



1608 Crestwood Lane
McLean, Virginia 22101

June 22, 2016

The Hon Nikki Haley
Office of the Governor of South Carolina
1205 Pendleton Street
Columbia, SC 29201

Dear Governor:

Since our son Jacob was born last August, Rick and I have been fighting constantly for parental rights and because you have been aware of our battle, we wanted to provide you with the latest. Because our case has been ongoing, we could not share any updates, and that was extremely frustrating as we wanted our friends and family to know what was happening.

There is much to report. The summary is that Rick and I are now officially recognized as Jacob's parents. Along with Jacob's sisters C.J. and Ellie, **we are now a family of five**. If you want the executive briefing, that's it! You are done reading.

But if you want the full story, keep reading...

Jacob's journey has been frustrating, emotional, and surreal. While we wish our family did not have to endure the prejudice and judicial activism we faced, our experience has given us resolve to help others who may face similar challenges. They may not have the resources to fight – and some ultimately lose their child.

As you may know, C.J. (age 6) and Ellie (age 4) were birthed thanks to the miracle of surrogacy. Our daughters are related to one of us biologically. Jacob's story is different. Nearly three years ago in 2013, friends of the family – who have four children through IVF – approached us about adopting two of their embryos, frozen since 2002. They did not want the embryos destroyed. We were honored and humbled by their offer.

At that point, we set about to thoroughly investigate how to legally receive an embryo and establish parentage over any children which resulted. This process took months.

In a state that recognizes the validity of surrogacy, parental rights are recognized through an expedited process, since the intended parents are known right from the start. This is in contrast to adoption, where the adoptive parents are not known when the child is conceived and the biological parents' rights must be terminated. This is why adoption is a more lengthy process and why many states recognizing surrogacy have developed a relatively streamlined process for recognizing parental rights in surrogacy. Out of all 50 states, 12 emerged as the best options.

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Several lawyers confirmed that Wisconsin was a state that not only allowed surrogacy, but had a state Supreme Court decision validating surrogacy and declaring that surrogacy contracts were binding. We entrusted a wonderful woman in Wisconsin to be our surrogate. Right before Christmas of 2014, we learned the hard news, although not entirely unexpected: there was only one heartbeat. Only one embryo survived, and our surrogate carried Jacob throughout 2015. He was due in late August.

In June of that year, Rick and I, along with our daughters, traveled to Madison to appear before Judge Sarah O'Brien when we petitioned the Court for parental rights over our unborn son. Importantly, this case was completely uncontested. The original biological parents, the surrogate, and the surrogate's husband were all enthusiastically supportive. And so was Judge O'Brien.

Judge O'Brien was a reserve judge – a retired judge who served as an active judge for 20 years. She was filling in because the judge to whom we were assigned had recently resigned. Judge O'Brien praised our parenting during our testimony to the Court, indicated that Jacob was fortunate to soon be a part of our family and that it was in his “best interest” to be our son. This judge said that she would grant our parental rights petition through an interim pre-birth order, declared no further hearings were necessary, and instructed us to inform the Court when our child was born so the final order could be signed.

We were ecstatic. And we were relieved that we had finality and security for our child and for us.

Less than a month later, however, things changed dramatically. The Wisconsin Governor appointed a new judge to fill the vacancy on a permanent basis: James Troupis, a long-time political activist.

Within days of his appointment, Judge Troupis summoned our lawyers into court. He demurred that he had no bias against a same-gender family, but that he wanted to use a “different process” for determining Jacob's parental rights – even though Judge O'Brien already determined we were Jacob's parents and no circumstances had changed. He ordered the appointment of a *Guardian ad Litem* (GAL), “to determine what is in the best interest of the child.”

Needless to say we were alarmed about this change of direction. When we were alerted that the GAL had been appointed on August 10, we immediately reached out to him. We were taken aback when he refused to even speak to us. So was our lawyer – it was unheard of. After much back and forth between him and our attorney, he only agreed to talk with us to determine our fitness to be Jacob's parents if we were under oath. He demanded that he depose us.

