ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CASE NO. DF-121316

In Re the Marriage of:

REBEKAH KAY WILSON,
Petitioner/Appellee,

v.

KRISTINA LEA WILLIAMS,
Respondent/Appellant,

RESPONDENT/APPELLANT KRISTINA LEA WILLIAMS' BRIEF-IN-CHIEF

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INTRODUCTION

This case is about the legal parentage of W.W.R., a child born to a married same-sex couple via donor insemination. The parties are Rebekah Kay Wilson, W.W.R.'s birth mother,[1] Kristina Lea Williams, who was Wilson's spouse at the time of W.W.R.'s birth and who raised and supported W.W.R. as a loving parent,[2] and Jeremy Harlan Vaughn, a sperm donor who is now asserting paternity.[3]

Like many other marital children, W.W.R. was raised by his two married parents from the moment of his birth. Both parents loved him, supported him, and took care of him every day, encouraging him to depend on both spouses as parents and to develop a permanent parent-child bond with both. Under Oklahoma law, the trial court should have protected those established bonds and applied the legal rules used to determine the parentage of all marital children in this state. Instead, the trial court held that because W.W.R.'s parents are both women, the marital presumption "does not apply,"[4] W.W.R.'s deeply bonded relationship with Williams may be severed completely, and W.W.R. may be treated like a non-marital child with no presumed parent, thereby permitting a sperm donor to assert paternity "at any time."[5]

Appellant respectfully asks this Court to reverse the trial court's decision and afford W.W.R. the same protections given to other marital children under Oklahoma law. As this Court has stressed, the marital presumption "is intended for the benefit and protection of children born during the marriage." *Clark v. Edens*, 2011 OK 28, ¶ 11, 254 P.3d 672, 676. It encourages

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[1] Transcript of Trial Proceedings had on the 14th day of November, 2022 before the Honorable Lynn McGuire ("Tr.Vol.I") at 15:20-25.
[2] *Id.* at 16:11-13.
[3] *Id.* at 8:1-3; 98:23-25.
[4] Journal Entry of November 14, 15, 17 and 18, 2022 ("Trial Court Opinion"), filed March 1, 2023 at p. 6.
[5] *Id.* at p. 7.

parents rather than the state to support and care for marital children, promotes the permanency of parent-child bonds, and ensures that, if a married couple divorces, children can continue to be loved and cared for by the people they have come to know and depend on as their parents. It is "one of the strongest presumptions of the law," *David V.R. v. Wanda J.D.*, 1995 OK 111, ¶ 13 n.3, 907 P.2d 1025, 1028, and one rooted primarily in the commitments of marriage, not biology, *see e.g.*, *Michael H. v. Gerald D.*, 491 U.S. 110, 119 (1989) (noting that, like other states, California law "declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during, and born into, an existing marriage was begotten by someone other than the husband") (emphasis in original); *David R.* (holding that the same is true under Oklahoma's marital presumption).

Under this longstanding Oklahoma law and the plain terms of the Oklahoma Uniform Parentage Act (UPA), a man who is married to a child's mother at the time of birth is presumed to be a legal parent, regardless of biology, and, with limited exceptions not relevant here, that presumption cannot be challenged after two years. Both as a matter of statutory and constitutional law, W.W.R.'s relationship with Williams should receive the same protection.

SUMMARY OF RECORD

A. Factual Background

Williams and Wilson began dating in June 2014 and began living together in September 2014.[6] After sharing a home and living together in a committed relationship for several years, Williams and Wilson decided to have a child using a sperm donor.[7] Williams and Wilson first

[6] Transcript of Trial Proceedings had on the 15th day of November, 2022 before the Honorable Lynn McGuire ("Tr.Vol.II") at 158:8-10; Tr.Vol.I at 55:15-24.

[7] Tr.Vol.II at 163:22-25; 164:1-8; 166:15-25; 167-168; Transcript of Trial Proceedings had on the 17th day of November, 2022 before the Honorable Lynn McGuire ("Tr.Vol.III") at 20:1-25; 21:1-4.

contacted Vaughn as a potential sperm donor after finding his profile on a known donor website.[8] Williams and Wilson spoke to Vaughn over the phone to discuss the arrangement before Wilson met with Vaughn and entered into a written sperm donor agreement with him on September 29, 2018.[9] The agreement stated that Wilson, the "recipient,"[10] has "decided to conceive and raise a child," and that "the recipient and any child or children born to the recipient shall constitute a family unit. . . ."[11] The agreement identified Vaughn as a sperm donor.[12] The agreement stated that Vaughn would agree to assist Wilson in any court proceeding to facilitate the adoption of the child, or "any other matters that could result in a legal requirement for donor's assistance."[13] The agreement further stated that the "recipient will be the child's only parents [sic] and will exclusively possess all parental rights."[14] The agreement further stated that Vaughn "does not want to be a parent to any child born to the recipient now or in the future."[15] Vaughn had also acted as a sperm donor to thirteen other families.[16]

Subsequently, Vaughn provided sperm to Wilson and Williams on nine occasions, and Williams assisted Wilson in at-home inseminations.[17] Wilson became pregnant with W.W.R.

