

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, individually and as parent
and next friend of N.D.-R, R.D.-R., and J.D.-R,
minors, and JAYNE ROWSE, individually and as parent
and next friend of N.D.-R, R.D.-R., and J.D.-R,
minors,

Plaintiffs,

ED Mi No. 12-10285
Honorable Bernard A. Friedman
United States District Judge

-vs-

Honorable Michael J. Hluchaniuk
United States Magistrate Judge

RICHARD SNYDER, in his official capacity as
Governor of the State of Michigan, and
BILL SCHUETTE, in his official capacity as
Michigan Attorney General,

Defendant.

**PLAINTIFFS' STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

APRIL DEBOER, individually and as parent and next friend of N.D.-R, R.D.-R., and
J.D.-R, minors, and JAYNE ROWSE, individually and as parent and next friend of N.D.-R,
R.D.-R., and J.D.-R, minors, submit the following Statement of Undisputed Material Facts¹ in
support of their Motion for Summary Judgment, filed contemporaneously herein.

1. Under Michigan law, a single person can adopt a child individually following an
individualized determination by the State of fitness to parent.

¹The record submitted in support of Plaintiffs' Statement of Undisputed Material facts consists of the following: Exhibit 1, Declaration of April DeBoer; Exhibit 2, Declaration of Jayne Rowse; Exhibit 3, Declaration of Wendy DeBoer; Exhibit 4, Declaration of Cynthia Bostwick; Exhibit 5, Declaration of Kathi Nelson; Exhibit 6, Declaration of Jeanne Howard.

2. Under Michigan law, the sexual orientation of a single person seeking to adopt a child is irrelevant to the determination of fitness to parent.

3. Under Michigan law, a married couple may adopt a child as a couple following individualized determinations by the State of fitness to parent.

4. Under Michigan law, a spouse in a married couple may adopt their spouse's child following an individualized determination by the State of fitness to parent.

5. Under Michigan law, a partner in a same sex couple may not adopt the child of their partner, even if the person seeking to adopt has been found by the State to be fit to adopt a child individually.

6. Under Michigan law, a partner in a same sex couple may not adopt the child of their partner, even if the couple has been legally married in another state.

7. Under Michigan law, the partners in a same sex relationship may be found by the State to be fit to become foster parents as a couple.

8. In order to be found fit to adopt in Michigan, a person seeking to adopt a child, whether individually or as a couple, must undergo a careful, detailed and thorough assessment by the Michigan Department of Human Services of their fitness to parent. In particular,

- (a) the prospective adoptive parent must petition the circuit court for permission to adopt the child,
- (b) the prospective adoptive parent and adults living in the home are interviewed extensively,
- (c) the prospective adoptive parent and adults living in the home are screened by the State for criminal history and, through the Department of Human Services, for any history of abuse or neglect,

- (d) an assessment is done through the county where the adoptions are to take place,
- (e) the home is inspected,
- (f) a temporary placement of the child is made in the home,
- (g) the prospective adoptive family is monitored by the State post-placement with visits by social workers, and where indicated, nurses, and
- (h) a determination is made by the circuit court of applicable jurisdiction that the applicant is a suitable parent and that the child being adopted was being properly cared for while in the temporary placement.

(Exhibit, 1, DeBoer Declaration, ¶15; Exhibit 4, Bostwick Declaration, ¶4; Exhibit 5, Nelson, Declaration, ¶7).

9. A child with two parents enjoys legal benefits unavailable to a child with one parent, specifically as follows:

- (a) the legal right to have a parent automatically in the event of the death of the other parent,
- (b) the right to dependency benefits under laws and other contractual arrangements providing for dependency benefits, such as social security, workers compensation, pensions, insurance and tort law, and
- (c) the right to have at least one parent able and available to make decisions in the event the other parent is incapacitated or is unavailable.

See Affidavits of DeBoer, Rowse, Bostwick and Nelson.²

² See also *Adoption of Tammy*, 416 Mass. 205, 214 (1993) (an adopted child can inherit from the “second” legal parent under the law of intestate succession; the second parent is legally be obligated to provide support for the child; the child is eligible for coverage under the second parent’s insurance policies, and for social security benefits in the event of the second parent’s disability or death). See also *Matter of Jacob*, 86 NY2d 651 (1995)(same, as well as entitlement to health insurance and wrongful death benefits upon the death of the second parent); *In re Hart*, 806 A.2d 1179 (Del. Fam. Ct. 2001)(same).

