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STATE OF MICHIGAN

COURT OF APPEALS

FOR PUBLICATION
November 18, 2026
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In re BABY DOE, Minor.

No. 379886
Clinton Circuit Court
LC No. 25-032635-NB

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

SWARTZLE, P.J.

In this interlocutory appeal under the Safe Delivery of Newborns Law (SDNL), MCL 712.1 *et seq*., Adoption Associates, Inc. appeals from the circuit court's order directing DNA testing to determine whether petitioner, a person claiming to be a nonsurrendering parent, is likely the biological father of Baby Doe. The primary question on appeal is this: When does the deadline begin for the nonsurrendering parent to file a petition for custody under the SDNL—28 days from (i) when the nonsurrendering parent receives actual notice of the newborn's surrender, or (ii) when the notice of the surrender was published in a newspaper of general circulation in the county where the newborn was surrendered? We conclude that the answer is (ii), and this means that the nonsurrendering parent acted timely in seeking custody of the newborn. For the reasons set forth here, we affirm and remand.

I. BACKGROUND

A bit of nomenclature at the outset: Adoption Associates and the alleged biological father each is properly referred to as a "petitioner" in these proceedings, as each filed what was purported to be a petition under the SDNL. For ease of reference, we will refer to Adoption Associates by its name, and the nonsurrendering parent/alleged biological father as "petitioner."

Baby Doe was surrendered under the SDNL on October 18, 2025. Shortly thereafter, Adoption Associates, a child-placing agency, temporarily placed the child with prospective adoptive parents under MCL 712.7(c) and filed a petition with the family division of the Clinton Circuit Court seeking an order to place the child in that home under MCL 712.7(e), which the court promptly granted. The surrendering parent spoke with Adoption Associates and identified petitioner as the nonsurrendering parent.

As required under MCL 712.7(f), Adoption Associates then began making efforts to notify petitioner of Baby Doe's surrender under the SDNL. Petitioner was being held at the Jackson County Jail at the time and was provided written notice of Baby Doe's surrender on October 29.[1] This written notice advised petitioner that he had 28 days from receipt of the notice to file a petition to seek custody of Baby Doe. With respect to where to file, the notice stated: "Your petition must be filed in Clinton County where the newborn is placed, or Jackson County where the emergency service provided [sic] is located, or the county where you as the parent are located." Adoption Associates also provided notice by publication in the *Jackson County Legal News* on October 30.

On December 4, Adoption Associates filed a petition seeking to terminate the parental rights of Baby Doe's parents under MCL 712.17. In a report attached to its petition, Adoption Associates detailed its efforts to verify that neither of Baby Doe's parents was challenging the child's surrender under the SDNL. Adoption Associates requested an order terminating the parental rights of Baby Doe's parents.

On December 18, Adoption Associates received a fax from the Jackson County Friend of the Court. Attached to the fax was an "Inmate Request Form" from the Jackson County Jail filled out by petitioner, who claimed, "I've sent multiple request forms petitioning the courts of my 28 day petition for rights" and "if someone from the courts [could] respond to me I'd appreciate it." The communication was directed to "family court foc [sic]/circuit court family division" and was dated December 12; the jail sent it to the Jackson County Friend of the Court on December 15. On December 18, the Jackson County Friend of the Court wrote back to petitioner, advising that it was not involved in this proceeding but that it would forward the communication to Adoption Associates.

By affidavit, Adoption Associates' Legal Coordinator described her next steps: She filed the fax from the Jackson County Friend of Court with the Clinton County Probate Registrar[2] to verify whether petitioner had filed any petitions with the court and asked the Jackson County Friend of the Court to determine whether petitioner had sent it any other communications. No other petitions had been filed in Clinton County, but the Jackson County Friend of the Court reported that petitioner had sent an earlier inmate request form from the jail on December 1.

The December 1 document was addressed to "family court/friend of the court" in Jackson County. The name listed was "Rodriguez" (no first name) and included his inmate and cell numbers. The body of the document stated: "Im writing to file a 28 day petition for rights to my child." The document indicates that someone from the jail forwarded it to "Court" on December 1, and the record confirms that it was received by the Jackson County Friend of the Court that same day. On one copy of the document, there is also a sticky note that indicates that someone contacted the jail and obtained petitioner's first name and included that in the file. The document

[1] Adoption Associates' Legal Coordinator later explained that petitioner was orally notified about this matter as early as October 21.

[2] In Clinton Circuit Court, Clinton Probate Judge Lisa Sullivan sits by assignment as a circuit judge in the family division. Accordingly, even though Judge Sullivan is the elected probate judge for the county, she serves in this case as a circuit judge, family division.

had not been processed because it lacked a first name, case number, or other identifying information.

Based on information received by the Clinton Circuit Court indicating that petitioner wanted to dispute the proceeding, the court appointed an attorney to represent him on January 22, 2026, and through that counsel petitioner filed another petition on February 18 seeking custody of Baby Doe, along with a motion requesting DNA testing. Meanwhile, Adoption Associates filed a "motion to compel court to schedule a safe delivery hearing," which argued that petitioner's communications were untimely and that the court was obliged to proceed with deciding whether to terminate parental rights under MCL 712.17.

At a hearing on March 4, the circuit court first indicated that it was not hearing Adoption Associates' motion, only petitioner's motion. It then expressed concern that petitioner "did file something in Jackson County . . . in a timely manner," but "it went to the friend of the court office and not the . . . clerk's office," and when they "attempted to respond . . . and say you need to file this with clerk's office not our office, their communication never got through to" petitioner. The circuit court said that it was "not moving forward with anything until we clear up" whether petitioner was Baby Doe's biological father and whether he was "going to follow through with" the custody petition. Adoption Associates argued that petitioner's submissions were untimely, and the court responded that "all . . . I'm going to tell you is I'm on notice that a non-surrendering parent is contesting this and I'm not going to simply terminate [petitioner's] parental rights because while incarcerated we aren't sure whether [petitioner] did or did not timely file."

