

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

CHELSEA TORRES and JESSAMY  
TORRES, individually and as next friends and  
parents of A.T., a minor child, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

*versus*

KITTY RHOADES, in her official capacity as  
Secretary of the State of Wisconsin  
Department of Health Services,

Defendant.

CASE NO. 3:15-cv-00288

HON. BARBARA B. CRABB

**PLAINTIFFS' PROPOSED FINDINGS OF FACT IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

1. Plaintiffs Chelsea Torres and Jessamy Torres are both women and are married to one another. Declaration of Chelsea Torres ("Chelsea Dec.") at ¶¶ 2, 6; Declaration of Jessamy Torres ("Jessamy Dec.") at ¶¶ 2, 6.
2. They reside in Madison, Dane County, Wisconsin. Chelsea Dec. at ¶ 3; Jessamy Dec. at ¶ 3.
3. Chelsea Torres is 36 years old. Chelsea Dec. at ¶ 2.
4. Jessamy Torres is 35 years old. Jessamy Dec. at ¶ 2.
5. Chelsea and Jessamy Torres met in 2001. *Id.* at ¶ 5.
6. They have been in a loving, committed relationship since 2010. *Id.*
7. They were married on September 7, 2012 in New York, New York, in front of friends and family. Jessamy Dec. at ¶ 6; Chelsea Dec. at ¶ 6, Ex. A.

8. Jessamy is a Deputy with the Dane County Sherriff's Office. Jessamy Dec. at ¶ 4.

9. Chelsea is the Operations Manager for a local business. Chelsea Dec. at ¶ 4.

10. When Chelsea and Jessamy began discussions about having children, Chelsea expressed a desire to experience pregnancy, and they agreed that Chelsea would carry their child. If Chelsea had been unable to conceive, Jessamy would have been happy to carry their child. Chelsea Dec. at ¶ 9; Jessamy Dec. at ¶ 7.

11. In or around September 2013, Chelsea and Jessamy began working with a fertility clinic in order for Chelsea to conceive via artificial insemination, using an anonymous sperm donor, which was ultimately successful. Chelsea Dec. at ¶ 8; Jessamy Dec. at ¶ 8.

12. Jessamy wholly supported and agreed for her wife Chelsea to be inseminated with the sperm of an anonymous donor to accomplish conception. Jessamy Dec. at ¶ 8.

13. Chelsea and Jessamy both considered themselves and each other to be partners in the process, including with respect to selecting the anonymous donor. Jessamy Dec. at ¶ 7; Chelsea Dec. at ¶ 10.

14. On or about March 13, 2015, Chelsea was admitted to Meriter Hospital in Madison, Wisconsin to give birth. Jessamy Dec. at ¶ 9; Chelsea Dec. at ¶ 11.

15. During the birth, there were complications, and Jessamy watched as her wife lost blood and their son turned blue due to lack of oxygen. Jessamy Dec. at ¶ 10; Chelsea Dec. at ¶ 12.

16. Jessamy was terrified that her wife and their child would not survive. Jessamy Dec. at ¶ 10.

17. Fortunately, both Chelsea and A.T. survived, though both were required to spend several days in the hospital following the birth. Jessamy Dec. at ¶ 12; Chelsea Dec. at ¶ 13.

18. A.T. was placed in intensive care. Chelsea Dec. at ¶ 13.

19. Jessamy stayed at the hospital throughout this period, moving between floors to care for both her wife and son. Jessamy Dec. at ¶ 13.

20. On or around March 14, 2015, while at the hospital, Chelsea and Jessamy filled out a Department of Health Services (“DHS”) form for the purpose of obtaining a birth certificate for A.T. Chelsea Dec. ¶ 14; Jessamy Dec. at ¶ 14.

21. On the form, Chelsea and Jessamy indicated that they are married and that both are parents to A.T. Chelsea Dec. at ¶ 15; Jessamy Dec. at ¶ 15.

22. They supplied DHS with the requested information for both parents. Jessamy Dec. at ¶ 14; Chelsea Dec. at ¶ 14.

23. On March 30, 2015, Chelsea received a “Notification of Birth Certificate Registration” from DHS that, without explanation, omitted all of Jessamy’s information and listed only Chelsea as A.T.’s parent. Chelsea Dec. at ¶ 16, Ex. B; Jessamy Dec. at ¶ 16.

24. On April 24, 2015, counsel for the Torres family sent a letter and enclosures to Defendant Kitty Rhoades and DHS Chief Legal Counsel requesting confirmation within seven days of receipt of the letter that DHS intended to issue a correct birth certificate that accurately listed both Chelsea and Jessamy as A.T.’s parents. Declaration of Attorney Kyle Palazzolo (“Dec. of Counsel”) at ¶ 4, Ex. A.

