁴ was "not limited in its scope and application to matters of inheritance only, but was legally sufficient" to establish a legal relationship between parent and child.⁷⁵ Suggesting that an adoption of one's own natural child was possible under Maryland law, the court remanded the case for a determination of, among other things, whether it was "in the best interests of [the child] to grant the adoption [by his father] and thus terminate all of his parental ties to his mother."⁷⁶ This ostensibly left open the possibility that natural parents in Maryland could adopt their own children over the objections of the other natural parent.

Other states, including Ohio, Oklahoma, and Oregon, generally have not allowed a natural parent to adopt his or her own legitimate child.⁷⁷ In *In re Adoption of Kohorst*,⁷⁸ the Court of Appeals of Ohio refused to permit a father to use an adoption proceeding to terminate the mother's rights to her legitimate child despite the fact that she had not contributed child support and had not made regular visits.⁷⁹ Prior to *Kohorst*, an Ohio trial court had held that a mother

71. See *id.* at 3, 497 A.2d at 143.

72. See *id.*

73. See *id.*

74. See MD. CODE ANN., EST. & TRUSTS § 1-208(b) (Supp. 1996). A child born out of wedlock is presumptively the child of his mother but not his father. See *id.* § 1-208(a). Subsection (b) provides four ways for a father to legitimate his child born out of wedlock. *Id.* § 1-208(b). A child born out of wedlock is considered the child of his biological father only if the father:

(1) Has been judicially determined to be the father in an action brought under the statutes relating to paternity proceedings; (2) Has acknowledged himself, in writing, to be the father; (3) Has openly and notoriously recognized the child to be his child; or (4) Has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

Id.

75. *Bridges*, 304 Md. at 7-8, 497 A.2d at 145 (quoting *Thomas v. Solis*, 263 Md. 536, 542, 283 A.2d 777, 780 (1971)).

76. *Id.* at 14, 497 A.2d at 148.

77. See, e.g., *In re Adoption of Kohorst*, 600 N.E.2d 843, 846 (Ohio Ct. App. 1992); *Leake v. Grissom*, 614 P.2d 1107, 1109 (Okla. 1980); *Campbell v. Kindred*, 554 P.2d 599, 600 (Or. Ct. App. 1976).

78. 600 N.E.2d 843 (Ohio Ct. App. 1992).

79. See *id.* at 849. In *Kohorst*, the father claimed that the mother had failed to

could not adopt her own child thereby cutting off the father's ties with the child, notwithstanding the father's consent.⁸⁰ The court reasoned that a father's duty to support his minor children is a duty which he owes to the state and thus, the father cannot contract with the mother to relieve himself of this liability.⁸¹ An Oklahoma court held that a natural parent could not adopt her own legitimate child.⁸² The court stressed the fact that an adoption in such cases would not confer upon the child any additional benefits.⁸³ Similarly, an Oregon court invalidated an attempted adoption by a natural father that severed the rights of the mother.⁸⁴

Several states, however, have found no legal impediment to a natural parent adopting his or her own child.⁸⁵ The Supreme Judicial Court of Massachusetts, for example, permitted an unmarried mother to adopt her own natural child who was born out of wedlock.⁸⁶ Similarly, a New Jersey court permitted a natural father to adopt his own child whose mother and legal father had died.⁸⁷ A Georgia court, likewise, held that natural parents are not precluded from adopting their own children.⁸⁸

The Court of Appeals of Maryland has suggested that one parent will not be permitted to consent to adoption in order to terminate child support payment arrearage.⁸⁹ Yet, Maryland's adoption statute requires the consent of natural parents to the adoption of their children by either a stranger or a relative,⁹⁰ and for the adoption of

make child support payments. *See id.* at 844. The court, however, noted that the judgment awarding the father custody made no such requirement. *See id.* The father further claimed that he feared that the child would at some time be adversely affected by her mother's "lifestyle." *See id.* at 845-46. The court, concerned with the harsh consequences of permanently and completely terminating the child's ties to the mother, rejected the father's attempt to adopt his child. *See id.* at 847-48. The admitted sole purpose of the adoption was terminating the mother's rights. *See id.* at 848. The court labeled such action by the father as "overkill." *See id.* at 845-46.

80. *See In re Adoption of Graham*, 409 N.E.2d 1067, 1069-70 (Ohio Ct. C.P. 1980).

81. *See id.* at 1069.

82. *See Leake*, 614 P.2d at 1109 (reasoning that the Legislature did not intend to provide a proceeding for a parent to adopt his or her natural legitimate child).

83. *See id.* at 1109.

84. *See Campbell v. Kindred*, 554 P.2d 599 (Or. Ct. App. 1976).

85. *See, e.g., McDonald v. Hester*, 155 S.E.2d 720, 721 (Ga. Ct. App. 1967); *In re Curran*, 49 N.E.2d 432, 434 (Mass. 1943); *In re Adoption of Adult by G.V.C.*, 581 A.2d 123, 124-25 (N.J. Super. Ct. Ch. Div. 1990).

86. *See Curran*, 49 N.E.2d at 432-35.

