

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KAIL MARIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14-cv-2518
)	
SUSAN MOSIER, M.D., in her official)	
capacity as Secretary of the Kansas Department)	
of Health and Environment, <i>et al.</i> ,)	
)	
Defendants.)	

PLAINTIFFS’ INDEX OF EXHIBITS SUBMITTED IN REPLY TO DEFENDANTS’
ADDITIONAL SUBMISSIONS PURSUANT TO COURT ORDER (DOC. 126)

In its Memorandum and Order filed on August 10, 2015, the Court set forth a schedule to allow the parties to file supplemental evidence regarding whether “the Court’s hopefulness about Kansas officials’ pledge to comply with *Obergefell* [*v. Hodges*, 135 S. Ct. 2584 (2015)] is misplaced[.]” Doc. 126, pp. 32 & 42. On September 14 and 15, Defendants filed additional affidavits to supplement the Defendants’ previous affidavits that purported to address the State’s efforts to comply with *Obergefell*. Docs. 129 & 130. Now, Plaintiffs file the following declarations in response to Defendants’ evidence regarding the need for injunctive relief in order to show that the Kansas Department of Health and Environment (KDHE), of which Defendant Mosier is Secretary, is still not complying with *Obergefell* because the KDHE’s Office of Vital Statistics is “treating male spouse[s] of women who give birth through assisted reproduction involving the use of donor sperm differently than identically situated female spouse[s],” *Roe v. Patton*, 2015 WL 4476734, *3 (D. Utah July 22, 2015):

1. Declaration of Christa A. Gonser;
2. Declaration of Carrie L. Hunt; and
3. Declaration of Casey Leeann Falmer Smith.

Respectfully submitted,

/s/ Stephen Douglas Bonney
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ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I certify that, on October 5, 2015, the foregoing document was served on counsel for all defendants per the Court's ECF system.

/s/ Stephen Douglas Bonney

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)	
Defendants.)	

DECLARATION OF CHRISTA A. GONSER

1. I, Christa A. Gonser, have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. On August 14, 2007, I married my wife, Carrie L. Hunt, in Ontario, Canada.

3. Since 2007, Carrie and I have lived together as a married couple. We currently reside in Kansas City, Kansas.

4. After several years of marriage, Carrie and I decided to start a family. At or around the first of the year, 2015, Carrie became pregnant through artificial insemination with sperm from a donor unknown to us, the parents. A licensed physician performed the insemination.

5. On September 22, 2015, Carrie gave birth to twins, B.R.G. and B.A.G., at the University of Kansas Medical Center in Kansas City, Kansas.

6. The hospital – which is a state entity – did not list me as a parent on the children’s birth certificate because its software only has an option for entering a mother and a father and is unable to accommodate a same-sex spouse/parent.

7. Carrie and I are the parents of B.R.G. and B.A.G., and Carrie – as the biological mother of the children – consents to my being listed on the children’s birth certificates as a parent. Carrie and I plan to raise the children as parents.

8. On September 24, 2015, two days after the birth of our children, I called the Kansas Department of Health and Environment (KDHE), Office of Vital Statistics (OVS), in Topeka, Kansas. Specifically, I called the telephone number (785-296-1426) for the Chief of Registration at OVS, and I initially spoke to a male KDHE employee about obtaining an amended birth certificate listing me as a parent. That employee told me he would have the responsible official call me back. About ten minutes after my call to OVS, a woman called me and advised me that, since I was in a same-sex marriage, I could not be listed as a parent on my children’s birth certificates. She told me that I would have to obtain a second parent adoption in order to be listed as a parent on my children’s birth certificates.

9. With respect to children conceived through artificial insemination, Kansas statutes provide as follows: “Any child or children heretofore or hereafter born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived child of the husband and wife so requesting and consenting to the use of such technique.” K.S.A. § 23-2302.

10. By refusing to treat my same-sex marriage the same as an opposite-sex marriage with respect to children conceived by my spouse through artificial insemination, the KDHE-OVS has refused to recognize my marriage on equal terms with opposite-sex marriages as required by *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on October 1, 2015.

/s/ Christa A. Gonser
Christa A. Gonser

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)	
Defendants.)	

DECLARATION OF CARRIE L. HUNT

1. I, Carrie L. Hunt, have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. On August 14, 2007, I married my wife, Christa A. Gonser, in Ontario, Canada.

3. Since 2007, Christa and I have lived together as a married couple. We currently reside in Kansas City, Kansas.

4. After several years of marriage, Christa and I decided to start a family. At or around the first of the year, 2015, I became pregnant through artificial insemination with sperm from a donor unknown to us, the parents. A licensed physician performed the insemination.

5. On September 22, 2015, I gave birth to twins, B.R.G. and B.A.G., at the University of Kansas Medical Center in Kansas City, Kansas.

6. The hospital – which is a state entity – did not list Christa as a parent on the children’s birth certificate because its software only has an option for entering a mother and a father and is unable to accommodate a same-sex spouse/parent.

7. As the biological mother of the children, I consent to Christa being listed as a parent on the birth certificates of B.R.G. and B.A.G. because Christa and I are legally married and plan to raise the children as parents.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on October 1, 2015.

/s/ Carrie L. Hunt

Carrie L. Hunt

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)	
Defendants.)	

DECLARATION OF CASEY LEEANN FALMER SMITH

1. I, Casey Leeann Falmer Smith, have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. On August 2, 2013, I married my wife, Jessica Smith, in Napa, California.