The circuit court entered an order that same day directing DNA testing under MCL 712.11, from which Adoption Associates appeals by leave granted.

II. ANALYSIS

"The SDNL is a rarely litigated but vital statute." *In re Doe*, 350 Mich App 1, 8; 29 NW3d 499 (2024). The SDNL provides a statutory mechanism for the safe surrender of a child by a parent within 72 hours of the child's birth, as well as safeguards for the surrendering parent and nonsurrendering parent to assert their parental rights within specified timeframes. For this appeal, we focus on the safeguards applicable to the nonsurrendering parent, which include timely notice to that parent of the surrender of the child by the other parent, MCL 712.7(f), 712.10(1), 712.17; a period of time for the nonsurrendering parent to petition for custody after notification of the surrender, MCL 712.10(1), 712.17(3); and the right of that parent to DNA testing to establish parentage, MCL 712.11. Related to these safeguards are the duties placed on the child-placing agency, which include making "reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent." MCL 712.7(f).

Adoption Associates' primary argument is that the circuit court erred in ordering DNA testing because petitioner's petition for custody was untimely. The agency also argues on appeal that what petitioner submitted for filing did not constitute a "petition" under the SDNL. The first argument was raised and litigated below, and so it is preserved for appellate review. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289-290; 14 NW3d 472 (2023). Adoption Associates did not, however, sufficiently raise the second issue before the circuit court,

and therefore it is not preserved. *Id.*; see also *In re Baby Boy Doe*, 509 Mich 1056, 1058 (2022) (*In re Baby Boy Doe II*). We address each matter in turn.

A. TIME FOR NONSURRENDERING PARENT TO FILE PETITION

As noted by Adoption Associates, in refusing to hear the agency's motion and ordering DNA testing, the circuit court implicitly denied the agency's motion. The gravamen of the agency's motion was that petitioner's request for custody was untimely, and the circuit court should therefore conduct a hearing under MCL 712.17.

In fairness to the circuit court, none of the current court rules are well-suited for SDNL proceedings. The act repeatedly refers to parties filing a "petition" with the circuit court to take various actions. MCL 712.7(e); 712.10(1); 712.17(2)-(4). The probate chapter of the Michigan Court Rules explain how to handle proceedings initiated by petition. See MCR 5.101(B). The nature of SDNL proceedings is consistent with "the open-ended matters [normally] within the probate court's jurisdiction . . . in which interested persons may appear and raise concerns with the court." *Ecker v Nickel*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 366482); slip op at 3. But the probate rules apply in probate court, MCR 5.001(A), while the SDNL expressly provides that proceedings under it are conducted in the family division of circuit court, MCL 712.1(2)(b). Yet it is difficult to apply the general rules for civil matters and simply treat a petition as a "complaint" under those rules, because those rules contemplate only a single initiating "complaint." See MCR 2.101(B).

After review of the relevant statutes and court rules, we conclude that the substantive standards applicable to a motion under MCR 2.116(C)(7) (statute of limitations) apply here. Appellate review of such a motion is de novo. *Fisher Sand & Gravel Co v Neal A. Sweebe, Inc*, 494 Mich 543, 553; 837 NW2d 244 (2013). Neither party is required to produce supporting material, although both parties may file such material and the contents of the petition are assumed to be true unless the supporting material contradicts the petition. *Id*.

We also review de novo matters of statutory interpretation. *Id*. "[W]e apply the 'fair reading' standard [of statutory review], where the text, context, and statutory history are consulted to construe a statute as a reasonable reader would do." *People v Cotton*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 378335); slip op. at 3. Although we must read the SDNL as a whole and not focus myopically on one provision to the exclusion of others, *Malone v McRell*, 348 Mich App 705, 711-713; 19 NW3d 909 (2023), we are mindful that the SDNL largely restricts our reading to the text of the act itself. Specifically, the SDNL reads in relevant part: "Unless this chapter specifically provides otherwise, a provision in another chapter of this act [the Probate Code, MCL 710.21 et seq.] does not apply to a proceeding under this chapter. Unless this chapter specifically provides otherwise, the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, does not apply to a proceeding under this chapter." MCL 712.2(3). Thus, we focus our attention on the text of the SDNL without reference to similar statutes. *In re Miller*, 322 Mich App 497, 501; 912 NW2d 872 (2018).

Under the SDNL, a nonsurrendering parent has the statutory right to petition the family division of a circuit court for custody of a newborn child, but the petition must be timely filed. In the normal course, a filing deadline is triggered by notice of some kind. The deadline for filing a

petition is set forth in § 10 of the SDNL: "Not later than 28 days after *notice* of surrender of a newborn has been *published*, an individual claiming to be the nonsurrendering parent of that newborn may file a petition with the court for custody." MCL 712.10(1) (emphasis added); see also *In re Baby Boy Doe II*, 509 Mich at 1058 (describing this provision as creating a "filing deadline" for the nonsurrendering parent to petition for custody). Relatedly, the effect of missing this deadline is found in § 17: "If the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of *notice* of surrender of a newborn *under section 10* of this chapter, the child placing agency with authority to place the newborn shall immediately file a petition with the court to determine whether the court shall enter an order terminating the rights of the nonsurrendering parent." MCL 712.17(3) (emphasis added). Thus, § 10 sets forth both a simple, straightforward starting-line and deadline for the nonsurrendering parent to file a petition—28 days from the date that notice of surrender has been published—with the implication for missing this deadline made clear in § 17 (forfeiture of right to seek custody) and its explicit reference back to § 10.[3]

