S T A T E O F M I C H I G A N
IN THE MICHIGAN SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS

RIORDAN, P.J., AND MARKEY AND K.F. KELLY, JJ.

JENNIFER STANKEVICH a/k/a JENNIFER MILLIRON

Plaintiff-Appellant,

v.

LEANNE MILLIRON,

Defendant-Appellee
_____/

Supreme Court No.: 148097

Court of Appeals No.: 310710

Dickinson Circuit Court
LC No.: 12-016939-DP

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND FOR IMMEDIATE CONSIDERATION OF THE MOTION

NATIONAL FAMILY CIVIL RIGHTS CENTER
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STATEMENT OF QUESTIONS PRESENTED ON THE MOTION

I. WHETHER G.M. HAS STANDING AND INTERESTS SUFFICIENT TO INTERVENE IN THIS CASE?

Plaintiff-Appellant, says "Yes".
Petitioner/Intervening-Appellant, says "Yes".
Respondent-Appellee does not answer.
The Circuit Court did not address.
The Court of Appeals did not address.

II. WHETHER THE COURT MUST CONSIDER THE INTERESTS OF G.M.?

Plaintiff-Appellant, says "Yes".
Petitioner/Intervening-Appellant, says "Yes".
Respondent-Appellee does not answer.
The Circuit Court did not address.
The Court of Appeals did not address.

III. WHETHER THIS CASE SHOULD BE EXPEDITED AT ALL STAGES?

Plaintiff-Appellant, says "Yes".
Petitioner/Intervening-Appellant, says "Yes".
Respondent-Appellee does not answer.

STATEMENT OF JURISDICTION

This Court has jurisdiction to consider this Motion pursuant MCR 7.313 and the authority to grant the relief requested under MCL 722.24(2). This Court also has jurisdiction under MCR 7.302 to consider Application for Leave to Appeal the decision below in this case in the Court of Appeals, which conflicts with the decisions of the Supreme Court of the United States and decisions of other State courts of last resort, and involves legal principles of great significance to Michigan jurisprudence and families and children in Michigan.

STATEMENT OF RELEVANT FACTS

G.M. was born on October 3, 2007. Prior to G.M.'s birth, his parents were lawfully wed in a marriage ceremony in the Province of Ontario, Canada. Like many couples unable to conceive through traditional means, G.M. was conceived through the use of assisted reproductive technology. Indeed, as is sometimes the only choice when one parent is unable to provide viable genetic biological material; G.M.'s parents employed the use of donor genetic material with the intent to raise G.M. as a child together as equal parents. In fact, G.M.'s parents were so intimately involved in the decision to jointly conceive a child that one parent physically inseminated G.M.'s other parent with the donor sperm, upon the consent of the birth mother and sperm donor. Thereafter and for the first eighteen months of his life, G.M. lived in the home of his parents, cared for and loved by each of his parents, as each equally participated in raising G.M. (*see e.g.* First Amended Verified Complaint, *passim*; 5/18/12 transcript at pg 3, ln 16)

In or around May of 2009, it is undisputed that G.M.'s parents separated. After his parents' relationship soured, like many children, G.M. continued to enjoy visitation with each of his parents until November 14, 2011, when he was four years of age. During this period of time preceding and following his parents' separation, each parent provided for G.M. financially, attended medical related appointments, and shared together in making decisions in the best interests of G.M. Then, without cause or reason, one of G.M.'s parents unilaterally denied G.M. any further contact with the other parent and litigation ensued. *Id.* These facts are not in dispute.

Ordinarily, the constitutional rights of G.M. and his parents to share in the care, custody and control of G.M. would be protected because G.M.'s parents were married when he was born. Further, the rights of G.M. and his parents would ordinarily be governed by the "equitable parent

doctrine", notwithstanding how G.M. was conceived, or the respective genetic contributions of G.M.'s parents.

