

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

MARISA N. PAVAN and TERRAH D. PAVAN,
Individually, and Marisa N. Pavan and Terrah D.
Pavan, as parents, next friends and guardians
of T.R.P., a minor child

LEIGH D. W. JACOBS and JANA S. JACOBS,
Individually, and Leigh D. W. Jacobs and Jana
S. Jacobs, as parents, next friends and guardians
of F.D.J., a minor child

COURTNEY M. KASSEL and KELLY L. SCOTT,
Individually, and Courtney M. Kassel and Kelly L.
Scott, as parents, next friends and guardians of
A.G.S., a minor child

PLAINTIFFS

VS. CASE NO. 60CV-15-3153

NATHANIEL SMITH, MD, MPH, Director of the
Arkansas Department of Health, in his official capacity,
and his successors in office

DEFENDANT

RESPONSE TO MOTION FOR STAY

Comes the Plaintiffs, Marisa N. Pavan and Terrah D. Pavan, Individually, and as parents, next friends and guardians of T.R.P., a minor child, Leigh D.W. Jacobs and Jana S. Jacobs, Individually and as parents, next friends and guardians of F.D.J., a minor child, and Courtney M. Kassel and Kelly L. Scott, Individually and as parents, next friends and guardians of A.G.S., a minor child, by and through their attorney, Cheryl K. Maples, and for their Response to Motion for Stay, state:

1. On November 23, 2015 this Court ordered Defendant to immediately issue amended birth certificates for the minor Plaintiffs.

2. Defendant is now requesting that this Court issue a stay of its Order.

3. In his motion, Defendant did not assert a basis for the granting of a stay which would permit this Court to balance the equities to determine whether a stay should be granted.

4. In order for a Court to determine whether to issue a stay there are four (4) factors to be considered. These are:

- a. the threat of irreparable harm to the movant;
- b. the state of the balance between this harm and the injury that granting the injunction will inflict on the other parties litigant;
- c. the probability that movant will succeed on the merits; and
- d. the public interest.

Arkansas Electric Energy Consumers v. Arkansas Public Service Commission, 31 Ark. App. 217-A, 791 S.W.2d. 719 (1990), *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

5. Defendant's entire motion is based upon a stated intent to appeal the written order of this court and whether this court's pronouncement from the bench is a final order.

6. Defendant does not allege any irreparable harm that will occur should the stay be denied, does not argue the balance between any alleged harm to Defendant and the injuries the Plaintiffs would suffer should the stay be granted, does not argue the likelihood of success on the merits and does not mention any public interest that would be furthered by the granting of this stay.

7. The effect of a stay in the issuance of birth certificates reflecting both parents would be not only inconvenient, but devastating to Plaintiffs' families in case of illness, death or other change in family circumstances The failure by the Defendant to include both parents on the Plaintiff children's birth certificates will or could result in, but not limited to, the following:

- a. The non-birth mother being denied the right to authorize medical care for her child;
- b. The non-birth mother being denied the right to authorize or enroll her child in daycare, school or extracurricular activities;
- c. The non-birth mother being denied the right to apply for needed benefits through her employer or through an agency;
- d. The denial to the child of survivor benefits in the case of the death of the non-birth mother;
- e. The denial to the child of inheritance rights in the event of the intestate death of the non-birth mother;
- f. The protection of the mother - child relationship in the event of the breakup of the parents' relationship; and
- g. The ability to collect child support from the non-birth mother in the event of the breakup of the parents' relationship with custody of the minor child going to the birth mother.

8. Additionally, both Division 2 of the Pulaski County Circuit Court in *Wright, et al v. State*, et al, Case No. 60CV-13-2662 and the United States Supreme Court in *Obergefell v. Hodges*, 135 S.Ct 2584 (2015) have found that a denial of the privileges and benefits of marriage to same-sex couples is a deprivation of fundamental constitutional rights under both the equal protection and due process clauses of the United States Constitution. These decisions undeniably show an unlikelihood of Defendant's success on appeal. Additionally, any deprivation of a fundamental constitutional right for any period of time results in irreparable harm.

9. On May 16, 2014 the Hon. Chris Piazza Ordered this defendant to immediately commence the issuance of birth certificates reflecting both parents of children born in same-sex relationships. The Defendant cannot argue that they have not had enough time to prepare procedures and forms to accomplish this.

10. In that the recognition of same-sex marriages and the inclusion of all rights, responsibilities and privileges of marriage is now the law of the land under *Obergefell*, Defendant cannot assert any public policy that would be impacted by a denial of their requested stay.

11. This court should deny Defendant's Motion for Stay.

WHEREFORE, Plaintiffs pray this Court deny Defendant's Motion for Stay, for their attorney fees and costs and for all other relief to which they may be entitled

Respectfully submitted,

/s/ Cheryl K. Maples
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Certificate of Service

I, the undersigned attorney do hereby state that on this 24th day of November, 2015 a true and correct copy of the foregoing document was served by email only upon:

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/s/ Cheryl K. Maples

