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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.

Reh Starks (P76689)
STARKS LAW, PLC
Attorney for Plaintiff-Appellant
119 North Church Street, Suite 202
Kalamazoo, MI 49007
Ph: (269) 216-6006

George T. Perrett (P42751)
BUTLER, TOWESON & PAYSENO, PLLC
Attorneys for Defendant
202 North Riverview Drive
Parchment, MI 49004
Ph: (269) 349-7686

PLAINTIFF-APPELLANT'S APPENDIX

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Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN 9th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 2020- -DC

Court address
1536 Gull Road, Kalamazoo, MI 49048

Court telephone no.
269-385-6000

Plaintiff's name(s), address(es), and telephone no(s).		Defendant's name(s), address(es), and telephone no(s).
Carrie Pueblo 4274 South 29th Street Kalamazoo MI 49048	v	Rachel Haas 5191 Mission Kalamazoo, MI 49048
Plaintiff's attorney, bar no., address, and telephone no. Reh Starks (P76689) Starks Law, PLC 119 North Church Street, Suite 202 Kalamazoo, MI 49007 Ph: (269) 216-6006		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

☑ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.

☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

CARRIE PUEBLO,

Plaintiff, Case No. 2020- DC

v Hon.

RACHEL HAAS,

Defendant.

Reh Starks (P76689)
STARKS LAW, PLC
Attorney for Plaintiff
119 North Church Street, Suite 202
Kalamazoo, MI 49007
Ph: (269) 216-6006

PLAINTIFF'S COMPLAINT FOR CUSTODY

NOW COMES Plaintiff, Carrie Pueblo, by and through STARKS LAW, PLC and states in support of their Summons and Complaint to obtain custody and parenting time:

1. Father Pueblo has resided in Michigan for more than 180 days immediately preceding the filing of this Complaint.
2. Father Pueblo has resided in Kalamazoo County for more than 10 days immediately preceding the filing of this Complaint.
3. The parties were in a long-term committed relationship when they decided to utilize in-vitro fertilization so as to conceive a child.
4. In-vitro fertilization efforts were successful.
5. On or about November 2, 2008, John Paul Haas-Pueblo ("Jack") was born.

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6. The parties celebrated the birth of their son Jack and equally shared in the joys, privileges, rights, and responsibilities of parenthood.
7. Plaintiff is the putative father.
8. In 2014, the parties ended their relationship, but continued to informally share custody and parenting time of Jack.
9. On or about February 20, 2016, Jack suffered a stroke.
10. In March of 2017, shortly after the St. Patrick's Day holiday, the Defendant contacted Father Pueblo and disrespectfully and inappropriately demanded that Father Pueblo have no future contact with Jack.
11. Father Pueblo made efforts to continue the parent-child relationship with Jack, but the Defendant would behave erratically, hostilely, aggressively, and simply inappropriately—and created an environment that was not appropriate for Jack.
12. It was not, nor has it ever been, in Jack's best interests for Father Pueblo to not have parenting time and custody of Jack.
13. It is in Jack's best interests for the parties to work toward joint legal and joint physical custody.
14. More specifically, a breakdown and applied summary of MCL 722.23 is as follows:
    a. Both parties demonstrate love, affection, and other emotional ties existing between the parties involved and the child.
    b. Each party has the capacity and disposition to give the child, love, affection, and guidance in the continuation of educating and raising the child in its religion or creed, if any.

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c. Each party has the capacity and disposition to provide the child with food, clothing, medical care, and other remedial care recognized and permitted under the laws of Michigan in place of medical care, and other material needs.

d. Each party has the ability to provide a stable, satisfactory environment. Admittedly, Father Pueblo has been forced out of Jack's life by the Defendant's hand. However, Father Pueblo desires strongly to reenter Jack's life in a slow and healthy manner, to ensure permanent continuance within Jack's life, and to be a part of Jack's stable and satisfactory environment.

e. Over time, through diligent reunification efforts, and the permanence of a family unit, the existing or proposed custodial homes will not be questionable.

f. Father Pueblo is morally fit. CPS involvement with the Defendant does bring into question the Defendant's moral fitness.

g. Father Pueblo is mentally and physical healthy. The Defendant's medical history does bring into question Defendant's mental health; the Defendant is otherwise believed to be physically healthy.

h. It is not Father Pueblo's intent to upset the home, school, and/or the community record of the child; rather, it is Father Pueblo's intent to once again supplement and improve the quality of Jack's life within those settings.

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i. Given the stroke Jack sustained in 2016, we are unsure if he would be of sufficient ability to express his preference to the courts. Furthermore, it is not Father Pueblo's desire to ask of their son that he bear such a weight on his shoulders.

j. Father Pueblo is certainly willing and able to facilitate and encourage a close and continuing parent-child relationship with the Defendant. Alternatively, and most unfortunately, the Defendant has not been willing or able to facilitate and encourage a close and continuing parent-child relationship between Father Pueblo and Jack.

k. To the best of Father Pueblo's knowledge, information, and belief, there is no history of domestic violence. However, it is worth noting that CPS has been involved and investigated the Defendant's parenting choices regarding the parties' minor child.

WHEREFORE, Father Pueblo prays this Honorable Court award joint legal custody and joint physical custody—utilizing an appropriate parenting time schedule for reunification efforts taking into consideration Defendant's refusal to allow Father Pueblo contact with their son since 2017.

FURTHERMORE, Father Pueblo prays this Honorable Court calculate and award child support as is appropriate pursuant to the Michigan Child Support Guidelines.

Respectfully submitted,

STARKS LAW, PLC
Attorney for Plaintiff

Dated: October 25, 2020

By: _____
Reh Starks (P76689)

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.
/

Hon. Stephen D. Gorsalitz

File No. 2020-6382-DC

FEB 16 2021

Reh Starks (P76689)
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Leslie L. Payseno (P63935)
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DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT FOR CHILD CUSTODY, PARENTING TIME AND CHILD SUPPORT

Answer to Complaint

NOW COMES the Defendant, Rachel Haas, by and through her attorneys, Butler, Toweson & Payseno - PLLC, by Leslie L. Payseno, and for her *Answer to Complaint for Child Custody, Parenting Time and Child Support*, states as follows:

1. Father Pueblo has resided in Michigan for more than 180 days immediately preceding the filing of this Complaint.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue. Plaintiff is a female.

2. Father Pueblo has resided in Kalamazoo County for more than 10 days immediately preceding the filing of this Complaint.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding

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and without waiving this defense, denied for the reason it is untrue.

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

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, admit.

4. In-vitro fertilization efforts were successful.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, admit.

5. On or about November 2, 2008, John Paul Haas-Pueblo ("Jack") was born.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, admit.

6. The parties celebrated the birth of their son Jack and equally shared in the joys, privileges, rights and responsibilities of parenthood.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

7. Plaintiff is the putative father.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

8. In 2014, the parties ended their relationship, but continued to informally share custody and parenting time of Jack.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

9. On or about February 20, 2016, Jack suffered a stroke.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding

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and without waiving this defense, admit.

10. In March of 2017, shortly after the St. Patrick's Day holiday, the Defendant contacted Father Pueblo and disrespectfully and inappropriately demanded that Father Pueblo have no future contact with Jack.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

11. Father Pueblo made efforts to continue the parent-child relationship with Jack, but the Defendant would behave erratically, hostilely, aggressively, and simply inappropriately- and created an environment that was not appropriate for Jack.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

12. It was not, nor has it ever been, in Jack's best interests for Father Pueblo to not have parenting time and custody of Jack.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

13. It is in Jack's best interests for the parties to work toward joint legal and joint physical custody.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

14. More specifically, a breakdown and applied summary of MCL 722.23 is as follows:

a. Both parties demonstrate love, affection, and other emotional ties existing between the parties involved and the child.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense,

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denied for the reason it is untrue. Plaintiff has had no contact with the minor child in more than 5 years.

b. Each party has the capacity and disposition to give the child love, affection, and guidance in the continuation of educating and raising the child in its religion or creed, if any.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

c. Each party has the capacity and disposition to provide the child with food, clothing, medical care, and other remedial care recognized and permitted under the laws of Michigan in place of medical care, and other material needs.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

d. Each party has the ability to provide a stable, satisfactory environment. Admittedly, Father Pueblo has been forced out of Jack's life by the Defendant's hand. However, Father Pueblo desires strongly to reenter Jack's life in a slow and healthy manner, to ensure permanent continuance within Jack's life, and to be a part of Jack's stable and satisfactory environment.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

e. Over time, through diligent reunification efforts, and the permanence of a family unit, the existing or proposed custodial homes will not be questionable.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

f. Father Pueblo is morally fit. CPS involvement with the Defendant does bring into question the Defendant's moral fitness.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

g. Father Pueblo is mentally and physically healthy. The Defendant's medical history does bring into question Defendant's mental health; the Defendant is otherwise believed to be physically healthy.

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ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

h. It is not Father Pueblo's intent to upset the home, school, and/or the community record of the child; rather, it is Father Pueblo's intent to once again supplement and improve the quality of Jack's life within those settings.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

i. Given the stroke, Jack sustained in 2016, we are unsure if he would be of sufficient ability to express his preference to the courts. Furthermore, it is not Father Pueblo's desire to ask of their son that he bear such a weight on his shoulders.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

j. Father Pueblo is certainly willing and able to facilitate and encourage a close and continuing parent-child relationship with the Defendant. Alternatively, and most unfortunately, the Defendant has not been willing or able to facilitate and encourage a close and continuing parent-child relationship between Father Pueblo and Jack.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

k. To the best of Father Pueblo's knowledge, information, and belief, there is no history of domestic violence. However, it is worth noting that CPS has been involved and investigated the Defendant's parenting choices regarding the parties' minor child.

ANSWER: Plaintiff lacks legal standing to file this Complaint. Accordingly, an analysis of these factors is irrelevant. Notwithstanding and without waiving this defense, denied for the reason it is untrue.

WHEREFORE, the Defendant would request the following relief in the aggregate:

A. that this Court dismiss the Plaintiff's Complaint for lack of legal standing with prejudice; and,

B. that this Court order the Plaintiff to pay the Defendant's actual, reasonable attorney's fees and costs for having to defend this frivolous matter, pursuant to MCR 2.114(e) and (f); and,

C. that this Court grant the Defendant such other and further legal and equitable relief that this Court deems appropriate in this matter.

I have read the foregoing and declare that the statements above are true to the best of my information, knowledge and belief.

Dated: _____

Rachel Haas, Defendant

Dated: 2/10/2021

BUTLER, TOWESON & PAYSENO – PLLC

By _____
Leslie L. Payseno (P63935)
Attorneys for Defendant Rachel Haas

Affirmative Defenses to Complaint

NOW COMES the Defendant, Rachel Haas, by and through her attorneys, Butler, Toweson & Payseno - PLLC, by Leslie L. Payseno, and for her Affirmative Defenses to the Complaint for Child Custody, Parenting Time and Child Support, states as follows:

1. Rachel Haas is the named Defendant in this action.

2. Rachel Haas is the legal and biological parent of the minor child subject to this action, to wit: John Paul Haas-Pueblo ("Jack") DOB: 11/02/2008.

3. Rachel Haas conceived the minor child, John Paul Haas-Pueblo, via in-vitro fertilization, without biological contribution from Carrie Pueblo.

4. These parties, i.e. Plaintiff Carrie Pueblo and Defendant Rachel Haas, were in a romantic relationship, i.e. a domestic partnership, that ended in or about the year 2012.

5. These parties were not married at the time of the minor child's conception or birth; nor did the parties ever get married post-Obergefell v Hodges.

6. That the minor child, John Paul Haas-Pueblo, was not conceived or born while Defendant Rachel Haas was married to someone other than Plaintiff.

7. That the Plaintiff, Carrie Pueblo, has no biological relationship with the minor

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child, John Paul Haas-Pueblo.

8. That the Plaintiff, Carrie Pueblo, has no adoptive relationship with the minor child, John Paul Haas-Pueblo.

9. That the Plaintiff, Carrie Pueblo, has not seen the minor child, John Paul Haas-Pueblo, in person in more than five (5) years.

10. That the Plaintiff, Carrie Pueblo, is not identified as a parent of the minor child, John Paul Haas-Pueblo, on his birth certificate.

11. The Plaintiff in this matter lacks capacity to sue, or lacks standing, to file this Complaint. Accordingly, this matter is subject to dismissal under MCR 2.116(c)(5).

12. The Plaintiff has failed to state a claim upon which relief may be granted. Accordingly, this matter is subject to dismissal under MCR 2.116(c)(8).

13. That Defendant reserves the right to add affirmative defenses to this action.

WHEREFORE, the Defendant would request the following relief in the aggregate:

A. that this Court dismiss the Plaintiff's Complaint for lack of legal standing with prejudice; and,

B. that this Court order the Plaintiff to pay the Defendant's actual, reasonable attorney's fees and costs in an amount not less than $2,500.00, for having to defend this frivolous matter, pursuant to MCR 2.114(e) and (f); and,

C. that this Court grant the Defendant such other and further legal and equitable relief that this Court deems appropriate in this matter.

I have read the foregoing and declare that the statements above are true to the best of my information, knowledge, and belief.

Dated_____

Rachel Haas, Defendant

Dated 2/10/2021

BUTLER, TOWESON & PAYSENO – PLLC

By_____

Leslie L. Payseno (P63935)

2/11/2021 Processed - 9th Circuit Court - Kalamazoo County, Michigan

FILED
FEB 10 2021
9TH JUDICIAL CIRCUIT COURT
COUNTY OF KALAMAZOO, MICHIGAN

STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.

Hon. Stephen D. Gorsalitz

File No.: 2020-6382-DC

Reh Starks (P76689)
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Leslie L. Payseno (P63935)
Attorney for Defendant
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202 North Riverview Drive
Parchment, Michigan 49004
(269) 349-7686

DEFENDANT RACHEL HAAS' MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

NOW COMES, the Defendant, Rachel Haas, by and through her attorneys **BUTLER, TOWESON & PAYSENO – PLLC**, by Leslie L. Payseno, to hereby move for summary disposition of the Plaintiff's Complaint, pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8), for lack of capacity to sue (i.e. lack of standing) and failure to state a claim upon which relief may be granted, respectively. In support thereof, Defendant herewith files a *Brief in Support of Motion for Summary Disposition Pursuant to MCR 2.116(C)(5) and (C)(8).*

Dated 2/10/2021

BUTLER, TOWESON & PAYSENO – PLLC

By _____
Leslie L. Payseno (P63935)
Attorney for Defendant Rachel Haas

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.

Hon. Stephen D. Gorsalitz

File No.: 2020-6382-DC

FEB 16 2021

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Starks Law, PLC
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Leslie L. Payseno (P63935)
Attorney for Defendant
Butler, Toweson & Payseno, PLLC
202 North Riverview Drive
Parchment, Michigan 49004
(269) 349-7686

DEFENDANT RACHEL HAAS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

NOW COMES, the Defendant, Rachel Haas, by and through her attorneys **BUTLER, TOWESON & PAYSENO – PLLC**, by Leslie L. Payseno, and for her *Brief in Support of Motion for Summary Disposition in Support of Motion for Summary Disposition Pursuant to MCR 2.116(c)(5) and 2.116(c)(8)* states as follows:

FACTS

The following facts are not in dispute. [1]

1. Rachel Haas is the named Defendant in this action.

2. Rachel Haas is the legal and biological parent of the minor child subject to this

1 See the Affidavit of Defendant Rachel Haas, attached hereto as **Exhibit A**.

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action, to wit: John Paul Haas-Pueblo ("Jack") DOB: 11/02/2008.

3. These parties, i.e. Plaintiff and Defendant, were in a romantic relationship that ended in or about the year 2012.

4. While still in a romantic relationship, Defendant gave birth to a child, to-wit: Jack Paul Haas-Pueblo, DOB: 11/02/2008, via in-vitro fertilization.

5. At the time the minor child was born, the Plaintiff and the Defendant in this matter were not married; nor did they ever get married after Oberg

6. After the minor child was born, the Plaintiff in this matter did not adopt the minor child.

7. The Plaintiff is not identified as a parent on the minor child's birth certificate.

STANDARD OF REVIEW

This Motion for Summary Disposition is brought pursuant to MCR 2.116(c)(5) and (c)(8). The following standards of review apply to the Court's analysis in this matter.

MCR 2.116(c)(5)

A motion for summary disposition under MCR 2.116(c)(5) tests whether the party asserting the claim for affirmative relief has the legal capacity to sue or standing to bring the legal action. In the case at bar, the question is whether the plaintiff has legal standing to initiate an action for custody, parenting time and child support under Michigan's Child Custody Act, MCL 722.21 et seq. "Whether a party has legal standing to assert a claim constitutes a question of law. . ." Heltzel v Heltzel, 248 Mich.App. 1, 28; 638 N.W.2d 12 (2001).

This Court is to review the Michigan Child Custody Act, MCL 722.21 et seq., and to interpret the statute as a matter of law. "Since the time of Marbury v Madison, interpreting the law has been one of the defining aspects of judicial power. 'Although we

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may not usurp the lawmaking function of the legislature, the proper construction of a statute is a judicial function, and we are required to discover the legislative intent.'" SBC Michigan v Public Service Commission, 482 Mich. 90; 754 N.W.2d 259, 265 (2008), citing Marbury v Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803) and Webster v Rotary Electric Steel Co., 321 Mich. 526, 531; 33 N.W.2d 69 (1948). See also, Kelly v Secretary of State, 293 Mich. 530, 533; 292 N.W. 479 (1940) ("[I]n the final analysis the construction of a statute remains in the judicial branch of our government.")

"Statutory standing" simply entails statutory interpretation and the question it asks is whether the Legislature provided this plaintiff the right to sue this defendant to redress his injury. Lansing Schools Ed. Ass'n, MEA/NEA v Lansing Board of Educ., 282 Mich.App. 165; 772 N.W.2d 784, 787 (2009). Standing is critical to a court's exercising its jurisdiction over a particular claim – our state constitution requires that a plaintiff possess standing before a court can exercise its jurisdiction. Miller v Allstate Ins. Co., 481 Mich. 601; 751 N.W.2d 463, 467 (2008).