From this, it is clear that our Legislature intended for notice-by-publication to play a central role with respect to the deadline for a nonsurrendering parent to seek custody of the newborn. This does not obviate, however, the practical deficiencies of notice-by-publication, as members of our Judiciary have noted in the SDNL context. See, e.g., *In re Baby Boy Doe II*, 509 Mich at 1061-1063 (MCCORMACK, C.J., concurring in part and dissenting in part); *id.* at 1069 (ZAHRA, J., concurring in part and dissenting in part); *id.* at 1070-1071 (WELCH, J., concurring); *In re Baby Boy Doe (On Remand)*, 344 Mich App 82, 91; 998 NW2d 733 (2022) (BOONSTRA, J., dissenting). As a method for actually notifying a person of a legal right, notice-by-publication leaves much to be desired.

In fact, the SDNL muddies the "notice" waters in § 7. There, the applicable language states: "Within 28 days" upon notice from a hospital of a surrendered newborn, the child placing agency must "make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent . . . . If the identity and address of the nonsurrendering parent are unknown, the child placing agency shall provide notice of the surrender of the newborn by publication in a newspaper of general circulation in the county where the newborn was surrendered." MCL 712.7(f). Nowhere does the SDNL otherwise describe what constitutes "reasonable efforts" under § 7. Thus, read in isolation, § 7 might suggest that notice-by-publication

[3] Although in the normal course a prepositional phrase will modify the noun just preceding it, we share the dissent's view that the phrase "under section 10" in § 17(3) is best read to modify "a petition." MCL 712.17(3). We part ways with the dissent, however, with respect to the rest of the dissent's reading of § 17(3). The nonsurrendering parent's right to file "a petition" referenced in § 17(3) is the very right created by § 10(1) (as the callback to § 10 makes clear), and the parent can exercise that right, by the express terms of § 10(1), "[n]ot later than 28 days after notice of surrender of a newborn *has been published*." MCL 712.10(1) (emphasis added). A nonsurrendering parent like petitioner who has read § 10(1) would certainly be forgiven for concluding that he has 28 days from when notice "has been published" to petition for custody of his child. Any period less than this would be a trap for the unwary.

should be reserved for the circumstance where the agency has no identifying information about the nonsurrendering parent. This is contrary to the reading of §§ 10 and 17 above, where notice-by-publication would seem to be required in every case because it starts the clock for the nonsurrendering parent to petition for custody of the newborn.

With a bit of patience, however, the waters settle and clear, as there is a rational way to read § 7 in harmony with §§ 10 and 17. First, § 7 sets forth the duties of the child-placing agency; nowhere in that provision is there mention of a deadline by when a nonsurrendering parent must file a petition. Thus, one can read § 7 as simply inapposite to the question of what triggers the nonsurrendering parent's limited time to petition for custody, whereas §§ 10 and 17 are directly on-point.

Second, a fair reading of § 7 makes clear that a child-placing agency cannot satisfy its statutory duty to provide notice by doing the "bare minimum" of notice-by-publication regardless of the circumstance. To see this, begin with the standard that the agency must meet when giving notice to the nonsurrendering parent: "reasonable efforts." MCL 712.7(f). We agree with the observation of the majority in *In re Baby Boy Doe*, 338 Mich App 571, 596; 980 NW2d 513 (2021) (*In re Baby Doe I*) rev'd and vacated on other grounds by *In re Baby Boy Doe II*, 509 Mich at 1056, that "reasonable efforts must be tailored to the particular facts of the case and are to be evaluated on a case-by-case basis."

With that said, some general observations can be made about the requirements of § 7. For efforts to be "reasonable," they must have some fair chance of providing actual notice to the nonsurrendering parent—put another way, "notice" that is not noticed by anyone can hardly be called notice. Given the well-known deficiencies of notice-by-publication, see *supra*, merely publishing the notice in a local newspaper of general circulation will rarely (if ever) be reasonable when the child parenting agency has (or can obtain with due diligence) reliable information about the identity and location of the purported nonsurrendering parent. Instead, when the agency has access to such information, the agency will need to use modern, reliable, affordable methods of direct communication (e.g., personal; postal; phone) to meet its statutory duty of using "reasonable efforts" to provide notice. It is only when "the identity and address of the nonsurrendering parent are unknown" will notice-by-publication "in a newspaper of general circulation in the county where the newborn was surrendered" satisfy the agency's duty to provide notice under § 7. MCL 712.7(f).

Reading §§ 7, 10, and 17 together, the SDNL requires that notice-by-publication be made in every case, as this is the explicit trigger event for the nonsurrendering parent's deadline to file a petition for custody. MCL 712.10(1); MCL 712.17(3). If the agency has reliable information about the identity and location of the nonsurrendering parent, then it must use common and effective means of communication to satisfy its duty of using "reasonable efforts" to provide notice. It is only when there is no reliable information available or, using due diligence could be discovered, that the agency can satisfy its duty under § 7 solely by giving notice through publication. In short, notice-by-publication is a *necessary* form of notice in every case, but it is a *sufficient* form of notice only when the agency has no identifying information about the nonsurrendering parent, and the use of due diligence by the agency likewise uncovers no such information.

