SUPREME COURT OF FLORIDA
CASE NO. SC17-1963
L.T. CASE NO. 4D16-3502

TRENEKA SIMMONDS, ET AL.,

Petitioner(s),

vs.

CONNOR PERKINS,

Respondent.
_____/

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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INTRODUCTION

The Respondent, CONNOR PERKINS, the Biological Father in the lower tribunal or trial court shall be referred to as "Mr. Perkins", the "Biological Father" or the "Respondent". The Petitioner, TRENEKA SIMMONDS, the Respondent/Mother in the lower tribunal or trial court shall be referred to as "Ms. Simmonds", "the Mother" or the "Petitioner". The Petitioner, SHAQUAN FERGUSON, the Third Party Defendant in the lower tribunal or trial court shall be referred to as "Mr. Ferguson" or the "Petitioner".

The Record-On-Appeal shall be referenced by "R. page(s) ___".

Reference to the Appendix to the Respondent's Answer Brief on the Merits shall be referenced by use of the symbol "A page(s) ___".

Reference to the transcript of the proceedings in the lower tribunal or trial court from June 17, 2016, shall be referenced by the use of the symbol "T. 6/17/16 page(s) ___ line(s) ___", which transcript is found in the Appendix to the Respondent's Answer Brief on the Merits at pages 7-88 of the Respondent's Appendix.

STATEMENT OF THE CASE AND OF THE FACTS

The birth mother in this case is Treneka Simmonds (hereinafter "Ms. Simmonds"). Ms. Simmonds' husband is Shaquan Ferguson (hereinafter "Mr. Ferguson"). Ms. Simmonds and Mr. Ferguson were married in the State of Florida on August 1, 2011. (T. 6/17/16 page 11 lines 10-22/T. 6/17/16 page 27 lines 6-11). The minor child that is the subject of this proceeding is C.A.P., who was born on January 6, 2013, at Memorial Regional Hospital in Broward County, Florida (hereinafter the "minor child" or the "child"). (T. 6/17/16 page 13 lines 2-4). (R. page 16).

Ms. Simmonds had an extramarital affair with Connor Perkins (hereinafter "Mr. Perkins") and C.A.P. is the product of that extramarital affair. A Deoxyribonucleic Acid (hereinafter "DNA") test was conducted and the DNA report issued on February 7, 2013, indicated that there was a 99.99% probability that Mr. Perkins is the biological father of the minor child. (R. page 8). Pursuant to the agreement of Ms. Simmonds and Mr. Perkins and consistent with the trial court's order of September 18, 2015, a second DNA test was conducted. (R. page 17). The second DNA report issued on October 15, 2015, confirmed that there was a 99.99% probability that Mr. Perkins is the biological father of the minor child. (R. pages 47-48).

Mr. Perkins acknowledged that he is the biological father of C.A.P. and wished to establish himself as the legal father of the child with full parental rights and obligations with respect to C.A.P. Accordingly, on September 14, 2015, Mr. Perkins filed his "Petition to Establish Paternity, Child Support and for Other Relief", in the

trial court. (R. pages 5-9). In response thereto, on November 1, 2015, Ms. Simmonds filed her "Answer to Petition to Establish Paternity, Child Support and for Other Relief", in the trial court. (A. pages 1-6). Ms. Simmonds' "Answer to Petition to Establish Paternity, Child Support and for Other Relief" was served upon Mr. Perkins' Counsel; however, there was a problem with the electronic filing of same and Ms. Simmonds' pleading was never docketed by the Clerk of Court of the lower tribunal. (R. pages 84-86/A. pages 89-91).

Nonetheless, in her "Answer to Petition to Establish Paternity, Child Support and for Other Relief", Ms. Simmonds admitted to having a "physical relationship" with Mr. Perkins and asserted that she was awaiting the results of the paternity test before acknowledging Mr. Perkins as the biological father of the child. (A. pages 1-6). Further, in her "Answer to Petition to Establish Paternity, Child Support and for Other Relief", Ms. Simmonds also included the "Mother's Counter-Petition to Establish Parental Responsibility and a Parenting Plan/Time-Sharing Schedule", as well as the "Mother's Counter-Petition to Establish Temporary, Permanent and Retroactive Child Support". (A. pages 1-6).

Pointedly, in "Section II." of the "Mother's Counter-Petition to Establish Parental Responsibility and a Parenting Plan/Time-Sharing Schedule" entitled, "Parental Plan Establishing Parental Responsibility and Time-Sharing", Ms. Simmonds set forth as follows:

8. The parties believe that the Counter-Respondent is the biological father of the minor child C.A.P., born __/__/2013 (hereinafter referred to as the "minor child").

9. The parties have agreed to submit for a DNA test to establish the paternity of the minor child.

13. The Counter-Petitioner has liberally allowed time-sharing between the minor child and the Counter-Respondent.

14. It is in the best interest of the child that parental responsibility be shared by both Father and Mother.

15. It is in the best interest of the minor child that the parties establish a parenting plan with time-sharing with the minor child.
(A. pages 1-6).

Later, on February 3, 2016, Ms. Simmonds filed her "Motion to Dismiss Petition for Paternity for Lack of Standing and for Lack of Subject Matter Jurisdiction", in the trial court. (R. pages 40-42). In pertinent part, Ms. Simmonds alleged in her "Motion to Dismiss Petition for Paternity for Lack of Standing and for Lack of Subject Matter Jurisdiction", that Mr. Perkins lacked standing to bring an action for paternity, as the minor child was born during an intact marriage. (R. pages 40-42).

Thereafter, on March 17, 2016, Mr. Perkins filed his "Verified Amended Petition to Establish Paternity, Child Support and for Other Relief", in the trial court (hereinafter the "Petition"). (R. pages 62-71). In response thereto, on March 28, 2016, Ms. Simmonds filed her "Motion to Dismiss Petition for Paternity for Lack of Standing and Request for Attorney Fees". (R. pages 72-74).

Subsequently, on June 17, 2016, the trial court conducted an evidentiary hearing related to Mr. Perkins' request to be designated the biological and legal father of the minor child, C.A.P., and Ms. Simmonds' "Motion to Dismiss Petition for Paternity for Lack of Standing and Request for Attorney Fees", consistent with the District Court of Appeal Fourth District's decision in ***J.T.J. v. N.H. and E.R.***, 84 So.3d 1176, 1179 (Fla. 4th DCA 2012), wherein the District Court of Appeal Fourth District agreed with the biological father, who claimed that he was entitled to an evidentiary hearing to determine his standing to bring his paternity petition.

Specifically, in ***J.T.J.***, the District Court of Appeal Fourth District determined that the trial court had to conduct an evidentiary hearing to determine whether the biological father had standing to bring his paternity petition and that the trial court had to evaluate all of the circumstances of the case in determining the biological father's standing and the child's best interests. ***Id.*** at 1180.