3. Since then, Jessica and I have lived together as a married couple. We currently reside in Lawrence, Kansas.

4. After marrying, Jessica and I decided to start a family, and I became pregnant through artificial insemination with sperm from a donor unknown to us, the parents. A licensed physician performed the insemination.

5. In 2015, I gave birth to our child, L.D.S., at Shawnee Mission Medical Center in Shawnee Mission, Kansas.

6. The hospital advised that Jessica would not be listed as a parent on our child's birth certificate.

7. As the biological mother of L.D.S., I consent to Jessica being listed as a parent on L.D.S.'s birth certificate. *See* Birth Mother's Consent to Immediate Entry of Parentage Order (verified & redacted copy attached). Jessica and I plan to raise L.D.S. as parents.

8. Officials at the Kansas Department of Health and Environment (KDHE), Office of Vital Statistics (OVS), have refused to recognize Jessica as a parent of L.D.S. and are insisting that Jessica complete a step-parent adoption before Jessica's name can be added to L.D.S.'s birth certificate.

9. With respect to children conceived through artificial insemination, Kansas statutes provide as follows: "Any child or children heretofore or hereafter born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived child of the husband and wife so requesting and consenting to the use of such technique." K.S.A. § 23-2302.

10. By refusing to treat our same-sex marriage the same as an opposite-sex marriage with respect to children conceived through artificial insemination, the KDHE-OVS has refused to recognize my marriage on equal terms with opposite-sex marriages as required by *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

11. As a result of the refusal of the KDHE officials to recognize Jessica as a parent of L.D.S., Jessica and I have had to retain counsel and to initiate legal proceedings for determination of parentage under Kansas law. That case, *In re L.D.S.*, Case No. 2015-DM-892, was filed in Douglas County District Court on September 16, 2015.

12. On September 16, 2015, District Judge Sally Pokorny entered an Emergency Order Determining Parentage, in which the Court determined that Jessica is a parent of L.D.S. under Kansas law.

13. After the entry of Judge Pokorny's Emergency Order, KDHE officials refused to recognize Jessica's parentage of L.D.S. Thus, on September 21, 2015, my lawyer filed a Motion for Joinder of KDHE-OVS and Susan Mosier, M.D., Department Secretary as Necessary Parties under K.S.A. 60-219.

14. At this time, KDHE-OVS continues to refuse to recognize Jessica as a parent of L.D.S.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on October 2, 2015.


Casey Leeann Falmer Smith

ELECTRONICALLY FILED
2015 Sep 16 AM 8:11
CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: 2015-DM-000892

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

In the Matter of the Parentage of:)
L.D.S.), a minor born in 2015,) Case No. 15-DM-_____
by and through his Mother and next friend,) Division ____
JESSICA SMITH)

Pursuant to K.S.A. Chapter 23 and 60

**BIRTH MOTHER'S CONSENT
TO IMMEDIATE ENTRY OF PARENTAGE ORDER**

COMES NOW Casey Leeann Falmer Smith, the biological mother of L.D.S.
, and states:

1. I have read the Emergency Petition for Determination of Parentage filed by my wife Jessica Smith and all statements contained therein are true.
2. I reside with my wife Jessica Smith at 824 Arkansas Street, Lawrence, Douglas County, Kansas, 66044. We were married on August 2, 2013, in Napa, California.
3. L.D.S. was born in 2015 at Shawnee Mission Medical Center, where he is currently being cared for in the neonatal intensive care unit.
4. L.D.S. was conceived through artificial insemination with sperm from an unknown (to the parents) donor through Fairfax Cryobank, in Fairfax, Virginia. Insemination occurred at the KU Women's Health Specialty Clinic, 10777 Nall Avenue, Overland Park, Kansas.

5. I have not had sexual relations with any male during the year prior to the birth of L.D.S.
6. Jessica Smith and I are the legal parents of L.D.S. for all the reasons stated in the Petition filed in this case.
7. Jessica Smith and I should be awarded primary joint legal custody and residency of L.D.S.
8. No child support order should issue as L.D.S. resides with both Jessica Smith and I and we share all responsibility for his direct expenses.
9. The Kansas Department of Vital Statistics should be ordered to prepare an original birth certificate for L.D.S. listing Jessica Smith and Casey Leeann Falmer Smith as his parents.

WHEREFORE, Casey Leeann Falmer Smith requests that the Court:

- A. Grant all relief requested in Petitioner's Emergency Petition for Determination of Parentage; and,
- B. Grant any further relief the Court deems necessary and appropriate under the circumstances.

Respectfully submitted,


Casey Leeann Falmer Smith

VERIFICATION

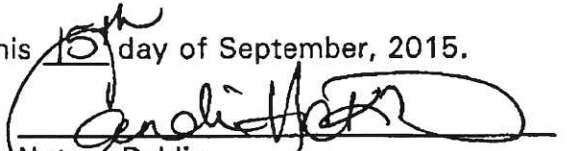
STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

Casey Leeann Falmer Smith, of lawful age, being first duly sworn upon oath says:

That she is the Petitioner in the above-entitled action; that she has read the forgoing Petition, knows the contents thereof; and that all statements therein made are true.



Casey Leeann Falmer Smith

Subscribed and sworn to before me this 10th day of September, 2015.


Notary Public
My Appointment expires:

Prepared by:

THE LAW OFFICE OF DAVID J. BROWN, LC

By: 
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