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[8] Tr.Vol.I at 16:5-8.
[9] Tr.Vol.II at 170:3-6, 171:2-9; Tr.Vol.I at 19:11-15.
[10] *Id.* at 25:16-18.
[11] *Id.* at 20:10-11; 23-25.
[12] *Id.* at 25:19-21.
[13] *Id.* at 24:10-14.
[14] *Id.* at 27:5-7, 15-16.
[15] Tr.Vol.II at 14:11-16.
[16] *Id.* at 19:18-23, 197:4-17.
[17] *Id.* at 179:10-180:22, Tr.Vol.I at 31:9-25; 32:1-11.

in December 2018.[18] Williams notified Vaughn of Wilson's pregnancy in late February or March of 2019.[19]

In February of 2019, Wilson proposed to Williams before a group of family and friends, and Williams agreed.[20] The couple married on June 1, 2019, to mark the fifth-year anniversary of their relationship.[21] Williams testified that it was important to both partners to be married before Wilson gave birth to solidify Williams's parentage.[22]

Wilson and Williams were married and living together when W.W.R. was born on August 8, 2019.[23] Williams was present when W.W.R. was born. Vaughn was not.[24] The couple named W.W.R. after Williams's uncle.[25] Wilson identified Williams as W.W.R.'s parent on W.W.R.'s birth certificate and gave W.W.R. Williams's surname.[26]

After W.W.R.'s birth, Wilson and Williams raised W.W.R. together in a married, two-parent family and ensured that others knew him as their child.[27] Williams was the family's sole breadwinner.[28] Williams and W.W.R. "spent every day together,"[29] and W.W.R. called Williams "mom."[30] Williams took W.W.R. to school every morning and picked him up most afternoons.[31] The teachers at W.W.R.'s school knew Williams as one of W.W.R.'s parents.[32]

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[18] Tr.Vol.I at 71:20-72:6.
[19] *Id.* at 36:24-37:5; Tr.Vol.II at 182:20-183:11.
[20] Tr.Vol.II at 154-55.
[21] *Id.* at 157:8-15, 158:7-12.
[22] *Id.* at 158:15-23.
[23] *Id.* at 157:8-15; 162:23-163:7; Tr.Vol.I at 36:18-19.
[24] Tr.Vol.II at 159:7-25, Tr.Vol.I at 83:3-6.
[25] Tr.Vol.II at 96:1-13; Tr.Vol.III at 53:1-6.
[26] Tr.Vol.I at 96:2-98:6
[27] Tr.Vol.II at 192:17-195:6, Tr.Vol.III at 52:18-23.
[28] Tr.Vol.II at 193:9-25, 194:1-14.
[29] Tr.Vol.III at 25:18; 24:13.
[30] Tr.Vol.II at 149:7-10.
[31] *Id.* at 162:9-13, Tr.Vol.III at 24:13-14.
[32] Tr. Vol.II. at 162:9-13.

Williams would take W.W.R. to the park every Saturday and sing and read to him at bedtime almost every night.[33] For more than two years, the couple lived together with W.W.R. as a marital family.[34]

Vaughn had no contact with W.W.R. from the time of W.W.R's birth until after his first birthday.[35] Around the time of W.W.R.'s first birthday, the parties agreed to hold weekly Zoom calls where they held up a device to W.W.R. to interact with Mr. Vaughn.[36] Both Wilson and Williams testified that they wanted Vaughn to have contact because they thought it was important for W.W.R. to know his history and to have contact with his sperm donor.[37] Vaughn traveled to Oklahoma to visit Wilson, Williams, and W.W.R. in the spring of 2020.[38] He did not see W.W.R. again in person until the fall of 2021.[39] Vaughn did not assume any responsibility for W.W.R.'s financial support or play any role in making decisions about his upbringing, medical care, schooling or related matters.

Williams and Wilson's relationship began to deteriorate, and they agreed to live separately. In October of 2021, Williams and Wilson entered into a "nesting" schedule, whereby W.W.R. would remain in the shared home, and the mothers would alternate residing in the home with the child every three days.[40] Williams had custody of W.W.R. in the shared residence every Sunday, Monday, and Tuesday, and would take him to school daily even on days when Wilson had custody.[41] On November 23, 2021, when Williams went to pick W.W.R.

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[33] Tr.Vol.II at 162:9-13; Tr.Vol.III at 24:22-25; 25:1-4.
[34] Tr.Vol.III at 19:16-20.
[35] Tr.Vol.I at 37:8-23, Tr.Vol.II at 41:16-20; 172: 23-25; 174:1-4.
[36] Tr.Vol.I. at 38:5-14, Tr.Vol.II at 42:14-16.
[37] Tr.Vol.II at 136:11-15.
[38] Tr.Vol.II at 138: 1-10.
[39] Tr.Vol.I at 43:7-15
[40] Tr.Vol.I at 123:5-128:4.
[41] Tr.Vol.II at 215:4-7, 9-11.

up from school, Williams discovered that Wilson had taken the child.[42] Williams has not seen W.W.R. since.[43]

W.W.R. turned two years old on August 8, 2021. Wilson filed a Petition for Dissolution of Marriage approximately 4 months later, on December 2, 2021.[44] Vaughn filed a motion to adjudicate W.W.R.'s parentage on January 18, 2022, more than five months after W.W.R.'s second birthday.[45]

B. The Decision Below

On March 1, 2023, the trial court issued a final order determining "who are the legal parents" of W.W.R.[46] The trial court held that Oklahoma's UPA "was enacted in 2006 and does not take into account same-sex marriage, and there is no presumption that the wife of the mother is automatically the presumed parent of a child born during the marriage."[47] Finding that "Williams identifies as female and was born a woman," the trial court held that she "therefore cannot establish a father-child relationship under 10 O.S. 7700-201(B) or have the benefit of a presumption of paternity 10 O.S. 7700-204, as Oklahoma has not yet adopted gender neutral language in the Uniform Parentage Act."[48]