87. *See G.V.C.*, 581 A.2d at 123-25.

88. *See McDonald*, 155 S.E.2d at 721.

89. *See Stambaugh v. Child Support Enforcement Admin.*, 323 Md. 106, 591 A.2d 501 (1991).

90. *See MD. CODE ANN., FAM. LAW* §§ 5-309, -311 (1991 & Supp. 1996).

a child by a single parent.⁹¹ Moreover, in *Bridges v. Nicely*,⁹² the court suggested there might be cases where a natural parent would be permitted to adopt a natural child, despite the fact that: (1) the other parent's ties to the child would be severed; and (2) the other parent had not consented to the adoption.⁹³ *Green v. Sollenberger*⁹⁴ combined these issues by addressing whether an adoption of legitimate children by their natural custodial mother, but not her husband, may be granted where both natural parents have consented and such adoption would have the effect of severing the father's ties and responsibility to the children.⁹⁵

III. THE INSTANT CASE

In *Green v. Sollenberger*,⁹⁶ the Court of Appeals of Maryland addressed the issue of whether Maryland's adoption law permits a natural mother to adopt her own legitimate child, with the consent of the other natural parent, thereby severing the relationship between the children and their natural father.⁹⁷

A. Facts

David Brian Lenick (Lenick) and Dorothy Mae Green (Green) were married in 1979 and had three legitimate children.⁹⁸ When they divorced in 1983, Green was awarded custody of the children, and Lenick was ordered to pay child support.⁹⁹ Custody remained with Green except for a one-year period in which the children resided with Lenick.¹⁰⁰ Lenick was consistently either behind in his payments or failed to pay at all.¹⁰¹ In 1990, the right to receive child support was assigned to the state when Green began to receive Aid for Families with Dependent Children (AFDC) to help support the children.¹⁰²

In May 1991, with the consent of both Lenick and the children, the Circuit Court for Carroll County allowed Green to adopt her children, thus severing their ties to Lenick.¹⁰³ Over a year later,

91. *See id.* § 5-309(b).

92. 304 Md. 1, 497 A.2d 142 (1985).

93. *See id.*

94. 338 Md. 118, 656 A.2d 773 (1995).

95. *See id.* at 120-23, 656 A.2d at 773-75.

96. *Id.* at 118-31, 656 A.2d at 773-79.

97. *See id.*

98. *See id.* at 122, 656 A.2d at 775.

99. *See id.*

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.* at 123, 656 A.2d at 775.

Lenick petitioned a Pennsylvania court to relieve him of his obligation to pay child support.¹⁰⁴ At Maryland's request, the Pennsylvania court stayed the suspension pending a Maryland court determination of whether the adoption decree was valid.¹⁰⁵ The Executive Director of Maryland's Child Support Enforcement Agency (State) filed a complaint seeking to have the adoption vacated.¹⁰⁶ The trial court concluded that "the complaint for adoption failed to allege that substantial social benefits would accrue to the children," and vacated the adoption, declaring it void *ab initio*.¹⁰⁷

The Court of Special Appeals of Maryland affirmed the judgment holding that "despite the broad, unqualified language of Maryland's adoption statute, it was not the intention of the Legislature that *any* individual may be adopted by *any* adult, totally without qualification or restriction concerning blood relationships."¹⁰⁸ The court of appeals granted certiorari.¹⁰⁹

B. Appellant's Claims

On appeal, Green, relying on the broad language of the statute, argued that natural parents should be permitted to adopt their own children because such an action would not violate Maryland law or public policy.¹¹⁰ She further urged the court to follow *Bridges v. Nicely*,¹¹¹ in which the same court held that "[i]n view of the broad, unqualified wording of Maryland's adoption statute . . . we are unable to conclude that the Legislature intended to prohibit adoption in all circumstances by a *natural parent* of a child born out of wedlock."¹¹² Green claimed that the circuit court had erroneously distinguished this case from *Bridges*.¹¹³

Moreover, Green argued that given the holding in *Carroll County Department of Social Services v. Edelmann*,¹¹⁴ adoption was her only viable alternative.¹¹⁵ In *Edelmann*, the court held that the only way

104. *See id.*

105. *See id.*

106. *See id.*

107. *See id.* at 124, 656 A.2d at 775.

108. *See id.* at 124, 656 A.2d at 775-76 (quoting *Green v. Sollenberger*, 100 Md. App. 686, 691, 642 A.2d 324, 327 (1994), *aff'd* *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995)).

109. *See id.* at 124, 656 A.2d at 776.

110. *See id.* (referring to MD. CODE ANN., FAM. LAW § 5-309(a) (1991) which states that "[a]ny adult" may adopt).

111. 304 Md. 1, 497 A.2d 142 (1985).

112. *Id.* at 12, 497 A.2d at 147 (emphasis added).

113. *See Green*, 338 Md. at 125, 656 A.2d at 776.

114. 320 Md. 150, 577 A.2d 14 (1990).