MCR 2.116(c)(8)

A motion for summary disposition based upon MCR 2.116(c)(8) for failure "to state a claim upon which relief may be granted" tests the legal sufficiency of the complaint based on the pleadings alone. Corley v Detroit Board of Educ., 470 Mich. 274; 681 N.W.2d 342 (2004). Such motion can only be granted where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. Kuznar v Raksha Corp., 481 Mich. 169; 750 N.W.2d 121 (2008). All well-pleaded allegations must be accepted as true and construed in a light most favorable to the non-moving party. Patterson v Kleiman, 447 Mich. 429; 562 N.W.2d 879 (1994).

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ARGUMENT

I. PLAINTIFF CARRIE PUEBLO LACKS LEGAL CAPACITY, OR STANDING, TO FILE THIS COMPLAINT AND DEFENDANT RACHEL HAAS IS ENTITLED TO DISMISSAL OF THE COMPLAINT UNDER MCR 2.116(C)(5).

To initiate this legal analysis, the Court must recount certain incontrovertible facts. Those facts are: 1) Carrie Pueblo is not the biological parent of the minor child; 2) Carrie Pueblo is not the adoptive parent of the minor child; 3) Carrie Pueblo is not and was never married to Rachel Haas; 4) Carrie Pueblo has not seen the minor child in 5+ years and has had no custodial or other relationship with the minor child in that time period; and 5) Carrie Pueblo is not identified as a parent of the minor child on the birth certificate, nor has she ever been judicially established as a parent of the minor child in any prior proceeding. In other words, Carrie Pueblo's legal status is that of an unrelated third party to this minor child – to be careful, Rachel Haas is not conceding that Carrie Pueblo meets the definition of a "third party" triggering standing under the Michigan Child Custody Act, but rather this is a mere generic reference to prompt appropriate judicial examination of standing under MCL 722.26c, 722.26d, and 722.26.e.

Under the Michigan Child Custody Act, a "third party" or "third person" means an "individual other than a parent." MCL 722.22k. A "parent" means the natural or adoptive parent of a child. MCL 722.22i. Clearly, Carrie Pueblo is a "third person" within the meaning of the Michigan Child Custody Act, as she is neither the natural or adoptive parent of the minor child.

In 1993, Michigan's legislature expanded third party, or "third person" standing, to file an original action seeking custody. Under MCL 722.26c(1)(a), a third party may file such a complaint if both of the following conditions are met: 1) the child was placed

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for adoption with a third person under the laws of the adoption laws of the state of Michigan or another state and the placement order is still in effect when the action is filed; and (2) since the placement, the child has resided with the person for at least six (6) months. This, obviously, is to address the situation of an incomplete adoption proceeding. Where there is no ongoing adoption proceeding involving this minor child, this provision has no applicability to the case at bar.

Under MCL 722.26c(1)(b), a third party, or third person, has standing to initiate a complaint for custody if all three (3) of the following conditions are met: 1) the child's biological parents have never been married to one another; 2) the child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under a court order2; and, 3) the third person is related to the child within the fifth degree of consanguinity by virtue of marriage, blood or adoption. See In re Anjoski, 283 Mich.App. 41; 770 N.W.2d 1, 8 (2009).

In the case at bar, while it is true that the biological parents of the minor child have never been married to one another, the other two mandatory conditions for "third person" standing cannot be met. Rachel Haas, the biological mother of the minor child, is alive and not missing and the third person has no relationship to the minor child by marriage, blood or adoption. Accordingly, Carrie Pueblo has no standing to initiate this custody complaint under MCL 722.26c(1)(b).

This legal result would be the same if Carrie Pueblo and Rachel Haas remained

2 This provision, requiring the death or absence of an involved biological parent, is presumably designed to be read consistently with MCL 722.25, that provides "Section 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence." [emphasis added].

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mere domestic partners today, notwithstanding opportunities for same-sex marriage under Obergefell v Hodges, 576 U.S. 644 (2015). Domestic partners of a custodial parent do not have standing to seek custody under these expanded provisions of the Child Custody Act. Porter v Overton, 214 Mich.App 95; 542 N.W.2d 288 (1995).

Finally, this conclusion regarding Carrie Pueblo's lack of capacity to sue, or lack of standing, is not altered by any theoretical argument that she is an "equitable parent" of the minor child. "Generally, a party has standing so long as he or she 'has some real interest in the cause of action' or its subject matter. Anjoski, 283 Mich.App. 41, 50 [partial citation omitted]. 'However, this concept is not given such a broad application in the context of child custody disputes involving third parties, or any induvial other than a parent[.]' Id." Lake v Putnam, 316 Mich.App. 247; 894 N.W.2d 62, 65 (2016).

In Lake, the Plaintiff and Defendant were in a same-sex romantic relationship from 2001 to 2014. They were not married and never did marry, post-Obergefell. During their relationship, the Defendant was artificially inseminated and gave birth to the minor child at issue in the case. There was no biological or adoptive relationship between the Plaintiff and the minor child. Shortly thereafter, the parties' relationship ended. Defendant denied the Plaintiff's requests to spend time with minor child.

The Plaintiff filed a lawsuit seeking parenting time with the minor child, arguing that she had standing to bring the suit because she "asserted a right to custody and parenting time . . . under Michigan's equitable-parent doctrine." Id. at 252. "Under the equitable-parent doctrine, a husband who is not the biological father of a child born or conceived during wedlock may, nevertheless, be considered that child's natural father if three requirements are satisfied: (1) the husband and the child must mutually acknowledge their father-child relationship, or the child's mother must have cooperated

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in the development of that father-child relationship before the divorce proceedings commenced, (2) the husband must express a desire to have parental rights to the child, and (3) the husband must be willing to accept the responsibility of paying child support. Van v Zahorik, 460 Mich. 320, 330; 597 N.W.2d 15 (1999); Atkinson v Atkinson, 160 Mich.App. 601, 608-609; 408 N.W.2d 516 (1987). 'Once it is determined that a party is an equitable parent, that party becomes endowed with both the rights and responsibilities of a parent.' York v Morofsky, 225 Mich.App. 333, 337; 571 N.W.2d 524 (1997)." Lake, 316 Mich.App. at 252.

In Lake, the Plaintiff claimed that because she satisfied the three requirements in Van and Atkinson, she was the minor child's equitable parent. In a very succinct response, the Court of Appeals held, "[s]he is incorrect." Id. Holding oneself out as a child's parent, alone is insufficient to be considered that child's parent under the equitable-parent doctrine. Id., citing Van, 460 Mich. at 330-331, 597 N.W.2d 15 (1999).

The Court of Appeals points out that the Plaintiff "'ignores one crucial, and dispositive, requirement for the equitable-parent doctrine to apply – *the child must be born in wedlock*.' Van, 460 Mich. at 330, 597 N.W.2d 15." Lake, 316 Mich.App. at 252. "The child at issue in this case was not born or conceived during a marriage. In fact, it is undisputed that the parties were never married. Therefore, the equitable-parent doctrine does not apply." Id. To eliminate any confusion regarding the impact of Obergefell on this analysis, the Court of Appeals goes further to state that it is not within the court's discretion, in light of Obergefell, "to retroactively transform an unmarried couple's past relationship into marriage for the purpose of custody proceedings. Stated differently, it is, in our view, improper for a court to impose, several years later, a marriage on a same-sex unmarried couple simply because one party desires that we do so." Id. at

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253.

In the case at bar, like the Plaintiff in Lake, Carrie Pueblo has no legal standing to establish custodial or parenting time rights to the minor child; nor can she successfully establish that she is the equitable parent of the minor child and thereby assert standing. As a matter of law, where there is no legal standing to initiate this proceeding, Carrie Pueblo's Complaint for Custody, Parenting Time and Child Support must be dismissed under MCR 2.116(c)(5).

As this is long-established law within the State of Michigan, clearly articulated in repeated cases and documented in numerous substantive authorities including without limitation the ICLE Publication on Michigan Family Law, Seventh edition (2011), the Plaintiff should have been aware of the substantive authority declining to afford her the relief sought in her ill-advised and deficient complaint. This Complaint should never have been filed. There is no arguable legal merit. Defendant Rachel Haas, accordingly, requests an award of attorney's fees and costs in the amount of not less than $2,500.00, as sanctions under MCR 2.114(D) and (E), for having to prepare and Answer with Affirmative Defenses, and this Motion with supporting Brief to obtain dismissal of this Complaint.

II. PLAINTIFF CARRIE PUEBLO HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND DEFENDANT RACHEL HAAS IS ENTITLED TO DISMISSAL OF THE COMPLAINT UNDER MCR 2.116(C)(8).

The Plaintiff Carrie Pueblo's *Complaint for Custody, Parenting Time and Child Support* is so patently deficient, even if the allegations are accepted as true, that it warrants dismissal of the Complaint under MCR 2.116(c)(8). The Complaint fails to allege that the Plaintiff Carrie Pueblo was married to Rachel Haas and that the minor

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child was conceived or born during such marriage. The Complaint fails to allege any biological or adoptive relationship between Plaintiff Carrie Pueblo and the minor child at question. The Complaint fails to allege that Rachel Haas is dead or missing and that the other biological parent has no custodial rights. Furthermore, and as significant, no amendment to the Complaint will cure these defects.

As these defects are measured against long-established law within the State of Michigan, clearly articulated in repeated cases and documented in numerous substantive authorities including without limitation the ICLE Publication on Michigan Family Law, Seventh edition (2011), the Plaintiff should have been aware of the substantive authority declining to afford her the relief sought in her ill-advised and deficient complaint. This Complaint should never have been filed. There is no arguable legal merit. Defendant Rachel Haas, accordingly, requests an award of attorney's fees and costs in the amount of not less than $2,500.00, as sanctions under MCR 2.114(D) and (E), for having to prepare and Answer with Affirmative Defenses, and this Motion with supporting Brief to obtain dismissal of this Complaint.

CONCLUSION

Defendant Rachel Haas hereby respectfully requests that this Court grant her Motion for Summary Disposition, and grant the Defendant her actual, reasonable attorney's fees and costs, in an amount not less than $2,500.00, as sanctions under MCR 2.114(D) and (E), and any and all such other relief as this Court may deem appropriate.

Dated 2/10/2021

BUTLER, TOWESON & PAYSENO – PLLC

By _____
Leslie L. Payseno (P63935)
Attorney for Defendant Rachel Haas

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.

Hon. Stephen D. Gorsalitz

File No.: 2020-6382-DC

FEB 16 2021

Reh Starks (P76689)
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Starks Law, PLC
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DEFENDANT RACHEL HAAS' AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

STATE OF MICHIGAN)
)ss:
COUNTY OF KALAMAZOO)

Rachel Haas (hereinafter the "Affiant"), being first duly sworn, deposes and says:

1. That if asked to testify, Affiant could and would competently and affirmatively testify to the facts asserted herein.

2. That Affiant swears and avers that:

A. Rachel Haas is the named Defendant in this action.

B. Rachel Haas is the legal and biological parent of the minor child subject to this action, to wit: John Paul Haas-Pueblo ("Jack") DOB: 11/02/2008.

C. Rachel Haas conceived the minor child, John Paul Haas-Pueblo, via in-vitro

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fertilization, without biological contribution from Carrie Pueblo.

C. These parties, i.e. Plaintiff Carrie Pueblo and Defendant Rachel Haas, were in a romantic relationship, i.e. a domestic partnership, that ended in or about the year 2012.

D. These parties were not married at the time of the minor child's conception or birth; nor did the parties ever get married post-Obergefell v Hodges.

E. That the minor child, John Paul Haas-Pueblo, was not conceived or born while Defendant Rachel Haas was married to someone other than Plaintiff.

F. That the Plaintiff, Carrie Pueblo, has no biological relationship with the minor child, John Paul Haas-Pueblo.

G. That the Plaintiff, Carrie Pueblo, has no adoptive relationship with the minor child, John Paul Haas-Pueblo.

H. That the Plaintiff, Carrie Pueblo, has not seen the minor child, John Paul Haas-Pueblo, in person in more than five (5) years.

I. That the Plaintiff, Carrie Pueblo, is not identified as a parent of the minor child, John Paul Haas-Pueblo, on his birth certificate.

3. And, further, the Affiant sayeth not.

Rachel Haas, Affiant

Subscribed and sworn to before me this 11 day of February 2021.

Amber Murray

Notary Public, Kalamazoo County, MI
My Commission expires: 05/17/2025

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO\
FAMILY DIVISION

CARRIE PUEBLO,

Plaintiff,

Case No. 2020-6382-DC

v

Hon. Stephen D. Gorsalitz

RACHEL HAAS,

Defendant.

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PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

NOW COMES Plaintiff, Carrie Pueblo, by and through her attorney STARKS LAW, PLC and states in support of her Brief as follows:

I. STATEMENT OF FACTS

Ms. Pueblo and the Defendant were involved in a long-term, same-sex relationship beginning near the early 2000s. On or about June 30, 2007, the parties participated in a Commitment Ceremony in Lansing, Michigan.[1] 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. That ceremony would roughly go as follows:

[1] Same-sex marriage was not legal in Michigan until the *Obergefell v Hodges*, 576 US 644 (2015) ruling came down from our SCOTUS on June 26, 2015. Nonetheless, the parties did everything legally in their power in 2007 to commit as lifelong partners.

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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."

1

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

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For all intents and purposes, from June 30, 2007, to present day, the parties were equitably 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 marriage.

After much thought and debate, the parties agreed that Defendant would undergo IVF. However, Defendant 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 so as 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.

Both parties entered into the contract with the IVF clinic. Ms. Pueblo paid for the IVF procedure on her Discover credit card. The successful IVF procedure occurred in approximately December of 2007. 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 continues to hold herself out as wife and lifelong partner to Ms. Pueblo by identifying herself as Rachel Haas Pueblo during prenatal medical appointments.

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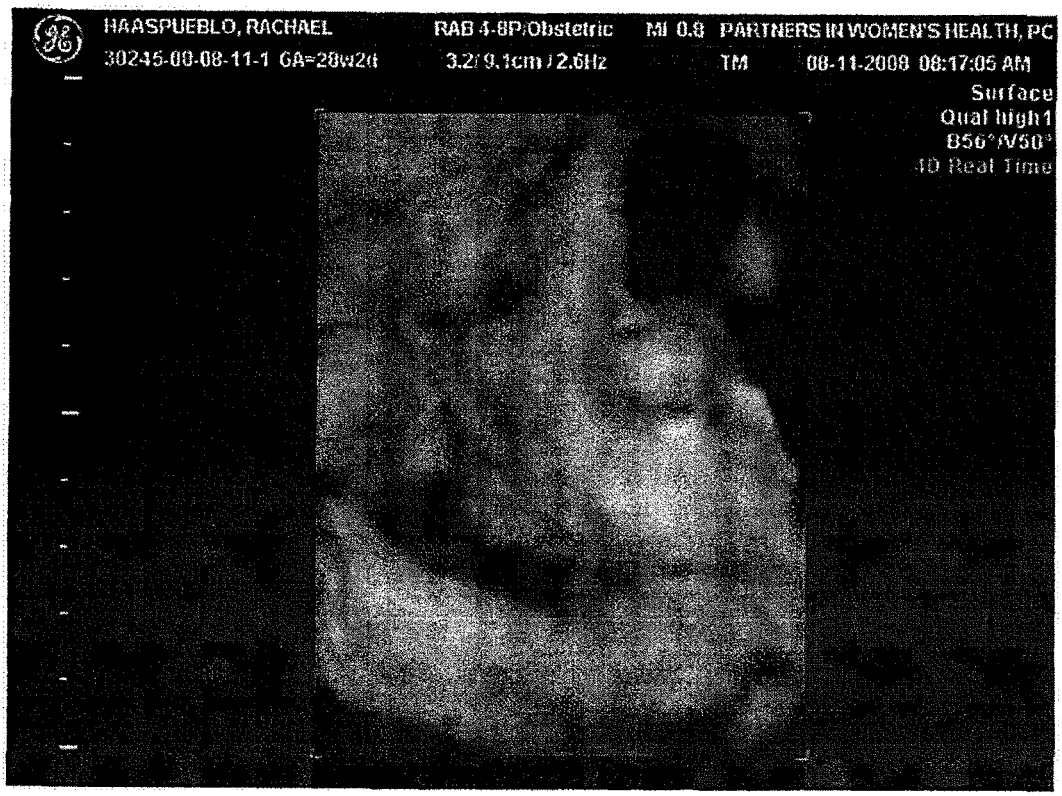

John Paul Haas-Pueblo ("JPHP") was born on November 2, 2008. Ms. Pueblo was present for Defendant's labor and JPHP's birth. JPHP's legal name includes both parties' last names, to wit: Haas and Pueblo. Despite hospital staffs' refusal to allow Ms. Pueblo to be listed on the birth certificate, Defendant herself filled out an information card regarding JPHP. The information card Defendant Haas personally filled out is seen here:

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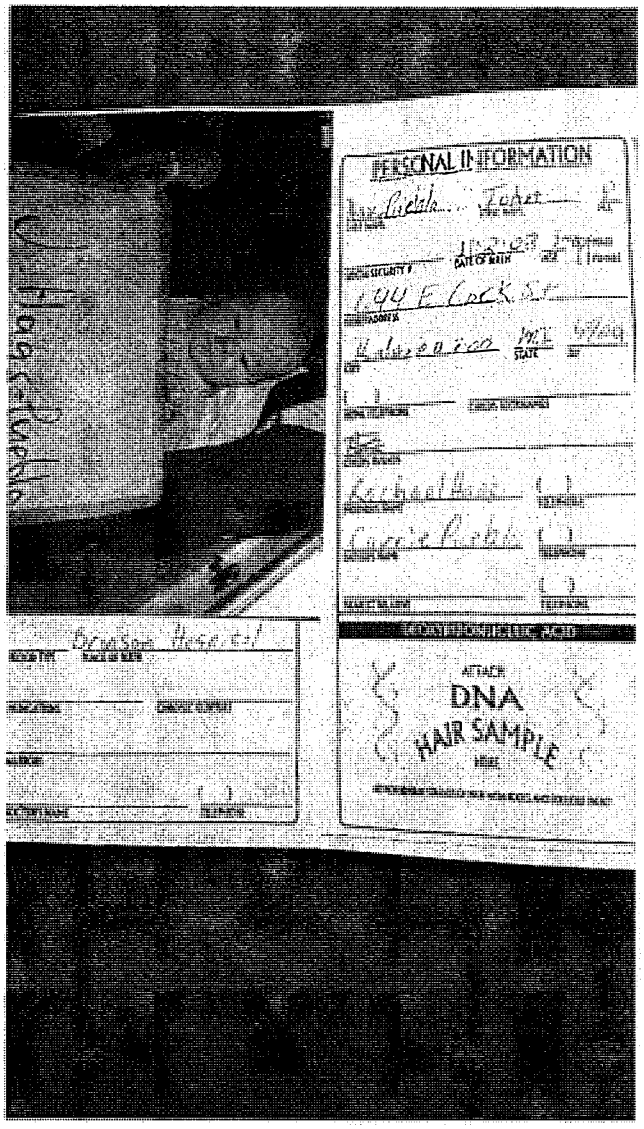

Clearly seen above, Defendant specifically identifies Carrie Pueblo as JPHP's father.[2] From the date JPHP was born, Ms. Pueblo was present and active as his putative father. Defendant did not begin contesting Ms. Pueblo's status in JPHP's life until the parties were no longer lifelong partners.

