

UTAH SUPREME COURT

Manzanares v. Byington

308 P.3d 382 (Utah 2012) · Decided June 15, 2012

SUMMARY

The Utah Supreme Court reviewed whether an unmarried biological father's consent was required for the adoption of his child under Utah's Adoption Act. The court held that the birth mother's consent was valid despite alleged nondisclosure of related proceedings, but reversed the finding that the father knew or reasonably should have known of a qualifying circumstance. The case was remanded for determination of whether he complied with Colorado requirements and demonstrated a full commitment to his parental responsibilities.

OPINION

LEE, J.

AMENDED OPINION * Justice LEE, opinion of the Court: T1 Robert Manzanares challenges the district court's order terminating his parental rights in his biological daughter, "Baby B." The district court held that Manzanares's consent to the adoption of Baby B. was not required under Utah law. It based this conclusion on a finding that Manzanares either knew or through "reasonable diligence" could have known of at least one of several "qualifying circumstances" defined by Utah law. ¶2 We find the district court's conclusions to run counter to a proper understanding of the statute and to be unsupported by the evidence.

We accordingly reverse, after clarifying the standards that govern under the Adoption Act and under our prior cases. I 3 In the summer of 2007, Robert Manzanares and Carie Terry conceived a child in Colorado. Manzanares communicated regularly with Terry regarding the pregnancy, and he provided some financial support both before and after the birth of the child.

The anticipated date of the child's birth was late March 2008. T4 Terry ended her relationship with Manzanares in August 2007. Despite the split, Manzanares attempted to maintain contact with Terry by e-mail. Manzanares repeatedly told Terry that he wanted to raise the child and would do so alone if necessary. Terry, in contrast, consistently expressed her desire to place the child for adoption.

5 In November 2007, Terry asked a Colorado adoption agency to contact Manzanares, requesting that he sign papers consenting to the adoption. Manzanares refused, indicating that he would actively oppose any proposed adoption. T6 On January 11, 2008, Terry informed Manzanares by

e-mail that she was going to Utah for a short visit with her sick father, but that she would return to continue discussions regarding adoption.

Terry's e-mail message was as follows: I will be flying to Utah to visit my father in Feb{ruary] for a week (maybe a little longer, it depends on how he/things are). Then it will be back to work to finish up the club's construction before I take time off at the end of March.... {I]n April I will be willing to sit down and talk with you about your reconsideration to consent for adoption[;] otherwise this will be a long process and it will benefit no one, especially this baby.

The district court found Terry's e-mail to be "misleading and that the e-mail in general was intended to create the false impression that she would stave off any decisions about adoption until she returned to Colorado."

In reality, the court found, she intended to visit Utah to make preparations for a return in late March to deliver the child in Utah. T7 Five days later, on January 16, 2008, Manzanares filed a paternity action in Colorado, seeking to enjoin any adoption proceeding. Manzanares's petition detailed his perception that Terry wished to place the child for adoption in Utah.

Manzanares stated that he was filing the petition prior to the child's birth because he has serious and founded concerns that, although the unborn child will not be legally available for adoption pursuant to [Colorado law], [Terry] plans to surreptitiously make the child available for adoption immediately upon his or her birth. [Terry] has repeatedly asserted her intention to give the child up for adoption via telephone and e-mail, and continues to pressure [Manzanares] to authorize an adoption, referring to him as a "chromosome donor."

Based on his "serious and founded concerns," Manzanares asserted that Terry "will flee to Utah, where she has family, to proceed with an adoption." He also alleged a need to "establish immediate jurisdiction in Colorado, *387where the parties live and where the child was conceived, prior to the child's birth." T8 Terry filed a verified response on February 12, 2008.

She acknowledged that Man-zanares was the biological father of the unborn child and that she was a resident of Colorado, but denied Manzanares's allegations that she intended to surreptitiously give the child up for adoption in Utah, asserting that such allegations call for a "legal conclusion." Instead, Terry asked the Colorado court to "deny [Manzanares] parental rights and responsibilities once [the] baby is born, for the best interest of the baby," and to "allow adoption proceedings" in Colorado "upon [the] baby's birth for the best interest of the baby." £9 Also on February 12, Terry filed a motion to continue a hearing set for February 20, 2008, asking that the hearing be postponed until late March 2008.

In this motion, Terry indicated that she had informed Manzanares and his counsel of her upcoming visit to Utah. Terry's motion to continue was denied. 10 On February 14, 2008, Terry traveled to Utah for the stated purpose of visiting her sick father.

The purported purpose of the trip soon took a turn in a different direction. On February 16, 2008, Terry's brother and sister-in-law, Brandon and Julissa Byington, signed a petition for the adoption of Terry's baby in Utah. Terry also began exploring hospital and midwife options, presumably in preparation for the birth of the baby in Utah. Manzanares apparently had no knowledge of any of these developments at this time. {11 In the meantime, unpersuaded by Terry's denial of her intent to put the baby up for adoption in Utah, Manzanares filed a response in the Colorado action on February 15, 2008, in which he asserted that Terry "is planning to give birth in Utah and place the parties' unborn child up for adoption."

Man-zanares further alleged that Terry "plans to drive herself and her six-year-old daughter to Utah at some undetermined point in the future, while pregnant," and that there was a "likelihood that she will flee the State of Colorado... to make the parties' unborn child available for adoption." Despite his concerns, Manzanares did not take action at this point to assert his parental rights in Utah.

T 12 While in Utah, Terry gave birth to her child (Baby B.) on February 17, 2008, approximately six weeks premature. At a later evidentiary hearing, Terry indicated that it was not her intention in coming to Utah in February to give birth to the child.

On February 19, 2008, the Byingtons filed their adoption petition in the Third District Court. A relinquishment hearing was scheduled for the next day before Judge Hilder. 13 February 20 was also to be the day the Colorado court held its hearing on Man-zanares's paternity and injunction action. Terry, who was still in Utah following the birth of Baby B., called the Colorado court and indicated that she would not be at the hearing.

She gave as her reason for not attending the hearing that she was out of town visiting an ill relative. Terry did not inform the court or Manzanares that she had given birth to the child. Nor did she divulge that she was appearing at 8:45 a.m. that day before Judge Hilder to give her consent to the adoption of the child by her brother and sister-in-law.

In light of Terry's absence, the Colorado court agreed to continue the hearing until March 5, 2008. Believing Terry to still be pregnant, the court appointed a guardian ad litem for the child. 14 That same morning at 8:45 a.m., just fifteen minutes before the scheduled Colorado hearing, Terry executed a consent to adoption in Utah before Judge Hilder. Terry did not inform Judge Hilder of the Colorado proceeding.

I 15 On February 24, 2008, Terry returned to Colorado. The next day, Manzanares became aware that Terry was no longer pregnant. Manzanares immediately began calling Colorado hospitals in an attempt to locate the child, but he could not find her. Manza-nares next called the Byingtons, who indicated only that Manzanares would be contacted by counsel.

The Byingtons did not inform Manzanares of their adoption petition. T16 On February 26, 2008, Manzanares filed an emergency motion with the Colorado court. The court held hearings on February 27, 29, and March 3, 2008. Manzanares and *388Terry were both present at those hearings.

The Colorado judge granted Manzanares's petition for paternity and signed a final order of paternity on March 3, 2008. The judge also ordered that Manzanares's name be listed on Baby B.'s birth certificate, a potentially significant act under Utah law.¹ T 17 On March 4, 2008, Manzanares filed in Utah a motion to dismiss the Byingtons' adoption petition.

The district court (Judge Faust) scheduled a two-day bench trial, to begin July 28, 2008. At trial, Terry testified of her multiple efforts to keep Manzanares in the dark regarding her plans to give birth to the baby and give her up for adoption in Utah.

Although she asserted that she batched the plan to give the baby up for adoption to her brother and sister-in-law in Utah as early as October or November of 2007, Terry testified that she could not "recall" whether she had informed Manzanares of her plans. Judge Faust interpreted her testimony to mean that she "admitted [that] she never advised Mr. Manzanares that she intended to place the child for adoption with her brother and sister-in-law, and that she was intending to do it in Utah."

He also noted that "neither the Byingtons [n]or Ms. Terry told [Manzanares] specifically what her adoption plans were." Terry also testified that although she made Manzanares aware of her desire to give the baby up for adoption almost from the beginning of the pregnancy, she never told him that she wanted to place the child with a Mormon family. Yet Manzanares apparently inferred a desire on Terry's part to place the baby in such a family, based on the fact that Terry came from a Mormon family.

T18 At the conclusion of the trial, the court determined that Terry, through deliberative effort, had "deceive[d]" Manzanares. Specifically, the court found that Terry's email to Manzanares telling him of her visit to Utah to see her ailing father was deceitful.