In this case, the biological mother, Treneka Simmonds, testified at the hearing before the trial court on June 17, 2016. Ms. Simmonds confirmed that she was married to Shaquan Ferguson and that they were married on August 1, 2011. (T. 6/17/16 page 27 lines 3-11). Ms. Simmonds acknowledged that she and Mr. Ferguson had their "ups and downs" and that during their marriage, she had an intimate relationship with Mr. Perkins. As a result of her relationship with Mr. Perkins, Ms. Simmonds gave birth to their daughter, C.A.P., and gave the child the last name of "Perkins", as Mr. Perkins is the biological father of the child. (T. 6/17/16 page 27 lines 23-25/T. 6/17/16 page 28

lines 1-11). At the hearing before the trial court, Ms. Simmonds could not recall whether Mr. Perkins was present for the birth of the child. (T. 6/17/16 page 32 line 25/ T. 6/17/16 page 33 line 1). Nonetheless, Ms. Simmonds confirmed that Mr. Ferguson was not present for the birth of the child and, rather, that "he was at work". (T. 6/17/16 page 33 lines 4-5).

Ms. Simmonds admitted at the hearing that she had been in Mr. Perkins' house, but testified that she did not know if the child had a room in Mr. Perkins' residence. (T. 6/17/16 page 35 lines 1-4). This, despite the fact that Ms. Simmonds confirmed that she had permitted the child to reside with her biological father, Mr. Perkins, in Bradenton, Florida for approximately two (2) months. (T. 6/17/16 page 33 lines 12-16/T. 6/17/16 page 34 lines 10-22). Further, Ms. Simmonds denied that Mr. Perkins had ever resided with her in Boston, despite the testimony of both Mr. Perkins and his witness, Mr. Daniel Rizzetto. (T. 6/17/16 page 31 lines 22-25/T. 6/17/16 page 32 line 1). Regardless, Ms. Simmonds corroborated that Mr. Perkins' bank statements went to her house in Boston, but added that she had merely permitted him to use her address for this purpose. (T. 6/17/16 page 32 lines 8-15). Ms. Simmonds also verified that Mr. Perkins had given her money, but denied that the funds had been provided by Mr. Perkins on behalf of the parties' minor child. (T. 6/17/16 page 35 lines 18-21).

Ms. Simmonds conceded at the hearing before the trial court that she had provided Mr. Perkins with access to the child and that Mr. Perkins has told her that he loves the child, his daughter. (T. 6/17/16 page 43 lines 20-25/T. 6/17/16 page 44 lines

1-5). Similarly, Ms. Simmonds also admitted that prior to Mr. Perkins bringing his Petition, she and Mr. Perkins and the child had dined out together on numerous occasions and that the child had contact with Mr. Perkins; however, once she retained her current legal counsel, she terminated Mr. Perkins' contact with the child. (T. 6/17/16 page 39 lines 6-21/T. 6/17/16 page 40 line 9).

Shaquan Ferguson, Ms. Simmonds' husband, also testified at the hearing. (T. 6/17/16 page 11 lines 10-22). Mr. Ferguson admitted at the hearing that he and Ms. Simmonds have had their "ups and downs" in their relationship. (T. 6/17/16 page 16 lines 17-19). To this end, Mr. Ferguson confirmed that Ms. Simmonds is the biological mother of the minor child, C.A.P., and that he is not the biological father of the child. (T. 6/17/16 page 13 lines 2-11). In fact, Mr. Ferguson admitted that the child had been held out by Ms. Simmonds as Mr. Perkins' daughter and, despite the fact that he testified that the minor child is his daughter, the minor child bears Mr. Perkins' last name. (T. 6/17/16 page 18 lines 5-9/T. 6/17/16 page 20 lines 10-16).

Mr. Ferguson also described how he resided in Fort Lauderdale, Florida and that the minor child, C.A.P., resided in Boston with Ms. Simmonds because he was in school and worked in Florida, and Ms. Simmonds was in school and worked in Boston. Mr. Ferguson added, that once he graduated from school in approximately a year and a half, he intended upon moving to Boston. (T. 6/17/16 page 15 lines 13-25).

Nonetheless, Mr. Ferguson had no idea that Mr. Perkins had been providing Ms. Simmonds with financial support or that Mr. Perkins had lived in Boston with Ms. Simmonds. (T. 6/17/16 page 18 lines 10-12). Similarly, Mr. Ferguson had absolutely no idea that the child had been enrolled in day care or school or that she had resided with Mr. Perkins in Bradenton, Florida for a few months. (T. 6/17/16 page 17 lines 11-25/T. 6/17/16 page 18 line 1).

At the hearing before the trial court, Mr. Perkins, the biological father of C.A.P., confirmed that Ms. Simmonds is the biological mother of C.A.P. and that he is the biological father of the child and was present at the birth of the child. (T. 6/17/16 page 63 lines 14-25). Mr. Perkins related that he did not find out until after he had commenced his relationship with Ms. Simmonds that she was married. In fact, Ms. Simmonds had initially advised him that she had gotten married for "immigration papers" and had told him several times that she was getting a divorce. Mr. Perkins further indicated at the hearing that he did not learn that Ms. Simmonds was still married until his Petition was filed and that Ms. Simmonds was contesting same. In short, Mr. Perkins had no idea that Ms. Simmonds' marriage to Mr. Ferguson was still intact. (T. 6/17/16 page 64 lines 1-24).

To this end, Mr. Perkins confirmed that he and Ms. Simmonds had been "dating on and off for the past three years". (T. 6/17/16 page 77 line 25/T. 6/17/16 page 78 lines 1-4). Prior to the filing of his Petition, Ms. Simmonds never told Mr. Perkins that she did not want him to be involved in the child's life. Further, Mr. Perkins verified

that Ms. Simmonds had never held out Shaquan Ferguson as the child's father in any way. In fact, Mr. Perkins had no idea that Shaquan Ferguson was Ms. Simmonds' husband. Mr. Perkins had met Mr. Ferguson several times, but he was introduced by Ms. Simmonds as a friend or a cousin, but never as her husband. (T. 6/17/16 page 78 lines 23-25/T. 6/17/16 page 79 lines 1-6).

Mr. Perkins further described for the trial court how he was present at the hospital when the child was born and stayed with Ms. Simmonds. Mr. Perkins went back to the hospital the day after the child was born and he and Ms. Simmonds brought the child home from the hospital. (T. 6/17/16 page 64 line 25/T. 6/17/16 page 65 lines 1-17).

