SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 18482

ANTHONY RAFTOPOL, et al.

v.

KARMA RAMEY, et al.

BRIEF OF *AMICI CURIAE* AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE, LEGAL PROFESSIONAL GROUP OF THE AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE, AMERICAN ACADEMY OF ASSISTED REPRODUCTIVE TECHNOLOGY ATTORNEYS, CONNECTICUT FERTILITY ASSOCIATES, AND NEW ENGLAND FERTILITY INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLEES WITH APPENDIX

BENNETT H. KLEIN, PHV*
KAREN L. LOEWY, PHV*
GAY & LESBIAN ADVOCATES & DEFENDERS
30 WINTER STREET, SUITE 800
BOSTON, MA 02108
PHONE: (617) 426-1350
FAX: (617) 426-3594

THOMAS W. UDE, JR.
LAMBDA LEGAL
120 WALL STREET, SUITE 1500
NEW YORK, NY 10005
JURIS NO. 400907
PHONE: (212) 809-8585
FAX: (212) 809-0055

* PRO HAC VICE APPLICATIONS PENDING

KENNETH J. BARTSCHI
KAREN L. DOWD
HORTON, SHIELDS & KNOX, P.C.
90 GILLETT STREET
HARTFORD, CT 06105
JURIS NO. 38478
JURIS NO. 404685
PHONE: (860) 522-8338
FAX: (860) 728-0401

OF COUNSEL:

JOHN WELTMAN
SCOTT BUCKLEY
THE WELTMAN LAW GROUP, LLP
200 HIGH STREET, SUITE 600
BOSTON, MA 02110
PHONE: (617) 439-9600
FAX: (617) 439-9990

TABLE OF CONTENTS

STATEMENT OF THE ISSUE

Does the Superior Court have the power to protect children born through gestational surrogacy by issuing a pre-birth order establishing the legal parentage of both intended parents and directing the issuance of a replacement birth certificate?

TABLE OF AUTHORITIES

Page

Cases:

Statutes and Regulations:

Other Authority:

STATEMENT OF INTEREST OF THE AMICI CURIAE

Amicus Curiae American Society for Reproductive Medicine (ASRM) is the nation's leading multidisciplinary organization dedicated to the advancement of the art, science and practice of reproductive medicine. Founded by a group of fertility experts in 1944, members of ASRM were the first physicians to perform many of the standard procedures used by fertility specialists today, including donor insemination and in vitro fertilization. ASRM members include obstetrician/gynecologists, urologists, reproductive endocrinologists, embryologists, mental health professionals, internists, nurses, pediatricians and research scientists. The ASRM Practice Committee issues guidelines, minimum standards, and technical and educational bulletins on important and emerging diagnostic and therapeutic topics in the field of reproductive medicine. Since 1950, ASRM has published *Fertility and Sterility*, a leading peer-reviewed medical journal in obstetrics and gynecology. ASRM also provides a range of patient information booklets designed to help patients understand reproductive treatments and technologies. When fertility treatments involve a third party, such as an egg donor or a gestational surrogate or both, ASRM believes that the best interests of the children are served if the law recognizes the non-genetic parent who endeavored to bring a child into the world as surely as a genetic parent.

Amicus Curiae Legal Professional Group of the American Society of Reproductive Medicine is comprised of attorneys and other professional members of ASRM from across the country working in the field of reproductive technology law. Part of its mission is to raise awareness of and clarify legal issues surrounding the assisted reproductive technologies for participants and the families they create. While the Legal Professional Group of ASRM did not participate in the drafting of this brief, it supports its purpose and urges the Court to make the findings, reach the conclusions, and issue the order as requested herein

Amicus Curiae American Academy of Assisted Reproductive Technology Attorneys (AAARTA), is a Specialty Division of the American Academy of Adoption Attorneys, and is a credentialed, professional organization dedicated to the advancement of best legal practices in the area of assisted reproduction and to the protection of the interests of all parties, including the children, involved in assisted reproductive technology matters. While AAARTA did not participate in the drafting of this brief, the Academy supports its purpose and urges the Court to make the findings, reach the conclusions, and issue the order as requested herein.

Amicus Curiae Connecticut Fertility Associates (CFA), with offices in Bridgeport, Norwalk and Orange, provides comprehensive, effective fertility treatments, including fertility testing, and basic and advanced fertility treatments, such as in vitro fertilization, egg donation, and artificial insemination. Founded in 1991, CFA has helped to conceive over 4,500 babies in Connecticut. CFA believes that when a couple endeavors to bring a child into the world, the child's interests are best served when the law recognizes both parents regardless of any genetic or biological tie to the child.

Amicus Curiae New England Fertility Institute (NEFI) is a patient-oriented fertility treatment center in Stamford, Connecticut which provides state-of-the-art medical, educational, and emotional support to those who need help realizing their dream of having children. Over the past twenty years, NEFI has helped to conceive approximately 8,000 babies in Connecticut. NEFI believes that when parents take deliberate steps to bring children into the world, they should be recognized as legal parents to those children regardless of any genetic connection between parent and child.

ARGUMENT[1]

This case is about protecting children born through gestational surrogacy by securing their legal relationships to both of the adults who sought to bring them into the world. The plain meaning of Conn. Gen. Stat. § 7-48a, addressing children born through a "gestational agreement," shows that the Legislature sought to do exactly that. Section 7-48a states, in relevant part,

> If the birth is subject to a gestational agreement, the Department of Public Health shall create a replacement certificate in accordance with an order from a court of competent jurisdiction not later than forty-five days after receipt of such order or forty-five days after the birth of the child, whichever is later.[2]

This statute authorizes a couple who uses a gestational surrogate to bring children into their family to seek a court order, before or after the children are born, to confirm their parentage and to ensure that the children have birth certificates reflecting the reality of their family. These children, like all others, should enjoy the security of legal parent-child relationships with both of their parents, rather than being penalized because of the circumstances of their birth. *See Walsh v. Jodoin*, 283 Conn. 187, 201 (2007).

I. THIS COURT SHOULD REJECT THE DEPARTMENT'S ATTEMPT TO DISREGARD THE PLAIN MEANING OF CONN. GEN. STAT. § 7-48A WHEN DOING SO WILL HARM A WIDE RANGE OF FAMILIES IN CRITICAL WAYS.

Like the Plaintiffs, Anthony and Shawn Raftopol ("the Raftopols"), countless families have brought children into the world through Third-Party Assisted Reproductive Technology ("TP ART"). TP ART refers to various means of enabling individuals or couples to become parents via assistance from a third party, including through the donation of gametes or

---

[1] No counsel for any party to this matter wrote any part of this brief. No party or their counsel or any persons other than the amici curiae, their members, or counsel contributed to the cost of the preparation or submission of this brief.

[2] Although this excerpt includes the language added by the Legislature in 2008, as illustrated by the Plaintiffs-Appellees, Br. at 6-8, even the pre-2008 language was intended to address the factual context of gestational surrogacy.

embryos, and through carrying the baby.[3] TP ART includes, *inter alia*, two forms of gestational surrogacy: egg donor gestational surrogacy and non-donor gestational surrogacy. Data collected from reporting fertility clinics by the Society for Assisted Reproductive Technology, an affiliate of ASRM, indicates the following numbers of children in the United States born through gestational surrogacy: in 2004 – 738, in 2005 – 1,012, in 2006 – 1,059, and in 2007 – 1,034. Egg donor gestational surrogacy is used by same-sex and different-sex couples when an intended male parent has available sperm, but the couple has neither viable eggs nor a healthy uterus in which to carry a child. The couple then finds two separate women, one who donates an egg (an "egg donor") and the other who carries the embryo(s) created from the donor egg and an intended parent's sperm in her uterus (a "gestational carrier"). The children born are genetically related to only one of the intended parents and born to a third party, i.e. the gestational carrier, who has no genetic relation to the children.

By contrast, non-donor gestational surrogacy is used when an intended female parent can produce viable eggs, but is unable to carry a child, most often due to a diseased or absent uterus. Limited to different-sex couples, this form of TP ART involves the intended female parent's eggs being fertilized by the intended male parent's sperm and the embryos created being implanted into the uterus of a third woman, the gestational carrier, who then carries the child for the intended parents. The children created by non-donor gestational surrogacy are genetically related to both intended parents, but the children are born to a third party -- the gestational carrier.

This case squarely addresses egg donor gestational surrogacy.[4] Couples in Connecticut have been using this form of TP ART for many years, and in many cases from

---

[3] *See* American Society for Reproductive Medicine, *Third Party Reproduction*, 3-4 (2006), at http://www.asrm.org/Patients/patientbooklets/thirdparty.pdf (hereinafter "*Third Party Reproduction*").

[4] This Court's resolution of this matter would affect all gestational surrogacy in which a gamete is provided by a donor, whether donor egg or donor sperm.

2002 through 2008, the Department placed the names of both the genetic parent and the non-genetic parent on the child's birth certificate without objection. *See, e.g., Vogel v. Kirkbride*, No. FA 02-0471850, 2002 WL 34119315 (Conn. Super. Dec. 18, 2002), Appendix ("App.") at A1. The Department's change of position brought this matter before the Court, and now the Department suggests that only children born to couples using non-donor gestational surrogacy fall within the protections of Conn. Gen. Stat. § 7-48a.[5] Were this Court to adopt the Department's interpretation, it would not only tie the hands of the Superior Court going forward, but could also embolden someone to argue – incorrectly – that it raises questions about the validity of the birth certificates already issued by the Department reflecting both genetic and non-genetic legal parents for children born through gestational surrogacy. This Court should decline the Department's invitation to wreak havoc with these children's paramount interests in the integrity and security of their families. *See W. v. W.*, 248 Conn. 487, 498 (1999).[6]

---

[5] After allowing non-genetic intended parents' names to be placed on birth certificates unopposed for six years, the Department should be estopped from denying families like the Raftopols the same treatment. The Raftopols successfully obtained a Connecticut-issued pre-birth order establishing both of their parentage for their first child, who was also born through egg donor surrogacy. *See* Br. of Plaintiffs-Appellees at 1. The Raftopols chose to work again with a Connecticut gestational carrier, relying on the Department's longstanding policy and practice for their understanding that both of their names would be placed on their children's birth certificates as had happened with their first child. Thus, estoppel should apply. *See Kimberly-Clark Corp. v. Dubno*, 204 Conn. 137, 148 (1987).

[6] Another group of children born through TP ART who potentially could be impacted by this Court's decision are the children born through egg donation before the 2007 amendments to Conn. Gen. Stat. § 45a-771 et seq. Egg donation is a procedure that allows women who cannot produce fertile eggs, but who can carry an embryo to term, to have children. In this procedure an egg donor donates eggs which are then fertilized and the resulting embryos are implanted into the uterus of the intended female parent. Children born to intended parents using egg donation are not genetically related to the intended female parent, even though she carries them to term. *See Third Party Reproduction*, *supra*, note 3, at 4-9. Since 1984, when the first egg donor baby was born in the United States, children born in Connecticut through egg donation have had the name of the non-genetic female parent placed on the original birth certificate. Though Amici believe that Conn. Gen. Stat. §§ 45a-771 and 45a-774 remove any cloud over those birth certificates, no court has addressed the status of children born prior to 2007, and the Defendant's position could raise questions about the validity of the birth certificates of the hundreds, if not thousands, of children born in Connecticut in those twenty-three years (1984-2007) that list a female parent who was not genetically related.

Obtaining a pre-birth order of parentage and a birth certificate that reflects the child's joint parentage is of critical importance to children born through egg donor gestational surrogacy. Without a pre-birth order securing the legal relationships between the children and both parents, these children are left vulnerable in significant ways. When a non-genetic parent is not recognized as a legal parent, that parent cannot direct the child's medical care -- a matter of particular importance when caring for a newborn -- or communicate with or direct the child's care providers.[7] The child will face obstacles in traveling with that parent, as the child cannot obtain a passport reflecting his or her parentage.[8] As the Massachusetts Supreme Judicial Court recognized,

> Delays in establishing parentage may, among other consequences, interfere with a child's medical treatment in the event of medical complications arising during or shortly after birth; may hinder or deprive a child of inheriting from his legal parents should a legal parent die intestate before a postbirth action could determine parentage; may hinder or deprive a child from collecting Social Security benefits under 42 U.S.C. § 402(d) (Supp. 1999); and may result in undesirable support obligations as well as custody disputes (potentially more likely in situations where the child is born with congenital malformations or anomalies, or medical disorders and diseases).

Culliton v. Beth Israel Deaconess Med. Ctr., 756 N.E.2d 1133, 1139 (Mass. 2001).

The Department's insistence that these families pursue an adoption will not address these harms, either in the time period after the child's birth and before an adoption can be completed, or at all for the same-sex couples and unmarried different-sex couples for whom co-parent adoption is not legally available. The adoption process is neither quick nor simple, and includes numerous layers of applicant scrutiny and associated filing fees.[9] Until that process is complete, the child remains vulnerable. Furthermore, for children born in Connecticut whose families reside in states or countries that do not allow unmarried

---

[7] *See Sweeney v. Sweeney*, 271 Conn. 193, 207 (2004) ("[t]he essence of parenthood is the companionship of the child and the right to make decisions regarding his or her care, control, education, health, religion and association.") (internal citations omitted).

[8] *See* 22 C.F.R. § 51.28.

[9] *See* Conn. Gen. Stat. § 45a-727.

couples or same-sex couples to adopt children,[10] there is no legal mechanism to secure that co-parent's legal relationship to the child.

By contrast, orders of parentage should give these children the security of legal relationships with both of their parents from the moment of birth, and those orders should be enforceable no matter where the family resides or travels.[11] Authoritative organizations of child welfare and mental health experts, such as the American Academy of Pediatrics, the American Psychological Association, and the Child Welfare League of America, recognize the critical importance of securing those legal relationships.[12] To that end, courts across the country have established procedures for protecting those relationships between non-genetic intended parents and children born by means of TP ART.[13] In *Culliton*, 756

---

[10] Some states explicitly bar gay people or unmarried couples from adopting. *See* Fla. Stat. Ann. § 63.042; Utah Code Ann. 1953 § 78B-6-117; Miss. Code Ann. § 93-17-3. Many more states lack explicit statutory or judicial authorization for gay and unmarried couples, leaving them uncertain about their ability to adopt. *See* Human Rights Campaign, *Parenting Laws: Second Parent Adoption* (July 6, 2009), at http://www.hrc.org/documents/parenting_laws_maps.pdf. As well, many countries around the world do not allow gay or unmarried couples to adopt, including Romania, where the Raftopols reside. *See* Code Civil [C. Civ.] art. 462 (Rom.).

[11] Like all other judgments issued with proper jurisdiction, pre-birth orders should be entitled to Full Faith and Credit. *See Packer Plastics, Inc. v. Laundon*, 214 Conn. 52 (1990). *Cf. Adar v. Smith*, --- F.3d ----, 2010 WL 550420 (5th Cir. Feb. 18, 2010), App. at A2 (adoption decree for same-sex couple, though against the public policy of the domicile, is still entitled to Full Faith and Credit); *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (same).

[12] *See, e.g.*, American Academy of Child & Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (Oct. 2008), http://www.aacap.org/cs/root/policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement; American Academy of Pediatrics, *Coparent or Second-Parent Adoption by Same-Sex Parents* (Feb. 2002), http://aappolicy.aappublications.org/cgi/reprint/pediatrics;109/2/339.pdf; American Psychological Association, *Sexual Orientation, Parents, & Children* (July 2004), http://www.apa.org/about/governance/council/policy/parenting.aspx; Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, http://www.cwla.org/programs/culture/glbtqposition.htm; National Association of Social Workers, *NASW Statement on Foster Care and Adoptions* (June 2008), http://www.socialworkers.org/practice/children/2008/adoption.asp.

[13] Lower courts in many states have entered pre-birth orders to place a non-genetic parent on a birth certificate, whether pursuant to specific statutory authorization or otherwise. *See, e.g., D.W.M.A. & K.A. v. K.S., E.S., & B.F. Med. Ctr.*, Docket No. FR 09E0017QC (Mass. Prob. & Fam. Ct. Sept. 29, 2009), App. at A25; *M.N., K.N. & K.F. v. I. Hosp.*, Case No. 09-09-R-802 (N.D. Dist. Ct. Cass Cty. Aug. 14, 2009), App. at A28; *R.D. & M.D. v. K.M., J.M., & L.V.*, Civ. 09-2629 (S.D. Cir. Ct. Minnehaha Cty. Jun. 11, 2009), App. at A31; *S. K.-S. &*

N.E. 2d at 1139, the Massachusetts Supreme Judicial Court recognized that such a protocol was "increasingly necessary as infertile couples, and others, take advantage of existing and emerging assisted reproductive technologies, and as children are conceived and born through these technologies." Finding that the related statutes – those regarding adoption, parentage and artificial insemination – did not sufficiently address the context of gestational surrogacy, that Court relied on its equity authority, providing a means for the Department of Public Health to obtain the relevant statistical information about the child's birth, while ensuring that the child's birth certificate reflected the intended parents. *Id.* at 1137-41.[14] This Court need not resort to equity, however, because in enacting Conn. Gen. Stat. § 7-48a, the Legislature has already established the means to protect these parent-child relationships.

II. THE SUPERIOR COURT HAD THE POWER TO PROTECT THESE CHILDREN BY ISSUING AN ORDER OF PARENTAGE AND DIRECTING THAT THEIR BIRTH CERTIFICATES REFLECT THE REALITY OF THEIR FAMILY.

Faced with a growing range of TP ART to bring children into the world, the Connecticut Legislature has begun to address the parent-child relationships created by their use. Particularly, the Legislature has enacted and amended Conn. Gen. Stat. § 45a-771 et seq., governing children born to a married couple through the use of sperm or eggs not belonging to a member of the couple, and § 7-48a, governing children born through gestational surrogacy.

The plain language of Conn. Gen. Stat. § 7-48a authorizes the Superior Court to issue the pre-birth orders sought by the Raftopols.[15] The statute refers to "an order from a

---

Y. K.-S. v. R.R. & P.S., Civil Case No. 24637M (Md. Cir. Ct. Montgomery Cty. Oct. 15, 2009), App. at A33.

[14] Though *Culliton* arose in the context of non-donor gestational surrogacy, it has been interpreted to apply to egg donor gestational surrogacy as well. *See, e.g., D.W.M.A. & K.A. v. K.S., E.S., & B.F. Med. Ctr.*, Docket No. FR 09E0017QC (Mass. Prob. & Fam. Ct. Sept. 29, 2009), App. at A25.

[15] As with all statutes, in determining this provision's meaning and scope, "the text of the statute itself and its relationship to other statutes" provide the starting point, without resort to external sources if its meaning is "plain and unambiguous and does not yield absurd or

court of competent jurisdiction," and while it does not assign or limit jurisdiction to a particular court, it must certainly include the Superior Court. Despite the Department's confusion on this point, no real question exists as to the Superior Court's jurisdiction over the order sought here, which encompasses both a declaration of parentage and direction to the Department to issue a replacement birth certificate reflecting that parentage.[16] The Superior Court plainly has subject matter jurisdiction over issues of parentage, children, and family relations. *See* Conn. Gen. Stat. § 46b-1(13), (17).[17]

Turning to the "order" the statute authorizes, the Legislature described the factual context that could trigger the order, using the term "gestational agreement" without further restriction. This broad, flexible language makes clear the intention to include non-genetic parents within the court's order. The Legislature could have limited this provision to genetic parents had that been its intention, but did not do so.[18] Reading this provision to apply only to genetic parents would render the "gestational agreement" language unnecessary, as the legal status of genetic parents was never in doubt. *See Am. Promotional Events,*

---

unworkable results." *See* Conn. Gen. Stat. § 1-2z. Because the language and context make its meaning clear, the Court need not look to the legislative history of this provision. To the extent the Court considers the legislative history, amici agree with the Plaintiffs, and the Superior Court in *Griffiths v. Taylor*, 2008 WL 2745130, at *2-3, App. at A35, A36-A37, that the history supports the Superior Court's authority to issue the relief sought.