In reality, according to the court, Terry "was here to finalize hospital and insurance arrangements, and arrange for midwives and/or doctors which she started working on as early as December 2007." Based on Terry's testimony, the court found "that she clearly had a plan to return to Utah in March of 2008 to give birth and that she intentionally kept this information from...

Manza-nares in order to preclude him from taking definitive action in Utah." €19 The district court found particularly troubling Terry's failure to inform the Utah and Colorado courts of each other and of the actions before them. Indeed, the court considered the "threshold issue" of the case to be "whether Judge Hilder's acceptance of... Terry's Consent to Adoption, which occurred on February 20, 2008, should be vacated."

But for "Terry's premature delivery and affirmative steps to mislead the Court through acts of omission as well as commission," the district court believed, "Manzanares certainly would have secured his paternity order well in advance of the child's expected delivery date." Finding Terry's deceptions "highly material," the court found "ample grounds for the vacatur of Judge Hilder's approval and acceptance of...

Terry's Consent." The court found that it had authority to vacate Judge Hilder's acceptance because the adoption statutes "do[] not expressly preclude the Court from setting aside" an acceptance of consent. {20 The district court's rationale was based in equity: "[I]t would be a gross injustice and miscarriage of justice to allow... Terry's and [the Byingtons'] action to defeat.

Manzanareg'[s] legitimate claim to his child and to challenge the adoption under these circumstances." 121 The district court declined to decide whether Manzanares complied with the requirements of Colorado law to preserve the right to notice of a proceeding in connection with the adoption of Baby B. The court noted, however, that "it does not appear that [Manzanares] has taken any such steps in Utah."

122 Despite vacating Judge Hilder's acceptance of Terry's consent to adoption, the *389district court in a later ruling held that the vacatur "did not render the Consent void from its inception." The court reasoned that the term "executed" found in Utah Code sections 78B-6-122(1)(c)@ii)(A) and (B) refers to the birth mother's execution of her consent, not to the district court's acceptance of the consent.

Because the court concluded that Manzanares was aware of multiple "qualifying circumstances," it held that "the date for the purposes of determining whether... Manzanares complied with Utah law is February 20, 2008, when... Terry signed the Consent." ¶ 28 Manzanares appealed the district court's determination that Terry's consent was valid and that he was aware of qualifying circumstances.² We will not disturb that court's findings of fact "unless they are... clearly erroneous."

State, Dep't of Human Servs. ex rel. Parker v. Irizarry, 945 P.2d 676, 678 (Utah 1997) (internal quotation marks omitted). To the extent our resolution of those facts depends on our construction of the relevant adoption statutes, however, we review the district court's statutory interpretation for correctness. Cf. H.U.F. v. W.P.W., 2009 UT 10, ¶ 19, 203 P.3d 943.

II ¶ 24 Subject to two narrow exceptions, an unmarried biological father's consent to the adoption of his child who is six months of age or younger is not required under Utah law unless the father complies with Utah Code section 78B-6-121(3) (Section 121(8)). Section 121(8), among other things, requires the father to "initiate[] proceedings in a district court of Utah to establish paternity," Utah Code § 78B-6-121(3)(a), "prior to the time the mother executes her consent for adoption," id. § 78B-6-121(3)³ The district court noted that "it does not appear that [Manzanares]

hald] taken any such steps" to comply with Section 121(8) prior to February 20, 2008, the day Terry consented before Judge Hilder to the adoption of her three-day-old child. ¶ 25 Manzanares nevertheless argues that his consent was required for two independent reasons⁴ He first argues that Terry's consent was voided upon Judge Faust's vacatur of Judge Hilder's acceptance of the consent.

On this point, Manzanares challenges the district court's ruling that the relevant statute requires an unmarried biological father to assert his rights in Utah prior to the time the mother "executed the consent" (February 20, 2008), "not the time that the consent was accepted by the Court." ¶ 26 Alternatively, Manzanares argues that he qualifies for one of the two exceptions to the strict-compliance requirements of Section 121(3).

Because he did not know (and could not have known through "reasonable diligence") of a "qualifying circumstance" before February 20, 2008, the date Terry signed her consent, Manzanares argues that his consent to adoption was required by statute.

Under Utah law, the consent of an unmarried biological father who has failed to comply with Section 121(3) is still required where (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; (B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by: (I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or (II) the state where the child was conceived; and (C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b).

Utah Code § 78B-6-122(1)(c)(i).⁵ ¶ 27 Citing Manzanares's Colorado court filings detailing his belief that Terry planned to flee to Utah to surreptitiously give up the child for adoption, the district court held either that Manzanares knew or through "reasonable diligence" should have known of one or more qualifying circumstance. Manzanares counters that although he believed Terry would flee to Utah, Terry mollified those concerns when she denied, in Colorado court filings, any such intention.

In light of Terry's denials, Manzanares insists that he was unaware of any qualifying circumstance. ¶ 28 The parties' arguments implicate two issues on appeal: (A) the effect (if any) of Judge Faust's vacatur on Terry's consent to adoption, and (B) whether Manzanares was unaware (and reasonably could not have become aware) of a qualifying circumstance.

We find that Terry's consent was valid, but we reverse the district court's determination that Manzanares knew or reasonably should have known of a qualifying circumstance. Accordingly, we remand to the district court to determine (1) whether Manzanares fully complied with Colorado's requirements to establish his parental rights in Baby B., and to preserve the right to notice of a Colorado adoption proceeding, id. § 78B-6-122(1)(c)(i)(B); and (2) whether Manzanares demonstrated a full commitment to his parental responsibilities, id. § 78B-6-122(1)(c)(i)(C). *391A.

Validity of Terry's Consent ¶ 29 The district court vacated Judge Hilder's acceptance of Terry's consent, but later decided that the vacatur did not render Terry's consent invalid for purposes of the relevant adoption statutes.

We agree that Terry's consent to adoption is valid because under the relevant statutes the judge's only role is to ensure that the birth mother consented freely and voluntarily. Because there is no contention that Terry did not freely and voluntarily consent to the adoption of Baby B., we find Terry's consent valid and reject Manzanares's attempts to subvert it. ¶ 30 Under Utah law, a "consent or relinquishment by a birth mother" must be signed before certain statutorily authorized individuals, including "a judge of any court that has Jurisdiction over adoption proceedings."

Id. § 78B-6-124(1)(a). The judge "shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily." Id. § 78B-6-124(4). Such a "consent or relinquishment is effective when it is signed and may not be revoked." Id. § 78B-6-126. ¶ 31 Terry signed her consent before Judge Hilder on February 20, 2008.

Judge Hilder certified that Terry signed the consent freely and voluntarily. Yet in light of Terry's alleged "deceptions and misrepresentations to the Courts," the district court "vacate[(d)] Judge Hilder's acceptance of Ms. Terry's Consent."

The court reasoned as follows: Our judicial system requires that all individuals appearing before the court, whether parties, witnesses, or counsel, be candid with the Court and provide it 'with an accurate picture of the issues that may be present. This is functionally important and precludes one party from gaining an unfair advantage over the other party or precluding that party's full participation....

The Court further finds and holds that it would be a gross injustice and miscarriage of justice to allow Ms. Terry's and [the Byingtons'] action to defeat Mr. Manzanares'[s] legitimate claim to his child and to challenge the adoption under these circumstances. ¶ 32 Despite vacating Judge Hilder's acceptance of Terry's consent, the district court "did not vacate or set aside the Consent itself."

Rather, the court "contemplated the re-filing of the Consent so that the process of Judicial acceptance, with all of the relevant information being disclosed, could be renewed." In a later memorandum decision, however, the court held that its earlier vacatur "did not render the Consent void from its inception." This is because, the court reasoned, Utah Code sections 78B-6-122(1)(c)(1)(A) and (B) speak of the date on which a mother "executed" a consent to adoption, not the date on which that consent was accepted by a trial judge.

"Consequently," the court resolved, "the operative date for the purposes of determining whether Mr. Manzanares complied with Utah law is February 20, 2008, when Ms. Terry signed the Consent." ¶ 33 Manzanares disputes the district court's interpretation of the word "executed" in the adoption statutes. According to Manzanares, a consent to adoption is valid only after it has been accepted by a judge.

But Manzanares cites no relevant authority for this position.⁶ The Byingtons, in contrast, argue that the district court's action vacating Judge Hilder's acceptance was improper in the first place, because the only role a judge plays when a mother gives consent for an adoption is to ensure that the consent does not result from coercion but is freely and voluntarily given.

Absent any contention that Terry did not freely and voluntarily consent to the adoption, the Byingtons argue, the district court lacked authority to vacate Judge Hilder's acceptance. ¶ 34 Whether or not the district court had authority to vacate Judge Hilder's acceptance, we conclude that the district court did not vacate anything of relevance to this case.

Utah law requires a mother to sign her consent before a judge who "certifies] to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily." Utah Code § 78B-6-124(1), (4). Such a consent "is effective when it is signed and may not be revoked."