Mr. Perkins also attested that he had been paying support to Ms. Simmonds for the parties' minor child. Further, when the child was first born, Mr. Perkins and Ms. Simmonds were raising the child together and both purchased items for the child. Mr. Perkins purchased two (2) cribs and strollers for his residence and for Ms. Simmonds' residence and several items for the child, prior to the birth of C.A.P., as Ms. Simmonds had advised him that he was the child's father. (T. 6/17/16 page 65 line 18-25/T. 6/17/16 page 66 lines 1-7).

Specifically, as to his financial support of the child, Mr. Perkins confirmed that he had given Ms. Simmonds gifts, but that he had also paid her support for the child, had paid for school for the child, for doctors' visits, and for toys for the child. (T. 6/17/16 page 78 lines 5-12). In addition, after Mr. Perkins took a job in Europe, he

sent approximately Three Hundred Dollars ($300.00) to Four Hundred Dollars ($400.00) per month to Ms. Simmonds for approximately six (6) months. When Mr. Perkins returned from Europe, he lived in Florida for a short time and then moved to Boston, where he lived with Ms. Simmonds and the parties' minor child at 325 Commandants Way. To this end, at the hearing, Mr. Perkins provided copies of four (4) months of his bank statements, evidencing his address in Boston. It was during this time that Mr. Perkins worked at the Cheesecake Factory in Boston. (T. 6/17/16 page 66 lines 7-25/T. 6/17/16 page 67 lines 1-4/T. 6/17/16 page 77 lines 6-12).

Mr. Perkins recalled for the trial court that the child had attended three (3) different schools and had either been enrolled by him or by him and Ms. Simmonds together. Specifically, the child has been enrolled at KinderCare Midtown, Crayons, which is in Davie, Florida, a Christian school in Miramar, and the Sunshine Academy in Bradenton, Florida. Mr. Perkins had contributed towards the cost of the child's schools and had solely paid for the Sunshine Academy in Bradenton, as the child had been residing with him in Florida at the time. (T. 6/17/16 page 67 line 25/T. 6/17/16 page 68 lines 1-25/T. 6/17/16 page 69 lines 1-5/T. 6/17/16 page 75 lines 11-13).

To this end, Mr. Perkins advised the trial court that he has text messages wherein Ms. Simmonds indicates that the child is his child and that he is "dad" and that it is his responsibility to care for the child. (T. 6/17/16 page 69 lines 18-21/T. 6/17/16 page 70 lines 1-25). In fact, Mr. Perkins related that after he received such a text message from Ms. Simmonds, the child came to live with him for a while in Florida. Consequently,

Mr. Perkins confirmed that he has financially supported the child since her birth and that he "absolutely" loves the child. (T. 6/17/16 page 71 lines 1-9).

Mr. Perkins informed the trial court that his daughter called him, "Daddy", and called his mother, the paternal grandmother, "Nanny", and that prior to the filing of his Petition, Ms. Simmonds had allowed him to see his daughter whenever he wished. Further, Mr. Perkins confirmed that he was held out as the child's father to everyone. (T. 6/17/16 page 69 lines 6-17). As such, Mr. Perkins had taken his daughter for doctors' visits and was present for her immunizations. Mr. Ferguson had never been present for any of these appointments. (T. 6/17/16 page 67 lines 14-24).

Mr. Perkins also described for the trial court his close relationship with the child and that he loved and missed the child; that he and Ms. Simmonds had raised the child since her birth; and, that he and the child had a mutual attachment. Mr. Perkins confirmed that he had a room for C.A.P. at his house and that up to the time of the filing of his Petition, he was regularly seeing his child. Further, Mr. Perkins expressed at the hearing that he believed that it was in the child's best interest to have him in her life and that she already knew him as her father. The child also knew Mr. Perkins' whole family and both the child and Ms. Simmonds had attended holiday celebrations with him and his family. (T. 6/17/16 page 71 lines 10-25/T. 6/17/16 page 72 lines 1-25/T. 6/17/16 page 73 lines 1-4). Consequently, Mr. Perkins expressed at the hearing that he wanted a relationship with his child and that having a relationship with her was very important to him. (T. 6/17/16 page 74 lines 20-23).

Ms. Denise Corness also testified at the hearing before the trial court. Ms. Corness had known Mr. Perkins' mother for forty (40) years and had known Mr. Perkins "since the day he was born." Ms. Corness advised the trial court that she had met Ms. Simmonds at Mr. Perkins' house and that Ms. Simmonds had been to her home with the minor child to celebrate the Thanksgiving holiday. At the hearing, Ms. Corness could not identify Mr. Ferguson in the courtroom and advised the trial court that she had never met Mr. Ferguson. (T. 6/17/16 page 46 lines 3-18).

Ms. Corness could not recall whether Mr. Perkins' mother was at the hospital when the child was born, but confirmed that Mr. Perkins was present at the birth of the child. (T. 6/17/16 page 46 lines 21-25/T. 6/17/16 page 47 lines 1-4). Ms. Corness also verified that Ms. Simmonds had held out Mr. Perkins as the child's father in all respects. Ms. Corness also recalled that she had frequently seen the child at Mr. Perkins' house when the child was living with Mr. Perkins. The child had also spent holidays with Mr. Perkins and his family and had stayed at Mr. Perkins' house for "weeks at a time". Ms. Corness also confirmed that the child had her own room at Mr. Perkins' house "with her favorite pillow" and "she has a table in the room with colors, paints, and Play-Doh." Ms. Corness was also aware that Mr. Perkins had enrolled the child in school in Broward County, "somewhere in the neighborhood." (T. 6/17/16 page 47 lines 4-25/T. 6/17/16 page 48 lines 1-3/T. 6/17/16 page 49 lines 4-10/T. 6/17/16 page 50 lines 10-19/T. 6/17/16 page 52 lines 1-8).

Additionally, Ms. Corness also recounted for the trial court that she had observed Mr. Perkins' mother, who the child referred to as, "Nanny", at his residence when the child was present and had also observed Ms. Simmonds with the child at Mr. Perkins' residence at "different times". Mr. Ferguson had never been present. (T. 6/17/16 page 53 lines 9-24).

Further, Ms. Corness corroborated that the minor child referred to Mr. Perkins as "Daddy". (T. 6/17/16 page 48 lines 4-7). Ms. Corness also verified that Ms. Simmonds had never claimed that Mr. Perkins was not the child's father. (T. 6/17/16 page 48 lines 11-18).

Mr. Daniel Rizzetto testified at the hearing before the trial court as well. Mr. Rizzetto was familiar with both Mr. Perkins and Ms. Simmonds. Mr. Rizzetto advised the trial court that he met Mr. Perkins when he was in the tenth grade and Mr. Perkins was in the ninth grade. Mr. Rizzetto also recalled that the first time that he met Ms. Simmonds was at the Hard Rock Casino, which was also the first occasion that Mr. Perkins met Ms. Simmonds. (T. 6/17/16 page 54 lines 15-25/T. 6/17/16 page 55 lines 1-5).

