NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN RE THE MARRIAGE OF:

REBEKAH KAY WILSON,

Petitioner/Appellee,

vs.

KRISTINA LEA WILLIAMS,

Respondent/Appellant.

Case No. 121,316
(Consolidated with
Case No. 121,912)

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE LYNNE MCGUIRE, TRIAL JUDGE

AFFIRMED AND REMANDED

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OPINION BY DEBORAH B. BARNES, JUDGE:

In this consolidated dissolution of marriage proceeding,[2] Appellant Kristina Lea Williams appeals from the district court's Journal Entry of April 6, 2023 (April 2023 Order) in which the court, among other matters, denied her "Motion for Reconsideration/New Trial and Brief in Support" and entered judgment on its "Journal Entry of November 18, 2022" (November 2022 Judgment), file stamped March 1, 2023. A trial was held November 14 through 18, 2022, on the issue that is the subject of this appeal; that is, "the determination as to who are the legal parents of the minor child at issue in this case[.]" The court entered a "**Letter Ruling**" on February 13, 2023, in which, among other things, the court requested a

[2] Case No. 121,316 is an appeal from the district court's denial of a motion to reconsider/new trial in consolidated case FD-2021-3681 (Appellee Rebekah Kay Wilson's petition for dissolution of marriage) and case FP-22-44 (Intervenor Jeremy Harlan Vaughn's petition for paternity). The denial of the motion concerns a custody issue upon the district court's determination of parentage of the minor child who is the subject of the custody dispute. An Agreed Decree of Dissolution of Marriage was entered on July 5, 2023. Case No. 121,192 is an appeal from the district court's award of attorney fees to Ms. Wilson entered in December 2023 after the entry of the decree of dissolution. By order of the Oklahoma Supreme Court, the two appeals were consolidated.

"Journal Entry be prepared reflecting this Court's ruling on or before March 10, 2023." The parties were unable to reach an agreement and a motion to settle journal entry was filed February 28, 2023. Ms. Williams filed her motion for reconsideration/new trial on March 10, 2023. Ms. Williams also appeals from the district court's December 21, 2023 Attorney Fee Order (December 2023 Order) in which the court, after entry of the decree of dissolution of marriage, awarded attorney fees to Ms. Wilson. Ms. Williams, however, has waived review of the order awarding attorney fees to Ms. Wilson;[3] thus, the only issue presented in this appeal is the district court's determination of Ms. Williams's legal status with respect to the minor child. We affirm and remand.

BACKGROUND

This dissolution of marriage proceeding has been ongoing since December 2, 2021, when Ms. Wilson filed her petition for dissolution of marriage in which,

[3] Ms. Williams made no argument in her appellate briefs concerning the consolidated appeal in Case No. 121,912 in which she appealed from the December 2023 Order. The district court made numerous findings and awarded Ms. Wilson $35,354.39 in attorney fees with statutory post judgment interest pursuant to 12 O.S. 2021 § 727.1. On December 27, 2023, Ms. Wilson filed a motion for appeal-related attorney fees. On January 24, 2024, Ms. Wilson filed a post appeal motion to dismiss the attorney fees appeal in Case No. 121,912 because Ms. Williams failed to comply with a certain Oklahoma Supreme Court rule. That motion was deferred to the decisional stage by the Oklahoma Supreme Court, but on February 20, 2024, that order was withdrawn. The Court denied the motion to dismiss and deferred to the decisional stage Ms. Wilson's motion for appeal-related attorney fees. Because Ms. Williams has made no argument regarding the district court's December 2023 Order, she has waived review of that issue in this consolidated action. Okla. Sup. Ct. R. 1.11, 12 O.S. 2021, ch. 15, app. 1.

among other matters, she alleged she and Ms. Williams were married on June 1, 2019, and that:

> There are no children of the marriage. There is one child that was born [August 2019] during the marriage, however the alleged/biological father [Jeremy Harlan Vaughn] has held himself out as the father for approximately the past year and a half, the minor child knows the biological father, and his biological paternal extended family.

Ms. Wilson alleged she understood Mr. Vaughn would be filing a paternity action pursuant to the Oklahoma Uniform Parentage Act (UPA), 10 O.S. 2021 §§ 7700-101 through 7700-902.

Ms. Williams filed a response and counterclaim in which, among other allegations, she stated the parties were married and have remained lawfully married since June 1, 2019, and that "[t]he parties have one minor child . . . born 2019[.]" She further alleged no other party other than she and Ms. Wilson has or claims to have any custody or visitation rights to the minor child and alleged it is in the child's best interest that custody be awarded to her. Ms. Wilson filed a response denying "the parties have one child," and alleging Ms. Williams lacks standing to seek custody or visitation with the minor child because she has not established the legal mother/child relationship defined in § 7700-201 of the UPA. It is undisputed that Ms. Williams is not the child's biological mother and she has not adopted the child.

Shortly thereafter, Mr. Vaughn filed his motion to intervene alleging he is the child's biological father, that he filed a paternity action in another court on January 18, 2022, and "seek[s] . . . to avoid the possibility of inconsistent rulings in two cases involving the same minor child." It is undisputed Mr. Vaughn is the child's biological father.

By court minute, on January 27, 2022, the trial court determined Ms. Williams had a legal remedy to establish parental rights that she failed to pursue "and as such the child is not a child of the marriage." Ms. Williams filed a motion to reconsider in which she asserted Oklahoma law does not require adoption to establish a right to seek custody and visitation where it can be determined the party stands *in loco parentis* to the child and asserted the constitutional rights of same-gender married couples is violated by denying to a same-gender married couple who conceives a child through artificial insemination the same rights as opposite-gender married couples. Ms. Wilson and Mr. Vaughn filed separate objections and responses to the motion to reconsider. A hearing was held over two days in June 2022 in which the court heard argument and received evidence and at the conclusion of which the court determined the dissolution of marriage and paternity cases should be consolidated "for now, with the paternity issue only being, of course, the part that's consolidated, that's with regard to parentage and custody and visitation." The court granted the motion to reconsider, vacated a paternity decree

that was entered in the paternity case (FP-2022-44) that was based on the January 27, 2022 minute because the minute was not a final order and Ms. Williams did not have notice or involvement in the paternity case, and found that "further testimony and evidence will need to be presented with regard to the adjudication of rights, custody and visitation[.]"[4]

The matter was set for trial in November 2022 on the issue of "Determination of Parentage."[5] During the four-day trial, the court heard testimony from the three parties, among others, and received other evidence. The court ruled that Ms. Williams was not the child's legal parent, adjudicated Mr. Vaughn the father, and determined that adjudication is in the child's best interest.