115. *See Green*, 338 Md. at 125, 656 A.2d at 776.

to terminate a parent's rights was through guardianship or adoption.¹¹⁶ Green also noted that, although her husband did not join her in the adoption petition, section 5-309(b) expressly allowed an adoption by a single person.¹¹⁷

Emphasizing that the children's best interest is the overriding concern in an adoption, Green argued that this adoption would serve her children's best interest because it would protect them from future disturbance in their relationship with her.¹¹⁸ She argued that the children would actually benefit from the adoption because they could never be held liable to support their father.¹¹⁹ Finally, Green argued that even if the adoption were invalid, the court did not have the authority to strike it down because it had been more than one year since the adoption was entered.¹²⁰

C. The Court's Rationale

Despite Green's arguments to the contrary, the court held that Green could not adopt her own children.¹²¹ First, the court rejected Green's interpretation of section 5-309(b), holding that "despite the broad and seemingly unqualified language used in these provisions, the General Assembly never intended for natural parents to be permitted to adopt their own *legitimate* children."¹²² The court also emphasized that pursuant to section 5-303, one of the primary goals of Maryland's adoption statute is to protect the child from "unnecessary separation from their natural parents."¹²³ This goal, the court pointed out, was not furthered by Green's adoption of her children,¹²⁴ as it severed the children's ties to their natural father.

Moreover, the court noted that "another primary purpose of adoption is to create a legal connection between an adoptive parent and child who are *not biologically related*, thereby conferring on each legal rights and obligations that did not previously exist."¹²⁵

116. See Carroll County Dep't of Soc. Serv. v. Edlmann, 320 Md. 150, 175-76, 577 A.2d 14, 26 (1990).

117. See Green, 338 Md. at 125, 656 A.2d at 776.

118. See *id.* at 126, 656 A.2d at 776.

119. See *id.*

120. See *id.* at 126, 656 A.2d at 777. Green cited section 5-325 which states that "[a] court may not receive a petition to invalidate a final decree of adoption because of procedural or jurisdictional defect unless the petition is filed within 1 year after the entry of the final decree of adoption." MD. CODE ANN., FAM. LAW § 5-325 (1991).

121. See Green, 338 Md. at 118-31, 656 A.2d at 773-79.

122. *Id.* at 127, 656 A.2d at 777.

123. *Id.*

124. See *id.*

125. *Id.* at 127-28, 656 A.2d at 777 (emphasis added). The court, however, cited no authority for this broad proclamation. See *id.*

Importantly, the adopted children must acquire a new legal relationship or at least some social benefit.¹²⁶ The court concluded that Green's children did not acquire a new relationship from the adoption and, moreover, acquired no additional social benefits.¹²⁷

The court opined that the children were harmed as a result of the adoption.¹²⁸ The court noted five losses that the children would experience if the adoption were permitted to stand: first, the children would lose their right to any current support from their father; second, they would lose the right to future support from their father; third, they would forfeit their right to take by intestacy from and through their father; fourth, they would lose the right to bring a wrongful death action on the father's behalf; and finally, they would "lose the opportunity to have any sort of filial relationship with their father."¹²⁹

The court also noted that the granting of such an adoption would violate public policy.¹³⁰ The court was particularly concerned that Green's failure to include her husband as a party in the adoption petition left the children "fatherless."¹³¹ Significantly, this in itself is a violation of Maryland's adoption law which requires the joining of the spouse of a petitioner for adoption.¹³² Failure of Green to join her husband, the court held, was "clearly against public policy and such a misuse of the adoption statute [would] not be allowed."¹³³

Next, the court distinguished Green's case from *Bridges v. Nicely*.¹³⁴ The court asserted that in *Bridges* the father had a *legitimate reason* for undertaking to adopt his child, while in *Green* the mother's purpose was clearly against public policy.¹³⁵ According to the *Green* court, the father in *Bridges* wanted to adopt in order to legitimate his child who was born out of wedlock,¹³⁶ whereas the mother in *Green* did not have any such appropriate purpose.¹³⁷ The court further

126. *See id.*

127. *See id.*

128. *See id.* at 128-29, 656 A.2d at 778.

129. *Id.*

130. *See id.* at 129, 656 A.2d at 778.

131. *Id.*

132. *See id.* at 129 n.5, 656 A.2d at 778 n.5 (citing § 5-315(a) which states that "[i]f a petitioner for adoption is married, the petitioner's spouse shall join the petition"). *But cf.* MD. CODE ANN., FAM. LAW § 5-309(b) (1991) ("[C]ourt may not deny petition for adoption solely because the petitioner is single or does not have a spouse."); *In re* Adoption No. 90072022/CAD, 87 Md. App. 630, 590 A.2d 1094 (1991) (holding that law does not require that adopting parent be married).

133. *Green*, 338 Md. at 129, 656 A.2d at 778.

134. 304 Md. 1, 497 A.2d 142 (1985).

135. *See Green*, 338 Md. at 129-30, 656 A.2d at 778.

136. *See id.* at 129, 656 A.2d at 778.