[2] This directly refutes Defendant's answer to paragraph 7 of Ms. Pueblo's Complaint. Based upon this document prepared by Defendant in 2008, Ms. Pueblo clearly is JPHP's putative father; therefore calling into question the entirety of Defendant's credibility.

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Throughout and after the parties' partnership, the parties shared parental responsibilities and duties equally. Ms. Pueblo has always maintained or tried to maintain a strong parental role that included bonding with JPHP.

In 2014, the parties ended their life-long partnership, but continued to informally share custody and parenting of JPHP.

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 regarding JPHP's care; and more. Ms. Pueblo participated in the care and rearing of JPHP until Defendant prevented her from doing so.

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

II. APPLICABLE LAW

A. Child Custody Act of 1970

MCL 722.25(1) states as follows:

> If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control…

MCL 722.22(i) states as follows:

> 'Parent' means the natural or adoptive parent of a child.

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B. Equitable-Parent Doctrine

Atkinson v Atkinson, 160 Mich App 601, 608-609; 408 NW2d 516 (1987) establishes the Equitable-Parent Doctrine as follows.

> ...a husband is who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support.

III. LEGAL ANALYSIS/APPLICATION

A. MCR 2.116(C)(5)

i. Child Custody Act of 1970

MCL 722.26(1) specifies that the Child Custody Act is "...equitable in nature and **shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved**..." (emphasis added). As previously stated, same-sex marriage was not permitted in the State of Michigan until the Supreme Court ruled on *Obergefell v Hodges* on June 26, 2015. While staying within the confines of the law (knowing that same-sex marriage was illegal as of June 30, 2007) the parties chose to partake in a Holy Union/Commitment Ceremony wherein they pledged to be lifelong partners; this was the maximum the parties could legally do at that time. Following that Commitment Ceremony/Holy Union, the parties held themselves out to the public as husband and wife, and the parties held Ms. Pueblo out as JPHP's putative father. In recognizing the parties' Commitment Ceremony/Holy Union as being an equitable marriage, pursuant to MCL 700.2114(1)(a):

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> If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

Pairing MCL 700.2114(1)(a) with MCL 722.22(i) we find that Ms. Pueblo and the Defendant are the natural parents of JPHP. Wherefore, pursuant to MCL 722.25, this is a child custody dispute between the parents, and the best interests of the child control. Therefore, we pray this Honorable Court refer this matter for status conference and evidentiary hearing so that the parties may present proofs relative to the best interest factors and a determination regarding custody and parenting time may be made.

Should this Honorable Court not be persuaded that Ms. Pueblo meets the definition of "parent" pursuant to MCL 722.22(i), Ms. Pueblo certainly falls under the definition of a "third person" pursuant to the Equitable-Parent Doctrine.

ii. Equitable-Parent Doctrine

Stankevich v Milliron, 313 Mich App 233; 882 NW2d 194 (2016) at 241 states:

> Plaintiff alleges that the parties entered into an agreement to conceive and raise the child with the attendant parental rights and responsibilities. Plaintiff also claims that she assisted with the artificial insemination process through which the child was conceived, that she was present at the child's birth, and that she fully participated in the care and rearing of the child until Defendant prevented her from doing so. Further, Plaintiff alleges that, during the parties' relationship, they shared parental responsibilities and duties equally. She asserts that she always has maintained a strong parental role that included bonding with the child, providing for the child financially, attending the child's health care appointments, making medical decisions with Defendant concerning the child's

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> care, and providing a home for the child. Further, after going their separate ways in March 2009, the parties had a parenting-time schedule for a significant period of time...As set forth, Plaintiff's allegations would establish factually her standing to file this action seeking equitable parenthood. The facts alleged in the complaint, if proved, would support the elements of the equitable-parent doctrine as set forth in *Atkinson* 160 Mich App at 608-609.

The court in *Stankevich* states as follows in footnote 3 at 240:

> Unlike marriages solemnized in sister states, which are generally recognized as valid in this state, Michigan has no statute requiring the recognition of marriages celebrated in foreign nations. Nonetheless, Michigan courts recognize marriages solemnized in foreign nations as a matter of comity. ***It is well settled that Michigan's law and public policy favor the institution of marriage***, *Van,* 460 Mich at 332; *Boyce v McKenna*, 211 Mich 204, 214; 178 NW 701 (1920), and Michigan courts have long recognized the validity of marriages celebrated in foreign countries, provided that those marriages are valid in the nation of celebration, see, e.g., *Boyce*, 211 Mich at 215; *People v Imes,* 110 Mich 250, 251; 68 NW 157 (1896); *Hutchins v Kimmell*, 31 Mich. 126, 130-131 (1875) (emphasis added).

If we can give comity to marriages celebrated in foreign nations, and since Michigan's law and public policy favor the institution of marriage, surely it is appropriate for this Honorable Court to recognize as valid in this state the Commitment Ceremony/Holy Union the parties celebrated in Lansing, Michigan on June 30, 2007, wherein the parties took vows, exchanged rings, and persons bore witness to the parties' pledging a lifelong commitment to one another. Therefore, Ms. Pueblo was the Defendant's equitable husband, but not the biological father of JPHP, and their child was conceived during their equitable marriage. Furthermore, Ms. Pueblo may be considered the natural father of JPHP because she satisfies the following:

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1. The husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce.

Ms. Pueblo and JPHP did, in fact, mutually acknowledge their relationship as father and child. From the date JPHP was born, and even before, Ms. Pueblo was there to bond; provide love, care, affection, necessities, etc. JPHP looked to Ms. Pueblo for guidance, support, understanding, instruction; Ms. Pueblo partook in JPHP's medical care and treatment; Ms. Pueblo made and assisted in making medical decisions regarding JPHP; and so much more.

Defendant (mother of JPHP) cooperated in the development of the father-child relationship with Ms. Pueblo and JPHP from the date JPHP was conceived up to March of 2017. Let us remember the shared name on Defendant's ultrasound pictures; the child's information card Defendant filled out wherein she named Ms. Pueblo as JPHP's father; and that JPHP's full legal name is John Paul **Haas-Pueblo.**

2. The husband desires to have the rights afforded to a parent.

Since JPHP's inception, through the end of time, and by way of filing this action for custody and parenting time, Ms. Pueblo is asserting and has always asserted her desire to have the rights afforded to a parent.

3. The husband is willing to take on the responsibility of paying child support.

Ms. Pueblo has historically provided financially for JPHP. Ms. Pueblo specified in her Complaint's prayer for relief that she "prays this Honorable Court calculate and award child support as is appropriate pursuant to the Michigan Child Support Guidelines." Ms. Pueblo is willing to take on the responsibility of paying child support.

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B. MCR 2.116(C)(8)

Defendant alleges Ms. Pueblo has failed to state a claim upon which relief may be granted, and Defendant specifies the following:

1. The Complaint fails to allege that the Plaintiff Carrie Pueblo was married to Rachel Haas;
2. That the minor child was conceived or born during such marriage;
3. The Complaint fails to allege any biological or adoptive relationship between Ms. Pueblo and the minor child;
4. The Complaint fails to allege that Defendant is dead or missing and that the other biological parent has no custodial rights; and
5. That no amendment to the Complaint will cure these defects.

Following hearing for this Motion for Summary Disposition, the Court should hold that the parties, in light of their Commitment Ceremony/Holy Union, were equitably married. Therefore, should this Honorable Court so require, Ms. Pueblo requests leave to amend pursuant to MCR 2.118(A)(2). As set forth herein, it is abundantly clear that JPHP was conceived and born during the equitable marriage. The Complaint and this Brief assert Ms. Pueblo's relationship as JPHP's putative father. This Brief goes into further detail explaining that Ms. Pueblo is JPHP's natural parent and/or equitable parent. In light of the parties' Commitment Ceremony/Holy Union, thereby resulting in an equitable marriage, an analysis of Ms. Pueblo as a third person under the Child Custody Act is not necessary and/or appropriate; therefore, it is unnecessary for Ms. Pueblo's Complaint to allege the Defendant is dead or missing, etc. Should this Honorable Court find that any defects of Ms. Pueblo's Complaint exist, Ms. Pueblo prays this Honorable Court freely grant leave to amend as justice, herein, so requires.

C. Case Law Distinguished

Opposing counsel cites the following cases, in opposition of Ms. Pueblo's position, in her Brief:

1. *Porter v Overton*, 214 Mich App 95; 542 NW2d 288 (1995);

2. *In Re Anjoski*, 283 Mich App 41; 770 NW2d 1 (2009);
3. *Lake v Putnam*, 316 Mich App 247; 894 NW2d 62 (2016); and
4. *Stankevich v Milliron*, 313 Mich App 233; 882 NW2d 194 (2016)

The Court in *Porter* specifies that domestic partners cannot seek custody pursuant to the Child Custody Act. However, the Court in *Porter* does not contemplate *Obergefell*, nor does it contemplate an equitable marriage; wherefore, the finding from this Court is not applicable herein.

The Court in *Anjoski*, conducts an analysis of the Child Custody Act pursuant to a third person seeking custody. Ms. Pueblo is not a third person seeking custody of JPHP; rather, she is an equitable husband in light of her and Defendant's equitable marriage. Furthermore, *Anjoski* precedes and thus cannot contemplate *Obergefell*. Wherefore, Ms. Pueblo is, in fact, a natural parent pursuant to MCL 700.2114(1)(a) and the finding by the *Anjoski* Court is not applicable herein.

However, the *Anjoski* Court affirms Ms. Pueblo does, in fact, have standing because her equitable marriage to Defendant—which was contemplated at the time the parties decided to pursue IVF, and contemplated as the parties mutually reared their child—affirms Ms. Pueblo has a real interest in this cause of action and/or the subject matter in controversy.

In *Lake*, the Court of Appeals held that, in the event the parties were not married, custody nor parenting time could be awarded. However, the *Lake* Court does not contemplate the equitable marriage—herein. Because the issue of equitable marriage was not before the Court in *Lake*, the standard in *Lake* does not apply.

Furthermore, the *Lake* Court goes on to explain that "[h]ad the parties married in another jurisdiction, for example, our conclusion may be different. See e.g, *Stankevich v Milliron*." *Lake* at 255. For all intents and purposes, the parties **were** equitably married in **this** jurisdiction; thus lending way for this court to hold differently now.

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The *Stankevich* Court, according to Defendant's argument, bars Ms. Pueblo's relief sought. To the contrary, the *Stankevich* Court affirms Ms. Pueblo's relief sought, as previously analyzed under the Equitable-Parent Doctrine discussed above.[3]

IV. CONCLUSION

We can no longer turn a blind eye to parent/custody issues regarding equitably wed same-sex couples. Opposing counsel implicitly argues that what we have works just fine. Opposing counsel fails to acknowledge the gray area; commitment ceremonies/holy unions create an equitable marriage during time pre-dating *Obergefell*.

It is egregious for Michigan's standard to be, "Sorry you didn't go out and violate our state constitution when the two of you were on good terms and had the chance." It is egregious for Michigan's standard to be, "Sorry it was ***illegal*** for you to get married in our state before 2015, but since you didn't do something you couldn't legally do, you will never have parental rights or custody of your child." It is egregious for Michigan's standard to be, "Sorry you decided to exercise a fundamental right to become a parent; turns out it wasn't a fundamental right because you were in a same-sex relationship, and you're never going to get to see your kid again." It is egregious for our courts to sweepingly say that, "discrimination based on sexual orientation is not occurring," yet unwed heterosexual couples enjoy statutory protection and relief of custody and parenting time issues every second of every day.

What Michigan law has in place is archaic. What we have in place did not and could not predict the future. What we have in place has not kept up with the changing of the times. This will not do! A better standard must be put in place.

[3] See Section III, A, ii, page 8.

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Our Supreme Court stated in *Obergefell v Hodges* 576 US 644 (2015), "[t]he dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal state in our basic charter…"

An Executive Order on Preventing and Combating [sic] Discrimination on the Basis of Gender Identity or Sexual Orientation issued by President Biden on January 20, 2021, states as follows:

> Section 1. Policy. Every person should be treated with respect and dignity and should be able to live without fear, no matter who they are or whom they love…All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation…These principles are reflected in the Constitution…These principals are also enshrined in our Nation's anti-discrimination laws…Discrimination on the basis of gender identity or sexual orientation manifests differently for different individuals…It is the policy of my Administration to prevent and combat discrimination on the basis of gender identity or sexual orientation…[4]

The Supreme Court in *Obergefell* is calling. The President of the United States is calling. With all due respect, it is time for Michigan courts to pick up the phone!

Ms. Pueblo has standing. Defendant has not met her burden of proof under MCR 2.116(C)(5). In that Defendant's arguments under MCR 2.116(C)(8) are couched in her same analysis under her (C)(5) motion, Defendant has also failed to meet her burden of proof here.

[4] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/

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VI. PRAYER FOR RELIEF

WHEREFORE, Ms. Pueblo prays this Honorable Court deny Defendant's motions for summary disposition—both MCR 2.116(C)(5) & (C)(8) as Defendant has grossly failed to meet her burden.

FURTHERMORE, Ms. Pueblo prays this Honorable Court deny Defendant's request for attorney's fees, costs, sanctions, etc.

FURTHERMORE, Ms. Pueblo prays this Honorable Court set this matter for a status conference and evidentiary hearing so that an analysis pursuant to the best-interest factors may be conducted and custody and parenting time may be awarded.

Respectfully submitted,

STARKS LAW, PLC
Attorney for Plaintiff

Dated: March 1, 2021

By: _____
Reh Starks (P76689)

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

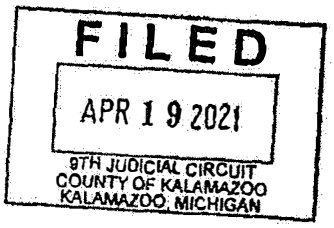
CARRIE PUEBLO,

Plaintiff,

v

RACHEL HAAS,

Defendant.



Case No. 2020-6382-DC

Hon. Stephen D. Gorsalitz

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Leslie L. Payseno (P63935)
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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

At a session of said Court held in the City and County of Kalamazoo, State of Michigan on the 19th day of April, 2021.

PRESENT: Honorable Stephen D. Gorsalitz, Circuit Court Judge

THIS COURT FINDS, for reasons set forth on the record, that the Plaintiff Carrie Pueblo lacks legal standing to initiate this child custody complaint and, accordingly, has failed to state a claim upon which relief may be granted.

NOW, THEREFORE, IT IS ORDERED that Defendant Rachel Haas' Motion for Summary Disposition Pursuant to MCR 2.116(C)(5) and (C)(8) is hereby GRANTED and the Plaintiff Carrie Pueblo's Complaint is hereby dismissed without prejudice and without costs being awarded to either party.

IT IS FURTHER ORDERED that this constitutes a final order in this case, and this file is hereby closed.

Hon. Stephen D. Gorsalitz, Circuit Court Judge

Drafted by:
Reh Starks (P76689)
Attorney for Plaintiff

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.

Hon. Stephen D. Gorsalitz

File No.: 2020-6382-DC

FILED
APR 23 2021

Reh Starks (P76689)
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MOTION FOR RECONSIDERATION OF ENTRY OF ORDER GRANTING DEFENDANT RACHEL HAAS' MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8) WITHOUT PREJUDICE

NOW COMES, Rachel Haas, by her attorneys, BUTLER, TOWESON & PAYSENO – PLLC, pursuant to MCR 2.119(F), to hereby move this Court for reconsideration of its entry of a certain order granting motion for summary disposition, without prejudice. In support thereof, the Defendant specifically pleads:

1. This Court granted the Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8), for reasons set forth on the record adopting the reasoning set forth in Lake v Putnam, 316 Mich.App. 247; 894 N.W.2d 62, 65 (2016).

2. More specifically, Lake held that there was no legal standing under Michigan law

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for a former same sex partner to maintain a custody action over her non-biological child under the equitable parent doctrine that required the parents to be married; and, hence, there was no claim upon which relief might be granted. (Lake notes that its ruling would be the same under existing Michigan custody law, even if the matter involved a heterosexual unmarried couple.) In reliance on Lake, this Court agreed and granted the Defendant's Motion.

3. Defendant Rachel Haas submitted an Order granting her summary disposition of the Plaintiff's action with prejudice. See attached ***Exhibit A***.

4. Plaintiff Carrie Pueblo subsequently objected to the Order on the basis that it ought to be entered without prejudice because "if Michigan law should change before the minor child turns eighteen, Ms. Pueblo should be allowed to reassert her request for custody and parenting time with the minor child. A dismissal "with prejudice" precludes Ms. Pueblo from ever being able to file for custody or parenting time with her son again."

6. Plaintiff Carrie Pueblo objected to the entry of the submitted order and submitted an alternate order for the Court's consideration. See ***Exhibit B***.