The November 2022 Judgment made various findings of fact, some facts occurring prior to Ms. Wilson and Ms. Williams's marriage and some after their marriage and the birth of the child. The court found that Ms. Wilson and Mr. Vaughn entered a "Known Sperm Donor and Recipient Agreement" in September 2018. Ms. Williams was neither a party to nor mentioned in the agreement or present when it was signed. The agreement stated only Ms. Wilson "decided to

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[4] The district court continued the hearing to consider whether Ms. Williams should have interim visitation with the minor child because the child had been included in an emergency Victim Protective Order entered by a different judge. At the conclusion of the evidentiary hearing, the district court "grant[ed] a five-year VPO no-contact order" against Ms. Williams.

[5] At the trial, the court stated the trial was "a little bit of an unusual trial in that we have three actual parties in this matter," noting that the dissolution of marriage case and the paternity action were consolidated for the purpose of determining the issue with regard to parentage.

'conceive and raise a child'" and that she and "'a conceived child' would constitute a 'family.'" While the agreement provided that Mr. Vaughn would facilitate or approve of the adoption, the court found neither Ms. Wilson nor Ms. Williams asked him to do so. The court further found that over a two-day period in December 2018, Ms. Wilson and Ms. Williams participated in non-medically assisted insemination that eventually resulted in conception of the minor child. Ms. Wilson and Ms. Williams were married on June 1, 2019, and the child was born in August 2019. The court found that Ms. Williams was present for the birth of the child and was named on the child's birth certificate as the Second Mother, and that the child was given a hyphenated last name of Wilson-Williams. The court found "[Ms.] Williams was actively involved in the minor child's life up until November 2021 at which time [Ms.] Wilson obtained a Victim Protective Order against [Ms.] Williams and moved in with [Mr.] Vaughn." The court further found all three parties have "held this child [out] as their own prior to and after the child's birth," and that "[a]ll three parties have bonded with the minor child." The court found Ms. Wilson and Mr. Vaughn are the child's biological parents and that Ms. Williams knew she needed to pursue "second-parent adoption to secure parental rights of the minor child, but never attempted to do so."

In its legal rulings, the court found that Ms. Williams failed to establish a mother/child relationship pursuant to UPA § 7700-201(A)(1) & (2), and because

she "identifies as female and was born a woman," she cannot establish a father/child relationship pursuant to § 7700-201(B), nor seek the presumption of paternity in § 7700-204. The court found Oklahoma has yet to adopt a gender-neutral version of § 7700-204. The court acknowledged and found that Ms. Williams "prove[d] by a preponderance of the evidence that she acted in a parental role during her marriage," but found "[a] stepparent can also act in a parental role." The court found there was no legal bar to adoption in this case. The court ruled that Ms. Wilson and Mr. Vaughn are the child's legal parents and adjudicated Mr. Vaughn the father of the child.

It is from the district court's denial of her motion to reconsider/new trial that Ms. Williams appeals.

STANDARD OF REVIEW

A motion for new trial is authorized by 12 O.S. 2011 § 651.[6] *See Schepp v. Hess*, 1989 OK 28, ¶ 9, 770 P.2d 34, 38. "In considering the correctness of the

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[6] Although titled a motion to reconsider/new trial, the present appeal is from the district court's denial of Ms. Williams's motion filed pursuant to 12 O.S. 2021 § 651(6), "New Trial" ("A new trial is a reexamination in the same court, of an issue of fact or of law or both, after . . . a decision by the court. The former . . . decision shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes, affecting materially the substantial rights of the party: . . . 6. [t]hat the . . . decision is not sustained by sufficient evidence, or is contrary to law[.]"). Given the legal basis for her motion, we conclude it was one for new trial. We, of course, acknowledge the consequences of a denial of a motion to reconsider and a motion for new trial can be significant. Thus, while both a motion to reconsider or a motion for new trial, like the motion filed in this case, filed within ten days of the underlying judgment will extend the appeal time to the time a decision on the motion is made, 12 O.S. 2011 § 990.2; Okla. Sup. Ct. R. 1.22(c)(1), 12 O.S. Supp. 2013, ch. 15, app. 1, what can be raised on

trial court's order overruling [a] Motion for New Trial, we first note that such motions are directed to the sound discretion of the trial court[] and will not be disturbed on appeal in the absence of an abuse of that discretion." *Nu-Pro, Inc. v. G. L. Bartlett & Co., Inc.*, 1977 OK 226, ¶ 5, 575 P.2d 620, 622 (footnote omitted). "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Gowens v. Barstow*, 2015 OK 85, ¶ 11, 364 P.3d 644, 649 (citation omitted); *Head v. McCracken*, 2004 OK 84, ¶ 2, 102 P.3d 670, 673, 674.

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appeal is determined by whether the motion is treated as for reconsideration or new trial. Title 12 O.S. 2011 § 991(b) provides that "[i]f a motion for a new trial be filed and a new trial be denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted." The only issues Ms. Williams raised in that motion were the court's ruling that she is not a legal parent under the UPA and the constitutionality of an interpretation of the UPA that excludes her protection under the act because she is the same-gender spouse of the biological mother of a child born during the couple's marriage. The district court's denial of her motion, if treated as a denial for new trial, was based on those issues raised in the motion and only those issues are preserved for appellate review. *See, e.g., Indep. Sch. Dist. # 52 of Okla. Cnty. v. Hofmeister*, 2020 OK 56, ¶ 14, 473 P.3d 475, 484 ("A party who files a motion for new trial must raise therein the issues the party seeks to use as assignment of error in a subsequent appeal." (footnote omitted)).