137. *See id.*

analogized *Green* to *Stambaugh v. Child Support Enforcement Administration*,¹³⁸ in which the court held that it was a violation of public policy for one parent to waive child support payments from the other parent in exchange for that parent's consent to an adoption.¹³⁹

Finally, the court declared, with little analysis, that the adoption was ineffective and thus voidable and subject to collateral attack at any time.¹⁴⁰ The case was viewed as a collateral attack and, thus, declared void *ab initio*.¹⁴¹

IV. ANALYSIS

The court's decision in *Green* is troubling for several reasons: first, the court departed from the plain language of the statute;¹⁴² second, the holding suggested, without further analysis, that children could never benefit from the termination of their natural father's rights;¹⁴³ third, the court's decision espoused a rigid definition of family and gives the state the power to intervene to enforce it;¹⁴⁴ and

138. 323 Md. 106, 591 A.2d 501 (1991).

139. *See id.*

140. *See Green*, 338 Md. at 131, 656 A.2d at 779.

141. *See id.*

142. According to section 5-309(a), "[a]ny adult may petition a court to decree an adoption." *See MD. CODE ANN., FAM. LAW § 5-309(a)* (1991). Yet in *Green*, the court held that "despite the broad unqualified language of Maryland's adoption statute, it was not the intention of the Legislature that any individual may be adopted by any adult." *Green*, 338 Md. at 124, 656 A.2d at 775 (1995) (quoting with approval the court of special appeals's decision in that case) (emphasis added). This is contrary to *Bridges v. Nicely*, 304 Md. 1, 12, 497 A.2d 142, 147 (1985), in which the court, interpreting this statute, held that "[i]n view of the broad, unqualified wording of Maryland's adoption statute . . . we are unable to conclude that the Legislature intended to prohibit adoption in all circumstances by a natural parent of a child born out of wedlock." *Id.* (emphasis added). The *Bridges* court relied on a rule of construction which states that "where the language of a statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form." *Id.* at 10-11, 497 A.2d at 147. Note, however, that the language in section 5-315(a) appears to place a restriction on the term "any adult" by requiring that a married petitioner join their spouse in a petition for adoption. This was not the focus of the court's discussion. A discussion of the appropriateness of this provision is beyond the scope of this paper.

143. *See Green*, 338 Md. at 128-29, 656 A.2d at 777-78. Upon further analysis, however, the court may have been able to identify possible social benefits to the children of having their father's rights terminated. *See supra* note 23; *see also infra* notes 155-68 and accompanying text.

144. The court allowed the state to bring suit to invalidate an adoption decree that was consented to by all the parties involved. *Green*, 338 Md. at 123, 656 A.2d at 775. In *Green*, the father and the children consented to the adoption, as did the mother by filing for the adoption. *Id.* at 123, 656 A.2d at 774; *see also infra* notes 169-88 and accompanying text.

fourth, the decision fostered a dual system of adoption — one for the poor and one for the rest of society.¹⁴⁵

A. *Statutory Construction*

According to section 5-309(a), “[a]ny adult may petition a court to decree an adoption.”¹⁴⁶ Yet in *Green*,¹⁴⁷ the court violated the basic rule of statutory construction it had embraced in *Bridges*¹⁴⁸ which stated that “where the language of a statute is clear, courts may not insert or omit words to make the statute express an intention not evident in its original form.”¹⁴⁹ The *Bridges* court, interpreting section 5-309(a), held that “[i]n view of the broad, unqualified wording of Maryland’s adoption statute . . . we are unable to conclude that the Legislature intended to prohibit adoption in *all circumstances by a natural parent of a child born out of wedlock*.”¹⁵⁰ In *Green*, the court implicitly rejected its former interpretation of the statute,¹⁵¹ holding that “*despite the broad unqualified language of Maryland’s adoption statute, it was not the intention of the Legislature that any individual may be adopted by any adult*.”¹⁵² The court, however, did not overrule *Bridges*.¹⁵³ By not explicitly rejecting its contradictory holding in *Bridges*, the court of appeals left the lower courts with little guidance as to how to interpret the statute in the future.¹⁵⁴

145. Cf. Levesque, *supra* note 25, at 3 (suggesting that the current welfare system creates a “dual system of family law,” one for poor fathers and one for the rest of society”). See generally tenBroek, *supra* note 25, at 257.

146. MD. CODE ANN., FAM. LAW § 5-309(a) (1991).

147. 338 Md. at 118-31, 656 A.2d at 773-79.

148. 304 Md. 1, 12, 497 A.2d 142, 147 (1985).

149. *Id.* at 10-11, 497 A.2d at 147.

150. *Id.* (emphasis added).

151. Note, however, that the court did not overrule *Bridges*. See *Green*, 338 Md. at 130, 656 A.2d at 778.

152. *Id.* at 124, 656 A.2d at 775 (quoting with approval *Green v. Sollenberger*, 100 Md. App. 686, 642 A.2d 324 (1994), *aff’d* *Green v. Sollenberger*, 338 Md. 118, 656 A.2d 773 (1995)) (emphasis added).

153. See *id.* at 130, 656 A.2d at 778 (stating that “[t]he situation before us in the instant case is very different from that presented in *Bridges*.”).