The trial court held that "[a]lthough the Uniform Parentage Act doesn't apply to Williams [because she is a woman married to another woman], it does apply to Wilson and Vaughn."[49] The trial court found that "[a]s there is no presumed father under current Oklahoma

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[42] *Id.* at 217:12-14. Wilson and W.W.R. moved into Vaughn's home in November 2021. Tr.Vol.II at 67:10-11.
[43] *Id.* at 217:17-18.
[44] Tr.Vol.III at 18:14-17.
[45] *See* FP-2022-44.
[46] Trial Court Opinion at p. 1.
[47] *Id.* at p. 5.
[48] *Id.* at pp. 6-7.
[49] *Id.* at p. 7.

law, a proceeding to adjudicate the paternity of the minor child can be filed at any time pursuant to 10 O.S. 7700-606" and that Vaughn's paternity action was therefore "timely filed."[50] The trial court also stated that "[e]ven if Williams were to be considered to be a 'presumed father' of the minor, said presumption can be rebutted by biology, which is undisputed in this case."[51]

Based on the above, the trial court ruled that "the legal parents of the minor child [W.W.R.] are Wilson and Vaughn" and that "Vaughn is hereby adjudicated the father of the minor child, W.W.R. born in 2019."[52] The trial court further stated that because Williams could have adopted W.W.R., "[t]he law provides a legal remedy to those seeking to establish parental rights."[53]

On March 10, 2023, Williams filed a motion for a new trial/reconsideration, which the trial court denied on April 6, 2023. This appeal followed.[54]

STANDARD OF REVIEW

There are no underlying disputed questions of fact material to the issue presented here: whether Oklahoma must apply the marital presumption equally to determine the parentage of children born to same-sex spouses. Since the case presents only questions of law, this Court's review is *de novo. In re Estate of Bell–Levine,* 2012 OK 112, ¶ 5, 293 P.3d 964, 966. Under that standard this Court has "plenary independent and non-deferential authority to reexamine [the] trial court's legal rulings." *Kluver v. Weatherford Hosp. Auth.,* 1993 OK 85, ¶ 14, 859 P.2d 1081, 1084.

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[50] *Id.*
[51] *Id.*
[52] *Id.* at p. 8.
[53] *Id.* at p. 7.
[54] Respondent's Motion for Reconsideration/New Trial and Brief in Support Thereof, filed March 10, 2023.

ARGUMENT & AUTHORITIES

Williams is W.W.R.'s legal parent under a straightforward application of Oklahoma's UPA. She was married to Wilson at the time of W.W.R.'s birth and thus is a presumed parent under OKLA. STAT. tit. 10, § 7700-204. Vaughn waited more than two years after W.W.R.'s birth to file a paternity action. Under clear Oklahoma law, his action was barred by the two-year statute of limitations in OKLA. STAT. tit. 10, § 7700-607. None of the exceptions to the two-year bar apply.[55] Under the Oklahoma UPA, a husband in Williams' shoes would be conclusively established as W.W.R.'s legal parent, and Vaughn's action to adjudicate paternity would be barred and dismissed as untimely. Both as a matter of ordinary statutory interpretation and to avoid raising serious constitutional concerns, the same result must apply here to ensure that W.W.R. receives the same protections as other marital children.

As this Court has made clear, the due process and equal protection guarantees of the federal Constitution require that Oklahoma must provide same-sex spouses and their children with "the constellation of benefits that States link to marriage." *Ramey v. Sutton*, 2015 OK 79, ¶ 11, 362 P.3d 217, 220. It is also well-settled that where possible, as it is here, state laws should be construed to comply with constitutional requirements rather than to violate them. *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶ 7, 451 P.3d 161, 165-166. Thus, rather than interpret the marital presumption to exclude same-sex spouses, as the trial court erroneously did, this Court should clarify that OKLA. STAT. tit. 10, § 7700-204 must be applied to any person,

[55] *See* OKLA STAT. tit. 10, § 7700-607(B) (permitting an action to be brought at any time "if the court...determines that 1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and 2. The presumed father never openly held out the child as his own."); (C) (permitting an action to be brought at any time if the "biological father, presumed or acknowledged father, and the mother agree to adjudicate the biological father's parentage"; and (D) (permitting an action to be brought at any time "on the basis of fraud"). None of these circumstances exist here.

regardless of gender, who meets the statutory criteria, both to effectuate the statute's purpose and to avoid rendering it unconstitutional. In the alternative, if the Court determines that it must reach the constitutional issues, it should hold that the gendered restriction in OKLA STAT. tit. 10, § 7700-204 is unconstitutional and therefore may not be enforced.

I. Williams Is W.W.R.'s Legal Parent Under the Oklahoma Uniform Parentage Act

Williams is W.W.R.'s legal parent under a straightforward application of the marital presumption codified in the UPA. Oklahoma has long held that when a married woman gives birth to a child, her spouse is presumed to be the child's legal parent regardless of whether there is a biological tie. As this Court has recognized: "The [marital] presumption is a matter of public policy intended for the benefit and protection of children 'born during the marriage.'" *Clark v. Edens*, 2011 OK 28 at ¶ 11, 254 P.3d at 676; *see also Stevens v. Griggs,* 2013 OK CIV APP 104, ¶ 1, 362 P.3d 662, 663 (noting that Oklahoma law "unequivocally states a strong public policy intended to benefit and protect the parentage of children born during a marriage"); *David V.R. v. Wanda J.D.*, 1995 OK 111 at ¶ 13 n.3, 907 P.2d at 1028 ("[I]t is said that the presumption of legitimacy is one of the strongest presumptions of the law.") (additional citations omitted).

