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IN THE INDIANA COURT OF APPEALS
CAUSE NO. 64A03-0908-JV-367

IN THE MATTER OF THE PATERNITY)	Appeal from the Porter Circuit Court
)	Case No. 64C01-0812-JP-1516
AND MATERNITY OF INFANT R.)	The Honorable Mary Harper, Judge

APPELLANTS' REPLY BRIEF

This case began as a non-adversarial, agreed action to establish paternity and maternity. Despite the State's argument that the trial court may have based its decision denying that request upon a statute that was inapplicable and not even raised before it, the case remains in its original posture. Both the State and appellants agree that the trial court *could have* and *should have* granted the motion. There remains an issue, however, over what remedy this Court should apply in order to accomplish this undisputed result.

In order to avoid appellants' constitutional challenge to Indiana's paternity statutes, the State posits that the court's erroneous decision could have been based on Indiana's surrogacy statutes, I.C. 31-20-1-1, *et. seq.* As the State itself, recognizes, however, Indiana's surrogacy statutes were never invoked and, indeed, are wholly inapposite to the case. As the State points out (State's Brief, at 7), T.G. and V.G. never asked the court to enforce a surrogacy agreement because 1) there was no need to do so since nothing was disputed, and 2) **there never was a surrogacy agreement.** D.R.'s actions in this case were completely altruistic. There was no contract. There was no payment to D.R. (App. 40, l. 9-11). The trial court could not possibly have based its decision denying the parties' request to establish paternity and maternity on Indiana's surrogacy statute, since that statute is completely silent as to the issue before the court. Remanding the case to the court, as the State suggests, would be an utter waste of time and

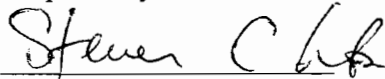
resources. No one, except the State in its effort to have this Court avoid confronting an issue squarely before it, has suggested that this is case that involves Indiana's surrogacy statutes.

The State mirrors appellants' argument that the trial court could have summarily granted the motion, and cites two additional cases in support thereof. As appellants offered in their brief, if this court wishes to engage in the linguistic gymnastics necessary to conclude that "paternity" means "maternity" that is fine with them. See, Appellants' Brief, f. 6, at p. 10. Whether it does so based on the Constitutional maxim of equal protection under the law, "equitable jurisdiction" as the State suggests, or whether it recognizes what all parties urge—that as is often the case, medical technology has surpassed legislative reaction to it—the ultimate goal of achieving familial recognition, establishing Infant R.'s inheritance rights, and affirming T.G.'s and V.G.'s parental rights still will be accomplished. However resolved, the Court's decision should explicitly address the issue so that future, similarly situated Indiana couples and their children will not be in this legal no-man's-land.

CONCLUSION

WHEREFORE, V.G. and T.G., by counsel, move that the trial court's denial of their agreed petition to establish paternity and maternity be reversed, that the court be ordered to grant said petition as tendered to it, that the statute allowing T.G. to establish that he is the father but not affording V.G. the opportunity to establish that she is the mother be declared unconstitutional as applied to them, or, alternatively, that it be interpreted to apply to each of them equally, and for all other just and proper relief.

Respectfully Submitted,



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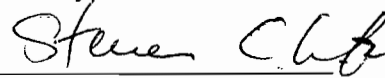
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon Frances Barrow of the Indiana Attorney General's Office by United States mail, this 26th day of October, 2009.



Steven C. Litz