McLaughlin v. Jones

Citation: No. CV-16-0266-PR, 2017 WL 4126939 (Ariz. Sept. 19, 2017).
Date Filed: Sept. 19, 2017
Author: Chief Justice Bales
Joined by: Justices Brutinel and Timmer and Judge Jones.*
Concurrence: Justice Lopez, joined by Vice Chief Justice Pelander.
Concurrence-in-Part and Dissent-in-Part: Justice Bolick.

Facts: Kimberly and Suzan McLaughlin legally married in California and decided to have a child through artificial insemination. Kimberly became pregnant in 2010. During the pregnancy, Kimberly and Suzan moved to Arizona. In February 2011, Kimberly and Suzan executed wills declaring Suzan to be an equal parent and signed a contractual parenting agreement assigning Suzan equal parental rights. The parenting agreement stated that, in the event of a separation, Kimberly and Suzan intended Suzan would maintain shared custody, have regular visitation, and be responsible for child support proportional to custody time and income. In 2011, Kimberly gave birth to a boy, E. Suzan stayed home and cared for E while Kimberly worked. In 2013, the relationship deteriorated and Kimberly moved out, taking E, and cutting off communication between E and Suzan.

As part of Arizona's comprehensive child support statutory scheme, ARS § 25-814(A)(1)[1] provides for a rebuttable presumption of paternity to a male married to the mother of a child, if the pair was married at any time in the ten months before the child's birth.

Procedural history: Suzan, the real party in interest, filed petitions for dissolution of marriage and for legal decision-making and parenting time in loco parentis. Suzan challenged Arizona's refusal to recognize lawful same-sex marriages performed in other states and the State intervened in the litigation.

After the *Obergefell v. Hodges*[2] decision, the State withdrew and Judge Pro Tempore Jones ordered the dissolution to proceed as a marriage with children. The trial court held that denying Suzan presumptive parenthood under § 25-814(A) would violate her Fourteenth

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* Justice Gould recused himself.

[1] A man is presumed to be the father of the child if:

> 1. He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.
> 2. Genetic testing affirms at least a ninety-five per cent probability of paternity.
> 3. A birth certificate is signed by the mother and father of a child born out of wedlock.
> 4. A notarized or witnessed statement is signed by both parents acknowledging paternity or separate substantially similar notarized or witnessed statements are signed by both parents acknowledging paternity.

ARIZ. REV. STAT. § 25-814(A) (2016).

[2] Obergefell v. Hodges, 135 S. Ct. 2584 (2015).

Amendment rights. It also prevented Kimberly from rebutting Suzan's presumptive parentage by demonstrating Suzan was not a biological parent of E. Allowing Kimberly to rebut Suzan's presumptive parentage would result in Suzan's legal obligation for child support[3] while denying her any other parental rights or responsibilities.

Kimberly petitioned for special action review. The court of appeals accepted jurisdiction. Judge Espinosa determined that *Obergefell* required the presumption to be applied equally to same-sex spouses. The court held that Suzan was a presumptive parent under § 25-814(A) due to her marriage to Kimberly preceding E's birth. Kimberly was also equitably estopped from rebutting Suzan's presumptive parenthood.[4]

After the court of appeals ruled in the matter, another division of the court of appeals declined to find presumptive parentage for a same-sex spouse under § 25-814(A). In *Turner v. Steiner,* the court held *Obergefell* did not require a gender-neutral reading of § 25-814(A) because the statute merely acknowledged biological differences.[5]

The Arizona Supreme Court granted review to resolve the application of the presumptive paternity statute.

Issue: Does *Obergefell* require that Arizona's presumptive paternity statute be read in a gender-neutral manner?

Holding: Yes, Suzan is E's presumptive parent under Arizona's presumptive paternity statute.

Disposition: The court of appeals' finding that § 25-814(A) must be read in a gender-neutral manner is affirmed. The trial court's decision ordering a martial dissolution with children is affirmed.

Rule: Arizona's presumptive paternity statute, as a benefit attendant to marriage, applies equally to same-sex spouses.

Reasoning:

> **Paternity Statute:** The court began by explaining that § 25-814(A)'s presumption of paternity refers to legal rights and responsibilities—not biological paternity. In opposite-sex marriages, a husband can establish paternity of a child conceived with an anonymous sperm donor through the presumptive paternity statute despite lacking biological paternity. The court acknowledged, however, that the statute referred to males and was drafted to apply to male husbands in opposite-sex

[3] Under A.R.S. § 25-501(B), "[a] child who is born as the result of artificial insemination is entitled to support from the mother as prescribed by this section and the mother's spouse if the spouse . . . agreed in writing to the insemination before or after the insemination occurred." ARIZ. REV. STAT. ANN. § 25-501(B) (2016).
[4] McLaughlin v. Jones, 382 P.3d 118, 124 (Ariz. Ct. App. 2016).
[5] Turner v. Steiner, 398 P.3d 110, 115 (Ariz. Ct. App. 2017).

marriages. Therefore, on its plain terms, the statute would exclude Suzan's claim of parentage.

