

STATE OF MICHIGAN  
IN THE SUPREME COURT

CARRIE PUEBLO,

Plaintiff-Appellant,

Supreme Court Case No. 164046

Court of Appeals Case No. 357577

v

Lower Court Case No. 2020-6382-DC

RACHEL HAAS,

Defendant-Appellee.

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**PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-APPELLEE'S  
SUPPLEMENTAL BRIEF ON APPEAL**

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A  
STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS  
INVALID.

THIS CASE INVOLVES A CONTEST AS TO THE CUSTODY OF A MINOR CHILD.

**ORAL ARGUMENT REQUESTED**

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**JURISDICTIONAL STATEMENT**

This is an Application for Leave to Appeal from the Court of Appeals *unpublished* Order dated December 28, 2021, affirming the trial court's decision that granted Defendant-Appellee's motion for summary disposition pursuant to MCR 2.116(C)(5) and MCR 2.116(C)(8).

This Honorable Court granted Application for Leave to Appeal on or about September 23, 2022. On or about December 2, 2022, this Honorable Court granted Plaintiff-Appellant's Motion to Extend the Time for Filing her Brief.

On or about January 20, 2023, this Honorable Court granted Defendant-Appellee's Motion to Extend Time for Filing Supplemental Brief to February 17, 2023.

This Reply Brief is timely filed pursuant to MCR 7.312(E)(3).

This Honorable Court has jurisdiction pursuant to MCR 7.303(B)(1) and MCR 7.305(H)(1) and (4).

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**STATEMENT OF QUESTIONS**

1. When reviewing a Motion for Summary Disposition under MCR 2.116(C)(8), must this court accept all well-pleaded factual allegations as true and construe them in the light most favorable to the Appellant as the non-moving party?

Trial Court: Failed to Answer.

Appellate Court: Yes.

Ms. Pueblo answers: Yes.

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### **STATEMENT OF FACTS**

Ms. Pueblo and the Defendant-Appellee were involved in a long-term, same-sex relationship beginning near the early 2000s. (App p 27a). On or about June 30, 2007, the parties participated in a Commitment Ceremony in Lansing, Michigan.<sup>1</sup> Reverend Kent Lederer of Unity of Greater Lansing presided over the ceremony. This ceremony was witnessed by Amber Gonzales and her wife, Mandy Costello. Reverend Lederer called this a “Holy Union Ceremony”. The ceremony would roughly go as follows:

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<sup>1</sup> Same-sex marriage was not legal in Michigan until the *Obergefell v Hodges*, 576 US 644; 135 S Ct 2584; 192 L Ed 609 (2015) ruling came down from the U.S. Supreme Court on June 26, 2015. Nonetheless, the parties did everything *legally* in their power in 2007 to commit as lifelong partners.

**Unity of Greater Lansing  
Holy Union Ceremony  
MICHIGAN GAY PRIDE  
(2007-2013)**



**Opening/Processional Song:**

**Minister:** *(Invocation)* We're now in the presence of pure Being, and immersed in the Holy Spirit of life, love and wisdom. Divine Love flows through all of us—as we come together in this place today—to bless and celebrate the joining of these persons in Holy Union.

**Minister:** *(Charge to the Congregation)* To those of you in attendance today: True commitment is more than the joining of two people. In its right relation, it's the uniting of two souls who are already attuned to each other. Today, we come together to bear witness of the entry into a closer relationship of these loved and special friends standing before us.

**Minister:** *(Charge to Couple)* To each couple who stands before me: The two of you are entering upon an act of pure faith in which you give of yourself to the utmost, in which you may lose the only self you've ever known, for the one that is to be when you have called it forth through the thousand thoughts and words and acts of love that your commitment means. You must never forget or deny the vision you now see; you must resolve that it never be blurred by the commonplace experience of life. Be unmoved in your devotion to each other.

Remain confident and hopeful. Grasp firm the love you now share.

**Minister:** Please turn and face your partner, as you now affirm your intent: Do you take the person beside you as your life-partner-- to love them, to encourage them, and to inspire them to their highest good in all times? *And the answer is:* "I do."

**Couples:** I do.

**Minister:** *(Ring Exchange)* If you have rings, please bring them forward. If you do not have rings, then please repeat the vows as you will hear it shortly.

These rings represent the endless spiritual love that links you together, spirit to spirit and soul to soul. They represent in their circle, your unity and your oneness. Let them always be a reminder of your commitment made this day to one another.

**Minister:** Please place a ring on the finger of your partner's hand. First one Partner, then the other.

And then...in unison and together...please look at your partner and speak their first name: ----- As you hold hands and look at one another...please repeat these words after me. ( Speak them directly to your partner and not to me.) Together: "With my soul... I will honor... uplift... support... encourage... and love you... with all of my mind... and my heart."