25. Kitty Rhoades is the Secretary of the State of Wisconsin Department of Health Services. *Id.* at ¶ 5.

26. On May 1, 2015, the Chief Legal Counsel for DHS wrote to counsel for the Torres family stating that the “Vital Records Office . . . is evaluating the request and will respond when that evaluation is complete.” *Id.* at ¶ 6, Ex. B.

27. As of the date of this filing, the Torres family has not received a birth certificate from the State of Wisconsin for A.T. that lists both of his parents. Chelsea Dec. ¶ 17; Jessamy Dec. at ¶ 17.

28. Under Wisconsin law, a “man is presumed to be the natural father of a child” if “he and the child’s natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.” Wis. Stat. § 891.41(1)(a) (hereafter termed the “spousal presumption of parentage” or “spousal presumption”).

29. The spousal presumption also applies to married couples who use assisted reproductive technology. Wis. Stat. § 891.40 (“If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband of the mother at the time of the conception of the child shall be the natural father of a child conceived.”).

30. In accordance with the spousal presumption, Wis. Stat. § 69.14(1)(e)1 provides: “If the mother of a registrant under this section was married at any time from the conception to the birth of the registrant, the name of the husband of the mother shall be entered on the birth certificate as the legal father of the registrant. The name of the father entered under this subdivision may not be changed except by a proceeding under ch. 767.”

31. DHS issues birth certificates to children born to married different-sex couples listing both spouses as parents regardless of whether the husband is not the child’s genetic parent, either because the mother had intercourse with a man other than her spouse or because the couple achieved pregnancy through donor insemination. Wis. Stat. § 69.14(1)(3)1.

32. DHS issues worksheets to be filled out by the mother or another “informant” shortly after birth. Dec. of Counsel at ¶ 7, Ex. C (“Mother’s Birth Certificate Worksheet-Hospital” and “Birth Certificate Worksheet-Hospital”); *id.* at Ex. D (“Mother’s Birth Certificate Worksheet-Non-Hospital” and “Attendant Birth Certificate Worksheet-Non-Hospital”) (together, “birth certificate worksheets”).

33. DHS creates a child’s birth certificate using the information provided on the birth certificate worksheet. *Id.* at ¶ 7, Ex. E (“FACTS ABOUT YOUR CHILD’S BIRTH CERTIFICATE”) (stating that “The State Vital Records Office will create a birth certificate for your child using the information you give on the birth certificate worksheet”).

34. The birth certificate worksheets and the instructions provided by DHS to assist in filling them out state that if a birth mother is married, the husband’s name must be entered on the form on the spaces designated for the father. *Id.* at ¶ 7, Ex. C at 2 (“Husband’s Information must be completed”), Ex. D at 2 (same), Ex. E at Section E.

35. The birth certificate worksheets, instructions provided by DHS, and internal DHS guidance do not permit omission of the husband’s name if he is not the child’s genetic parent, or seek or offer any way of providing information concerning whether the husband is the child’s genetic parent. *Id.* at ¶ 7, Ex. C at 2, Ex. D at 2, Ex. E, Ex. F (Local Vital Records Office Handbook at pp. III-2, III-4-5).

36. DHS states expressly that it is irrelevant whether the husband is the child’s biological father; his name still goes on the original birth certificate as the father:

According to Wisconsin State Statute 69.14(1), whether or not your husband is the biological father of the child, you must complete the information requested in the “Husband Information” sections of the worksheet, even if you divorced during pregnancy. The husband’s information may be removed from the birth certificate later by court order and a new birth certificate will be completed and placed on file to replace the original certificate.

*Id.* at ¶ 7, Ex. E at Section E(1); *see also id.* at Ex. F (Local Vital Records Office Handbook at pp. III-2, III-4-5).

37. If a mother is married at any time from conception to birth, and omits the name of the husband from the birth certificate worksheet, DHS sends the mother correspondence stating that the child’s birth certificate “has not been legally filed.” *Id.* at ¶ 7, Ex. G.

38. This correspondence informs the mother that if she refuses to provide the name of the husband, “whether or not he is the biological father of the child,” for placement on the certificate as the father, the child “WILL NEVER have a birth certificate”, “will NOT be able to obtain a Social Security number”, and “may have problems in the future when trying to obtain legal identity documents and/or benefits (e.g., custody, a driver’s license, a passport).” *Id.* at ¶ 7, Ex. G (emphasis in original).

39. The birth certificate worksheets include a box under “Risk factors in this pregnancy” permitting a mother to indicate that her “[P]regnancy resulted from infertility treatment,” but the boxes underneath this heading do not permit a parent to indicate the use of “artificial insemination” alone. *Id.* at ¶ 7, Exs. C and D.