Id. § 78B-6-126. The statutes never mention a judge's "acceptance" of the consent-let alone acceptance based on full disclosure to the court-as a prerequisite to the execution of a valid consent. The district court never questioned that Terry freely and voluntarily signed her consent, only that she did not divulge to the court that Manzanares had filed a paternity action in Colorado.

The district court's vacatur of Judge Hilder's acceptance of the consent is thus of no legal significance to the issues in this appeal. ¶ 35 The district court's analysis also rested on a mistaken premise-that parental-rights proceedings in another state affect the validity of a mother's consent in this state.

Under the Adoption Act, a birth mother has an absolute right to consent to an adoption, so long as she understands what she is doing and does so freely and voluntarily. See *id.* § 78B-6-124(4). And the Act specifically contemplates the possibility that an unmarried biological father may attempt to secure his parental rights in another state. See *id.* § 78B-6-122(1)(c)(i)(B).

Doing so does not prevent the mother from executing a consent to adoption in Utah. Nor is the father excused from asserting his rights in Utah by the mother's purported failure to disclose. See *id.* § 78B-6-106(1). Rather, the father "is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur," and "has a duty to protect his own rights and interests."

Id. § 78B-6-110(1)(a). ¶ 36 Thus, the district court's vacatur of Judge Hilder's "acceptance" of Terry's consent was legally baseless. Terry's consent to adoption on February 20, 2008, was therefore valid. B. Qualifying Circumstances ¶ 37 Under the applicable statute, a finding that Manzanares's consent to Baby B.'s adoption was required depends first on a conclusion that he did not know, and through the exercise of reasonable diligence could not have known, of a qualifying circumstance prior to or on February 20, 2008.

There are four qualifying circumstances set forth in the statute that may arise "at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption": (i) the child or the child's mother resided, on a permanent or temporary basis, in the state; (ii) the mother intended to give birth to the child in the state; (iii) the child was born in the state; or (iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption: (A) in the state; or (B) under the laws of the state.

Id. § 78B—6—122(1)(a). ¶ 38 "Based on Mr. Manzanares'[(s)] filings in Colorado," 7 the district court concluded that "prior to February 20, 2008, Mr. Manzanares knew, or through the exercise of reasonable diligence should have known" of any or all of the second, third, and fourth qualifying circumstances—"that (i) Ms. Terry intended to give birth in Utah, (ii) the child would be born in Utah, or (iii) Ms. Terry intended to execute a consent to adoption of the child in Utah or under the laws of Utah."

Although the district court did not evaluate the first qualifying circumstance—residence in Utah—the Byingtons argue on appeal that Manzanares knew or should have known that Terry resided in Utah. Accordingly, we must determine whether the record supports the court's conclusion that at least one of the qualifying circumstances provisions identified by the district court was met.

We also must independently evaluate, based on the record, whether Manzanares did not know and could not have known through reasonable diligence that Terry resided in Utah before giving consent to the adoption. ¶ 39 In the paragraphs below, we articulate the varying standards of review that apply to the findings explicit and implicit in the district court's above conclusions.

We then evaluate those conclusions under the appropriate standards of review, concluding that the district court applied incorrect legal standards in finding in Terry's favor under the qualifying circumstances provision.

We accordingly reverse under the legal standards as clarified below. Finally, we evaluate the Byingtons' claim that Manzanares was aware that Terry resided in Utah, ultimately rejecting the underlying factual predicate that Terry in fact resided in the state. 1. Standards of Review ¶ 40 The standard of appellate review varies depending on the nature of the lower court's analysis.

A key question is whether the trial court's decision qualifies as a finding of fact, a conclusion of law, or a determination of a mixed question of law and fact. Findings of fact are entitled to the most deference. Those findings "entail[] the empirical, such as things, events, actions, or conditions happening, existing, or taking place, as well as the subjective, such as state of mind."

State v. Pena, 869 P.2d 932, 935 (Utah 1994)⁸ Since the lower court often has a comparative advantage in its firsthand access to factual evidence, and because there is no particular benefit in establishing settled appellate precedent on issues of fact, there is a potential downside and no significant upside to a heavy-handed, fresh reexamination of the facts on appeal.

Such findings are accordingly overturned only when "clearly erroneous." See, e.g., State v. Tripp, 2010 UT 9, ¶ 23, 227 P.3d 1251. ⁴¹ Conclusions of law are at the other end of the spectrum. No deference is given to the lower court's analysis of abstract legal questions. This is because the lower court has no comparative advantage in resolving legal questions and settled appellate precedent is of crucial importance in establishing a clear, uniform body of law.

Our review of conclusions of law is accordingly de novo. We take a fresh look at questions of law decided by a lower court, according no deference to its resolution of such issues. See, e.g., H.U.F. v. W.P.W., 2009 UT 10, ¶ 19, 203 P.3d 943. ¶ 42 Mixed questions fall somewhere in the twilight between deferential review of findings of fact and searching reconsideration of conclusions of law.

On mixed questions-involving application of a legal standard to a set of facts unique to a particular case⁹-our review is sometimes deferential and sometimes not. The applicable standard depends on the nature of the issue and the marginal costs and benefits of a less deferential, more heavy-handed appellate touch.

Thus, we have sometimes applied a deferential standard of review on mixed questions, and sometimes reviewed mixed determinations de novo, depending on: (1) the degree of variety and complexity in the facts to which the legal rule is to be applied; (2) the degree to which a trial court's application of the legal rule relies *394on facts observed by the trial judge, such as a witness's appearance and demeanor, relevant to the application of the law that cannot be adequately reflected in the record available to appellate courts; and (8) other policy reasons that weigh for or against granting discretion to trial courts.

State v. Levin, 2006 UT 50, ¶ 25, 144 P.3d 1096 (internal quotation marks omitted). The deference given in these circumstances rests on the notion that the mixed finding is not "law-like" because it does not lend itself to consistent resolution by a uniform body of appellate precedent, and/or on

the premise that the mixed finding is "fact-like" because the trial court is in a superior position to decide it. ¶ 43 An example of a determination of such a mixed question would be a finding of negligence in a personal injury suit arising out of an automobile accident.

The particular facts and circumstances of the drivers' conduct are likely to be "so complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out," Pena, 869 P.2d at 939, so there would be little upside to a heavy-handed, searching reconsideration of a trial court's finding of negligence in a particular case. By the same token, the trial judge's negligence determination would often be affected by his observation of a competing "witness's appearance and demeanor" on matters "that cannot be adequately reflected in the record available to appellate courts."

Levin, 2006 UT 50, ¶ 25, 144 P.3d 1096 (internal quotation marks omitted). If so, a non-deferential appellate review of a negligence finding would not only have little upside, but would also have significant downside since the appellate court would be in an inferior position to review the "correctness" of the trial judge's decision.

For these reasons a negligence finding is a classic finding that, while mixed, calls for deference to the lower court.¹⁰ ¶ 44 Some mixed findings, on the other hand, call for non-deferential appellate review. Such findings are those where a fresh appellate reconsideration of the issues present little downside and significant upside—as on issues that are "law-like" in lending themselves to consistent resolution by uniform precedent and not "fact-like" because the appellate court is in as good a position as the trial court to resolve the issue.

A paradigmatic example here would be a finding that a common set of recurring law enforcement practices qualifies as a "reasonable" search or seizure. The upside of de novo appellate review is apparent, in that both law enforcement and the general public ought to be able to rely on a consistent rule established by set appellate precedent as to the reasonableness of certain law enforcement procedures.¹¹ And the downside is minimal in a case involving common, recurring practices, where the decision will turn on the general reasonableness of those practices and not so much on the demeanor or credibility of a particular witness.¹² This is why a mixed finding of reasonableness is typically subject to a non-deferential standard of review.¹³ ¶ 45 This background sets the stage for an evaluation of the appropriate standards of review of the district court's findings in this case.

A trial court's application of the qualifying circumstances statute in a given case may involve findings of fact subject to considerable deference. If a trial court found that a father "knew" that the mother intended to give birth in Utah (or knew that the baby had been born there), for example, that would be a finding of fact entitled to deference that would be reversible only if clearly erroneous.

This is because knowledge is a "subjective... state of mind," which normally is a factual question. See *Pena*, 869 P.2d at 935. ¶ 46 Other findings under the qualifying circumstances statute would involve mixed questions of law and fact. A finding that "through the exercise of reasonable diligence" a biological father "could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed" involves a mixed question of law and fact because it essentially concludes that "a given set of facts comes within the reach of a given rule of law."

Id. at 936. Such a mixed finding under the qualifying circumstances provision is one that would ordinarily merit some deference on appeal. An evaluation of whether a biological father "could not have known" of a qualifying circumstance through the exercise of "reasonable diligence" typically would be one that is "so complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out."

