

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY, FLORIDA

CaseNo.:

Division:

IN RE THE MARRIAGE OF:  
KAREN LYNSKEY-LAKE,  
Petitioner/Wife

and

DEBORAH LYNSKEY-LAKE,  
Respondent/Wife

**VERIFIED PETITION FOR DISSOLUTION OF MARRIAGE WITH  
MINOR CHILDREN, PETITION TO MODIFY PRIOR COURT ORDER REGARDING  
SOLE PARENTAL RESPONSIBILITY OF MINOR CHILD, MOTION FOR  
DECLARATORY JUDGMENT TO  
DETERMINE PARENTAGE AND NOTICE OF CHALLENGE  
TO CONSTITUTIONALITY OF FLORIDA STATUTE §382.013(2)(a)**

The Petitioner/Wife, Karen Lynskey-Lake, by and through her undersigned counsel, and hereby files this Verified Petition for Dissolution of Marriage with Minor Children, Motion for Declaratory Judgment to Determine Parentage and to Challenge Constitutionality of Florida Statute §382.013(2)(a), and states as follows:

1. This is an action for Dissolution of Marriage pursuant to Chapter 61 Florida Statutes, an action pursuant to Florida Statutes Sections: 742.011<sup>1</sup>; 742.11<sup>2</sup>; 742.13<sup>3</sup>; and an action to challenge the constitutionality of Florida Statutes Section 382.013(2)(a)<sup>4</sup>.
2. The parties are married women who were in a committed familial relationship with one another for 19 years.

<sup>1</sup>Fla. Stat. Ann. §742.011 provides: "Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law..."

<sup>2</sup>Fla. Stat. Ann. §742.11(1) provides: "Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the husband and wife, provided that both husband and wife have consented in writing to the artificial or in vitro insemination."

<sup>3</sup>Fla. Stat. Ann. §742.13(2) provides: "'Commissioning couple' means the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents."

3. The Petitioner and the Respondent jointly commissioned in vitro fertilization in Massachusetts prior to their marriage, which resulted in the birth of their child, D.L-L. in 2003.
4. Thereafter, the Petitioner and Respondent filed a Joint Petition for Adoption, which resulted in a Final Judgment of Adoption (a copy of which could not be obtained as of yet, but will be provided when available), whereby the Petitioner adopted the minor child D.L-L., resulting in the Petitioner's name being listed on the minor child's amended birth certificate (a copy of which could not be obtained as of yet, but will be provided when available).
5. The Petitioner and the Respondent legally married in Massachusetts on May 21, 2005.
6. Thereafter, the Petitioner and the Respondent jointly commissioned in vitro fertilization in Massachusetts which resulted in the conception of twins by the Respondent.
7. In 2007, while the Respondent was still pregnant, the parties moved to Florida and established legal residency in the State.
8. The twins, C.L-L. and E.L-L., were born in 2007 in Broward County, Florida. The twins bear their mothers' surname.
9. At the time of the birth of the twins, the parties were legally married in the State of Massachusetts, but the legality of their marriage was not recognized by the State of Florida *at that time*.
10. As Florida Statute §382.013(2)(a) permits only a *husband's* name to be added to the birth certificate if he is married to the birth mother, and as it does not provide for a *wife's* name to be added to the birth certificate if *she* is married to the birth mother, Petitioner's name does not appear on the twins' birth certificates.
11. In 2009 the parties' relationship deteriorated and in 2011 the Respondent filed an action in Family Court (Case No.: 11-06506) to obtain sole parental responsibility for the oldest child, and establish child support for that child. The Respondent did not seek any judicial relief as to the twins which she and her wife were also jointly parenting. A Final Judgment regarding that support matter was entered on May 24, 2011 (attached hereto as Exhibit A).

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<sup>4</sup>Fla. Stat. Ann. §382.013(2)(a) provides: "If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction."