7. Without hearing on the Plaintiff's Objection that had been scheduled for Monday, April 19, 2021 at 2:30 p.m., the Court entered the alternative order offered by the Plaintiff Carrie Pueblo. Respectfully, the Defendant Rachel Haas asserts that the Court made an error in doing so.

8. It is long and well-settled law in Michigan that the public policy of this state favors finality of judgments. See by example, Rose v Rose, 289 Mich.App. 45; 795 N.W.2d 611 (2010); Gillespie v Detroit Housing Comm. Bd. Of Tenant Affairs, 145 Mich.App.424; 377 N.W.2d 864 (1985); Sumner v Gen. Motors Corp. (On Remand), 245 Mich.App. 653; 633 N.W.2d 1 (2001).

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9. This longstanding public policy supports and is based on two tenets -- in somewhat of a legally enforceable bootstrap argument – first, that a judgment on the merits should be entered to prevent reassertion of the same claim – the very notion that undergirds the term "with prejudice" and the legal principle of "res judicata" [1] – and second, that a court should not avoid entry of a judgment on the merits and with prejudice because of a possibility of a subsequent change in the law. As to this latter point, if Plaintiff Carrie Pueblo's legal argument relative to a "possible change in law" is relied upon to prevent entry of an order "with prejudice," then there should never be a dismissal in a civil matter "with prejudice" because there can always be a change in the civil law. [2]

10. In looking at this issue from a post-judgment perspective, the Michigan Court of Appeals for much the same reasoning concluded that "[a]n intervening change in law is not an appropriate basis for granting relief from a judgment; indeed, if it were, 'it is not clear why all judgments rendered on the basis of the particular interpretation of law should not opened when the interpretation is substantially changed.' 2 Restatement Judgments, 2d, §73, illustration 4, p. 200. [Sumner v Gen. Motors Corp., 212 Mich.App. 694, 538 N.W.2d 112 (1995)]". King v McPherson Hosp., 290 Mich.App. 299; 810 N.W.2d 594 (2010). [emphasis added].

---

1 Michigan's Supreme Court has held, premised on a decision of the United States Supreme Court, that "'[n]ew legal principles, even when applied retroactively, do not apply to cases already closed.'" People v Maxson, 482 Mich. 385, 387; 759 N.W.2d 817 (2008), quoting Reynoldsville Casket Co. v Hyde, 514 U.S. 749, 758; 115 S.Ct. 1745, 131 L.Ed.2d 820 (1995). The basis for this longstanding rule is that 'at some point, 'the rights of the parties should be considered frozen' . . .' Reynoldsville Casket, 514 U.S. at 758, 115 S.Ct. 1745, quoting United States v Donnelly Estate, 397 U.S. 286, 296, 90 S.Ct. 1033, 25 L.Ed.2d 312 (1970) (Harlan, J., concurring)." King, 290 Mich.App. at 305-06.

2 This same concern does not arise in criminal matters where dismissals with prejudice immediately trigger constitutional protections afforded under notions of double jeopardy, even if there is a subsequent change in the law favoring prosecution.

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11. In essence, an argument that cannot be used to grant legal relief from a judgment should not be used to prevent entry of that judgment, either.

12. Contrary to the Plaintiff Carrie Pueblo's assertions, she is not left without a potential remedy should the law change, which is highly doubtful. An argument regarding the equities of the continued, prospective application of a judgment and/or the impact of a change in the law relative to the continued "finality" of a judgment are specifically contemplated in the "Set Aside" provisions of MCR 2.612(1)(E) and (F).

13. The entered order in this matter declares it to be "without prejudice," suggesting that this Plaintiff could renew her claim. Plaintiff then inserts that this constitutes a "final order" of this Court. Quite simply, as to a summary disposition motion on the same claim, it cannot be both.

14. Michigan public policy and law favors finality in judgments. Dismissing a matter without prejudice on the mere prospect that a law might change is not a basis to deny this Defendant the finality of the relief she won, to wit: that the Plaintiff had no standing to bring this action and no claim for relief could be granted. This was not even a close case – as this Court noted, there was a case directly on point -- Lake v Putnam, 316 Mich.App. 247; 894 N.W.2d 62, 65 (2016). We can be certain, after appeal and on remand, that summary disposition in Lake was not entered "without prejudice" and this case should not be so resolved either.

WHEREFORE, pursuant to MCR 2.119(F), Defendant Rachel Haas respectfully requests that this Court reconsider and withdraw its entry of the Plaintiff's drafted Order Granting Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8) and enter the Defendant Rachel Haas's proposed order instead, and grant this Defendant her actual, reasonable attorney's fees and costs and any and all such

other relief that this Court may deem appropriate.

Dated 4/20/2021

BUTLER, TOWESON & PAYSENO – PLLC

By _____
George T. Perrett (P42751)
Attorneys for Defendant Rachel Haas

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EXHIBIT A

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STATE OF MICHIGAN
9th JUDICIAL CIRCUIT COURT - FAMILY DIVISION
1536 Gull Road, Kalamazoo, Michigan 49048

CARRIE PUEBLO,

Plaintiff,

v.

RACHEL HAAS,

Defendant.

Hon. Stephen D. Gorsalitz

File No.: 2020-6382-DC

Reh Starks (P76689)
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Leslie L. Payseno (P63935)
Attorney for Defendant
Butler, Toweson & Payseno, PLLC
202 North Riverview Drive
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(269) 349-7686

ORDER GRANTING DEFENDANT RACHEL HAAS' MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

At a session of this Court held this _____ day of _____, 2021, in the City of Kalamazoo, County of Kalamazoo, State of Michigan, having reviewed the pleadings, heard the argument of counsel, and being further advised in the premises;

PRESENT: HON. STEPHEN D. GORSALITZ, CIRCUIT COURT JUDGE

THIS COURT FINDS, for reasons set forth on the record, that the Plaintiff Carrie Pueblo lacks legal standing to initiate this child custody complaint and, accordingly, has failed to state a claim upon which relief may be granted.

NOW THEREFORE, IT IS ORDERED that Defendant Rachel Haas' Motion for Summary Disposition under MCR 2.116(c)(5) and (c)(8) is hereby **GRANTED** and the Plaintiff Carrie Pueblo's Complaint is hereby dismissed with prejudice and without

costs being awarded to either party.

IT IS FURTHER ORDERED that this constitutes a final order in this case and this file is hereby closed.

Hon. Stephen D. Gorsalitz, Circuit Court Judge

Prepared by

George T. Perrett (P42751)
BUTLER, TOWESON & PAYSENO – PLLC
202 N. Riverview Drive
Parchment, MI 49004
269/349-7686

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EXHIBIT B

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

CARRIE PUEBLO,

Plaintiff,

Case No. 2020-6382-DC

v

Hon. Stephen D. Gorsalitz

RACHEL HAAS,

Defendant.

Reh Starks (P76689)
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PLAINTIFF'S OBJECTION TO ENTRY OF ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION SUBMITTED PURSUANT TO MCR 2.602(B)(3)

NOW COMES, Plaintiff Carrie Pueblo, by and through her attorney STARKS LAW, PLC, and hereby objects to Defendant's proposed Order Granting Defendant's Motion for Summary Disposition dated March 16, 2021. More specifically, Ms. Pueblo objects to the Defendant's motion being granted "with prejudice" because if Michigan law should change before the minor child turns eighteen, Ms. Pueblo should be allowed to reassert her request for custody and parenting time with the minor child. A dismissal "with prejudice" precludes Ms. Pueblo from ever being able to file for custody and parenting time with her son again.

WHEREFORE, Ms. Pueblo prays this Honorable Court enter her proposed Order filed herewith, which is identical to Defendant's proposed Order except Ms. Pueblo's Order contains the phrase "without prejudice."

Respectfully submitted,

STARKS LAW, PLC
Attorney for Plaintiff

Dated: March 22, 2021

By: _____
Reh Starks (P76689)

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

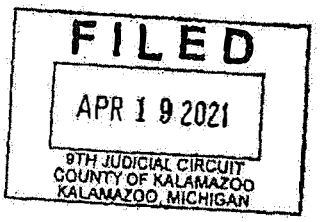
CARRIE PUEBLO,

Plaintiff,

v

RACHEL HAAS,

Defendant.



Case No. 2020-6382-DC

Hon. Stephen D. Gorsalitz

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8)

At a session of said Court held in the City and County of Kalamazoo, State of Michigan on the 19th day of April, 2021.

PRESENT: Honorable Stephen D. Gorsalitz, Circuit Court Judge

THIS COURT FINDS, for reasons set forth on the record, that the Plaintiff Carrie Pueblo lacks legal standing to initiate this child custody complaint and, accordingly, has failed to state a claim upon which relief may be granted.

NOW, THEREFORE, IT IS ORDERED that Defendant Rachel Haas' Motion for Summary Disposition Pursuant to MCR 2.116(C)(5) and (C)(8) is hereby GRANTED and the Plaintiff Carrie Pueblo's Complaint is hereby dismissed without prejudice and without costs being awarded to either party.

IT IS FURTHER ORDERED that this constitutes a final order in this case, and this file is hereby closed.

Hon. Stephen D. Gorsalitz, Circuit Court Judge

Drafted by:
Reh Starks (P76689)
Attorney for Plaintiff

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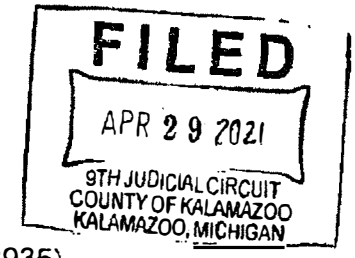
STATE OF MICHIGAN
IN THE 9TH CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

CARRIE PUEBLO,
Plaintiff,
v

Case No. F 2020-6382-DC

RACHEL HAAS,
Defendant.
_____/



APPEARANCES:

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Leslie L. Payseno (P63935)
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At a session held in the Courthouse
in the City and County of Kalamazoo, State of Michigan,
on this 29th day of April 2021

PRESENT: HONORABLE STEPHEN D. GORSALITZ, Circuit Court Judge

DECISION OF THE COURT REGARDING DEFENDANT'S MOTION FOR RECONSIDERATION OF ENTRY OF ORDER GRANTING DEFENDANT RACHEL HAAS' MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(5) AND MCR 2.116(C)(8) WITHOUT PREJUDICE

Plaintiff filed a Complaint for Custody and Parenting Time on October 26, 2020. Defendant filed an Answer to Complaint on February 10, 2021, along with a Motion for Summary Disposition, Affidavit, and Brief-Memorandum. Plaintiff filed a Brief in Opposition to Defendant's Motion for Summary Disposition on March 1, 2021. The Court heard arguments on March 8, 2021 and issued a Decision Granting Defendant's Motion for Summary Disposition on the record.

Defendant filed a Proposed Order Granting Defendant, Rachel Haas', Motion for Summary Disposition Pursuant to MCR 2.116(C)(5) and MCR 2.116(c)(8) on March 16, 2021. On March 22, 2021 Plaintiff filed an objection to the order because the order stated that the matter was being dismissed "with prejudice". This Court reviewed the transcript of the hearing and determined that the proposed order dismissing the case "with prejudice" did not comport with the Court's decision. Nowhere in its decision upon the record did this Court determine that the case should be dismissed "with prejudice.' This Court, therefore, entered the Plaintiff's proposed order granting the Motion for Summary Disposition and dismissing the case without prejudice on April 19, 2021.

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On April 21, 2021, the Defendant filed a Motion for Reconsideration Pursuant to MCR 2.119(F). Paragraph 3 of the court rule states, *"Generally, and without restricting the discretion of the Court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."*

This Court initially notes that, although the Defendant did not state in their Motion for Summary Disposition, Affidavit in Support of, or oral argument before the Court, a request that the Court grant their Motion for Summary Disposition and dismiss the case with prejudice, it was, however, requested relief stated in Defendant's answer and affirmative defenses to complaint for child custody, parenting time, and child support filed on February 10, 2021.

Plaintiff filed a Complaint for Custody and Parenting Time. Defendant is the natural and legal parent of the minor child, John Paul Haas-Pueblo, who was born on November 2, 2008. 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. Defendant filed a Motion for Summary Disposition under MCR 2.116(C)(5) and (C)(8). This Court conducted a hearing and granted the Defendant's motion. Plaintiff claimed that the Plaintiff was an "equitable parent" of the child because the parties had a "commitment ceremony". Clearly however, the parties were never married and, pursuant to established case law, Van v Zahorik, 460 Mich 330 (1999) and Lake v Putnam, 316 Mich App 247 (2016), equitable parentage can only be established if the parties are legally married.

Therefore, this Court found easily that the Plaintiff does not have standing in this case to pursue custody or parenting time. This Court also found clearly that the claim for custody was so clearly unenforceable as a matter of law that no factual development could possibly justify relief. So, under both arguments, MCR 2.116(C)(5) and (C)(8), the first being standing and the second being failure to state a claim upon which relief can be granted are both met, the Court granted the Motion for Summary Disposition.

Plaintiff seems to claim in their objection to entry of an order under the 7-day rule, that the Court should not enter the dismissal "with prejudice" because the law might change allowing the Plaintiff to proceed. If the Court entered the order with prejudice, Plaintiff would not be able to proceed. Clearly, this is not a basis for which the Court should determine whether or not to enter an order of dismissal with or without prejudice.

Plaintiff clearly understood that there was no legal marriage in this case and that she had no legal rights regarding this minor child. Yet Plaintiff argued that, although Plaintiff and Defendant were never married, there was an "equitable" marriage. As far as this Court knows, that is not legally recognized in this state. This Court stated in its opinion

on the record that, *"This Court is not going to make new law and impose marriage where there isn't any marriage."*

This Court finds palpable error in not dismissing the case with prejudice.

Based upon the findings of this Court, the circumstances of the case, and well-established law, this Court is going to determine that it is more appropriate that the Court dismiss the case with prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED that the case before this Court is dismissed with prejudice.

Honorable Stephen D. Gorsalitz P26933
Judge

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

CARRIE PUEBLO,

Plaintiff,

Case No. 2020-6382-DC

v

Hon. Stephen D. Gorsalitz

RACHEL HAAS,

Defendant.

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PLAINTIFF'S MOTION FOR RECONSIDERATION

NOW COMES Plaintiff, Carrie Pueblo, by and through her attorney STARKS LAW, PLC, and states in support of her Motion pursuant to MCR 2.119(F) as follows:

1. On or about October 26, 2020, Ms. Pueblo filed her Summons and Complaint for Custody and Parenting Time, thus prompting this action.
2. On or about January 19, 2021, an Order for Alternate Service was entered (following the process server's Motion for Alternate Service).
3. On or about January 21, 2021, Defendant was served.
4. On or about February 10, 2021, Defendant filed an Answer to our Complaint.
5. Along with Defendant's February 10, 2021, Answer, Defendant also filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(5) and MCR 2.116(C)(8) with Brief in Support therewith.

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6. On or about March 1, 2021, Ms. Pueblo filed her Brief in Opposition to Defendant's Motion for Summary Disposition.
7. On or about March 8, 2021, oral argument was held regarding Defendant's Motion for Summary Disposition.
8. On or about March 16, 2021, Defendant submitted a proposed Order under the 7-Day Rule.
9. On or about March 22, 2021, Ms. Pueblo's Objection to that proposed Order submitted under the 7-Day Rule was entered.
10. On or about April 19, 2021, Ms. Pueblo's proposed Order was entered by this Honorable Court.
11. On or about April 21, 2021, Defendant filed a motion for reconsideration.
12. On or about April 29, 2021, this Honorable Court filed its Decision in response to Defendant's motion for reconsideration.
13. Ms. Pueblo now timely files her motion for reconsideration.
14. After oral argument was held on March 8, 2021, the Court of Appeals issued, for publication, an opinion in the matter of *Kyresha LeFever v Lanesha Matthews*, Court of Appeals No. 353106, dated April 1, 2021. (case attached hereto)
15. The *LeFever* Court of Appeals concluded that the:

    …trial court committed error requiring reversal when it concluded that [Lanesha Matthews] was not a 'natural parent' under the [Child Custody Act] because she lacked a genetic connection to the [minor child]. (*LeFever* p 4)

16. The term "natural parent" is not defined by the Child Custody Act. *LeFever* states: [W]hen interpreting an undefined statutory term, the term 'must be accorded its plain and ordinary meaning.' *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008).

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> …We have found no dictionary definition for 'natural parent,' …the textual clues indicate that the term 'natural parent' is elastic enough to include defendant…although she has no genetic connection to the twins… (*LeFever* p 5)

17. **"In addition, a review of [Michigan's statutes] does not support the trial court's conclusion that Michigan law generally requires a genetic connection in order to establish maternity…This definition does not hint at any legal requirement of a genetic connection between a parent and a child. In fact, '[n]othing in the Acknowledgment of Parentage Act requires that the man completing the Acknowledgment form actually be the child's biological father."** *In re Daniel's Estate,* 301 Mich App 450, 456; 837 NW2d 1 (2013). (*LeFever* p 7) (emphasis added)

18. The Court of Appeals considered several Acts and statutes before arriving to their conclusion. Acts and statutes considered by the Court of Appeals within *LeFever* include, but are not limited to, the following:

    a. Child Custody Act;

    b. Surrogate Parenting Act;

    c. Revocation of Paternity Act;

    d. Acknowledgment of Parentage Act;

    e. The Safe Delivery of Newborns Act;

    f. The Adoption Code; and

    g. Genetic Parentage Act.

