

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. LISA I ABRAMS

CASE NO. DC20130015

COURT REPORTER:

DATE: March 08, 2019

Courtroom - 763

KIMBERLY DANYEL MCLAUGHLIN

Petitioner

VS.

SUZAN ELIZABETH MCLAUGHLIN

Respondent

R U L I N G

IN CHAMBERS UNDER ADVISEMENT RE: MINOR CHILD'S BIRTH CERTIFICATE

The parties' Decree of Dissolution of Marriage was entered November 6, 2018. The parties have one minor child, Edward, age 7. There is one issue which remains unresolved. While the parties have agreed to amend the minor child's birth certificate to add Respondent, the parties remain in dispute about how each parent should be designated on the child's birth certificate.

Petitioner requests that the court order that Edward's birth certificate be amended to read that she and Respondent be respectively designated "Mother/Legal Parent" or "Biological Mother/Legal Mother".

In an ideal world, Respondent argues that the parties should both be listed as "Mother". In light of Arizona Department of Health Services practice and procedure, and in order to ensure that neither parent has superior rights based on choice of language, Respondent requests that the court order that Edward's birth certificate be amended to read that Petitioner and she be respectively designated as "Parent/Parent". The court took this matter under advisement upon receipt of written briefs on January 31, 2019.

In *Obergefell v. Hodges*, 135 S.Ct. 2584, 192 L.Ed.2d 609(2015), the Supreme Court held that the Due Process and Equal Protection clauses of the 14th Amendment require states to extend marriage rights to same-sex couples "on the same terms and conditions as opposite-sex couples." In June 2017, the United States Supreme Court examined the manner in which the state of Arkansas issued birth

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certificates to the children of same sex couples. *Pavan v. Smith*, 137 S.Ct. 20175, 198 L.Ed. 2d 636 (2017) While Arkansas was issuing marriage certificates to same sex couples, when same sex parents had children, the state refused to list both parents on the birth certificate.

The Department of Health Services of Arkansas argued that its rule was a recognition of biology. This argument proved to be disingenuous as Arkansas already listed nonbiological parents on birth certificates. For example, when a married woman conceived through artificial insemination with a sperm donor, the child's birth certificate listed the woman's husband as the father. In discussing the importance and use of birth certificates, the Supreme Court found that birth certificates are used for vital transactions in child-rearing including school enrollment and medical treatment.

Because Arkansas law already "makes birth certificates about more than just genetics," the court held, the state may not inflict such "disparate treatment" on same-sex couples. In *Obergefell*, the court explained that the Constitution grants these couples "the constellation" of "rights, benefits, and responsibilities" that "the states have linked to marriage." It also "expressly identified" birth and death certificates as two of those rights. Therefore, states cannot deny same-sex couples any rights related to birth certificates that are granted to opposite-sex couples. The court ruled that Arkansas must begin listing same-sex parents on birth certificates. The *per curiam* decision marked a landmark victory for gay rights, confirming that the court's decision in *Obergefell v. Hodges* protects the constellation of rights relating to marriage, not simply the recognition of marriage itself.

The Arizona Supreme Court ruled in this very case that same sex couples must be extended the marital paternity presumption and the rights that extend therefrom. *McLaughlin v. McLaughlin*, 243 Ariz. 29 (2017). The Supreme Court did not, however determine or order that the Arizona Department of Health Services change its birth certificate forms to reflect the preference of the parents. Furthermore, nothing in the *Pavan* decision addresses how parents are to be labeled on their child's birth certificate.

To that end, the Department of Health Services continues to process birth certificates in accordance with A.R.S. §36-334. The name of the woman who gave birth is listed as the child's mother ("...unless otherwise provided by law or court order" seemingly refers to a gestational carrier). The name of the spouse of the mother is listed under the section labeled "father" irrespective of gender.

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(Letter dated April 25, 2018, Office of the Attorney General RE: Request to Revise the Arizona Birth Certificates and Birth Certificate Applications). Amendments to birth certificates are made in accordance with A.R.S. §36-337 and Title 9, Ch. 19, Arizona Administrative Code. Amendments to birth certificates contemplate changing the names of the parents or the child, not changing the field identifiers listed on the birth certificate. The field identifiers currently available are Mother/Father or Parent/Parent. The court notes that the Arizona Department of Health Services is not a party to this action; this court does not have the legal authority to order that the field identifiers contained in forms used by the Arizona Department of Health Services be modified.

There are, therefore, two options currently available. As the birth mother of Edward, Petitioner could be listed as “Mother” and as her spouse, Respondent, could be listed as “Father.” Merriam-Webster defines “father” as “A male parent” or “A man who has begotten a child”. Respondent is neither a male parent or a man who has begotten a child. To amend the birth certificate in this manner is patently absurd and perpetuates a falsehood.

The court agrees with Respondent’s position. In an ideal world, the field identifiers available for birth certificates should reflect all possible circumstances of the birth of a child. In this instance, Edward has two mothers, each of whom is a parent. The issuance of a birth certificate identifying both mothers as parents does not change Edward’s birth story for the purpose of seeking medical care and genetic information. Kimberly McLaughlin is Edward’s birth mother. The amendment to the birth certificate does not negate or change that fact.

The Court finds that Edward McLaughlin was born to parents Kimberly McLaughlin and Suzan McLaughlin on June 14, 2011.

IT IS ORDERED the Arizona Department of Health Services (“ADHS”), Bureau of Vital Records shall amend the birth certificate of Edward McLaughlin, DOB June 14, 2011, to list Kimberly McLaughlin in the space normally reserved for “Mother” which shall read “Parent”, and Suzan McLaughlin in the space normally reserved for “Father” which shall read “Parent”.

As for Petitioner’s Motion to Strike Portions of Respondent’s Brief, the court denies the request to strike and notes that the court gave no weight to arguments made by Respondent that exceeded the scope of the issue at hand.

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As for Petitioner's request for attorney's fees incurred in filing the Motion to Strike, said request is denied.

IT IS ORDERED that Respondent's Request for Attorney's Fees, is DENIED.

These are final appealable orders in accordance with Rule 78, ARFLP.


HON. LISA ILKA ABRAMS

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Clerk of Court - Under Advisement Clerk

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