12. Petitioner is the Mother and parent – legal, social, emotional, financial and psychological – of the three minor children. Petitioner, at all times material hereto, provided financial, emotional, psychological and physical support for all three of the minor children, beginning from the decision to have children together, and continuing through the mutual involvement in the in vitro fertilization process, signing of the documents as a commissioning couple for both pregnancies, attending the births, and being an active parent in every meaningful way, up through and including the date of the filing of this Petition.
13. Respondent, at all times material hereto, has acknowledged the Petitioner’s Maternity and has held the Petitioner out to be the Mother of all three children.
14. All three children bear the hyphenated last names of the parties, which they legally changed upon their marriage in Massachusetts.
15. All three children refer to both the Petitioner and the Respondent as “Mom”, “Mommy”, Momma and other similar names to designate a female parent.
16. Petitioner has continued to enjoy time-sharing with all three of the children, albeit solely at the discretion of the Respondent.

**DISSOLUTION OF MARRIAGE UNDER CHAPTER 61 FLORIDA STATUTES**

Petitioner realleges and reavers paragraphs 1-18 as if fully set forth herein.

17. This is an action for Dissolution of Marriage with Minor Children pursuant to Chapter 61 of the Florida Statutes.
18. The parties were legally married in Massachusetts on May 21, 2005.
19. The Petitioner is a resident of Broward County, Florida and has been a resident of the State of Florida for more than 6 months prior to the filing of this Petition.
20. The Respondent is a resident of Palm Beach County, Florida and has been a resident of the State of Florida for more than 6 months prior to the filing of this Petition.
21. The Petitioner and the Respondent last lived together as a married couple in Broward County, Florida.
22. Neither party is a member of the US Armed Forces or any of its Allies.
23. The marriage of the parties is irretrievably broken.
24. There are three children born of this marriage:

- a. D.L-L. was born in 2003 prior to the parties' marriage in 2005 and was adopted legally by the Petitioner.
  - b. C.L-L. and E.L-L. were born in 2007 in Florida during the intact marriage of the parties.
  - c. All three children were born as a result of successful assisted reproductive technology and the parties hereto signed contracts as commissioning parents for both in vitro fertilizations. A completed Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit is filed contemporaneously with this Petition.
25. The parties have acquired certain assets and liabilities which should be divided by this Court after setting aside any non-marital assets or liabilities.
26. Consistent with the statutory criteria set forth in §61.13(3)(a-t), the Petitioner is a fit and proper parent to have shared parental responsibility and substantially equal time-sharing for all three of the parties' children.
27. Both parties are capable of self-support and neither party requires spousal support from the other.
28. Upon information and belief, the Respondent is in a superior financial position to bear the legal fees and costs associated with this action, and the Court should perform an analysis under Florida Statute §61.16 in determining entitlement to attorney's fees and costs. Further, to the extent that the Respondent denies the Petitioner's parentage of the twins, and forces the extended litigation over the recognition of the Petitioner as the legal parent of all three children, she should be required to contribute to or pay the entirety of Petitioner's legal fees and costs associated with establishing the Petitioner's parental rights, as such legal positions are insupportable under the current case law, and indefensible under any reading of the law or good faith extension thereof.

WHEREFORE, the Petitioner, KAREN LYNSKEY-LAKE, respectfully requests that this Court enter a Final Judgment of Dissolution of Marriage, determining the appropriate equitable distribution of assets and liabilities, awarding the Petitioner shared parental responsibility of all three children along with a substantially equal time-sharing schedule, determining child support and other child-related matters, awarding her legal fees and costs, and such other and further relief as this Court deems just and proper under the circumstances.

**ESTABLISHMENT OF PARENTAGE PURSUANT TO  
CHAPTER 742 FLORIDA STATUTES AND CHALLENGE TO THE  
CONSTITUTIONALITY OF §742.011, §742.11, §742.13**

Petitioner reavers and realleges paragraphs 1-18 as if fully set forth herein.