Id. at 939. Assuming a district court applied the correct legal standard in making a mixed finding under the qualifying circumstances provision, such a mixed finding typically would be entitled to deference and would be properly affirmed on appeal if not clearly erroneous. 47 Finally, we note that the factual and mixed findings described above may contain embedded legal questions. "[B]ecause appellate courts have traditionally been seen as having the power and duty to say what the law is and to ensure that it is uniform throughout the jurisdiction," *id.* at 936, we must be vigilant in our review of both purely factual and mixed findings to ensure that they are based on correct legal principles.

If a hypothetical statute were to impose penalties for the wearing of a red shirt, a trial court could be called upon to make a factual finding on the empirical question of the color of an individual party's shirt. But such a finding could also entail an embedded legal conclusion, such as whether fuchsia shirts are prohibited. Our review of a court's decision under this statute would defer to the factual finding on the empirical question of the color of a particular shirt.

But we would give no deference on the legal question of the meaning of the statutory term "red," deciding for ourselves whether fuchsia shirts are covered. Thus, if a trial court finds that a particular fuchsia shirt is effectively a red one covered by the statute, the applicable standard of review would require us to distinguish the factual finding on the empirical question of the shirt's color from the legal conclusion on what is meant by the term "red." *3962.

The District Court's Findings Regarding the Second, Third, and Fourth Qualifying Circumstances ¶ 48 The district court's finding that Manzanares knew or should have known of one of three qualifying circumstances is not entitled to deference on appeal for three reasons.

First, it is impossible to cleanly evaluate the district court's finding that Manzanares knew or should have known of a qualifying circumstance because its analysis effectively fused underlying

questions of fact, law, and mixed questions.

Second, to the extent the court effectively answered the factual question that Manzanares "knew" of a qualifying circumstance, that conclusion appears to have been based on the incorrect legal conclusion that belief is equivalent of knowledge.

Finally, under a correct reading of the statute, the evidence in the record sustains only one conclusion—that Manzanares did not know and could not have known of a qualifying circumstance in light of Terry's deception before she executed her consent to adoption. 149 Although the factual and mixed questions inherent in the qualifying circumstances provision are central to its operation, and often dependent on evidence that the trial court has firsthand experience with, we ultimately conclude that remanding to allow the district court to make these findings would be fruitless, and therefore simply reverse.

In so doing, we offer some points of clarification on the applicable legal standards that govern under the statute. ¶ 50 We hasten to add that our goal in this endeavor bears no relation to the motive attributed to us by the dissent.

As explained in detail below, our approach has nothing to do with substituting our "own sense of what is fair" for the "legislature's policy choices." *Infra* ¶ 94. Our goal, rather, is to give the Adoption Act our best interpretation, giving meaning to each of its provisions in a way that credits the plain language of the statute.

The approach set forth below is aimed at doing so, not, as the dissent asserts, at achieving "palatable" results or condemning "fraudulent and outrageous" conduct. *Infra* ¶ 94.14 (a) ¶ 51 The district court did not make a separate finding on the factual question whether Manzanares knew of one of the qualifying circumstances. Nor did it make a separate finding on the mixed question whether Manzanares "could have known" through "reasonable diligence" of a qualifying circumstance.

Instead, the district judge simply concluded that the "qualifying circumstances" provision of the statute was satisfied in this case—that Manzanares knew or reasonably should have known of one of the three qualifying circumstances enumerated in the court's order (intent to give birth in Utah, birth in Utah, or intent to execute a consent to adoption in Utah).15 *397152 The dissent implies that the district court's analysis is a factual finding worthy of deference, but it is not.

A determination that Manzanares knew that Terry intended to give birth in Utah (or knew that the baby had been born there) would be a finding of fact subject to the deferential clear error standard of review. But that is not what the district court found. Instead, by concluding generally that the qualifying circumstances condition was met, the court effectively packaged factual findings (of knowledge) with mixed questions of fact and law (that "reasonable diligence" would have led to knowledge), labeling the whole thing a "finding of fact."

Because the district court simply concluded that the range of facts and circumstances before the court satisfied the qualifying circumstances provision of the statute, it failed adequately to analyze the factual and legal basis for concluding that Manzanares knew of a qualifying circumstance or, separately, that "reasonable diligence" would have led him to knowledge.

The court never rendered a separate mixed finding or a separate finding of empirical fact or state of mind. Thus, there is no factual or even mixed finding for us to defer to, and thus no basis for deference to the trial court's decision. (b) 153 The district court's finding was also corrupted by an embedded legal error.

In expressly relying on Manzanares's allegations in his Colorado pleadings, the court effectively adopted a legal premise that a belief expressed in a court pleading is the equivalent of knowledge. 154 That premise was erroneous. Knowledge and belief are distinct states of mind.¹⁶ And the Adoption Act expressly requires proof of the former. An unmarried biological father's consent is required where he "did not know, and through the exercise of reasonable diligence could not have known" that a "qualifying circumstance" existed.

Utah Code § 78B-6-122(1)(c)(i)(A) {emphases added}.¹⁷ ¶ 55 The statute's inquiry into what the father knew or could have known clearly implies proof beyond mere belief. 18 "[The word 'knowledge' connotes more than subjective belief or unsupported speculation.

The term 'applies to any body of known facts or to any body of ideas inferred from such facts *398or accepted as truths on good grounds.¹⁹ Thus, in context, the statute requires consent by the father unless he knew or could have known-and not merely believed-of a qualifying circumstance (residence in the state, intent to give birth in the state, the child's birth in the state, or intent to consent to adoption in the state). ¶ 56 Knowledge of such circumstances implies that the father "accepted" them "as truths on good grounds."

It would not be sufficient, therefore, for the father simply to accept the subjective possibility of the likelihood of such event taking place. If the father is told by the mother that she intended to give birth in the state or consent to adoption there, that would give the father "good grounds" for knowledge of those qualifying circumstances. But mere suspicion of such intent would fall short. ¶ 57 This standard is generally consistent with the approach set forth in our opinion in *O'Dea v. Olea*, 2009 UT 46, 217 P.3d 704.

An "unambiguous notification" by the mother of a qualifying circumstance is evidence of a father's knowledge. *Id.* 148. The law requires proof of knowledge and not mere subjective belief. Proof of knowledge, moreover, may be established on the basis of an "unequivocally communicated" statement by the mother to the father, *id.* 142, so long as that statement is sufficient to sustain a finding of knowledge and not mere suspicion or belief.²⁰ ¶ 58 The dissent

complains that this standard is "impossible to satisfy in practice," *infra* ¶ 96, but experience and common sense teach otherwise.

It is true that the child's mother is under no obligation to share information regarding her intent, but there are good reasons for her to communicate with the father of her child and she will often do so. In fact, cases heard by this court confirm that the mother often will communicate her intentions to the father,²¹ and when that happens the father's knowledge of her intent will be established.²² *399159 The dissent also complains that the approach we take today is inconsistent with the standard set forth in *O'Dea*.

Infra ¶¶ 111-114. We acknowledge the need to refine and clarify the *O'Dea* standard, and we do so here in a number of respects. For the most part, however, our decision here is consistent with *O'Dea*, as explained above. ¶ 60 There is one aspect of *O'Dea* that is arguably incompatible with the approach we adopt today, and that is its characterization of the statutory standard as turning on proof of "sufficient notice" or "inquiry notice."

2009 UT 46, ¶¶ 39-42, 217 P.3d 704. In context, the reference to "notice" could simply be understood as a shorthand for a showing that the father knew or reasonably could have known. In that sense, the *O'Dea* opinion is correct, and we reaffirm it. There is another sense of "notice," however, that is potentially confusing and that we accordingly disavow. Given our construction of the notion of "knowledge," it cannot be enough to simply establish that the father had "notice" in the sense of suspicion sufficient to trigger a further inquiry.

To the extent *O'Dea* can be read to suggest that, we disavow it as overtaken by our explanation of the knowledge requirement set forth above.²³ ¶ 61 Next, the dissent challenges the knowledge inquiry as we have defined it as irreconcilable with the Adoption Act's proviso that a mother's "fraudulent representation is not a defense to strict compliance with the requirements of this chapter."

Infra ¶¶ 130-31 (quoting Utah § 78B-6-106). In the dissent's view, this language renders a mother's statements to an unmarried biological father inadmissible and irrelevant to the statutory inquiry into whether the father knew or could have known of a qualifying circumstance.

Thus, the dissent would disregard evidence of Terry's statements to Man-zanares and rejects our approach as advocating a "'fraudulent concealment' exception. at odds with the legislative intent that the burden of fraud is best borne by the father." *Infra* ¶¶ 126, 131. ¶ 62 This mischaracterizes our approach and advocates an inquiry that would thwart any reasonable inquiry into a father's knowledge.

If the dissent's approach were taken seriously, no informed examination of a father's knowledge could ever be undertaken, since such knowledge of the mother's intentions and actions would almost always be based on statements by the mother.

