

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.) CASE NO. 1:21-cv-02965-TWP-MPB
)
METROPOLITAN SCHOOL DISTRICT)
OF MARTINSVILLE; PRINCIPAL,)
JOHN R. WOODEN MIDDLE SCHOOL,)
in his official capacity,)
)
Defendants.)

**REPLY IN SUPPORT OF REQUEST FOR COURT TO TAKE JUDICIAL NOTICE OF
STATE COURT ORDER AND NOTICE OF COLLATERAL ESTOPPEL**

Plaintiff's Response in Opposition to Request for Court to Take Judicial Notice of State Court Order and Notice of Collateral Estoppel demonstrates why collateral estoppel is proper. In paragraph eleven of the response, A.C. argues that (1) it is in A.C.'s best interest to access the middle school boys' restrooms, and (2) the Morgan County state court's conclusion that it was not in A.C.'s best interest to obtain a gender-marker change has no bearing on restroom access. (ECF No. 45 at ¶ 11.) However, a comparison of the issues before this Court with those decided by the state court establish issue preclusion as to the irreparable harm prong of the preliminary injunction analysis. Moreover, the state court decision as to best interests of A.C. provides a significant and material difference with the plaintiff in *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 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). As a result, the appropriate outcome in this case differs from *Whitaker* based upon different facts.

In the response, A.C. generally refers to the “best interest factors in Indiana Code § 31-17-2-8” without listing them, claiming that the underlying issues in the state court are unrelated, and summarily asserting “this Court has a wealth of evidence as to the harms that A.C. has faced, and continues to suffer.” (ECF No. 45 at ¶¶ 7-12.) But closer consideration of the evidence on irreparable harm presented in this case with the best interest factors considered by the state court underscores the preclusive effect the state court decision should have at this stage of the litigation. Specifically, in the pending motion for preliminary injunction, A.C.’s evidence of alleged harm was limited to A.C.’s testimony, M.C.’s testimony, and the disputed testimony of Dr. James Fortenberry; each of whom referenced anxiety, depression, and the potential for increased risk of harm without access to the male restrooms at school. (*See* ECF No. 30 at 3-15; ECF No. 39 at 4-5.) However, A.C. presented no individualized assessment by an expert of the alleged risk of harm.

Meanwhile, the state court’s analysis of the best interest of the child considered the gender marker change request applying the following factors, among others:

- (1) The age and sex of the child.
 - (2) The wishes of the child’s parent or parents.
 - (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.
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- (5) The child’s adjustment to the child’s:
 - (A) home;
 - (B) school; and
 - (C) community.
 - (6) The mental and physical health of all individuals involved.

Ind. Code § 31-17-2-8.

Thus, the state court’s analysis on the best interest of the child as to the gender marker addressed the perspectives and interests (the wishes) of A.C., M.C., and the mental and physical health of A.C. alongside the social adjustment any change may have for A.C. at school—the very same considerations set forth by Plaintiff in this case on irreparable harm. Moreover, the state court

specifically noted that it considered M.C.'s desire for A.C. to have access to the boys' restroom at school and M.C.'s argument that the gender marker change would eliminate other people questioning A.C.'s gender.

Based upon these considerations, the state trial court questioned whether it would be in A.C.'s best interests to have access to the boys' restroom and denied the requested gender marker change. As part of its analysis, the state court considered the same issues underlying irreparable harm in this present action on the best interest of the child and was unpersuaded by them. Collateral estoppel on irreparable harm is therefore proper, as the issues actually litigated in the state court decision envelop an issue before this Court; A.C.'s ability to access the boys' bathrooms were an essential part of the state court's decision; and A.C.'s interests were fully represented in the state court action. *See Universal Guar. Life Ins. Co. v. Coughlin*, 481 F.3d 458, 462 (7th Cir. 2007).

Furthermore, the state court decision underscores significant and material differences with the facts in *Whitaker*. A.C. correctly points out that the state court cannot supersede prevailing Seventh Circuit case law, but ignores that the existence of the state court order is yet another distinction between this case and *Whitaker*. In *Whitaker*, the plaintiff did not have access to a gender marker change under Wisconsin state law, which conditioned such a change upon surgery. 858 F.3d at 1053. Moreover, there was no ruling by a state court adjudicating the best interests of the child, nor was there a ruling by a state court that reached contrary conclusions to those requested by the plaintiff in the federal action. Here, however, A.C. not only has access to a gender marker change under Indiana law, but A.C. was denied a gender marker change based upon the state court's review of the evidence. The state court concluded, after an individualized assessment of specific statutory factors, that the best interests of A.C. were not served by access to the boys' restroom—a decision contrary to A.C.'s requests before this Court. These significant differences

in the facts and the legal implications of the contested issues before this Court further distinguish *Whitaker*.

Because A.C. has no objection to this Court taking notice of the state court decision filed under seal (ECF No. 45 at ¶ 2), and in light of the foregoing, Defendant respectfully renews its request that the Court take notice of that order and give it the appropriate collateral estoppel effect.

Respectfully submitted,

/s/ Philip R. Zimmerly

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, a copy of the foregoing “Reply in Support of Request for Court to Take Judicial Notice of State Court Order and Notice of Collateral Estoppel” was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

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/s/ Philip R. Zimmerly _____
Philip R. Zimmerly