29. Assuming, arguendo, that this Court rules that the Petitioner is not the legal parent of C.L-L. and E.L-L. based upon its reading of Florida Statutes Chapter 61.13 or Chapter 61 in generally, and §382.013(2)(a), the Petitioner brings this cause of action for determination of parentage pursuant to Chapter 742.
30. Petitioner and Respondent are a legally married couple under Florida law. *See Brenner v. Scott*, 999 F.Supp. 1278 (N.D.Fla., 2014); *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015), wherein the Court held that the state laws challenged by Petitioners in those cases are now invalid to the extent they exclude same sex couples from civil marriage on the “same terms and conditions as opposite sex couples.”
31. Under both the laws of the State of Massachusetts and the laws of the State of Florida, a commissioning couple, whether same-sex or opposite-sex, using Assisted Reproductive Technology (hereinafter “ART”) are both the legal parents of the resulting child(ren). *See D.M.T. v. T.M.H.*, 129 So. 3d 320, 341-342 (Fla. 2013)
32. The two minor children on whose birth certificates the Petitioner is not listed as a parent were both born using ART and both the Petitioner and the Respondent signed the necessary documents to qualify as a commissioning couple under the laws of both Massachusetts and of Florida.
33. The Florida Supreme Court has already ruled that the ART Statute §742.13 et seq. applies to same-sex couples as well as opposite-sex couples. (*D.M.T., supra*).
34. As a result, the Petitioner is the legal parent of the two minor children on whose birth certificates the Petitioner is not listed as a parent, despite the existing rules of the State of Florida disallowing the Petitioner’s name from appearing on the birth certificate.
35. Florida Statutes §742.011, §742.11, §742.13 must be applied to same sex couples in the same manner as applied to opposite sex couples in order for the statute to pass constitutional muster. *See D.M.T. v. T.M.H.*, 129 So. 3d 320, 341-342 (Fla. 2013).
36. To the extent that the State of Florida or the Respondent argue that §742.011, §742.11, §742.13 are valid as written and so deprive the Petitioner of her parental rights, the Petitioner states that §742.011, §742.11, §742.13 are unconstitutional as applied.
37. As the Florida Supreme Court opined:

[T]he State would be hard pressed to find a reason why a child would not be better off having two loving parents in her life,

[T]he State would be hard pressed to find a reason why a child would not be better off having two loving parents in her life, regardless of whether those parents are of the same sex, than she would by having only one parent. *D.M.T. v. T.M.H.*, 129 So.3d 320, 344 (Fla. 2013), reh'g denied (December 12, 2013).

38. The Respondent is, upon information and belief, in a superior financial position to bear the legal fees and costs associated with this action, and the Court should determine entitlement to attorney's fees and costs. Further, to the extent that the Respondent denies the Petitioner's parentage of the twins, and forces the extended litigation over the recognition of the Petitioner as the legal parent of all three children, she should be required to contribute to or pay the entirety of Petitioner's legal fees and costs associated with establishing the Petitioner's parental rights, as such legal positions are insupportable under the current case law, and indefensible under any reading of the law or good faith extension thereof.

WHEREFORE, the Petitioner, KAREN LYNSKEY-LAKE, respectfully requests that this Court enter an Order Determining and Establishing the Petitioner's Parentage of C.L-L. and E.L-L, establishing a parenting plan and time sharing schedule, and calculating child support as appropriate, awarding her legal fees and costs, and such other and further relief as this Court deems just and proper under the circumstances.

**PARENTAGE PURSUANT TO FLORIDA STATUTE §382.013(2)(a) and CHALLENGE TO THE CONSTITUTIONALITY OF FLORIDA STATUTE §382.013(2)(a) INsofar AS IT EXCLUDES SAME SEX MARRIED COUPLES**

Petitioner reavers and realleges paragraphs 1-18 as if fully set forth herein.

39. Petitioner and Respondent are a legally married couple under Florida law. *See Brenner v. Scott*, 999 F.Supp. 1278 (N.D.Fla., 2014); *Obergefell v. Hodges*, 576 U.S. \_\_\_\_\_ (2015).
40. As a legally married couple, an irrebuttable presumption exists that Petitioner is the legal parent of the children born of the marriage and she should be afforded the fundamental right to have her name listed on the children's birth certificates as the legal spouse of the birth mother.
41. Florida has always held that married couples who have a child/children are the presumptive parents of that child/those children. Public policy dictates this strong presumption.
42. The State must give great weight to the sanctity of legally established family relationships to protect a child's present and future interests. *See Carlson v. State Dept. of Health and Rehab. Sers.*, 378 So.2d 868 (Fla. 2d DCA 1979).