Oklahoma permits the marital presumption to be rebutted based on biology under some circumstances; however, because of the importance of the presumption to children, Oklahoma has long disfavored such challenges and limited the circumstances and timeframe in which they can be brought. *See, e.g., Clark v. Edens,* 2011 OK 28 at ¶ 12, 254 P.3d at 676 (holding that the marital presumption applies even where "the parties agree[d] a genetic test was performed within two years of [the child's] birth and that this test excluded [the husband] as the biological father"); *David V.R. v. Wanda J.D.,* 1995 OK 111 at ¶¶ 3-4, 907 P.2d at 1026

(strictly enforcing two-year statute of limitations on challenging the marital presumption based on allegation that husband is not the biological father); *Stevens v. Griggs,* 2013 OK CIV APP 104, ¶ 12, 362 P.3d 662, 665 (holding that mother's action to disestablish husband's paternity and establish biological father's paternity was barred by the two-year statute of limitations and noting that "this is exactly the kind of situation that the Act was designed to cover").

In 2006, Oklahoma adopted the UPA. Like the common law and statutes that preceded it, the UPA establishes a strong presumption that a child born during a marriage is the legal child of both spouses. OKLA. STAT. tit. 10, § 7700-204(A)(1) provides: "A man is presumed to be the father of a child if... [h]e and the mother of the child are married to each other and the child is born during the marriage." As the statutory language makes clear, the presumption is triggered exclusively by marriage to a child's birth mother; there is no additional or independent requirement that a birth mother's spouse know, believe, or prove that he is the child's biological parent for the presumption to apply. *Id.; David V.R. v. Wanda J.D.,* 1995 OK 111 at ¶ 13, 907 P.2d at 1028 (holding that the marital presumption applies even where husband knows or suspects that he is not the biological father); *Clark v. Edens*, 2011 OK 28 at ¶ 16, 254 P.3d at 677 (same); *Bates v. Copeland*, 2015 OK CIV APP 30, 347 P.3d 318 (same).[56]

While the marital presumption "can be rebutted by biology," as the trial court noted, March 1, 2023 Journal Entry of November 14, 15, 17, and 18, 2022 (Trial Court Docket FD-2021-3681, FP-2022-44) at 7, the UPA places strict limits on how, when, and by whom such an action may be brought. A presumption of paternity under OKLA. STAT. tit. 10, § 7700-204(A)(1) "may be rebutted only by an adjudication under Article 6 of the Uniform Parentage

[56] *See also Bishop v. Smith*, 760 F.3d 1060, 1081 (10th Cir. 2014) (noting that "Oklahoma permits infertile opposite-sex couples to marry despite the fact that they, as much as same-sex couples, might raise non-biological children").

Act." OKLA. STAT. tit. 10, § 7700-204(B). Among other limitations, Article 6 provides that an action "to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child." OKLA. STAT. tit. 10, § 7700-607(A).[57]

Recognizing the importance of the marital presumption to the stability of families and the best interests of children, Oklahoma courts have strictly enforced these and other limitations, including in cases in which a presumed parent under § 7700-204 is not a biological parent. For example, in *Bates v. Copeland*, 2015 OK CIV APP 30, 347 P.3d 318, the Oklahoma Court of Appeals held that a man who was married to a child's mother at the time of the child's birth was a presumed parent under § 7700-204(A)(l), even though the parties were physically separated and the mother had sexual relations with another man, and even though the mother and the alleged biological father attempted to execute an acknowledgement of paternity shortly after the child was born. *Id.* at ¶ 16, 347 P.3d at 324 (holding that the execution of an acknowledgement of paternity by mother and third-party is not sufficient to divest a presumed father/child relationship unless accompanied by an adjudication of the presumed father's non-paternity or a timely executed and filed denial of paternity). In addition to strictly enforcing the substantive provisions of § 7700- 204(A)(l), the Court of Appeals also strictly enforced the statute of limitations in § 7700–607(B), holding that the former spouse was conclusively established as the child's legal parent because the alleged biological father commenced an

[57] Moreover, even when an action to adjudicate paternity is timely brought, the UPA provides that trial courts "shall deny a motion seeking genetic testing" "in a paternity action in which the child has a presumed or acknowledged father . . . if (1) the conduct of the mother or the presumed/acknowledged father estops them from denying parentage, or (2) it would not be in the best interests of the child to disprove the paternity of the presumed/acknowledged father." OKLA. STAT. tit. 10, § 7700-608.

"action to determine paternity more than two years after the birth of the child." *Id.* at ¶19, 347 P.3d at 325.

Similarly, in *In re A.S.*, the Court of Appeals upheld a trial court's decision to deny a motion for genetic testing in a case in which a wife left her husband and became pregnant by another man, and then reconciled with the husband. "In reconciling with Mother, [the husband] recognized [another man] as the biological father of [the child], but still chose to raise [the child] as his own child." *In re A.S.*, 2020 OK CIV APP 23, ¶2, 466 P.3d 619, 621. The Court of Appeals held that the trial court properly applied Section 7700-608 in denying the mother's request for genetic testing based on the factors set forth in Subsection 7700-608(B), even though the husband was not the child's biological father. *Id.* at ¶12, 466 P.3d at 623. As these examples show, the UPA expressly contemplates situations in which a spouse who is not a biological parent is nonetheless a legal parent.