Further, the only propositions of error Ms. Williams argues in her Brief-in-chief relate to the ruling concerning the applicability of the presumption of paternity to Ms. Williams and constitutional challenge she argues must ensue if that presumption is not applied to her; consequently, other issues are deemed waived. Okla. Sup. Ct. R. 1.11(f) & (k)(1), 12 O.S. 2021 & Supp. 2022, ch. 15, app. 1. Thus, legal theories that might establish a parent/child relationship or confer custody or visitation rights other than being the biological mother or having adopted the child were not pursued as reasons for new trial. On appeal, Ms. Williams does not assert any law, judicial or statutory, for establishing that legal relationship other than § 7700-204. Consequently, whether she is barred from raising those issues on appeal because they were not presented in her motion or because she has not offered argument on appeal regarding those potential issues, our review is confined to only those issues raised on appeal.

The present appeal raises questions concerning statutory interpretation and thus presents a question of law. *State v. Tate*, 2012 OK 31, ¶ 7, 276 P.3d 1017, 1020. Questions of law require a de novo review standard. *Kluver v. Weatherford Hosp. Auth.*, 1993 OK 85, ¶ 14, 859 P.2d 1081, 1084. In reviewing a trial court's legal rulings, "an appellate court claims for itself plenary independent and non-deferential authority . . . ." *Id.* (citation omitted).

ANALYSIS

I. Ms. Williams's Parental Status Under the UPA

On appeal, Ms. Williams raises two propositions of error, one of which contains three sub-propositions. She first contends she is the legal parent of the minor child "under a straightforward application of the marital presumption codified in the UPA";[7] therefore, Ms. Williams asserts the district court erred in failing to find she is the child's parent. Second, she contends the district court erred in failing to apply the marital presumption solely because she is a same-gender spouse and asserts: that applying standard principles of statutory construction establish she is the presumed parent under the presumed paternity statute, § 7700-204(A)(1) of the UPA; that interpreting § 7700-204 to exclude same-gender spouses would render the provision unconstitutional, and thus, it should be interpreted in gender-neutral terms; and that applying § 7700-204 only to

[7] Br.-in-chief at 9.

male spouses renders that statute unconstitutional and this Court should strike the male-only spouse restriction.

She argues, in keeping with "well-settled [law] that where possible, as it is here, state laws should be construed to comply with constitutional requirements rather than to violate them. *Shadid v. City of Oklahoma City*, 2019 OK 65, ¶ 7, 451 P.3d 161, 165-166."[8] Thus, she argues, "rather than interpret the marital presumption to exclude same-sex spouses, as the trial court did, the Court should clarify that [10 O.S. § 7700-204] must be applied to any person, regardless of gender, who meets the statutory criteria, both to effectuate the statute's purpose and to avoid rendering it unconstitutional."[9] She argues that in the alternative, § 7700-204 must be declared unconstitutional and unenforceable should this Court reach the constitutional issues.

The Oklahoma Supreme Court has declined, so far, to apply the UPA to custody and visitation conflicts between same-gender married couples. The issue presented to the Court on review in *Guzman v. Guzman*, 2021 OK 26, 507 P.3d 630, was:

> whether the Court of Civil Appeals properly applied our laws on parental rights in a dispute between a married couple regarding custody and visitation with a minor child who was adopted by only

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[8] Br.-in-chief at 8.

[9] Br.-in-chief at 8-9.

> one of the parties prior to marriage.[10] We hold that it did not. The child was adopted by [the respondent] prior to the marriage. [The petitioner] never adopted the child. As a step-parent, [the petitioner] has no standing to petition the court for paternity of the child.

Id. ¶ 1, 507 P.3d at 631. The Court therefore vacated the opinion of the Court of Appeals and affirmed the district court's order dismissing the petitioner's petition for paternity.

The Court also stated that it granted certiorari to clarify its "recent decision in [*Schnedler v. Lee*, 2019 OK 52, 445 P.3d 238,] specifically concerning its limited holding and limited application in paternity actions." *Guzman*, ¶ 5, 507 P.3d at 632. The *Guzman* Court explained:

> Our decision in *Schnedler* concerned a question of first impression in Oklahoma: whether our laws recognized a non-biological same-sex co-parent's right to seek custody and visitation on the same grounds as the legal, biological, same-sex co-parent when the couple was unable to legally marry in Oklahoma. Under those specific facts, we held that they must. *See Schnedler*, 2019 OK 52, ¶ 10, 445 P.3d 238. However, *Schnedler* is limited in nature and does not extend any additional rights to step-parents, grandparents, or others. *Id. Schnedler* does not apply to legally married couples.

Guzman, ¶ 10, 507 P.3d at 633.

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[10] The Court recognized that the parties were in a relationship since 2012 and that the respondent adopted the child in 2015. Two years later, the parties married, then separated about a year and a half later. The petitioner sought "to establish her parental status and for a determination on custody and support." *Id.* ¶ 3, 507 P.3d at 631. Thereafter, the respondent filed a petition for dissolution of the marriage and alleged no children were born of the marriage.

As noted above, although in *Schnedler* and *Guzman* the Court was concerned with an issue of parental rights regarding custody and visitation, in neither case did the Court rely on the UPA in rendering its decision. The *Guzman* Court relied on long-standing Oklahoma jurisprudence applicable to any stepparent regardless of whether the marriage was a same-gender or opposite-gender marriage. In *Schnedler*, the Court recognized that Oklahoma has not enacted "clear statutory reforms to address the ambiguities of same-sex parentage," explaining as follows:

> [The UPA] was enacted in 2006 and appears to have in no way anticipated conflicts between biological and non-biological same-sex co-parents regarding the parental rights of children artificially conceived. Given that same-sex marriage would not even be legally recognized until nearly a decade after the Uniform Parentage Act's adoption, this omission is understandable. Still, this Court is left with "absolutely no textual indication" of how to proceed and "can derive no help from the textual analysis of the Act."