Meanwhile, Jacob was born a week after the GAL was appointed. Instead of congratulatory messages from the GAL, we were accosted – literally hours after the birth – by demands from the GAL that Judge Troupis deny us the ability to leave the state with our son.

We started doing some research because it had become clear that the judge was adversarial to our type of family. Apparently, it had been some 10 years since a GAL was appointed in a non-contested surrogacy case, and over 25 years since a GAL had been

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appointed outside the county borders in such a case. Judge Troupis had to go several counties and nearly 75 miles away to find a GAL for our son to fit the judge's agenda: Mark Knutson. Knutson was making a specific exception to participate in a Dane County proceeding; his website advertises his services in several counties, but not Dane.

Knutson is well known for his radio commentary "The Word and The Law," where he discusses how to ensure God's will is enacted in the legal system. His associate attorney, Erik Krueger, is affiliated with "Liberty Counsel," the group known for its defense of public officials who refuse to obey the civil law because they have alleged religious objections. Krueger had written publicly that any public official who condones same gender marriage "forfeit[s] God's blessing." We knew what we were up against.

Because the girls had to get back to Virginia to start school in early September, we faced the prospect of splitting up our family just weeks after Jacob's birth. And ultimately, we had to do exactly that. Telecommuting and handling NAM business on the road, I stayed in Wisconsin with Jacob while Rick drove back home with the girls. He subsequently flew back for the depositions that the GAL required of us. Eventually, thanks to the outstanding work of a new attorney we hired for our case, Judge Troupis finally released us with a "temporary" custody order over Jacob so that we could return to Virginia and reunite our family.

The GAL wasn't done with subpoenas, however. He next ordered the surrogate and her husband, as well as the owner of the surrogacy agency who matched us with the surrogate, to undergo hours of unfocused and wandering interrogation in deposition. No one in the legal community in Wisconsin had ever heard of a GAL "deposing" any party in an amicable, non-contested proceeding. Not only was it unnecessary and unprecedented, it was obviously extremely costly. Judge Troupis had ordered us to pay all costs associated with the GAL's work.

After many months of legal back and forth, including objecting to the ever increasing bills we were receiving from the GAL (we had 10 days to object to each bill in order to preserve our appeal rights), we were getting more concerned by the day. The hostility and vitriol directed at us by the GAL and the judge were incomprehensible. But because this was a family court and our case was technically confidential, we couldn't say a word publicly about our situation.

In mid-November, the GAL issued his long awaited report. Typically, there is no GAL in an uncontested surrogacy parental rights case like ours. But in the extraordinarily unusual case where one is appointed, the GAL will normally talk with the intended parents for an hour or so, and then write a brief report consisting of less than 10 pages of information that details the family life of which the child will become a part. That report is usually issued within a few days of the conversation. Mr. Knutson didn't do any that. Instead, he authored a caustic and combative 272 page report that he issued three months after our child was born.

In it, he bizarrely accused us of attempting to enact "Plato's vision of a perfect society", whereby the government takes children from their rightful parents. He accused us of engaging in commercial "baby buying" (even though we were asked to accept embryos that could potentially be destroyed someday). He declared his personal philosophy – not based in the law – in all capital letters, "SURROGACY IS NEVER IN THE BEST INTEREST OF ANY CHILD", and he also condemned traditional adoption in the process.

Finally, he unbelievably concluded that despite all of this, it was in Jacob's best interest to have Rick and me as his parents. This unexpected twist was likely due in large part to the many character reference letters he received on our behalf. Our support from family and friends was so overwhelming, there was no way that the GAL could conclude Rick and I were not fit parents.