40. A mother is directed to “check all that apply,” followed by boxes for “fertility-enhancing drugs, artificial insemination, or intrauterine insemination (e.g., Clomid, Pergonal),” and “Assisted Reproductive Technology (e.g., in vitro fertilization (IVF), gamete intrafallopian transfer (GIFT), ZIFT).” *Id.* at ¶ 7, Exs. C and D.

41. The forms do not seek any information about whether a couple complied with the requirements of Wis. Stat. § 891.40(1) for artificial insemination with respect to signed consents, or a doctor’s certification. *Id.* at ¶ 7, Exs. C and D.

42. Defendant's refusal to provide the Torres family with a two-parent birth certificate for A.T. poses significant and ongoing harm to A.T., Chelsea, and Jessamy, and renders the family vulnerable to future harm. Chelsea Dec. at ¶ 18.

43. Without an accurate birth certificate, it is difficult if not impossible for the Torres family to comply with legal identification requirements for A.T. *Id.* at ¶ 19.

44. Birth certificates are vital to A.T.'s ability to obtain a Social Security card and a passport. Dec. of Counsel at ¶ 7, Ex. G; *see also* Social Security Administration, *Learn What Documents You Need To Get A Social Security Card*, available at <http://www.ssa.gov/ssnumber/ss5doc.htm>; United States Department of State, *Passports for Minors Under 16*, available at <http://travel.state.gov/content/passports/english/passports/under-16.html>.

45. When A.T. or his parents must produce a birth certificate to establish Jessamy's parental rights and Jessamy's ability to take actions on A.T.'s behalf, such as to enroll him in school or extracurricular activities or authorize medical treatment, they are unable to do so. Chelsea Dec. at ¶ 19.

46. State agencies and employers often request birth certificates to enroll a child for needed benefits. *See, e.g.*, Wis. Stat. 632.885 (regarding health insurance for a child through a parent's employer-sponsored group plan); Dec. of Counsel at ¶ 7, Ex. G ("If you FAIL TO RESPOND to this letter . . . [y]our child may have problems in the future when trying to obtain . . . benefits.").

47. Recognition of a parent on a birth certificate also provides for Social Security survivor benefits to the child in the event of the parent's death and provides inheritance to the

child in the event of the parent's death intestate. *See* Social Security Administration, *Benefits for Children*, available at <http://www.ssa.gov/pubs/EN-05-10085.pdf>.; Wis. Stat. § 852.05.

48. If A.T. were to go missing or be kidnapped, law enforcement agencies may require parents to produce a birth certificate to report a missing child or secure his return. *See, e.g.*, Wis. Stat. § 938.991(4) (Interstate Compact on Juveniles discussing a parent's need for a birth certificate to regain custody)

49. If a couple's marriage breaks down, a birth certificate establishes the child's rights to child support from both parents." Wisconsin Department of Children and Families, Bureau of Child Support, "*Your Guide to Legal Fatherhood*," [http://dcf.wisconsin.gov/publications/pdf/dcf\\_p\\_dwsc15445.pdf](http://dcf.wisconsin.gov/publications/pdf/dcf_p_dwsc15445.pdf) (last viewed September 11, 2015).

50. A birth certificate is the primary document used to establish parentage. It is "one of [a] child's most important documents" and "will be required at critical points throughout [a] child's life." Dec. of Counsel at ¶ 7, Ex. E.

51. During A.T.'s birth, Jessamy feared that Chelsea might not survive, and that if something were to happen to Chelsea, she might not be able to prove that she is A.T.'s parent. Jessamy Dec. at ¶¶ 10 and 11.

52. Fortunately, the staff at Meriter Hospital treated Jessamy as A.T.'s parent, but absent an accurate birth certificate, she may not be as fortunate in future medical emergencies. *Id.* at ¶ 13.

53. Even if Chelsea and Jessamy can explain the discrepancies in A.T.'s birth certificate and establish Jessamy's equal claim to exercise control over A.T.'s care and custody,

having to do so is likely to invade the privacy of the Torres family by revealing which parent has a genetic connection to A.T. Jessamy Dec. at ¶ 18.

54. Jessamy's inability to demonstrate her parentage with a birth certificate is painful to her, and makes her feel as though her government believes she is not a valid parent to A.T. *Id.* at ¶ 19.

55. Jessamy also worries that, as A.T. grows older he will internalize the State's message that she is somehow less a parent to him than Chelsea, that his relationship to her is less secure, and that his family is not legitimate. *Id.*

56. She worries that A.T. will encounter discrimination because he has only one parent on his birth certificate. *Id.*

\* \* \*

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Respectfully submitted,

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