19. "There is no indication in the plain language of any of these statutes that the Legislature intended to limit the path to establishing maternity to the single route of demonstrating a genetic connection." (*LeFever* p 4)

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20. Thus Ms. Pueblo has met her burden demonstrating a palpable error by which this Honorable Court and the parties have been misled pursuant to MCR 2.119(F)(3).
21. Ms. Pueblo has shown that a different disposition of the motion must have resulted based upon the correction of this error.
22. In accordance with *LeFever's* Court of Appeals opinion, Ms. Pueblo is a natural parent to the parties' minor child, whether or not Ms. Pueblo has a genetic connection the parties' minor child pursuant to MCR 2.119(F)(3).
23. In accordance with the ruling in *LeFever*, Ms. Pueblo has standing herein.
24. This Honorable Court's prior ruling violates Ms. Pueblo's 14th Amendment right to due process and equal protection.
25. This Honorable Court's prior ruling is a violation of Ms. Pueblo's fundamental rights to procreation and/or child rearing and is, therefore, subject to heightened scrutiny. See *MLB v SLJ*, 519 US 102 (1996).
26. This Honorable Court's prior ruling is a violation of the minor child's fundamental rights because the child is being treated differently based on the circumstances of his birth, and that violation is also subject to heightened scrutiny.
27. This Honorable Court also erred in granting Defendant's motion for reconsideration.
28. The only family-law case cited in Defendant's brief in support is a case regarding non-modifiable spousal support language in a Judgment of Divorce—it is not regarding parenting time and custody.[1]

[1] *Rose v Rose*, 289 Mich App 45; 795 NW2d 611 (2010).

29. Parenting time and custody orders are, in fact, intended to be modifiable so as to ebb and flow with the best interests of minor children. See *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW 2d 847 (2003); see *Shade v Wright*, 291 Mich App 17; 805 NW 2d 1 (2010).

30. There is an inherent finality and statute of limitations on parenting time and custody cases: age of majority.

31. Ms. Pueblo has shown the palpable error by which the Court and parties have been misled, and that a different disposition of Defendant's motion for reconsideration must have resulted based upon the correction of this error.

PRAYER FOR RELIEF

WHEREFORE, Ms. Pueblo prays this Honorable Court reconsider their prior ruling on Defendant's Motions for Summary Disposition—both MCR 2.116(C)(5) & (C)(8), thereby granting Ms. Pueblo standing as the minor child's natural parent according to the holding in *LeFever* and denying Defendant's motions for summary disposition.

FURTHERMORE, Ms. Pueblo prays this Honorable Court set this matter for a status conference and evidentiary hearing so that an analysis pursuant to the best-interest factors may be conducted and custody and parenting time may be awarded.

FURTHERMORE, if this Honorable Court does not award Ms. Pueblo standing, Ms. Pueblo prays this Honorable Court reconsider their prior ruling on Defendant's motion for reconsideration and re-enter Ms. Pueblo's previously proposed Order presented with her 7-day objection, being that this case should have been dismissed without prejudice.

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Respectfully submitted,

STARKS LAW, PLC
Attorney for Plaintiff

Dated: May 20, 2021

By: _____
Reh Starks (P76689)

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

KYRESHA LEFEVER,

Plaintiff-Appellee,

v

LANESHA MATTHEWS,

Defendant-Appellant.

FOR PUBLICATION
April 1, 2021
9:15 a.m.

No. 353106
Wayne Circuit Court
LC No. 19-103263-DP

Before: GLEICHER, P.J., and K. F. KELLY and RIORDAN, JJ.

RIORDAN, J.

In this child custody case, defendant, Lanesha Matthews, appeals as of right the trial court's order of parentage, custody, and parenting time. The trial court awarded sole legal custody and sole physical custody of plaintiff's and defendant's two minor children to plaintiff, Kyresha LeFever, granted parenting time to defendant, and ordered defendant's name be removed from the children's birth certificates. The custody order was premised on an earlier determination that defendant was merely a third party and not a parent to the children because, although she gestated and birthed the children, she did not have a genetic connection to them, unlike plaintiff whose ova were used in the procreation of the children.

However, we conclude that the trial court improperly interpreted the term "parent" as defined by MCL 722.22(i) in the Child Custody Act ("CCA"), MCL 722.21 *et seq.*, as requiring a genetic connection, and misapplied the Surrogate Parenting Act ("SPA"), MCL 722.851 *et seq.* Accordingly, we vacate the trial court's order and remand this case for further proceedings.

I. FACTS & PROCEDURAL HISTORY

This case arises out of the dissolution of the parties' relationship and subsequent custody dispute over their two minor children, twin girls. Plaintiff and defendant, both women, began a romantic relationship in 2011. At some point during the course of the relationship, they decided to have children together using plaintiff's eggs, fertilized by a sperm donor, and implanted in defendant's womb. The in vitro fertilization resulted in defendant's pregnancy with the twins. Although the parties intended for defendant to give birth in Ohio, where both women could be listed on the birth certificates, defendant gave birth two months early in Michigan. At that time,

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the Michigan Department of Health and Human Services' Division of Vital Records permitted one father and one mother to be listed on a birth certificate. As a result of this practice, defendant was listed as the twins' mother, and although plaintiff was not listed on the birth certificates, the twins were given plaintiff's last name.

The parties cohabitated and parented the twins together until they separated in 2014—before statutes excluding same-sex couples from marriage were declared unconstitutional in *Obergefell v Hodges*, 576 US 644; 135 S Ct 2584; 192 L Ed 609 (2015). The parties continued co-parenting the twins and shared custody until defendant experienced serious health concerns in 2016. At that time, plaintiff became the twins' primary caretaker until 2018 when a custody dispute arose.

In November 2018, plaintiff filed a complaint for custody of the twins as well as a motion to establish interim custody and parenting time. The matter was heard by a referee who determined parentage should first be established. The case was dismissed and resubmitted by plaintiff as a complaint to establish parentage.

The trial court held a hearing to establish plaintiff's standing as a parent. Plaintiff argued that she was the twins' "natural mother" by virtue of her genetic connection to the children, and that defendant, the "gestational surrogate," was merely "the woman who carried the eggs of [plaintiff] and the sperm of an anonymous donor." Plaintiff also raised due process and equal protection arguments. Defendant countered that the SPA applied in such a way that it invalidated any surrogacy contract between the parties. Defendant reasoned that because there is no valid surrogacy contract, she is the twins' "natural parent" by default because she gave birth to them. Defendant further argued that Michigan law provides no avenue for conferring maternity on a party except by way of birth and delivery of a child, and therefore, plaintiff lacked standing to seek custody. Defendant asserted that the parties decided not to have plaintiff recognized as a legal parent to the children at the time of their birth, and that plaintiff must now live with the consequences of that decision.

The trial court found that plaintiff is the twins' "natural and legal mother" and ordered that the birth certificates be amended to add plaintiff. The trial court also awarded joint legal custody on an interim basis and set forth a parenting-time schedule. However, during the course of the preliminary hearing, the trial court raised the issue of defendant's standing as a "natural parent" and ordered additional briefing on the matter. Defendant moved for reconsideration of the trial court's orders, which it denied.

Regarding defendant's standing, plaintiff then argued that defendant was not the twins' natural parent because she shared no genetic connection with them. In response, defendant maintained her position that her biological connection to the twins, by way of gestation, made her the twins' natural parent too. Defendant argued that neither the statute, nor the dictionary definition, limit "natural parent" to mean only a genetic parent, and such a narrow interpretation of the term is antithetical to the purpose of the CCA and would violate her constitutional rights to substantive due process and equal protection. Defendant also argued that she has "standing by agreement" by way of the parties' co-maternity arrangement and that plaintiff's action to revoke defendant's parentage of the twins was barred by the limitations period set forth in the Revocation of Paternity Act ("ROPA"), MCL 722.1437(1).

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The trial court concluded that the SPA applied to the facts of this case because it broadly defines a surrogate parentage contract as encompassing any arrangement in which a female agrees to conceive a child through artificial insemination, or in which a female agrees to surrogate gestation. The trial court further reasoned that the SPA identifies the "mother" as a party with a genetic connection to the child, whereas a "surrogate carrier" gestates and births a child to whom she has no genetic relationship. The trial court recognized that the SPA does not indicate which party should have custody to the resultant offspring, but rather directs court to apply the CCA.

The trial court noted that this case presents a matter of first impression in Michigan, but it considered the various outcomes in other jurisdictions under similar factual circumstances. The trial court was persuaded by the public policy rationale in *Belsito v Clark*, 67 Ohio Misc 2d 54; 644 NE2d 760 (1994). The trial court considered the Acknowledgment of Parentage Act, MCL 722.1003, the Safe Delivery of Newborns Act, MCL 712.1 *et seq.*, the Adoption Code, MCL 710.21, and finally the CCA, which defines a parent as "natural" or "adoptive," MCL 722.22(i). The trial court concluded that "the [L]egislature of this state has established that it is the public policy of this state to identify a parent as a person with a biological connection to the child." In this case, the trial court concluded that plaintiff, by way of her genetic connection to the twins, was the only party to establish such a biological connection. As a result, this finding created a presumption that the best interests of the twins were served by awarding plaintiff custody, while the SPA granted defendant standing as a third party.

Defendant sought leave to appeal to this Court, but the application was dismissed for lack of jurisdiction because the opinion issued by the trial court was not a decision on a dispositive motion. *LeFever v Matthews*, unpublished order of the Court of Appeals, entered October 23, 2019 (Docket No. 351133). Accordingly, the matter progressed to trial where defendant was required to show by clear and convincing evidence that it was in the twins' best interest for her to have custody.

After a six-day trial, the court concluded that defendant failed to carry her burden to establish parentage. Plaintiff was awarded full legal and physical custody and the trial court ordered that defendant's name be removed from the twins' birth certificates. However, the trial court granted parenting time to defendant pursuant to her standing as a third party under MCL 722.271(b). Defendant now appeals and challenges the trial court's finding that she is not a natural parent. She argues that the trial court misinterpreted the CCA when it found that she is not a "natural parent," that it misapplied the SPA to the facts of this case, and that the trial court's order implicates her federal constitutional rights to substantive due process and equal protection under the law.

II. STANDARDS OF REVIEW

Legal standing constitutes a question of law that we review de novo. *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001). As it relates specifically to "the resolution of a child custody dispute," the CCA provides that "all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28. A clear legal error occurs when the circuit court incorrectly chooses, interprets, or applies the law. *Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014); *Fletcher v Fletcher*, 447 Mich

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871, 881; 526 NW2d 889 (1994). We review matters of statutory interpretation and constitutional issues de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008); *In re MKK*, 286 Mich App 546, 556; 781 NW2d 132 (2009).

III. THE CHILD CUSTODY ACT OF 1970

Defendant first argues that the trial court committed error requiring reversal when it concluded that she was not a "natural parent" under the CCA because she lacked a genetic connection to the twins. We agree.

The CCA governs custody, parenting time, and child support issues for minor children in Michigan and it is the exclusive means of pursuing child custody rights. MCL 722.24(1); *Aichele v Hodge*, 259 Mich App 146, 153; 673 NW2d 452 (2003). It is "equitable in nature," and must be "liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved." MCL 722.26(1). The CCA contains the following parental presumption:

> If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence. [MCL 722.25(1).]

"Parent" is defined as "the natural or adoptive parent of a child." MCL 722.22(i). However, determining whether the term "natural parent" is elastic enough to include defendant is a matter of statutory interpretation. To that end, we consider the following principles:

> The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. First, the court examines the most reliable evidence of the Legislature's intent, the language of the statute itself. When construing statutory language, the court must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined. Effect must be given to every word, phrase, and clause in a statute, and the court must avoid a construction that would render part of the statute surplusage or nugatory. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion. The courts may not read into the statute a requirement that the Legislature has seen fit to omit. When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose. Statutes that address the same subject matter or share a common purpose are *in pari materia* and must be read collectively as one law, even when there is no reference to one another. [*In re Jajuga Estate*, 312 Mich App 706, 712; 881 NW2d 487 (2015), quoting *Book–Gilbert v Greenleaf*, 302 Mich App 538,

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541–542; 840 NW2d 743 (2013) (brackets omitted).]

The term "natural parent" is not defined by the statute. However, we have previously interpreted the term to mean a blood relation. *Stankevich v Milliron (On Remand)*, 313 Mich App 233, 236; 882 NW2d 194 (2015), (hereinafter, *Stankevich III*) (citing Random House Webster's College Dictionary (2005) definition of "natural"). A blood relation is different from relation by affinity or adoption, and the term "natural parent" as defined in the CCA does not include those relationships. This is supported by the inclusion of the term "adoptive parent" as a separate category from "natural parent" within the same subsection, MCL 722.22(i). Thus a "parent" within the meaning of the CCA does not include relations such as step-parents (who are related to a child by marriage or affinity), foster parents (whose relationship to a child is determined and controlled by the agency foster/parent agreement), or grandparents (who may be related to a child by consanguinity, but are removed in their relation by one degree). Such parties are "third persons." See MCL 722.22(k) (defining "third person" as "an individual other than a parent"); *In re Anjoski*, 283 Mich App 41, 52; 770 NW2d 1 (2009) (considering a step-parent as a third party); *Tallman v Milton*, 192 Mich App 606; 482 NW2d 187 (1992) (considering foster parents as third parties); *Bowie v Arder*, 441 Mich 23, 48–49; 490 NW2d 568 (1992) (considering a grandparent as a third party). Here, defendant's relationship to the twins as their birth mother has a closer biological connection than a step-parent or foster parent, and even that of a grandparent because she is related to the twins in a closer degree than a grandparent as defendant gave birth to the children.

Moreover, when interpreting an undefined statutory term, the term "must be accorded its plain and ordinary meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). Consulting a lay dictionary is proper when defining common words or phrases that lack a unique legal meaning, but when the statutory term is a legal term of art, the term must be construed in accordance with its peculiar and appropriate legal meaning. *Id.* *Black's Law Dictionary* (11th ed 2019) does not define "natural parent," but it defines "blood relative" as "[s]omeone who shares an ancestor with another." In addition, the entry for "genetic parent" refers to the definition for "biological parent" which is "[t]he woman who provides the egg . . . to form the zygote that grows into an embryo." "Birth parent" is defined as "[e]ither the biological father or the mother who gives birth to the child." Thus, plaintiff meets the definition of "biological parent" and "genetic parent" and defendant satisfies the definition of a "birth parent." However, those terms are not included in the definition of "blood relative" or otherwise mention the term "natural parent."

Accordingly, we must consider the lay dictionary definition as we did in *Stankevich III*, 313 Mich App at 236.[1] We have found no dictionary definition for "natural parent," but, building

[1] In that case, the parties were a same-sex couple that had been married in Canada in 2007. *Stankevich III*, 313 Mich App at 233. Using artificial insemination, the defendant became pregnant and gave birth before the parties separated in 2009 and a subsequent custody complaint was filed. *Id.* It was undisputed that the defendant was the biological parent to the child. *Id.* Rather, the issue before us concerned the application of the equitable-parent doctrine which recognizes that " 'a person who is not the biological father of a child may be considered a parent against his will, and consequently burdened with the responsibility of the support for the child,' such a person, in

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off our analysis in *Stankevich III*, we consider the various dictionary definitions of "blood relation," and conclude that they merely differentiate between relation by birth and adoption. See *American Heritage Dictionary of the English Language* (5th ed) (defining "blood relation" as "a person who is related to another by birth rather than by marriage"); *Merriam-Webster Online Dictionary* (defining "blood relative" as "someone who has the same parents or ancestors as another person"); *MacMillan Dictionary Online* (defining "blood relation" as "someone that you are related to by birth, rather than by marriage"); *Cambridge Dictionary Online* (defining "blood relation" as "someone who is related to you by birth rather than through marriage"). Thus, the textual clues indicate that the term "natural parent" is elastic enough to include defendant, who, although she has no genetic connection to the twins, is related to them by birth rather than through marriage.[2]

In concluding otherwise, the trial court erroneously considered the genetic requirements in other family-law statutes, namely, the Acknowledgment of Parentage Act, MCL 722.1003, the Safe Delivery of Newborns Act, MCL 712.1 *et seq.*, and the Adoption Code, MCL 710.21. "However, the first step of statutory interpretation is to review the language of the statute at issue, not that of another statute." *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Michigan*, 492 Mich 503, 521; 821 NW2d 117 (2012). Although a statute must be read in conjunction with other

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being treated as a parent, may also seek the rights of custody or parenting time." *Id.* at 238, quoting *Atkinson v Atkinson*, 160 Mich App 601, 608–609; 408 NW2d 516 (1987).

Initially, we concluded that the equitable-parent doctrine was inapplicable to the case because in *Van v Zahorik*, 460 Mich 320, 330–331; 597 NW2d 15 (1999), the Michigan Supreme Court had declined to extend application of the doctrine outside the context of marriage, and because at the time of the appeal Michigan did not recognize same-sex marriage, the doctrine was inapplicable to the facts of that case. *Stankevich v Milliron*, unpublished opinion per curiam of the Court of Appeals, issued October 17, 2013 (Docket No. 310710), p 1, (hereinafter *Stankevich I*) vacated and remanded 498 Mich 877; 868 NW2d 907 (2015) (hereinafter *Stankevich II*). While appeal from *Stankevich I* was pending, the United States Supreme Court issued its decision in *Obergefell*, 576 US 644, which struck down as unconstitutional Michigan's statute that prohibited same-sex marriage. Accordingly, the Michigan Supreme Court vacated *Stankevich I* and remanded the case to the Court of Appeals for reconsideration in light of *Obergefell*. On remand, we maintained our interpretation of the term "natural parent" but concluded that the plaintiff was not barred from asserting the equitable-parent doctrine and we remanded the matter to the trial court for an evidentiary hearing regarding the validity of the marriage and the other disputed factual issues *Stankevich III*, 313 Mich App at 240-242.

[2] The concurrence criticizes us for relying on dictionaries, rather than the common law, to ascertain the meaning of "natural parent." However, the CCA is "a comprehensive statutory scheme" concerning child-custody matters. See *Van*, 460 Mich at 327. "In general, where comprehensive legislation prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions, the Legislature will be found to have intended that the statute supersede and replace the common law dealing with the subject matter." *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006). Our duty is therefore to address the comprehensive statutory language of the CCA.

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relevant statutes and interpreted in a manner that ensures that it works in harmony with the entire statutory scheme, *Potter v McLeary*, 484 Mich 397, 411; 774 NW2d 1 (2009), none of these statues were implicated by the facts of this case.