In sum, the UPA recognizes that a person need not be a biological parent to be a legal parent. Under clear, straightforward, and consistently applied Oklahoma law, after a child's second birthday, a birth mother's spouse is conclusively established as a child's legal parent even if the spouse is not the child's genetic parent.[58] This clear statutory framework applies to all children in Oklahoma, including those born to married same-sex couples, and is directly applicable here.

Under the UPA, a husband in Williams' position would be recognized as a legal parent and Vaughn's action to adjudicate paternity would have been held to be untimely and dismissed. *See, e.g., Clark v. Edens*, 2011 OK 28, 254 P.3d 672; *Bates v. Copeland*, 2015 OK

[58] Subject, as noted above, to the limited exceptions in OKLA STAT. tit. 10, § 7700-607(B), (C), and (D), none of which apply here.

CIV APP 30, 347 P.3d 318; *David V.R. v. Wanda J.D.,* 1995 OK 111, 907 P.2d 1025; *Stevens v. Griggs,* 2013 OK CIV APP 104, 362 P.3d 662. It is undisputed that Wilson and Williams were married at the time of the child's birth, as the trial court found. Thus, under OKLA. STAT. tit. 10, § 7700-204(A)(1), Williams is presumed to be the child's other parent. In addition, it is undisputed that although W.W.R. was born on August 8, 2019, Vaughn did not file an action seeking to adjudicate paternity until January 28, 2022, well after the maximum two-year time allotted for bringing such an action under OKLA. STAT. tit. 10, § 7700-607(A). Accordingly, Vaughn's claim was time-barred, as none of the exceptions to the two-year bar apply.

Here, it is undisputed that Williams and Wilson cohabited with each other during the time of conception and that Williams administered the at-home inseminations.[59] It is also undisputed that both Williams and Wilson held out W.W.R. as Williams' child, including by placing Williams on the birth certificate and giving W.W.R. the same surname as Williams.[60] Williams supported W.W.R. and was a committed, responsible, and loving parent to W.W.R. in every way, holding herself out as one of his two parents to teachers, family members, and friends.[61] Thus, the exception in OKLA. STAT. tit. 10, § 7700-607(B) does not apply.

The exceptions in OKLA. STAT., tit. 10, § 7700-607(C) and (D) are also inapplicable as this is not a case in which "the biological father, presumed or acknowledged father, and the mother agree to adjudicate the biological father's parentage." OKLA. STAT. tit. 10, § 7700-607(C). As the presumed parent under § 7700-204(A)(1), Williams did not agree to adjudicate Vaughn's parentage and wishes to maintain her established parent-child relationships with W.W.R. Nor is this a case in which any party is alleging fraud. To the contrary, Vaughn agreed

[59] Tr.Vol.II at 179:10-180:22.
[60] Tr.Vol.I at 96:2-98:6.
[61] Tr.Vol.II at 192:17-195:6; Tr.Vol.III at 52:18-23.

in writing that he would be a donor, not a parent. He was notified of the pregnancy and the child's birth, and he certainly knew of his biological relationship to the child. As in *Bates*, there was "no excuse for commencement of the action to determine paternity more than two years after the birth of the child." *Bates*, 2015 OK CIV APP 30 at ¶ 19, 347 P.3d at 325.

II. The Trial Court Erred by Failing to Apply the Marital Presumption Solely Because Williams Is a Same-Sex Spouse.

Rather than applying the UPA to determine W.W.R.'s parentage as it would do for any other marital child, the trial court erred by holding that because § 7700-204(A)(1) does not employ gender-neutral terms, referring only to "man" and "father," the marital presumption does not apply, and W.W.R. has no presumed parent despite being born to, and raised by, married parents. In effect, the trial court held that because W.W.R. was born to a same-sex married couple rather than to an opposite-sex married couple, he does not have the same rights and protections afforded to other marital children. The trial court's holding on this point is erroneous for multiple reasons.

A. Standard Principles of Statutory Interpretation Establish that Wilson Is a Presumed Parent.

First, simply as a matter of statutory interpretation, applying Section 7700-204 in a gender-neutral manner is expressly authorized by OKLA. STAT. tit. 25, § 24 and required by this Court's longstanding guidance that "the primary object of interpretation is to ascertain and give effect to the legislative intent and purpose." *Peterson v. Fulton*, 1987 OK 120, ¶4, 747 P.2d 304, 305; *see also id.* at ¶7, 747 P.2d at 305 ("[A] statute will not be construed so as to reach an absurd or irrational result."). The trial court's opinion conflicts with the plain language of Section 24, which states: "Words used in the masculine gender include the feminine and neuter." OKLA. STAT. tit. 25, § 24. The marital presumption is triggered solely by marriage to

the birth mother and applies to a husband even if he is not a genetic parent. Accordingly, it can be applied equally to a woman, and under black letter law and the intended scope of OKLA. STAT. tit. 25, § 24, it must be. The one case in which an Oklahoma court refused to follow this directive and apply paternity provisions equally to determine maternity was later overruled by this Court in *Ramey v. Sutton*, 2015 OK 79 at ¶ 18, 362 P.3d at 221 ("Insofar as *Dubose v. North,* 2014 OK CIV APP 68, 332 P.3d 311, is in conflict with this opinion, it is hereby *overruled.*"). Consistent with OKLA. STAT. tit. 25, § 24, this Court should hold that the marital presumption in Section 7700-204 must be applied equally to any person, regardless of gender, who is married to the mother of a child born during the marriage.