2019 OK 52, ¶ 21 & n.10, 445 P.3d at 244 & n.10 (citation omitted). *See also Guzman*, 2021 OK 26, ¶ 13 n.9, 507 P.3d 630, 637 n.9 (Gurich, J., dissenting) ("In 2017, the National Conference of Commissioners of Uniform State Laws approved, and recommended for enactment in all states, a new Uniform Parentage Act. The Act accords a *presumption of parentage* to '[a]n individual' if he or she 'resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual's child.' Unif. Parentage Act § 204(a)(2) (Unif. Law Comm'n

2017).[11] The Oklahoma Legislature adopted the previous incarnation of the Uniform Parentage Act in 2006.[12] *See* 10 O.S. §§ 7700-101 to -902." (emphasis added)).

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[11] Section 204 of the 2017 Uniform Parentage Act which Oklahoma has not adopted provides:

> (a) An **individual** is presumed to be a parent of a child if:
>
> (1) except as otherwise provided under [[Article] 8 [concerning surrogacy agreements] or] law of this state other than this [act]:
>
> (A) the **individual and the woman who gave birth** to the child are **married** to each other and **the child is born during the marriage**, whether the marriage is or could be declared invalid;
>
> (B) the individual and the woman who gave birth to the child were married to each other and the child is born not later than 300 days after the marriage is terminated by death, [divorce, dissolution, annulment, or declaration of invalidity, or after a decree of separation or separate maintenance], whether the marriage is or could be declared invalid; or
>
> (C) the individual and the woman who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child, and:
>
> (i) the assertion is in a record filed with the [state agency maintaining birth records]; or
>
> (ii) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; **or**
>
> (2) **the individual resided in the same household with the child for the first two years of the life of the child**, including any period of temporary absence, and openly held out the child as the individual's child.
>
> (b) A **presumption of parentage** under this section may be overcome, and competing claims to parentage may be resolved, only by an adjudication under [Article] 6 or a valid denial of parentage under [Article] 3.

(Emphasis added.)

[12] Section 7700-204 of the Oklahoma UPA provides:

> A. **A man** is presumed to be the father of a child if:
>
> 1. **He and the mother of the child are married to each other and the child is born during the marriage**;
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> 2. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;
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> 3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
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> 4. After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
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> a. the assertion is in a record with the State Department of Health, Division of Vital Records or the Department of Human Services,
>
> b. he agreed to be and is named as the child's father on the child's birth certificate, or
>
> c. he promised in a record to support the child as his own; or
>
> 5. **For the first two (2) years of the child's life, he resided in the same household with the child and openly held out the child as his own**.
>
> B. A **presumption of paternity** established under this section may be rebutted only by an adjudication under Article 6 of the Uniform Parentage Act.

(Emphasis added.) Section 608 of the 2017 version of the Uniform Parentage Act entitled "Adjudicating Parentage of Child with Presumed Parent," is substantively different from the provisions set out in Article 6 of the Oklahoma UPA entitled "Proceeding to Adjudicate Parentage." Section 7700-607 sets out the procedures for rebutting the presumption of paternity established in § 7700-204, among other things. Section 608 of the 2017 Uniform Parentage Act does more than merely substitute the word individual for "mother" or "father," and "man" or "woman," in determining parentage under the revised act.

The only published Oklahoma appellate opinion considering the applicability of the UPA to a same-gender couple is the Court of Civil Appeals decision in *Dubose v. North*, 2014 OK CIV APP 68, 332 P.3d 311. There the appellate court denied the standing of the plaintiff in a same-gender relationship with the defendant who sought paternity under the UPA. In this pre-*Obergefell v. Hodges*, 576 U.S. 664 (2015) case, the parties were unmarried but had been co-habiting since 2001, during the time the defendant was pregnant through artificial insemination and at the time of the child's birth. The parties co-parented the child for a period of several years after the child's birth but had "not enter[ed] into any type of co-parenting agreement." 2014 OK CIV APP 68, ¶ 2, 332 P.3d at 312. The Court reasoned as follows:

> The parties dispute whether [plaintiff] has rights as a parent under the [UPA]. The UPA applies to determination of parentage in the State of Oklahoma and "does not create, enlarge, or diminish parental rights or duties under other laws of this state." *See* 10 O.S. 2011 § 7700-103(C).
>
> [Plaintiff] argues that she has a legally protected interest as a parent under the UPA and relies on a gender-inclusive interpretation of the UPA. The UPA provides that a proceeding to adjudicate parentage may be maintained by:
>
> > (1) the child, (2) the mother of the child, (3) a man whose paternity of the child is to be adjudicated, (4) the Department of Human Services, or (5) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.
>
> *See* 10 O.S. 2011 § 7700-602. Additionally, the next section states who may be joined to a proceeding to adjudicate parentage, "(1) the mother of the child; and (2) a man whose paternity of the child is to be

adjudicated." Section 7700-102 states that "man means a male individual of any age." This section succinctly defines the meaning of man with regard to the UPA. [Plaintiff] is a female who is not the mother of the minor child. Accordingly, [plaintiff] lacks standing to maintain this suit to adjudicate parentage.

[Plaintiff] argues that the UPA, specifically the portions of the statute dealing with the interpretation of *man* and *presumed father* should be read according to 25 O.S. 2011 § 24 which states "words used in the masculine gender include the feminine and neuter." Although this is a creative argument, 25 O.S. 2011 § 1 states that "words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears." Here, there is no contrary intention that appears in the UPA. Sections 7700-602 and 7700-603 of the UPA clearly state, with no apparent contrary intention, who may bring and join a proceeding to adjudicate parentage.

Dubose, ¶¶ 5-7, 332 P.3d at 313.

Dubose was specifically overruled in *Ramey v. Sutton*, 2015 OK 79, 362 P.3d 217, wherein the Court stated:

> Today we broaden [*Eldredge v. Taylor*, 2014 OK 92, 339 P.3d 888], acknowledging the rights of a non-biological parent in a same sex relationship who has acted *in loco parentis* where the couple, prior to [*Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014)] or *Obergefell* . . . (1) were unable to marry legally; (2) engaged in intentional family planning to have a child and to co-parent; and (3) the biological parent acquiesced and encouraged the same sex partner's parental role following the birth of the child.

Ramey, ¶ 2, 362 P.3d at 218 (footnotes omitted). The Court concluded:

> This case is intended to recognize those unmarried same sex couples who, prior to *Bishop* and *Obergefell*, entered into committed relationships, engaged in family planning with the intent to parent jointly and then shared in those responsibilities after the child was born. Public policy dictates that the district court consider the best interests of the child and extend standing to the nonbiological parent

> to pursue hearings on custody and visitation. This decision does not extend any additional rights to step-parents, grandparents, or others.