Thus, the dissent would completely undermine any reasonable inquiry into the father's knowledge of qualifying circumstances by deeming the mother's statements irrelevant on the ground that the father bears the risk of her fraud. That approach is wrong because it renders meaningless the statutory inquiry into knowledge, which necessarily implies a consideration of the mother's statements as to her intentions and actions. ¶ 63 We read the statute to call for an evaluation of any evidence relevant to the father's knowledge, including statements (fraudulent or otherwise) by the mother.

This inquiry is not, as the dissent suggests, the adoption of a " 'fraudulent concealment' exception." *Infra* ¶ 126. It is simply a re-evaluation of the fact that an evaluation of the father's knowledge of the mother's intentions must consider evidence of what the mother said about those intentions. ¶ 64 Our approach preserves reasonable meaning for the knowledge inquiry and for the proviso cited by the dissent—that a mother's "fraudulent representation is not a defense to strict compliance with the requirements of this chapter."

Utah Code § 78B-6-106(2) (Section 106). Unlike the dissent, we do not read the Act to "forbid[] consideration of 'any' fraudulent action, statement, or omission." *Infra* ¶ 134 (emphasis added). Rather, the Act merely states that fraud is not a defense to a father's failure to strictly comply with the requirements of the statute. Utah Code § 78B-6-106(2).

Thus, a father who gained knowledge of a qualifying circumstance from another source (such as a friend, relative, revealed documents, etc.) could not defend his failure to comply with the statute by pointing to the birth mother's fraudulent representations to him.

The ultimate question under the statute, in other words, is not fraudulent misconduct by the mother, but whether the father knew or could have known of a qualifying circumstance. ¶ 65 In addition, it should be noted that the fraud proviso has reference to the father's obligations in "compliance with the requirements of this chapter"—i.e., the requirements that the father protect his interests under Section 121(8) by filing a paternity proceeding and submitting an affidavit stating his capacity and willingness to provide for the child.

Id. § 78B-6-121(3). Thus, Section 106 also clarifies that the father cannot forgo strict compliance with the Section 121(8) filing requirements because the mother defrauded him into thinking that such was not required. ¶ 66 That provision in no way suggests, however, that the mother's statements are irrelevant to the father's knowledge of qualifying circumstances.

Such knowledge, after all, is not a "requirement[]" of the Adoption Act. It is simply a trigger for the imposition of those requirements. Thus, we read the "fraud" proviso in Section 106 to have no bearing on the knowledge inquiry under section 122(1)(c)(i)(A), preserving independent meaning for both the "fraud is not a defense" clause that the dissent relies on and for the "knowledge trigger" provision requiring strict compliance.

To do otherwise would render impossible the statutory evaluation of the father's knowledge, an approach that is clearly incompatible with the statutory text.²⁴ (c) ¶ 67 Under the statutory standard as clarified above, we conclude that there is no basis in the record for a finding that Manzanares knew or reasonably could have known of the second, third, or fourth qualifying circumstance. ¶ 68 First, the parties have identified no evidence in the record to support a finding that Manzanares had knowledge, as opposed to belief. As the district court indicated, there was no evidence that Terry ever told Manzanares of her intention to have her baby in Utah or to give it up for adoption there.²⁵ And although Manzanares's Colorado petition expressed his "serious and founded concerns" about the possibility that Terry would "flee to Utah... to proceed with an adoption," those concerns arose from inferences he drew from the fact that Terry wanted to give the baby up for adoption somewhere, was raised in a Mormon family, and had relatives in Utah.

This is belief at best, not knowledge. -It is an inference that Manzanares drew from circumstantial "yellow flags," not an acceptance of a truth on good grounds. ¶ 69 The dissent makes much of the allegations in the Colorado proceedings, insisting that Manzanares's knowledge is "clear." *Infra* ¶ 154. But the dissent conflates belief with knowledge, and the Colorado allegations indicate only the former.

Under Colorado's rules of civil procedure, a party may make an allegation in a legal pleading that is premised merely on "information and belief," not actual knowledge.²⁶ And that is precisely the *401kind of allegation Manzanares was making in his Colorado filings when he detailed his "serious and founded concerns." 70 In fact, Manzanares filed the Colorado paternity action immediately on the heels of an email from Terry assuring him that she intended to return to Colorado to have the baby; *supra* ¶¶ 6-7.

That email foreclosed any knowledge by Manzanares, leaving him only with the "concern[s]" he expressed on "information and belief." Manzanares's lack of knowledge was further confirmed by his actions upon Terry's return to Colorado one week after giving birth to the child. When he realized Terry was no longer pregnant, his reaction was to call hospitals in Colorado in an attempt to find his child.

These are not the actions of a man who "knew" that Terry planned to give birth in Utah or consent to an adoption there. T71 Second, the record also clearly indicates that Manzanares "could not have known" of the second, third, or fourth qualifying circumstances "through the exercise of reasonable diligence." Utah Code § 78B-6-122(1)(c)(i)(A). Typically, this inquiry involves an exercise in the hypothetical-of what "reasonable diligence" the father could have undertaken and of what he "could have known" if he had been more diligent.

See *O'Dea*, 2009 UT 46, ¶ 40, 217 P.3d 704. In this case, however, we know exactly what would have happened if the father had probed more deeply. Despite his repeated assertions of concern,

the mother consistently rebuffed him and denied, under oath and otherwise, any intention to give birth or consent to adoption in Utah.

Under the circumstances, it could hardly be clearer that Manzanares "could not have known" of Terry's concealed intentions. Any further diligence would have been pointless and thus unreasonable. The parties have not identified any further diligence that Manzanares might have undertaken, much less suggested a basis for concluding that such efforts would have given him knowledge of a qualifying circumstance.²⁷ ¶ 72 The dissent insists that the father's knowledge "at any point in time" should trigger strict compliance under Section 121), and asserts that Manzanares was required to file the paternity action and affidavit contemplated by that provision on the basis of the knowledge he had at the time of his Colorado paternity filing.

Infro ¶¶ 140-43. This contention is premised on the dissent's reading of the statutory basis for an exception to the strict-compliance requirements of Section 121(3)-that "the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed."

Utah Code Ann. § 78B-6-122(1)(c)(i)(A). In the dissent's view, this provision triggers the strict compliance requirements of Section 121(8) anytime the father has any knowledge of a qualifying circumstance-however fleeting and whether or not such knowledge is defeated by subsequent events.

Because the dissent deems *402Manzanares to have known of Terry's intentions at the time he filed his Colorado paternity proceeding, it would require him to file the Section 121(3) paternity action and affidavit in the Utah courts even if such knowledge was subsequently defeated by Terry's denials.

We find this approach unpersuasive. In the first place, the factual premise of the argument is baseless, as there is no evidence that Manzanares had knowledge at any point in time-even upon the filing of the Colorado paternity action. And in any event, the dissent's reading of the statute is strained and would lead to absurd results. T74 The question highlighted by the dissent is whether a father's fleeting knowledge-for any brief period of time and even if defeated by subsequent information-triggers the Section 121(8) strict compliance requirements.

The answer to that question is not apparent on the face of the statute. Its plain language simply provides for avoidance of strict compliance with Section 121(8) when the father lacked knowledge "before the time the mother executed a consent or relinquishment of the child." Utah Code § 78B-6-122(1)(c)(i)(A). That standard, in turn, raises the question whether the father must lack knowledge at all times before the execution of consent or relinquishment or just immediately before that takes place. ¶75 We read "before" in the statute in the latter sense.

If the father knows of (or reasonably could have known of) a qualifying circumstance immediately before the mother executes a consent or relinquishment, he loses his parental rights absent strict compliance with the statute. If the father has failed to file the paternity papers and affidavit by the time of the consent or relinquishment, in other words, he has failed to effect strict compliance and his parental rights are forfeited.

Fleeting knowledge at earlier stages, by contrast, does not necessarily trigger the requirement of strict compliance with Section 121(8). If such knowledge is defeated or overtaken by subsequent events, the father can properly say that he "did not know" or "could not have known" "before the time the mother executed" a consent or relinquishment. T 76 That does not mean that an unmarried biological father can safely ignore the requirements of Section 121(8) strict compliance until the baby's due date approaches.

There is always the chance the baby will be born prematurely, and strict statutory compliance may take some time. Thus, to be on the safe side, a father who wants to be sure to protect his rights should do so well before, and not just immediately before, the anticipated consent or relinquishment. T77 Despite the dissent's protestations to the contrary, the statutory language does not foreclose this approach.

Nowhere does the statute use the language that the dissent adopts in paraphrasing it—that strict compliance is required "if the father either knows or should have known of one of the specified circumstances at any point during the time after the conception and 'before' " the execution of a consent or relinquishment.²⁸ *Infra* 140. Instead, the statute simply says "before," giving rise to the above-noted ambiguity. ¶ 78 Although the statutory language does not resolve the ambiguity, the absurd consequences associated with the dissent's approach clearly do.²⁹ If the dissent's construction prevailed, unmarried fathers everywhere would be forced to file unnecessary paternity actions and affidavits to protect their rights in the speculative event that circumstances changed and there might be a need to do so.