10. The State concedes that having a second legal parent provides a child with security and legal rights that go above and beyond what a guardianship by the second parent can provide.³

11. Plaintiffs April DeBoer and Jayne Rowse are unmarried same-sex domestic partners, they are citizens and residents of Hazel Park, Michigan, in the Eastern District of Michigan, Southern Division, and they are the parents of the different minor plaintiffs in this case: “N”, “J” and “R”. (R 1, Complaint, ¶¶1,6; R 14, Defendants’ Motion to Dismiss, p 5, ¶1).

12. Plaintiffs DeBoer and Rowse have resided together for six years, they own a home together, and they participated in a commitment ceremony in February of 2007, which was attended by their family and friends. (R 1, Complaint, ¶¶6,13; R 14, Defendants’ Motion to Dismiss, p 5, ¶1; Exhibit 1, April DeBoer Declaration, ¶6; Exhibit 3, Wendy DeBoer Declaration, ¶1).

13. DeBoer is and was employed as a nurse in the neonatal intensive care unit at Hutzel Hospital in Detroit, Michigan. Rowse is and was employed as an emergency room nurse at Henry Ford Hospital in Detroit, Michigan. (R 1, Complaint, ¶7).

14. On November 2, 2009, Jayne Rowse became the adoptive parent of N, and on April 6, 2011, April DeBoer became the adoptive parent of R. (R 1, Complaint, ¶¶8, 9; R14, Defendants’ Motion to Dismiss, p 5, ¶1; Exhibit 1, DeBoer Declaration, ¶¶10,13)

15. On December 9, 2009, Rowse and DeBoer were certified by the State as foster parents

³ According to the State of Michigan’s own Child Welfare Law Manual, “[g]uardianship should not be seen as a cure-all, nor can it be equated with... parental rights and adoption in terms of the security it offers.” See DHS, State of Michigan, Child Welfare Law Manual, published 11/9/07.

as a couple. (Exhibit 1, DeBoer Declaration, ¶12).

16. On March 2, 2010, J was placed in DeBoer and Rowse's home as their foster child. (Exhibit 1, DeBoer Declaration, ¶12).

17. On October 28, 2011, Rowse became the adoptive parent of J. (R 1, Complaint, ¶10; R 14, Defendants' Motion to Dismiss, p 5, ¶1; Exhibit 1, DeBoer Declaration, ¶12).

18. R was and is a special needs child who continues to experience issues related to her lack of prenatal care, including a delay in her gross motor skill development, and she requires ongoing physical therapy to address those problems. (R 1, Complaint, ¶8; Exhibit 1, DeBoer Declaration, ¶17).

19. J was and is a special needs child who was born prematurely, at 25 weeks, to a drug addicted prostitute. At birth, he weighed 1 pound, 9 ounces and tested positive for marijuana, cocaine, opiates and methadone. His birth mother abandoned him immediately after delivery. J remained at the hospital in the NICU for four months with myriad health complications, and was not expected to live. J is in intensive occupational and physical therapy. With Rowse and DeBoer's constant care and medical attention, many of J's physical conditions have resolved. (R 1, Complaint, ¶10; Exhibit 1, DeBoer Declaration, ¶¶12, 17).

20. The undisputed social and psychological science data demonstrates that same-sex couples make equally good parents as their heterosexual counterparts. (Exhibit 6, Howard Declaration, ¶6).

21. The State does not claim that homosexual people as a class are not competent to be parents because same sex single persons are allowed to adopt under Michigan law.

22. Same sex couples are more likely than their heterosexual counterparts to adopt special needs children. (Exhibit 6, Howard, ¶10).

Respectfully submitted,

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CERTIFICATE OF SERVICE

CAROLE M. STANYAR hereby certifies that a copy of Plaintiffs' Statement of Undisputed Material Facts, Index to Exhibits, Exhibits in Support, and this Certificate of Service, were served upon Assistant Attorney General Joseph E. Potchen, an ECF filer, on March 13, 2012.

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