Id. ¶ 19, 362 P.3d at 221. *Dubose* was overruled "[i]n so far" as it "is in conflict with [the *Ramey*] opinion," *id.* ¶ 18, 362 P.3d at 221, but the *Ramey* Court's decision was not one that was made under the UPA.

The *Ramey* Court stated:

> In her petition in error, [the petitioner] contends as a non-biological mother she has a legally protected interest giving her standing (1) as a parent under the provision "as otherwise provided by law" under the [UPA]; (2) as a third party recognized as a parent under Oklahoma common law estoppel principles; and (3) as a parent whose rights are constitutionally protected through the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Because we hold that the long recognized equitable doctrine of *in loco parentis* provides [the petitioner] standing to pursue a hearing on custody and visitation, we need not reach the other theories raised by [the petitioner].

Id. ¶ 3, 362 P.3d at 218-19. *Dubose*, therefore, is at least persuasive authority that the UPA is not gender neutral and, thus, not applicable to same-gender couples; however, mandate issued in *Dubose* one month before the decision in *Bishop* (holding Oklahoma's prohibition of same-gender marriage was unconstitutional) and, of course, *Obergefell* (holding all state laws prohibiting same-gender marriage were unconstitutional). Thus, the *Dubose* Court did not consider the constitutional issues presented in this appeal that bear on a decision concerning whether the

UPA, specifically the § 7700-204 presumed paternity provision of the UPA, can or should be interpreted in gender-neutral terms.[13]

Unlike the issue presented in *Guzman*, the issue in this case requires consideration of the Legislative intent expressed in the UPA to determine what, if any, parental rights Ms. Williams has.[14] In applying commonly recognized rules of statutory interpretation,[15] we disagree with Ms. Williams's assertion that the §

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[13] We are mindful of the dissenting opinion in *Guzman* in which Justice Gurich stated:

> For over six years, since the decisions in *Bishop* and *Obergefell*, Oklahoma's statutory schemes for adoption and parentage have not been updated. The specially concurring opinion discusses how [the petitioner] could have adopted the child as [the respondent's] spouse under 10 O.S. 2011 § 7503-1.1. That statute, which has not been updated since 1998, still refers only to husband and wife. Likewise, the provision relating to establishment of the parent-child relationship, 10 O.S. 2011 § 7700-201, defines parentage solely in terms of mother and father, and has gone unchanged since 2006. Nothing about any of these statutes is gender-neutral and likely the reason [the Department of Human Services] discouraged [the petitioner] from adopting [the minor child].

Guzman, ¶ 13, 507 P.3d at 637 (Gurich, J, dissenting). However, as above noted, the Oklahoma Supreme Court has thus far declined to consider the UPA in its decisions regarding parental rights of custody and visitation for same-gender couples and, thus, has made no determination about whether the UPA must be interpreted in only gender-neutral terms. Moreover, in the present case, no argument has been made that Ms. Williams was unable to or prohibited from adopting the minor child. In fact, the district court found Ms. Williams knew she needed to pursue a second-parent adoption to secure parental rights but chose not to do so.

[14] Early in this case, Ms. Williams appears to have asserted she has a right to seek custody and visitation based on a contract theory, through the parties' commitment to co-parent the child, *see, e.g., Eldredge*, 2014 OK 92, ¶ 21, 339 P.3d at 895; *Ramey*, and that issue was reasserted in the Pretrial Order. Ms. Williams, however, abandoned that theory in her motion for new trial even though the district court made no specific finding about the presence or absence of such an agreement, and as noted, she has not raised that theory on appeal as a basis for reversal; thus, she has waived consideration of that issue.

[15] "The fundamental rule of statutory construction is to ascertain the intent of the legislature," *Tate*, 2012 OK 31, ¶ 7, 276 P.3d at 1020 (citation omitted), "and that intent is first

7700-204 presumed paternity provision of the UPA must apply to her in gender-neutral terms or that the statute must be found to be unconstitutional because it gives parentage benefits to opposite-gender married couples that are not provided to same-gender married couples.

Regardless of a person's sexual orientation, the UPA provides the means by which the legal relationship of parent and child may be established and thus affords that person the obligations, protections, and benefits of the UPA from that relationship.[16] Section 7700-201 provides:

> A. The mother-child relationship is established between a woman and a child by:
> 1. The woman's having given birth to the child;
> 2. Adoption of the child by the woman; or
> 3. As otherwise provided by law.
>
> B. The father-child relationship is established between a man and a child by:
> 1. An unrebutted presumption of the man's paternity of the child under Section 8 of the Uniform Parentage Act;

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sought in the language of the statute," *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, ¶ 6, 136 P.3d 656, 658 (citation omitted). "This inquiry begins with the text of the statute and – absent unresolvable ambiguity – ends with the text." *Hall v. Galmor*, 2018 OK 59, ¶ 45, 427 P.3d 1052, 1070. "Where the language of a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction, the statute will be accorded the meaning as expressed by the language" used. *Berry v. State ex rel. Okla. Pub. Emps. Ret. Sys.*, 1989 OK 14, ¶ 6, 768 P.2d 898, 899 (citation omitted). "Words and phrases of a statute are to be understood and used not in an abstract sense, but with due regard for context, and they must harmonize with other sections of the Act." *Tate*, ¶ 7, 276 P.3d at 1020.

[16] For example, pursuant to § 7700-203, "Unless parental rights are terminated, a parent-child relationship established under the Uniform Parentage Act applies for all purposes, except as otherwise provided by the laws of this state." The duration and scope of that relationship apply to same-gender and opposite-gender parents.

2. An effective acknowledgment of paternity by the man under Article 3 of the Uniform Parentage Act, unless the acknowledgment has been timely rescinded or successfully challenged;
3. An adjudication of the man's paternity;
4. Adoption of the child by the man; or
5. As otherwise provided by law.

In the present case, Ms. Williams is not the child's biological mother, but she could have established a mother-child relationship through adoption or as "otherwise provided by law."[17] Consequently, in our view, the UPA in general does not infringe Equal Protection rights of individuals because of their sexual orientation.