Consider a father who is told early in his girlfriend's pregnancy that she wants nothing to do with him and intends to give her child up for adoption in Utah. If that father completely reconciles with the mother of his child the next day, and she unequivocally recants any interest in an adoption (in Utah or elsewhere), it can certainly be said that the father no longer knows of a qualifying circumstance and thus should not be required to file a paternity proceeding and affidavit in Utah.

Yet that is exactly what the dissent's approach would require. ¶79 We do not read the statute to require such pointless compliance with Section 121(8). Strict compliance is pointless and absurd if the father's knowledge of a qualifying circumstance is defeated by events that take place "before the time the mother" executes a consent or relinquishment.

We accordingly read the statutory trigger for strict compliance-proof that the father knew or could have known-to be implicated only when the father's knowledge continues until just "before the time the mother executed" a consent or relinquishment. 180 This framework adequately resolves the "theoretical and practical dilemmas" posed by the dissent. *Infra* ¶ 144.

If a birth mother "repeatedly vacillates regarding her intention to give their child up for adoption," *infra* " 144, the father would be well-advised to comply strictly with the statute to be sure to protect his rights. But if the consent or relinquishment is executed at a time when he lacks knowledge of a qualifying circumstance, he can preserve his rights under Section 122(1)(c) without strictly complying with Section 121(8).

That is because he "could not have known" of the qualifying circumstance immediately "before the time the mother executed a consent to adoption or relinquishment," Utah Code § 78B-6-122(1)(c)(i)(A). 81 For all of these reasons, we conclude that Manzanares could not have known, and did not know, of the second, third, or fourth qualifying circumstance.³⁰ Any factual findings the district court may have made to the contrary, even if made under a correct legal standard, were clearly erroneous, and we accordingly reverse.

8. The Qualifying Circumstance of Residence ¶ 82 The district court did not evaluate the one remaining qualifying circumstance-residence in Utah-but the Byingtons raise it as an alternative ground for affirming the district court's decision, so we address it here. This qualifying circumstance does not require any intent on the part of the mother. It simply asks a factual question: whether the father knew, or through the exercise of reasonable diligence could have known, that the mother resided ("on a permanent or temporary basis") in Utah. *404¶ 83 The adoptive parents cite O'Dea for the proposition that a mother who visits Utah shortly before giving birth to her child and gives birth to the baby in Utah is a temporary Utah resident under the statute.

They further assert that Terry's brief visit to Utah to see her father (from her arrival in Utah on February 14, 2008, through her execution of consent to adoption at 8:45 a.m. on February 20) constitutes temporary residence under O'Dea.

Because Manzanares was informed by e-mail of Terry's visit to Utah, the adoptive parents argue, Manzanares was aware of the qualifying circumstance of temporary residence in Utah. ¶ 84 We acknowledge that the birth mother in O'Dea was present in Utah for only a short period of time, and that we nonetheless concluded that she temporarily resided in Utah,.

Under the circumstances of this case, however, we cannot conclude that Terry resided in Utah, temporarily or otherwise. Terry informed Manzanares by e-mail only that she would visit Utah for a few days and that she would then return to Colorado for the remainder of her pregnancy. She was here only three days before giving birth to Baby B., and three days later she gave her consent to adoption.

On this record, we see no basis for finding that Terry resided in Utah for purposes of the qualifying circumstances statute. T 85 The facts regarding the length of the mother's stay in O'Dea are unclear. "At some point" between "early June" and June 15, 2006 (the day the child was born), the mother "traveled to Utah" to give birth to the child. O'Dea, 2009 UT 46, ¶ 6, 217 P.3d 704.

The O'Dea majority made no definitive determination regarding the mother's length of stay in Utah, but concluded that the mother temporarily resided in Utah. The dissent characterized the mother's stay differently, maintaining that the record did not "reflect any facts" pertaining to the mother's length of stay in Utah "other than [a] telephone call, made on the very day [the mother] gave birth."

Id. ¶ 49 (Durham, C.J., dissenting). The dissent then hypothesized that "a one- to three-day hospital stay in Utah, for the sole purpose of giving birth and relinquishing an infant for adoption," could not satisfy the qualifying circumstance of residence. Id. 186 Equipped with these nebulous facts, "Iwle decline[d] to adopt a rule that establishes a minimum amount of time a mother must remain in Utah to become a temporary resident."

Id. ¶ 36 (majority opinion). Although it was "unclear from the record exactly how long" the mother had been in Utah "around the time of the birth," we held that "the totality of the circumstances" in O'Dea "suggest[ed] that [the mother] temporarily resided in Utah." Id. Importantly, we reasoned that the unmarried biological father in O'Dea did not present "a compelling argument as to why [the mother's] presence in Utah did not constitute a temporary residence."

Id. We therefore found that "the district court was not in error in determining the existence of a qualifying circumstance." Id. T87 As the O'Dea case demonstrates, temporary residence is a difficult term to define with precision. See, e.g., *In re McQuiston's Adoption*, 238 Pa. 304, 86 A. 205, 207 (1913).

Under the circumstances of this case, however, we have little difficulty concluding that Terry did not "reside" in Utah. "Reside" means "[t]o dwell permanently or for a length of time; to have a settled abode for a time." *Knuteson v. Knuteson*, 619 P.2d 1387, 1389 (Utah 1980) (internal quotation marks omitted).

The word connotes "'a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit. " 31 ¶88 In other contexts (divorce and insurance coverage), we have examined residence in light of such factors as voting, owning property, paying taxes, maintaining a mailing address, working or operating a business, and having children attend school in the forum.*40532 Terry satisfies none of the above factors.

At the time she gave birth to Baby B., Terry had long been a resident of Colorado. And as she stated in her e-mail to Manza-nares, she was here merely to "visit" her sick father for a few days. We thus hold that Terry did not reside even temporarily in Utah, and accordingly that Manzanares did not know and could not have known of this qualifying circumstance. {89 The district court found that Terry intended not just to visit her sick father, but also to return in late March to give birth to the child here.

Even if Terry's apparent intent to return were somehow relevant to the residency analysis, we still would find for Manzanares. First, Terry never returned for that purpose in late March (because the child was born on February 17).

Under these facts, Manzanares could not have known that Terry ever "resided " (past tense) "on a permanent or temporary basis" in Utah. Code § 78B-6-122(1)(a)(i) (emphasis added). Even if an individual plans to move to Utah on a permanent basis, surely she cannot be said to have temporarily resided here the moment she crosses state lines. Some threshold time period must first be met. ¶ 90 We cannot conclude that Terry resided here, even if only temporarily, when she was present in Utah for only six days before giving her consent to adoption-especially when her stated purpose for being here was to visit a sick relative. ¶ 91 Besides, Terry concealed from Manzanares any intention to return to Utah in March.

Manzanares knew only that Terry planned to "visit" her "father in Feb[ruary] for a week{[,] maybe a little longer." He accordingly did not know and could not have known that she resided in Utah. TII ¶ 92 The district court in this case erroneously concluded that Manzanares "knew, or through the exercise of reasonable diligence should have known," of one or more qualifying circumstance.

We therefore reverse the district court and remand the case for further findings regarding (1) whether Manza-nares fully complied with Colorado's requirements to establish his parental rights in Baby B., and to preserve the right to notice of a Colorado adoption proceeding; and (2) whether Manzanares demonstrated a full commitment to his parental responsibilities.

Justice LEE authored the opinion of the Court, in which Justice DURHAM and Associate Chief Justice NEHRING joined. Justice DURHAM filed a concurring opinion, in which Associate Chief Justice NEHRING joined. Justice PARRISH filed a dissenting opinion, in which Chief Justice DURRANT joined.

The court has rewritten paragraphs 42-43.. "Notice of an adoption proceeding shall be served" on "any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother." Utah Code § 78B-6-110(2)(f)..

After oral argument, we requested supplemental briefing regarding the applicability of a federal statute-the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A-to the facts of this

case. Prior to our supplemental briefing order, neither party had raised the PKPA before the district court or on appeal.

Thus, in light of our decision in *J.M.W. v. T.I.Z. (In re Adoption of Baby E.Z.)*, 2011 UT 38, 266 P.3d 702, we hold that the parties forfeited any argument regarding the PKPA.. Utah Code section 78B-6-121i(3) provides in full: Except as provided in Subsection 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father: (a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; (b) files with the court that is presiding over the paternity proceeding a sworn affidavit: (i) stating that he is fully able and willing to have full custody of the child; (ii) setting forth his plans for care of the child; and (iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth; (c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless: i) he did not have actual knowledge of the pregnancy; (ii) he was prevented from paying the' expenses by the person or authorized agency having lawful custody of the child; or (iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d)..