[16] The statute authorizes both of these components. Section 7-48a, like other statutes governing birth certificates, makes clear that the parentage information on a birth certificate may be changed only upon the confirmation or establishment of legal parentage. *See In re Michaela Lee R.*, 253 Conn. 570, 582-87 (2000). Conn. Gen Stat. § 7-36 confirms that for purposes of these statutes, "matters relating to ... gestational agreements" are included within the term "parentage." Thus the order should address both the confirmation of legal parentage and the amendment of the birth certificate. Even if, *arguendo*, this Court were to conclude that the statute does not authorize an explicit order of parentage, the statute plainly authorizes the Superior Court to direct the Department to issue "a replacement certificate" with the names of both intended parents.

[17] Additionally, the order sought could also be seen as a request for a declaratory judgment, over which the Superior Court has subject matter jurisdiction under Conn. Gen. Stat. § 52-29(a). *See, e.g., Cunningham v. Tardiff*, No. FA084009629, 2008 WL 4779641 (Conn. Super. Oct. 14, 2008), App. at A43. *Cf. Doe v. Roe*, 246 Conn. 652, 661 (1998).

[18] The Legislature knows how to specify genetics in provisions related to parents, and did not do so here. *See, e.g.*, Conn. Gen. Stat. §§ 17a-110, 45a-438.

Inc. v. Blumenthal, 285 Conn. 192, 203 (2008) ("Interpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation"). The Department has no justification for its argument that this Court should essentially re-write the statute to include such a restriction,[19] and this overly narrow reading of the statute should be rejected. The most plausible, if not the only reason to specify a "birth [that] is subject to a gestational agreement" is to authorize the Court to fulfill the intentions of all parties to a "gestational agreement," which the Legislature knew could include non-genetic intended parents. *See Griffiths v. Taylor*, 2008 WL 2745130, at *2, *6, App. at A36, A40. Indeed, this flexible statutory scheme gives the Superior Court the ability to protect parent-child relationships, serving "the court's paramount consideration" in this context: "the child's welfare." *Doe v. Doe*, 244 Conn. 403, 441-42 (1998) (looking to third party visitation statute as flexible means to protect child's interest in maintaining legal relationship with a woman the child had known as her mother since birth).

The Department's suggestion that this section's reference to a court order refers to some pre-existing authority of a court to declare parentage[20] would render this provision superfluous. As the Department repeatedly notes, the vehicles for a court order of parentage prior to § 7-48a's addressing the context of gestational surrogacy were genetics and adoption -- and other provisions already address amendments to birth certificates to

---

[19] The Court's concern in *Doe v. Doe*, 244 Conn. 403, 453 (1998), about the absence of the adoption system's procedural safeguards, 244 Conn. at 453, provides no justification here. The Legislature's passage of § 7-48a, which happened after this Court's decision in *Doe*, provided those safeguards. Pre-birth orders are sought jointly by all parties involved -- the couple seeking to confirm their parentage and the gestational surrogate -- ensuring that the Superior Court has the opportunity to evaluate the parties' respective intentions and involvement in bringing the child into the world. The Superior Court did so here. Br. of Plaintiffs-Appellees, at 3-4.

In addition, when couples have used donor eggs or sperm, there are no competing genetic parents whose interests the Court need weigh. Under the plain language of Conn. Gen. Stat. § 45a-775, an identified egg donor "shall not have any right or interest in any child born as a result of A.I.D." Contrary to the Department's contention, Reply Br. at 9-10 n.2, neither this section, nor the definition of A.I.D. in Conn. Gen. Stat. § 45a-771a has any limitation to children born to married women.

[20] Reply Br. at 2.

conform to those orders.[21] Section 7-48a addresses a different set of factual circumstances and empowers the Superior Court to confirm the parentage of both parties who have entered into an agreement with a gestational surrogate to bring children into their family.[22]

Separate from the plain language of the statute, the Department's reading of § 7-48a to allow only the genetic parent on the birth certificate in gestational agreement cases -- whether or not the couple is married[23] -- prevents that provision from being read consistently with Conn. Gen. Stat. § 45a-771 et seq. ("the A.I.D. statutes"). For married couples, the A.I.D. statutes establish that when a married couple uses donor sperm or egg, both members of the couple are legal parents regardless of a lack of genetic connection. That someone other than one of the spouses carries the baby (namely, the gestational surrogate), does not change the import of the A.I.D. statutes. In order to read those statutes harmoniously with § 7-48a, both members of the couple in gestational agreement cases must be declared parents and placed on the birth certificate.

In the same vein, for unmarried couples, the principles underlying the A.I.D. statutes support an order that children born as a result of a gestational agreement have two parents. These statutes reflect the Legislature's interest in protecting the familial status of children conceived through ART. *See Doe*, 244 Conn. at 469 (Katz, J., concurring and dissenting). While the *Doe* Court declined to apply these policy interests under the circumstances of the family in that case, 244 Conn. at 447, in passing § 7-48a, the Legislature reiterated and extended these interests to children born through gestational surrogacy. Unlike the child in *Doe,* these children come before the Court at the moment of

---

[21] *See* Br. of Defendant-Appellant, at 34 (citing Conn. Gen. Stat. §§ 7-50, 7-53, 19a-42(d)).

[22] Though the Court need not look beyond § 7-48a, the Superior Court can exercise other statutory and equitable powers to establish parentage as well, including those granted by the paternity statutes, *see* Conn. Gen. Stat. tit. 46b, ch. 815y, and the equitable authority retained by the Superior Court to declare parentage in various contexts, including habeas corpus actions. *See Weidenbacher v. Duclos*, 234 Conn. 51, 65-68 (1995).

[23] Br. of Defendant-Appellant at 3.

family formation, rather than family dissolution, and the issuance of a pre-birth order protects them regardless of the technology that brought them into that family.

Additionally, viewing § 7-48a as a means of protecting a parent-child relationship without relying on genetics comports with a wider body of Connecticut law establishing that biology does not always control matters of the care and welfare of children. *See Weidenbacher v. Duclos*, 234 Conn. 51, 76 (1995). Other statutes relating to parentage establish that biology is not dispositive. For example, Conn. Gen. Stat. § 46b-160 allows a person to be adjudged a parent, and thereby become a legal parent without referring to or relying on biology or adoption. *See Remkiewicz v. Remkiewicz*, 180 Conn. 114, 117 (1980). This adjudication can happen without any genetic testing. *See* § 46b-160.[24] As well, the plain language of Conn. Gen. Stat. § 46b-172 allows a person to sign an acknowledgment of parentage, waiving any blood tests,[25] and such acknowledgment has the same force and effect as a judgment of parentage. Here, too, the Legislature has differentiated legal parentage from genetics. As the Superior Court stated in *Griffiths v. Taylor*, 2008 WL 2745130, at *7, "[t]he instant case is not about the establishment of genetic, or biological parents, but rather the establishment of legal or intentional parents. ... In this era of evolving reproductive technology and intent based parenthood, our laws must acknowledge these realities and not simply cling to genetic connections as preconditions to being placed on a birth certificate."

---

[24] As the Superior Court noted in *Griffiths v. Taylor*, 2008 WL 2745130, at *6, App. at A40, "on almost a daily basis, in our Magistrate Court and in our Superior Court, men and women are declared to be parents of children without a genetic test."

[25] The Department's suggestion, reply br. at 12, that "a putative father would have to be convinced that his is the putative child's genetic father" to waive his right to genetic testing is completely unsupported by the text of § 46b-172. Rather, this section simply requires that the putative father be made aware of the ramifications of his waiver.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Amici,

By Karen L. Dowd

KAREN L. DOWD
KENNETH J. BARTSCHI
HORTON, SHIELDS & KNOX, P.C.
90 GILLETT STREET
HARTFORD, CT 06105
JURIS NO. 38478
PHONE: (860) 522-8338
FAX: (860) 728-0401

OF COUNSEL:

JOHN WELTMAN
SCOTT BUCKLEY
THE WELTMAN LAW GROUP, LLP
200 HIGH STREET, SUITE 600
BOSTON, MA 02110
PHONE: 617-439-9600
FAX: 617-439-9990

BENNETT H. KLEIN, PHV*
KAREN L. LOEWY, PHV*
GAY & LESBIAN ADVOCATES & DEFENDERS
30 WINTER STREET, SUITE 800
BOSTON, MA 02108
PHONE: (617) 426-1350
FAX: (617) 426-3594

THOMAS W. UDE, JR.
LAMBDA LEGAL
120 WALL STREET, SUITE 1500
NEW YORK, NY 10005
JURIS NO. 400907
PHONE: (212) 809-8585
FAX: (212) 809-0055

* PRO HAC VICE APPLICATIONS PENDING

APPENDIX

APPENDIX

TABLE OF CONTENTS

Not Reported in A.2d, 2002 WL 34119315 (Conn.Super.)
(Cite as: 2002 WL 34119315 (Conn.Super.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.
Andrew R. VOGEL and Donald A. Savitz
v.
Heather KIRKBRIDE, Kevin Kirkbride Lauren Budnick, Yale-New Haven Hospital and Greenwich Hospital.
No. FA 02-0471850.

Dec. 18, 2002.

ORDER

GRUENDEL, J.

*1 The foregoing motion praying that the Plaintiffs be declared and adjudged the legal parents of the unborn Baby and that the egg donor agreement and the gestational carrier agreement be found to be valid, enforceable, irrevocable and of full legal effect, it is:

ORDERED, that the plaintiffs be declared and adjudged the legal parents of the unborn Baby and the gestational carrier agreement between the Plaintiffs and the Defendants HEATHER KIRKBRIDE and KEVIN KIRKBRIDE is found to be valid, enforceable, irrevocable and of full legal effect.

IT IS FURTHER ORDERED the egg donor agreement between the Plaintiffs and the Defendants LAUREN BUDNICK is found to be valid, enforceable, irrevocable and of full legal effect.

IT IS FURTHER ORDERED that the Defendant YALE-NEW HAVEN HOSPITAL or GREENWICH HOSPITAL shall place the names of the Plaintiffs ANDREW R. VOGEL and DONALD A. SAVITZ on the birth certificates as the parents of said child.

INTERIM ORDER

This court grants the motion to reopen is granted, in part. The judgment made on 12/18/02 so amended to provide that Greenwich Hospital is ordered to issue a birth certificate to the child named Cole born on 12/18/02 naming Donald Savitz as the biological father.

Pursuant to the court's authority under section 7-48a for the protection of the parties this court orders that until final judgment is entered and the state has an opportunity to be heard, the birth certificate shall not include the name of the birth mother. This portion of the order is without prejudice to the rights of any party or the child.

The State of Connecticut Department of Public Health is made a party to this action. The plaintiff's counsel shall make service.

Conn.Super.,2002.
Vogel v. Kirkbride
Not Reported in A.2d, 2002 WL 34119315 (Conn.Super.)

END OF DOCUMENT

--- F.3d ----, 2010 WL 550420 (C.A.5 (La.))
(Cite as: 2010 WL 550420 (C.A.5 (La.)))

HOnly the Westlaw citation is currently available.

United States Court of Appeals,
Fifth Circuit.
Oren ADAR, Individually and as Parent and Next Friend of J.C. A.-S., a minor; Mickey Ray Smith, Individually and as Parent and Next Friend of J.C. A.-S., a minor, Plaintiffs-Appellees,
v.
Darlene W. SMITH, In Her Capacity as State Registrar and Director, Office of Vital Records and Statistics, State of Louisiana Department of Health and Hospitals, Defendant-Appellant.
No. 09-30036.

Feb. 18, 2010.

Background: Unmarried same-sex adoptive parents of child born in Louisiana but adopted in New York sued State Registrar of Louisiana's Office of Vital Records and Statistics, seeking injunctive relief and declaratory judgment that Registrar's refusal to enforce New York adoption decree and to issue amended birth certificate violated Full Faith and Credit Clause. Adoptive parents moved for summary judgment. The United States District Court for the Eastern District of Louisiana, Jay C. Zainey, J., 591 F.Supp.2d 857, granted motion. State Registrar appealed.

Holdings: The Court of Appeals, Wiener, Circuit Judge, held that:
(1) like infant, adoptive parents had made sufficient allegations of statutory right to provide standing to pursue their claims against Registrar;
(2) adoptive parents' allegations of injury flowing from Registrar's failure to comply with statute satisfied prerequisites of injury-in-fact for Article III standing purposes;
(3) Louisiana owed full faith and credit to subject New York adoption decree; and
(4) full faith and credit required Louisiana, under plain language of its own statute and constitutional requirement of "evenhanded" enforcement of that judgment, to issue a certificate for infant that listed both adoptive parents as his parents.

Affirmed.

West Headnotes

[1] Federal Courts 170B ⚿776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews questions of jurisdiction, including standing, de novo.

[2] Federal Courts 170B ⚿870.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk870 Particular Issues and Questions
170Bk870.1 k. In General. Most Cited Cases
If district court expressly or implicitly resolves any factual disputes in making its jurisdictional ruling, Court of Appeals reviews such findings for clear error.

[3] Federal Courts 170B ⚿776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews grant of summary judgment de novo under same standards applied by district court.

[4] Federal Courts 170B ⚿776

170B Federal Courts

170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases

Federal Courts 170B ⚷802

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)3 Presumptions
170Bk802 k. Summary Judgment. Most Cited Cases
On review of grant of summary judgment, Court of Appeals reviews determinations of fact in light most favorable to nonmoving party, and it reviews questions of law de novo.

[5] Federal Courts 170B ⚷781

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)2 Questions of Local Law
170Bk781 k. Local Law Questions in General. Most Cited Cases
Court of Appeals reviews district court's determinations of state law de novo, giving no deference to such rulings.

[6] Federal Civil Procedure 170A ⚷103.2

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Federal Courts 170B ⚷12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases
"Standing" is question of justiciability that poses two questions: (1) whether parties' claims present constitutional case or controversy and (2) whether federal court is proper forum to decide this question. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[7] Federal Courts 170B ⚷12.1

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk12 Case or Controversy Requirement
170Bk12.1 k. In General. Most Cited Cases
As jurisdiction of federal courts is limited, parties may not seek redress there unless they can show an actual case or controversy under Article III of United States Constitution, i.e., an "injury-in-fact." U.S.C.A. Const. Art. 3, § 2, cl. 1.

[8] Federal Civil Procedure 170A ⚷103.2

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Federal Civil Procedure 170A ⚷103.3

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.3 k. Causation; Redressability. Most Cited Cases
There are three aspects to constitutional requirement for standing under Article III, viz., showing by plaintiffs of (1) "injury-in-fact" that constitutes invasion of legally protected interest which is (a) concrete and particularized and (b) actual or imminent, (2) causal connection between such injury and conduct complained of, and (3) likelihood that favorable decision will redress the injury; party invoking federal jurisdiction has burden of establishing these elements. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[9] Action 13 ⚷2

13 Action
131 Grounds and Conditions Precedent

13k2 k. Acts or Omissions Constituting Causes of Action in General. Most Cited Cases

Records 326 ⚿10

326 Records
326I In General
326k10 k. Defects, Amendment and Correction. Most Cited Cases
State of Louisiana recognizes private right of action to correct public records.

[10] Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Infant who was born in Louisiana and was adopted by same-sex parents in New York had made sufficient allegations of statutory right to accurate birth certificate and thus had Article III standing to compel State Registrar of Louisiana to issue new certificate listing them as adoptive parents. U.S.C.A. Const. Art. 3, § 2. cl. 1; LSA-R.S. 40:76.

[11] Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Like infant born in Louisiana and adopted by same-sex parents in New York, adoptive parents had made sufficient allegations of statutory right to provide standing to pursue their claims against State Registrar of Louisiana for issuance of new birth certificate listing them as adoptive parents. LSA--R.S. 40:77.

[12] Federal Civil Procedure 170A ⚿103.2

170A Federal Civil Procedure
170AII Parties
170AII(A) In General
170Ak103.1 Standing
170Ak103.2 k. In General; Injury or Interest. Most Cited Cases
Statute cannot grant standing to parties whose claims do not rise to the constitutional threshold; however, when person alleges concrete, particularized, and individual injury by virtue of operation of statute, Article III standing to challenge that statute's execution usually obtains. U.S.C.A. Const. Art. 3, § 2, cl. 1.

[13] Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Unmarried, same-sex adoptive parents' allegations of injury flowing from Louisiana Registrar's failure to comply with statute governing birth certificate corrections for out-of-state adoptions satisfied prerequisites of injury-in-fact for Article III standing purposes. U.S.C.A. Const. Art. 3, § 2, cl. 1; LSA-R.S. 40:77.

[14] Judgment 228 ⚿815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases
There are no roving public policy exceptions to Full Faith and Credit Clause; that is, forum state may not refuse to recognize out-of-state judgment on grounds that judgment would not obtain in forum state. U.S.C.A. Const. Art. 4, § 1; 28 U.S.C.A. § 1738.

[15] Adoption 17 ⚿25

17 Adoption
17k25 k. Foreign Adoption. Most Cited Cases
Louisiana owed full faith and credit to New York adoption decree and had to recognize that unmarried same-sex adoptive parents were infant's legal parents. U.S.C.A. Const. Art. 4, § 1.

[16] Judgment 228 ⚿815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in

Other States. Most Cited Cases

Judgment 228 ⚷828.4(1)

228 Judgment
228XVII Foreign Judgments
228k828 Effect of Judgments of State Courts in United States Courts
228k828.4 Full Faith and Credit
228k828.4(1) k. In General. Most Cited Cases
Full faith and credit is not merely redundant reiteration of res judicata; at its core, common law doctrine of res judicata is concerned with respecting finality of litigation, whereas in contrast, even though Full Faith and Credit Clause promotes this laudatory end, its primary purpose is to serve modus vivendi of federalism by harmonizing competing sovereign interests of the several states. U.S.C.A. Const. Art. 4, § 1.

[17] Judgment 228 ⚷815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases

Judgment 228 ⚷821

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k821 k. Merger and Bar of Causes of Action. Most Cited Cases
Res judicata is voluntary restraint by forum state from exercising its power so as to respect judgment of another state and as to judgments forum state may and sometimes chooses to re-litigate issues as it sees fit; in contrast, Full Faith and Credit Clause is mandatory, constitutional curb on every state's sovereign power. U.S.C.A. Const. Art. 4, § 1.

[18] Judgment 228 ⚷815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases

States 360 ⚷5(2)

360 States
3601 Political Status and Relations
3601(A) In General
360k5 Relations Among States Under Constitution of United States
360k5(2) k. Full Faith and Credit in Each State to the Public Acts, Records, Etc. of Other States. Most Cited Cases
Under Full Faith and Credit Clause, statute is not owed the same exacting obeisance as is judgment; however, there is no authority for the proposition that some kinds of judgments may be treated as statutes for purposes of full faith and credit analyses. U.S.C.A. Const. Art. 4, § 1.

[19] Judgment 228 ⚷815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases

Judgment 228 ⚷823

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k823 k. Enforcement in Other States. Most Cited Cases
While out-of-state judgment may not force the forum state to accomplish an official act within its exclusive province, this exception refers to judgments that themselves purport to compel action by, not in, another state.

[20] Judgment 228 ⚷815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases

Judgment 228 ⚷822(2)

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k822 Conclusiveness of Adjudication
228k822(2) k. Persons Concluded. Most Cited Cases
Non-parties may be bound by judgments under Full Faith and Credit Clause. U.S.C.A. Const. Art. 4, § 1.