But Knutson didn't end there. He declared, "there is no legal pathway for them to achieve that." Never mind the fact that the Wisconsin Supreme Court had stated there absolutely was. Never mind the fact that countless numbers of uncontested parental rights petitions had been granted for surrogacies of children who were biologically or not biologically related to the intended parents – whether they were same gender or opposite gender, or even single. Never mind the fact that there was clear statute that provided a pathway for the determination of parental rights in surrogacy cases. This was a GAL on a mission.

And clearly so was Judge James R. Troupis.

The judge set another hearing for January 11, 2016, nearly five months after Jacob was born. For perspective, a parental rights case of this nature would normally take a couple of days at most. The first judge, Judge O'Brien, didn't even believe that amount of time was necessary and ruled that she would sign a final order the day Jacob was born. Of course, she was no longer there, having been replaced by Judge Troupis.

At the January 11 hearing, Judge Troupis stated he had no intention of ruling at that time and that he would let us know when he would. Then, after a mere six months on the bench, he jetted off to Hawaii for a month of vacation.

We were informed that when he returned, he began to tell colleagues that he "didn't like the job" and planned to resign early. Fearful of facing the voters, he had not declared a candidacy for election to the seat permanently, so his appointment would expire on July 31 in any case and he would be replaced by a new judge, chosen by the electorate.

On March 25, 11 weeks after the last hearing and 9 months after the first, Judge Troupis finally issued his edict. As we fearfully anticipated, he denied us parental rights. He also did something that was patently illegal and unbelievably cruel – he terminated the parental rights of the surrogate without her consent. He deliberately and callously left Jacob as an orphan.

The judge's order was shrill and piercing.

Troupis declared that Rick and I were "human traffickers."

Troupis referred to women as "wombs".

Troupis left Jacob with no protections of parentage.

His only merciful act was leaving intact his temporary custody order for the short term.

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It would take days to fully outline the legal melee, and everything that went on hour by hour for many weeks and months prior to that final order. In fact, in order to deal with the constant back and forth between lawyers (we have had to pay 11 of them – 9 to help us save Jacob and 2 ordered by the Court who were trying to take him away from us), Rick was forced to make the difficult decision to leave his 16 year government relations career in the banking industry last December. One of us had to deal with the mountains of daily communications from the attorneys.

It would also take days to explain what happened AFTER March 25, but I will try to give it to you in a nutshell.

The rumors persisted that Judge Troupis would soon be resigning. We knew that we had 20 days after March 25 to ask for the Court to reconsider our case. In a standard case, that's the time limit. But if we asked Troupis to reconsider, we knew exactly what the outcome would be.

When Troupis finally did resign, he did so effective May 2, which many involved in our case believe he did to specifically impact Jacob's case negatively.

Undaunted, on May 4, we filed with the Dane County Circuit Court to reopen the judgment, a special form of reconsideration that allows a Court to reconsider a case where there have been "manifest errors of the law," among other extraordinary circumstances, and which, according to statute, is not governed by a time limit.

At the same time, our appeal rights were set to expire on May 9. We were forced to file an "intent to appeal" in the Appellate Court. In addition, we were advised to begin the steps necessary to pursue traditional adoption in our home state of Virginia in the Fairfax County Circuit Court as a backup in case everything ultimately went poorly in Wisconsin. So we now had three distinct court cases in process attempting to save our son.

Our motion to reconsider our original case was reassigned to another branch of the Dane County Circuit Court, since there was now no judge in the branch in which we had been held hostage for so long. On May 16, a new judge – Judge Peter Anderson – agreed to hear our request for reconsideration and he set a hearing date for June 3.

He split our case into two questions: 1) parental rights determination, and 2) our challenges to the GAL bills, which alone totaled nearly \$100,000. Again, for perspective, the customary range for GAL fees is between \$500 and \$1,500.

On June 3, justice for Jacob was finally achieved.