We do not, however, agree with Ms. Williams's premise that the presumption of paternity is a restriction on the marital rights of same-gender couples. While we agree with the arguments made by Ms. Williams and made in the Amicus Curiae Brief that if same-gender married couples are denied the fundamental rights associated with marriage conferred upon opposite-gender married couples, then the constitutional rights of same-gender married couples are violated. United States Supreme Court decisions mandate such protection and, if

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[17] We again note, that the only "otherwise provided by law" argument Ms. Williams raises on appeal is the UPA presumed paternity statute. Ms. Wilson below and on appeal discusses other law – such as laws concerning artificial insemination – that may or may not establish a legal relationship of mother and child and, thus, may or could have provided Ms. Williams with the means by which she could have protected her rights to custody and visitation under the "otherwise provided by law" provision in § 7700-201(A). We, however, offer no view about those arguments because, as above stated, Ms. Williams did not rely on law other than § 7700-204 to establish her parental rights under § 7700-201(A)(3).

applicable, those protections must be provided.[18] That protection of the constitutional rights of same-gender married couples, however, is not the issue presented here. Rather, the paternity presumption is based on gender. While that gender-based statute must also pass constitutional muster, the test applied is one of quasi-scrutiny.

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[18] We reiterate, the UPA provides the means by which the legal relationship of parent and child may be established regardless of the sexual orientation of the parent. However, if the presumption of paternity is based on a marital right, then we agree marital rights of same-gender couples, at least the rights of female-gender couples, are not accorded the same marital rights as opposite-gender marital couples. As reasoned in *Pavan v. Smith*, 582 U.S. 563 (2017), wherein the United States Supreme Court held unconstitutional an Arkansas statute that "denied married same-sex couples access to the constellation of benefits that the Stat[e] ha(s) linked to marriage." *Id.* at 566 (internal quotation marks omitted) (citation omitted). The *Pavan* Court explained: "*Obergefell* proscribes such disparate treatment. As we explained there, a State may not "exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." *Id.* (citation omitted). The *Pavan* holding makes clear that in the present case if § 7700-204 is based on a marital right, its disparate treatment of same-gender marital couples is constitutionally intolerable; thus, § 7700-204 would be unconstitutional. It would be unenforceable. It would give neither Ms. Williams nor Mr. Vaughn a presumption of paternity. Further, assuming we can declare but one provision of the UPA unconstitutional, we do not agree the statute can be salvaged by interpreting § 7700-204 in gender neutral terms. Not only would the definitional section of § 7700-102(16) need to be revised, but as above discussed, more significantly, revision of § 7700-204 requires consideration of the revision of and additions to other provisions of the UPA. If § 7700-204 is unconstitutional this Court's effort to "fix" it by making it gender-neutral usurps the legislative role because that solution is this Court's determination that the recommendation of the Uniform Law Commissioners is the proper and only solution to the problem even though that solution has been available to but not adopted by the Oklahoma Legislature for nearly ten years. If the statute is unconstitutional, that deprivation of protected rights must be corrected, but it is the Legislature not this Court that must act.

Accordingly, under the facts of the present case, if the statute is unconstitutional, the district court's order – though determined under a different theory – is correct. Ms. Williams is not the presumed parent of the child. Mr. Vaughn's paternity must also be established outside the presumption. It was. The uncontested fact is that Mr. Vaughn is the child's biological father and has a right to seek custody of and visitation with the minor child. The district court made the custody award based on Mr. Vaughn's status as the child's biological father and found that award was in the child's best interest. Therefore, the district court's order is not in error.

Some provisions of the UPA, specifically, § 7700-204, evidence a legislative intent concerning a parent that only applies to a male – that is, that imposes legal obligations or provides legal benefits available only to a male – those provisions do not, ipso facto, render the statute constitutionally infirm because they do not apply to women. It is, however, a presumption based on gender, a quasi-suspect classification;[19] thus, § 7700-204 can be upheld under the Equal Protection Clause if it is substantially related to an important or substantial state interest.

While it likely may be the case that when the UPA was enacted in Oklahoma in 2006, the Legislature did not anticipate "conflicts between biological and non-biological same-sex co-parents regarding the parental rights of children artificially conceived," *Schnedler*, ¶ 21 & n.10, 445 P.3d at 244 & n.10, the plain language of the UPA makes it clear that part of the Legislature's intent was to establish the

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[19] As explained recently by the Oklahoma Supreme Court:

> When legislation categorizes persons based on a suspect class, such as race or national origin, it is subject to strict scrutiny under the Equal Protection Clause – meaning the legislation will only be upheld if it is narrowly tailored to serve a compelling state interest. When legislation categorizes persons based on a quasi-suspect classification – such as sex or illegitimacy – it is subject to intermediate scrutiny – meaning the legislation will only be upheld if it is substantially related to an important or substantial state interest. But when the categorization is not based upon suspect or quasi-suspect classifications, the legislation is subject only to rational-basis review, meaning it will be upheld if it is rationally related to a legitimate government purpose.

In re M.R., 2024 OK 28, ¶ 13, 548 P.3d 120, 127 (citations omitted).

legal status of fatherhood in circumstances where that legal status concerns the biology of men.[20]

In this regard, the UPA definitions found in § 7700-102 specifically define "Acknowledged father," "Adjudicated father," "Alleged father," and "Presumed father," as a "man," and a "'Man' means a male individual of any age[.]" The definitional section also delineates terms applicable to both men and women, including the definitions of genetic testing,[21] parent,[22] and parent-child relationship.[23] Further, § 7700-204, the statute Ms. Williams asserts applies to her, is titled "Presumption of Paternity-Rebuttable." Paternity is defined in Black's Law Dictionary as follows: "1. The quality, state, or condition of being a father,

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[20] *See In re Adoption of J.M.B.*, 2018 OK CIV APP 47, ¶ 12, 420 P.3d 1044, 1046-47 ("[T]here is a difference between the *status* of being a biological father and the *status* of being a father in the legal sense. The law has nothing to do with the former. However, situations arise where it is necessary for the law to define the status of fatherhood *in a legal sense*. The Uniform Parentage Act provides for establishing the mother-father-child relationship in a legal sense. 10 O.S. 2011 § 7700-201.11." (footnote omitted) (emphasis in original)).