[21] Judgment 228 ⚿815

228 Judgment
228XVII Foreign Judgments
228k814 Judgments of State Courts
228k815 k. Adjudications Operative in Other States. Most Cited Cases
There is not some per se difference under Full Faith and Credit Clause between money judgments and equitable judgments; both kinds of judgments are afforded full faith and credit under the Constitution. U.S.C.A. Const. Art. 4, § 1.

[22] Federal Courts 170B ⚿392

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(B) Decisions of State Courts as Authority
170Bk388 Federal Decision Prior to State Decision
170Bk392 k. Withholding Decision; Certifying Questions. Most Cited Cases
Question of proper construction of Louisiana statute governing birth certificate corrections for out-of-state adoptions would not be certified to Louisiana Supreme Court, since statute's meaning was clear and unambiguous. Sup.Ct.Rules, Rule 12, 8 LSA-R.S.; LSA-R.S. 40:76.

[23] Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Full faith and credit required Louisiana, under plain language of statute governing birth certificate corrections for out-of-state adoptions and constitutional requirement of "evenhanded" enforcement of statute, to issue a new, corrected birth certificate for Louisiana-born infant listing as his parents both of infant's unmarried same-sex adoptive parents, who obtained joint adoption decree for infant in New York court. U.S.C.A. Const. Art. 4, § 1; LSA-R.S. 40:76(A).

[24] Constitutional Law 92 ⚿2400

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2400 k. In General. Most Cited Cases
Under Louisiana's constitution, statutory grant of ministerial authority must comport with that document's separation-of-powers clause, which prohibits unconstitutional delegation of authority by legislative branch of state government to another branch. LSA-Const. Art. 2, §§ 1, 2.

[25] Constitutional Law 92 ⚿2406

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2405 To Executive, in General
92k2406 k. In General. Most Cited Cases
Delegation of authority by legislature to the executive branch must not be so broad as to impinge mandatory separation of powers; in considering this issue, Louisiana courts have traditionally distinguished between two types of governmental authority, (1) ministerial or administrative authority, which may be delegated and (2) purely legislative authority, which may not. LSA-Const. Art. 2, §§ 1, 2.

[26] Constitutional Law 92 ⚿2406

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2405 To Executive, in General
92k2406 k. In General. Most Cited Cases

Constitutional Law 92 ⚿2407

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)4 Delegation of Powers
92k2405 To Executive, in General
92k2407 k. Standards for Guidance. Most Cited Cases
Delegation of authority to administrative agency is constitutionally valid if enabling statute (1) contains a clear expression of legislative policy, (2) prescribes sufficient standards to guide the agency in the execution of that policy, and (3) is accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency. LSA-Const. Art. 2, §§ 1, 2.

[27] Constitutional Law 92 ⚿994

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k994 k. Avoidance of Constitutional Questions. Most Cited Cases
Whenever possible, court should avoid interpreting statute in way that renders it unconstitutional.

[28] Adoption 17 ⚿25

17 Adoption
17k25 k. Foreign Adoption. Most Cited Cases

Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Correct interpretation of Louisiana statute governing birth certificate corrections for out-of-state adoptions is that its use of "may" affords State Registrar the limited discretion of determining whether certification furnished by applicants is satisfactory. LSA-R.S. 40:76(A).

[29] Adoption 17 ⚿25

17 Adoption
17k25 k. Foreign Adoption. Most Cited Cases
Plain meaning of "adoptive parent" in Louisiana statute governing birth certificate corrections for out-of-state adoptions is a father or mother who adopts a child. LSA-R.S. 40:76(C)(3).

[30] Adoption 17 ⚿25

17 Adoption
17k25 k. Foreign Adoption. Most Cited Cases

Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Same-sex couple comprised of two men, who obtained joint adoption decree for infant in New York court, were the "adoptive parents" of Louisiana-born infant for purposes of Louisiana statutes governing birth certificate corrections for out-of-state adoptions and certified copy for adoptive parents. LSA-R.S. 40:76(C)(3), 40:77.
Kenneth Dale Upton, Jr. (argued), Lambda Legal Defense & Educ. Fund, Inc., Dallas, TX, Spencer R. Doody, Regina O. Matthews, New Orleans, LA, for Plaintiffs-Appellees.

Stuart Kyle Duncan, Asst. Atty. Gen., (argued), Baton Rouge, LA, for Defendant-Appellant.

Richard Arthur Bordelon, Ralph Joseph Aucoin, Sr., Denechaud & Denechaud, L.L.P., New Orleans, LA, for LA Conference of Catholic Bishops, Amicus Curiae.

Austin R. Nimocks, Alliance Defense Fund, Washington, DC, for Family Research Council, Louisiana Family Forum, Amici Curiae.

Mathew D. Staver, Anita Leigh Staver, Liberty Counsel, Maitland, FL, Stephen M. Crampton, Mary Elizabeth McAlister, Liberty Coinsel, Lynchburg, VA, for Liberty Counsel, Amicus Curiae.

Katharine Murphy Schwartzmann, Amer. Civ. Liber-

ties Union Foundation of LA, New Orleans, AL, for Amer. Civ. Liberties Union, Amer. Civ. Liberties Union of LA, Amici Curiae.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before REAVLEY, JOLLY, and WIENER, Circuit Judges.

WIENER, Circuit Judge:

*1 Plaintiffs-Appellees Oren Adar and Mickey Ray Smith (the "Adoptive Parents"), individually and next friends of their adopted minor son, Plaintiff-Appellee J C A-S ("Infant J"), all three referred to collectively as "Plaintiffs-Appellees," brought this injunction action against Defendant-Appellant Darlene W. Smith, the Louisiana State Registrar (the "Registrar"), to force her to issue a new original birth certificate ("Certificate") for Infant J, who was born in Louisiana. The Adoptive Parents are unmarried adult males who obtained a joint adoption decree for Infant J in a New York state court. After obtaining that decree, the Adoptive Parents applied to the Registrar for a Certificate listing both men as parents of Infant J. The Registrar refused to issue the Certificate, citing Louisiana statutes that prohibit the in-state adoption of children by unmarried couples. On a motion for summary judgment, the district court issued a mandatory injunction, commanding the Registrar to issue the Certificate on grounds that (1) Louisiana owes full faith and credit to the New York adoption decree, and (2) LA. REV.STAT. ANN. § 40:76 authorizes the issuance of a Certificate listing both men as adoptive parents of Infant J. The Registrar timely appealed. We affirm.

I. FACTS AND PROCEEDINGS

A. Facts

Infant J is a male who was born in Shreveport, Louisiana, in 2005. In April 2005 the Adoptive Parents, who then resided in Connecticut, obtained an agency adoption of Infant J in the Family Court of Ulster County, New York, pursuant to New York state law that authorizes joint adoptions by unmarried, same-sex couples.

After obtaining this New York adoption decree, the Adoptive Parents arranged for a Report of Adoption to be forwarded from the New York Department of Health to the Louisiana Department of Health and Hospitals, Office of Public Health, Vital Records and Statistics. The Adoptive Parents sought to have a Certificate issued and recorded for Infant J, reflecting his new name and his relationship to the Adoptive Parents. Before deciding whether to comply with that request, the Department of Health and Hospitals requested an opinion from the State's Attorney General whether Louisiana was required to issue the requested Certificate. The Attorney General issued an opinion that Louisiana does not owe full faith and credit to the instant New York adoption judgment because it is repugnant to Louisiana's public policy of not allowing joint adoptions by unmarried persons.

Approximately one week after receiving this opinion, the Registrar wrote to the Adoptive Parents informing them of her decision to decline to issue the Certificate. The Registrar's letter stated that because (1) Louisiana only authorizes in-state adoptions by single adults or married couples; (2) LA.REV.STAT. ANN. § 40:76 vests the Registrar with full discretion in issuing amended birth certificates for out-of-state adoptions of Louisiana-born children; and (3) LA.REV.STAT. ANN. § 40:34(D) only authorizes the Registrar to issue amended Certificates in accordance with Louisiana law, the State's Office of Vital Records and Statistics was "not able to accept the New York adoption judgment to create a new birth certificate." As additional support for not issuing the Certificate, the Registrar cited the State Attorney General's opinion that Louisiana does not owe full faith and credit to the instant New York judgment.

B. Proceedings

*2 In October 2007, the Plaintiffs-Appellees filed suit in the Eastern District of Louisiana against the Registrar in her official capacity, seeking (1) a declaration that the Registrar's refusal to issue the Certificate violates both the Full Faith and Credit Clause (the "Clause") and the Equal Protection Clause of the United States Constitution and (2) a mandatory injunction requiring the Registrar to issue a Certificate that identifies both Adoptive Parents as Infant J's parents.

The Registrar filed a motion to dismiss for lack of

jurisdiction which the district court denied. After the Registrar filed an answer to the amended complaint, the Adoptive Parents filed a motion for summary judgment. In it they asserted that (1) by its plain language, LA.REV.STAT. ANN. § 40:76 expressly requires the issuance of a Certificate for Infant J reflecting that both Adoptive Parents are his parents, (2) Louisiana owes full faith and credit to the New York state adoption decree, and (3) failure to issue a Certificate for Infant J denies the Plaintiffs-Appellees equal protection under the United States Constitution.

In granting summary judgment to the Plaintiffs-Appellees, the district court held that Louisiana owes full faith and credit to the New York adoption decree and that there is no public policy exception to the Clause. The court also went on to state that a forum state's enforcement of such a decree from an adjudicating state is subject to the "evenhanded" enforcement of the laws of the forum state. The district court then examined the Louisiana statute that governs the recording of out-of-state adoptions of Louisiana-born children and held that the plain language of the statute mandates that, on receipt of a duly certified copy of the New York adoption decree, the Registrar had to issue a Certificate for Infant J that contains the names of the Adoptive Parents as his parents. As the trial court granted summary judgment on grounds of Full Faith and Credit and Louisiana law, it did not reach the Plaintiffs-Appellees' equal protection claim.

Before filing her timely notice of appeal, the Registrar filed a motion in the district court seeking either a new trial or dismissal. In that motion, the Registrar asserted for the first time that the Adoptive Parents lacked standing and, in the alternative, that the district court should abstain from interpreting LA.REV.STAT. ANN. § 40:76 and instead certify the question to the Louisiana Supreme Court. After briefing and a hearing, the district court denied the Registrar's motion for a new trial or dismissal, as well as her motion for a temporary stay. Subsequently, the Registrar filed a motion in this court seeking a stay pending this appeal which, we granted.

II. STANDARD OF REVIEW

*3[1][2][3][4][5] We review questions of jurisdiction, including standing, *de novo*.[FN1] If the district court expressly or implicitly resolves any factual disputes in making its jurisdictional ruling, we review such findings for clear error.[FN2] We review a grant of summary judgment *de novo* under the same standards applied by the district court. [FN3] Summary judgment is appropriate when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.[FN4] We review determinations of fact in the light most favorable to the nonmoving party, and we review questions of law *de novo*.[FN5] We also review the district court's determinations of state law *de novo*, giving no deference to such rulings.[FN6]

III. ANALYSIS

This case poses an issue of first impression in this circuit; only one other circuit has addressed a similar one.[FN7] The instant dispute implicates the questions (1) whether Louisiana owes full faith and credit to the subject New York adoption decree and (2) whether full faith and credit requires Louisiana, under the plain language of its own statute and under the constitutional requirement of "evenhanded" enforcement of that judgment, to issue a Certificate for Infant J that lists both Adoptive Parents as his parents.

The Registrar is now challenging the standing of the Plaintiffs-Appellees [FN8] to bring this action. As standing is jurisdictional, we address that issue before addressing full faith and credit and state law.

A. Standing

The Registrar contends that the Plaintiffs-Appellees have not satisfied Article III's standing requirements; specifically, that the harms they allege are not sufficient injuries-in-fact. The harms alleged are (1) difficulties encountered in enrolling Infant J in Smith's health insurance plan; (2) problems encountered with airline personnel who suspected that the Adoptive Parents were kidnappers of Infant J; and (3) denial of the "emotional satisfaction" of "seeing both of their names on the birth certificate." In supplemental briefing, the Registrar also contends that LA.REV.STAT. ANN. § 40:76 does not grant a right to judicial relief.

The Adoptive Parents counter that the issue of standing is more properly framed as two broader questions: (1) whether the Registrar's refusal to issue a fully compliant Certificate reflecting the entire parent-child relationship created by the New York adoption decree results in a legally cognizable injury in and of itself; and (2) whether the "barriers" imposed

by the Registrar's refusal to list both Adoptive Parents in a Certificate, as evidenced by "past difficulties," constitutes a legally cognizable injury for purposes of standing. In supplemental briefing, the Adoptive Parents also invoke LA.REV.STAT. ANN. § 40:77 which they assert constitutes a non-discretionary mandate that the Registrar issue certified copies of Certificates to out-of-state adoptive parents of Louisiana-born children.

[6][7] Standing is a question of justiciability that poses two questions: (1) whether the parties' claims present a constitutional case or controversy and (2) whether federal court is the proper forum to decide this question.[FN9] As the jurisdiction of the federal courts is limited, parties may not seek redress there unless they can show an actual case or controversy under Article III of the United States Constitution, i.e., an "injury-in-fact."[FN10]

*4[8] There are three aspects to the constitutional requirement for standing under Article III, *viz.*, a showing by the plaintiffs of (1) an injury-in-fact that constitutes the invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between such injury and the conduct complained of; and (3) the likelihood that a favorable decision will redress the injury.[FN11] The party invoking federal jurisdiction has the burden of establishing these elements.[FN12] Article III standing may also obtain by virtue of a state or federal statutory right, the invasion of which confers standing.[FN13]

The Registrar asserts that the injuries allegedly suffered by the Plaintiffs-Appellees do not rise to the level of injuries-in-fact. The Plaintiffs-Appellees disagree, pointing to the barrier of health care coverage, the impediments to travel, and the dignitary harm of an obsolete, incorrect birth certificate, as providing the requisite injury-in-fact. We need not resolve this disagreement, however, because Plaintiffs-Appellees have sufficiently alleged, for the purposes of standing, that (1) LA.REV.STAT. ANN. §§ 40:76 and 40:77 mandate that the Registrar issue a Certificate and (2) they have suffered cognizable harm by Registrar's refusal to do so.

[9][10] The state of Louisiana recognizes a private right of action to correct public records. In *State ex rel. Treadaway v. Louisiana State Bd. of Health*, the Supreme Court of Louisiana approved of civil actions as the proper vehicle for requiring the State to correct birth certificates.[FN14] *Treadaway* dealt with the attempt of the relator to have his deceased mother's birth certificate altered to designate her race as "white" rather than "colored."[FN15] The relator sought alteration under the then-current statutory provision for correcting birth certificates, LA.REV.STAT. ANN. § 40:266. That statute read: "No certificate or record on file in the local registrar's office shall be altered except upon submission of sufficient documentary or sworn evidence acceptable as the basis of the alteration." The contemporary analog of that statute is LA.REV.STAT. ANN. § 40:59, which subjects any alteration procedure to regulations of the Department of Health and Hospitals and requires a showing by sworn and documentary proof. The current statute that governs birth certificate corrections for out-of-state adoptions is LA.REV.STAT. ANN. § 40:76, which-like the predecessor LA.REV.STAT. ANN. § 40:266, and LA.REV.STAT. ANN. § 40:59-requires that specified documentary evidence be submitted before a new Certificate will be issued, and (as discussed in more detail *infra*) is couched in mandatory language. Accordingly, we find apposite *Treadaway's* holding that:

> [S]ince the matter was brought to the attention of the Board of Health by a person who was affected by the record, the Board of Health is authorized and, in fact, required by the statute to receive such evidence as might be available and, in accordance with its own rules, to make the change if the evidence submitted is found by the court to be satisfactory.[FN16]

*5 Given the plain language of the governing statute and the Louisiana Supreme Court's recognition of private rights of action to correct the State's public documents, we hold that Infant J has made sufficient allegations of a statutory right to an accurate birth certificate and thus has Article III standing to compel the Registrar to issue a new Certificate.

[11] This reasoning applies, by virtue of LA.REV.STAT. ANN. § 40:77,[FN17] with equal force to the allegations of the Adoptive Parents. Therefore, we hold that, like Infant J, the Adoptive Parents have made sufficient allegations of a statutory right to provide standing to pursue their claims against the Registrar.

[12][13] This is not dispositive of the question of constitutional standing by itself, however, because the law is well-settled that a statute cannot grant standing to parties whose claims do not rise to the constitutional threshold.[FN18] When a person alleges a concrete, particularized, and individual injury by virtue of the operation of a statute, however, Article III standing to challenge that statute's execution usually obtains.[FN19] We therefore hold that Plaintiffs-Appellees' allegations of injury flowing from the Registrar's failure to comply with the statute satisfy the prerequisites of injury-in-fact for Article III standing purposes.[FN20]

B. Full Faith and Credit

Turning to the substantive claims at issue, we first consider whether, under the United States Constitution, Louisiana owes full faith and credit to the New York adoption decree. The Registrar asserts several rationalizations why Louisiana does not owe full faith and credit to the decree as a constitutional matter, and she categorizes the argument based on them as an alternative to her argument that Louisiana's out-of-state adoption statute does not, by its plain meaning, require her to issue a new Certificate. As we need consider LA.REV.STAT. ANN. § 40:76 only if Louisiana owes full faith and credit to the New York decree,[FN21] we first address full faith and credit.

1. The Full Faith and Credit Clause

The Full Faith and Credit Clause of the United States Constitution reads:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.[FN22]

Congress enacted implementing legislation for the Clause in 1790[FN23] and has amended that legislation only once, in 1948.[FN24] The Supreme Court first interpreted the Clause in *Mills v. Duryee* to require that an out-of-state *judgment* be given the same effect in the several states as it would be given in the adjudicating state.[FN25] Such expansive full faith and credit was later held not to be owed to a *statute* enacted in another state, however, when the forum state is competent to legislate on the matter.[FN26]

[14] The Supreme Court's most recent full faith and credit decision dealing with judgments, *Baker ex rel. Thomas v. General Motors Corp.*,[FN27] both reiterates that full faith credit is owed to out-of-state judgments[FN28] and explains the "exacting"[FN29] nature of this duty. Important to the instant appeal, the Court in *Baker* emphasized that there are no "roving public policy exceptions" to the Clause;[FN30] that is, the forum state may not refuse to recognize[FN31] an out-of-state judgment on the grounds that the judgment would not obtain in the forum state.[FN32] Although the duty of recognition that is owed is "exacting," however, it is not absolute. For example, even though the forum state may not refuse to enforce the judgment of the adjudicating state, the forum state is not required to substitute the adjudicating state's provisions for the *enforcement* of judgments for their own.[FN33] The substantive issues adjudicated in that state are afforded full faith and credit; within particular bounds, the provisions for enforcing that judgment are determined by the law of the forum state.

