ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

KIMBERLY McLAUGHLIN v. HON. JONES/SUZAN McLAUGHLIN
CV-16-0266-PR

PARTIES:

Petitioner: Kimberly McLaughlin ("Kimberly")

Respondent: Suzan McLaughlin ("Suzan")

FACTS:

Kimberly and Suzan were legally married in October 2008 in California. The couple agreed to have a child through artificial insemination, using an anonymous sperm donor selected from a sperm bank. Although efforts to have Suzan conceive and give birth through this process did not prove successful, Kimberly became pregnant in 2010. Before the child was born, the couple moved to Arizona. Anticipating the birth, they entered into a join parenting agreement and executed mirror wills, declaring they were to be equal parents of the child Kimberly was carrying. Baby E. was born in June 2011. For almost two years, Suzan stayed home and cared for E., while Kimberly worked as a physician. When E. was almost two years old, Kimberly moved out of the home, taking E. with her and cutting off his contact with Suzan.

In April 2013, Suzan filed a Petition for Dissolution of Marriage, and a Petition for Legal Decision-Making and Parenting Time in Loco Parentis, and a Petition for Temporary Orders. The proceedings were stayed pending a decision by the United States Supreme Court in *Obergefell v. Hodges*, a case about the legality of gay marriage. The Supreme Court decided *Obergefell* in 2015, ___ U.S. ___, 135 S. Ct 2584 (2015), ruling that same sex couples may exercise the fundamental right to marry.

In 2016, Kimberly moved to set the dissolution for trial. The trial court ordered that the case proceed as a dissolution action with children, applying a presumption in A.R.S. § 25-814(A) that the spouse of a child conceived by artificial insemination during the marriage was presumed to be the child of the husband. The trial court read A.R.S. § 25-814(A) in a "gender neutral" manner. Kimberly filed a motion for declaratory judgment, seeking a ruling that she would be permitted to rebut the presumptions. The trial court denied the motion for declaratory judgment. Kimberly filed a petition for special action. The Arizona Court of Appeals accepted jurisdiction of the special action petition, but denied relief.

ISSUES:

I. Multiple Arizona statutes and prior decisions of this Court and Division One hold that the terms "paternity" and "maternity" are not gender neutral. Did Division

Two err in finding that the female same-sex spouse of an artificially inseminated woman was entitled to the marital "paternity" presumption under A.R.S. § 25-814(A) to establish legal parentage?

II. Arizona does not have a statute that establishes parentage for male or female spouses of artificially inseminated mothers. Did Division Two err in judicially adopting the exact test and language from the Uniform Parentage Act, under the guise of judicial interpretation?

RELEVANT STATUTE:

A.R.S. § 25-814(A) provides, in pertinent part:

A. 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.