[21] 10 O.S. § 7700-102(10) ("'Genetic testing' means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. . . .").

[22] *Id.* § 7700-102(13) ("'Parent' means an individual who has established a parent-child relationship under Section 7700-201 of this title[.]").

[23] *Id.* § 7700-102(14) ("'Parent-child relationship' means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship[.]").

esp. a biological one; fatherhood. *Cf.* FILIATION." Black's Law Dictionary (12th ed. 2024). Similar definitions for paternity are found in standard dictionaries.[24]

In our view, the plain meaning of the words used in the definitional section of the UPA and other sections of the UPA, including § 7700-204, evidence a legislative intent to impose certain obligations and rights upon a male because of a man's biological ability, either through sexual intercourse or artificial reproductive means, to fertilize the ovum through his contribution of sperm, a biologically impossible contribution for a female to make by any means. While § 7700-204 raises a presumption of paternity in circumstances where the male and the female who gives birth to the child are married, it also raises the presumption of paternity in circumstances where, for the first two years of the child's life, the male has resided with the child and held the child out as his own; that is, regardless of marriage. § 7700-204(A)(5). Consequently, we conclude the Legislative intent evidenced in § 7700-204 is not a denial to a same-gender marital couple of a means of establishing a legal relationship to a child given to an opposite-gender married couple. Rather, it is a means of establishing the legal status of fatherhood based on the biology of a male. The recognition of this means – not the only means – for

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[24] *See, e.g.,* Webster's Third New International Dictionary of the English Language Unabridged 1654 (Merriam-Webster 1961) (Paternity is defined as "1: the quality or state of being a father: FATHERHOOD . . . 2: origin or descent from a father: male parentage . . . .").

establishing that legal relationship of fatherhood is an important state interest very much embracing, among other things, stability and the best interest of the child.

Moreover, it is not this Court's place to substitute its judgment for the Legislature's wisdom in imposing obligations and conferring benefits on a defined group of persons because of physical attributes only that group can possess.[25] We, thus, decline to apply gender-neutral terms to § 7700-204 because such a construction materially alters the evident Legislative purpose of § 7700-204.

We, therefore, conclude Ms. Williams's constitutionally protected rights are not infringed by the gender-specific presumption of paternity set forth in § 7700-204. Consequently, the district did not err in its legal ruling that Ms. Williams is

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[25] In this regard, the Oklahoma Supreme Court has explained with respect to statutory interpretation:

> In considering a statute's constitutionality, courts are guided by well-established principles. A heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality and every presumption is to be indulged in favor of the constitutionality of a statute. If two possible interpretations of a statute are possible, only one of which would render it unconstitutional, a court is bound to give the statute an interpretation that will render it constitutional, unless constitutional infirmity is shown beyond a reasonable doubt. A court is bound to accept an interpretation that avoids constitutional doubt as to the legality of a legislative enactment.

Fent v. Okla. Capitol Improvement Auth., 1999 OK 64, ¶ 3, 984 P.2d 200, 204 (per curiam) (citations omitted). "Respect for the integrity of our tripartite scheme for distribution of governmental powers," however, "commands that the judiciary abstain from intrusion into legislative policymaking. A court's function, when the constitutionality of a statute is put at issue, is limited to a determination of the validity or invalidity of the legislative provision and a court's function extends no farther in our system of government." *Id.* ¶ 4, 984 P.2d at 204 (citations omitted).

not the "presumed father" of the child pursuant to § 7700-204, and that the UPA provides the means by which she, as a same-gender spouse, could have established her parental rights to the child and protected her rights to custody and visitation of the child born during her marriage to Ms. Wilson. We further conclude the evidence clearly supports the district court's determination that Ms. Williams chose not to adopt the minor child and, inferentially, that no impediment to her ability to adopt the child was identified. Consequently, because no presumed father was established,[26] the rebuttal provisions for presumed paternity set forth in § 7700-607 do not apply.[27] Moreover, because no presumed father has been established, "[a] proceeding to adjudicate the parentage of a child . . . may be commenced at any time," even after the child has reached majority subject to

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[26] With respect to Mr. Vaughn, while the district court found Ms. Williams was not the presumed father, the court did consider the UPA's applicability to him and made findings regarding his parentage and the child's best interest as to his parentage. Ms. Williams has not presented an appellate argument calling into question the court's determinations and, thus, has waived that issue.

[27] Although Ms. Williams argues in her Reply Brief that Mr. Vaughn's paternity action is untimely because it was filed more than two years after the child's birth, citing § 7700-607(A) ("Except as otherwise provided in subsection B of this section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child."), the district court's statute of limitations determination was not specifically raised by her in her motion for new trial. It was raised in her Petition in Error, Exhibit C "Issues to be Raised on Appeal," but not argued in her Brief-in-chief. However, to the extent her argument is that the district court erred in failing to apply the presumption of paternity to her, it may be arguable that the statute of limitations regarding Mr. Vaughn's action is tied to the presumption. Regardless, because we conclude the presumption of paternity does not apply to Ms. Williams and, thus, she is not presumed to be the child's father, the limitations period in § 7700-606 applies, not the period in § 7700-607.

certain conditions. *Id.* § 7700-606. The district court, therefore, did not err in determining that the statute of limitations does not bar Mr. Vaughn's paternity action.

Because the district court's rulings are not contrary to law or clearly against the weight of the evidence, we affirm the district court's order denying Ms. Williams's motion for new trial.

II. Motion for Appeal-Related Attorney Fees

In a February 2024 post-appeal Order, the Oklahoma Supreme Court deferred to the decisional stage Ms. Wilson's motion for appeal-related attorney fees.[28] Ms. Williams has filed no response to that motion and, as previously noted herein, has apparently abandoned her objection to the district court's award of attorney fees below, thereby waiving review of the December 2023 Attorney Fee

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[28] Ms. Wilson's motion was made pursuant to Oklahoma Supreme Court Rule 1.14(B) which provides: "A motion for an appeal related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate. The motion must state the statutory and decisional authority allowing the fee. See 12 O.S. § 696.4(C)." Section 696.4(C) provides:

> Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court by separate motion filed any time before issuance of mandate. The application shall cite authority for awarding attorney fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. . . .