2. Application

*6[15] As a threshold matter, there is virtually universal acknowledgment that Louisiana owes full faith and credit to the New York adoption decree and *must* recognize that the Adoptive Parents are Infant J's legal parents. Numerous authorities hold that a state must afford out-of-state adoption decrees full faith and credit.[FN34] The parental rights and status of the Adoptive Parents, as adjudicated by the New York court, are not confined within that state's borders and do not cease to exist at Louisiana's borders; the Registrar points to no precedent or persuasive authority to the contrary. In the face of this well-established legal principle, however, the Registrar tenaciously insists that there are exceptions to the application of the Clause that allow Louisiana to refuse to give full faith and credit to the instant adoption decree. The Registrar contends first that the "preclusive effects of an out-of-state judgment do not compel another State to alter its public records." She asserts further that adoption decrees are "fundamentally different judgments" from those that must be given "categorical effect" under the Clause, because, unlike typical "money judgements," adoption decrees "create new

status, forge on-going family relationships, are typically the product of non-adversarial proceeding[s], and may subvert a State's core domestic policies." Finally, the Registrar echoes her first contention by advancing that the Clause does not support extending the effects of an adoption decree to control the public records of another state. We consider each of these contentions in turn.

a. An Out-of-state Adoption Decree has only Preclusive Effect on Future Litigation

The Registrar's first contention is in reality an argument that the Clause's reach is coextensive with that of the traditional principle of *res judicata* and therefore does not constrain a forum state's actions beyond such strictures. By way of example, the Registrar offers that an adjudicating state's divorce decree would preclude the forum state from re-litigating the matters decided in that divorce, but would not mandate that the forum state alter its public records to reflect that judgment. From this premise, the Registrar propounds the argument that full faith and credit, being no greater than *res judicata,* does not require the Registrar to "alter Louisiana's vital records [in a manner] contrary to Louisiana's substantive family law." The Registrar takes this argument further by noting (correctly) that full faith and credit does not require a state to substitute its own statutes for those of another state. Therefore, she continues, because "categorical" recognition of the New York judgment (as opposed to giving it mere *res judicata* effect) would be tantamount to exporting New York's public policy determination about who may adopt in Louisiana, requiring Louisiana to accept the New York judgment would be no different than requiring Louisiana to substitute a New York statute for one of its own. Consistent with her argument that full faith and credit is nothing greater than *res judicata,* the Registrar also contends that, because Louisiana was not party to the New York proceedings ("adjudicating her duty to register the New York adoption decree"), Louisiana is not required "to obey New York law"; that Louisiana's processing of vital statistics is "collateral" to "the decree's *res judicata* effects."

[16][17] These arguments fail for a number of reasons. First and foremost, full faith and credit is not merely a redundant reiteration of *res judicata.* At its core, the common law doctrine of *res judicata* is concerned with respecting the finality of litigation.[FN35] In contrast, even though the Clause does promote this laudatory end,[FN36] its primary purpose is to serve the *modus vivendi* of federalism by harmonizing the competing sovereign interests of the several states.[FN37] A crucial difference between *res judicata* and the Clause is that *res judicata* is the *voluntary* restraint by a forum state from exercising its power so as to respect the judgment of another state. Indeed, as to judgments, a forum state may and sometimes does choose to re-litigate issues as it sees fit.[FN38] In contrast, the Clause is a *mandatory,* constitutional curb on every state's sovereign power. With respect to judgments (although not to statutes), a state as a rule *has no discretion* to disregard a decision of another state on a matter over which that other state is competent to exercise jurisdiction.[FN39]

*7[18] The Registrar's second argument, that the New York adoption decree is a judgment *cum* statute to which Louisiana does not owe full faith and credit, is a leap too far. Although she is correct that, under the Clause, a statute is not owed the same exacting obeisance as is a judgment, the Registrar cites no authority for the proposition that some kinds of judgments may be treated as statutes for purposes of full faith and credit analyses. She appears to be arguing that, because the New York court's adoption decree embodies both the public policy of New York and New York's adoption statutes (as interpreted by New York courts), the decree may be ignored by Louisiana as an attempt to substitute New York's statute for Louisiana's. But, if credited, this shallow, circular attempt to conflate "judgment" and "statute" would swallow the Clause's curb on the states.[FN40] If the Registrar's argument were correct, its natural conclusion would be that only those judgments that are rendered on purely common law grounds-unadulterated by any statutory nexus, effect, or derogation-would have to be afforded protection under the Clause. Under this reasoning, to the extent that a judgment incorporates the statutory-and repugnant-public policy of the adjudicating state, a forum state would be free to ignore the adjudicating state's *judgment* as an improper substitution for the forum state's *statute.* Such a reading, for the purpose of interstitially importing such an illicit "public policy exception" to the reach of the Clause, is utterly contradicted by precedential full faith and credit jurisprudence.

[19][20] We acknowledge, as the Registrar observes,

that an out-of-state judgment may not force the forum state to "accomplish an official act within its exclusive province."[FN41] But, this exception refers to judgments that *themselves* purport to compel action *by* (not *in*) another state.[FN42] Even though the Clause may not serve as a puppeteer to empower an adjudicating state to govern a forum state by judicial decree, that is not occurring here. The New York court has not ordered Louisiana, or any other state, to do or refrain from doing anything. It has merely adjudicated a parent-child relationship between the Adoptive Parents and Infant J. Thus, the question here is not what has a New York decree purported to compel Louisiana *to do or not to do*; rather, the question here is what respect does Louisiana *owe* to New York's adoption decree. The obvious answer is that Louisiana owes "exacting" full faith and credit to the New York adoption decree.[FN43]

b. Adoptions Decrees are Fundamentally Different from Those Judgments that Must Be Given Categorical Effect under the Full Faith and Credit Clause.

*8 Arguments like those of the Registrar-that adoption decrees are fundamentally different kinds of judgments and are not owed full faith and credit-have either been rejected by those courts that have considered them or simply reflect a fundamental misapprehension of the law and the Constitution. First, as already noted, multiple authorities-including Louisiana-have demonstrated virtually universal agreement that adoption decrees are judgments for purposes of full faith and credit.[FN44] Furthermore, although the Supreme Court itself has not addressed this precise issue, it has held that other types of domestic-law judgements are to be afforded full faith and credit. For example, the very case on which the Registrar would rely for her argument, *New York ex rel. Halvey v. Halvey*,[FN45] recognized that the results of custody proceedings are owed full faith and credit. In *Halvey*, the Court considered a mother's attempt to have a New York court enforce her Florida-adjudicated child-custody determination. The New York state court had given effect to the determination, but had modified its terms. After the mother challenged this modification under the Clause, the Supreme Court held that (1) New York may alter the custody decree because under Florida law, such decrees are modifiable by a Florida court, but (2) New York could do so only to the same extent as could a Florida court.[FN46] In reaching this result, the Court reiterated the general principle that out-of-state judgments are due full faith and credit, stating "[t]he general rule is that this command [the Full Faith and Credit Clause] requires the judgment of a sister State to be given full, not partial, credit in the State of the forum."[FN47]

[21] The Registrar's claim that adoptions fall within a "category" of judgments that are not owed full faith and credit is likewise unavailing. The dichotomy she purports to identify would describe judgments as either prospective or retrospective, with retrospective judgments being owed full faith and credit but prospective judgments *not* being owed such respect by forum states. According to this contention by the Registrar, the Clause would apply to such retrospective judgments as money judgments, but not to prospective judgments (to which subset she would assign adoption decrees). This assertion echoes the argument dismissed by the Supreme Court in *Baker* that there is some *per se* difference under the Clause between money judgments and equitable judgments. The *Baker* Court held unequivocally that both kinds of judgments are afforded full faith and credit under the Constitution.[FN48]

The Registrar cites no authority for her proposed prospective-retrospective dichotomy of judgments. Instead, she confuses the broad full faith and credit obligation owed by a forum state to out-of-state *judgments* with the tightly restricted obligation of the forum state to respect an out-of-state court's ability to determine *post-judgment activity* in the forum state.[FN49] This distinction was articulated most recently in *Baker*, when the Court noted that, although respect for judgments is exacting, the Clause does not require one state "to adopt the practices of other States regarding the time, place, manner, and mechanisms for enforcing judgments."[FN50]

The Registrar would support her distinction by a negative analogy, seeking to show that, unlike money judgments or divorces, which are "final," an adoption judgment "concern[s] the new and ongoing parent-child status created in the originating State." This description of the nature of an adoption is misleading, however: Like divorce decrees between spouses, adoption decrees seek to make legally final the relationship between the adoptive parents and the adopted child.[FN51] The parent-child status is no more "ongoing" or less final than any other legally determined domestic relationship. That is, the adoption

decree creates a legal relationship that remains in effect until and unless it is subsequently changed by legal processes. No one questions that adoptive parents may lose or surrender their parental rights through judicial action just as spouses may divorce and later remarry each other; but this truism does not in any way mitigate the obligation of one state to give full faith and credit to the status judgments of other states.[FN52]

*9 The Registrar concludes her argument on this point with the statement that "categorically enforcing sister-state adoption decrees will inevitably undermine core social policies of the second State in a way that simple money judgments or even divorce decrees do not." To the extent that this assertion is meant to cast doubt on whether Louisiana must give full faith and credit to the subject New York adoption decree, the Supreme Court has made pellucid that there is no "roving public policy exception" to the Full Faith and Credit Clause.[FN53] Again, the specific question here is not whether Louisiana may refuse to recognize the New York adoption (which it clearly may not), but whether that recognition requires it to issue a Certificate under the terms of its own statute. Whether the New York adoption contravenes Louisiana's "public policy" is simply irrelevant and immaterial. Put another way, the new Certificate merely records the action done by the New York court and expresses nothing about what Louisiana would or would not do in matters of its solely domestic concern.

c. The Clause Does Not Support Extending the Effects of an Adoption Decree to Control the Public Records of Another State.

The Registrar's argument here is that the Clause does not "command[ ] complete recognition of a sister-state adoption in another State's public records." This is nothing more than a rehash of her earlier argument that adoptions are not a specie of judgment that is owed universal recognition under the Clause. It is equally unavailing.

C. LA.REV.STAT. ANN. § 40:76.

Having determined that Louisiana owes full faith a credit to the instant New York adoption decree, we turn to the Registrar's arguments concerning Louisiana's duty *vel non* to give effect to that decree. She contends that Louisiana's out-of-state adoption birth certificate statute is an "enforcement mechanism," and therefore, even if Louisiana owes full faith and credit to the New York adoption decree, is not required to enforce the decree by issuing a Certificate to Infant J. Alternatively, the Registrar urges us to certify the question of § 40:76's application to the Supreme Court of Louisiana. We address certification before addressing the Registrar's proffered interpretation of the State's statute.

1. Certification of the Question of Interpretation of § 40:76 to the Louisiana Supreme Court.

*10[22]Rule 12 of the Louisiana Supreme Court authorizes us to certify questions of state law to that court. The Registrar urges us to certify the "proper construction" of § 40:76 to the Louisiana Supreme Court. She offers as support for this request that (1) the state law is unsettled on this question; (2) a definitive interpretation would "impact the constitutional question"; and (3) the "the state law implicates sensitive family-law and interstate comity issues." Because we hold that the statute's meaning is clear and unambiguous, we decline the Registrar's request for certification under Rule 12.

2. Section 40:76 is an Enforcement Mechanism for Purposes Full Faith and Credit.

The Registrar does not point to any direct authority for her bald assertion that a statute such as § 40:76 is a "time [and] manner ... mechanism[ ] for enforcing judgments."[FN54] The Plaintiffs-Appellees counter not only that the statute is not an enforcement mechanism, but that it would be immaterial if that were not clear because, even if the statute were an "enforcement mechanism," under *Baker*, the Registrar has failed to enforce the statute in an "evenhanded" manner.

[23] We are at least doubtful that the adoption statute is an "enforcement mechanism." But even if we assume *arguendo* that it is such a mechanism, the Registrar cannot prevail. If the plain language of Louisiana's own statute requires that a new, corrected birth certificate be issued to Louisiana-born adopted minors and their adoptive parents[FN55] (as it clearly does), that requirement must be applied in an "evenhanded" manner.[FN56] The pertinent question thus turns on the language of Louisiana's statute.

3. Interpreting LA.REV.STAT. ANN. § 40:76.

Neither the parties's citations nor our research reveals that any other court, state or federal, has interpreted § 40:76. Proceeding on a blank slate, therefore, we must look to analogous decisions of Louisiana's courts for guidance in construing its statutes: When we interpret state law, we are "bound to apply the law as the state's highest court would."[FN57] With regard to judicial interpretation of state statutes, the Louisiana Supreme Court has held:

> As a general rule, '[t]he plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters' [in which case] the intention of the drafters, rather than the strict language controls.'[FN58]

Furthermore:

> While it is true that the Civil Code directs that laws on the same subject matter should be construed with reference to one another, it is also true that it is only when one statute is unclear that another on the same subject should be called in aid to explain it. Otherwise, where there is no ambiguity, the words of a statute are to be read in their most usual significance, that is, according to their general and popular use.[FN59]

With these general principles in mind, we examine the text of the subject statute itself. LA.REV.STAT. ANN. § 40:76 reads:

> *11 A. When a person born in Louisiana is adopted in a court of proper jurisdiction in any other state or territory of the United States, the state registrar may create a new record of birth in the archives upon presentation of a properly certified copy of the final decree of adoption or, if the case has been closed and the adoption decree has been sealed, upon the receipt of a certified statement from the record custodian attesting to the adoption decree.
>
> B. The decree is considered properly certified when attested by the clerk of court in which it was rendered with the seal of the court annexed, if there is a court seal, together with a certificate of the presiding judge, chancellor, or magistrate to the effect that the attestation is in due form. The certified statement is considered proper when sworn to and having the seal of the foreign state or territory's record custodian.
>
> C. Upon receipt of the certified copy of the decree, the state registrar shall make a new record in its archives, showing:
>
> (1) The date and place of birth of the person adopted.
>
> (2) The new name of the person adopted, if the name has been changed by the decree of adoption; and
>
> (3) The names of the adoptive parents and any other data about them that is available and adds to the completeness of the certificate of the adopted child.

The district court interpreted the plain language of § 40:76(C) to mandate that the Registrar issue a Certificate for Infant J that identifies both Adoptive Parents. The Registrar takes issue with the district court's interpretation for two reasons. First, she asserts that § 40:76(A) vests her with the discretion to decide whether to issue a new birth certificate ("the state registrar *may* create a new record of birth in the archives ...."), and that § 40:76(C)'s mandatory language ("Upon receipt of the certified copy of the decree, the state registrar *shall* make a new record ...") applies only to the *contents* of the new certificate. This reading, she argues, renders her decision whether to issue a new Certificate wholly discretionary and not subject to challenge. The Registrar further contends that the phrase "adoptive parents" should be construed *in pari materia* with those provisions of the Louisiana Civil Code that prohibit adoptions within the state by unmarried couples. The Registrar does not offer, and our research does not reveal, any place where the phrase "adoptive parents" is expressly defined in the Louisiana Civil Code, the State's statutes, or the case law.

The crux of the Registrar's first argument is that each word in the statute must be given effect;[FN60] accordingly, giving effect to this permissive language in § 40:76(A) renders the entire statute discretionary as to whether a Certificate is issued. Thus, according to the Registrar, (1) § 40:76(A) affords her broad discretion in deciding whether to issue a Certificate on the basis of an out-of-state adoption; (2) § 40:76(B) establishes the authentication requirements for an out-of-state

decree; and (3) § 40:76(C) mandates *only* the contents of the Certificate, when and if the Registrar should choose to issue one.

[24][25] Dealing as we are with a statutory grant of ministerial authority, we look to Louisiana precedent on this matter as a guide for our interpretation. Under the State's constitution, a statutory grant of ministerial authority must comport with that document's separation-of-powers clause, which prohibits "[unconstitutional] delegation" of authority by the legislative branch of state government to another branch.[FN61] Delegation of authority by the legislature to the executive branch must not be so broad as to impinge the mandatory separation of powers.[FN62] In considering this issue, Louisiana courts have traditionally distinguished between two types governmental authority: (1) *ministerial or administrative* authority, which may be delegated; and (2) purely *legislative* authority, which may not be delegated. [FN63] As for the former, Louisiana's highest court has observed that:

> *12 the complexity of our social and industrial activities ... [have lead the court's] decisions to hold as non-legislative the authority conferred upon boards and commissions.... [T]he Legislature may make the operation or application of a statute contingent upon the existence of certain conditions, and may delegate ... the power to determine the existence of such facts and carry out the terms of the statute. So long as the regulation or action ... does not determine what the law shall be, or involve the exercise of primary and independent discretion, but only determines within prescribed limits some fact upon which the law by its own terms operates, such regulation is administrative and not legislative in its nature.[FN64]

As for the delegation of legislative authority, that court has stated:

> When the delegated authority is unfettered ..., its exercise becomes *legislative, not administrative,* in nature, and contravenes the mandate of Article 2, Section 2 of the Louisiana Constitution.[FN65]

[26][27] The Supreme Court of Louisiana has fashioned a three-pronged test for determining whether a statute unconstitutionally delegates legislative authority:

> Delegation of authority to an administrative agency is constitutionally valid if the enabling statute (1) contains a clear expression of legislative policy, (2) prescribes sufficient standards to guide the agency in the execution of that policy, and (3) is accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency.[FN66]

Whenever possible, a court should avoid interpreting a statute in a way that renders it unconstitutional.[FN67] If the Registrar's interpretation of § 40:76 would render it unconstitutional under the *All Pro Paint & Body* test, then it should be rejected in favor of a more constrained construction, assuming one is available.

The Registrar's interpretation fails at least prongs two and three of the *All Pro Paint & Body* test. First, even if the Registrar were correct that the permissive "may" in § 40:76(A) allows her unfettered discretion to issue or not to issue a birth certificate, there is still no accompanying legislative guide to implementing the legislative policy (assuming there is one) in furtherance of this grant of discretion. Under the Registrar's own argument it would be within her sole decision whether to issue a birth certificate: No standards for making that decision, outside of mere whimsy, are to be found in the statute.[FN68] By the same token, this absence of any guiding policy is linked to the absence of any procedural safeguards. Because, under the Registrar's interpretation, she would have the unlimited discretion to issue (or to decline to issue) birth certificates for out-of-state adoptions, she in her discretion may simply choose not to issue a birth certificate for a Louisiana-born child to a married couple who *could* legally adopt in Louisiana. Her proffered reading of the statute would thus afford such a couple no safeguard in their access to a new, corrected birth certificate. The Legislature's intent in enacting § 40:76, at a minimum, is surely not to allow the Registrar-for any reason or for no reason at all-to deny birth certificates to out-of-state adopters who could have adopted the Louisiana-born child under Louisiana law. The statute's plain language suggests no such legislative intent.

In the framework of *All Pro Paint & Body,* we do not find the Registrar's excessively broad interpretation of § 40:76 to be persuasive or reasonable. Under the Registrar's interpretation, she would enjoy absolute discretion in issuing or denying birth certificates for

out-of-state adoptions, without any legislative guidance or limitation whatsoever. Furthermore, there is some authority which holds that when a statute directs a public official to perform some act, the otherwise permissive auxiliary "may" is in fact read as mandatory, if to deem it discretionary would thwart the act's very purpose. [FN69]

*13 We need not go so far as to hold that the language in § 40:76(A) is mandatory, however, because a facially reasonable reading of that statute would restrict the applicability of the "may" in that section *to that section only,* limiting the Registrar's discretion to issue a birth certificate for an out-of-state adoption to the determination whether the out-of-state decree is "properly certified," or, in the case of sealed records (as is the case here), on receipt of a certified statement. This more circumspect reading affords the Registrar the discretion of the permissive language in the exercise of her ministerial function, i.e., in determining the validity and sufficiency of the certification furnished, without granting her the plenary and arbitrary power to decide which Louisiana-born children will receive Certificates and which will not.

[28] We hold that the correct interpretation of § 40:76(A) is that its use of "may" affords the Registrar the limited discretion of determining whether the certification furnished by the applicants is satisfactory. The discretion afforded her is that she need issue a certificate only when she is satisfied that the certification is satisfactory, a decision that is guided in turn by § 40:76(B)'s list of the required contents of such certification. Finally, if the decree's certification is proper, then § 40:76(C) *mandates* that the Registrar issue a new, corrected birth certificate. This interpretation avoids the Registrar's manifestly strained and unconstitutional attempt to go beyond the plain language of the statute.