Interpreting Section 7700-204 in this way is both required by ordinary statutory construction principles and necessary to effectuate the statute's purpose of protecting all marital children. *See Watkinson v. Adams*, 1939 OK 462, ¶ 4, 103 P.2d 498, 501 (noting the "general principle that all statutes should be construed and applied in such a manner as to accomplish the legislative intent."). On its face, Section 7700-204 recognizes that the marital presumption is based primarily on marriage, not biology, and that a non-biological parent may be conclusively established as a child's legal parent, even when it is known that another person is the child's biological parent. Applying Section 7700-204 to both male and female spouses requires no alteration of the substantive law in this regard: the same statutory presumption applies, regardless of the gender of the birth mother's spouse, and the same potential statutory challenges to that presumption may be brought, subject to the same statutory limitations. In contrast, refusing to apply Section 7700-204 to a same-sex spouse defeats the purpose of the law, which is to protect marital children, and leads to a manifestly absurd and irrational result: some marital children receive the benefit of that public policy, and some—through no fault of

their own—do not. There is no valid reason to interpret the statute in this irrational and contradictory way. *McIntosh v. Watkins*, 2019 OK 6, ¶ 4, 441 P.3d 1094, 1096 ("Statutory construction that would lead to an absurdity must be avoided and a rational construction should be given to a statute if the language fairly permits.").

In sum, now that same-sex couples can legally marry in Oklahoma, there is no valid reason to ignore that legal reality when interpreting laws that confer marital rights and responsibilities, including those relating to parentage. Doing so violates standard principles of statutory construction and defeats the purpose of those laws, which is to provide a stable legal framework to protect marital children. The trial court erred by failing to apply that clear statutory framework to the parties here, wrongly depriving W.W.R. of the strong protections afforded to marital children under the UPA and severing his established parent-child bond with one of the only two parents he had ever known.

B. Interpeting Section 7700-204 To Exclude Same-Sex Spouses and their Children Would Render the Statute Unconstitutional

In addition to subverting the purpose of the statute, refusing to apply Section 7700-204 to a same-sex spouse would render the statute unconstitutional by selectively denying same-sex couples and their children "the constellation of benefits that States link to marriage." *Ramey v. Sutton*, 2015 OK 79 at ¶ 11, 362 P.3d at 220. Under well-settled law, "[i]f there are two possible interpretations [of a statute], one of which would hold the legislation unconstitutional, the construction must be applied which renders it constitutional." *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶ 7, 451 P.3d 161, 165-166. Here, that rule mandates interpreting Section 7700-204 to apply to any person, regardless of gender, who is married to the mother of a child born during the marriage, rather than interpreting it to unconstitutionally

deny same-sex spouses and their children the fundamental right to marry, including the full panoply of marital rights, and the equal protection of the laws.

In *Obergefell*, the U.S. Supreme Court held that state governments violate the federal constitutional guarantees of equal protection and due process when they fail to give same-sex couples access to "civil marriage on the same terms and conditions as opposite-sex couples," *Obergefell v. Hodges*, 576 U.S. 644, 676 (2015), and to provide their children with the same "certainty and stability" afforded to other marital children, *id.* at 678. That requirement—that states must treat married same-sex parents and their children equally—is central to *Obergefell*'s holding. Importantly, some of the plaintiff couples in *Obergefell* expressly sought equal parental rights, including a married lesbian couple from Tennessee who sought the right to have Tennessee's marital presumption apply to their newborn child. *See Tanco v. Haslam*, 7 F. Supp. 3d 759, 764 (M.D. Tenn. 2014) (seeking a preliminary injunction requiring Tennessee to recognize the birth mother's female spouse as a legal parent under Tennessee's marital presumption).[62] When the Supreme Court issued its decision in *Obergefell*, it directly ruled on the very same question presented by this case: must a state apply its marital presumption equally to a same-sex spouse? As *Obergefell* makes clear, the answer is yes; the federal Constitutional requires it.

Just two years later, when the Arkansas Supreme Court refused to comply with that holding, the Supreme Court unequivocally confirmed that states must apply their parentage laws equally to married same-sex couples and their children. In *Pavan v. Smith,* 582 U.S. 563 (2017), the Supreme Court summarily reversed an Arkansas Supreme Court decision holding

[62] *Tanco v. Haslam* was consolidated with and decided in *Obergefell v. Hodges*. *See Obergefell,* 576 U.S. at 653–56, 659 (discussing Tennessee plaintiffs).

that Arkansas need not recognize a birth mother's female spouse as the child's presumed parent, even though a similarly situated man would have been recognized as such. As the Supreme Court explained, "*Obergefell* proscribes such disparate treatment." *Id.* at 566. The Arkansas law used the gendered terms "mother" and "husband"; however, the Supreme Court held that Arkansas must apply the statutes equally to a female spouse. *Id.* (citing § 20-18-401(f)(1) of the Arkansas Code). Here, Oklahoma's analogous statutes are substantively identical to their Arkansas counterparts. Accordingly, *Pavan* requires Oklahoma to apply its marital presumption to a same-sex spouse, just as it would to an opposite-sex spouse.