Considered in context of the SDNL as a whole, §§ 7, 10, and 17 can be harmonized when it comes to understanding the dual roles that notice-by-publication play under the act: (a) as a trigger for the nonsurrendering parent's filing deadline under §§ 10 and 17; and (b) as a statutory minimum form of notice when reasonable efforts otherwise provide no reliable identification or location information about the nonsurrendering parent. In addition to harmonizing various sections, this reading also avoids (or at least mitigates) some of the due-process concerns voiced by members of our Judiciary about a statutory regime that would rely solely on notice-by-publication. See, e.g., *In re Baby Doe II*, 509 Mich at 1061-1062 (MCCORMACK, C.J., concurring in part and dissenting in part) (explaining that "due process demands more" than notice-by-publication); *id.* at 1069 (ZAHRA, J., concurring in part and dissenting part) ("In short, this is a dubious method of providing notice before terminating a legal parent's rights."); *In re Baby Doe I*, 338 Mich App at 595-596 (BOONSTRA, J., writing for the majority) ("Simply put, nothing in the language of MCL 712.7(f) can be read as providing that publication alone constitutes reasonable efforts or that such a nondescript and *de minimis* notice as the one in this case, or one that was published for such a brief time, should be accepted by a trial court as adequately evidencing reasonable efforts.").

One might question why notice-by-publication is required under § 7 only in certain circumstances, if §§ 10 and 17 already require notice-by-publication in all cases. Does this reading make the reference to notice-by-publication in § 7 surplusage, in violation of the canon of construction counseling against such a reading? *Yellow Tail Ventures, Inc v City of Berkley*, 344 Mich App 689, 701; 1 NW3d 860 (2022). No—as already noted, § 7 focuses on the agency's duties, and subdivision (f) sets forth the general standard of "reasonable efforts" that an agency must meet when notifying a nonsurrendering parent. It makes sense that in that same subsection, our Legislature would explicitly identify the limited circumstance in which an agency can meet its statutory duty solely with notice-by-publication. Even if one could read some statutory overlap between the provisions, such overlap would make sense given the critical importance of parental notice under the SDNL.[4]

Similarly, one might question why our Legislature would require that notice-by-publication be made in every instance, even when the agency has reliable information at-hand about the nonsurrendering parent's identity and location. It would presumably be more efficient, for example, to excuse notice-by-publication when the agency provides actual notice to the

[4] The requirement that the agency's efforts be "reasonable" also guards against potential gamesmanship. For example, it would not be reasonable for an agency with information about the identity and address of a nonsurrendering parent to rush to publish the notice in a newspaper, thereby starting the 28-day clock, but then wait several weeks before providing actual notice to that parent. This type of "publish first, actually notify later" practice could be seen as an attempt to thwart a nonsurrendering parent's practical ability to petition for custody of the newborn. In contrast to this, Adoption Associates appears to have used reasonable efforts by notifying petitioner (both orally and personally) before subsequently publishing the notice. Moreover, best practices would suggest that, when an agency publishes notice after giving actual notice to a surrendering parent, the agency should update the nonsurrendering parent with the date of publication, so that the nonsurrendering parent knows when the 28-day deadline has started.

nonsurrendering parent, as occurred here. Under this efficiency-based alternative, the agency would be excused from having to provide duplicative notice-by-publication, and the 28-day deadline for the nonsurrendering parent to petition for custody would begin on the date of actual notice, as Adoption Associates advocates for here.

This is a question of policy for our Legislature, however, not one of statutory interpretation for us. *People v Savage*, 327 Mich App 604, 626; 935 NW2d 69 (2019). One can certainly imagine that there will be instances when the surrendering parent is honestly mistaken about who is the actual nonsurrendering parent or provides misleading information to the agency. Members of our Legislature could have rationally concluded that, given the possibility of mistake or misdirection, due process would be furthered with overlapping notices, even if notice-by-publication was duplicative in the mine-run of instances.

Accordingly, under this reading, Adoption Associates provided notice-by-publication on October 30, 2025; this event triggered the 28-day deadline for petitioner to file a petition for custody of the newborn. The 28-day period concluded on November 27, but that day was Thanksgiving, a court holiday, and the following day was likewise a court holiday. MCR 8.110(D)(2)(a). Petitioner had, therefore, until Monday, December 1 to file a petition for custody of the newborn.

B. BRIEF RESPONSE TO OUR COLLEAGUE'S DISSENTING OPINION

Before moving to the question of whether petitioner did, in fact, file a petition for custody by December 1, we offer several brief observations of the dissent. First, as we read the dissent's statutory analysis, that analysis holds together only if one deletes the verb phrase "has been published" from § 10(1). Under that alternative version of the statute, the 28-day deadline would start when notice of any kind is made; notice by publication would, in this version, measure the maximum potential amount of time a nonsurrendering parent would have to file a petition for custody, as the dissent appears to read the SDNL. Dis op p __. Absent some extraordinary circumstance, however, we should not read out of a statute words that our Legislature expressly included in it. *Yellow Tail Ventures*, 344 Mich App at 701. As our Supreme Court has described, § 10(1) creates a deadline for a nonsurrendering parent to petition for custody, and § 10(1) explicitly states that this deadline is measured by 28 days from when notice "has been published." MCL 712.10(1). It is hard to conceive of a clearer way to describe a statutory deadline than this one.

Second and relatedly, the dissent asserts that we "infer[] an additional publication requirement from § 10(1)." Dis op p ___. We need not (and do not) "infer[]" any "additional publication requirement" from § 10(1); as already explained, the language is explicit that the nonsurrendering parent's deadline for moving for custody begins when notice "has been published." MCL 712.10(1). In fact, the dissent itself draws the wrong inference from § 10(1) when comparing the nonsurrendering parent's deadline with that of the surrendering parent's deadline (28 days from the date of surrender). Given that notice is not an issue with the surrendering parent, little can be gleaned from comparing the two types of parents with respect to when their respective deadlines start. Instead, the more interesting inference to be drawn is from the fact that § 10(1) is where our Legislature decided to set forth the deadlines for *both* parents, without reference to § 7(f)—the first sentence sets forth the deadline for the surrendering parent,

and the second one sets forth the deadline for the nonsurrendering parent. This seems rather logical in terms of legislative drafting.