Mr. Rizzetto confirmed that Mr. Perkins was present for the birth of the child. (T. 6/17/16 page 56 lines 19-25/T. 6/17/16 page 57 lines 1-2). Mr. Rizzetto also verified that the child referred to Mr. Perkins as "Dad" or "Daddy", and that Mr. Perkins had a close bond with his daughter and that she loved her father. Mr. Rizzetto recounted for the trial court that Mr. Perkins talked about his child "all the time" and

tried to see her as much as he could. (T. 6/17/16 page 59 lines 1-25/T. 6/17/16 page 60 lines 24-25/T. 6/17/16 page 42 lines 1-3/T. 6/17/16 page 56 lines 1-5).

To this end, Mr. Rizzetto corroborated that the child had lived with Mr. Perkins for periods of time during her life and that Mr. Perkins had a room for the child in his house. Mr. Perkins maintained hair care products for the child in her room, blankets, a baby walker, a crib, toys, and products for the child in the bathroom. Mr. Rizzetto also confirmed that Mr. Perkins lived with Ms. Simmonds in Boston for about six (6) months after the child was born. (T. 6/17/16 page 57 lines 3-25/T. 6/17/16 page 58 lines 1-2).

Accordingly, Mr. Rizzetto advised the trial court that Mr. Perkins moved out of the State of Florida to be with Ms. Simmonds and their child. (T. 6/17/16 page 58 line 3). Mr. Rizzetto further explained that Mr. Perkins is his best friend and that since they became friends, they had spoken on a daily basis. Consequently, Mr. Rizzetto had spoken with Mr. Perkins while he was living in Boston. In fact, Mr. Rizzetto explained to the trial court that the only reason that Mr. Perkins left the State of Florida was to take care of his daughter. Mr. Rizzetto, specifically, confirmed that Mr. Perkins lived with Ms. Simmonds and worked at the Cheesecake Factory in Boston. (T. 6/17/16 page 61 line 25/T. 6/17/16 page 62 lines 1-16).

Mr. Rizzetto also recounted at the hearing that he had the opportunity to spend time with Mr. Perkins, Ms. Simmonds, and the child "all together" on "ten plus" occasions and that they interacted "like they were together" and appeared to be a

"family unit". Further, Mr. Rizzetto advised the trial court that contrary to Ms. Simmonds' testimony, the child never referred to Mr. Perkins as "Connor". (T. 6/17/16 page 58 lines 15-25/T. 6/17/16 page 41 lines 24-25/T. 6/17/16 page 42 lines 1-3).

Mr. Rizzetto also verified that prior to the filing of his Petition, Mr. Perkins was seeing the child on a fairly regular basis and he had never heard that Mr. Perkins was not the father of the minor child. In fact, at one point, on Facebook, Ms. Simmonds actually posted that she was married to Mr. Perkins and was using Mr. Perkins' last name as her last name. (T. 6/17/16 page 59 lines 14-25/T. 6/17/16 page 60 lines 1-8).

Mr. Rizzetto reiterated that Ms. Simmonds had stated that Mr. Perkins was the child's father and that he also had personal knowledge that Mr. Perkins had provided financial support to Ms. Simmonds on behalf of C.A.P. (T. 6/17/16 page 55 lines 16-25/T. 6/17/16 page 56 line 1). In addition, Mr. Rizzetto had never met Mr. Ferguson. (T. 6/17/16 page 56 lines 6-8).

Subsequent to the hearing, on June 29, 2016, the trial court entered its Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case (hereinafter the "Final Order"). (R. pages 84-86, A. pages 89-91). Accordingly, the trial court granted Ms. Simmonds' "Motion to Dismiss Petition for Paternity for Lack of Standing and Request for Attorney Fees" and dismissed with prejudice, Mr. Perkins' "Verified Amended Petition to Establish Paternity, Child Support and for Other Relief". (R. pages 84-86, A. pages 89-91).

In its Final Order, the trial court set forth in pertinent part as follows:

> **The mother came from Boston for the hearing. She did not bring the child to see either father. The mother testified that she left the child with a relative. Upon cross examination the mother confessed that the caretaker was not a relative but was a long term caretaker who was "like family". This is consistent with this Court's perception of the mother's testimony. It was generally not credible.** (R. page 85, A. page 90).

In addition, the trial court also clearly set forth in its Final Order the following:

> **The facts strongly favor the Petitioner having some involvement in the child's life. However, the law requires this Court to do something else. Perhaps there needs to be some movement in the law. However, it needs to come from a higher Court or from the Legislature. The function of this Court is to follow and uphold the law as this Court understands it.** (R. page 86, A. page 91).

In response to the trial court's Final Order, on July 7, 2016, Mr. Perkins filed the "Petitioner/Father's Motion for Rehearing". (R. pages 87-88). On September 13, 2016, the trial court entered its "Order on Motion for Rehearing", denying the Petitioner/Father's Motion for Rehearing. (R. page 100, A. page 92).

Consequently, Mr. Perkins filed his Notice of Appeal of the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", as well as the "Order on Motion for Rehearing". (R. pages 101-106). To this end, Mr. Perkins requested in his appeal to the District Court of Appeal Fourth District that the "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", entered by the lower tribunal on June 29, 2016, and the "Order on Motion for Rehearing", entered by the lower tribunal on September 13, 2016, be reversed, and the matter remanded to

the trial court for further proceedings to establish paternity on his behalf and for the formulation of an appropriate parenting plan and time sharing schedule on behalf of the biological parents with C.A.P. and in the best interest of the child.

On October 4, 2017, the District Court of Appeal Fourth District rendered its opinion in ***Perkins v. Simmonds***, 227 So.3d 646 (Fla. 4th DCA 2017) (A. pages 93-96). In reversing the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", the District Court of Appeal Fourth District reasoned in ***Perkins*** as follows:

> **This case is on all fours with *Lander*. Like in *Lander*, it is uncontested that Appellant is the biological father and that the Child was given Appellant's last name. Also like in *Lander*, Appellant alleged that the Mother represented she was getting or was divorced when she had the Child. Additionally, Appellant also established that he financially supported the Child. Most importantly, as was the case in *Lander*, Appellant's evidence established that Appellant had a strong parent/child relationship with the Child and was committed to continuing the relationship. Under these circumstances, it is not in the Child's best interest to apply the presumption of legitimacy at the cost of the Child's established relationship with her father. Accordingly, consistent with *Lander*, we reverse the trial court's order of dismissal of Appellant's paternity action and remand for further proceedings.**
> ***Id.*** at 649-650.

