

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

A.C., a minor child by his next friend,)
mother and legal guardian, M.C.,)

Plaintiff,)

v.)

No. 1:21-cv-02965-TWP-MPB

METROPOLITAN SCHOOL DISTRICT)
OF MARTINSVILLE, *et al.*,)

Defendants.)

**Response in Opposition to Defendants’ Request for Court to Take Judicial Notice of
State Court Order and Notice of Collateral Estoppel**

Plaintiff, by counsel, states that:

1. Defendants have requested that this Court take judicial notice of an April 8, 2022 decision of the Morgan Superior Court denying M.C.’s request to grant A.C. a gender-marker change and has asked this Court to give the decision collateral estoppel effect.

2. Plaintiff has no objection to this Court recognizing the decision of the state court, which is still subject to challenge through a motion to correct error and/or appeal, but the decision has no collateral estoppel effect in this case.

3. The law is clear that:

“Under the doctrine of collateral estoppel (also known as issue preclusion), once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” Collateral estoppel constraints, as a matter of federal law, apply only when

“(1) the issue sought to be precluded [is] the same as that involved in the prior litigation, (2) the issue must have been actually litigated, (3) the determination of the issue must have been essential to the final judgment, and (4) the party against whom estoppel is invoked must [have been] fully represented in the prior action.”

Shaffer v. Kraemer, 2021 WL 5113986, at *3 (S.D. Ind. Nov. 3, 2021) (internal Seventh Circuit citations omitted).

4. Defendants seek that collateral estoppel effect be given to the state court’s conclusion, reached only after expressing doubt as to its authority to grant a gender-marker change, that it was not in A.C.’s best interests to receive a gender-marker change.

5. The issue before the state court is not the same as the one before this court. The sole issue before the Morgan Superior Court was whether it was in A.C.’s best interest to have the gender marker on his birth certificate changed from female to male. *In re A.B.*, 164 N.E.3d 167 (Ind. Ct. App. 2021).

6. Gender marker proceedings are not declaratory actions that decide one’s gender. Instead, they are limited scope proceedings that decide if the gender marker on one’s Indiana birth certificate should be changed. *Petition for Change of Birth Certificate*, 22 N.E.3d 707, 708 (Ind. Ct. App. 2014); Indiana Code § 16-37-2-10 (birth certificate corrections). The sole function and purpose of gender marker change orders is to update a birth certificate. *Petition for Change of Birth Certificate*, 707 N.E.3d at 708-10, see also *In re A.B.*, 164 N.E.3d 167, 168 (Ind. Ct. App. 2021), *In re RE*, 142 N.E.3d 1045, 1052 (Ind. Ct. App. 2020).

7. To determine if it was in A.C.'s best interest to have his birth certificate updated, the trial court had to balance the best interest factors in Indiana Code § 31-17-2-8, which governs child custody. *See A.B.*, 164 N.E. 3d at 171. This analysis, of course, has no relevance to the issue before this Court.

8. Because gender marker change orders are not declarations about one's gender, the orders are not necessary to change gender markers on any other state or federal identification. *See, e.g.*, 140 Ind. Admin. Code 7-1.1-3(d)(3)(C) (gender marker on driver's license or state identification card may be changed with doctor's letter or updated birth certificate); U.S. Department of State, *Selecting your Gender Marker*, available at <https://travel.state.gov/content/travel/en/passports/need-passport/selecting-your-gender-marker.html> (gender marker changed upon written request). And because each agency determines what is required to change a gender marker and what gender marker options are available, no one has a "legal gender."

9. This case has nothing to do with whether it is in the best interests that A.C. receive a gender marker change. The sole issue in this case is whether denying A.C. access to male restrooms violates Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a), and the Equal Protection Clause of the United States Constitution. Nothing that the state court did in denying the gender marker change has any relevance to this issue. After all, in *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Board of Educ.*, 858 F.3d 1034 (7th Cir. 2017), abrogation on other grounds recognized by *Illinois Republican Party v. Pritzker*,

973 F.3d 760, 763 (7th Cir. 2020), the court affirmed the preliminary injunction on behalf of the transgender plaintiff despite the fact that he had not obtained a gender marker change, as one could only be obtained after surgery. 858 F.3d at 1053. To point out the obvious, a decision by the Morgan Superior Court cannot supersede prevailing case law established by the Seventh Circuit.

10. Defendants argue that “the Morgan Superior Court order offers the only individualized assessment of the best interests of the child before this Court.” (ECF No. 42 at 3). Of course, this Court has a wealth of evidence as to the harms that A.C. has faced, and continues to suffer, because of defendants’ failure to allow him access to male restrooms. Defendants have not attempted to counter any of this evidence.

11. In addition to being factually incorrect, this argument concerning “individualized assessment” highlights the error of defendants’ collateral estoppel claim. To the extent that “best interests” are relevant to this Court’s preliminary injunction analysis, and defendants have not explained how it is, it is in A.C.’s best interests to be able to access the male restrooms in his school. The state court’s conclusion that it was not in his best interest to obtain a gender-marker change has no bearing on the question of restroom access.

12. Therefore, “the doctrine of collateral estoppel is not involved; the two rulings are unrelated.” *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 299 F.3d 635, 640 (7th Cir. 2002).

WHEREFORE, although plaintiff has no objection to this Court taking judicial notice of the actions of the Morgan Superior Court, plaintiff objects to it being given any collateral estoppel effect in this case, and requests all other proper relief.

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