Third, the dissent questions why our Legislature would "require[] publication in every case, even when *the* parent has already received direct notice of the surrender and the deadline to seek custody." Dis op p __ (emphasis added). The assumption made by the dissent—that "the" parent has received notice—is one not made by us or our Legislature, as evidenced by the fact that a purported nonsurrendering parent who petitions for custody must still show by way of DNA test whether that person is, in fact, the actual biological parent. See MCL 712.11. The dissent's assumption rests on the secondary assumption that mistakes and misdirections do not occur, and such an assumption is particularly unwarranted in this context.

Fourth and finally, even if we assume for the sake of argument that the dissent's reading is a plausible one, our reading is (at least) just as plausible. Any perceived ambiguity in the SDNL should be read in favor of our Legislature having provided *more* due process for biological parents and their child, not *less*. See *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."); cf *Sole v Mich Economic Dev Corp*, 509 Mich 406, 419; 983 NW2d 733 (2022) ("[U]nder the constitutional-doubt canon, courts reasonably presume that the Legislature did not intend to enact a statute that raises serious constitutional doubts." (internal quotation marks omitted)). Whether to petition for custody of a child who has been surrendered is the most consequential parenting decision that a nonsurrendering parent can make, and if a statute can be read to provide sometimes duplicative notice that might extend by several days a nonsurrendering parent's deadline to petition for custody, then the statute should so be read.

C. PETITION FOR CUSTODY UNDER THE SDNL

Returning to the matter at hand, petitioner did, in fact, submit a document for filing with a court on December 1. On appeal, Adoption Associates argues that this did not constitute the filing of a petition, both because it was received by the Jackson County Friend of the Court rather than the family division of the Jackson Circuit Court or Clinton Circuit Court, and it did not have sufficient information to constitute a petition for custody. We decline, however, to take this matter up in the first instance on interlocutory appeal. Neither in its motion or brief nor during the oral argument before the Clinton Circuit Court did the agency focus on the substance of the petition itself. The agency's argument instead centered on the timeliness of petitioner's various submissions.

To be fair, the agency did make passing reference in its brief and during the hearing that petitioner's December 1 submission was received by the Jackson County Friend of the Court, not the Jackson Circuit Court, and the submission failed to list his first name, any information about the child, or a case number. We conclude that this was not, however, sufficient to preserve the argument for interlocutory appellate review. Similar passing remarks, without developed legal analysis, were deemed insufficient to preserve an argument for appellate review in an SDNL case. See *In re Baby Boy Doe II*, 509 Mich at 1058; see also *In re Doe*, 350 Mich App at 10-11 (noting

the current uncertainty in our jurisprudence on whether to apply the "raise-or-waive" bar or "plain-error review" to an unpreserved claim under the SDNL).

Moreover, there remain unanswered factual questions that could implicate this matter. For example, why did the jail apparently send petitioner's document to the Jackson County Friend of the Court, when the first addressee listed on the document was "family court," a shorthand often used to refer to the family division of circuit court? See, e.g., *In re Pierre Matthews*, unpublished opinion per curiam of the Court of Appeals, issued April 21, 2025 (Docket No. 369441), p 1 n 1. Similarly, why did the Jackson County Friend of the Court not immediately send the document to the "family court," i.e., the family division of the Jackson Circuit Court? If it was because the Friend of the Court did not have petitioner's first name, when did Jackson County Friend of the Court contact the jail and obtain this information? Did petitioner satisfy the prison mailbox rule set forth in MCR 1.112? The lack of a developed record counsels against taking up the matter on interlocutory appeal, regardless of any preservation hurdle.

Finally, there likewise remain unanswered legal questions that bear on this matter. What standards apply when evaluating the sufficiency of a petition under the SDNL? In the normal course, "petitions" are filed in probate court, and there are established standards for evaluating those petitions. See MCR 5.101(B). Under the SDNL, however, a petition must be filed in the family division of circuit court. MCL 712.1(2)(b), 712.10(1). It is unclear whether Michigan's notice-pleading standards for a civil complaint filed in circuit court would likewise apply to a SDNL petition filed in that court. See MCR 2.110(A) (identifying complaint, cross-claim, counterclaim, third-party complaint, answer, and reply to an answer as the only forms of pleading recognized under the court rules applicable to circuit courts). Does it matter that petitioner did not use the form provided by the State Court Administrative Office (SCAO) for nonsurrendering parents to petition for custody of a newborn, SCAO Form CCFD 03? In probate court, use of a SCAO form is mandatory, MCL 600.855; MCR 5.113(A), though in circuit court, these forms are not mandatory, *In re Doe*, 350 Mich App at 15 ("SCAO forms are not binding authority."); see also MCR 1.109(D)(1), (2); 8.119(C). Similarly, when he submitted the December 1 document for filing, petitioner was acting in a pro per capacity. Courts have long been instructed to read pro per pleadings with some leniency. See, e.g., *Haines v Kerner*, 404 US 519, 520-521; 92 S Ct 594; 30 L Ed 2d 652 (1972). How lenient should a court read a pro per petition submitted under the SDNL? And in any event, petitioner (represented this time by counsel) filed a subsequent petition, and there has been no legal argument before the circuit court or this Court on whether that petition should relate back to the original December 1 submission.