**Minister:** (*The Blessing*) To our Heavenly Father, we say "Thank you!" Thank you for Your Presence here and Your continued blessing on each one of these beautiful couple here today. And it is so! Amen and amen.

*To each one of you I speak this blessing:* The light of God surrounds you. The love of God enfolds you. The power of God protects you. The presence of God watches over you. Wherever you are, God is!

**Minister:** (*The Declaration*) And so...in conformity with your mutual declarations made this day in front of these friends, family and God, I now pronounce you life-partners—in the name of the Father, Son and Holy Spirit. You may kiss your partner!

*(Couple kisses)*

**Minister:** Congratulations!

*(Raise hands for everyone to stand and clap.)*

**Closing/Recessional Song:**

(Minister stays around in robe and stole in order to be available to couples for photos/videos.)

2

(*Id* p 28a)

For all intents and purposes, from June 30, 2007, to present day, the parties were equitably, or de facto, married; it was the parties' intent to be and portray themselves as a wedded couple. The parties wore wedding bands, lived together, paid bills together, and - most importantly - *chose together* to become pregnant via in vitro fertilization ("IVF") and rear that child in the course of their equitable, de facto marriage (*Id* p 29a).

After much thought and debate, the parties agreed that Defendant-Appellee would undergo IVF. An excerpt from Appellee's Answer to Plaintiff's Summons & Complaint states as follows:

3. The parties were in a long-term committed relationship when they decided to use in-vitro fertilization to conceive a child.



ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, **admit**. (*Id* p 9a). (emphasis added).

However, Defendant-Appellee did not undergo IVF until a very careful selection process occurred; by way of further explanation, the parties sought a sperm donor who had strong physical characteristics resembling Ms. Pueblo's to ensure their child would have features resembling both parents, the parties. Ms. Pueblo assisted with the IVF process through which the child was conceived (*Id.* p 29a).

Both parties entered into the contract with the IVF clinic. Ms. Pueblo paid for the IVF procedure on her Discover credit card. The IVF procedure occurred in approximately December of 2007. IVF was successful (*Id.*).

The parties entered into an agreement to conceive and raise their child with attendant parental rights and responsibilities. The parties/parents enjoyed prenatal visits together, the parties picked out a name for their child, together they obtained all things baby, and they even indulged in a 4D ultrasound when baby's gestational age was 28 weeks and 2 days. On that 4D ultrasound (below), we see that Defendant-Appellee continues to hold herself out as wife and lifelong partner to Ms. Pueblo by identifying herself as Rachel Haas Pueblo during prenatal medical appointments (*Id.*).

[Space intentionally blank]



(*Id* p 30a)

John Paul Haas-Pueblo (“JPHP”) was born on November 2, 2008. Ms. Pueblo was present for Defendant-Appellee’s labor and JPHP’s birth. JPHP’s legal name includes both parties’ last names, to wit: Haas and Pueblo.<sup>2</sup> Despite hospital staff’s refusal to allow Ms. Pueblo to be listed on the birth certificate, Defendant-Appellee herself filled out an information card regarding JPHP. The information card Defendant-Appellee Haas personally filled out is seen here (*Id* p 30a):

<sup>2</sup> On multiple occasions in pleadings and/or responsive pleadings, Defendant-Appellee admits and/or acknowledges that the minor child shares both parties’ last names: Haas-Pueblo. See also, paragraph 5 of Answer; paragraphs 2, 3, 6, 7, 8, 9, 10 of affirmative defenses; paragraphs 2 and 4 of motion for summary disposition. (*Id.* p1-2a)

**PERSONAL INFORMATION**

LAST NAME: Haas-Pueblo FIRST NAME: John M.I.: P

SOCIAL SECURITY # \_\_\_\_\_ DATE OF BIRTH: 11/2/08 AGE: 3  MALE  FEMALE

STREET ADDRESS: 644 E Cork St

CITY: Kalamazoo STATE: MI ZIP: 4900

HOME TELEPHONE: \_\_\_\_\_ CHILD'S NICKNAMES: \_\_\_\_\_

CHILD'S FRIENDS: [scribble]

MOTHER'S NAME: Rachael Haas TELEPHONE: \_\_\_\_\_

FATHER'S NAME: Carrie Pueblo TELEPHONE: \_\_\_\_\_

NEAREST RELATIVE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

**DEOXYRIBONUCLEIC ACID**

ATTACH  
**DNA**  
**HAIR SAMPLE**  
HERE

ATTACH SEVERAL STRANDS OF HAIR WITH ROOTS AND FOLLICLES INTACT

BLOOD TYPE \_\_\_\_\_ PLACE OF BIRTH: Branson Hospital

MEDICATIONS \_\_\_\_\_ CHRONIC ILLNESSES \_\_\_\_\_

ALLERGIES \_\_\_\_\_

DOCTOR'S NAME \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

(Id p 31a)