In her second statutory-interpretation argument, the Registrar notes that construing § 40:76(C) as requiring her to issue a birth certificate that lists both adoptive parents whenever, under § 40:76(A), she determines that the proffered certification satisfies § 40:76(B), is a reading improperly isolated from the rest of Louisiana's substantive law, specifically articles 1198, 1221, and 1243 of the Louisiana Children's Code, which authorize joint adoptions by married couples only, and article 3520(B) of the Louisiana Civil Code, which limits state recognition to married heterosexual persons only.[FN70] Thus, according to the Registrar's interpretation, because (1) the Adoptive Parents are an unmarried, same-sex couple, and (2) adoption provisions *other* than § 40:76 would deny them the right to adopt in Louisiana, § 40:76 should likewise require such a prohibition for out-of-state adoptions by referential implication.

The Registrar relies on Article 13 of the Louisiana Civil Code, which directs that statutes are to be construed with reference to one another. Assuming *arguendo* (and not without serious doubts as to its validity) that the statutory provisions which the Registrar cites are relevant or salient to the meaning of "adoptive parents," the Registrar's reasoning nevertheless fails to account for the strictures established by the Supreme Court of Louisiana when interpreting the Civil Code's Article 13. The court held in *Crescionne* that other statutes are to be consulted "*only* when one statute is unclear." [FN71] In essence, the Registrar's entire argument rests on construing the term "adoptive parents" *not* to include "same-sex couples" for purposes § 40:76 because an *in-state* adoption can be effected only by married, heterosexual couples. Nowhere does she argue, however, that the term "adoptive parents" is ambiguous or unclear.

*14 The court's decision in *Crescionne* is instructive here. In that case, the parties disagreed about the meaning of the phrase "surviving spouse" in a particular state statute. The court reasoned that:

> The ordinary meaning of the word "spouse" is one's husband or wife, and marriage is dissolved only by death, divorce, judicial decree of nullity, or the contracting of another marriage on account of absence when authorized by law. Had the legislature intended that a use of the term other than the one usually and generally understood, it could have given the words "surviving spouse" a legal definition....
>
> ....
>
> Since there is no special statutory definition of the term "surviving spouse," we hold that it must be given its ordinary, commonly understood meaning....[FN72]

[29][30] Like "surviving spouse," the term "adoptive parents" is nowhere defined in the statute, or else-

where in the codes or the case law of Louisiana. When we parse the term for its plain meaning, we find that a common dictionary definition of "parent" is "father or mother,"[FN73] and that the meaning of "adoptive" is "of or involving adoption ... acquired or related by adoption."[FN74] Thus, when effect is given to the ordinary meaning of the words of the statute, the plain meaning of "adoptive parents" is a "father or mother who adopts a child." It is obvious to us that this construction is the ordinary, commonly understood one. As the meaning of "adoptive parent" is clear and unambiguous, our inquiry is over; we need not consult other statutes for interpretive guidance.[FN75] Neither shall we overstep our mandate by importing the strained and attenuated reading that the Registrar urges by reference to other statutory provisions of at best uncertain applicability. The New York adoption decree constitutes both Adar and Smith as a "father" "related by adoption" to Infant J. Accordingly, under the plain meaning of the term "adoptive parents," written as it is in § 40:76, and by virtue of the New York adoption decree, we hold that Adar and Smith are the "adoptive parents" of Infant J for purposes of §§ 40:76 and 40:77.

IV. CONCLUSION

*15 We hold that under the plain meaning of the statutes, Adar and Smith are the "adoptive parents" of the minor J.C. A.-S. for purposes of LA.REV.STAT. ANN. §§ 40:76 and 40:77, and that under the Full Faith and Credit Clause of the Constitution of the United States, Louisiana owes full faith and credit to the New York adoption decree that declares J.C. A.-S. to be the adopted child of Adar and Smith. We hold further that said § 40:76 does not vest the Registrar with discretion to refuse to make a new, correct birth certificate for a Louisiana-born child when, as here, his out-of-state adoption decree is evidenced by documentation that indisputably satisfies the requirements of § 40:76(A) and (B). We also hold that § 40:76 mandates that the Registrar make a new record for J.C. A.-S. and issue a new, correct birth certificate for him containing all statutorily directed information.

We therefore LIFT our stay of the district court's order; AFFIRM the district court's grant of a mandatory injunction; and ORDER that the Registrar comply with the district court's injunction forthwith.[FN76]

FN1. *Bonds v. Tandy*, 457 F.3d 409, 411 (5th Cir.2006).

FN2. *See Pederson v. Louisiana State University*, 213 F.3d 858, 869 (5th Cir.2000) (citation omitted).

FN3. *Floyd v. Amite County Sch. Dist.*, 581 F.3d 244, 247 (5th Cir.2009).

FN4. *Id.*

FN5. *Id.*

FN6. *Tradewinds Environmental Restoration, Inc. v. St. Tammany Park, LLC*, 578 F.3d 255, 258 (5th Cir.2009) (citing *Salve Regina Coll. v. Russell*, 499 U.S. 225, 239-40, 111 S.Ct. 1217, 113 L.Ed.2d 190 (1991)).

FN7. The Tenth Circuit dealt with similar facts and claims in *Finstuen v. Crutcher*, 496 F.3d 1139 (2007). We summarize it briefly. In *Finstuen*, three same-sex couples challenged an amendment to Oklahoma's foreign adoption statute that prohibited the State from recognizing adoptions by same-sex couples. 496 F.3d at 1142. The district court held that the amended statute was unconstitutional because it violated the Full Faith and Credit Clause, and the court ordered Oklahoma to issue a revised birth certificate to one of the couples. The Tenth Circuit affirmed on full faith and credit grounds. *Id.* at 1156.

> The appeals court reasoned that each State owes full faith and credit to every other state's judgments. *Id.* at 1153. That court also noted that the forum state's mechanisms for the enforcement of such a judgment are determined by the *lex loci*-therefore the rights of the judgment flowed from the law of Oklahoma, not California, the state of adoption. *Id.* at 1154. The court ruled that, because the amended adoption statute's categorical refusal to recognize out-of-state judgments was unconstitutional, and because Okla-

homa had a duty to recognize the California adoption decree, the Doe plaintiffs were entitled to whatever rights would be afforded them from the judgment under Oklahoma law. *Id.* at 1154-56. Concluding that Oklahoma's foreign adoption statute, *sans* the amendment, provided for the issuance of a birth certificate to the Does, the Tenth Circuit held that denial of the birth certificate would be a violation of the "evenhanded" requirement in applying local enforcement mechanisms to foreign judgments and affirmed the district court's grant of summary judgment. *Id.*

FN8. The Registrar argues throughout her briefing that the "Appellees" lack standing to pursue this action, and she does not differentiate between the Adoptive Parents and Infant J for purposes of her argument. As the Adoptive Parents bring suit both individually and as next friend to Infant J, however, the standing of both the parents and Infant J must be determined independently. We construe the Registrar's arguments on this matter as applying with equal measure to each Plaintiff-Appellee.

FN9. *Comer v. Murphy Oil USA*, 585 F.3d 855, 868 (5th Cir.2009). *See also Apache Bend Apartments, Ltd. v. United States*, 987 F.2d 1174, 1176-77 (5th Cir.1993) ("The Supreme Court has noted that [t]he term 'standing' subsumes a blend of constitutional requirements and prudential considerations.' ") (quoting *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471, 102 S.Ct. 752, 70 L.Ed.2d 700(1982)).

FN10. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal citations and punctuation omitted). The Registrar does not challenge the Plaintiffs-Appellees' prudential standing, and we limit our discussion to Article III's requirements only.

FN11. *Lujan*, 504 U.S. at 560-61, 112 S.Ct. 2130.

FN12. *Id.* at 561, 112 S.Ct. 2130.

FN13. *Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) ("The actual or threatened injury required by Art. III may exist solely by virtue of 'statute creating legal rights, the invasion of which creates standing ...' ") (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n. 3, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973)).

FN14. 54 So.2d 343, 344 (La.App.1951) ("We think that the public interest which is involved is paramount, and that in such a case what is most desirable is that the record be correct, and that whenever the attention of the Board of Health is directed by any person at interest to the possible incorrectness of a record and conclusive evidence is produced, the public interest demands that the correction be made...."). *See also Messina v. Ciaccio*, 290 So.2d 339, 342 (La.App. 4th Cir.1974) (affirming the trial court's ordering of the Louisiana Bureau of Vital Statistics to alter child's birth certificate).

FN15. *Treadaway*, 54 So.2d at 343. The fact that the relator's underlying motive for changing the certificate arose from Louisiana's then-prevailing practice of institutionalized racial discrimination (which, by virtue of his mother's racial designation, saddled the relator with legal disabilities) does not affect that case's pertinence to the instant action.

FN16. *Id.* at 344. *Cf. Warth*, 490 U.S. at 500, 109 S.Ct. 1976 ("Essentially, the standing question ... is whether the constitutional or *statutory provision* on which the claim rests properly can be understood as granting persons in the plaintiff' position a right to judicial relief.") (emphasis added).

FN17. "Upon completion of the new record as provided for in R.S. 40:76 with respect to an adopted person who was born in Louisiana and adopted in another state, *the state registrar shall issue to the adoptive parents* a certified copy of the new record and shall

place the original birth certificate and the copy of the decree and related documents in a sealed package and shall file the package in its archives." (emphasis added).

FN18.*Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979).

FN19.*See Lujan*, 504 U.S. at 561-62, 112 S.Ct. 2130 ("When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon *whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury,* and that a judgment preventing or requiring the action will redress it.") (emphasis added).

FN20. Although not raised by any party, we also note in passing that we and the district court have subject-matter jurisdiction over these claims. The Plaintiffs-Appellees' claim is that, by refusing to give full faith and credit to the out-of-state adoption decree, the Registrar denies them the rights afforded by Louisiana's out-of-state adoption certificating statute. This case therefore "arises under" the United States Constitution.

FN21. That is, if Louisiana does not owe full faith and credit, then presumably LA.REV.STAT. ANN. § 40:76 would not apply because the New York adoption decree likely would not be a proper "final decree of adoption" that Louisiana would have to recognize.

FN22.U.S. Const. art IV, § 1.

FN23. 1 Cong. Ch. 11, May 26, 1790, ch. 11, 1 Stat. 122. ("That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: That the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.").

FN24.28 U.S.C. § 1738. In the 1948 revision of the Judicial Code, the wording of the first implementing statute was amended to include state statutes within the command of the implementing statute:

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> ....
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

FN25.11 U.S. (7 Cranch) 481, 485, 3 L.Ed. 411 (1813).

FN26.*Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488, 494, 123 S.Ct. 1683, 155 L.Ed.2d 702 (2003) ("As we have explained, '[o]ur precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments.' *Baker v. General Motors Corp.*, 522 U.S. 222, 232, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). Whereas the full faith and credit command 'is exacting' with respect to '[a] final judg-

ment ... rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment,' *id.*, at 233, 522 U.S. 222, 118 S.Ct. 657, 139 L.Ed.2d 580, it is less demanding with respect to choice of laws. We have held that the Full Faith and Credit Clause does not compel ' "a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." ' ") (citing *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722, 108 S.Ct. 2117, 100 L.Ed.2d 743 (1988)) (quoting *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501, 59 S.Ct. 629, 83 L.Ed. 940 (1939)).

FN27.522 U.S. 222, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998).

FN28.*Id.* at 233-35, 118 S.Ct. 657.

FN29.*Id.* at 233, 118 S.Ct. 657.

FN30.*Id.*

FN31. Although it may be possible to collaterally attack a judgment as invalid in the forum state, e.g., when the sister state lacked jurisdiction to effect the order, the validity of the instant New York order is not at issue. The Registrar conceded that the adoption order is a valid and true judgment under New York law.

FN32.*Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229, 80 L.Ed. 220 (1935) ("In numerous cases this court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded....").

FN33.*Baker*, 522 U.S. at 234, 118 S.Ct. 657 ("Full faith and credit, however, does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the even-handed control of the forum law.") (citing *McElmoyle ex rel. Bailey v. Cohen*, 13 Peters 312, 325, 10 L.Ed. 177 (1839)).

FN34.*See, e.g., Hood v. McGehee*, 237 U.S. 611, 615, 35 S.Ct. 718, 59 L.Ed. 1144 (1915) ("There is no failure to give full credit to the adoption of plaintiffs, in a provision denying them the right to inherit land in another State. Alabama is sole mistress of the devolution of Alabama land by descent.") *See also Finstuen*, 496 F.3d at 1156 (collecting authorities from Oklahoma, Montana, North Carolina, Pennsylvania, Florida, Illinois, Massachusetts, New Mexico, and California that all hold adoption judgments are owed full faith and credit). See also the position of the Restatement (First) Conflict of Laws, § 143. Most pertinently, *Louisiana itself* acknowledges that out-of-state adoptions are to be afforded full faith and credit. *Alexander v. Gray*, 181 So. 639, 645 (La.App. 2d Cir.1938).

FN35.47 AM.JUR.2D JUDGMENTS § 465 ("[T]he doctrine of res judicata is a manifestation of the recognition that endless litigation leads to confusion or chaos. It reflects the refusal of the law to tolerate a multiplicity of, or needless, litigation to the harassment and vexation of a party opponent.") Additionally, *res judicata* is a doctrine based on the equitable tradition of estoppel. *See* 47 AM.JUR.2D JUDGMENTS § 466.

FN36.*See Baker*, 522 U.S. at 235, 118 S.Ct. 657 (noting that full faith and credit has a "preclusive" effect on litigation in forum states).

FN37.*Milwaukee County*, 296 U.S. at 276-77, 56 S.Ct. 229 ("The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obli-

gation might be demanded as of right, irrespective of the state of its origin."). *See also generally* Stewart E. Sterk, *The Muddy Boundaries Between* Res Judicata *and Full Faith and Credit,* 58 WASH. & LEE L.REV. 47 (2001).

FN38.*See, e.g.,* *Anierson v. La. Dep't of Transp. & Dev.*, 570 So.2d 51, 54 (La.App. 5th Cir.1990) (discussing some judicially created exceptions to the bar of *res judicata*).

FN39.*See* *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438, 64 S.Ct. 208, 88 L.Ed. 149 (1943) ("We are aware of no ... considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to ... a judgment outside the state of its rendition.").

> There are limited exceptions to the mandate of the Full Faith and Credit Clause that look behind the judgment to original court proceedings-such as attacking the validity of the judgment under the forum state's law-which are inapplicable here and are not advanced by the Registrar.

FN40.*See also* *Finstuen*, 496 F.3d at 1153 (discrediting a similar argument).

FN41.*Baker*, 522 U.S. at 235, 118 S.Ct. 657.

FN42.*Id.* (noting that the Court has struck down decrees by one state that purported to transfer title between parties in another state, even though the judgment was preclusive on the parties themselves) (citing *Fall v. Eastin*, 215 U.S. 1, 30 S.Ct. 3, 54 L.Ed. 65 (1909)). *See also* *Finstuen*, 496 F.3d at 1154.

FN43. The Registrar's argument that Louisiana is not bound because it was not party to the adoption decree is even more specious. The Supreme Court has made abundantly clear that non-parties may be bound by judgments under the Clause. *See, e.g.,* *Johnson v. Muelberger*, 340 U.S. 581, 588-89, 71 S.Ct. 474, 95 L.Ed. 552 (1951) (holding that, under the Clause, a daughter may not challenge the validity of her deceased father's Florida divorce on jurisdictional grounds in New York court when Florida law would not allows such an attack). It is true that the Supreme Court held, in *Estin v. Estin*, 334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561 (1948), that a judgment rendered in another state would only be enforced if the other state had personal jurisdiction over the parties to the judgment. As the Tenth Circuit noted when dismissing an argument similar to the Registrar's, however, *Estin* only applies when one attempts to enforce a judgment *against* a non-party. *See* *Finstuen*, 496 F.3d at 1155. Here, as in *Finstuen*, the Plaintiffs-Appellees are only seeking to be afforded the rights under Louisiana law to which the judgment entitles them. The New York judgment is not, for example, a damage award or injunction against Louisiana or the Registrar.

FN44.*See supra* note 34.

FN45.330 U.S. 610, 67 S.Ct. 903, 91 L.Ed. 1133 (1947). The Registrar's specific citation of authority is to Justice Frankfurter's concurrence.

FN46.*Id.* at 614-15, 67 S.Ct. 903.

FN47.*Id.* (citing *Davis v. Davis*, 305 U.S. 32, 59 S.Ct. 3, 83 L.Ed. 26 (1938); *Williams v. State of North Carolina*, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942)).

FN48.522 U.S. at 234, 118 S.Ct. 657.

FN49.*See generally* Sterk, *supra* note 37, for a discussion of this dichotomy.

FN50.*Baker*, 522 U.S. at 235, 118 S.Ct. 657.

FN51.*See, e.g.,* *Matter of Male Infant D.*, 137 Misc.2d 1016, 1019 523 N.Y.S.2d 369 (New York Family Ct.1987). ("Since certainty and finality in an adoption proceeding

are highly desirable, both from the point of view of the child, who has a substantial interest in a secure home, and from the point of view of the adoptive parents, whose bonding with the child should be unimpeded by fears of possible loss of the child, it is of great importance that an adoption be final when completed and not subject to future attack or controversy.")

FN52. Likewise, the Registrar's argument that adoptions are not "judgments" because they are not the product of adversarial proceedings is wholly without merit. *See supra* note 34 and accompanying text.

FN53.*Baker*, 522 U.S. at 233, 118 S.Ct. 657.

FN54.*Baker*, 522 U.S. at 235, 118 S.Ct. 657.

FN55.*See Finstuen*, 496 F.3d at 1154 (noting that, even though a California judgment is owed full faith and credit by Oklahoma, "[w]hatever rights may be afforded [by virtue of the judgment] flow from an application of Oklahoma law, not California"). *See also McElmoyle ex rel. Bailey v. Cohen*, 13 Peters 312, 325, 10 L.Ed. 177 (1839) (holding judgment may only be enforced as laws of enforcing forum permit).

FN56.*Baker*, 522 U.S. at 224, 118 S.Ct. 657.

FN57.*FDIC v. Abraham*, 137 F.3d 264, 267-68 (5th Cir.1998) (citations omitted).

FN58.*State v. Ste. Marie*, 723 So.2d 407, 409 (La.1998) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 243, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989) (internal citation omitted)).

FN59.*Crescionne v. Louisiana State Police Retirement Bd.*, 455 So.2d 1362, 1363 (La.1984) (citing LA. CIVIL CODE art. 17 which was amended in 1987 to be reassigned as LA. CIVIL CODE ANN. art. 13).

FN60.*See Burmaster v. Plaquemines Parish Gov't*, 982 So.2d 795, 804 (La.2008) ("[E]very word in a statute must be given meaning, if possible, and no word, clause, phrase or sentence of a statute shall be deemed meaningless or surplusage if a construction can be legitimately found that will give force to and preserve every word of the statute.").

FN61.*State v. All Pro Paint & Body Shop, Inc.*, 639 So.2d 707, 711 (citing LA. STAT. ANN. art. II § 2).

FN62.*Id.*

FN63.*Id.*

FN64.*Schwegmann Brothers Giant Super Markets v. McCrory*, 237 La. 768, 112 So.2d 606, 613 (1959) (footnotes omitted).

FN65.*State v. Taylor*, 479 So.2d 339, 343 (La.1985) (emphasis added).

FN66.*All Pro Paint & Body*, 639 So.2d at 711.

FN67.*Crown Beverage Co. v. Dixie Brewing Co.*, 695 So.2d 1090, 1093 (La.App. 4th Cir.1997) ("If a statute can be interpreted in either of two ways, one of which raises a serious question of the statute's constitutionality and one of which does not, then the court should favor the interpretation which avoids the constitutional question.") (citing Norman Singer, SUTHERLAND'S STATUTORY CONSTRUCTION § 45.11 (5th ed. 1992 rev.)).