Given the myriad of unanswered factual and legal questions, we decline to take up the claim involving the adequacy of the submission filed on December 1.

III. CONCLUSION

As explained here, petitioner timely sought custody of the newborn. This is the only matter properly before this Court on interlocutory appeal, and therefore we decline to consider whether petitioner's submission on December 1 constituted a "petition" under the SDNL. Nor do we consider whether his subsequently filed petition relates back to the December 1 filing. These are

matters better left to the Clinton Circuit Court in the first instance. Accordingly, we affirm the circuit court and remand for proceedings consistent with this opinion.

Affirmed. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Christopher M. Trebilcock

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ACKERMAN, J. (*dissenting*).

The Safe Delivery of Newborns Law (SDNL), MCL 712.1 *et seq*., requires a child placing agency to make "reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent." MCL 712.7(f). Only "[i]f the identity and address of the nonsurrendering parent are unknown" must the agency resort to notice by publication in a newspaper. *Id.* That distinction makes sense. Publication is a substitute for direct notice when the parent cannot be located, not an additional requirement when the parent has already been found and notified.

The majority turns that statutory framework on its head. It concludes that notice by publication is required in every case, even when the agency has already located the nonsurrendering parent and provided actual notice. The majority relies on MCL 712.10(1), which permits a nonsurrendering parent to petition for custody "[n]ot later than 28 days after notice of surrender of a newborn has been published." Read in isolation, that language supports the majority's position. But § 10(1) establishes a deadline for filing a petition; it does not purport to establish the obligations of a child placing agency. Section 7(f) does that, and it expressly identifies when publication is required. The majority instead transforms a conditional, last-resort method of notice into an indispensable requirement in every case.

Here, petitioner received actual notice of the child's surrender on October 29, 2025, and was expressly advised that he had 28 days to seek custody. The agency nevertheless published notice the following day. Under the majority's interpretation, that unnecessary publication extended petitioner's deadline, even though he had already been notified of the surrender and told when he needed to act. I do not believe the Legislature intended that result. Because petitioner

failed to seek custody within 28 days of receiving actual notice, I would reverse the trial court's decision.

I. BACKGROUND

I have no objection to the majority's recitation of the facts. Baby Doe was surrendered on October 18, 2025, and Adoption Associates began efforts to notify petitioner of the child's surrender. On October 29, while petitioner was being held at the Jackson County Jail, he received actual notice advising him that he had 28 days to file a petition for custody. In an apparent excess of caution, Adoption Associates also provided notice by publication on October 30. After Adoption Associates filed a petition to terminate the parental rights of Baby Doe's parents, it came to light that petitioner had arguably attempted to seek custody through an inmate request form sent to the Jackson County Friend of the Court on December 1.

The one-day difference between actual notice and publication proved consequential. If the 28-day period began on October 30, the date of publication, it would have expired on November 27. Because courts were closed on November 27 and 28 for Thanksgiving, MCR 8.110(D)(2)(a), under MCR 1.108(1), he would have had until the end of the next business day, which was December 1. But if the 28-day period began on October 29, when petitioner received actual notice, it would have expired on November 26, before the Thanksgiving holiday. The trial court treated petitioner's December 1 communication as a timely petition for custody, which Adoption Associates now challenges on appeal.

On surrender of a newborn under the SDNL, MCL 712.7 establishes the responsibilities of a child placing agency. In relevant part, the agency is required to do the following:

> Within 28 days, make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent . . . . If the identity and address of the nonsurrendering parent are unknown, the child placing agency shall provide notice of the surrender of the newborn by publication in a newspaper of general circulation in the county where the newborn was surrendered. [MCL 712.7(f).]

This language unambiguously communicates that the child placing agency is required to provide notice by publication *only* "[i]f the identity and address of the nonsurrendering parent are unknown." The primary obligation, laid out in the first sentence, is that the agency has 28 days to "make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent." Notice by publication is required only "[i]f the identity and address of the nonsurrendering parent are unknown," so if the agency has any leads it can pursue, it has 28 days to pursue those under § 7(f). Only when those efforts are exhausted—which it may not take 28 days to discern—would the agency be able to conclude that "the identity and address of the nonsurrendering parent are unknown," at which point it can *then* provide notice by publication.[1]

[1] That said, of course it may be the case that the agency knows from the outset that this will be impossible, as the statutory scheme contemplates that a parent may surrender a newborn

If, as the majority posits, publication was always necessary even if only sometimes sufficient, § 7(f) would say that. But in the enacted text, § 7(f) makes the *necessity* of publication—and not merely its *sufficiency*—conditional on "the identity and address of the nonsurrendering parent [being] unknown."

The SDNL also establishes a deadline for a nonsurrendering parent to seek custody. Under MCL 712.10(1), "[n]ot later than 28 days after notice of surrender of a newborn has been published, an individual claiming to be the nonsurrendering parent of that newborn may file a petition with the court for custody." The statute also directs the agency to initiate termination proceedings if the nonsurrendering parent fails to act:

> If the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of notice of surrender of a newborn under [MCL 712.10], the child placing agency . . . shall immediately file a petition with the court to determine whether the court shall enter an order terminating the rights of the nonsurrendering parent. [MCL 712.17(3).]

The central dispute in this case is how to reconcile these provisions. While § 7(f) requires publication only when the nonsurrendering parent cannot be identified or located, § 10(1) describes the deadline to seek custody by reference to publication. The majority concludes that publication "is the explicit trigger event for the nonsurrendering parent's deadline to file a petition for custody," meaning "the SDNL requires that notice-by-publication be made in every case." Although § 10(1) is not ideally drafted, I do not believe the statute, read as a whole, supports that conclusion.