Manzanares also seeks to challenge Section 121(3) on constitutional grounds, asserting that it fails to give full faith and credit to paternity actions initiated in another state as required, according to Manzanares, by article IV, section 1 of the United States Constitution.

We decline to reach this issue because it was not asserted in the proceedings below and accordingly was not *390preserved for appeal. See *Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998) (party must give trial court an opportunity to rule on an issue to preserve it for appellate review)..

The second exception to Section 121(3) applies where an "unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption... that a qualifying circumstance existed," Utah Code § 78B-6-122(1)(c)(ii)(A), and he complied with Section 121(3) either "20 days after"" he became aware of the qualifying circumstance, or before "the time that the mother executed" her consent to adoption, whichever comes later, *id.* § 78B-6-122(1)(c)(ii)(B).

The district court found that "Manzanares did not file a Utah paternity action until September 10, 2008, nearly seven months after the child's birth." Accordingly, this second exception does not apply in this case.. Manzanares cites *In re Adoption of D.*, 122 Utah 525, 252 P.2d 223 (1953), for the proposition that a judge must accept a mother's consent for the consent to be valid.

But that case says nothing of the effect of a district court's vacatur of a mother's consent to adoption. In *In re Adoption of D.*, we considered a scenario where prospective adoptive parents were promised that "if they would assume parental responsibility and take care of" a child, they could adopt the child. *Id.* at 228.

We held that "[a]fter acceptance" of the offer by the adoptive parents (by fulfilling the relevant parental responsibilities), "such a contract is enforceable against the adopting parents and ought to be enforceable by them." *Id.* at 229.

The case never mentions the sort of statutory consent to an adoption at issue here.. The district court also vaguely referred to "other evidence adduced at the evidentiary hearing" to support its conclusion, but our own review of the evidentiary hearing discloses no evidence of Manzanares's knowledge other than that set forth in the Colorado court filings.

In fact, summarizing the testimony of Terry and the Byingtons, the district court noted that neither Terry nor the Byingtons informed Manzanares of their plans. The trial judge did not, nor has either party attempted to, identify what "other evidence" the court had in mind, and we know of no other evidence in the record.. See also J. Tuaver, *A Preliminary Treatise on Evidence at Common Law* 191 (1898) ("Nothing is a question of fact which is not a question of the existence, reality, truth of something; of the *rei veritas*.")..

Pena, 869 P.2d at 936 (mixed questions involve a determination "whether a given set of facts comes within the reach of a given rule of law").. See *Bowers v. Union Pac. R. Co.*, 4 Utah 215, 7 P. 251, 253 (Utah Terr. 1885) ("Negligence is generally a mixed question of law and fact, and sometimes, although all the facts are admitted, the question arises whether the act imputed as negligence was such as persons of ordinary prudence would have performed under the circumstances, and, unless the question is clear of all doubt, it is the duty of the court to leave it with the jury, and not to disturb their finding.")..

Cf. *State v. Thurman*, 846 P.2d 1256, 1271 (Utah 1993) ("On the one hand, the application of the clearly erroneous standard to [a] trial court's factual findings recognizes the trial court's advantaged position in judging credibility and resolving evidentiary conflicts.

On the other hand, the application of the correct[ness] standard to the trial court's ultimate voluntariness determination acknowledges that a single trial judge is in an inferior position to determine what the legal content of voluntariness should be and that a panel of appellate judges, with their collective experience and their broader perspective, is better suited to that task.

Also, the decision of the appellate panel is published, thereby providing state-wide standards that guide law enforcement and prosecutorial officials. Therefore, while the trial court is primarily concerned with the proper resolution of factual issues under the controlling law, the appellate court addresses itself to the clarity and correctness of the developing law in order to provide unambiguous direction to those whose further rights and responsibilities are affected." (citations omitted)..

That is not to say that a reasonableness determination. will never involve pure findings of fact subject to a deferential standard of review. Before reaching the ultimate determination on reasonableness, the district judge may well make intermediate findings of empirical fact on issues *395such as the methods and timing of a search, the considerations leading up to it, or who said what to whom (and when).

Those would be classic findings of fact on which the district judge would be entitled to deference.. See *State v. Worwood*, 2007 UT 47, ¶ 11, 164 P.3d 397 ("In cases involving Fourth Amendment questions under the United States Constitution, we review mixed questions of law and fact under a correctness standard in the interest of creating uniform legal rules for law enforcement."); *State v. Levin*, 2006 UT 50, ¶ 23, 144 P.3d 1096 ("[With regard to certain mixed questions where uniform application is of high importance, as in the context of Fourth Amendment protections, we have held that policy considerations dictate that the application of the legal concept should be strictly controlled by the appellate courts.

Thus, if we determine that society's interest in establishing consistent statewide standards outweighs other considerations, we grant no discretion to the trial court, and we review the mixed question for correctness." (footnote omitted)); cf. *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996) (determinations of reasonable suspicion and probable cause are mixed questions of law and fact which are reviewed de novo)..

The dissent's contrary construction rests largely on what it perceives as the legislature's purpose in enacting the Adoption Act, which in its view is to "ensur[e] finality and permanence in adoptive placements." *Infra* ¶ 99. But the statute surely has other purposes that merit our consideration. It is worth recalling that "(M)egislation is rarely aimed at advancing a single objective at the expense of all others."

Myers v. Myers, 2011 UT 65, ¶ 27, 266 P.3d 806; see also *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 23 n. 6, 248 P.3d 465 (explaining "that most statutes represent a compromise of purposes advanced by competing interest groups, not an unmitigated attempt to stamp out a particular evil"). "More often, statutes are a result of a legislative give-and-take that balances multiple concerns."

Myers, 2011 UT 65, ¶ 27, 266 P.3d 806. That is certainly true of the Adoption Act, whose text plainly indicates a concern not only with assuring the finality of adoptions but also with protecting the rights of biological fathers who demonstrate "timely and full commitment to the responsibilities of parenthood" and "acquire[] constitutional protection" of their interest in their child.

Urag Cope § 78B-6-102(5)(e). Our construction of the statute must account for this and all other policies and purposes addressed by the statutory text, not just the general purpose cited by the dissent. The district court employed the "should have known" formulation with respect to Manza-nares's knowledge of a qualifying circumstance rather than the "could not have known" language prescribed in section 122(1)(c)@).

Compare *id.* § 78B-6-122(1)(c)(i)(A) ("did not know, and through the exercise of reasonable diligence could not have known") with *id.* § 78B-6-122(1)(c)(ii)(A) ("knew, or through the exercise of reasonable diligence should have known").

The dissent follows suit. See, eg., *infra* ¶¶ 105-07, 116-21, 149, 159. The "could" formulation we*397utilize throughout this opinion is correct as it is the language employed in the operative section. As we note above, *supra* ¶ 26 n. 5, this case arises under section 122(1)(c)(i)(A) (which uses the "could not have known" formulation) not under section 122(1)(c)(i)(A) (which speaks in terms of what the father "should have known").

See *Iron Silver Mining Co. v. Reynolds*, 124 U.S. 374, 384, 8 S.Ct. 598, 31 L.Ed. 466 (1888) ("There may be difficulty in determining whether. knowledge in a given case was had; but between mere belief and knowledge there is a wide difference.

The court could not make them. synonymous by its charge and thus in effect incorporate new terms into the statute."); *Tracerlab, Inc. v. Indus. Nucleonics Corp.*, 313 F.2d 97, 102 (1st Cir.1963) ("Suspicion and knowledge are poles apart on a continuum of understanding.... Suspicion differs from knowledge in that one who has knowledge of a fact has no ' substantial doubts as to its existence, whereas one may have suspicions although he realizes that there is a substantial chance of its nonexistence." (internal quotation marks omitted)); *Jameson v. Jameson*, 176 F.2d 58, 60 (D.C.

Cir.1949) ("Belief, no matter how sincere, is not equivalent to knowledge.").. The district court's global finding also contained a second embedded legal conclusion-in its statement of the statute's third qualifying circumstance. Instead of concluding that Manza-nares knew or reasonably should have known that "the child was born" in Utah, Urag CopE § 78B-6-122(1)(a)(iii), the district court's finding phrased this standard in terms of whether he knew or reasonably should have known that the child "would be born in Utah."

The question is not whether Manzanares believed that the child would be born in Utah, but whether he knew that the child, after the fact, had been born in Utah. Remand on this factual question is unnecessary, since the answer to that question clearly is no. Terry concealed the birth of the child from Manzanares (and the Colorado court) after the fact. Manzanares was unaware that the child had been born, let alone born in Utah, until several days after Terry gave her consent to adoption..