43. The Florida Supreme Court previously and unequivocally declared that Florida Statute §742.13(2) must be applied to same sex couples in the same manner in which it is applied to opposite sex couples to pass constitutional muster. *See D.M.T. v. T.M.H.*, 129 So. 3d 320, 341-342 (Fla. 2013).
44. In *Obergefell v. Hodges*, the United States Supreme Court held that all states, including the State of Florida, must provide married same-sex couples with the full “constellation of benefits” associated with marriage “on the same terms and conditions as opposite-sex couples.” 135 S.Ct. at 2601, 2605. The Supreme Court also expressly held that this “constellation of benefits” includes birth certificates that list the names of both spouses. *See id.* at 2601 (listing “birth and death certificates” as examples of marital protections that must now be afforded equally to married same-sex couples).
45. To the extent that the State of Florida or the Respondent argue that §382.013(2)(a) is valid as written and so deprives the Petitioner of her right to parent or her right to be listed on the children’s birth certificates, §382.013(2)(a) is unconstitutional as applied.
46. As the Florida Supreme Court opined:

[T]he State would be hard pressed to find a reason why a child would not be better off having two loving parents in her life, regardless of whether those parents are of the same sex, than she would by having only one parent. *D.M.T. v. T.M.H.*, 129 So.3d 320, 344 (Fla. 2013), reh’g denied (December 12, 2013).

47. States may not, consistent with the Fourteenth Amendment, deny rights, obligations, conditions or benefits of marriage based on the sex of the spouses. *See Obergefell*, 135 S.Ct. 2584; *see also Brenner*, 999 F. Supp. 2d 1278; *Pareto*, slip op. at 25. Just as these precedents require the issuance of marriage licenses to same-sex couples notwithstanding the use of gendered terms such as “husband” and “wife” or “man” and “woman” in state laws concerning marriage licenses, these precedents also require Florida to provide married same-sex couples and their children with the same rights and protections provided to married opposite-sex couples and their children, notwithstanding the use of gendered terms in Section §382.013(2)(a).

WHEREFORE, the Petitioner, KAREN LYNSKEY-LAKE, respectfully requests that this Court enter an Order Establishing the Petitioner’s Parentage of the two children whose parentage is not yet established by law, declaring that Florida Statute §382.013(2)(a) is unconstitutional if applied to deny the Petitioner her parental rights and to deny the placement of her name on the children’s birth certificates, awarding her legal fees and costs, and such other and further relief as this Court deems just and proper under the circumstances.

### DECLARATORY JUDGMENT

Petitioner reavers and realleges paragraphs 1-18 as if fully set forth herein.

48. To the extent that this Court interprets Chapter 61, §741.212, §742.011, §742.11, §742.13 and §382.013(2)(a) as inapplicable to same sex couples, there is a *bona fide*, actual and present need for declaratory relief.
49. The Petitioner has been and is being deprived of her fundamental parental rights protected by both the Florida and the United States Constitutions.
50. The facts alleged in this Petition sufficiently allege the present controversy which necessitates this declaration. It is within the penumbra of Petitioner's fundamentally protected privacy and parental rights to be declared the legal parent of all three of the mothers' children and to enjoy all of the rights, privileges and obligations inherent in the parental role, the exercise of parental responsibility and including substantially equal time-sharing with all of her children guaranteed her by an enforceable Judgment.
51. Only a declaratory judgment by this Court can establish Petitioner's legal parental rights in this action.
52. To the extent that this Petition challenges the validity of Florida Statute §382.013(2)(a), §742.011, §742.11 and/or §742.13, the Petitioner, concurrently with the service of this Petition upon the Respondent, will have served notice upon the Attorney General of the State of Florida via Certified Mail Return Receipt Requested and a notice of constitutional challenge is hereby filed as part of this Petition.

WHEREFORE, the Petitioner, KAREN LYNSKEY-LAKE, respectfully requests that this Court Enter an Order Declaring Florida Statute §382.013(2)(a), §742.011, §742.11 and/or §742.13 unconstitutional as applied to prevent the spouse of a birth mother from being listed as the legal parent on the birth certificate of a child born to a married same sex couple, and which would, if read as written, deny parentage to the Petitioner as a commissioning parent/intended parent.