In *Ramey*, this Court held that Oklahoma must comply with *Obergefell*'s clear holding that the children of married same-sex parents must receive the same rights and protections as other marital children. *Ramey*, 215 OK 79 at ¶ 11, 362 P.3d at 220. As this Court explained: "One of the four principles central to the reasoning in *Obergefell* is that marriage "safeguards children and families." *Id.* "Central to its consideration is the harm caused to children of same-sex couple families who are denied the constellation of benefits that States link to marriage." In *Ramey*, this Court held that these considerations mandated that the law must protect the parental rights of a same-sex couple who had a child together at a time when "it was legally impossible for them to wed in Oklahoma." *Id.* at ¶ 12, 362 P.3d at 220. That holding is dispositive here: if constitutional principles require that Oklahoma must recognize the parental rights of a same-sex partner who was *unable to legally marry* at the time of the child's birth, surely it must recognize the parental rights of a same-sex partner who *was legally married* at the time of the child's birth. Doing otherwise would cause the very harm that *Ramey* sought to avoid, depriving the children of same-sex couples of one of the most important benefits linked to marriage.

It is no answer to say that Williams could have secured parental rights through adoption. If a woman in an opposite-sex marriage gives birth to a child conceived via donor insemination, her husband is the child's presumed father even though he is not biologically related to the child, and he is not required to adopt the child into order to protect his relationship with the child. But under the trial court's ruling, when a woman in a same-sex marriage gives birth to a child conceived in the same way, her female spouse does not have that immediate protection and may secure parental rights only through the far more cumbersome, expensive, and time-consuming process of adoption. In addition to subjecting same-sex couples and their children to facial inequality, forcing a same-sex spouse to adopt to secure her parental status would expose these families to serious legal vulnerabilities and harms. For example, if the birth mother dies in childbirth, the child would have no legal parent. In a case addressing the same issue under Arizona law, the Arizona Supreme Court held that, under such an unequal rule, "a female spouse in a same- sex marriage is only afforded one route to becoming the legal parent of a child born to her marital partner namely, adoption, whereas a male spouse in an opposite-sex marriage can either adopt or rely on the marital paternity presumption to establish his legal parentage." *McLaughlin v. Jones*, 243 Ariz. 29, 34-35, 401 P.3d 492, 497-98 (2017). As the Arizona Supreme Court correctly held, construing the statute in this manner would violate the Fourteenth Amendment because it "excludes same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." *Id.* at 35, 401 P.3d at 498.

Across the country, other state courts that have considered the issue have uniformly held that the marital presumption must be applied in a gender-neutral manner to avoid

unconstitutional discrimination against same-sex spouses.[63] The same reasoning applies here. A similarly situated husband is not required to adopt his child to be a legal parent under the Oklahoma UPA. Requiring a female spouse to do so treats married same-sex couples unequally and deprives the children of same-sex married couples of the "certainty and stability" enjoyed by other marital children. *Obergefell*, 576 U.S. 644 at 678.

Contrary to the trial court's opinion, the obligation to apply Oklahoma law equally to same-sex spouses and their children exists regardless of whether the legislature has specifically

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[63] *See, e.g., Schaberg v. Schaberg,* 637 S.W.3d 512, 522-23 (Mo. Ct. App. E.D. 2021), reh'g and/or transfer denied, (Dec. 13, 2021) and transfer denied, (Feb. 8, 2022) (holding that *Obergefell* "mandate[s] that we apply [the marital presumption] equally to same-sex couples as we would to opposite-sex couples."); *Allen v. Allen,* 2021 Ark. App. 263, 2021 WL 2132240 (2021) (applying Arkansas's marital presumption to a transgender spouse); *E.D.M. v. S.J.M.,* 2020 WL 6554653 (Minn. Ct. App. 2020) (applying Minnesota's marital presumption in a gender-neutral manner to same-sex spouses); *Henderson v. Box,* 947 F.3d 482, 487 (7th Cir. 2020) ("We agree with the district court that, after *Obergefell* and *Pavan,* a state cannot presume that a husband is the father of a child born in wedlock, while denying an equivalent presumption to parents in same-sex marriages."); *McGovern v. Clark,* 2020 WL 3112760 (Fla. 5th DCA 2020) (holding that a same-sex spouse need not be a biological parent in order to be a presumed parent because no such requirement is imposed on an opposite-sex spouse); *Treto v. Treto,* 2020 WL 373063, *3 (Tex. App. Corpus Christi 2020) (holding that Texas courts must apply the marital presumption equally to a same-sex spouse to "avoid an interpretation that violates the equal protection guarantees of the Texas and federal constitutions"); *Boquet v. Boquet,* 269 So. 3d 895, 900 (La. Ct. App. 3d Cir. 2019), writ denied, 274 So. 3d 1261 (La. 2019) ("[U]sing the reasoning of *Pavan,* we find that we must apply [the marital presumption] in such a manner that Brittany, the female spouse of a birth mother, has the same 'constellation of benefits' and obligations as those of a male spouse of the birth mother."); *Interest of A.M.,* 2019 PA Super 344, 223 A.3d 691, 697 (2019) (holding that the marital presumption applies equally to married same-sex couples); *LC v. MG and Child Support Enforcement Agency,* 143 Haw. 302, 430 P.3d 400 (2018), cert. denied, 140 S. Ct. 234, 205 L. Ed. 2d 127 (2019) (holding that "despite the gender specific language [in Hawaii's marital presumption], the presumptions of paternity equally apply in determining the existence or nonexistence of a mother-child relationship"); *McLaughlin v. Jones in and for County of Pima,* 243 Ariz. 29, 401 P.3d 492, 500 (2017), cert. denied, 138 S. Ct. 1165, 200 L. Ed. 2d 314 (2018) (holding that the marital presumption must be applied equally to female spouses); *Della-Corte v. Ramirez,* 81 Mass. App. Ct. 906 (2012) ("We do not read 'husband' to exclude same-sex married couples, but determine that same-sex married partners are similarly situated to heterosexual couples in these circumstances."); *Christopher YY. v. Jessica ZZ.*, 159 A.D.3d 18, 69 N.Y.S.3d 887 (3d Dep't 2018), leave to appeal denied, 31 N.Y.3d 909, 81 N.Y.S. 3d.

