

August 18, 2017; Supreme Court Upholding Rights of Non-Heterosexuals

For the second time in two years, the U.S. Supreme Court has released an opinion on a civil rights matter that closely followed, and supported, a recent Guam case with similar facts. First, on June 5, 2015, Federal District Court Judge Francis Tydingco-Gatewood issued a decision in the case of *Aguero v. Calvo*, declaring that same-sex couples on Guam had a constitutional right to marry. Three weeks later, on June 26, 2015, the U.S. Supreme Court issued its landmark decision in *Obergefell v. Hodges*, stating that under the U.S. Constitution same-sex couples have the same right to pursue a civil marriage as do heterosexual couples. This meant that all states and territories had to allow same-sex marriages.

Then, on April 20, 2017, in the case of *Chargualaf v. Garrido*, a same-sex female married couple filed a Writ of Mandate at the Guam Superior Court against the Guam Registrar for Vital Statistics. One of the spouses had given birth using in vitro fertilization. The Registrar refused to list both spouses as parents on the child's birth certificate despite the fact that under Guam law a child born during the marriage is considered a child of the marriage and only the spouses can challenge this presumption.

Despite the law, the Registrar only entered the name of the spouse who had given birth to the child. The Registrar told the other spouse that she would have to adopt the child to have her name included as a parent on the birth certificate. However, the Registrar admitted that under similar circumstances she'd list the husband of a heterosexual couple as the child's parent despite the fact he had no biological link to the child. On May 8, 2017, just prior to a hearing on the matter, the Registrar relented and entered into a Stipulated Order agreeing to list both spouses as the child's parents.

On June 26, 2017, the U.S. Supreme Court decided a similar case, *Pavan v. Smith*. Like Guam, Arkansas law generally requires that the husband of a married woman be listed as the father of any child born during the marriage. This is required even when the husband isn't the child's biological father. Despite this, when Terrah Pavan gave birth to a child through in vitro fertilization, the Arkansas Department of Public Health refused to list Terrah's same-sex spouse as the other parent. As a result, the couple sued the Public Health director, Nathaniel Smith.

In a 6 to 3 decision, the U.S. Supreme Court ruled in favor of the same-sex married couple. The court emphasized that under the *Obergefell* case, "the Constitution entitles same-sex couples to civil marriage 'on the same terms and conditions as opposite-sex couples.'" According to the Court, a birth certificate is one of the "constellation of benefits" linked to marriage. A birth certificate is an essential document required "for important transactions like making medical decision for a child or enrolling a child in school." Consequently, Arkansas cannot treat married heterosexual couples and same-sex couples differently when issuing

birth certificates. Like the *Obergefell* decision, this ruling is applicable in all states and territories.

As an attorney who worked on both Guam cases, and as a gay married man with children, I am gratified that the U.S. Supreme Court has again upheld the right of non-heterosexuals to be treated just like any member of the heterosexual community under similar circumstances.