Above, Defendant-Appellee specifically identifies Carrie Pueblo, Plaintiff-Appellant, as JPHP's father.<sup>3</sup>

Up to this point, these facts are uncontested except Defendant-Appellee contests that the parties were married or equitably married (App. p 20a, 26a). However, Defendant-Appellee does

<sup>3</sup> This directly refutes Defendant-Appellee's answer to paragraph 7 of Ms. Pueblo's Complaint (App p 9a). Based upon this document prepared by Defendant-Appellee in 2008, Ms. Pueblo clearly is JPHP's putative father; therefore, calling into question Defendant-Appellee's credibility.

not contest the parties' commitment ceremony, vows exchanged, their intent to hold themselves out as a married couple, wearing wedding bands, living together, paying bills together, and - most importantly - choosing to undergo IVF to have a child as a product of their relationship.

From the date JPHP was born, Ms. Pueblo was present and active as JPHP's putative father. Defendant-Appellee did not begin contesting Ms. Pueblo's parental status in JPHP's life until the parties were no longer lifelong partners (*Id.* p 31a).

Throughout and after the parties' partnership, the parties shared parental responsibilities and duties equally. Ms. Pueblo has continuously maintained or tried to maintain a strong parental role that included bonding with JPHP (*Id.* p 32a).

In 2014, the parties ended their life-long partnership, but continued to informally share custody and parenting of JPHP (*Id.* p 32a).

On or about February 20, 2016, tragically, JPHP suffered a stroke. Ms. Pueblo continued to assist in the child rearing of JPHP including, but not limited to, being JPHP's putative father; providing love, care, affection, and guidance to JPHP; bonding with JPHP; providing food, clothing, housing, transportation, and other necessities for daily living; providing financial support for JPHP; attending JPHP's healthcare appointments; making medical decisions with Defendant-Appellee regarding JPHP's care; and more. Ms. Pueblo participated in the care and rearing of JPHP until Defendant prevented her from doing so (*Id.* p 32a).

In March of 2017, shortly after the St. Patrick's Day holiday, the Defendant-Appellee contacted Ms. Pueblo; during that contact, Defendant-Appellee aggressively, disrespectfully, and inappropriately demanded that Ms. Pueblo have no future contact with JPHP (*Id.*).

Defendant-Appellee intercepted Ms. Pueblo's efforts to maintain contact with JPHP. As a result, Ms. Pueblo had no choice but to file a Complaint for Custody<sup>4</sup>. (*Id.* p 3a). In response to Ms. Pueblo's Complaint, Defendant-Appellee filed a Motion for Summary Disposition and Supporting Brief (App. P 15a, 16a).

Defendant-Appellee motioned for summary disposition on two grounds:

1. That Ms. Pueblo lacks standing (MCR 2.116(C)(5)); and
2. For Ms. Pueblo's failure to "state a claim upon which relief may be granted" and that no amendment to pleadings could cure the defect (MCR 2.116(C)(8)). (App. p 15a).

Following oral argument on Defendant-Appellee's Motion for Summary Disposition, the trial court's April 29, 2021, Decision granted Defendant-Appellee's motions for the following reasons:

Plaintiff and Defendant were never married and Plaintiff is not a legal parent of the minor child involved or related at all to the child. There was no adoption, no judicial establishment of parentage, no Affidavit of Parentage, and Plaintiff has no biological relationship with the minor child (App. p 87a).

After oral argument was heard by the trial court, the Court of Appeals issued a decision in the case of *LeFever v Matthews*, 336 Mich App 651; 971 NW2d 672 (2021). The trial court did not have *LeFever* before it to consider at the time of rendering its March 8, 2021, Decision. Nonetheless, the *LeFever* decision holds that the Child Custody Act does not define "natural parent" nor legally require a genetic connection between a parent and a child. Thus, the trial court erred in requiring adoption, judicial establishment of parentage, Affidavit of Parentage, or a biological relationship with the minor child and, therefore, erred in granting Defendant's MCR 2.116(C)(5) and MCR 2.116(C)(8) motions (App. p 38a).

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<sup>4</sup> No evidentiary hearings have been held in this matter (*Id.* at p 90a).

Ms. Pueblo filed a Motion for Reconsideration in light of the *LeFever* decision (App. P 60a). On June 1, 2021, the trial court issued its Decision of the Court Regarding Plaintiff's Motion for Reconsideration wherein it denied Ms. Pueblo's Motion for Reconsideration (App. P 87a). Ms. Pueblo timely appealed by right to the Court of Appeals. The Court of Appeals affirmed the trial court's decision (App. P 92a). Ms. Pueblo sought leave to appeal from the Michigan Supreme Court, and this Honorable Court granted leave on September 23, 2022.