In addition, a review of these statutes does not support the trial court's conclusion that Michigan law generally requires a genetic connection in order to establish maternity. Specifically, the trial court concluded that "MCL 722.1003, Michigan's Acknowledgment of Parentage Act has clearly identified that only a biological parent will have the 'duties of a child-parent relationship and legal status of [a] natural parent'." However, the act establishes paternity (not maternity). MCL 722.1004. The act defines the term "father" but not the term "mother." MCL 722.1002. Moreover, the act defines "father" as "the man who signs an acknowledgment of parent of a child." MCL 722.1002(d). This definition does not hint at any legal requirement of a genetic connection between a parent and a child. In fact, "[n]othing in the Acknowledgement of Parentage Act requires that the man completing the acknowledgement form actually be the child's biological father." *In re Daniels Estate*, 301 Mich App 450, 456; 837 NW2d 1 (2013). MCL 722.1007(g)(*i*) expressly provides that the acknowledgement form must include notice that signing the form waives blood or genetic tests to determine if the man is the biological father of the child. The only indication in the act as to how maternity is determined is found in MCL 722.1002(b) which defines the term "child" as "a child conceived and born to a woman . . . ." This definition does not include any requirement that the child be conceived by the same woman who births the child, nor does it indicate any preference for a genetic parent to take priority over a birth parent. Although MCL 722.1437 permits for the revocation of acknowledgment of parentage, "[n]othing in the act indicates that DNA results, standing alone, are sufficient to require revocation of an acknowledgment of parentage." *Helton v Beaman*, 304 Mich App 97, 108; 850 NW2d 515 (2014).

The Safe Delivery of Newborns Act states that a party petitioning for custody of a newborn may be ordered to submit to genetic testing "[u]nless the birth was witnessed by the emergency service provider and sufficient evidence exists to support maternity." MCL 712.11(2). Thus, it appears that the act only contemplates scenarios when a birth mother is also the genetic mother, and is uninformative as to the statutory construction of the CCA in this case.

The trial court's reliance on the Adoption Code is also misplaced. The act does not define or otherwise address genetic parents or birth parents. In addition, the trial court did not consider the Genetic Parentage Act, MCL 722.1461 *et seq.*, which permits a man to establish paternity by way of blood, tissue, or genetic testing. MCL 722.1467. The act focuses on a genetic parent-child connection, but considering it in the context of the entire statutory scheme, it does not support a conclusion that the Legislature intended for genetics to be the only way to establish parentage. Rather, "[t]he Legislature has provided numerous statutory paths to establishing paternity." *In re MKK*, 386 Mich App at 557. There is no indication in the plain language of any of these statutes that the Legislature intended to limit the path to establishing maternity to the single route of demonstrating a genetic connection.

In addition, the trial court relied on the public policy rationale provided in *Belsito v Clark*, 67 Ohio Misc 2d 54. We do not find this case by the Ohio Court of Common Pleas to be persuasive. In that case, the plaintiffs, Anthony and Shelly Belsito, a heterosexual married couple, used in vitro fertilization to combine their own genetic material and produce an embryo which was implanted into a surrogate, Carol Clark (Shelly's younger sister). *Id.* Before the child was born, the local

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hospital informed Shelly that, in accordance with Ohio law, Carol would be listed on the birth certificate as the child's mother, and because Carol was not married to the child's father, Anthony, the child would be considered illegitimate. *Id.* Thereafter, Shelly, along with Anthony, sought a declaratory order recognizing that they were the child's legal and natural parents. *Id.* The court concluded that, although both Shelly and Carol would be considered legal mothers under the language of the applicable Ohio statutes, society would be served best by a determination that only one woman was the child's mother. *Id.*

On public policy grounds, the Ohio court rejected the "intent test" adopted by California courts whereby parentage was awarded to the "intended parent." *Id.* Instead, the court, without reliance on any legal authority, concluded that in such cases, genetics wins out over gestation because the "genetic parent can guide the child from experience through the strengths and weaknesses of a common ancestry of genetic traits." *Id.* at 64. However, our Supreme Court has stated that "[i]t is not within the authority of the judiciary 'to redetermine the Legislature's choice or to independently assess what would be most fair or just or best public policy.' " *Lash v City of Traverse City*, 479 Mich 180, 197; 735 NW2d 628 (2007), quoting *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 504; 638 NW2d 396 (2002).

Therefore, we vacate the trial court's final order and remand this case for the trial court to consider custody and parenting time with both parties as "natural parents" under the CCA.

IV. THE SURROGATE PARENTING ACT

Defendant also argues that the trial court erred when it concluded that the SPA applies to the facts of this case. We agree but conclude that the trial court's misapplication of the law does not require reversal.[3]

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[3] At the outset, we note that defendant has waived this issue by initially arguing that the SPA *applies* during the May 7, 2019 hearing on plaintiff's standing in the trial court. Now on appeal, defendant reverses course and argues that the trial court erred when it concluded that the SPA applies. Waiver is a voluntary and intentional abandonment of a known right. *Braverman v Granger*, 303 Mich App 587, 608; 844 NW2d 485 (2014). "A party cannot stipulate [to] a matter and then argue on appeal that the resultant action was error." *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW2d 300 (2008) (quotation marks and citation omitted). "A party who waives a right is precluded from seeking appellate review based on a denial of that right because waiver eliminates any error." *The Cadle Co v City of Kentwood*, 285 Mich App 240, 255; 776 NW2d 145 (2009). To allow a party to assign error on appeal to something that he or she deemed proper in the lower court would be to permit that party to harbor error as an appellate parachute. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Although an issue is waived, we "may overlook the preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Johnson Family Ltd Pship v White Pine Wireless, LLC*, 281 Mich App 364, 377; 761 NW2d 353 (2008) (internal quotation marks and citation omitted). Moreover, when the trial court "incorrectly

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The SPA, MCL 722.851 *et seq.*, governs surrogacy agreements. MCL 722.855 renders invalid surrogate parentage contracts. MCL 722.853(i) defines "surrogate parentage contract" as follows:

> a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to *voluntarily relinquish her parental or custodial rights to the child.* It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child. [Emphasis added.]

In turn, "surrogate gestation" means "the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female." MCL 722.853(g). In addition, MCL 722.861 provides:

> If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, "best interests of the child" means that term as defined in [the CCA, MCL 722.23].

There is no doubt that the parties had an arrangement, though not at arm's length, for plaintiff to provide the eggs and for defendant to carry and birth the twins. However, we have previously explained that the voluntary relinquishment of parental rights is a necessary element to finding that a surrogate parentage contract exists:

> The statutory language clearly defines "a surrogate parentage contract" as consisting of two elements: (1) conception, through either natural or artificial insemination, of, or surrogate gestation by a female and (2) her voluntary relinquishment of her parental rights to the child. Only a contract, agreement, or arrangement combining these two elements constitutes a "surrogate parentage contract" that is void and unenforceable under the act.
>
> * * *
>
> To summarize, we hold:

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chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct." *Fletcher*, 447 Mich at 881. Accordingly, we address defendant's argument on appeal.

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> (1) A surrogate parentage contract is void and unenforceable under § 5;
>
> * * *
>
> (3) For a surrogate parentage contract to exist there must be present the elements of (1) conception, through either natural or artificial insemination, of, or surrogate gestation by a female and (2) the voluntary relinquishment of her parental rights to the child; and
>
> (4) A contract, agreement, or arrangement that does not contain both elements set forth in (3) above is neither void and unenforceable under § 5 nor unlawful and prohibited by § 9, even when entered into for compensation. [*Doe v Attorney Gen*, 194 Mich App 432, 441-443; 487 NW2d 484 (1992) (footnotes omitted).]

MCL 722.853(i) does not state that the presumption of relinquishment of parental rights is conclusive,[4] but it also does not indicate what level of proof is required to rebut the presumption of relinquishment. Thus, we must use the "the usual standard required to overcome a rebuttable presumption: competent and credible evidence." *Reed v Breton*, 475 Mich 531, 539; 718 NW2d 770 (2006). In addition, where the statute does not specify the standard of proof, the usual civil "preponderance of the evidence" quantum of proof applies. *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 521-522; 857 NW2d 529 (2014); *Residential Ratepayer Consortium v Pub Serv Comm*, 198 Mich App 144, 149; 497 NW2d 558 (1993).[5]

The trial court did not make any finding on whether the evidence in this case successfully rebutted the statutory presumption of relinquishment of parental rights set forth in MCL 722.853(i). However, the parties testified that they intended to co-parent the twins and the clinic forms which were filled out at the time of the in vitro fertility treatments state that the parties intended a co-maternity arrangement. In any event, the trial court does not need to consider this issue on remand because, even assuming the SPA applies, MCL 722.861 of the SPA directs the trial court to consider the best-interest factors as set forth in the CCA when determining custody.[6]

---

[4] A statutory conclusive presumption may not be rebutted by other evidence. *Pearo v Mackinac Island*, 307 Mich 290; 11 NW2d 893 (1943). In the absence of any language indicating that a statutory presumption is conclusive, we will decline to make such an inference. *Maier v General Telephone Company of Michigan*, 247 Mich App 655; 637 NW2d 263 (2001).

[5] MRE 301, entitled "Presumptions in Civil Actions and Proceedings," explains the effect of rebuttable presumptions:

> In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

[6] MCL 722.861 states:

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Notably, the SPA does not indicate that the surrogate mother is a third party under the CCA, nor does it cross-reference any other provision of the CCA. Nor does MCL 722.23 (the CCA's best-interest factors) cross-reference MCL 722.25(1) (the parental presumption provision of the CCA). But, because the CCA is the exclusive means of pursuing child custody rights,[7] there is no reason to conclude that MCL 722.25(1), which provides that the best interests of the child are served by awarding custody to the child's parent or parents unless there is clear and convincing evidence to the contrary, is inapplicable. In other words, even if the SPA applies, defendant remains a "natural parent" under the CCA, as discussed above, and the trial court's erroneous conclusion that the SPA applies does not alter the outcome of the case.

V. CONSTITUTIONAL CLAIMS

Defendant also argues that the trial court's order violates her constitutional rights under the Equal Protection Clause and Due Process Clause of the United States Constitution.[8] However, because we conclude that the trial court erred in interpreting the CCA and misapplied the SPA in this case, we need not address defendant's remaining constitutional arguments. See *Dep't of Health & Human Services v Genesee Circuit Judge*, 318 Mich App 395, 407; 899 NW2d 57 (2016) (the widely accepted and venerable rule of constitutional avoidance counsels that we first consider whether statutory or general law concepts are instead dispositive).

VI. CONCLUSION

The trial court erred when it concluded that defendant is not a "natural parent" under the CCA because she lacks a genetic link to the twins that she carried through gestation and birthed.[9]

If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, "best interests of the child" means that term as defined in [MCL 722.23].

[7] *Aichele*, 259 Mich App at 153.

[8] See US Const, Am XIV.

[9] We conclude that the term "natural parent" is elastic enough to include both parents in this case, where the parties divided the female reproductive roles of conceiving a child so that each has assumed a function traditionally used to evidence a legal maternal relationship. However, we note that the advent of assisted reproductive technology has complicated an area of law that traditionally was fairly straightforward. The statutes at play in this case, specifically the Child Custody Act of 1970, MCL 722.21 *et seq.*, and the Surrogate Parenting Act ("SPA"), MCL 722.851 *et seq.* (first passed in 1988, 1988 PA 199) were written and enacted in an era when modern forms of assisted reproductive technology that are commonly used today were considered science fiction, and the cutting-edge technology being developed now was unimaginable then. Certainly, the common law could not have anticipated the fairly common circumstances of the parties in this case, let alone the circumstances of families where one child has three genetic parents, or where a child is

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Accordingly, we vacate the custody order and remand this case to the trial court for a new custody hearing where both parties are considered parents.

/s/ Michael J. Riordan
/s/ Kirsten Frank Kelly

---

produced from the DNA of one egg fertilizing a second egg, or where a child has two genetic fathers and no genetic mother. Our current statutory schemes are poor vehicles for modern-made families to seek relief, and we question whether they are robust enough in their current form to provide equitable outcomes to such families. These new technologies have thrown a wrench into the legal understanding of parentage and have given rise to novel issues in contract law, insurance coverage, immigration law, and estate planning. Accordingly, we anticipate that the Legislature will need to modernize the law to keep pace with technological advancements and appropriately balance various public policy concerns.

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STATE OF MICHIGAN

IN THE 9th CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

CARRIE PUEBLO,

Plaintiff,

Case No. 2020-6382-DC

v

Hon. Stephen D. Gorsalitz

RACHEL HAAS,

Defendant.

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BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

NOW COMES Plaintiff, Carrie Pueblo, by and through her attorney STARKS LAW, PLC, and states in support of her Brief as follows:

I. STATEMENT OF FACTS

Defendant motioned for summary disposition on two grounds:

1. That Plaintiff lacks standing (MCR 2.116(C)(5)); and
2. For Plaintiff'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)).

This Honorable Court's April 29, 2021, Decision granted Defendant'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

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> Affidavit of Parentage, and Plaintiff has no biological relationship with the minor child. (Decision p 2)

II. ISSUE

After oral argument was heard in the case at bar, the Court of Appeals issued a decision in the case of *LeFever v Matthews*, Court of Appeals No. 353106, dated April 1, 2021 for publication. This Honorable 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, this Honorable 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.

III. APPLICABLE LAW

A. LeFever v Matthews

The *LeFever* Court of Appeals concluded that the:

> ...trial court committed error requiring reversal when it concluded that [Lanesha Matthews] was not a 'natural parent' under the CCA because she lacked a genetic connection to the [minor children]. (*LeFever* p 4)
>
> The term 'natural parent' is not defined by the statute...
>
> ...[W]hen interpreting an undefined statutory term, the term 'must be accorded its plain and ordinary meaning.' *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008).
>
> ...We have found no dictionary definition for 'natural parent,' (*LeFever* p 5)
>
> ...the textual clues indicate that the term 'natural parent' is elastic enough to include defendant...although she has no genetic connection to the twins...

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> **"In addition, a review of [Michigan's statutes] does not support the trial court's conclusion that Michigan law generally requires a genetic connection in order to establish maternity...This definition does not hint at any legal requirement of a genetic connection between a parent and a child. In fact, '[n]othing in the Acknowledgment of Parentage Act requires that the man completing the Acknowledgment form actually be the child's biological father."** *In re Daniel's Estate*, 301 Mich App 450, 456; 837 NW2d 1 (2013). (*LeFever* p 7) (emphasis added)

The Court of Appeals considered several Acts and statutes before arriving to their conclusion. Acts and statutes considered by the Court of Appeals within *LeFever* include, but are not limited to, the following:

a. Child Custody Act;

b. Surrogate Parenting Act;

c. Revocation of Paternity Act;

d. Acknowledgment of Parentage Act;

e. The Safe Delivery of Newborns Act;

f. The Adoption Code; and

g. Genetic Parentage Act.

"The Legislature has provided numerous statutory paths to establishing paternity." *In Re MKK*, 386 Mich App at 557... "There is no indication in the plain language of any of these statutes that the Legislature intended to limit the path to establishing maternity to the single route of demonstrating a genetic connection." (*LeFever* p 7)

B. Due Process Clause and Equal Protection Clause Pursuant to the 14th Amendment

The Constitution protects "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Planned Parenthood of SE Pennsylvania v Casey*, 505 US 833, 851 (1992), citing *Carey v Population Serv Int'l*, 431 US 678,

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685 (1977). The decision of whether or not to procreate, and how, is a protected fundamental liberty interest. *Eisenstadt, Sheriff v Baird*, 405 US 438, 453 (1972). Constitutional rights connected to our liberty to procreate and to bodily autonomy are not limited by the method chosen to procreate (i.e., assistive reproductive technology) ("ART"). See *DMT v TMH*, 129 So 3d 320, 338 (FLA 2013).

Our Supreme Court has "recognized on numerous occasions that the relationship between parent and child is constitutionally protected." *Quillion v Walcott*, 434 US 246, 255 (1978).

The "State must provide access to its judicial processes" in the context of termination of parental rights because "a fundamental interest is at stake"—maintaining a parent-child relationship. See *MLB v SLJ*, 519 US 102 (1996). It is well-settled law that a classification creating unequal access to a fundamental right is subject to strict scrutiny. *Zablocki v Redhail*, 434 US 374, 381-390 (1978).

IV. APPLICATION/ANALYSIS

A. LeFever v Matthews

The Court of Appeals summarized *LeFever* in relevant part as follows:

> ...[t]his case arises out of the dissolution of the parties' relationship and subsequent custody dispute over their two minor children...plaintiff and defendant, both women, began a romantic relationship [pre-Obergefell]. At some point during the course of the relationship, they decided to have children together...and implanted in Defendant's womb. The invitro fertilization resulted in Defendant's pregnancy... Defendant gave birth...in Michigan. At that time, the Michigan Department of Health and Human Services' Division of Vital Records permitted one father and one mother to be listed on the birth certificate. As a result of this practice, Defendant was listed as the...mother, and although Plaintiff was not listed on the birth certificates, the [newborns were] given Plaintiff's last name.
>
> The parties cohabitated and parented...together until they separated...--before statutes excluding same-sex couples from

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> marriage were declared unconstitutional in *Obergefell v Hodges*, 576 US 644; 135 S Ct 2584; 192 L Ed 609 (2015). The parties continued co-parenting...the trial court held a hearing to establish Plaintiff's standing as a parent...Defendant...argued that...Plaintiff lacked standing to seek custody.