The District Court of Appeal Fourth District's opinion in ***Perkins*** is the subject of the instant appeal. ***Id.*** Accordingly, Mr. Perkins respectfully submits that the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", entered by the lower tribunal on June 29, 2016, was properly reversed by the District

Court of Appeal Fourth District on October 4, 2017, and, as such, the opinion of the District Court of Appeal Fourth District in ***Perkins*** should be affirmed in its entirety.

SUMMARY OF THE ARGUMENT

There is a strong presumption that a man married to the biological mother is in fact the legal father of the child. This presumption is one of the strongest rebuttable presumptions known to law and is based on the child's interest in legitimacy and the public policy of protecting the welfare of the child. Nevertheless, the presumption is not conclusive and may be overcome with clear and compelling reason based primarily on the child's best interests. However, common sense and reason are outraged by rigidly applying the presumption of legitimacy to bar a putative biological father's paternity action.

This case rests at the intersection of paternity and legitimacy where there exists a natural tension between reason and emotion, law and social consciousness, and the presumption of legitimacy and the best interests of a child in a modern world characterized by family structures of endless varieties and mores in constant flux. While mindful of the presumption of legitimacy and the importance that it serves for children who would otherwise face uncertainty in their family lives, C.A.P. is not one of these children. For C.A.P., it cannot be said that strictly applying the presumption of legitimacy is irrefutably in her best interests where it is uncontested that Mr. Perkins is her biological father and where Mr. Perkins has, since the child's birth, and is willing to continue to, assume that role in C.A.P.'s life.

Moreover, there is no longer a stigma associated with children born out of wedlock that would affect a child's well-being in today's society. Accordingly, in a country and, indeed, a state that has granted homosexuals the legal right to marry and adopt children, how can the parental rights of a biological father be denied?

To be clear, the reason for the equal protection clause was to assure that there would be no second class citizens. Yet, in most cases, the law continues to fail to provide equal protection to those unwed biological fathers who are prevented from parenting their children, when those children are born into an intact marriage. Rather, given the composition of modern day families, which often includes stepparents and partners of parents, the equal protection of the law must apply to Mr. Perkins and biological fathers similarly situated.

Consequently, the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", entered by the lower tribunal on June 29, 2016, was properly reversed by the District Court of Appeal Fourth District on October 4, 2017, and, as such, the opinion of the District Court of Appeal Fourth District in ***Perkins*** should be affirmed in its entirety.

ARGUMENT

I.

THE DISTRICT COURT OF APPEAL FOURTH DISTRICT DID NOT ERR IN REVERSING THE TRIAL COURT'S FINAL ORDER, AS THE TRIAL COURT ERRED IN DISMISSING WITH PREJUDICE THE BIOLOGICAL FATHER'S VERIFIED AMENDED PETITION TO ESTABLISH PATERNITY, TIME SHARING, CHILD SUPPORT AND FOR OTHER RELIEF UNDER THE FACTUAL CIRCUMSTANCES PRESENTED AND AS FLORIDA STATUTES SECTION 742 DENIES THE EQUAL PROTECTION OF THE LAW TO UNWED BIOLOGICAL FATHERS

Florida Statutes Section 742 "provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock." § 742.10(1), Fla. Stat. (2016). There is a strong presumption "that a man married to the biological mother is in fact the legal father of the child. This presumption is one of the strongest rebuttable presumptions known to law and is based on the child's interest in legitimacy and the public policy of protecting the welfare of the child." ***G.T. v. Adoption of A.E.T.***, 725 So.2d 404, 410 (Fla. 4th DCA 1999) (citing ***Department of Health & Rehabilitative Services v. Privette***, 617 So.2d 305 (Fla. 1993)). Nevertheless, the presumption is not conclusive and may be overcome with "clear and compelling reason based primarily on the child's best interests." ***Id.*** at 309.

To this end, in ***Kendrick v. Everheart***, 390 So.2d 53 (Fla. 1980), this Honorable Court carved out a means of rebutting the presumption to establish standing:

> **The fact remains, however, that the unwed father is not in all respects similarly situated with the unwed mother or the married father. This fact constitutionally permits the state to distinguish between them when the state does so on a basis realistically related to the differences in their situations.... As a consequence of the differences in their situations, the unwed father is required to show that he has manifested a substantial concern for the welfare of his illegitimate child before he may be accorded standing to assert an interest with respect to that child.**
>
> ***Id.*** at 60.

To be clear, before this Honorable Court's opinion in ***Daniel v. Daniel***, 695 So.2d 1253 (Fla. 1997), a child born during a marriage was presumed to be legitimate and, again, this Honorable Court had long declared this was "one of the strongest rebuttable presumptions known to the law." ***Eldridge v. Eldridge***, 16 So.2d 163 (Fla. 1944). However, after ***Daniel***, the presumption has become a label given to any child born during a lawful marriage, regardless of his or her paternity. Now "paternity" means the status of being the natural or biological father of a child and "legitimacy" means the status of a child born or conceived during a lawful marriage—whether or not the child received half of his or her genes from the husband. ***Daniel***, 695 So. 2d 1253. The term "legal father," on the other hand, is the man the law identifies as the father—whether or not he is the biological father. ***Id.*** at 1253.

Thereafter, as the District Court of Appeal Fourth District determined in ***Drouin v. Stuber***, 168 So.3d 305 (Fla. 4th DCA 2015), where, as in this case, a child is born during an intact marriage, the child does not face the threat of being declared

illegitimate. *See* ***Daniel***, 695 So.2d at 1255 (where child was born during an intact marriage, her status as a "legitimate" child would not be affected by any paternity determination) and ***Lander v. Smith***, 906 So.2d 1130, 1135 (Fla. 4th DCA 2005) (recognizing that, even if paternity is established in a man other than the mother's husband at the time of the child's birth, the child would not become illegitimate as he was born during the marriage).

Specifically, in ***Lander***, the child was conceived and born while the husband and wife were separated. ***Id.*** at 1131. The mother placed the putative biological father's name on the birth certificate and accepted support from him for the child. ***Id.*** The putative biological father also had a relationship with the child while the husband lived in another state. ***Id.*** Despite the fact that the child was conceived and born during an intact marriage and both the husband and wife objected to the paternity petition, the District Court of Appeal Fourth District allowed the case to proceed, finding that " 'common sense and reason are outraged' by rigidly applying the presumption of legitimacy to bar" the putative biological father's paternity action. ***Id.*** at 1134.

Pointedly, in ***Lander***, Mr. Lander, the biological father, contended that applying the presumption of legitimacy under the unique circumstances of his case was "outrageous to common sense and reason, especially where there are sufficient facts to overcome the presumption". Further, in ***Lander***, the mother, Smith, and the husband, Meyers, were separated, Smith acknowledged Lander as the child's father, Lander supported the child, Lander bonded with the child, Smith told Lander that her marriage

to Meyers was over, and Meyers was absent as a husband and a father. ***Id.*** at 1133.