FN68. The Registrar has in fact described how the application of such unguided discretion might look. In her deposition, the Registrar noted that it has been her policy, when previously faced with a request for a birth certificate for an out-of-state adoption by persons unable to legally adopt in Louisiana, to issue the certificate with only one parent's name. Yet, she cites no statutory authority for this practice other than Louisiana's *in-state* adoption provisions. Certainly nothing in § 40:76 authorizes this practice or indi-

cates that it furthers the legislature's policy with regard to *out-of-state* adoptions.

FN69.*See Sanders v. Department of Health & Human Resources*, 388 So.2d 768, 770 (La.1980) ("If a requirement is so essential to the statutory plan that the legislative intent would be frustrated by non-compliance, then it is mandatory."). *See also* Norman Singer, SUTHERLAND'S STATUTORY CONSTRUCTION § 57.14 (5th ed. 1992 rev.) ("Courts have also stated that where the intent of the legislature was to impose a duty on a public officer rather than a discretionary power, even the word 'may' has been held to be mandatory."). *But see Bannister v. Department of Streets*, 666 So.2d 641, 646 (La.1996) ("[P]rovisions designed to secure order, system, and dispatch in proceedings by guiding the discharge of a governmental official's duties are usually construed as directory even if worded in the imperative, especially when the alternative is harshness or absurdity.").

FN70.LA. CIV.CODE ANN. art. 3520(B) ("A purported marriage between persons of the same sex violates a strong public policy of the state of Louisiana and such a marriage contracted in another state shall not be recognized in this state for any purpose, including the assertion of any right or claim as a result of the purported marriage.").

FN71.455 So.2d at 1363 (emphasis added). The court in *Crescionne* considered Article 17, which was later re-codified as present Article 13. The reassignment "did not change the law." *See* Revision Comments.

FN72.*Crescionne*, 455 So.2d at 1364.

FN73. WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (1989 ed.).

FN74.*Id.*

FN75. Likewise, the Registrar's argument that LA.REV.STAT. ANN. § 40:34(D) prohibits altering vital birth records in violation of state law is without force; the out-of-state adoption provision, LA.REV.STAT. ANN. § 40:76, expressly requires the "adoptive parents" to be named on the new, corrected birth certificate, and it controls. *See, e.g., Morton v. Mancari*, 417 U.S. 535, 550-51, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.").

FN76. Because we affirm the district court's grant of summary judgment on these grounds, we decline to address Plaintiffs-Appellees' equal protection arguments.

C.A.5 (La.),2010.
Adar v. Smith
--- F.3d ----, 2010 WL 550420 (C.A.5 (La.))

END OF DOCUMENT

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court

[redacted]

Docket No. FR [redacted]

D[redacted] W. M[redacted] A[redacted]
and
J[redacted] A[redacted], Plaintiffs

v.

K[redacted] S[redacted] E[redacted] S[redacted]
and
B[redacted] F[redacted] MEDICAL CENTER, Defendants

JUDGMENT

Upon the Complaint filed on September 29, 2009, this court having jurisdiction and being an appropriate venue for this action by virtue of the fact that the Defendants reside in F[redacted] County, the assented-to Motion filed jointly by the parties on September 29, 2009 is, after consideration of the assented-to Complaint to Establish Paternity and Legal Parentage, Affidavits of all parties and of M[redacted] D[redacted] MD, ALLOWED. All parties having agreed to Judgment, it is hereby ORDERED AND ADJUDGED, without hearing, that:

1. the Plaintiffs, D[redacted] W. M[redacted] A[redacted] and J[redacted] B[redacted] A[redacted], a married couple, are the legal parents of the children due to be born to K[redacted] S[redacted] on or about November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted] Massachusetts, created by the union of D[redacted] W. M[redacted] A[redacted] sperm and the ova of an anonymous egg donor, of which the resulting embryos were transferred into the uterus of the Defendant, K[redacted] S[redacted], a gestational carrier.

2. D[redacted] W. M[redacted] A[redacted], born on [redacted] in [redacted], whose S[redacted] number is [redacted], is the biological father, and to be declared the legal father of the children due to be born to K[redacted] S[redacted] on or around November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted] Massachusetts, and he shall be treated as same by any hospital or medical professional making decisions concerning the children.

3. J[redacted] B[redacted] A[redacted] born on [redacted] in [redacted], whose Social Security number is [redacted], and married to D[redacted] W.

TRUE COPY ATTESTED
John F. Monigan, Register

8C4

M[redacted] A[redacted], is to be declared the legal mother of the children due to be born to K[redacted] S[redacted] on or around November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted], Massachusetts, and she shall be treated as same by any hospital or medical professional making decisions concerning the children.

4. Defendant K[redacted] S[redacted] born [redacted], whose Social Security number is [redacted], is not the natural, biological or legal mother of the children due to be born to her on or around November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted], Massachusetts. Defendant E[redacted] S[redacted], born on [redacted], whose Social Security number is [redacted], is not the natural, biological or legal father of the children due to be born to K[redacted] S[redacted] on or around November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted], Massachusetts.

5. as the legal parents of the children, D[redacted] W. M[redacted] A[redacted] and J[redacted] B[redacted] A[redacted] have the rights and responsibilities attendant thereto, including those of care and sole custody of the children. The informant shall be the father, D[redacted] W. M[redacted] A[redacted]

6. financial responsibility for the children due to be born to K[redacted] S[redacted] on or around November 10, 2009 at B[redacted] F[redacted] Medical Center, [redacted], Massachusetts shall rest solely with the Plaintiffs, D[redacted] W. M[redacted] A[redacted] and J[redacted] B[redacted] A[redacted], as legal parents of said children.

7. the reporter of birth certificates at B[redacted] F[redacted] Medical Center, [redacted], Massachusetts, shall complete, per instructions from the State Registry of Vital Records and Statistics, a "record of birth" created pursuant to G.L. c.46, §§ 1, 2 and 3A, also known as a birth certificate, for the children due to be born to the Defendant, K[redacted] S[redacted], a married woman, on or around November 10, 2009, which contains, in addition to all other required information, the information about the children's parents:

   a. D[redacted] W. M[redacted] A[redacted] (date of birth: [redacted], place of birth: [redacted], Social Security number: [redacted], surname at birth or adoption: A[redacted], to be named as the biological and legal father. The place of residence is [redacted]

   b. J[redacted] B[redacted] A[redacted] name at the time of birth, J[redacted] B[redacted] (date of birth: [redacted], place of birth: [redacted], Social Security number: [redacted], to be named as the legal mother. The place of residence is [redacted]

TRUE COPY ATTESTED
John F. Meegan, Register

8. the Reporter shall forward the completed certificates and a certified copy of this judgment to the Greenfield Registrar or the city or town where the birth occurs, if outside of Boston, Massachusetts.

9. B[redacted] Medical Center is hereby ordered to assist the City Clerk in any way customary. B[redacted] Medical Center shall make sure any hospital records it has for the children to be born to K[redacted] on or around November 10, 2009 reflect legal parentage as declared by this court.

10. B[redacted] Medical Center is ordered to treat D[redacted] W. M[redacted] A[redacted] as the father and J[redacted] A[redacted] as the legal mother for all purposes, legal or otherwise, of the children to be born to K[redacted] on or around November 10, 2009, and to permit either or both of them to make any decisions required by the hospital and medical staff concerning the children. All health care providers are to be directed to permit D[redacted] W. M[redacted] A[redacted] and J[redacted] A[redacted] to be in the delivery room for the birth of the children to be born to K[redacted] on or around November 10, 2009, to issue them identification bands and/or any other required items necessary to allow them access to the said children in the hospital, to allow them to name the children, to grant them physical custody of the children upon discharge, and to seek their consent regarding any medical care provided to the children.

11. the Reporter of birth certificates at the B[redacted] Medical Center, [redacted], Massachusetts shall forward to the State Registrar of Vital Records and Statistics the identity of and statistical information regarding the woman who delivers the children, and such other information concerning her, including her prenatal care, labor and delivery, and postpartum care and condition, and the statistical information regarding the anonymous egg donor, where possible, as is required by the Commissioner of the Massachusetts Department of Public Health for administrative, research, and statistical purposes, pursuant to G.L. c.111, §24B.

Date: September 29, 2009

Stephen M. Reinaud, Justice

DOCKETED: Oct. 2, 2009

Orders\09E0017mch

TRUE COPY ATTESTED

Page 3 of 3

[redacted]

8

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

M[redacted] N[redacted], K[redacted] N[redacted] and K[redacted] F[redacted]

Petitioners,

vs.

I[redacted] Hospital,

Respondent.

Case No. 09-09-R-802

ORDER DECLARING THAT FERTILITY PROCEDURE IS A VALID GESTATIONAL CARRIER ARRANGEMENT UNDER NORTH DAKOTA LAW AND DECLARING PETITIONERS M[redacted] N[redacted] AND K[redacted] N[redacted] AS NATURAL PARENTS AND DESIGNATION OF NAMES ON BIRTH CERTIFICATES

This matter came before this Honorable Court upon the Petition of M[redacted] N[redacted] K[redacted] N[redacted] and K[redacted] F[redacted] and the Consent and Waiver of Notice of Hearing of Respondent I[redacted] Hospital. From all of the foregoing, the Court finds that the donated egg of an unknown egg donor provided through M[redacted] Reproductive Medicine is the egg of the intended parents, Petitioners M[redacted] N[redacted] and K[redacted] N[redacted], and that the present situation, involving the use of the sperm of Petitioner M[redacted] N[redacted] a donated egg from an unknown egg donor, and a carrier for the pregnancy, K[redacted] F[redacted], is a valid gestational carrier arrangement as defined by North Dakota law and is not a surrogacy arrangement. The Court further finds that if K[redacted] F[redacted] is impregnated through fertilization procedures performed at M[redacted] Reproductive Medicine utilizing an egg donated by an unknown egg donor to Petitioners M[redacted] N[redacted] and K[redacted] N[redacted], the sperm of M[redacted] N[redacted] and the subsequent transfer of the resultant embryo to K[redacted] F[redacted] uterus, that K[redacted] N[redacted] will be declared the mother of the child, and that M[redacted] N[redacted] will be declared the father of the child. Accordingly, based on the foregoing,

FILED CLERK OF DISTRICT COURT
AUG 14 2009
CASS COUNTY, ND

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the donated egg of an unknown egg donor provided through M[redacted] Reproductive Medicine is the egg of the intended parents, Petitioners M[redacted] N[redacted] and K[redacted] N[redacted], and that the present situation involving the use of the sperm of Petitioner M[redacted] N[redacted], a donated egg from an unknown egg donor, and a carrier for the pregnancy, K[redacted] F[redacted], is a valid gestational carrier arrangement as defined by North Dakota law and is not a surrogacy arrangement.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Petitioners M[redacted] N[redacted] and K[redacted] N[redacted] be shown as the father and mother of the child with whom K[redacted] F[redacted] will carry following the fertility procedures performed at M[redacted] Reproductive Medicine and that the birth certificate so state, and that I[redacted] Hospital shall be and is relieved of any and all liability to any and all of the parties incurred solely as a result of the hospital's recognition of K[redacted] N[redacted] as the mother and M[redacted] N[redacted] as the father of the child with whom K[redacted] F[redacted] will carry as a gestational carrier. I[redacted] Hospital shall act in accordance with this Order and recognize K[redacted] N[redacted] as the mother and M[redacted] N[redacted] as the father of the baby with whom K[redacted] F[redacted] will be impregnated, granting them all rights and privileges pertaining to this child as if K[redacted] N[redacted] had given birth to the child (including the right to remove the child from the hospital).

IT IS FURTHER ORDERED that the clerk of court shall place the Court's record of the proceedings of this matter under seal for the protection of the privacy of the parties to this matter as well as the privacy of persons who may be affected by the matters addressed herein in the future. No person shall have access to the file of this matter without prior approval of this Court, except that the parties to this matter shall have access to all pleadings, orders, exhibits or other documents in this file of this suit (including obtaining certified copies of any pleading or

order) and shall have the right to the use of such documents to complete any matters addressed by this proceeding.

Dated this 14 day of August, 2009.

BY THE COURT:

Judge of the District Court

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

CIV. 09- 2629

R[redacted] D[redacted] and,
M[redacted] L[redacted]

Petitioners,

v.

JUDGMENT OF PARENTAGE

K[redacted] M[redacted]
J[redacted] M[redacted] and
L[redacted] V[redacted]

Respondents.

Pursuant to the stipulation filed between the parties, and the evidence presented, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Petitioner R[redacted] D[redacted] is hereby declared to be a legal parent and Father of any child born to Respondent K[redacted] M[redacted] on or about June 22, 2009.

2. Petitioner M[redacted] D[redacted] is hereby declared to be a legal parent and Mother of any child born to Respondent K[redacted] M[redacted] on or about June 22, 2009.

3. Respondent L[redacted] V[redacted] is declared not to be the mother of any child born to Respondent K[redacted] M[redacted] on or about June 22, 2009.

4. Respondent K[redacted] M[redacted] a gestational surrogate, is declared not to be the mother of any child born to Respondent R[redacted] M[redacted] on or about June 22, 2009.

5. Respondent J[redacted] M[redacted] is declared not to be the father of any child born to Respondent K[redacted] M[redacted] on or about June 22, 2009.

6. Legal and physical custody of any child born to Respondent K[redacted] M[redacted] on or about June 22, 2009, shall be awarded to Petitioners R[redacted] and M[redacted] D[redacted] immediately upon the birth of said child.

7. The Court hereby directs any physician and/or medical facility and/or medical personnel providing care to a child born to Respondent K[redacted] M[redacted] a gestational surrogate, on or about June 22, 2009, to communicate directly with either R[redacted] or M[redacted] D[redacted] regarding all issues relevant to the care of the infant child, and allow R[redacted] and M[redacted] D[redacted] access to all medical records and information regarding the infant child, and acknowledge and accept R[redacted] and M[redacted] D[redacted] as the child's parents and as individuals authorized to make all medical or other necessary care decisions for the child.

8. The medical facility where Respondent K[redacted] M[redacted] gives birth to any child on or about June 22, 2009, is hereby directed to prepare the original birth certificate in accordance with the terms of this judgment as follows:

a. Name the child in accordance with the directions given by Petitioners R[redacted] and M[redacted] D[redacted];

b. List the legal name of Petitioner R[redacted] D[redacted] in the space provided for "Father/Parent" and record the information given by him regarding his place and date of birth;

c. List the legal name of Petitioner M[redacted] D[redacted] in the space provided for "Mother/Parent" and record the information given by her regarding her place and date of birth;

d. Allow either R[redacted] or M[redacted] D[redacted] or the birth certificate clerk at the medical facility to sign the birth certificate;

9. Petitioners R[redacted] and M[redacted] O[redacted] shall have legal and physical custody of the child born to K[redacted] M[redacted] on or about June 22, 2009. When medically appropriate, said child may be discharged from the hospital to the care, custody and control of R[redacted] or M[redacted] D[redacted].

10. The Stipulation signed by all parties and filed with the Court is hereby approved and adopted by this Court as if fully set forth herein.

Dated at Sioux Falls, South Dakota, this 11th day of June, 2009.

BY THE COURT:

Honorable Kathleen Caldwell
Circuit Court Judge

ATTEST: Charles Fechner, Clerk of Courts

By: GLENDA HAMMOND
DEPUTY

STATE OF SOUTH DAKOTA, ss.
MINNEHAHA COUNTY
I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.
JUN 11 2009
Clerk of Courts, Minnehaha County
By: _____ Deputy

FILED
JUN 11 2009
Minnehaha County, S.D.
Clerk Circuit Court

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

In the matter of the Petition of:

S K-S and Y K-S

and

R R and P S

Civil Case No. 24637M

ORDER

Upon consideration of Petitioners' Consent Petition for Declaration of Parentage and its supporting attachments, it is hereby ORDERED that:

1. Petitioners S K-S and Y K-S are the sole legal parents of M K-S and G K-S born to Gestational Carrier R R on September 18, 2009. As such, Intended Parents shall have full legal rights and shall both be treated as the legal and biological parents of the Children for all purposes under the law.

2. Petitioner R R, who served as Gestational Carrier for the Intended Parents, is *not* the legal, biological or genetic mother of M K-S or G K-S and shall have no corollary rights.

3. Petitioner P S, who is the Husband of Gestational Carrier R R, is *not* the legal, biological or genetic father of M K-S or G K-S and shall have no corollary rights.

4. All health care providers shall acknowledge and treat S K-S and Y K-S as the sole legal parents of M and G K-S. For example:

(1) S K-S and Y K-S shall have full decision-making authority over the Children, including but not limited to the exclusive right to consent to medical treatment as provided by law and full access to the Children's medical records following birth and at all times thereafter;

(2) S K-S and Y K-S shall have exclusive legal and physical custody of the Children; and

ENTERED

OCT 15 2009

Clerk of the Circuit Court
Montgomery County, Md.

(3) All medical records and official documentation shall refer to the Children as M[redacted] K[redacted]-S[redacted] and G[redacted] K[redacted]-S[redacted] the Children shall not be identified by the surname "R[redacted]".

5. The Children shall be entitled to receive the benefits that any child born to Petitioners S[redacted] K[redacted]-S[redacted] and Y[redacted] K[redacted]-S[redacted] would receive, including but not limited to inheritance, government benefits as applicable, and insurance.

6. The Department of Vital Records is ordered to issue Birth Certificates that list S[redacted] K[redacted]-S[redacted] and Y[redacted] K[redacted]-S[redacted] as the sole parents of each of the Children. The Gestational Carrier shall not be listed as the Mother on either of the Birth Certificates. To this end, the Department of Vital Records shall change the name headers on the new birth certificates to read "Parent" and "Parent" instead of "Mother" and "Father." S[redacted] K[redacted]-S[redacted] and Y[redacted] K[redacted]-S[redacted] shall each be listed as "Parent" and "Parent" on the Birth Certificates.

7. Upon consideration of the foregoing Petition, and the Affidavits, Acknowledgments and Stipulation attached thereto, it is the determination of this Court that S[redacted] K[redacted]-S[redacted] and Y[redacted] K[redacted]-S[redacted] are the legal parents of M[redacted] and G[redacted] K[redacted]-S[redacted], the Children delivered by Gestational Carrier R[redacted] R[redacted] on September 19, 2009. It is hereby Ordered and Decreed that any and all copies of the birth records of said Children shall reflect the parentage of S[redacted] K[redacted]-S[redacted] and Y[redacted] K[redacted]-S[redacted] whenever parentage appears on such document.

8. The Clerk of the Court shall provide FIVE certified copies to D[redacted] H[redacted], Intended Parents' counsel so that she can provide copies to Petitioners, Vital Records, and any necessary legal authorities or medical care providers.

9. Good cause exists to deem this case confidential and sealed from the public, so no person may examine the court file except the parties and any attorney appointed by the parties to act on their behalf.

In addition, this Court is requested to grant such other and further relief as the nature of this cause may require.

Judge

JOHN W. DEBELIUS, III

Dated: Oct. 14 2009

JOHN W. DEBELIUS, III

ENTERED

OCT 15 2009

Clerk of the Circuit Court
Montgomery County, Md.

Not Reported in A.2d, 2008 WL 2745130 (Conn.Super.), 45 Conn. L. Rptr. 725
(Cite as: 2008 WL 2745130 (Conn.Super.))

C

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Waterbury.
Peter GRIFFITHS et al.
v.
Kenisha TAYLOR et al.
No. FA084015629.

June 13, 2008.

Background: Two men in a same-sex domestic partnership sought declaratory judgment that gestational carrier agreement they had with woman who was surrogate for the baby they intended to parent was valid, such that the men's names should be placed on child's birth certificate as legal parents.

Holding: The Superior Court, Judicial District of Waterbury, Lloyd Cutsumpas, Judge Trial Referee, as a matter of first impression, held that the gestational carrier agreement was valid and the child birth certificate should state men's names, and not the surrogate's, as legal parents to the child.
As ordered.

