No. 22A221

IN THE

Supreme Court of the United States

S.U.
Petitioner,
v.

C.J.
Respondent.

Emergency Application for Stay Pending Appeal to the Supreme Court of United States

To the Honorable John G. Roberts, Jr., Chief Justice of the United States Supreme Court and Circuit Justice for the District of Columbia

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APPLICATION FOR STAY

I request an emergency stay of proceedings below pending the finalization of the pending appeal and subsequent filing of a petition for writ of certiorari. I also request an administrative stay pending determination of this application. This is emergent because it concerns my and my children's Fourteenth Amendment rights and a rule to show cause hearing has been scheduled for October 5, 2022 with sanctions of approximately $72,000 having already been granted against me.

BACKGROUND

A biological stranger gestational surrogate was automatically identified as a presumed biological mother of my children on their birth certificates pursuant to self-operative code WV §16-5-10(e) which presumes that the woman who gives birth is the mother. The gestational surrogate was then given custody of my children due to her presumed relationship against my wishes. I am the actual biological mother of my children and their biological father is an anonymous donor. I have never waived my rights nor have my rights been terminated. The gestational surrogate has never sought a declaration of parentage and has never adopted my children. The gestational surrogacy contract and medical documentation identify me as the sole intended parent of my children.

The adoption statute of the District of Columbia, D.C. Code §16-302 states that "[a]ny person may petition" for a decree of adoption with the consent of the "natural parent." As such, I filed a petition and gave consent to my wife to adopt my children. The trial court originally granted the adoptions and issued final decrees of

adoption. The gestational surrogate then motioned to intervene and was permitted to intervene and caused the final decrees of adoption to be vacated. The decrees were vacated holding that the gestational surrogate had parental rights to my children due to her previous award of custody as their presumed mother.

I filed a petition for appeal requesting the adoptions be reinstated and the appeal is in the briefing stages. In the meantime, the gestational surrogate requested sanctions holding that I filed my adoption petition in bad faith because I did not identify her as the natural mother of my biological children. The trial court then ordered sanctions in the amount of approximately $72,000 that require a payment of $5,000/month.

I requested the trial court stay proceedings until an answer is obtained on whether a presumed mother has the right to intervene in a finalized stepparent adoption that was filed by the actual biological mother. The trial court denied my motion for stay. I then requested a stay from the Court of Appeals who also denied my motion.

ARGUMENT

A stay is appropriate when there is (1) "a 'reasonable probability' that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction;" (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous;" and (3) "a demonstration that irreparable

harm is likely to result from the denial of a stay." *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980).

The decisions of the trial court to vacate and dismiss the adoption petitions and then to find that they were filed in bad faith have chilled my Fourteenth Amendment right to be a parent to my children and for my children to be raised by their biological parent alongside their biological siblings. The decisions below are a result of the lack of state enacted legislation and lack of decisions by this Court surrounding in-vitro fertilization and gestational surrogacy.

Denying my and my children's mutual right to have a parent-child relationship runs afoul of many decisions made by this Court. See *Obergefell v. Hodges*, 135 U.S. 2584, 2605 (2015), "The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right." "[N]either liberty nor justice would exist if [fundamental rights] were sacrificed." *Palco v. Connecticut*, 302 U.S. 319 at 326 (1937). The limitations inherent in the requirements of Due Process and Equal Protection of the law extend to all branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. *Hanson v. Denckla*, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228 (1958). *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. . . . It is in recognition of this

that these decisions have respected the private realm of family life which the state cannot enter.").

As held in *Santosky v. Kramer*, 455 U.S. 745 (1982), "[e]ven when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." "[T]he State cannot presume that a child and his parents are adversaries." *Id.* "[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* And, procedures terminating such a relationship, "must be accomplished by procedures meeting the requisites of the Due Process Clause." *Id.*

See also *Quilloin v. Walcott*, 434 U.S. 246 (1978) ("We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (stating "the actions of judges neither create nor sever genetic bonds"). *Donaldson v. United States*, 400 U.S. 517, 531 (1971), (a person has an "interest" only if it is a "significantly protectable interest.").

"Presumptions are only indulged to supply the absence of evidence or averments respecting the facts presumed. They have no place for consideration when the evidence is disclosed or the averment is made." *Galpin v. Page*, 85 U. S. 368 (1873). See also *Glona v. American Guarantee & Liability Ins. Co.*, 391 U.S. 73

(1968), where this Court held that for purposes of determining whether a relationship between a mother and her child enjoys legal protection under the Fourteenth Amendment, it is the actual biological relationship between the mother and child which controls, not the legal fictions created by the laws of a state.

> "To say that the test of Equal Protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a state to draw such 'legal' lines as it chooses." *Id.* at 75-76.

This Court requires "that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights ..." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (quoting *Aetna Insurance Co. v. Kennedy*, 301 U.S. 389 (1936)). A waiver is ordinarily an intentional relinquishment of a known right. *Id.* The requirement that a waiver of a fundamental constitutional right is voluntary and fully informed is part of the substantive right itself. *Id.*, at 464-65. "[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made." *Troxel v. Granville*, 530 U.S. 57 (2000).

Without a stay from this Court, my family will be irreparably harmed through a total denial and chilling of my Fourteenth Amendment rights of due process and equal protection; and, of the right to have a parent-child relationship due only to the method of procreation. Deprivation of fundamental liberty rights "for even minimal periods of time, unquestionably constitutes irreparable injury."

Elrod v. Bums, 96 S.Ct. 2673; 427 U.S. 347, 373 (1976). Irreparable harm will also result because I do not have the means to pay $5,000 per month. I am a full-time parent raising two (2) minor children under the age of three (3). Irreparable harm will come to my children through my inability to pay the mortgage on our home and we will be forced to file for bankruptcy.

I intend to present the case below to this Court as a writ of certiorari to ascertain (1) if a presumed mother can supplant and pre-empt the rights of the natural mother through the act of giving birth where the same is against the wishes of the biological mother; (2) if a presumed mother has a significantly protectable interest that would allow her to intervene in an adoption filed by the fit natural mother; and, (3) if a fit biological mother's petition for a stepparent adoption can be filed in bad faith.

Respectfully Submitted,

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