154. It may be argued that the court of appeals was directing the lower courts to make a distinction between adopting one’s own legitimate child and adopting one’s own illegitimate child. A closer examination of *Bridges*, however, reveals that it would be inappropriate to draw this distinction because the children in both cases were legitimate. See *infra* notes 169-76 and accompanying text for a discussion of drawing a distinction between *Bridges* and *Green* based on legitimacy.

B. Social Benefit

In *Green*, the court concluded that “no beneficial consequences will attach as a result of an adoption that these children do not already enjoy as Green’s legitimate children”¹⁵⁵ and that the children would, in fact, lose benefits.¹⁵⁶ There is strong authority in support of this position.¹⁵⁷ In so holding, however, the *Green* court, as have other courts, failed to examine the full range of possibilities.

First, in analyzing potential losses the children might suffer, the court placed too great an emphasis on monetary losses. Four of the five losses identified by the court were economic.¹⁵⁸ This narrow focus prevented the court from recognizing that children do not necessarily benefit from efforts to force fathers to pay child support and that, in fact, the children may actually suffer.¹⁵⁹ The final potential loss discussed by the court — that the children would “lose the opportunity to have any sort of filial relationship with their

155. *Green*, 338 Md. at 130, 656 A.2d at 778.

156. *Id.* at 128-29, 656 A.2d 777-78; see *supra* text accompanying notes 125-27.

157. See *Green*, 338 Md. at 130, 656 A.2d at 779; see also, e.g., *Marshall v. Marshall*, 239 P. 36, 38 (Cal. 1925); *In re Adoption of Kohorst*, 600 N.E.2d 843, 847 (Ohio Ct. App. 1992); *In re Adoption of Graham*, 409 N.E.2d 1067 (Ohio Ct. C.P. 1980); *Leake v. Grissom*, 614 P.2d 1107, 1109 (Okla. 1980); *In re Estate of Baxter*, 827 P.2d 184, 187 (Okla. Ct. App. 1992); *Campbell v. Kindred*, 554 P.2d 599, 600-01 (Or. Ct. App. 1976). But see *McDonald v. Hester*, 155 S.E.2d 720 (Ga. Ct. App. 1967); *In re Curran*, 49 N.E.2d 432, 434 (Mass. 1943).

158. See *Green*, 338 Md. at 130, 656 A.2d at 779. First, the court noted, the children would lose their right to any current support from their father. See *id.* at 128, 656 A.2d at 778. The second potential loss identified by the court was loss of the right to future support from their father. See *id.* Third, the court noted, the children would forfeit their right to take by intestacy from and through their father. See *id.* And, fourth, the children would lose the right to bring a wrongful death action on the father’s behalf. See *id.*

159. Cf. *Levesque*, *supra* note 25, at 37. It is insignificant to the children involved where the money comes from as long as they are provided for. Thus, if *Green* receives benefits from the state the children will not suffer. The state and its citizens may suffer from having to pay for benefits, but this should not be confused with what is in the best interests of the children. Moreover, *Levesque* suggests that efforts to force fathers to pay child support may actually harm the children. See *Levesque*, *supra* note 25, at 37. *Levesque* argues that often fathers do not have the resources to pay child support and are unwilling to do so. See *id.* Significantly, that is the case with *Lenick* who, prior to the adoption, was consistently either behind in his payments or did not pay at all. See *Green*, 338 Md. at 122, 656 A.2d at 775. In fact, it was for this reason that *Green* signed over the child support payments in order to receive benefits from AFDC. See *id.* See *infra* notes 178-84 and accompanying text (suggesting that *Green*’s collection of AFDC benefits was what prompted the state to get involved and protest an adoption otherwise consented to by all parties concerned). See generally *Levesque*, *supra* note 25, at 31-32 (arguing that efforts to enforce fathers’ child support obligations are not cost effective).

father,"¹⁶⁰ — is illusory.¹⁶¹ Often fathers, as in *Green*, elect not to be part of their children's lives. In such cases, forcing fathers to pay child support payments is unlikely to make them more amenable to developing a relationship with their children.¹⁶²

Upon further analysis, the court might have also been able to identify various possible benefits. The children might have benefitted from the finality of an adoption through protection from future disturbance by their father.¹⁶³ Maryland statutory law implicitly recognizes the importance of such stability following an adoption in section 5-303 which states that one of the purposes of the adoption statutes is to protect "adoptive parents . . . from a future disturbance of their relationship with the child by a natural parent."¹⁶⁴ The court of appeals should have recognized that children who remain with one natural parent might similarly benefit. Given the emotional trauma children experience when their parents divorce, a child might benefit from the stability of knowing precisely which parent or parents will remain in their lives.¹⁶⁵ Moreover, if the children's ties to their father are severed through an adoption, the children escape the possibility of being forced to support their father if he becomes destitute.¹⁶⁶

The foregoing are just a few examples of possible situations in which a child could benefit from the permanent termination of a relationship with a natural parent. Although this adoption may not have been the ideal way to terminate a natural parent's relationship,

160. *Green*, 338 Md. at 129, 656 A.2d at 778.

161. *Cf. Levesque*, *supra* note 25, at 42 (suggesting that when the state attempts to enforce child support obligations of natural fathers the intended benefits to children and mothers are "more spurious than real").