West Headnotes

Children Out-Of-Wedlock 76H ⚿15

76H Children Out-Of-Wedlock
76HI Status in General
76Hk15 k. Assisted Reproduction; Surrogate Parenting. Most Cited Cases

Health 198H ⚿397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases
Gestational carrier agreement between woman who was surrogate mother to unborn child and two men who were in a same-sex registered domestic partnership was valid and enforceable, such that the Department of Public Health was required to issue a replacement birth certificate after child's birth that removed the surrogate's name as mother and named the two men as legal parents of the child, without proof of biological parentage or necessity of adoption by either of the men, even though only one of the men could have been the biological father of the child and it was not known which. C.G.S.A. § 7-48a.
Victoria T. Ferrara-Loris, Fairfield, for Peter Griffiths, Angel Naranjo.

Carmody & Torrance, Waterbury, for The Waterbury Hospital.

Jacqueline Suzanne Hoell, Hartford, for Connecticut Dept. of Health.

CUTSUMPAS, J.T.R.

*1 Two homosexual men, registered domestic partners in the State of New York, have entered into a gestational carrier agreement with an unrelated woman from Waterbury. They now seek to have the court validate their agreement and to order their names placed on the birth certificate as intended parents of the unborn child. The woman surrogate also seeks to have the agreement validated as well as a declaration that she is not the mother of the child she carries. The State of Connecticut objects claiming that information on birth certificates must be accurate and that only biological or adoptive parents can have their names placed on birth certificates. Such is the subject matter of birth certificates in the contemporary scientific society we now inhabit.

At the outset, it should be noted that this case appears to be one of first impression. It would have been preferable if the legislative branch had given specific statutory guidance to cover situations such as the one presented in the instant case and a variety of other gestational carrier scenarios. Absent that guidance, this court of equity is left to fashion a remedy for the litigants using what statutes and previously decided cases are available regarding this evolving subject matter.

Not Reported in A.2d, 2008 WL 2745130 (Conn.Super.), 45 Conn. L. Rptr. 725
(Cite as: 2008 WL 2745130 (Conn.Super.))

PROCEDURAL HISTORY AND FACTS

On March 4, 2008, the plaintiffs, Peter Griffiths and Angel Naranjo, initiated this action by filing a complaint against the defendants, Kenisha Taylor, Waterbury Hospital and the Department of Health (hereinafter the department). The plaintiffs filed an amended complaint on May 12, 2008, in which they alleged that they entered into a gestational carrier agreement with Taylor that provided for the transfer of two embryos, one consisting of the sperm of Griffith and the ova of an egg donor and one consisting of the sperm of Naranjo and the ova of an egg donor, into Taylor's uterus.[FN1] The plaintiffs asserted that Taylor subsequently became pregnant in November of 2007, but they are unsure as to which embryo developed into the fetus. The plaintiffs claimed that Griffiths, "Father A," is the intended father of the unborn baby and Naranjo. "Father B," is also the intended father of the unborn baby. The plaintiffs, therefore, requested that a judgment be entered (1) validating the gestational agreement, (2) declaring them to be the parents of the unborn child and (3) ordering the department to issue a replacement birth certificate with their names on it.

FN1. Griffiths testified that the egg donors were Naranjo's sister and Griffiths' niece. Under General Statutes § 45a-775, egg donors have no rights or interest in any child born as a result of artificial insemination.

On April 10, 2008, the plaintiffs filed a motion for order to show cause why the three forms of relief requested in their petition should not be granted. On April 30, 2008, the department filed an objection to the plaintiffs' motion to show cause, which was joined by Waterbury Hospital. On May 12, 2008, the court conducted a hearing at which the two plaintiffs and the defendant gestational carrier testified, two exhibits (the gestational carrier agreement and the affidavit of Michael B. Doyle M.D.) were admitted without objection, and the lawyers for all parties were heard at oral argument. All parties stipulated that the court could render its decision based upon the testimony and evidence produced at the hearing, oral argument of counsel, and the briefs presented before and after the filing of the amended complaint. No further court proceedings were requested.

*2 On May 15, 2008, the Department filed an objection to the plaintiffs' amended complaint and motion to show cause. In its objection, the department incorporated its original objection to the motion to show cause and requested that the court deny the plaintiffs' petition to declare Naranjo and Griffiths to be the fathers of the unborn child and the plaintiffs' request that the court order the department to include both Griffiths and Naranjo on a replacement birth certificate. The department asserted that the court must first receive evidence, in the form of a genetic test, as to which plaintiff is the biological father of the child. Once that is determined, the department will subsequently issue a replacement birth certificate with that plaintiff's name on it only. The remaining plaintiff will then have to go through the adoption process in order to legalize his parental rights.

LEGISLATIVE HISTORY

Connecticut currently lacks a gestational carrier agreement statute. However, General Statutes § 7-48a does provide in relevant part that "each birth certificate shall be filed with the name of the birth mother recorded. The Department of Public Health shall create a replacement certificate in accordance with an order from a court of competent jurisdiction ..." Although the text of the statute fails to indicate whether it pertains to gestational agreements, the legislative history of § 7-48a reveals that the legislature did, in fact, intend this statute to encompass such agreements.

Section 7-48a was enacted in 2001 as Public Acts 2001, No. 01-163, § 28. When the bill from which the statute derived, House Bill 6569, § 28, was first introduced, it provided extensive language about gestational agreements. It specifically provided for the preparing of a birth certificate by the Department of Health with the intended parents, under a court approved gestational agreement, named as the parents of the child. For reasons that are unclear, this section of the bill was amended by the Legislative Commissioner's Office # 7145 on May 24, 2001, to merely provide: "On and after January 1, 2002, each birth certificate shall contain the name of the birth mother, except by the order of a court of competent jurisdiction." In the House proceedings on the amendment, Representative Eberle stated: "This amendment makes a number of technical corrections and changes ... [I]t removes the language on gestational agree-

ments and simply substitutes the requirement that the mother on the birth certificate shall be the birth mother unless-except by order of a court of competent jurisdiction." [FN2] 44 H.R. Proc., Pt. 11, 2001 Sess., p. 3719. Therefore, the original version of § 7-48a only provided that single sentence.

FN2. Representative Eberle, however, did not discuss the reasons for the amendment.

In 2004, Public Acts 2004, No. 04-255 amended § 7-48a by adding that aside from containing the name of the birth mother, except by order of a court of competent jurisdiction, the birth certificate must also "be filed with the name of the birth mother recorded. Not later than forty-five days after receipt of an order from a court of competent jurisdiction, the Department of Public Health shall create a replacement certificate in accordance with the court's order. Such replacement certificate shall include all information required to be included in a certificate of birth of this state as of the date of the birth. When a certified copy of such certificate of birth is requested by an eligible party, as provided in [General Statutes §]7-51, a copy of the replacement certificate shall be provided. The department shall seal the original certificate of birth in accordance with the provisions of subsection 2 of [General Statutes §]19a-42. Immediately after a replacement certificate has been prepared, the department shall transmit an exact copy of such certificate to the registrar of vital statistics of the town of birth and to any other registrar as the department deems appropriate. The town shall proceed in accordance with the provisions of [§]19a-42."

*3 In 2005, Public Acts 2005, No. 05-272 amended § 7-48a for the second time by deleting the language "contain the name of the birth mother, except by the order of a court of competent jurisdiction, and ..." [FN3]

FN3. In the House procedures on what became Public Act 05-272, Representative Sayers provided: "This Bill ... changes the procedures for amending a birth certificate in the case of a gestational agreement ..." 48 H.R. Proc., Pt. 30, 2005 Sess. p. 9220. Wendy Furniss, from the Department of Health, provided the department's view on the bill: "Section 1 of this bill will clarify ... the procedure for amending a birth certificate in the case of a gestational agreement. The language '... contain the name of the birth mother, except by the order of a court of competent jurisdiction ...' is being deleted to make it clear that the hospital shall record the name of the birth mother on the birth record regardless of whether a court order has been issued. It is the responsibility of the Department of Public Health to follow up on the court order and subsequently make a replacement birth record to reflect the names of the intended parent(s)." Conn. Joint Standing Committee Hearings, Public Health, Pt. 10, 2005 Sess., p. 2943.

In 2007, Public Acts 2007, No. 07-252 amended § 7-48a a third time, which is the current version of the statute, to read as follows: "On and after January 1, 2002, each birth certificate shall be filed with the name of the birth mother recorded. The Department of Public Health shall create a replacement certificate in accordance with an order from a court of competent jurisdiction not later than forty-five days after receipt of such order or forty-five days after the birth of the child, whichever is later. Such replacement certificate shall include all information required to be included in a certificate of birth of this state as of the date of the birth. When a certified copy of such certificate of birth is requested by an eligible party, as provided in [§]7-51, a copy of the replacement certificate shall be provided. The department shall seal the original certificate of birth in accordance with the provisions of subsection (c) of [§]19a-42. Immediately after a replacement certificate has been prepared, the department shall transmit an exact copy of such certificate to the registrar of vital statistics of the town of birth and to any other registrar as the department deems appropriate. The town shall proceed in accordance with the provisions of [§]19a-42." This is the current version of § 7-48a.

Finally, the conclusion that the legislative history reveals an intent to encompass gestational agreements, is further supported by a very recent amendment to § 7-48a. Public Acts 2008. 08-184 amends § 7-48a to read: "On and after January 1, 2002, each birth certificate shall be filed with the name of the birth mother recorded. [The] *If the birth is subject to a gestational agreement, the* Department of Public Health shall create a replacement certificate in accordance with an order from a court of competent jurisdiction not later than forty-five days after receipt of

such order or forty-five days after the birth of the child, whichever is later. Such replacement certificate shall include all information required to be included in a certificate of birth of this state as of the date of the birth ..." This law, however, does not take effect until October 1, 2008.

In the discussion of what became Public Act 08-184 by the public health committee on March 3, 2008, J. Robert Galvin, the Commissioner of Public Health, testified: "The revised language ... makes it clear that ... § 7-48a pertains to births that are subject to a gestational agreement. Without this revision, it is difficult to interpret this statute."

From this legislative history, it is clear that the legislature contemplated that a Superior Court would have the authority, under § 7-48a, to enter a judgment on the validity of a gestational agreement and that where there is a valid gestational agreement, the court may then order the Department of Health to issue a replacement birth certificate with the names of the intended parents on it. A review of relevant case law also supports this position.

CASE LAW

*4 In *Hatzopoulos v. Murray,* Superior Court, judicial district of New Haven, Docket No. FA 02 046329 (February 15, 2002, Gruendel, J.), on the plaintiffs' motion that they be declared the parents of the unborn babies being carried by the defendant, a gestational carrier, the court, Gruendel, J., ordered the plaintiffs to be adjudged the parents and validated the gestational agreement between the parties. The court further ordered that the hospital [FN4] place the plaintiffs' names on the birth certificates of the children.[FN5] Moreover, in *Velardo v. Murray,* Superior Court, judicial district of New Haven, Docket No. FA 04 04805648 (January 22, 2004.Kenefick, J.), the court used Judge Gruendel's opinion, verbatim, in validating a gestational agreement and ordering the hospital to place the plaintiffs' names on the birth certificate of the child being carried by the gestational carrier. [FN6]

FN4. This case was decided prior to the 2005 amendment to § 7-48a, which made it clear that in the case of a gestational agreement, the hospital must record the name of the birth mother on the original birth certificate regardless of whether a court order has been issued. It is then the Department of Health's responsibility to follow up on the court order and subsequently make a replacement birth certificate to reflect the names of the intended parents. See the above provided legislative history.

FN5. See also, *Friend v. Lugo,* Superior Court, judicial district of New Haven, Docket No. CV 02 0467901 (August 20, 2002, Gruendel, J .) (same); and *Vogel v. Kirkbride,* Superior Court, judicial district of New Haven, Docket No. FA 02 0471850 (December 18, 2002, Gruendel, J.) (same).

FN6. This case was also decided prior to the 2005 amendment to § 7-48a. See footnote 4.

In 2005. the court in *Dicomo v. Hopkins,* Superior Court, judicial district of New Haven, Docket No. FA 05 4007885 (March 7, 2005, Munro, J.), held a gestational agreement to be valid and declared and adjudged the plaintiffs to be the biological and legal parents of the unborn baby. The court further directed the Department of Health "to create, upon receipt of said information, a certificate followed by a replacement certificate for the child as authorized by ... § 7-48 naming [the plaintiffs] as the parents of said child ..." [FN7]

FN7. See also, *Caird v. Lugo,* Superior Court, judicial district of New Haven, Docket No. FA 06 4017776 (February 2, 2006, Frazzini, J.) (same); *Caliendo v. Mariano,* Superior Court, judicial district of New Haven, Docket No. FA 07 4023465 (January 4, 2007, Frazzini, J.) (same); and *Goad v. Arel,* Superior Court, judicial district of New Haven, Docket No. FA 07 4025574 (May 24, 2007, Frazzini, J.) (same). In addition, the court in *Wray v. Samuel,* Superior Court, judicial district of New Haven, Docket No. FA 07 4024921 (April 20, 2007, Kenefick, J.), also issued the same order in a gestational carrier agreement case.

Finally, the most recent case involving gestational carrier agreements, *DeBernardo v. Gregory,* Superior Court, judicial district of Tolland, Docket No. FA 07

4007658 (November 7, 2007, Shluger, J.) (44 Conn. L. Rptr. 553), contains the most involved discussion on this legal issue. In *DeBernado v. Gregory, supra,* at 553, the intended parents of an unborn child instituted an action against the gestational carrier of the child to enforce a gestational carrier agreement entered into by the parties. The intended parents sought a declaration of their parental rights over the child and an order directing the Department of Health to file a replacement birth certificate for the child with their names on it. *Id.* The court began its discussion by stating: "There is scant authority in Connecticut approving gestational carrier agreements ... The Uniform Parentage Act of 2002, not yet adopted in Connecticut, sets out useful guidelines for a court to validate a gestational agreement and to declare the intended parents to be the actual parents of the child. That act requires that the court make a finding that residency requirements have been satisfied, that all parties have voluntarily entered into the agreement and understand its terms, that adequate provision has been made for all reasonable health expenses of the child and carrier parent and that the consideration to be paid to the carrier parent is reasonable." *Id.,* at 553-54. The court, after a review of the aforementioned cases, the language of § 7-48a and the gestational agreement at issue, declared the agreement to be valid, enforceable, irrevocable and of full legal effect. *Id.,* at 554-55. The court then ordered the Department of Health to create a replacement birth certificate for the child as authorized by § 7-48a. *Id.,* at 555.

DISCUSSION

*5 In the present case, the department distinguishes these aforementioned cases on the ground that the plaintiffs here are a homosexual couple. The department, citing *Doe v. Doe,* 244 Conn. 403, 710 A.2d 1297 (1998), maintains that to be considered a parent of the child, that person must have either conceived the child, meaning here that the results of a genetic test indicate a ninety-nine percent or greater probability that at least one of the plaintiffs is the father of the child, or adopted the child. The department asserts that because it is impossible for both plaintiffs to be a parent of the unborn child under this definition, and because no genetic marker test has been performed to reveal the biological father, neither of the plaintiffs can be adjudged to be a parent of the unborn child or be named as a parent on a replacement birth certificate. "[O]ur vital records require that information recorded on birth certificates be accurate. To faithfully perform this mandate, the Department must know to a high degree of probability that the person that is registering as a child's father is indeed the father." The department adds that in addition, despite Taylor's testimony that she adhered to the terms of the contract and abstained from sex during the time period surrounding the conception, she may have been impregnated by another party altogether, and therefore, a genetic marker test should absolutely be required to confirm the biological father.

The plaintiffs respond that there are cases in Connecticut in which a court found a homosexual couple to be the legal parents of a child, pursuant to a gestational carrier agreement. The plaintiffs further assert that the department's contention that whoever proves to be unrelated to the child after a genetic marker test should then be forced to adopt the child is contrary to the intent of the legislature, per Representative Sherer's remarks when § 7-48a was being amended in 2004.[FN8] Finally, the plaintiffs argue that the definition of parent provided in *Doe v. Doe, supra,* 244 Conn. at 403, 710 A.2d 1297, is inapplicable because it was adopted prior to the passage of § 7-48a.

> FN8. Representative Sherer stated: "A number of years ago ... this legislature changed the birth certificate registration law to permit a court of competency restriction being the Superior Court to find parentage in accordance with the biological relationship to a child rather than the birth mother if she wasn't the biological mother. And over the course of the years there's been confusion as to how to effectuate the birth certificate. So the language in this amendment pretty much clarifies what to do. It says that after the court orders parentage that within 45 days after the presentation of the court order the Department of Public Health will issue a replacement birth certificate and the original birth certificate with all the required statistical information would remain confidential ... 47 H.R. Proc., Pt. 14, 2004 Sess., p. 4456-57. There's been the difficult situation where due to the birth being, the parents not being the birth parents the only way to obtain a new birth certificate would be to go to probate court and basically adopt their own

> child, which no one really thinks is the right thing to do." 47 H.R. Proc., *supra,* p. at 4459.

It is true that in the majority of the aforementioned cases, the egg and the sperm used to create the embryo implanted in the gestational carrier's uterus belonged to heterosexual intended parents (husband and wife); thus, the plaintiffs in those cases were both biologically related to the unborn child. Yet, in *Vogel v. Kirkbride, supra,* Superior Court, Docket No. FA 02 0471850, the plaintiffs who sought the enforcement of the gestational agreement and a replacement birth certificate were, in fact, two males: Andrew Vogel and his partner, Donald Savitz. The court declared them *both* to be the legal parents of the child, validated the gestational agreement and ordered a replacement birth certificate, just as it had done in the two gestational carrier agreement cases it had heard earlier that year, *Hatzopoulos v. Murray, supra,* Superior Court, Docket No. FA 02 046329, and *Friend v. Lugo, supra,* Superior Court, Docket No. CV 02 0467901, both of which involved a heterosexual couple.

*6 In addition, the court finds the department's argument that, pursuant to *Doe v. Doe, supra,* 244 Conn. at 435-36, 710 A.2d 1297, only those who conceive a child or adopt a child can be considered to be a parent of that child under Connecticut law, to be inaccurate. In Connecticut, a man can also be adjudged to be a parent of the child by way of statutory paternity provisions. *Remkiewicz v. Remkiewicz,* 180 Conn. 114, 429 A.2d 630 (1980), rev'd on other grounds, *W. v. W.,* 248 Conn. 487, 728 A.2d 1076 (1999). "The defendant was not [the child's] parent because he was not her biological father, he was not her father by adoption, nor was he adjudged to be her father by a judgment of [a court] in a paternity pleadings brought under General Statutes ... § 46b-160[FN9] or by a formal acknowledgment of paternity filed under ... § 46b-172." [FN10] *Id.,* at 117, 728 A.2d 1076. Under both §§ 46b-160 and 46b-172, a man may be declared to be the father of a child without genetic testing. See *Hjarne v. Martin,* Superior Court, judicial district of New London, Docket No. FA 00 0631333 (May 7, 2002, Lifshitz, J.) (man who knew that he was not the child's father signed a parentage statement in which he acknowledged that he was the father of the newly born child; a birth certificate was then issued naming him as the father).

FN9.Section 46b-160 provides in relevant part: "(a)(1)(A) Proceedings to establish paternity of a child born or conceived out of lawful wedlock ... shall be commenced by the service on the putative father of a verified petition of the mother or expectant mother ... (2) The verified petition, summons and order shall be filed in the superior court for the judicial district which either she or the putative father resides ... (3)(A) The court ... shall cause a summons ... to be issued, requiring the putative father to appear in court at a time and place as determined by the clerk ... to show cause why the request for relief in such petition should not be granted ... (4) If the putative father fails to appear in court at such time and place, the court ... shall hear the petitioner and, upon a finding that process was served on the putative father, shall enter a default judgment of paternity against such father and such other orders as the facts may warrant ..."