In this case, both Ms. Simmonds and Mr. Ferguson admitted that they have had difficulties in their marriage. Further, Mr. Ferguson and Ms. Simmonds reside in different states. (T. 6/17/16 page 16 lines 17-19/T. 6/17/16 page 27 lines 23-25/T. 6/17/16 page 28 lines 1-11). Ms. Simmonds also readily admitted at the hearing that as a result of her relationship with Mr. Perkins, she gave birth to their daughter, C.A.P., and gave the child the last name of "Perkins", as Mr. Perkins is the biological father of the child. (T. 6/17/16 page 27 lines 23-25/T. 6/17/16 page 28 lines 1-11). Mr. Ferguson also admitted that the child had been held out by Ms. Simmonds as Mr. Perkins' daughter and, despite the fact that he testified that the minor child is his daughter, the minor child bears Mr. Perkins' last name. (T. 6/17/16 page 18 lines 5-9/T. 6/17/16 page 20 lines 10-16).

Here, Ms. Simmonds, initially, told Mr. Perkins that she had gotten married for "immigration papers" and advised him several times that she was getting a divorce. Mr. Perkins further indicated that he did not learn that Ms. Simmonds was still married until his Petition was filed and that Ms. Simmonds was contesting same. In short, Mr. Perkins had no idea that Ms. Simmonds' marriage to Mr. Ferguson was still intact, as he and Ms. Simmonds had been dating on and off for three (3) years. (T. 6/17/16 page 64 lines 1-24/T. 6/17/16 page 77 line 25/T. 6/17/16 page 78 lines 1-4).

Further, Mr. Perkins confirmed that Ms. Simmonds had never held out Shaquan Ferguson as the child's father in any way. In fact, Mr. Perkins had no idea that Shaquan Ferguson was Ms. Simmonds' husband. Mr. Perkins had met Mr. Ferguson several times, but he was introduced by Ms. Simmonds as a friend or a cousin, but never as her husband. (T. 6/17/16 page 78 lines 23-25/T. 6/17/16 page 79 lines 1-6).

In addition, Mr. Perkins was present at the hospital for the birth of the child and he and Ms. Simmonds brought the child home from the hospital. (T. 6/17/16 page 64 line 25/T. 6/17/16 page 65 lines 1-17). Mr. Ferguson was not present for the birth of the child. (T. 6/17/16 page 33 lines 4-5). Mr. Perkins also moved to Boston to take care of the child and resided with Ms. Simmonds and the child in Boston. (T. 6/17/16 page 58 line 3/T. 6/17/16 page 61 line 25/T. 6/17/16 page 62 lines 1-16/T. 6/17/16 page 66 lines 7-25/T. 6/17/16 page 67 lines 1-4/T. 6/17/16 page 77 lines 6-12). The child also lived with Mr. Perkins at his home in Florida for approximately two (2) months. (T. 6/17/16 page 57 lines 3-25/T. 6/17/16 page 58 lines 1-2/T. 6/17/16 page 71 lines 1-9).

To this end, Mr. Perkins had taken his daughter for doctors' visits and was present for her immunizations. Mr. Ferguson had never been present for any of these appointments. (T. 6/17/16 page 67 lines 14-24).

Moreover, in this case, Mr. Perkins, as well as Denise Corness and Mr. Daniel Rizzetto, verified that Mr. Perkins had been paying support to Ms. Simmonds on behalf of the parties' minor child since her birth and had paid for the child's schooling

as well. (T. 6/17/16 page 65 line 18-25/T. 6/17/16 page 66 lines 1-25/T. 6/17/16 page 67 lines 1-4, 25/T. 6/17/16 page 68 lines 1-25/T. 6/17/16 page 69 lines 1-5/T. 6/17/16 page 71 lines 1-9/T. 6/17/16 page 75 lines 11-13/T. 6/17/16 page 77 lines 6-12/T. 6/17/16 page 78 lines 5-12).

Further, in this case, the child had formed a close bond with Mr. Perkins and his family and he loves the child. (T. 6/17/16 page 47 lines 4-25/T. 6/17/16 page 48 lines 1-3/T. 6/17/16 page 49 lines 4-10/T. 6/17/16 page 50 lines 10-19/T. 6/17/16 page 52 lines 1-8/T. 6/17/16 page 71 lines 10-25/T. 6/17/16 page 72 lines 1-25/T. 6/17/16 page 73 lines 1-4). Mr. Perkins, as well as Denise Corness and Mr. Daniel Rizzetto, related at the hearing before the trial court that the child called Mr. Perkins "Daddy", and called his mother, the paternal grandmother, "Nanny", and that prior to the filing of his Petition, Ms. Simmonds had allowed Mr. Perkins to see his daughter whenever he wished. Mr. Perkins, Ms. Corness, and Mr. Rizzetto all confirmed that Mr. Perkins was held out as the child's father to everyone. (T. 6/17/16 page 69 lines 6-17).

In ***Lander*** the District Court of Appeal Fourth District reasoned as follows:

> **This case rests at the intersection of paternity and legitimacy where there exists a natural tension between reason and emotion, law and social consciousness, and the presumption of legitimacy and the best interests of a child in a modern world characterized by family structures of endless varieties and mores in constant flux. We are mindful of the presumption of legitimacy and the importance that it serves for children who would otherwise face uncertainty in their family lives. T.R.S. is not one of these children. For T.R.S. it cannot be said that strictly applying the presumption of legitimacy is irrefutably in his best interests**

> **where it is uncontested that Lander is his biological father and where Lander is willing to assume that role in T.R.S.'s life.**
> ***Id.*** at 1134.

As in ***Lander***, here, the child's biological father, Mr. Perkins, has and is willing to continue to embrace both the responsibilities and rights of being a father. To rigidly apply the presumption of legitimacy in this case shall create a scenario where C.A.P. is legitimate, but is left without a relationship with her biological father with whom she has already formed a close bond. To the contrary, as in ***Lander***, relaxing the presumption of legitimacy in this case shall result in a scenario where C.A.P. is both legitimate and involved in a nurturing and supportive relationship with both her biological father and her stepfather, Mr. Ferguson, should his marriage with Ms. Simmonds remain intact and should he choose to play a role in the child's life.

Additionally, given this Honorable Court's pronouncement that the purpose of the presumption is to protect the institution of marriage, the application of the presumption of paternity would not protect Ms. Simmonds' and Mr. Ferguson's marriage from the effects of disputed paternity. ***Privette*** 617 So.2d at 307. In reality, there is no dispute between Ms. Simmonds and Mr. Ferguson as to the identity of C.A.P.'s biological father, and Mr. Ferguson has never believed, and even testified at the hearing before the trial court, that he is not C.A.P.'s biological father. Furthermore, Ms. Simmonds and Mr. Ferguson have acknowledged the extramarital affair and subsequent birth of C.A.P., their public separation, and at least three (3) witnesses testified at the hearing before the trial court that Ms. Simmonds had always

held out Mr. Perkins as the child's father. Thus, Ms. Simmonds' and Mr. Ferguson's marriage will succeed or, perhaps, fail with or without the application of the presumption of legitimacy of the child.