Our approach does not read the "could have known" standard out of the statute, as the dissent suggests. *Infra* ¶ 123. It simply underscores the statutory standard, which turns on what the biological father knew or could have known, and not, as the dissent advocates, on what a "reasonable person" would have "conclude[d]" or "inferred." *Infra* ¶¶ 155, 159.. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 590, 113 S.Ct.

2786, 125 L.Ed.2d 469 (1993) (quoting *Weestea's Tem» Internationa Dictionary* 1252 (1986)).. This is not to say, as the dissent charges, *infra* T119, that a father can only acquire knowledge of a mother's intent through "unequivocal communication." Rather, we simply clarify the position of our decision in *O'Dea* within the correct legal standard: if a father knows or could have known through the exercise of reasonable diligence of a qualifying circumstance, he must strictly comply with the Adoption Act.

The actual source of knowledge is immaterial; whether the father gains it (or could have gained it) by way of an unequivocal communication from the mother, through information gleaned from a third party, by way of discovered documents, or via any myriad of alternative avenues, the result is the same.. See, e.g., *O'Dea*, 2009 UT 46, ¶¶ 5-6, 217 P.3d 704 (a birth mother contacted the natural father and indicated that she "miscarried the child," but later called to inform him that the child would be born, that she was in Utah, and that she expected him to make future child support payments); *J.S. v. P.K.*

(*In re I.K.*), 2009 UT 70, ¶ 2, 220 P.3d 464 ("Birth Mother contacted the Natural Father [weeks after their relationship ended] to inform him that she was pregnant and intended to have an abortion"); *Osborne v. Adoption Ctr. of Choice*, 2003 UT 15, ¶ 4, 70 P.3d 58 (following delivery, a birth mother called the natural father to inform him that "she had borne a son, [and] that she had decided not to place the child for adoption in Utah...."); *Swayne v. L.D.S.*

Soc. Servs., 795 P.2d 637, 639 (Utah 1990) (a birth mother told the natural father that "her parents wanted her to relinquish the child for adoption."); *In re Adoption of Baby Boy Doe*, 717 P.2d 686, 687 (Utah 1986) (although living in separate states during much of the pregnancy, unwed mother and father spoke "on the phone regularly" and intended to marry, before the mother ultimately placed the child for adoption); *Sanchez v. L.D.S.*

Soc. Servs., 680 P.2d 753, 755 (Utah 1984) (while living with the natural father, a birth mother told him that "she might give the baby up for adoption.").. The dissent attempts to undermine our standard with the suggestion that "none of the cases cited by the majority would meet its 'unequivocal communication' standard." *Infra* ¶ 122. That is incorrect, and in any event it proves nothing.

First, at least one of the cited cases does demonstrate a communication from a mother that would establish knowledge on the part of a father. See *O'Dea*, 2009 UT 46, ¶¶ 5-6, 217 P.3d 704 (mother clearly indicated to the biological father that she intended to give birth to the child and that she was in Utah).

In any event, the cases are cited not to illustrate instances where the knowledge standard would be met, but simply to demonstrate that birth mothers will often share their intent with biological fathers, whether solicited or not. And a paucity of cases involving actual knowledge would tell us very little. A father who had demonstrable knowledge of a qualifying circumstance would be unlikely to sue, or at least unlikely to press his case on appeal to a stage that would generate a published opinion..

The dissent chides us for "overrul[ing] our prior precedent" without giving reasons for doing so. *Infra* 1115. But our decision today is not to overrule *O'Dea* (whose holding and essential standards are left intact), but simply to clarify its latent ambiguities. Such a decision is entirely consistent with the principle of *stare decisis*, which recognizes that "people should know what their legal rights are as defined by judicial precedent, and having conducted their affairs in reliance on such rights, ought not to have them swept away by judicial fiat."

Austad v. Austad, 2 Utah 2d 49, 269 P.2d 284, 290 (1954). That policy is not undermined but reinforced by a decision that clarifies ambiguities in past opinions without overruling their holdings.. *State v. Morrison*, 2001 UT 73, ¶ 11, 31 P.3d 547 ("[A]ny interpretation which renders parts or words in a statute inoperative or superfluous is to be avoided." (interior quotation marks omitted))..

In fact, the district court acknowledged that Terry "never advised Mr. Manzanares that she intended to place the child for adoption with her brother and sister-in-law, and that she was intending to do it in Utah," and that "neither the Byingtons [nor Ms. Terry told [Manzanares] specifically what her adoption plans were.". See *Coro R. Civ. P. 8(e)(1)* ("Each averment of a pleading shall be simple, concise, and direct.

When a pleader is without direct knowledge, allegations may be made upon information and belief."); cf. *Lotenfoe v. Pahk*, 747 So.2d 422, 424 (Fla.Dist.Ct.App.1999) ("[A]n allegation made on information and belief is not sufficient to prove the fact asserted."). See generally *Aran Wricet, Artaur R. Mitcer & L. Marcus, Federal Practice & Procedure* § 1224, at 299-301 (3d ed.

2004) ("Pleading on information and belief is a desirable and essential expedient when matters that are necessary to complete the statement of a claim are not within the knowledge of the plaintiff but he has sufficient data to justify interposing an allegation on the subject.").. Our analysis does not imply, as the dissent suggests, that a biological father must "comply with the statutory registration requirements only in cases where the birth mother told the father of her 'unequivocal' intent to give birth or consent to an adoption in Utah."

Infra ¶ 121. Strict compliance is required in any case where the father "could have known" of a qualifying circumstance through "reasonable diligence." And knowledge that the father could have acquired could come from any reliable source, not just the mother.

The problem here is not just that Terry failed to tell Manzanares of her intent; it is that in these circumstances Manzanares could not possibly have known of Terry's intentions regardless of any further diligence. That does not forever foreclose the possibility of a finding that a father "could have known" of a qualifying circumstance upon further inquiry.

If, for example, the mother openly tells her friends and family of her intentions but communicates nothing to the biological father, the court could find that he "could have known" of those intentions had he inquired of those friends and family, thereby triggering a requirement of strict compliance..

The Adoption Act uses the "at any point" formulation in a different provision-in section 78B-6-122(1)(a), in the definition of "qualifying circumstance." But that simply clarifies that a qualifying circumstance can take place "at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption."

Utah Code § 78B-6-122(1)(a). It also suggests that the omission of similar language from section 78B-6-122(1)(c) is deliberate and telling. See also *Sill v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099 ("We read the plain language of a statute as a whole and interpret its provisions in harmony with other provisions in the same statute and with other statutes under the same and related chapters....

Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." (alterations omitted) (internal quotations marks omitted)); see, e.g., *State ex rel. Z.C.*, 2007 UT 54, ¶¶ 8-10, 165 P.3d 1206 (concluding that, when read in the context of Utah's child sex abuse statute as a whole, children are both "person{s] under the age of 14" and persons capable of committing child sex abuse); The absence of the "at any point" qualifier in Section 122(1)(c) is an additional reason to construe the language of that provision to refer to the period immediately before the execution of consent or relinquishment.

See *Carrier v. Salt Lake Cnty.*, 2004 UT 98, ¶ 30, 104 P.3d 1208 ("[we should give effect to any omission in the [statute] by presuming that the omission is purposeful.").. *Encon Utah, LLC v.*

Fluor Ames Kraemer, LLC, 2009 UT 7, ¶ 73, 210 P.3d 263 (preferring the statutory construction "that avoids absurd results" (internal quotation marks omitted)); see also State v. Redd, 1999 UT 108, ¶ 12, 992 P.2d 986 ("Where we are faced with two alternative readings, and we have no reliable sources that clearly fix the legislative purpose, we look to the consequences of those readings to determine the meaning to be given the statute....

In other words, we interpret a statute to avoid absurd consequences."); Clover v. Snowbird Ski Resort, 808 P.2d 1037, 1045 n. 39 (Utah 1991) ("When dealing with unclear statutes, this court renders interpretations that will avoid absurd consequences." (internal quotation marks omitted))..

Because we conclude that Manzanares could not have known of any of these three qualifying circumstances, remand for any further factual development would necessarily be an exercise in futility. We are not, therefore, "substituting [our] own judgment for that of the district court," infra " 147, but simply holding that there is no basis in the record for a finding that Man-zanares knew or could have known of a qualifying circumstance and thus have no reason to remand..

Keene v. Bonser, 2005 UT App 37, ¶ 11, 107 P.3d 693 (quoting Wessrer's Teirp New International Dictionary 1931 (1993)); see also Mesa Dev. Co. v. Sandy City Corp., 948 P.2d 366, 369 (Utah Ct.App.1997) ("[A] 'resident' is someone who dwells or resides in a place so as to be more than a mere inhabitant.").. See Bustamante v. Bustamante, 645 P.2d 40, 41 (Utah 1982); see also Travelers/Aetna Ins.

Co. v. Wilson, 2002 UT App 221, ¶ 14, 51 P.3d 1288 {adopting these and other factors in the insurance context).