

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

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

PLAINTIFFS

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

COURTNEY M. KASSEL and KELLY L. SCOTT,
individually, and as parents, next friends, and
guardians of A.G.S., a minor child

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

**ORDER SETTING ASIDE ALL ORDERS
REQUIRING MEDIATION**

On the 8th day of December, 2017, this matter came on for consideration and from all things and matters properly before the court, the court doth find and order as follows:

1. This case is on remand from the Arkansas Supreme Court. The Court's instruction to this court was to "award declaratory and injunctive relief as necessary to ensure that same-sex spouses are afforded the same tight as opposite-sex spouses to be listed on a child's birth certificate" as required by the mandate from the United States Supreme Court in its summary reversal of the Arkansas Supreme Court's previous opinion in this case.

2. The United States Supreme Court has ruled that the present Arkansas statutory scheme for the issuance of birth certificates pursuant to A.C.A. § 20-18-401 and replacement birth certificates pursuant to A.C.A. § 20-18-406 is violative of the equal protection clause of the Constitution of the United States.

3. In an attempt to effect an orderly transition with a minimum disruption to the citizens and residents of the State of Arkansas, this court has entered *Orders* requiring the parties to mediate the case in an attempt to pare the unconstitutional portions while retaining the constitutional remainder.

4. The court gave the parties more than sufficient time, until January 5, 2018 to complete mediation.

5. The court advised the parties if they were unable to achieve an agreed resolution by that date the court would implement its mandate from both the United States Supreme Court and the Arkansas Supreme Court and enjoin the issuance of any and all birth certificates in the State of Arkansas unless and until such time as birth certificates can be issued to every applicant in a constitutional manner.

6. It has come to the attention of the court that the defendant has refused to mediate utilizing the mediation parameters and framework that this court has ordered. The defendant has filed pleadings with the Arkansas Supreme Court concerning this court's mediation requirement that threaten to indefinitely postpone the final resolution of this case.

7. Whether such refusal is based in good faith or is a further delaying tactic by the defendant is immaterial. This case has been pending for over two years and it has been more than six months since the United States Supreme Court ruled the Arkansas statutory scheme unconstitutional. There are citizens and residents of the State of Arkansas whose constitutional rights are being violated on a daily basis.

8. As the defendant is unwilling to mediate using the framework outlined by this court there is no need to further delay implementation of the United States Supreme Court's mandate.

9. The *Order Requiring Mediation* entered on November 13, 2017, the *Order Concerning Defendant's Motion for Partial Consideration* filed on November 27, 2017, and the *Memorandum Opinion Concerning Defendant's Motion for Partial Reconsideration* filed on November 27, 2017, are hereby ordered to be immediately set aside and they are void and of no effect.

10. Plaintiffs are given thirty (30) days from the date of entry of this *Order* in which to submit their petition for the award of attorney's fees and costs. The defendant is given thirty (30) days following such petition to file its response. As the monies requested in a case of this nature may be substantial, the court urges the parties to attempt to mediate the issue of attorney's fees and costs. The court is not going to order mediation of such issue because of the defendant's refusal to attempt in good faith to comply with the court's previous mediation orders.

IT IS SO ORDERED.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE
12/8/17
DATE