Subsequent to ***Lander***, in ***Lohman v. Carnahan***, 963 So.2d 985 (Fla. 4th DCA 2007), the District Court of Appeal Fourth District opined as follows:

> **As Judge Altenbernd has written, these types of cases, involving "quasi-marital children," are intensely fact sensitive and "difficult, if not impossible, to address within the case law method." *S.D.*, 764 So.2d at 809. For centuries, the law developed on the assumption that a mother's parentage was certain, but a father's connection to a child could be open to doubt. The advent of DNA testing has changed the dynamics in these cases. In the past ten years, the law has struggled to balance the sanctity of marriage, the right of privacy, and the best interest of children against the knowledge of paternity acquired by DNA testing.**
> ***Id.*** at 988.

The District Court of Appeal Fourth District's decision in ***Lohman*** is now over ten (10) years old. In the ten (10) plus years that have elapsed since that decision, there has been a significant change in the composition of the American family. Specifically, the US Bureau of Census reports that one thousand three hundred (1300) new stepfamilies are forming every day; over fifty percent (50%) of United States families are remarried or re-coupled; the average marriage in America lasts only seven (7) years; one (1) out of two (2) marriage ends in divorce; and, fifty percent (50%) of the sixty million (60,000,000) children under the age of thirteen (13) are currently living with one (1) biological parent and that parent's current partner. *U.S. Department of*

Health and Human Services. National Vital Statistics Reports. Births: Final Data for 2014. Washington: Government Printing Office 2015.

Accordingly, in a country and, indeed, a state that has granted homosexuals the legal right to marry and adopt children, how can the parental rights of a biological father be denied? *See* ***Obergefell v. Hodges***, —— U.S. ——, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015) (same-sex couples have a constitutional right to marriage), ***Brenner v. Scott***, 999 F.Supp.2d 1278 (N.D.Fla.2014) (striking down Florida's ban on same-sex marriage), ***Brandon-Thomas v. Brandon-Thomas***, 163 So.3d 644, 648 (Fla. 2d DCA 2015), and ***Florida Department of Children and Families v. Adoption of X.X.G.***, 45 So.3d 79 (Fla. 3d DCA 2010) (Florida Statutes Section 63.042(3), which categorically excludes homosexuals from adopting served no rational purpose and violated the equal protection clause of the Florida Constitution).

In fact, today, there are Florida cases wherein the courts determined that Florida law permits a child to have two (2) mothers or two (2) fathers. *See* ***T.M.H. v. D.M.T.***, 79 So.3d 787 (Fla. 5th DCA 2011) and ***Greenfield v. Daniels***, 51 So.3d 421 (Fla. 2010); *approved in part, disapproved in part*, 129 So.3d 320 (Fla. 2013). Pertinent to the instant case, in ***T.M.H.***, two (2) women involved in a romantic relationship were involved in a custody dispute. One of the women gave birth to a child who was conceived using donor sperm and the other woman's egg. ***T.M.H.***, 79 So.3d at 788–89. The two (2) women raised the child for several years before their relationship deteriorated. ***Id.*** at 789. The District Court of Appeal Fifth District was required to

interpret the term "donor" as used in Florida Statutes Section 742.14 (2009). As no statutory definition was provided, the District Court of Appeal Fifth District relied on case law in holding that the woman who provided the egg to conceive the child was not considered a "donor" under Florida Statutes Section 742.14 and; therefore, that she did not surrender her parental rights to the child as would a "donor" contemplated by the statute. ***Id.*** at 791–94. The District Court of Appeal Fifth District rejected the argument that other statutory chapters applied to foreclose the parental rights of the woman who donated her egg, finding that "[c]hapter 742, entitled 'Determination of Parentage,' is the statutory vehicle by which paternity is established for children born out of wedlock." ***Id.*** at 794. Consequently, the District Court of Appeal Fifth District concluded in ***T.M.H.*** that both women had parental rights to the child. ***Id.*** at 803.

On review, in ***D.M.T. v. T.M.H.***, 129 So.3d 320 (Fla. 2013), this Honorable Court disagreed with the District Court of Appeal Fifth District that Florida Statutes Section 742.14 did not apply to the facts of the case. Further, this Honorable Court concluded that Florida Statutes Section 742.14 was unconstitutional as applied to the woman who provided the egg because it would deprive her—the biological mother—of parental rights "where she was an intended parent and actually established a parental relationship with the child." ***Id.*** at 327. In so concluding, this Honorable Court noted the sanctity of the parent-child biological connection and recognized that, " '[w]hen an unwed [biological] father demonstrates a full commitment to the responsibilities of parenthood by com[ing] forward to participate in the rearing of his child,' " the father's

inchoate constitutional right develops into a fundamental right. ***Id.*** at 335 (quoting ***Lehr v. Robertson***, 463 U.S. 248, 261, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)). This Honorable Court explained in ***D.M.T.*** that the same principle applied to the woman who provided the egg and that; therefore, the woman had a protected fundamental right to be a parent to her child. Consequently, this Honorable Court explained in ***D.M.T.*** that, as there had been no showing of a compelling government interest to deprive the biological mother of her fundamental right to be a parent, the statute was unconstitutional as applied. ***Id.*** at 347.

In ***D.M.T.***, this Honorable Court emphasized the protection of a biological parent's right to parent their child where that parent has demonstrated " 'a full commitment to the responsibilities of parenthood.' " ***Id.*** at 335 (quoting ***Lehr***, 463 U.S. at 261, 103 S.Ct. 2985). Further, "…although an unmarried man who impregnates an unmarried woman does not automatically have a fundamental right to be a parent to the child, his right to be a parent develops substantial constitutional protection as a fundamental right if he assumes responsibility for the care and raising of that child." ***Id.*** at 334. But what happens, as in so many cases, if the biological mother prevents the biological father from having contact with the child or from participating in the child's life in any manner? How then is the biological father to demonstrate "a full commitment to the responsibilities of parenthood"?