### PETITION TO MODIFY PRIOR CUSTODY ORDER

Petitioner reavers and realleges paragraphs 1-18 as if fully set forth herein.

53. This is an action for Supplemental Petition for Modification of a Prior Custody Order as to D.L-L., born in 2003.



- 54. This Court entered a previous Final Judgment related to parental responsibility and child support for said child on May 24, 2011.
- 55. Since the date of that Final Judgment, there has been a substantial, material, unforeseen and permanent change of circumstances warranting a modification of said Final Judgment.
- 56. At the time of the Final Judgment, the Petitioner was unable to participate in making major decisions for the minor child, and acknowledged that she was unable to do so at that time.
- 57. Since the entry of that Order, the Petitioner has made significant changes in her life and is a fit and proper parent to exercise shared parental responsibility and substantially equal time sharing with the minor child who was the subject of this prior Court Order.
- 58. It is in the best interest of the minor child that the Petitioner has shared parental responsibility and substantially equal time-sharing.

WHEREFORE, the Petitioner, KAREN LYNSKEY-LAKE, respectfully requests that this Court enter a Final Judgment that includes modifying the previous court order and awarding the Petitioner shared parental responsibility of the minor child who was the only child subject to said prior court order, a substantially equal time-sharing schedule, and such other and further relief as this Court deems just and proper under the circumstances.

**I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this Petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.**

Dated: 9/3/15

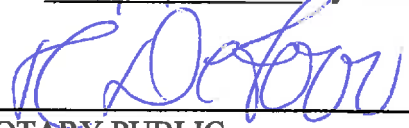
  
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 KAREN LYNSKEY-LAKE, Petitioner/Wife

STATE OF FLORIDA  
 COUNTY OF BROWARD

Sworn to or affirmed and signed before me on 9/3/15 by KAREN LYNSKEY-LAKE.



ROBERTA DEFOOR  
 MY COMMISSION # FF 126185  
 EXPIRES: September 6, 2018  
 Bonded Thru Budget Notary Services

  
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 NOTARY PUBLIC

\_\_\_\_\_ Personally known

✓ Produced identification  
Type of identification produced FLDL

Respectfully submitted,

BRODZKI JACOBS & ASSOCIATES, P.L.

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IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

Case No. FMCE1100065  
Division: FAMILY



DEBORAH LYNSKEY-LAKE  
Petitioner,  
and  
KAREN LYNSKEY-LAKE,  
Respondent

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**FINAL ORDER**

THIS CAUSE came before this court on May 24, 2011 of Deborah Lynsky-Lake's Petition for Sole Parental Custody and Responsibility. Present were Ms. Lynsky-Lake her attorney, Teresa Mary Pooler, Esquire. After hearing the facts and circumstances of this case, and after reviewing the Agreement signed and sworn to by both parties this court finds that:

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1. It is in the best interest of the minor child David Lynskey-Lake that Deborah Lynskey-Lake have sole parental responsibility for him, make all decisions regarding the minor child, and be solely responsible for his care.

2. It is in the best interest of the minor child that the Respondent only have contact with the minor child at the discretion of the Petitioner, and all contact with the minor child by the Respondent shall be supervised.

3. It is in the best interest of the minor child that the Respondent remain out of the residence jointly owned by the parties, or any place that the minor child resides, unless permitted access by the Petitioner.

**WHEREFORE, it is hereby ORDERED AND ADJUDGED:**

1. That the Petitioner Deborah Lynskey-Lake shall have sole custody of the Minor child David Lynskey-Lake.

2. That Respondent Karen Lynskey-Lake shall have supervised contact and visitation with the child at the discretion of the Petitioner.

3. That Respondent shall pay to the Petitioner \$500.00 per month child support, and

4. That all other conditions set for in the agreement of the parties date April 25, 2011 shall be force and effect until modified by mutual agreement in writing, or by further order of this Court.

**DONE AND ORDERED** in Chambers in Broward County, Florida this 24th day of May, 2011.



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MARINA GARCIA WOOD  
CIRCUIT COURT JUDGE