The new judge was amazing. Our hearing took over two hours, and other than letting our lawyers deliver opening comments for a mere two minutes, Judge Anderson spent most of the next one hour and fifty-eight minutes relentlessly grilling Mr. Knutson, the "Guardian ad Litem," and questioning basically everything he did to our family for the last 10 months. He chastised him for taking "this many months, this much money, this many pages of briefs to debate the question."

While he didn't use these exact words, Judge Anderson challenged the GAL for holding us hostage while he and Judge Troupis attempted to exert their personal philosophy, instead of doing their jobs and applying the law. When the GAL attempted to explain his reasoning, Judge Anderson verbally slapped him down by reminding him that Wisconsin statute permits surrogacy, as he held up the case reporter containing the seminal Wisconsin Supreme Court's decision on surrogacy. The GAL indicated he didn't agree with that law. The Judge said that reasonable people might disagree on the intent of the law, but that the Wisconsin Supreme Court had unequivocally ruled that granting parental rights for surrogacy in a case like ours was, indeed, the law of the land, whether the GAL and Judge Troupis liked it or not.

At the conclusion of the hearing, Judge Anderson completely vacated Judge Troupis' horrific order – and all of its vile language. He called the Troupis order “harsh” and “weird” and “faulty”. He declared it did, indeed, contain “manifest error” of the law. He had much more colorful language as well, but I will leave that for the official record of the proceedings.

Most importantly, Judge Anderson restored in total the original order from Judge O'Brien – issued nearly one year ago – that gave us parental rights over Jacob.

Judge Anderson's next act was to fire Mark Knutson, the Guardian ad Litem appointed by Troupis. That was quite significant because it means that this evil man cannot appeal the action of Judge Anderson to the Court of Appeals.

On the second issue of the exorbitant fees that Knutson churned and that we were forced by Troupis to pay, Judge Anderson did not rule in our favor. But, he did not rule against us either. He explained that there was no urgent need to immediately resolve the issue – as there was with Jacob's orphaned status – and that it was something the Court of Appeals was in the appropriate position to address in time. Then he suggested that everyone reach a settlement. Our attorney is dealing with that.

The bottom line is we are greatly relieved and gratified that Jacob is finally, unquestionably, ours. Just a few days ago, we received the signed birth certificate that shows both of our names as Jacob's parents. We have the finality and security that we thought we had been granted by a court one year ago. Our family is complete.

Over the course of nearly a year, our family faced the punishing force of a hostile judge who aggressively worked to deny the promise of equality under the law. We endured not just a challenge of law, but a challenge of who we are, and our right to form a family. Rick and I – every single day – thought we might lose our son. It was pure terror and agony.

We mortgaged our home three times to pay all of the calamitous legal bills and would do it all over again to save any one of our children. No doubt the emotional scars will take a long time to heal, and the financial hit will be long-lasting. But we will recover financially. We are blessed.

Regrettably, others are not as fortunate.

That is why Rick and I are asking those who have wanted to do more to help us, to please direct their support to the Family Equality Council so that other families will not be forced to endure a hellish nightmare like ours. That is especially true for those who might not have the resources to fight public servants who abuse their power to enact their personal and religious views instead of applying the law. No one should be forced to give up their child.

Sadly, even with marriage equality affirmed by the Supreme Court of the United States, same gender families still face discrimination from activist egomaniacal jurists like Jim Troupis and extremist zealots like Mark Knutson and Erik Krueger. If you are so inclined, you can contribute to the Family Equality Council at: www.familyequality.org/jacobsfund. Every dollar contributed to "Jacob's Fund" will be used to help the Family Equality Council change not just laws and policies, but also hearts and minds.

We are so thankful that during this horrible ordeal we have been enveloped by the love and prayers of our family and friends. It has sustained us and given us hope that the future is bright for others who face similar challenges.

On behalf of our entire family, I am

Sincerely,

Jay
Jay Timmons

*Governor
your leadership is essential
to bringing the GOP into the 21st
Century and away
from these
extremists.
- J*