LeFever's Court of Appeals held:

> ...that the trial court improperly interpreted the term 'parent' as defined by MCL 722.22(i) and the Child Custody Act ('CCA'), MCL 722.21 *et seq.*, as requiring a genetic connection and misapplied the Surrogate Parenting Act ('SPA'), MCL 722.851 *et seq.*" (*LeFever* p 1)

The facts in *LeFever v Matthews* are identical in the case at bar as follows:

1. This case arises out of the dissolution of the parties' relationship;
2. This is a subsequent custody dispute regarding the parties' minor child;
3. Plaintiff and Defendant are both women;
4. Plaintiff and Defendant were involved in a long-term, committed relationship;
5. During the relationship, the parties decided to have a child together;
6. The process of invitro fertilization resulted in Defendant's pregnancy;
7. Defendant gave birth in Michigan;
8. The Michigan Department of Health and Human Services' ("MDHHS") Division of Vital Records permitted only one father and one mother to be listed on a birth certificate at the time the parties' child was born;
9. As a result of the MDHHS Division of Vital Records' practice, Plaintiff was not listed on the birth certificate;
10. Despite Plaintiff not being listed on the birth certificate, the parties' minor child, John Paul **Haas** Pueblo ("JPHP") was given Plaintiff's last name;

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11. The parties cohabitated and parented JPHP together until they separated before statutes excluding same-sex couples for marriage were declared unconstitutional in *Obergefell v Hodges*, 576 US 644; 135 S Ct 2584; 192 L Ed 609 (2015);
12. There was no adoption, no judicial establishment of parentage at the trial court level, no Affidavit of Parentage, and Plaintiff had no biological relationship with the minor child; and
13. After their split, the parties continued co-parenting JPHP and shared custody.

The above facts were not contested by Defendant either in oral argument or in their written brief. The parties clearly intended to both be JPHP's natural parents.

In short, because the parties' relationship pre-dated *Obergefell*, they were in a committed relationship, they chose together to utlize ART to conceive their child, and they co-parented that child, (these facts are uncontested by the Defendant) the elastic definition, afforded by the *LeFever* Court, of the phrase "natural parent" must be interpreted in such a manner so as to include Ms. Pueblo to also be a natural parent of JPHP, thus putting her and Defendant on equal footing, which was the intent of the parties at the time the child was conceived.

Of importance, footnote 9 within the *LeFever* opinion considered and articulated the following:

> ...the statutes at play in this case...were written and enacted in an era when modern forms of assisted reproductive technology that are commonly used today were considered science fiction, and the cutting-edge technology being developed now was unimaginable then. Certainly, the **common law could not have anticipated the fairly common circumstances of the parties in this case, let alone the circumstances of families where one child has three genetic parents, or where a child is produced from the DNA of one egg fertilizing a second egg, or where a child has two genetic fathers and no genetic mother. Our current statutory schemes are poor vehicles for modern-made families to seek relief, and we question whether they are robust enough in their current form**

> **to provide equitable outcomes to such families**. These new technologies have thrown a wrench into the legal understanding of parentage and have given rise to novel issues in contract law, insurance coverage, immigration law, and estate planning. Accordingly, we anticipate that the Legislature will need to modernize the law to keep pace with technological advancements and appropriately balance various public policy concerns. (emphasis added)

B. Due Process Clause and Equal Protection Clause Pursuant to the 14th Amendment

The United States Constitution protects the right to procreate and the right to maintain relationships that form between children and parents. No matter a person's gender, sexual orientation, or the use of ART, every parent-child relationship is protected by the Constitution. This Honorable Court erred when it stated that, "...Plaintiff is not a legal parent of the minor child involved or related at all to the child...and Plaintiff has no biological relationship with the minor child." (Decision p 2) This violates the Constitutional rights of both Ms. Pueblo and the minor child. It is uncontested that the parties chose, together, to create their family utilizing ART. Because the parties brought the minor child into this world with the intent of being the natural parents, co-parenting, and raising him together, Ms. Pueblo and JPHP are entitled to Constitutional protection of their parent-child relationship because that Constitutional protection is not limited solely to genetic parent-child relationships. In essence, this Honorable Court is treating Ms. Pueblo and JPHP differently because of the method by which the parties chose to create their family, and this is a Constitutional violation.

By refusing to recognize Ms. Pueblo as JPHP's natural parent because of the method of procreation the parties used, thus denying Ms. Pueblo her Constitutionally protected rights to custody and parenting time with the minor child, this Honorable Court's decision burdened Ms. Pueblo's access to her fundamentally protected right of maintaining her parent-child relationship

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with JPHP and this violation is subject to strict scrutiny; a test which cannot be passed to uphold the Honorable Court's original finding on March 8, 2021.

The Court's refusal to recognize Ms. Pueblo as JPHP's natural parent burdens JPHP's access to his fundamentally protected right of maintaining his parent-child relationship with Ms. Pueblo. This violation is subject to strict scrutiny; a test that cannot be passed in favor of Defendant.

C. Error in Granting Defendant's Motion for Reconsideration

In the event this Honorable Court does not apply *LeFever* to the case at bar and grant standing to Plaintiff, it must be stated that this Honorable Court also erred in granting Defendant's motion for reconsideration. The only family-law case cited in Defendant's brief in support is a case regarding non-modifiable spousal support language in a Judgment of Divorce—it is not a case regarding parenting time and custody.[1]

Parenting time and custody orders are, in fact, intended to be modifiable so as to ebb and flow with the best interests of minor children. See *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW 2d 847 (2003); see *Shade v Wright*, 291 Mich App 17; 805 NW 2d 1 (2010).

There is an inherent finality and statute of limitations regarding parenting time and custody cases: age of majority. Ms. Pueblo has shown that a different disposition of Defendant's motion for reconsideration must have resulted based upon the correction of this error.

V. CONCLUSION

Applying the Court of Appeals' "for publication" holding in *LeFever*, this Court should deny Defendant's (C)(5) and (C)(8) motions to dismiss.

[1] *Rose v Rose*, 289 Mich App 45; 795 NW2d 611 (2010).

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Failure to apply *LeFever* to the case at bar violates Ms. Pueblo's fundamental rights regarding procreation and child rearing; it also violates Ms. Pueblo's and JPHP's fundamental right to their parent-child relationship as protected by the Equal Protection and Due Process Clauses of the 14th Amendment. Violation of these fundamental rights is subject to strict scrutiny.

If this Honorable Court declines to apply the *LeFever* holding to the case at bar, this Court should reinstate its prior Order dismissing this case without prejudice.

VI. PRAYER FOR RELIEF

WHEREFORE, Ms. Pueblo prays this Honorable Court reconsider their prior ruling on Defendant's Motions for Summary Disposition—both MCR 2.116(C)(5) & (C)(8), thereby granting Ms. Pueblo standing as the minor child's natural parent according to the holding in *LeFever*.

FURTHERMORE, Ms. Pueblo prays this Honorable Court set this matter for a status conference and evidentiary hearing so that an analysis pursuant to the best-interest factors may be conducted and custody and parenting time may be awarded.

FURTHERMORE, if this Honorable Court does not award Ms. Pueblo standing, Ms. Pueblo prays this Honorable Court reconsider their prior ruling on Defendant's motion for reconsideration and re-enter Ms. Pueblo's previously proposed Order presented with her 7-day objection.

STARKS LAW, PLC
Attorney for Plaintiff

Dated: May 20, 2021

By: _____
Reh Starks (P76689)

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STATE OF MICHIGAN
IN THE 9TH CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO
FAMILY DIVISION

CARRIE PUEBLO,
Plaintiff,
v
RACHEL HAAS,
Defendant.

Case No. F 2020-6382-DC

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JUN - 1 2021
9TH JUDICIAL CIRCUIT
COUNTY OF KALAMAZOO
KALAMAZOO, MICHIGAN

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At a session held in the Courthouse
in the City and County of Kalamazoo, State of Michigan,
on this 1ST day of June 2021

PRESENT: HONORABLE STEPHEN D. GORSALITZ, Circuit Court Judge

DECISION OF THE COURT REGARDING
PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff filed a Complaint for Custody and Parenting Time on October 26, 2020. Defendant filed an Answer to Complaint on February 10, 2021, along with a Motion for Summary Disposition, Affidavit, and Brief-Memorandum. Plaintiff filed a Brief in Opposition to Defendant's Motion for Summary Disposition on March 1, 2021. The Court heard arguments on March 8, 2021 and issued a Decision Granting Defendant's Motion for Summary Disposition on the record.

Defendant filed a Proposed Order Granting Defendant, Rachel Haas', Motion for Summary Disposition Pursuant to MCR 2.116(C)(5) and MCR 2.116(c)(8) on March 16, 2021. On March 22, 2021 Plaintiff filed an objection to the order because the order stated that the matter was being dismissed "with prejudice". This Court reviewed the transcript of the hearing and determined that the proposed order dismissing the case "with prejudice" did not comport with the Court's decision. Nowhere in its decision upon the record did this Court determine that the case should be dismissed "with prejudice." This Court, therefore, entered the Plaintiff's proposed order granting the Motion for Summary Disposition and dismissing the case without prejudice on April 19, 2021.

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On April 21, 2021, the Defendant filed a Motion for Reconsideration Pursuant to MCR 2.119(F). Paragraph 3 of the court rule states, *"Generally, and without restricting the discretion of the Court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error."*

This Court initially notes that, although the Defendant did not state in their Motion for Summary Disposition, Affidavit in Support of, or oral argument before the Court, a request that the Court grant their Motion for Summary Disposition and dismiss the case with prejudice, it was, however, requested relief stated in Defendant's answer and affirmative defenses to complaint for child custody, parenting time, and child support filed on February 10, 2021.

Plaintiff filed a Complaint for Custody and Parenting Time. Defendant is the natural and legal parent of the minor child, John Paul Haas-Pueblo, who was born on November 2, 2008. 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. Defendant filed a Motion for Summary Disposition under MCR 2.116(C)(5) and (C)(8). This Court conducted a hearing and granted the Defendant's motion. Plaintiff claimed that the Plaintiff was an "equitable parent" of the child because the parties had a "commitment ceremony". Clearly however, the parties were never married and, pursuant to established case law, Van v Zahorik, 460 Mich 330 (1999) and Lake v Putnam, 316 Mich App 247 (2016), equitable parentage can only be established if the parties are legally married.

In its Opinion and Order dated April 29, 2021, this Court determined that the dismissal should be "with prejudice" rather than without prejudice. This Court found palpable error in not dismissing the case with prejudice because, the circumstances of the case and well-established law, it was more appropriate that the Court dismiss the case with prejudice than without prejudice.

On May 20, 2021, the Plaintiff filed Plaintiff's Motion for Reconsideration and Brief in Support of Motion for Reconsideration. Plaintiff claims that the recent published case of the Court of Appeals in the matter of Kyresha LeFever v Lanesha Matthews, case number 353106 decided April 1, 2021, provides a basis for this Court to find that the Plaintiff, Carrie Pueblo, has standing to proceed in this custody action and, therefore, this Court made a palpable error. In addition, the Plaintiff claims that the Court made a palpable error in entering an order of dismissal "with prejudice".

In the LeFever supra case, it was a paternity action that arose out of the breakup of the parties' relationship where there was no marriage and determination of custody of twin girls. Plaintiff and Defendant were both women who decided during their relationship to have children together using Plaintiff's eggs, fertilized by a sperm donor, and implanted in Defendant's womb. Defendant became pregnant by this in vitro fertilization and gave

birth to twins. The parties raised the twins together until their breakup. In the LeFever case, arguments were made by Plaintiff and Defendant relating to standing and who was a "natural parent" under the Child Custody Act. Plaintiff argued that she was the twins "natural mother" because of the genetic connection between her and the children and that the Defendant was a "gestational surrogate" and merely carried the eggs of Plaintiff and sperm of the anonymous donor. The Defendant argued that she is a natural parent because she carried the children during the pregnancy and gave birth to them. The trial court agreed with the Plaintiff, determining that the Plaintiff was the natural parent because of the genetic connection.

The Court of Appeals, however, reversed and remanded for custody determination, finding that both the Plaintiff and Defendant were "natural parents" and had standing regarding the custody issue. The Court of Appeals determined that the law is "elastic" enough to cover this situation to include the Defendant who, although had no genetic connection to the twins, was related to them by birth.

The LeFever case is clearly distinguishable from the case at issue. Plaintiff in this case was not a birth parent, did not have any biological connection or genetic connection. After a very close-read of the LeFever case, this Court finds that it does not provide a legal basis for the Plaintiff, Carrie Pueblo, to have standing in the present custody case. This Court finds no palpable error in its determination.

Regarding the issue of dismissal with prejudice, this Court finds it to be an issue that has already been presented and ruled upon by the Court and, further, that no palpable error has been demonstrated.

This Court determines that Plaintiff has established no basis for this Court to modify its decisions. Plaintiff's Motion for Reconsideration is hereby denied.

Honorable Stephen D. Gorsalitz P26933
Judge

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REGISTER OF ACTIONS

CASE NO. 2020-6382-DC

Pueblo, Carrie vs Haas, Rachel

§
§
§
§
§
§

Case Type: **DC - Custody**
Date Filed: **10/27/2020**
Location: **Domestic Relations**
Judicial Officer: **Gorsalitz, Stephen D.**

PARTY INFORMATION

Defendant	**Haas, Rachel** 5191 Mission Kalamazoo, MI 49048	Female DOB: 09/02/1973	**Lead Attorneys** **Leslie L Payseno** *Retained* 269-349-7686(W)
Plaintiff	**Pueblo, Carrie** 4274 S 29th St Kalamazoo, MI 49048	Male DOB: 01/25/1978	**Reh A Starks** *Retained* 269-216-6006(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

10/26/2020 **Summons and Complaint - Domestic - New Filing^**
10/26/2020 **Uniform Child Custody Affidavit Act**
01/15/2021 **Motion for Alternate Service**
01/19/2021 **Order for Alternate Service**
First class mail and tacking
01/21/2021 **Return of Service on Complaint - Alternate Service ^**
01/22/2021 **Return of Service on Complaint - Alternate Service ^**
Defendant served 1.21.21
02/10/2021 **Answer to Complaint ^**
and affirmative defenses to complaint for child custody, parenting time and child support
02/10/2021 **Brief - Memorandum**
Defendant Rachel Haas' brief in support of motion for summary disposition pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8)
02/10/2021 **Affidavit**
of Leslie Payseno in compliance with MCR 2.116(H)
02/10/2021 **Proof of Service**
02/10/2021 **Motion for Summary Disposition**
02/11/2021 **Affidavit**
Rachel Haas
02/11/2021 **Proof of Service**
02/22/2021 **Notice of Hearing**
03/01/2021 **Brief - Memorandum**
Plaintiff's brief in opposition to defendant's motion for summary disposition
03/01/2021 **Proof of Service**
03/08/2021 **Attorney - 15 Minute Hearing** (3:00 PM) (Judicial Officer Gorsalitz, Stephen D.)
Defendant's Motion
Parties Present
Result: Held
03/08/2021 **Event Summary Report - Mittimus**
03/15/2021 **Transcript**
hearing on motion for summary disposition - 3/8/2021
03/16/2021 **7 Day Cover Letter**
03/16/2021 **7 Day Notice Entry**
with Proof of Service
03/22/2021 **7 Day Objections to Order**
03/22/2021 **Notice of Hearing**
03/22/2021 **Proof of Service**
04/19/2021 *CANCELED* **Attorney - 15 Minute Hearing** (2:30 PM) (Judicial Officer Gorsalitz, Stephen D.)
Other (specify)
Plaintiff Objection to 7 Day
04/19/2021 **Order Dismissing Case ^**
granting defendant's motion for summary disposition pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8)
04/21/2021 **Motion for Reconsideration - Relief from Judgment ^**
04/21/2021 **Proof of Service**
04/23/2021 **Proof of Service**
04/29/2021 **Opinion ^**
Decision of the Court regarding defendant's motion for reconsideration of entry of order granting defendant Rachel Haas' motion for summary disposition pursuant to MCR 2.116(c)(5) and MCR 2.116(c)(8) without prejudice
04/30/2021 **Proof of Service**
05/20/2021 **Motion for Reconsideration - Relief from Judgment ^**
05/20/2021 **Brief - Memorandum**
05/20/2021 **Proof of Service**
06/01/2021 **Order Denying Motion for Reconsideration ^**
Decision of the Court regarding Plaintiff's Motion for Reconsideration

06/02/2021	**Proof of Service**
06/08/2021	**Notice of Filing of Transcript and Affidavit of Mailing**
06/22/2021	**Claim of Appeal to Court of Appeals or Supreme Court**
06/22/2021	**Proof of Service**
08/31/2021	**Certificate of Transmittal of Record on Appeal (COA-Supreme)**
12/28/2021	**Court of Appeals-Supreme Court Opinion-Order - Affirmed**
02/11/2022	**Application-Motion Leave Appeal-Court of Appeals-Supreme Ct**
02/11/2022	**Proof of Service**

Financial Information

Defense Attorney Payseno, Leslie L

	Total Financial Assessment			40.00
	Total Payments and Credits			40.00
	Balance Due as of 12/16/2022			**0.00**
02/11/2021	Transaction Assessment			20.00
02/11/2021	Counter	Receipt # 2021-00488	Payseno, Leslie L	(20.00)
04/21/2021	Transaction Assessment			20.00
04/21/2021	Counter	Receipt # 2021-01816	Payseno, Leslie L	(20.00)

Plaintiff Attorney Starks, Reh A

	Total Financial Assessment			345.00
	Total Payments and Credits			345.00
	Balance Due as of 12/16/2022			**0.00**
10/27/2020	Transaction Assessment			255.00
10/27/2020	Mail	Receipt # 2020-05156	Starks, Reh A	(255.00)
01/15/2021	Transaction Assessment			20.00
01/15/2021	Counter	Receipt # 2021-00177	Starks, Reh A	(20.00)
05/21/2021	Transaction Assessment			20.00
05/21/2021	Counter	Receipt # 2021-02757	Starks, Reh A	(20.00)
06/22/2021	Transaction Assessment			25.00
06/22/2021	Mail	Receipt # 2021-03412	Starks, Reh A	(25.00)
02/11/2022	Transaction Assessment			25.00
02/11/2022	Counter	Receipt # 2022-00489	Starks, Reh A	(25.00)

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

CARRIE PUEBLO,

Plaintiff-Appellant,

v

RACHEL HAAS,

Defendant-Appellee.

UNPUBLISHED
December 28, 2021

No. 357577
Kalamazoo Circuit Court
LC No. 2020-006382-DC

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

Plaintiff, Carrie Pueblo, appeals as of right the trial court's order granting defendant, Rachel Haas, summary disposition under MCR 2.116(C)(5) and (8) of plaintiff's complaint for child custody. We affirm.