In this case, since the birth of the child, Mr. Perkins had clearly demonstrated "a full commitment to the responsibilities of parenthood." Nonetheless, despite the overwhelming evidence that Mr. Perkins had been actively involved in the rearing and parenting of C.A.P. since her birth, his efforts were clearly thwarted by Ms. Simmonds once he filed his Petition and were, ultimately, rejected by the trial court, who declined to grant Mr. Perkins standing to establish paternity. (T. 5/11/16 page 29 lines 8-12/T. 5/25/16 page 61 lines 19-25/T. 5/25/16 page 62 lines 1-8/T. 5/25/16 page 66 lines 22-25/T. 5/25/16 page 67 lines 1-14/T. 5/25/16 page 142 line 25/T. 5/25/16 page 143 lines 1-25/T. 5/25/16 page 144 lines 1-6/T. 5/25/16 page 152 lines 13-25/T. 5/25/16 page 162 lines 4-25). (R. pages 84-86). This, despite the trial court's own pronouncements that Ms. Simmonds' testimony was "generally not credible" and that, "[t]he facts strongly favor the Petitioner having some involvement in the child's life." (R. pages 85-86).

This Honorable Court reasoned in ***D.M.T.*** that, "[i]t would indeed be anomalous if, under Florida law, an unwed biological father would have more constitutionally protected rights to parent a child after a one night stand than an unwed biological mother who, with a committed partner and as part of a loving relationship, planned for the birth of a child and remains committed to supporting and raising her own daughter. As the District Court of Appeal Fifth District stated, 'it would pose a substantial equal protection problem to deny an unwed genetic mother the ability to assert parental rights after she established a parental relationship with her child while allowing an unwed

genetic father to do so.'" ***D.M.T.***, 129 So.3d at 339. However, in reality, generally, the law falls short for unwed genetic fathers, as in the instant case before the trial court.

To this end, subsequent to this Honorable Court's decision in ***D.M.T.***, the District Court of Appeal Second District in ***C.G. v. J.R.***, 130 So.3d 776 (Fla. 2d DCA 2014) determined that Florida does not recognize dual fathership and; therefore, only one (1) man may be designated the child's legal father with the rights and responsibilities thereof at any given time. Nonetheless, the District Court of Appeal Second District opined in ***C.G.*** as follows:

> **This is not a case where either the biological father or the legal father has abandoned the child. Nor is this a case where either father failed to demonstrate a strong desire to be a part of the child's life or even the ability to care for the child. Rather, this is one of those cases presenting the unfortunate circumstance of a child who was born into a legally intact marriage but who was conceived as the result of an extramarital affair. The consequence of that circumstance is that the third party, here C.G., has an interest in that child which is adverse to the legal father, here J.R. We are cognizant of the gravity of our decision and the legal ramification that it has on C.G.'s and H.G.-R.'s relationship. However, under the facts of this case, there is simply no support in Florida law for the proposition that H.G.-R. is entitled to have two legally recognized fathers. Because similar circumstances could arise in other cases, the legislature may choose to readdress the issue of a biological father's right to establish paternity where the child is conceived and born during an intact marriage to another man. But under the current state of the law, we are constrained to affirm the trial court's order vacating the February 2009 order approving the original paternity and support agreement.**
> ***Id.*** at 782.

To be clear, "[t]he reason for the equal protection clause was to assure that there would be no second class citizens." ***Osterndorf v. Turner***, 426 So.2d 539, 545–46 (Fla. 1982). Yet, in most cases, the law continues to fail to provide equal protection to those unwed biological fathers who are prevented from parenting their children, when those children are born into an intact marriage. For example, if a married man has an extramarital affair with an unmarried, single woman, and that woman becomes pregnant with his child, that man, the biological father, can bring an action to establish paternity, as well as for the establishment of a parenting plan and time sharing schedule on behalf of his minor child. *See* Florida Statutes Section 742.011 (2016). In such a case, under the laws of this state, the biological mother cannot prevent the biological father from establishing the paternity of the child or from participating in the rearing of the child, absent some extraordinary circumstance. *See* Florida Statutes Section 742.031 (2016). However, what if the law was the same for unwed, single women as it is for unwed, single men? What if once that woman, the married man's paramour, became pregnant and delivered a child, the biological father could assert that the child was born during his intact marriage and that the biological mother would have to surrender the child to his wife, who is not the biological mother of the child? That is exactly what the trial court demanded of Mr. Perkins in this case. In point of fact, is a man's genetic material any less valuable than that of a woman as to the creation of a human life? The answer is, it is not and, rather, the reality of modern day society is that the stigma once associated with a child born out of wedlock is no longer valid.

Moreover, contrary to the Petitioner(s) arguments in this case, given the composition of modern day families, which often includes stepparents and partners of parents, the equal protection of the law must apply to Mr. Perkins and biological fathers similarly situated. In point of fact, this Honorable Court has explained that the fundamental right to have children is a right "so basic as to be inseparable from the rights to 'enjoy and defend life and liberty, (and) to pursue happiness.'" ***Grissom v. Dade County***, 293 So.2d 59, 62 (Fla. 1974) (quoting art. I, § 2, Fla. Const.).

This is exactly what compelled Justice Brennan to proclaim in his dissenting opinion in ***Michael H. v. Gerald D.***, 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989), a view that would appear to accord with the view of this Honorable Court and is supportive of the District Court of Appeal Fourth District's opinion in ***Perkins***:

> **In construing the Fourteenth Amendment to offer shelter only to those interests specifically protected by historical practice, moreover, the plurality ignores the kind of society in which our Constitution exists. We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncracies. Even if we can agree, therefore, that "family" and "parenthood" are part of the good life, it is absurd to assume that we can agree on the content of those terms and destructive to pretend that we do. In a community such as ours, "liberty" must include the freedom not to conform. The plurality today squashes this freedom by requiring specific approval from history before protecting anything in the name of liberty.**
> 491 *U.S.* at 141, 109 *S.Ct.* 2333.

Consequently, the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", entered by the lower tribunal on June 29, 2016, was properly reversed by the District Court of Appeal Fourth District on October 4, 2017, and, as such, the opinion of the District Court of Appeal Fourth District in ***Perkins*** should be affirmed in its entirety.

CONCLUSION

Based upon the foregoing argument and authority, Mr. Perkins respectfully submits that the trial court's "Final Order on Motion to Dismiss for Lack of Standing and Dismissing Case", entered by the lower tribunal on June 29, 2016, was properly reversed by the District Court of Appeal Fourth District on October 4, 2017, and, as such, the opinion of the District Court of Appeal Fourth District in ***Perkins*** should be affirmed in its entirety.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true copy of the foregoing has been sent via E-Service to VICTOR H. WAITE, ESQUIRE, Attorney for the Petitioner(s), Victor H. Waite, P.A., 3440 Hollywood Boulevard, Suite 415, Hollywood, Florida 33021, at victor@vhlwlaw.com, on this 15th day of March, 2018.

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CERTIFICATE OF COMPLIANCE WITH FILING AND FONT REQUIREMENTS

I HEREBY CERTIFY, that the Respondent's Answer Brief on the Merits has been submitted to this Honorable Court via E-Service transmission and in Times New Roman 14 point font in compliance with all applicable Administrative Orders and Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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