162. *See Levesque*, *supra* note 25, at 40-41 (suggesting that fathers rarely develop social relationships with children they are forced to support).

163. *Cf., e.g., Qureshi v. Prince George's County Dep't of Soc. Servs.*, 11 Md. App. 615, 276 A.2d 675 (1971) (recognizing that the foundation underlying all adoptions is the need to surround the final decree with a high degree of certainty).

164. MD. CODE ANN., FAM. LAW § 5-303(b)(3)(ii) (1991).

165. *Cf. Levesque*, *supra* note 25, at 19-20 (stating that one criticism of AFDC is that it undermines family stability).

166. *See In re Adoption/Guardianship Nos. 2152A, 2153A, 2154A*, 100 Md. App. 262, 641 A.2d 889 (1994) (holding that termination of a person's parental rights through adoption negates the child's duty to support that parent under § 13-102). Section 13-102(a) provides that "[i]f a destitute parent is in this State and has an adult child who has or is able to earn sufficient means, the adult child may not neglect or refuse to provide the destitute parent with food, shelter, care, and clothing." MD. CODE ANN., FAM. LAW § 13-102(a) (1991). Section 13-103(b)(3) allows a destitute parent to file a complaint against an adult child for failing to provide necessary food, shelter, care, and clothing. *See id.* § 13-103(b)(3).

given the holding in *Carroll County Department of Social Services v. Edelmann*,¹⁶⁷ no alternatives were available.¹⁶⁸

C. Gender and the Bridges Distinction

While the court attempted to distinguish *Green* from *Bridges*, the two cases are, in fact, quite similar. By failing to either overrule *Bridges* or properly distinguish the two cases, the court granted greater protection to children's relationships with their father than children's relationships with their mother.

The court claimed these cases are distinguishable because the child in *Bridges* stood to gain greater rights from the adoption,¹⁶⁹ while the children in *Green* would be adversely affected by the adoption.¹⁷⁰ A closer look, however, reveals that in each case the children would be losing a parent, while purportedly gaining nothing. While the child in *Bridges*¹⁷¹ was born out of wedlock, the child's father had clearly established his paternity by the time he attempted to adopt his child.¹⁷² The father's name was on the child's birth certificate.¹⁷³ Additionally, the father had acknowledged his paternity in writing, and this had formed the basis for a court's recognition of his paternity.¹⁷⁴ Moreover, the father had physical custody of the child.¹⁷⁵ Likewise, in *Green*, the mother had custody.¹⁷⁶ Thus, in each case, the parent attempting to adopt was already the legitimate parent of the children to be adopted.

In both cases, the court acknowledged that the adoption would have the effect of severing the other parent's ties to the children. In *Green*,¹⁷⁷ the court invalidated the adoption because of this concern.¹⁷⁸ In *Bridges*, however, the court remanded to determine whether it

167. 320 Md. 150, 577 A.2d 14 (1990).

168. See *id.* at 175-76, 577 A.2d at 26. In *Edelmann*, the court held that the only way to terminate a parent's rights was through guardianship or adoption. See *id.*

169. See *Green v. Sollenberger*, 338 Md. 118, 129, 656 A.2d 773, 778 (1995).

170. See *id.* at 128, 656 A.2d at 778. See *supra* part IV.B for a discussion of potential benefits and losses.

171. 304 Md. 1, 497 A.2d 142 (1985).

172. See *id.* at 2-3, 497 A.2d at 142-43. See *supra* note 74 and accompanying text for a discussion of Maryland's legitimation statute.

173. See *Bridges*, 304 Md. at 3, 497 A.2d at 142-43.

174. See *id.*

175. See *id.* at 3, 497 A.2d at 1143.

176. See *Green v. Sollenberger*, 338 Md. 118, 129, 656 A.2d 773, 778 (1995). Note that unwed mothers, unlike unwed fathers, need not establish that a child is their biological child; it is presumed. Cf. MD. CODE ANN., FAM. LAW § 5-310 (1991) (describing "criteria" for being a natural father).

177. 338 Md. 118, 656 A.2d 773 (1995).

178. See *id.*

would be in the child's best interest "to grant the adoption and thus terminate all of his parental ties to his mother."¹⁷⁹ The *Bridges* court, thus, implicitly recognized that cutting off one natural parent's rights in favor of the other might be in a child's best interest.¹⁸⁰ When faced with severing the father's rights in *Green*, however, the court saw it as an impermissible misuse of the adoption process.¹⁸¹

Furthermore, the *Bridges* court did not find, as the *Green* court concluded, that "the child acquired greater rights as an adopted child than had the child merely been acknowledged under the legitimation statute."¹⁸² The *Bridges* court stated that it was unclear whether the child would acquire any greater rights if adopted and remanded the case for a determination of this issue.¹⁸³ Thus, it is unclear whether the child would actually have gained any benefit that would have been recognized by the court in *Green*.¹⁸⁴

What makes a decision based on this distinction even less compelling is the fact that in *Green* the father consented,¹⁸⁵ while in *Bridges*, the mother refused to consent.¹⁸⁶ In fact, in *Bridges*, the child's custody was the subject of pending litigation.¹⁸⁷ While the court appears to question the mother's motives in *Green*, the court had an equal or greater reason to question the father's motives in *Bridges*.