II. ANALYSIS

What is perhaps most remarkable to me is that the majority derives a requirement that every agency publish notice from § 10(1), even though the Legislature separately established the agency's notice obligations in § 7(f). Nowhere in § 7(f) does the Legislature require notice by publication in every case. Rather, the agency has 28 days to "make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent," which indicates that the contemplated notice is actual notice achieved after "identify[ing]" and "locat[ing]" the parent. It then expressly conditions notice by publication on the agency's inability to identify or locate the nonsurrendering parent. If the agency succeeds in locating the parent and providing actual notice, as it did here, it has satisfied its obligation under § 7(f). Yet under the majority's interpretation, the agency must undertake an additional step not required by § 7(f) before the deadline for seeking custody even begins to run.

That cannot be right. The nature of SDNL proceedings requires some deadline by which a nonsurrendering parent must act so the child is not left indefinitely in a temporary placement. But under the majority's interpretation, an agency could fully comply with its express obligations

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anonymously. See MCL 712.3(2)(d) (directing an emergency service provider to "make a reasonable attempt" to, among other things, "[a]sk the parent to identify himself or herself"). In the absence of any leads to pursue, immediate notice by publication may be justified.

under § 7(f), including providing actual notice, without ever starting the 28-day period under § 10(1). The majority resolves that problem by inferring an additional publication requirement from § 10(1), effectively modifying the agency's obligations under § 7(f). The majority reaches that conclusion by treating § 10(1)'s reference to "publication" as the exclusive "trigger" for the nonsurrendering parent's 28-day period to act. But that reasoning assumes the very point in dispute: that § 10(1) implicitly requires publication in every case, even though § 7(f), which expressly establishes the agency's obligations, does not.

A better reading, and one more consistent with the structure of the SDNL, is available. As noted above, under § 7(f) the agency must make reasonable efforts to provide notice to the nonsurrendering parent and can only have recourse to notice by publication when it is known those efforts either have not been or cannot be successful. Sections 10 and 17 then regulate the respective obligations of the nonsurrendering parent and the agency. Section 10(1) requires that the nonsurrendering parent must act "[n]ot later than 28 days after notice of surrender of a newborn has been published." Section 17(3), in turn, directs the agency to "immediately file a petition with the court" seeking termination of parental rights "[i]f the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of notice of surrender of a newborn under section 10." The juxtaposition of these provisions makes clear that § 10(1) establishes "a filing deadline." *In re Baby Boy Doe*, 509 Mich 1056, 1058 (2022). As a result, while the agency is directed to file a petition "immediately" on the expiration of the 28-day period under § 17(3), if the agency delays doing so, a petition from the nonsurrendering parent is still untimely and ineffective. In other words, § 10(1) makes clear that the 28-day period is not a *minimum* amount of time the nonsurrendering parent has before the agency can act, but rather *all* of the time the nonsurrendering parent has.

Read as a whole, the statutory scheme also reveals that the majority looks to the wrong provision to identify what starts the 28-day clock. Section 17(3) refers simply to "notice of surrender of a newborn," not necessarily publication. Section 10(1)'s reference to publication, meanwhile, reflects the Legislature's recognition that "28 days after notice of surrender of a newborn has been published" is as long as *any* case can wait. This is illustrated by the contrast between the statutory language for surrendering and nonsurrendering parents. For a surrendering parent, "the parent shall, within 28 days after the newborn was surrendered, file a petition with the court for custody," which unmistakably says that the 28-day clock runs from the date of surrender. For a nonsurrendering parent, by contrast, it says: "[n]ot later than 28 days after notice of surrender of a newborn has been published." The differing language indicates that publication is not intended to be *the* "trigger" in *all* circumstances, but rather the *latest possible* trigger in cases where resort to notice by publication is necessary.[2] And where, as here, publication was unnecessary because

[2] To be clear, I agree with the majority that because "notice is not an issue with the surrendering parent, little can be gleaned from comparing the two types of parents with respect to when their respective deadlines start." The comparison I mean to underline is the Legislature's *choice of phrasing*: A surrendering parent must act "within 28 days after the newborn was surrendered," while a nonsurrendering parent must act "not later than 28 days after notice of surrender has been published." It is my contention that this difference in language—"within" 28 days of an act that has already occurred within the contemplation of the statute under MCL 712.2(1), as opposed to

actual notice had already been accomplished, it should have no legal effect at all, because § 17(3) says the clock already began when notice—*actual* notice—was achieved.

The most important signal that this is the intended reading of § 10(1) is that it gives effect to the Legislature's express direction in § 7(f). The majority acknowledges that "read in isolation, § 7 might suggest that notice-by-publication should be reserved for the circumstance where the agency has no identifying information about the nonsurrendering parent." But it overrides that reading because, under § 10(1), "notice-by-publication would seem to be required in every case because it starts the clock for the nonsurrendering parent to petition for custody of the newborn." I see no reason to treat what § 10(1) "would seem" to require as creating an obligation that § 7(f) does not impose. Even if § 7 is "simply inapposite to the question of what triggers the nonsurrendering parent's limited time to petition for custody," § 10 is similarly inapposite to the agency's responsibilities. Yet the majority uses the latter to rewrite the former.

My reading also better harmonizes § 7(f) with *both* § 10(1) *and* § 17(3). Each provision has its own function. Section 7(f) establishes the agency's notice obligations. Section 10(1) sets a deadline for the nonsurrendering parent to seek custody. And § 17(3) directs the agency to act when the nonsurrendering parent's deadline expires, referring to notice rather than publication as the event that starts the 28-day clock.