adopted a gender-neutral version of the UPA. As the United States Supreme Court has long cautioned, "failed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Engineers,* 531 U.S. 159, 170 (2001) (quoting *Cent. Bank of Denver v. First Interstate Bank of Denver,* 511 U.S. 164, 187 (1994)). Legislative "inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change'." *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990). That principle cautions strongly against interpreting the Legislature's failure to adopt an expressly gender-neutral version of the marital presumption as indicating any view on whether it may be applied gender-neutrally. Across the country, courts have universally held that the marital presumption may be applied to a same-sex spouse[64]; considering that universal consensus, the Oklahoma Legislature might well have considered such an amendment to be unnecessary.

In any event, that "argument misperceives this Court's constitutional role and responsibility when faced with a statute that violates the equal protection of the laws guaranteed by the Fourteenth Amendment." *McLaughlin*, 243 Ariz. 29 at 35, 401 P.3d at 498. "It is no answer to a constitutional violation in a pending case to assert that it could be remedied by legislative action." *Id.* Rather, "individuals need not await legislative action before asserting a fundamental right." *Obergefell*, 576 U.S. 644 at 677; *see also Ramey*, 215 OK 79 at ¶ 11-13, 362 P.3d at 220 (holding that Oklahoma courts must comply with *Obergefell*).

Because of the Tenth Circuit's decision in *Bishop v. Smith*, 760 F.3d 1070 (10th Cir.) (striking down Oklahoma's ban on same-sex marriage), *cert. denied*, 135 S. Ct. 271 (2014),

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[64] *See*, *supra* n. 63.

and the Supreme Court's decision in *Obergefell*, both Oklahoma courts and other state actors must apply the marriage laws in gender-neutral terms. That requirement applies to all marital rights and benefits, including the presumption that the husband of a woman who gives birth to a child while the parties are married is the child's legal parent. Because excluding same-sex spouses from that marital benefit would be unconstitutional, this Court must apply the marital presumption equally to a same-sex spouse, regardless of whether the legislature has taken action to amend it.

C. If Section 7700-204 Applies Only to Male Spouses, It Is Unconstitutional and This Court Should Strike that Invalid Restriction.

For the reasons stated above, this Court should construe the statutory language in Section 7700-204 to apply equally to all spouses, regardless of gender, based on Section 7700-204 and general principles of statutory interpretation, and consistent with the longstanding rule that where possible, statutes should be construed to avoid having to hold a statutory provision unconstitutional. *See Kimery v. Public Service Company of Oklahoma,* 1980 OK 187, ¶ 6, 622 P.2d 1066, 1069 ("Statutes should be construed whenever possible so as to uphold their constitutionality."). If the Court does so, it need not reach any constitutional issues.

But if the Court determines that Section 7700-204 applies only to male spouses, that restriction would violate both the due process and equal protection guarantees of the federal Constitution, as explained above, by infringing upon the fundamental right of same-sex couples to marry and to be afforded the same constellation of marital benefits provided to opposite-sex couples. *Ramey*, 215 OK 79, ¶ 11-13; *Pavan,* 582 U.S. 563 at 566.

In that case, this Court would be required to determine whether the appropriate remedy would be to sever the unconstitutional gender-based restriction or to strike Section 7700-204 altogether. To resolve that question, the Court must determine whether that restriction is so

"inseparably connected with and so dependent upon" the rest of the statute "that the surviving provisions would not have otherwise been enacted," including consideration of "whether the surviving provisions rely on the severed portion for meaning or enforcement." *Local 514 Transport Workers Union of America v. Keating*, 2003 OK 110, ¶ 6, 83 P.3d 835, 837.

Under that test, the appropriate remedy would be to strike the gendered restriction. As explained above, applying Section 7700-204 to women as well as men would not change the substance of the statute or its interactions with other provisions of the UPA in any way. Neither its meaning nor its enforcement depends on restricting the marital presumption only to husbands. Nor is there any valid reason to believe that the Legislature would rather remove protections from all marital children than to provide them equally to the marital children of same-sex spouses.

CONCLUSION

For the reasons stated above, Appellant respectfully asks this Court to reverse the trial court's decision and to hold that Williams and Wilson are W.W.R.'s legal parents.

Respectfully submitted,

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CERTIFICATE OF DELIVERY

On the 19th day of August, 2024, I submitted a true and correct copy of the above-foregoing document via U.S. Postal Service, postage prepaid thereon, to:

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I further certify that a copy of the foregoing document was mailed to, or filed in, the Office of the Court Clerk for the District Court of Oklahoma County on the 19th day of August, 2024.

_____
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