When read together, these decisions demonstrate the court's willingness to terminate a child's relationship to his or her mother, while evidencing the court's reluctance to sever a similar relationship with the father.¹⁸⁸

D. State Intervention in the Family¹⁸⁹

In *Green v. Sollenberger*,¹⁹⁰ the court espoused a rigid definition of family and gave the state the power to intercede to enforce it.¹⁹¹ The

179. *Bridges*, 304 Md. at 14, 497 A.2d at 148.

180. *See id.*

181. *See Green*, 338 Md. at 129, 656 A.2d at 778.

182. *Id.*

183. *See Bridges*, 304 Md. at 14, 497 A.2d at 148.

184. *See supra* part IV.B.

185. *See Green*, 338 Md. at 123, 656 A.2d at 775.

186. *See Bridges*, 304 Md. at 3, 497 A.2d at 143.

187. *See id.*

188. *But see supra* note 154.

189. *See generally* Levesque, *supra* note 25, at 20. Levesque wrote that regulating the relationships among family members has traditionally been beyond the domain of the courts. *See id.* He suggested, however, that the courts have become increasingly involved in the family as a result of welfare reform proposals and policies. *See id.* at 20-21.

190. 338 Md. 118, 656 A.2d 773 (1995).

191. *See id.*

court allowed the state to bring suit to invalidate an adoption decree that was consented to by all the parties involved.¹⁹² The father and the children consented to the adoption, as did the mother by filing for the adoption.¹⁹³

The court's decision reaffirmed a rigid construction of family.¹⁹⁴ This is illustrated by the court's suggestion that had Green's husband been named in the petition for adoption, it would have been valid.¹⁹⁵ Although failure to join her husband was itself a violation of section 5-315,¹⁹⁶ the court was more concerned that "by failing to join her new husband in the adoption petition [Green] effectively left her children *fatherless*."¹⁹⁷ The narrow view of the family espoused by this court, as well as in section 5-315, may have a lasting impact on nontraditional families.¹⁹⁸ For example, the court seems to suggest that, while a mother and a father are fully capable of raising children, a single mother is not.¹⁹⁹ Significantly, Maryland law expressly provides for adoption by a single mother.²⁰⁰ Further, in light of this case, one must also wonder why the court in *Bridges* remanded to determine if it would be in the children's best interest to terminate the mother's rights, thus implying that a single father could raise a child.

192. *See id.* at 123, 656 A.2d at 775.

193. *See id.*

194. *See generally* Levesque, *supra* note 25, at 27 (stating that despite the reality "there remains the ingrained notion of the nuclear family as the 'family' prototype"). The reality, Levesque explains, is that there has been a dramatic increase in the proportion of children living in single parent homes. *See id.* Levesque argues that this idealized conception of family has hindered legal reform. *See id.* at 27 n.146 (citing with approval Margaret L. Andersen, *Feminism and the American Family Ideal*, 22 J. COMP. FAM. STUD. 235 (1991)).

195. *See Green*, 338 Md. at 129, 656 A.2d at 778.

196. Section 5-315 provides that "[i]f petitioner for adoption is married, the petitioner's spouse shall join the petition." FAM. LAW § 5-315.

197. *Green*, 338 Md. at 129, 656 A.2d at 778 (emphasis added).

198. *Cf.* Marla J. Hollandsworth, *Gay Men Creating Families Through Surro-Gay Arrangements: A Paradigm For Reproductive Freedom*, 3 AM. U. J. GENDER & L. 183 (1995) (evaluating possibilities for gay parenthood).

199. It may be argued that the court was merely pointing out that by not joining her husband she was not following Maryland law. *See* MD. CODE ANN., FAM. LAW § 5-315(a) (1991) ("If a petitioner for adoption is married, the petitioner's spouse shall join in the petition . . ."). The language used by the court, however, indicates that this was not their main concern. The court mentions this violation only in a footnote. *See Green v. Sollenberger*, 338 Md. 118, 129 n.5, 656 A.2d 773, 778 n.5 (1995). Moreover, in the text of its opinion, the court states "Green, by failing to join her new husband in the adoption petition, has effectively left her children *fatherless* . . ." *Id.* (citation omitted) (emphasis added).

200. *See supra* note 55 and accompanying text. *But see* MD. CODE ANN., FAM. LAW § 5-315(a) (1991) ("If a petitioner for adoption is married, the petitioner's spouse shall join in the petition . . .").