FN10.Section 46b-172(a)(1) provides in relevant part that "[i]n lieu of or in conclusion of proceedings under ... § 46b-160, a written acknowledgment of paternity executed and sworn to by the putative father of the child when accompanied by (A) an attested waiver of the right to a blood test, the right to a trial and the right to an attorney, and (B) a written affirmation of paternity executed and sworn to by the mother of the child shall have the same force and effect as a judgment of the Superior Court. It shall be considered a legal finding of paternity without requiring or permitting judicial ratification, and shall be binding on the person executing the same whether such person is an adult or a minor ... Such acknowledgment shall not be binding unless, prior to the signing of any affirmation or acknowledgment of paternity, the mother and the putative father are given oral and written notice of the alternatives to, the legal consequences of, and the right and responsibilities that arise from signing such affirmation or acknowledgment ... The notice to the putative father shall include, but not be limited to, notice that such father has the right to contest pa-

> ternity, including ... a genetic test to determine paternity ..."

It should be further noted that on almost a daily basis, in our Magistrate Court and in our Superior Court, men and women are declared to be parents of children without a genetic test. While it is true that such tests can be ordered, it is not always the case that they are ordered and often an acknowledgment of paternity will suffice.

This court is of the opinion that § 7-48a, which was enacted after both *Doe v. Doe, supra,* 244 Conn. at 505, 710 A.2d 1338, and *Remkiewicz v. Remkiewicz, supra,* 180 Conn. at 114, 429 A.2d 833, were decided, creates yet another statutory manner in which parentage can be established: by being named as an intended parent in a gestational carrier agreement. The legislative history of § 7-48a clearly evinces that the legislature contemplated that intended parents, irrespective of whether they are biologically related to the unborn child, can be adjudged the parents of the child pursuant to the gestational carrier agreement and be named as the parents of a child on a replacement birth certificate by the Department of Health. Had the legislature intended to limit the intended parents to include only biological parents, it could have done so. Furthermore, when amending the statute in 2004, the sponsor of the amendment specifically provided that the purpose of the amendment was to make it clear that one of the parents should not be forced to adopt the child, which is in direct contradiction to the department's argument.

In addition, it is unclear as to why the department takes issue with placing the unrelated plaintiff's name on a replacement birth certificate, but has no issue with the placing of Taylor's name on the original birth certificate, when she also has no genetic relationship with the child. If no one ever thought to ask a court to order the department to issue a replacement birth certificate, Taylor's name would indefinitely remain on the child's birth certificate, listing her as the mother of that child. This would also be inaccurate information, in violation of what the department states is the public policy underlying the vital records statutes.

*7 Finally, the department's argument that the court cannot grant the plaintiffs' petition because, despite Taylor's testimony that she adhered to the terms of the contract and abstained from sex during the time period surrounding the conception, she may have been impregnated by another party, also fails. This argument would apply to all cases involving gestational carrier agreements, not just those involving homosexual intended parents, and in not one of the aforementioned cases involving heterosexual intended parents did a court require that a genetic test be performed before validating the gestational agreement, declaring them to be the parents to the child and directing the Department of Health to issue a replacement birth certificate.

It is clear that the public policy of the State of Connecticut favors the issuing of orders regarding surrogate parentage. Our legislative history and case law supports this view. The instant case is not about the establishment of genetic, or biological parents, but rather the establishment of legal or intentional parents. Names on a birth certificate are not necessarily just an acknowledgment of paternity but can also establish legal responsibilities to a child. In this era of evolving reproductive technology and intent based parenthood, our laws must acknowledge these realities and not simply cling to genetic connections as preconditions to being placed on a birth certificate.

ORDERS

Accordingly, it is hereby ordered:

(1) that the plaintiffs, Peter Griffiths and Angel Naranjo, be declared and adjudged the intended parents of the unborn child being carried by the defendant, Taylor;

(2) that the gestational carrier agreement between the plaintiffs and Taylor is found to be valid, enforceable, irrevocable and of full legal effect;

(3) that Taylor is declared not to be the mother of the unborn child;

(4) that the hospital where the child is born or if born on route to the hospital, the hospital to which the child is taken immediately after birth, or if born elsewhere, the attending physician or midwife, shall file a birth certificate for the unborn baby, as required by General Statutes § 7-48, placing Taylor's name on it; and

(5) that thereafter, the Department of Public Health is to create a replacement birth certificate for the child as authorized by § 7-48a, removing Taylor's name and naming Peter Griffiths and Angel Naranjo as parents.

Conn.Super.,2008.
Griffiths v. Taylor
Not Reported in A.2d, 2008 WL 2745130 (Conn.Super.), 45 Conn. L. Rptr. 725

END OF DOCUMENT

Not Reported in A.2d, 2008 WL 4779641 (Conn.Super.), 46 Conn. L. Rptr. 478
(Cite as: 2008 WL 4779641 (Conn.Super.))

Superior Court of Connecticut,
Judicial District of Tolland.
Bennett CUNNINGHAM et al.
v.
Jamie TARDIFFF et al.
No. FA084009629.

Oct. 14, 2008.

West KeySummary
Health 198H 397

198H Health
198HII Public Health
198Hk395 Records, Reports, and Disclosure
198Hk397 k. Birth Certificates. Most Cited Cases

Parent and Child 285 20

285 Parent and Child
285k20 k. Assisted Reproduction; Surrogate Parenting. Most Cited Cases
Male, same-sex, married sperm donors' motion for order to show cause why department of health should not be required to record, on replacement birth certificates, both of them as the parents of two babies born to their gestational carrier under surrogacy agreement was granted. Each of the sperm donors was the biological father of one of the babies carried by the gestational surrogate, although it was unknown which sperm donor fathered which baby. The maternal eggs used in the procedure had been provided by an anonymous egg donor. Gestational carrier statute was amended to state that if the birth was subject to a gestational agreement, the department of public health should create a replacement certificate in accordance with an order of a court of competent jurisdiction. § 7-48a.

Victoria T. Ferrara-Loris, Law Offices of Victoria T. Ferrara-Loris, Fairfield, for Bennett Cunningham and Michael Spann.

Kerry Anne Colson, Hartford, for Connecticut Dept. of Health.

HOLLY ABERY-WETSTONE, J.

I

FACTS

*1 Before the court at this time is the plaintiffs' motion for an order to show cause why the department of health should not be required to record both of them as parents of Baby A and Baby B on the replacement birth certificates. The plaintiffs, Bennett Cunningham and Michael Spann, allege in their amended complaint the following facts. On September 17, 2007, they entered into a written agreement with Jamie Tardiff and James Tardiff in which Jamie Tardiff agreed to act as their gestational carrier. The plaintiffs are married [FN1] and reside in Dallas, Texas. The defendants are also married to each other and are residents of Connecticut. The agreement provided for Jamie Tardiff to have transferred into her uterus two fertilized embryos, one created from the sperm of Cunningham and an anonymous egg donor and one created from the sperm of Spann and an anonymous egg donor. On May 4, 2008, the procedure transferring two embryos into Jamie Tardiff's uterus occurred at the Connecticut Fertility Associates in Bridgeport. Jamie Tardiff became pregnant with unborn Baby A and Baby B. She was due to give birth on or about October 30, 2008, but delivered them earlier on October 10, 2008. Cunningham is the biological and legal father of Baby A and/or B and is seeking a declaration of his paternal rights and a legal affirmation of his parental responsibilities, financial and otherwise, over the child, including being named as father on the birth certificate of the child. Spann is seeking the same. Jamie Tardiff is not the biological or legal mother of the children gestated by her and is seeking a declaration that she has no maternal rights, financial and otherwise, over the children, including not being named as their mother on the birth certificate. James Tardiff is not the biological father of the children gestated by his wife, Jamie Tardiff and is also seek-

ing a declaration that he has no paternal rights, financial and otherwise over the children, including not being named as the father on the birth certificate of these children.

> FN1. The plaintiffs provided copies of their marriage certificates from the British Columbia and Massachusetts.

On September 22, 2008, the plaintiffs filed motion for order to show cause and for judgment and submitted a memorandum in support of the motion. In response, the defendant, the Connecticut department of health [FN2] filed its memorandum of law.

> FN2. Throughout this decision, the Connecticut department of health will be referred to as "the defendant."

II

DISCUSSION

The plaintiffs are seeking from the court a judgment ordering the defendant to issue a replacement birth certificate for the children, pursuant to General Statutes § 7-48a, naming Cunningham and Spann as the parents of the children in place of the gestational mother, validating the gestational surrogate contract entered into between the parties and affirming the parental rights of the plaintiffs. In support of their motion, they argue: (1) General Statues § 46b-1(17) provides the Superior Court with subject matter jurisdiction over a variety of issues concerning children or family relations and General Statutes § 52-29 allows the court to declare rights and other legal relations on request; specifically, that the court has subject matter jurisdiction to enter a judgment in accordance with the terms of the gestational carrier agreement; (2) Gestational surrogacy agreements are not prohibited in Connecticut, and General Statutes § 7-48a provides for a replacement certificate to be filed in accordance with the court's order; (3) The A.I.D. statutes, which define that term in General Statutes § 45a-774 as "[a]rtificial insemination with donor sperm or eggs," allow the plaintiffs, who were married at the time of the transfer of the fertilized embryos into the surrogate, to be given parental rights as biological and/or genetic parents and, consequently, to place their names on the birth certificate of each baby; (4) The plaintiffs have provided the court with evidence that the children being carried by Jamie Tardiff are the plaintiffs' children, that it would be in the best interest of all parties for the court to declare them as such and to authorize the issuance of the replacement certificate naming them as the parents on that certificate; and (5) The anonymous egg donor has no right or interest in any child born as a result of A.I.D. pursuant to General Statues § 45a-775 and, therefore, cannot be cited in as a party to have her name placed on the certificate.

*2 In response, the department counters: (1) The inclusion of the plaintiffs' names as parents on the children's birth certificate and replacement birth certificate would permit inaccurate information on these certificates in contravention of the vital records statutes, General Statutes §§ 7-42, 19a-40 and 19a-42, since the plaintiffs have failed to conclusively establish who is the genetic parent of Baby A and Baby B; (2) The plaintiffs have not alleged or proved a parent child relationship between them and the unborn children to fall within the definitions of "parent" and "child" as articulated in *Doe v. Doe*, 244 Conn. 403, 439, 710 A.2d 1297 (1998); (3) The plaintiffs have neither naturally conceived nor adopted these children as required in Connecticut to be considered a parent for purposes of inclusion on the replacement certificate; and (4) There is no objection to having the genetic parent, who conceived the child, being named on the replacement certificate once this can be determined through genetic testing, but there is an objection to having the intended parent, who is not genetically related to the child, being declared a parent of a child when that person neither conceived nor otherwise adopted that child through the appropriate procedures.

A.

Subject Matter Jurisdiction

In the present case, the plaintiffs claim that this court has jurisdiction over the action before it pursuant to General Statutes § 52-29[FN3] and § 46b-1(17) [FN4] to declare them as parents of Baby A and Baby B in accordance with the terms of the gestational surrogacy agreement they entered in with the defendants. Connecticut Case law, as examined in *DeBernado v. Gregory*, Superior Court, judicial district of Tolland, Docket No. TTDFA074007658 (November 7, 2007, Shluger, J.) (44 Conn. L. Rptr. 553) is in accord with

their position. See also *Doe v. Roe*, 246 Conn. 652, 664-65, 717 A.2d 706 (1998) (court held that a trial court had subject matter jurisdiction to render a judgment in accordance with a gestational carrier agreement); *Oleski v. Hynes*, Superior Court, judicial district of New London, Docket No. KNFA084008415 (July 10, 2008, Boland, J.) (45 Conn. L. Rptr. 855) (same). As a result, the present action is properly before the Family Division of the Superior Court to provide the plaintiffs with the relief they are requesting.

FN3.Section 52-29 provides in relevant part:

> (a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed ...

FN4.Section 46b-1 provides in relevant part:

> Matters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving ... (17) all such other matters within the jurisdiction of the Superior Court concerning children or family relations as may be determined by the judges of said court.

B.

Whose names are to be placed on the birth certificates of Baby A and Baby B.

The pivotal issue before this court is whether the names of the plaintiffs may be placed on the replacement birth certificate of each baby, Baby A and Baby B. This is the fourth such case before the Superior Court this year dealing with gestational surrogacy agreements and the issue as to whose names are to be placed on the birth certificates. The previous three include:

Oleski v. Hynes, supra, 45 Conn. L. Rptr. at 855; *Cassidy v. Williams*, Superior Court, judicial district of Litchfield, Docket No. LLIFA084006951 (July 9, 2008, Marano, J.) (45 Conn. L. Rptr. 816); and *Griffiths v. Taylor*, Superior Court, judicial district of Waterbury, Docket No. FA 08 4015629 (June 13, 2008, Cutsumpas, J.T.R.) [45 Conn. L. Rptr. 725]. In all of these cases, the plaintiffs requested that a judgment be entered validating the gestational carrier agreement declaring the plaintiffs to be the parents of the unborn child and ordering the department of health to issue a replacement birth certificate with their names on it.

***3** In *Griffiths v. Taylor*, the plaintiffs Peter Griffiths and Angelo Naranjo, who were registered domestic partners in the state of New York, entered into a gestational carrier agreement with an unrelated woman, the surrogate. The agreement provided for the transfer of two embryos, one consisting of the sperm of Griffith and the ova of an egg donor and one consisting of the sperm of Naranjo and the ova of an egg donor, into the surrogate's uterus. The surrogate became pregnant with one embryo developing into a fetus. The plaintiffs claimed that Griffiths, "Father A," is the intended father of the unborn baby and Naranjo, "Father B," is also the intended father of the unborn baby. In *Cassidy v. Williams*, the plaintiffs, Aidan Cassidy and Charles Teti, who were in a relationship for twenty-one years filed a complaint alleging that they entered into a gestational carrier agreement with the defendants, Dedra Williams and LeRon Williams. They alleged that the agreement provided for Dedra Williams to have transferred into her uterus one embryo created from the sperm of Cassidy and the ova of an anonymous egg donor and one embryo created from the sperm of Teti and the ova of an anonymous egg donor. The surrogate became pregnant with Baby A and Baby B. The plaintiffs asserted that they were the respective genetic and legal fathers of the two unborn babies, and were entitled to paternal rights and a legal affirmation of their parental responsibilities, including being named as the parents on the birth certificates of the babies. In *Oleski v. Hynes*, the plaintiffs Michael Oleski and Keith Nagy entered into a gestational surrogacy contract with the defendants, Michele Hynes and Russell Hynes, a married couple, whereby Michele Hynes would serve as a surrogate. The embryo consisted of the sperm of Oleski, and an unnamed eggs donor. Nagy was not a sperm donor.

After an exhaustive discussion in *Oleski v. Hynes* on the law of Connecticut dealing with these agreements, including relevant statutes, alternative reproductive arrangements and the concept of an "in-

Not Reported in A.2d, 2008 WL 4779641 (Conn.Super.), 46 Conn. L. Rptr. 478
(Cite as: 2008 WL 4779641 (Conn.Super.))

tended" parent, the court entered an order stating that Oleski is the biological and legal father of Baby A and Baby B and as to Nagy denied the motion to show cause on the ground that he was neither linked to the children by genetics nor in a legally recognized relationship with Oleski. The other two decisions granted the motion to show cause and entered an order that the names of the plaintiffs were to be placed on the replacement certificates.

In the present case, each plaintiff is the biological father of one of the babies carried by the gestational surrogate, although it is unknown as to which plaintiff fathered which baby. Thus, since the facts herein are more akin to *Cassidy v. Williams* and *Griffiths v. Taylor* than to *Oleski v. Hynes,* the court finds *Cassidy,* and *Griffiths* more persuasive. Furthermore, *Cassidy* relied on *Griffiths* since the court in the latter addressed many of the same issues.

*4 First, in *Griffiths,* the court rejected the argument that *Doe v. Doe, supra,* 244 Conn. at 435-36, 710 A.2d 1297 held that only those who conceive a child or adopt a child can be considered to be a parent of that child under Connecticut law.

> After an exhaustive review of the legislative history of § 7-48a and the case law dealing with gestational carrier agreements, the [*Griffiths*] court concluded that § 7-48a, which was enacted after both *Doe v. Doe, supra,* 244 Conn. at 403, 710 A.2d 1297, and *Remkiewicz v. Remkiewicz,* [180 Conn. 114, 429 A.2d 630 (1980), rev'd on other grounds, *W. v. W.,* 248 Conn. 487, 728 A.2d 1076 (1999)], were decided create[d] yet another statutory manner in which parentage [could] be established: by being named as an intended parent in a gestational carrier agreement. (Internal quotation marks omitted.)

Cassidy v. Williams, supra, at 45 Conn. L. Rptr. 816. In addition, § 7-48a has been amended, effective as of October 1, 2008 to include the language "[i]f the birth is subject to a gestational agreement, the Department of Public Health shall create a replacement certificate in accordance with an order for a court of competent jurisdiction." This amendment is applicable to the present case. As a result no parental rights need to be terminated in the case before the court.

As to the argument by the defendant that the genetic parent, who conceived the child, could be named on the replacement certificate once this is determined though genetic testing to maintain the accuracy of the certificate was also rejected in *Griffiths.* The court relied on *Remkiewicz v. Remkiewicz, supra,* 180 Conn. at 114, 429 A.2d 833,*Hjarne v. Martin,* Superior Court, judicial district of New London, Docket No. FA00 0631333 (May 7, 2002, Lifshitz, J.) and General Statutes §§ 46b-160 and 46b-172, stating that a man may be declared to be the father of a child without genetic testing.

> It ... further noted that on almost a daily basis, in our Magistrate Court and in our Superior Court, men and women [were] declared to be parents of children without a genetic test. While it is true that such tests [could] be ordered, it [was] not always the case that they [were] ordered and often an acknowledgment of paternity [would] suffice.

Griffiths v. Taylor, supra, Superior Court, Docket No. FA 08 4015629.

The court in *Griffiths* also questioned why the department took issue with placing the unrelated plaintiff's name on a replacement certificate, but had no issue with placing the name of the surrogate on the original birth certificate when she had no genetic relationship with the babies.

> If no one ever thought to ask a court to order the department to issue a replacement birth certificate, [the surrogate's] name would indefinitely remain on the child's birth certificate, listing her as the mother of that child. This would also be inaccurate information, in violation of what the department state [d] is the public policy underlying the vital records statutes.

5Griffiths v. Taylor, supra,* Superior Court, Docket No. FA08 4015629.

The *Griffiths* court summed up this issue succinctly. "It is clear that the public policy of the State of Connecticut favors the issuing of orders regarding surrogate parentage. Our legislative history and case law supports this view. The instant case is not about the establishment of genetic, or biological parents, but rather the establishment of legal or intentional parents. Names on a birth certificate are not necessarily just an acknowledgment of paternity but can also

CERTIFICATION

I hereby certify that the foregoing brief complies with the formatting requirements set forth in Practice Book § 67-2 and that the font is Arial 12. I further certify that a copy of the foregoing was mailed, postage prepaid, on March 8, 2010, to the following counsel of record:

Counsel for Plaintiffs

Victoria T. Ferrara
Law Firm of Victoria Ferrara, P.C.
2150 Post Road
Fairfield, CT 06824
Tel (203) 255-9877
Fax (203) 255-7620

Counsel for Defendants

Patrick B. Kwanashie
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141
Tel (860) 808-5210
Fax (860) 808-5385

Karma Ramey, Pro se
158 Paddock Avenue, Unit #104
Meriden, CT 06457

Karen L. Dowd