However, G.M.'s parents are a married, lesbian couple. Indeed, and because of the legal uncertainty in Michigan concerning the children of same-sex couples, G.M.'s parents jointly drafted and executed certain legal instruments while G.M. was *in utero* to memorialize and protect the parent-child relationship between G.M. and his same-sex parents, and thereafter were legally married prior to the birth of G.M. in part to further protect G.M.'s interests and rights prior to his birth. (*see e.g.* 5/18/12 transcript at pg 16, ln 8; Br. in Opposition to Def. Mot. for Summary Disposition Pursuant to MCR 2.116(c)(8) at page 3)

When G.M.'s mother, Jennifer, was finally denied all parental rights and visitation, she invoked the jurisdiction of the Circuit Court of Dickinson County for a court order establishing custodial and visitation rights to G.M.; G.M.'s mother Leanne successfully moved for summary disposition arguing *inter alia* that Jennifer was not the biological parent of G.M. and that Michigan's constitution barred recognition of the parties' Canadian marriage, which would have otherwise provided Jennifer with parental rights were she in a heterosexual union.

Considering the facts of this instant case, if G.M.'s parents were a heterosexual couple who utilized assisted reproductive technology in his conception, or if he was adopted and had no biological, genetic connection to his parents; the courts in this State would be required to examine G.M.'s best interests in making an award of custody and visitation to each of his parents. However and only because G.M.'s parents are a married lesbian couple, the courts below have refused to examine the best interests of G.M. or the fundamental rights of the only parents he has had since birth, to his care, custody and the control of his childhood.

LAW AND ARGUMENT ON THE MOTION

I. G.M. HAS STANDING AND INTERESTS SUFFICIENT TO INTERVENE IN THIS CASE AND THE COURT IS REQUIRED TO CONSIDER THE BEST INTERESTS OF THE CHILD IN THIS CUSTODY DISPUTE

A. Standard of Review

This court "review[s] *de novo* the interpretation of and application of statutes and court rules." *In re Mason*, 486 142, 152; 782 N.W.2d 747 (2010).

B. Analysis of the Issue

1. Rules of Statutory Interpretation

When interpreting MCL 722.24, the Court's "fundamental obligation…is 'to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.'" *People v Thompson,* 466 Mich 146, 151; 730 NW2d 708 (2007), quoting *Koontz v Ameritech Services, Inc.,* 466 Mich 304, 312; 645 NW2d 34 (2002); see also *People v Williams*, 491 Mich 164, 172; 814 NW2d 270 (2012). "This task begins by examining the language of the statute itself. The words of a statute provide 'the most reliable evidence of its intent….' If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written [and] … [n]o further judicial construction is required or permitted…." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citations omitted); *Williams*, 491 at Mich 172. "When parsing a statute, [this Court] presume[s] [that] every word is used for a purpose. As far as possible, [it] give[s] effect to every clause and sentence." *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219 (2002). Further, "[a] necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself" *Roberts v Mecosta Co General Hosp.*, 466 Mich 57, 63; 642 NW2d 663 (2002),

and "[o]nly where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent." *Sun Valley Foods Co v Ward*, 460 Mich at 236. Finally, "[o]nce the Court discerns the Legislature's intent, no further judicial construction is required or permitted 'because the Legislature is presumed to have intended the meaning it plainly expressed.'" *People v Lowe*, 484 Mich 718, 722; 773 NW2d 1 (2009)(citation omitted).

2. A child's rights in a custody dispute is exclusively guided by MCL 722.24

MCL 722.24(1) reads: "[i]n all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act." Further, MCL 722.24(2) reads in pertinent part: "[i]f, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child."

The heart of this case is a child custody dispute concerning the care, custody and parental access of G.M. At no point have the courts below declared G.M.'s inherent rights or established the rights and duties as to G.M.'s best interests with respect to his custody, support and parenting time. Further, without the joinder of G.M. as intervenor-appellant to this case, this child custody dispute will be adjudicated without any court considering the argument of a lawyer-guardian *ad litem* on behalf of G.M.

3. The Legislature entrusts the Judiciary to determine the best interest of children

To date, twice, the Legislature of Michigan has spoken on what the best interests of a child mean from a public policy perspective in MCL 722.23 and MCL 710.22. In each case, the Legislature set forth nearly identical evaluation factors which should be examined by the judiciary in any inquiry into a child's welfare:

The Child Custody Act, MCL 722.23	**The Adoption Code, MCL 710.22(g)**
As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court: (a) The love, affection, and other emotional ties existing between the parties involved and the child. (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any. (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs. (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity. (e) The permanence, as a family unit, of the existing or proposed custodial home or homes. (f) The moral fitness of the parties involved. (g) The mental and physical health of the parties involved. (h) The home, school, and community record of the child. (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference. (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and	“Best interests of the adoptee" or "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date: (i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39 of this chapter, the putative father and the adoptee. (ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee. (iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs. (iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity. (v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father. (vi) The moral fitness of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father.

the parents. (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child. (l) Any other factor considered by the court to be relevant to a particular child custody dispute.	(vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father, and of the adoptee. (viii) The home, school, and community record of the adoptee. (ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference. (x) The ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings. (xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father's request for child custody.