Moreover, legal scholars have suggested that adoption is an important vehicle for allowing gay couples, who are unable to legally marry, to take on equal legal roles in a child's life.²⁰¹ This inevitably requires the termination of the rights of one of the biological parents.²⁰² This decision may also have an impact on the related issue of surrogate motherhood, which requires the natural parent keeping the child to adopt the child.²⁰³

E. Welfare, Adoption, and Poverty: A Dual System

The significance of Green's AFDC payments should not be overlooked. *Green* would be a very different case, and probably would not have been brought at all, had Green and her children not been dependent on the state. Green, Lenick, and her children all consented to the adoption.²⁰⁴ It took the involvement of the Executive Director of Maryland's Child Support Enforcement Agency, to challenge the existing adoption decree.²⁰⁵ In fact, the Executive Director did not become involved until Lenick filed a petition in a Pennsylvania court to be relieved of his child support obligations.²⁰⁶

Monetarily, the granting of such a petition would make no difference to Green or her children. At that point, Lenick's payments had been assigned to the State of Maryland due to his continuing failure to pay on time or, at times, his failure to make payments at all.²⁰⁷ The state then intervened to prevent the Pennsylvania court from allowing him to escape his obligation.²⁰⁸ The state would have had no reason to become involved had Green not been receiving AFDC payments. More than a year had passed since a Maryland court had granted the adoption.²⁰⁹ It was only when Lenick attempted to have the Pennsylvania court relieve him of his obligations to the children that the State of Maryland became concerned that an adoption of children by their natural mother might be against public policy.²¹⁰

201. See Hollandsworth, *supra* note 198, at 234-39.

202. See *id.* at 235. Professor Hollandsworth suggests that termination of the birth mother's rights is necessary "[t]o avoid the legal uncertainty created by merely placing the child in the father's custody and to effectuate the legal creation of the gay family." *Id.* at 234.

203. See *id.*

204. See *Green v. Sollenberger*, 338 Md. 118, 123, 656 A.2d 773, 775 (1995).

205. See *id.*

206. See *id.*

207. See *id.* at 122, 656 A.2d at 775.

208. See *id.* at 123, 656 A.2d at 775.

209. See *id.*

210. See *id.*

This is important because it suggests a dual system of both welfare and adoption — one for the poor and one for the rest of society.²¹¹ If the state only becomes involved in cases of natural parent adoption when the natural parent is receiving AFDC, then only poor women will be prevented from adopting their own children. Women with other means of support will be able to escape such state scrutiny.²¹² While many would argue that it is unfair for the state to be forced to support children just because their fathers do not want anything to do with their children, it is equally unfair to subject poor women to additional scrutiny and reduced stability in their relationship with their children.²¹³ Moreover, a child's best interest and relationship with his or her parents should not be dictated by the amount of money their parents have.

V. CONCLUSION

*Stambaugh v. Child Support Enforcement Administration*²¹⁴ suggested that Maryland courts should not allow one parent to consent to adoption in order to terminate child support payment arrearage.²¹⁵ Yet, Maryland adoption law provides for natural parents to consent to the

211. See Levesque, *supra* note 25, at 6 (suggesting that the current welfare system creates a “dual system of family law,” one for poor fathers and one for the rest of society”). Levesque notes that assignment of poor women’s support rights to the state was purportedly implemented to protect poor women. See *id.* at 35. Significantly, Levesque argues, poor women strenuously opposed such reforms for a variety of reasons. See *id.* For example, it is argued, such assignments do not always, or even often, benefit the children. See *id.* at 37. Furthermore, women and their children may, in fact, wind up with less money than if they had not assigned their rights. See *id.* at 36. Finally, there is a potential that a man forced by the state to pay child support may counter-sue for custody in order to avoid child support obligations even when the father has no interest in actually raising the children. See *id.*

212. Cf. Yvette Marie Barksdale, *And the Poor Have Children: A Harm-Based Analysis of Family Caps and the Hollow Procreative Rights of Welfare Beneficiaries*, 14 LAW & INEQUITY: A JOURNAL OF THEORY & PRACTICE, Dec. 1995, at 1 (discussing proposed welfare reform and the impact these proposals would have on recipients). According to Barksdale, many of these “proposals appear designed to punish welfare recipients for violating” traditional societal norms “and to manipulate recipients into complying with these norms.” *Id.* at 3 (citations omitted). For example, recipients are rewarded for marrying by some programs. See *id.*

213. Of particular concern, given Levesque’s suggestion, is that a real threat exists that a man forced by the state to pay child support may counter-sue for custody in order to avoid child support obligations despite the fact that the father has no interest in actually raising the children. See Levesque, *supra* note 25, at 36.

214. 323 Md. 106, 591 A.2d 501 (1991).

215. See *id.*; See also *supra* note 33 and accompanying text.

adoption of their children²¹⁶ and for the adoption of a child by a single parent.²¹⁷

The adoption of a legitimate child by his or her natural parents appeared to be permissible after *Bridges v. Nicely*.²¹⁸ However, in *Green v. Sollenberger*, the court of appeals departed from this position and declared a mother's adoption of her own natural children invalid.²¹⁹

While the distinction between *Green* and *Bridges* may illustrate the court's own struggle with these intricacies of family law, the decision is troubling. Denying a natural mother the right to adopt her own child may or may not be good policy, but what is clear is the need for more consistency.

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216. *See supra* note 40 and accompanying text.

217. *See supra* note 55 and accompanying text.

218. *See supra* notes 68-76 and accompanying text.

219. 338 Md. 118, 656 A.2d 773 (1995).