

Biology Alone Doesn't Always Define A Parent

July 20, 2017 | by Matthew Coleman

On June 26, 2017, the LGBTQ community marked the two-year anniversary of the Supreme Court decision Obergefell v. Hodges, which made marriage equality the law of the land by finding that marriage is a fundamental right for same-sex couples. The United States Supreme Court greeted this anniversary with the release of its latest decision affecting the rights of same-sex couples, Pavan v. Smith, which ruled that married same-sex couples are entitled to have their names listed on their children's birth certificates.

The issue in the Pavan case arose following a challenge to the state of Arkansas's protocol relating to the issuance of birth certificates. In Obergefell, the court held that the Due Process and Equal Protection clauses of the 14th Amendment require states to extend marriage rights to same-sex couples on the same terms and conditions as opposite-sex couples. Following that decision, Arkansas began issuing marriage licenses to same-sex couples. The state, however, refused to list same-sex couples' names on birth certificates for children born during the marriage. Arkansas stated that its birth certificate rules were based on biology, and that same-sex partners cannot both be biologically related to the child.

The U.S. Supreme Court, however, noted that Arkansas was already issuing birth certificates to parents based on criteria other than biology. Much like the New Jersey rules, in Arkansas, if a child is born to a spouse during the marriage, the married spouse will be listed on the child's birth certificate regardless of biological connection. For instance, if a woman is artificially inseminated, her husband (rather than the sperm donor) will be listed as the father on the child's birth certificate based upon their marital relationship.

The court held that Arkansas was providing disparate treatment to same-sex couples because its birth certificate rules were already based upon more than mere genetics in some cases. This latest case is a landmark for LGBTQ rights because it demonstrates that the Obergefell decision stands for more than the proposition that states must merely recognize same-sex marriages. Same-sex couples are entitled

to the same constellation of rights, benefits, and responsibilities that the states have linked to marriage.