I. FACTS

Plaintiff and defendant were in a romantic relationship from sometime in the early 2000s until 2012 or 2014. The parties were not married to each other, nor did they marry after the United States Supreme Court issued its decision in *Obergefell v Hodges*, 576 US 644; 135 S Ct 2584; 192 L Ed 2d 609 (2015).[1] During the relationship, defendant underwent in-vitro fertilization and in November 2008, gave birth to a child. The parties agree that plaintiff has no biological relationship to the child, and that after the child was born plaintiff did not adopt the child. In her complaint, plaintiff alleged that after the child was born both parties parented the child, even after the parties' relationship ended. According to plaintiff, in 2017 defendant demanded that plaintiff have no further contact with the child.

In 2020, plaintiff initiated this action under the Child Custody Act of 1970 (CCA), MCL 722.21 *et seq.*, seeking joint legal and physical custody of the child, and arguing that the child's

[1] *Obergefell* struck down Michigan's constitutional and statutory prohibitions on same-sex marriage. *Sheardown v Guastella*, 324 Mich App 251, 256; 920 NW2d 172 (2018).

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best interests were supported by the parties sharing custody. In her answer to the complaint, defendant asserted that plaintiff lacked standing to seek custody of the child under the CCA because she had neither a biological nor adoptive relationship with the child. Defendant thereafter moved for summary disposition of plaintiff's complaint under MCR 2.116(C)(5) and (8), asserting that plaintiff lacked standing to seek custody of the child and also had failed to state a claim upon which relief could be granted.

After a hearing, the trial court granted defendant's motion and dismissed plaintiff's complaint without prejudice. Defendant moved for reconsideration, contending that she was entitled to have plaintiff's complaint dismissed with prejudice. Upon reconsideration, the trial court agreed and entered an order dismissing plaintiff's complaint with prejudice. Thereafter, plaintiff moved for reconsideration, contending that this Court's then newly-released opinion in *LeFever v Matthews*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353106), dictated a finding that plaintiff had standing to bring the custody action. The trial court disagreed, finding *LeFever* to be factually distinct and concluding accordingly that it had not palpably erred by granting defendant summary disposition of plaintiff's claim. Plaintiff now appeals.

II. DISCUSSION

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion for summary disposition under MCR 2.116(C)(5) is properly granted when "[t]he party asserting the claim lacks the legal capacity to sue."[2] When reviewing a motion under MCR 2.116(C)(5), this Court considers the pleadings, depositions, admissions, affidavits, and other

[2] We note that standing and legal capacity to sue are distinct concepts. See *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 502; 776 NW2d 387 (2009), citing *Michigan Chiropractic Council v Comm'r of Office of Fin and Ins Servs*, 475 Mich 363, 374 n 25; 716 NW2d 561 (2006) (opinion by YOUNG, J.) (admonishing Michigan courts not to conflate the two concepts for purposes of motions under MCR 2.116(C)(5)), overruled on other grounds by *Lansing Schs Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 352, 371 & n 18; 792 NW2d 686 (2010). Standing generally is the plaintiff's right initially to invoke the power of the trial court to adjudicate a claimed injury. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290; 715 NW2d 846 (2006). Capacity to sue refers to the absence of a legal barrier, such as infancy or mental incompetency, which deprives a party of the right to bring an action. *Moorhouse v Ambassador Ins Co, Inc*, 147 Mich App 412, 419 n 1; 383 NW2d 219 (1985). This Court has observed that because standing and legal capacity to sue are distinct concepts, a challenge to standing is more appropriately considered under MCR 2.116(C)(8) or (10). See *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019). Nonetheless, MCR 2.116(C)(5) often is identified as the appropriate subrule of MCR 2.116(C) under which a party may assert that a plaintiff lacks standing. See *Miller v Chapman Contracting*, 477 Mich 102, 104; 730 NW2d 462 (2007); see also *Pontiac Police & Fire Retiree v Pontiac No. 2*, 309 Mich App 611, 619; 873 NW2d 783 (2015). We may, of course, review an issue under an appropriate subrule regardless of the subrule under which the trial court granted summary disposition.

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documentary evidence submitted by the parties. *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *El-Khalil*, 504 Mich at 159. When reviewing a motion for summary disposition under MCR 2.116(C)(8), we accept all well-pleaded factual allegations as true and construe them in the light most favorable to the non-moving party. *Id.* at 160. A motion for summary disposition is properly granted under MCR 2.116(C)(8) when, considering the pleadings alone, the claims alleged are clearly unenforceable as a matter of law and no factual development could justify recovery. *Id.*

Whether a party has standing is a legal question that we review de novo. *Barclae v Zarb*, 300 Mich App 455, 467; 834 NW2d 100 (2013). Similarly, whether a party has sufficient basis to assert parental rights under the equitable-parent doctrine is a question of law that we review de novo. *Lake v Putnam*, 316 Mich App 247, 250; 894 NW2d 62 (2016). We also review de novo questions of statutory interpretation and constitutional questions. *LeFever*, ___ Mich App at ___; slip op at 3. We review a trial court's decision to grant or deny reconsideration for an abuse of discretion, which occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Sanders v McLaren-Macomb*, 323 Mich App 254, 264; 916 NW2d 305 (2018). We also observe that with regard to the resolution of a child custody dispute under the CCA, "all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Lake*, 316 Mich App at 250.

B. STANDING

Plaintiff contends that the trial court erred by granting defendant summary disposition of plaintiff's custody claim on the basis that plaintiff lacks standing to seek custody because she is not a parent of the child. Plaintiff argues that she has standing to seek custody under the CCA because the parties were "equitably married" at the time the child was conceived and born, and she therefore is the child's "natural father." Plaintiff thus urges that we extend the existing equitable-parent doctrine to create a new legal concept of "equitable marriage." We decline to extend existing law in that manner.

Generally, the term "standing" refers to the plaintiff's right initially to invoke the power of the trial court to adjudicate a claimed injury. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290; 715 NW2d 846 (2006). A party generally has standing if the party has a real interest in the cause of action or the subject matter of the cause of action. *Lake*, 316 Mich App at 250. In the context of child custody, however, the concept of standing is less broad when considering disputes involving a party other than a parent. *Id.*

In Michigan, the CCA governs custody, parenting time, and child support issues for minor children; it is the exclusive means by which to pursue child custody rights. MCL 722.24(1); *LeFever*, ___ Mich App at ___; slip op at 3. The CCA is equitable in nature and is to be liberally construed. MCL 722.26(1). The CCA provides the following parental presumption:

> If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall

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> presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence. [MCL 722.25(1).]

The CCA defines "parent" as "the natural or adoptive parent of a child." MCL 722.22(i). The CCA does not define "natural parent," but this Court has defined that term as meaning that the person is a parent related to the child by "blood" rather than by adoption. See *Stankevich v Milliron (On Remand)*, 313 Mich App 233, 236; 882 NW2d 194 (2015). More recently, this Court has expanded the meaning of natural parent as used in the statute to include a parent related to the child "by birth," regardless of a genetic connection. See *LeFever*, ___ Mich App at ___; slip op at 4 (including in the definition of natural parent a woman who gives birth to a child as a surrogate).

In addition, a person may also be deemed a natural parent under the equitable-parent doctrine. Under the equitable-parent doctrine, a husband who is not the biological father of a child born or conceived during wedlock nevertheless may be considered that child's natural father if (1) the husband and the child mutually acknowledge their father-child relationship, or the child's mother cooperated in the development of that father-child relationship before the divorce proceedings commenced, (2) the husband expresses a desire to have parental rights to the child, and (3) the husband is willing to accept the responsibility of paying child support. *Van v Zahorik*, 460 Mich 320, 330; 597 NW2d 15 (1999). Our Supreme Court in *Van*, however, specifically declined to extend the equitable-parent doctrine outside the context of marriage. *Id.* at 331.

The CCA defines a "third person" as "an individual other than a parent." MCL 722.22(k). Under the CCA, a third person "does not have standing by virtue of the fact that he or she resides with the child and has a 'personal stake' in the outcome of the litigation." *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992); see also *Lake*, 316 Mich App at 250-251. Further, a third person may not "create a custody dispute by simply filing a complaint in circuit court alleging that giving legal custody to the third party is in the child's best interests." *In re Anjoski*, 283 Mich App 41, 51; 770 NW2d 1 (2009) (quotation marks and citation omitted). The CCA limits the standing of a third person to bring a custody action to guardians or limited guardians under certain circumstances, MCL 722.26b, and to a third person when (1) the minor child's biological parents were never married to each other, (2) the parent who has custody of the child dies or is missing and the other parent does not have legal custody of the child, and (3) the third person seeking custody is related to the child "within the fifth degree by marriage, blood, or adoption." MCL 722.26c(1)(b); *Lake*, 316 Mich App at 251. Thus, if plaintiff in this case is not a parent, she is a third person who was obligated to satisfy the requirements of either MCL 722.26b or MCL 722.26c(1)(b) to demonstrate standing to initiate this custody action. See *Lake*, 316 Mich App at 251.

We conclude that plaintiff in this case is not a parent of the child. In *Lake*, the parties were in a romantic relationship for several years, during which the defendant underwent artificial insemination and gave birth to a child. After the parties' relationship ended, the defendant denied the plaintiff parenting time with the child and the plaintiff initiated a custody action. The defendant sought summary disposition on the basis that the plaintiff was an unrelated third person who lacked standing under the CCA to seek parenting time. The trial court denied the motion. This Court reversed the trial court's decision and determined that the plaintiff lacked standing. Relying in part on *Van*, this Court explained:

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> On appeal, plaintiff argues that "she has standing to bring this suit" because she "asserts a right to custody and parenting time . . . under Michigan's equitable-parent doctrine." Under the equitable-parent doctrine, a husband who is not the biological father of a child born or conceived during wedlock may, nevertheless, be considered that child's natural father if three requirements are satisfied: (1) the husband and the child must mutually acknowledge their father-child relationship, or the child's mother must have cooperated in the development of that father-child relationship before the divorce proceedings commenced, (2) the husband must express a desire to have parental rights to the child, and (3) the husband must be willing to accept the responsibility of paying child support. *Van v Zahorik*, 460 Mich 320, 330; 597 NW2d 15 (1999); *Atkinson v Atkinson*, 160 Mich App 601, 608-609; 408 NW2d 516 (1987). "Once it is determined that a party is an equitable parent, that party becomes endowed with both the rights and responsibilities of a parent." *York v Morofsky*, 225 Mich App 333, 337; 571 NW2d 524 (1997). Plaintiff claims that because she satisfies the three requirements in *Van* and *Atkinson*, she is the child's equitable parent. She is incorrect.
>
> While plaintiff claims that she satisfies all requirements under the equitable-parent doctrine, she ignores one crucial, and dispositive, requirement for the equitable-parent doctrine to apply—*the child must be born in wedlock*. *Van*, 460 Mich at 330 (stating that the equitable-parent doctrine applies only "to a child born or conceived during the marriage"). The child at issue in this case was not born or conceived during a marriage. In fact, it is undisputed that the parties were never married. Therefore, the equitable-parent doctrine does not apply. [*Lake*, 316 Mich App at 252.]

Thus, Michigan's equitable-parent doctrine applies only to married couples. *Id.* at 254. In this case, as in *Lake*, because the parties were never married, plaintiff's argument that she is an equitable parent fails. See *Lake*, 316 Mich App at 250-253.

Plaintiff argues, however, that she has standing under the "elastic definition" of natural parent adopted by this Court in *LeFever*. In *LeFever*, the parties were in a domestic relationship during which they decided to have children together using plaintiff's eggs, fertilized by a sperm donor, and implanted in defendant's womb, which resulted in the defendant giving birth to twins. The parties separated in 2014, but continued jointly to parent the children. In 2016, the defendant experienced serious health concerns, and the plaintiff became the twins' primary caretaker until a custody dispute arose in 2018. *Id.* at ___; slip op at 1-2. The plaintiff initiated a custody action asserting that she was the "natural parent" of the children because she was genetically related to the children while the defendant had been only a gestational surrogate. The trial court awarded plaintiff sole legal and physical custody of the children, finding that the defendant had not established a biological relationship to the children. On appeal, this Court determined that the defendant was a natural parent because, despite lacking a genetic connection to the twins, she was related to them by virtue of having given birth to them. *Id.* at ___; slip op at 4. In other words, the defendant in *LeFever* did not demonstrate that she was a natural parent under the equitable-parent doctrine; rather, the defendant was determined to be a natural parent of the twins by virtue of her own physical relationship to the children because she had given birth to them.

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Plaintiff here argues that the facts of this case mirror those of *LeFever*. In *LeFever*, however, unlike this case, although the twins were the product of the plaintiff's eggs and donor sperm, the defendant gave birth to the twins, which this Court equated with the physical connection of being a parent by virtue of genetic relationship. Here, plaintiff lacks the physical connection to the child that this Court in *LeFever* found determinative to being a natural parent. Nor is plaintiff an adoptive parent of the child. Because plaintiff is not related to the child genetically or by birth, she could only be determined to be a parent if under the equitable-parent doctrine she met the requirements for being a natural parent.

As discussed, a person is only a natural parent under the equitable-parent doctrine if he or she was married to the child's mother at the time of the child's conception or birth, and the other requirements of the doctrine are met. Relying upon the reasoning of the concurring opinion in *Lake*, however, plaintiff asserts that the parties were "equitably married" because, although at the time of their relationship same-sex marriages were not permitted under Michigan law, the fact that the parties participated in a commitment ceremony in 2007 demonstrates that the parties would have married had they been permitted to do so in Michigan. But in contrast to the view advocated by the concurring opinion in *Lake*, the majority opinion in that case declined to extend the equitable-parent doctrine by imposing the status of marriage upon a couple who had never married. This Court explained:

> [I]t is undisputed that the parties were never married. Therefore, the equitable-parent doctrine does not apply. Had the parties married in another jurisdiction, for example, our conclusion might be different. See, e.g., *Stankevich v Milliron (On Remand)*, 313 Mich App 233, 240-241; 882 NW2d 194 (2015). While we acknowledge that the issue presented in this case is complex, we simply do not believe it is within courts' discretion to, at the request of one party and in light of the United States Supreme Court decision in *Obergefell v Hodges*, 576 US ___; 135 S Ct 2584; 192 L Ed 2d 609 (2015), retroactively transform an unmarried couple's past relationship into marriage for the purpose of custody proceedings. Stated differently, it is, in our view, improper for a court to impose, several years later, a marriage on a same-sex unmarried couple simply because one party desires that we do so. [*Lake*, 316 Mich App at 252-253.]

Here, because plaintiff was not married to defendant, she cannot achieve the status of natural parent under the equitable-parent doctrine. Plaintiff thus is a third person under the CCA with respect to the child. Because plaintiff has not established the requisite factors for standing under MCL 722.26b or MCL 722.26c(1)(b), plaintiff is not entitled as a third person to initiate this custody action. See *Lake*, 316 Mich App at 251. The trial court therefore did not err by granting defendant summary disposition of plaintiff's complaint.

C. DUE PROCESS/EQUAL PROTECTION

Plaintiff also contends that the trial court's dismissal of her complaint violates her constitutional right to due process and equal protection. Plaintiff argues that the trial court failed to recognize her as the child's natural parent because of the procreation method used to conceive the child, thereby failing to protect her constitutional right to custody and parenting time. We disagree.

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"The Fourteenth Amendment of the United States Constitution provides that '[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' " *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014), quoting US Const, Am XIV, § 1 (alteration in *Sanders*.). "The Due Process Clause requires, procedurally, 'notice and a meaningful opportunity to be heard before an impartial decision-maker,' . . . and substantively, 'the statute need only be rationally related to a legitimate government interest.' " *Lake*, 316 Mich App at 254-255 (citations omitted). "The Equal Protection Clause requires that all persons similarly situated be treated alike under the law." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 318; 783 NW2d 695 (2010). Michigan's equal-protection provision is treated as coextensive with the Equal Protection Clause of the federal Constitution. *Id.*

On appeal, plaintiff refers to the rights to procreate and to maintain relationships between children and parents, briefly mentioning gender, sexual orientation, and the use of artificial insemination. Plaintiff does not explicitly argue, however, that she was denied equal protection or due process on the basis of sex, gender, or sexual orientation, and does not establish that she was treated differently than a heterosexual person or homosexual male would be under the same circumstances. Rather, plaintiff asserts that the trial court's decision violates her right to procreate in the manner she chooses by failing to ensure her right to co-parent a child born to her partner during a non-marital relationship, who is not biologically related to plaintiff, and whom plaintiff has not adopted. Plaintiff's argument lacks merit, however. The trial court did not dismiss plaintiff's complaint because of the method the parties used to become pregnant; the trial court dismissed the complaint because plaintiff lacked standing to seek custody of the child, being neither a natural nor adoptive parent of the child under the CCA. The trial court reasoned that the parties were never married, plaintiff has no biological relationship with the child, and plaintiff did not adopt the child, and therefore was not a parent of the child under the CCA.

We note that the definition of parent under MCL 722.22(i) does not violate the equal protection considerations of *Obergefell*[3] because "that definition applies equally to same-sex and opposite sex married couples." *Sheardown v Guastella*, 324 Mich App 251, 256; 920 NW2d 172 (2018). Plaintiff cannot assert an equal protection violation because she was not subjected to dissimilar treatment under the statute as compared to a heterosexual unmarried individual. See *id.* at 258. We also reject plaintiff's contention that the trial court's decision violates the child's constitutional right to equal protection; a person does not have standing to assert the constitutional rights of another person. *Lake*, 316 Mich App at 256.

D. RECONSIDERATION

Plaintiff also contends that the trial court abused its discretion by granting defendant's motion for reconsideration, and dismissing plaintiff's complaint with prejudice. Defendant fails to cite relevant authority or to explain the basis of her argument, however, thereby abandoning the issue. See *Seifeddine v Jaber*, 327 Mich App 514, 519-520; 934 NW2d 64 (2019).

---

[3] *Obergefell* requires states to afford the same marriage-related benefits to same-sex married couples that are afforded to heterosexual married couples. *Sheardown*, 324 Mich App at 258-259.

Affirmed.

/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron

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