The majority's analysis suggests that it believes the phrase "under section 10 of this chapter" in § 17(3) modifies "notice of surrender of a newborn," thereby incorporating § 10(1)'s reference to publication. But I believe a better reading is that the phrase refers to the filing of a petition for custody under § 10. That is confirmed by § 17(1), which says that "[a] parent who surrenders a newborn . . . and who does not file a custody action under section 10 of this chapter is presumed to have knowingly released his or her parental rights to the newborn."[3] The references to § 10 in § 17(1) and (3) are references to filing a petition for custody, not what qualifies as notice—precisely because § 10 is not *purporting* to establish what qualifies as notice.

The majority's interpretation also creates tension with familiar principles of statutory construction. First, it renders § 7(f)'s express limitation on publication largely meaningless. If publication must occur in every case under § 10(1), what purpose does § 7(f)'s conditional publication requirement serve? The majority suggests that the provisions simply have different "focuses." But that is no answer to the rule against surplusage, which requires us to "give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). The point of that rule is to harmonize the different

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"not later than" 28 days after an act whose necessity is conditional under § 7(f)—signals an intended difference in meaning.

[3] In a footnote, the majority says it "share[s] the dissent's view that the phrase 'under section 10' in § 17(3) is best read to modify 'a petition,' " but its analysis also juxtaposes "notice" with "under section 10" in italics. I am not sure what that juxtaposition suggests other than that § 17(3)'s reference to "notice" incorporates § 10(1)'s reference to "publication."

provisions of a statute, not to excuse inconsistencies because the provisions address different subjects.

For the same reason, the majority's interpretation is difficult to reconcile with the principle that statutory language "must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute." *Arrowhead Dev Co v Livingston Co Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982). The Legislature expressly made publication conditional in § 7(f). I would not read § 10(1) to silently eliminate that condition. The majority asserts that my reading of § 10(1) "read[s] out of [this] statute words that our Legislature expressly included in it," namely, "has been published." I disagree; I am trying to *reconcile* § 7(f), which expressly requires publication only in a subset of circumstances, with § 10(1), which is written as though publication will always be necessary (and therefore occur). Given that § 10(1) does not itself impose an obligation to publish and only "would seem to" require publication in light of the need for the 28-day clock to begin at some point, its meaning is not superficially obvious and requires interpretation. The purpose of the whole-act canon is to reconcile superficially inconsistent statutory provisions, and I believe it shows why the majority's interpretation is not "just as plausible" as mine. For the same reason, the superficial tension between § 7(f) and § 10(1) also leaves me satisfied that my interpretation is not a trap for the unwary. Rather, the tension between § 7(f) and § 10(1) is a signal that interpretation is needed.

The majority's interpretation also makes little practical sense. Notice by publication is notoriously ineffective compared to actual notice, which is precisely why it serves as a substitute only when the parent cannot be located. Yet the majority concludes that the Legislature required publication in every case, even when the parent has already received direct notice of the surrender and the deadline to seek custody. As our Supreme Court has observed, "[t]he law does not require the doing of a useless act." *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 669; 66 NW2d 92 (1954). I question whether the Legislature would have required a less effective form of notice after a superior form had already been accomplished, particularly when the only consequence is to delay the deadline for seeking custody.

There are also practical consequences for child placing agencies and the families involved. Agencies are entitled to know their obligations under the law. An agency consulting § 7(f) would reasonably conclude that it need not publish notice when it has successfully located and notified the nonsurrendering parent. Under the majority's interpretation, however, that agency would be mistaken, and its failure to publish could prevent the deadline for seeking custody from ever running. The agency would only discover that additional obligation by consulting today's opinion. That creates a needless risk of disrupting adoption proceedings, with potentially heartbreaking consequences for the children and families involved. By contrast, because the actual notice petitioner received unambiguously told him he had 28 days from the date of notice to file his petition, I do not believe this case raises any practical due process concerns related to whether petitioner received sufficient notice.

Indeed, the majority's interpretation unnecessarily introduces a new complication into SDNL proceedings: Agencies must publish in every case, but it is unclear when they must do so. Under § 7(f), the agency has 28 days to "make reasonable efforts to identify, locate, and provide notice of the surrender of the newborn to the nonsurrendering parent" and publication is required only "[i]f the identity and address of the nonsurrendering parent are unknown." If, in the face of

this language, publication is always required, what should an agency do if it has information about the "identity and address of the nonsurrendering parent"—as in this case? Suppose the agency has leads to pursue but publishes at the outset of its reasonable efforts under § 7(f), then gives actual notice to the nonsurrendering parent after 25 days. Does the parent have three days or 28 days to seek custody? Reading § 10(1) in a vacuum, as the majority does, suggests that it would be only three days, although the majority also says that "it would not be reasonable for an agency with information about the identity and address of a nonsurrendering parent to rush to publish the notice in a newspaper." But that leaves agencies uncertain when publication should occur and the 28-day clock should begin. The inquiry is simpler if we understand the statute to mean that the 28-day clock begins when the agency has satisfied its obligations under § 7(f), *either* by providing actual notice *or*, if "identity and address of the nonsurrendering parent are unknown," by publishing notice.

In the end, I do not believe § 10(1)'s reference to publication can bear the weight the majority places on it. The Legislature established an obligation to provide notice, required publication when the nonsurrendering parent cannot be identified or located, and afforded that parent 28 days to seek custody after being notified. Nothing in the SDNL persuades me that an agency's unnecessary decision to publish notice after providing actual notice should extend that deadline.

Because petitioner did not act within 28 days of receiving actual notice, I would reverse the trial court's decision. I respectfully dissent.

/s/ Matthew S. Ackerman