Discussion of *Obergefell* and *Pavan*: The court proceeded to examine the U.S. Supreme Court's decision in *Obergefell*. There, the Supreme Court concluded that denying homosexual couples the fundamental right of marriage violated the Fourteenth Amendment's Equal Protection and Due Process clauses.[6] The Supreme Court struck down all state laws which denied marriage to same-sex couples "on the same terms and conditions" as opposite-sex couples.[7] The court found the *Obergefell* decision explicitly included benefits attendant to marriage.[8] After *Obergefell*, applying § 25-814(A)(1) only to males would deny a part of "the constellation of benefits the States have linked to marriage" to same-sex spouses and their children.[9]

The court noted the U.S. Supreme Court's decision in *Pavan v. Smith*,[10] released the day before oral arguments, confirmed its reading of *Obergefell*. *Pavan* involved an Arkansas law that a birth certificate list the name of the mother's male spouse, even if there was no biological relationship with the child.[11] As the law did not apply equally to female spouses, the Court found the requirement unconstitutional.[12] The Court again noted the need to provide same-sex spouses with all the benefits of marriage traditionally accorded to opposite-sex spouses.[13]

Equal Application. Finding that legal parent status was a clear benefit of marriage, the court reasoned that § 25-814(A)(1) must be applied to same-sex and opposite-sex spouses on the same terms.[14] To do otherwise would allow a non-biologically related husband to establish parentage through the paternity presumption or adoption but leave a same-sex female spouse with adoption as her only option. Because the statute goes beyond mere biology, the court rejected arguments that *Nguyen v. INS*[15] should govern.

Remedy. After determining the statute must be applied evenly, the court discussed its ability to interpret and remedy statutes. Citing longstanding principles of constitutional supremacy, the court found it did not need to wait for a legislative remedy to act after finding a statute unconstitutional. It could remedy the unconstitutional law by nullifying the statute or extending coverage to the excluded group. As the legislative intent of the statute was to provide children with financial

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[6] *Obergefell*, 135 S. Ct. at 2604.
[7] *Id.* at 2605.
[8] McLaughlin v. Jones, 401 P.3d 492, 497 (Ariz. 2017).
[9] *Id.*
[10] Pavan v. Smith, 137 S. Ct. 2075 (2017).
[11] *Id.* at 2077.
[12] *Id.*
[13] *Id.*
[14] *McLaughlin*, 401 P.3d at 498.
[15] Nguyen v. INS, 553 U.S. 53 (2001) (upholding different rules for males and females to prove biological parentage for derivative citizenship as constitutional).

support from two parents, the court reasoned striking down the statute would undermine the legislative's important government objective whereas extending it would further that objective.[16] Determining that extension would best serve children and the family unit, the court held § 25-814(A)(1) applied to same-sex spouses.[17]

Response to Dissent: The court also responded to the dissent's contention that extending the statute was a judicial overreach. It stated an equal protection violation demands a remedy which mandates equal treatment. The court noted that Arizona's other branches of government could prevent potential litigation by addressing the mandate of equal treatment for same-sex spouses articulated in *Obergefell*.

Equitable Estoppel: The court reviewed the use of equitable estoppel against Kimberly's attempt to rebut Suzan's parenthood. Noting that equitable estoppel is common in family law matters, the court found that both the contractual parenting agreement and actions taken after E's birth supported the ruling. It further rejected Kimberly's argument that its ruling equated to disparate treatment—creating a standard where opposite-sex couples could rebut paternity under 25-814(A), but same-sex couples could not—by noting equitable estoppel applies equally to all spouses.[18]

Concurrence (Lopez): Justice Lopez wrote separately to highlight that the court's decision followed the reasoning stated in *Pavan* and was not an independent extension of *Obergefell*.[19] The concurrence also rejected claims of judicial overreach and noted the legislature's ability to independently address this statutory provision.

Dissent (Bolick): Justice Bolick concurred that the facts in this case warranted equitable estoppel and created "a compelling case for Suzan to have parenting rights."[20] However, Justice Bolick dissented from extending 25-814(A)(1) to same-sex spouses, finding it an overreach of judicial power which ignored the statute's role in a comprehensive child support scheme.[21] Distinguishing between a law which violates the constitution itself and the absence of a law creating a violation, the dissent found the latter present here. The *absence* of a maternity presumption for same-sex couples was unconstitutional but the paternity statute itself was not.[22] Justice Bolick further stated that the State should be joined as a party for the court to determine appropriate remedies.[23]

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[16] *McLaughlin,* 401 P.3d at 499–500.
[17] *Id.*
[18] *Id.* at 501.
[19] *Id.* at 502.
[20] *Id.* at 503.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 504.