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**STANDARD OF REVIEW**

Under MCR 2.116(C)(8), “all well-pleaded allegations are accepted as true, and construed most favorably to the non-moving party.” *Wade v Department of Corrections*, 439 Mich. 158, 162, 163; 482 NW 2d 26 (1992).

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## LAW AND ARGUMENT

- 1. WHEN REVIEWING A MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8), THIS COURT MUST ACCEPT ALL WELL-PLEADED FACTUAL ALLEGATIONS AS TRUE AND CONSTRUE THEM IN THE LIGHT MOST FAVORABLE TO APPELLANT AS THE NON-MOVING PARTY.**

### Discussion

Under MCR 2.116(C)(8), “all well-pleaded allegations are accepted as true, and construed most favorably to the non-moving party.” *Wade v Department of Corrections*, 439 Mich. 158, 162, 163; 482 NW 2d, 26 (1992).

Appellee, the moving party for the MCR 2.116(C)(8) dispositive Motion, made the following assertions (in relevant parts) in her February 17, 2023, Counter-Statement of facts<sup>5</sup>:

- [1] Rachel Haas is the legal and biological parent of the minor child subject to this action.
- [2] These parties, i.e., Appellant and Appellee, were in a romantic relationship that ended in or about the year 2012.
- [3] At the time the minor child was born, the Appellant and the Appellee were not married; nor did they ever get married...
- [4] After the minor child was born, the Appellant did not adopt the minor child.
- [5] The Appellant is not identified as a parent on the minor child’s birth certificate.
- [6] Contrary to the Appellant’s assertion, these parties were never married, nor “equitably married” – or *de facto* married – whatever the Appellant means by those terms.
- [7] The information concerning the parties’ actions in the period leading up to the birth of the minor child, while perhaps interesting, is not factually relevant to the issues before this Court.
- [8] From the date the child was born, the Appellant was not the child’s legal or putative “father” as relevant for purposes for this proceeding nor was she ever the Appellee’s “husband” notwithstanding notations made on the hospital information card.
- [9] The parties’ relationship terminated in or about 2012, not 2014.
- [10] At no point prior to or after 2012 did the Appellant initiate any adoption proceeding to be declared the adoptive parent of the minor child.

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<sup>5</sup> the above numerical order is not synonymous with the numbers assigned in Appellee’s Counter-Statement of Facts.



Appellant, as the non-moving party, responds to Appellee's inaccurate counter-statement of facts in numerical order as follows:

1. Appellee incorrectly states that she is *the* legal and biological parent of the minor child subject to this action. Rather, Appellee is *a* legal and biological parent of JPHP.
2. To the best of Appellant's memory and belief, the relationship terminated in 2014, not 2012.
3. Appellee ignores the *equitable* and/or *de facto* marriage in existence at the time JPHP was born.
4. After JPHP was born, adoption was not legally available to Appellant. The State of Michigan did not permit same-sex adoptions while the parties were romantically involved. Following the conclusion of the parties' relationship, Appellant would not have been able to successfully adopt JPHP without Appellee's consent. These proceedings have made it apparent that Appellee would not have consented to Appellant adopting JPHP.
5. Appellee fails to acknowledge that Michigan's Law prohibited same-sex couples from identifying their partner on the couple's minor child's birth certificate. Appellee also ignores the parties' intent, desire, and efforts to identify Appellant on the birth certificate.
6. Appellee ignores the *equitable* and/or *de facto* marriage in existence at the time JPHP was born.
7. Appellee wrongly states that the information concerning the parties' actions in the period leading up to the birth of JPHP are not "factually relevant". Appellee fails to address the Court of Appeals' call for an elastic definition of "natural parent" in

- LeFever v Matthews*, 336 Mich App 651; 971 NW2d 672 (2021) and the Court of Appeal's notes that Michigan's current law does not consider families derived from modern scientific methods and/or technologies when traditional conception methods are not otherwise available to the parties.
8. Appellant is JPHP's putative father precisely as evidenced by the "notations made on the hospital information card" that was written by Appellee herself.
  9. To the best of Appellant's memory and belief, the relationship terminated in 2014, not 2012.
  10. Prior to the parties' relationship ending, Appellant was not legally able to initiate adoption proceedings in the State of Michigan, because same-sex couples were prohibited from same.

Following the conclusion of the parties' relationship, Ms. Pueblo would not have been able to successfully adopt JPHP without Appellee's consent. These proceedings have made it apparent that Appellee would not have consented to same.

### **CONCLUSION AND RELIEF REQUESTED**

WHEREFORE, we pray this Honorable Court accept Appellant's well-pleaded allegations as true and construe same most favorably to Appellant because she is the non-moving party in this matter.

**Respectfully submitted,**

**STARKS LAW, PLC  
Attorney for Plaintiff-Appellant**

**By: /s/ Reh Starks  
Reh Starks (P76689)**

Dated: March 8, 2023