In other circumstances where the welfare of a child is at stake, the Legislature trusts the discretion of the judiciary with respect to addressing the best interests of children, for example under MCL 712A.19c(2), which reads: "if the court determines that it is in the child's best interests, the court may appoint a guardian for the child". Indeed and prior to the amendment of MCL 710.22 by 1980 PA 16; in *In re Barlow*, 404 Mich 216, 235-236; 273 NW2d 35 (1978), while acknowledging that the Child Custody Act did not apply to termination proceedings in probate court, this Court nevertheless held that "the factors comprising the best interests of the child contained in the Child Custody Act [are]… ones which the Legislature, case law and common sense would indicate ought likewise be relevant in cases arising under §39(1) of the Adoption Code." This Court thus found "that the trial court properly looked to § 3 of the Custody Act for guidance in evaluating the best interests of the child in the case at bar." *Id.*

This case clearly presents the circumstances where a child's welfare is at stake and where the factors comprising the best interests of G.M. are clearly those which the "Legislature, case law, and common sense" indicate are relevant. Accordingly, this Court should permit G.M. to join this case as Intervenor-Appellant, appoint the National Family Right Center as lawyer-guardian *ad litem* to G.M., and accept for filing the annexed "Brief of Intervenor-Appellant in Support of Plaintiff-Appellant's Application for Leave to Appeal.

II. THIS CASE SHOULD BE EXPEDITED AT ALL STAGES IN THIS COURT

A. Standard of Review

This court "review[s] *de novo* the interpretation of and application of statutes and court rules." *In re Mason*, 486 142, 152; 782 N.W.2d 747 (2010).

B. Analysis of the Issue

1. Michigan Court Rules and U.S. Supreme Court precedent support expedition of this case at all stages

MCR 7.213(C)(2) gives child custody cases a priority on the calendar date. This case presents an issue of utmost importance to not only G.M. but all families and children in Michigan. Further, as also argued in the annexed Brief in Support of Leave to Appeal, other state courts of last resort have been resolving custody cases concerning the parentage of same-sex parents in an expedited manner, given the uncertainty of families in lower courts and the precious time lost to children in appellate proceedings. This pressing issue must be adjudicated as expeditiously as possible.

Finally, in a case concerning the standing of a parent to seek custody rights recently decided by the Supreme Court of the United States, the majority and concurring opinions advised the appellate court on remand to render decision "as expeditiously as possible":

> "This case highlights the need for both speed and certainty *** Lynne Chafin filed her petition for a return order in May 2011. E. C. was then four years old. E. C. is now six and uncertainty still lingers about the proper forum for adjudication of her parents' custody dispute. Protraction so marked is hardly consonant with the Convention's objectives. On remand, the Court rightly instructs, the Court of Appeals should decide the case 'as expeditiously as possible,'" *Chafin v. Chafin*, 568 U.S. __ (2013) (Ginsburg, concurring)

Accordingly, we respectfully submit that this instant motion should be immediately considered and that this appeal should be expedited in all other respects.

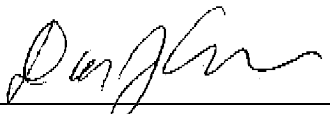
RELIEF REQUESTED

FOR THE FOREGOING REASONS, Benjamin J. Ashmore, Sr., Chairman of the National Family Civil Rights Center, by Douglas J. Callahan, Chief Appellate Attorney, respectfully requests that this Honorable Court permit G.M. to join this case as Intervenor-Appellant, appoint the National Family Civil Rights Center as lawyer-guardian *ad litem* to G.M. and accept for filing the annexed Brief in Support of Plaintiff-Appellant's Application for Leave to Appeal, and to expedite the appeal.

Respectfully submitted,

BENJAMIN J. ASHMORE, SR.,
CHAIRMAN
NATIONAL FAMILY CIVIL RIGHTS CENTER

Dated: December 23, 2013



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