Order. Ms. Wilson rests her entitlement to appeal-related fees on three separate statutory grounds.

Ms. Wilson seeks fees pursuant to 20 O.S. 2021 § 15.1, which provides: "On any appeal to the Supreme Court, the prevailing party may petition the court for an additional attorney fee for the cost of the appeal. In the event the Supreme Court or its designee finds that the appeal is without merit, any additional fee may be taxed as costs." Ms. Williams's appeal is neither frivolous nor without merit. We simply reach a conclusion different from the one for which she advocates. Although Ms. Wilson has prevailed because we affirm the district court's order, we are not obligated to and do not award fees to Ms. Wilson pursuant to § 15.1.

We further decline to award attorney fees to Ms. Wilson pursuant to 43 O.S. 2021 § 110(D) and a balancing of the equities. Though not binding on our decision, we note that in its December 2023 Attorney Fees Order, the district court chose not to award fees pursuant to § 110(D) though Ms. Wilson specifically sought an award of fees under that statute after the decree of dissolution of marriage was entered. While the record reveals the parties' contentious and hard-fought advocacy, such circumstances are not at all unusual in dissolution of marriage cases, particularly when custody and visitation are at issue. On the issues presented to us for review in this case, equity does not favor one party over the other.

Ms. Wilson, however, also seeks an award of appeal-related attorney fees pursuant to 43 O.S. 2021 § 112.6:

> In a dissolution of marriage . . . or custody proceeding, a victim of domestic violence or stalking shall be entitled to reasonable attorney fees and costs after the filing of a petition, upon application and a showing by a preponderance of evidence that the party is currently being stalked or has been stalked or is the victim of domestic abuse. The court shall order that the attorney fees and costs of the victimized party for the proceeding be substantially paid for by the abusing party prior to and after the entry of a final order.

In the present case, Ms. Wilson filed her petition for protective order against Ms. Williams on the same date she filed her petition for dissolution of marriage, December 2, 2021, and a five-year protective order against Ms. Williams was entered, a motion to vacate was denied, and that motion was affirmed by this Court in a subsequent appeal. While Ms. Williams's appeal concerning the December 2023 Attorney Fees Order was apparently abandoned and, thus, is waived, we note the district court awarded attorney fees to Ms. Wilson pursuant to § 112.6. Although Ms. Williams's appeal of the district court's order denying her motion for new trial was filed prior to the entry of the decree of dissolution, this appeal concerns custody in the dissolution proceeding and, thus, falls within the mandate of § 112.6.

Whether a request for appeal-related attorney fees must be granted by this Court or may be granted, turns on the basis for which an award of attorney fees was made below. In *Friend v. Friend*, 2022 OK 29, 506 P.3d 1092, the Supreme

Court held that "where a prevailing party is entitled to attorney fees below, they are also entitled to appellate attorney fees; where an award of attorney fees is within the trial court's discretion, a prevailing party may be granted appellate attorney fees," and "reaffirm[ed] [the Court's] previous holding that a prevailing party who is entitled to attorney fees in the district court is also entitled to recover appellate attorney fees," *Friend*, ¶¶ 0, 1, 506 P.3d 1092, 1093 (Syllabus by the Court) (citing *Ellis v. Lebowitz*, 1990 OK 107, ¶ 3, 799 P.2d 620, 621 (Memorandum Opinion)).

Because the present appeal concerns a child custody proceeding and Ms. Wilson is the victim of domestic violence, she is entitled to an award of appeal-related attorney fees. We, therefore, remand the case to the district court to determine the amount.

CONCLUSION

We conclude the district court did not abuse its discretion by ruling that § 7700-204 is gender specific and does not provide Ms. Williams with a means to establish a legal parental relationship with the minor child. We further conclude the Legislature's gender-specific intent evidenced in § 7700-204 and other provisions of the UPA is substantially related to an important state interest and, thus, Ms. Williams's equal protection rights have not been violated. Moreover, the district court did not abuse its discretion in ruling that Ms. Williams failed to establish a mother/child relationship with the minor child under the UPA because

she is not the child's biological mother and she chose not to adopt the child. We thus affirm the district court's order denying Ms. Williams's motion for new trial. Additionally, we grant Ms. Wilson's motion for appeal-related attorney fees as mandated by 43 O.S. 2021 § 112.6. We thus remand the case to the district court to determine the amount of those fees. Accordingly, we affirm and remand.

AFFIRMED AND REMANDED.

HUBER, J., concurs, and BLACKWELL, P.J., dissents.

BLACKWELL, P.J., dissenting:

This case presents a simple question: is the presumption of paternity the State of Oklahoma bestows upon *husbands* a benefit "linked to *marriage*"? *See Obergefell v. Hodges*, 576 U.S. 644, 670 (2015) (emphasis supplied). If so, the majority decides this case contrary to clear precedents of the United States Supreme Court. *See id.*; *Pavan v. Smith*, 582 U.S. 563, 566 (2017) (per curiam).

The question nearly answers itself, but the text of the statute removes all doubt. In Oklahoma, as relevant here, "[a] man is presumed to be the father of a child if ... [h]e and the mother of the child *are married* to each other and the child is born *during the marriage* ...." 10 O.S. § 7700-204(A)(1) (emphasis supplied). Under the law, if a man and a woman are married and the woman bears a child, the state offers the man the label "father," regardless of the veracity of the claim. But

under the same statute, if that same couple is not married and the woman gives birth, the offer does not materialize, no matter how deeply committed the couple. The presumption of § 7700-204(A)(1) is linked, indisputably, to marriage.[1]

Given this coupling, *Obergefell* and *Pavan* dictate the outcome. *Pavan* concerned an Arkansas law that allowed a husband's name to appear on a birth certificate even if it was clear he was not the biological father. 582 U.S. at 564. A female spouse of a mother was not provided this same benefit. *Id.* When the Arkansas Supreme Court upheld this law, written in "gendered language" just as we have before us, the United States Supreme Court summarily reversed, admonishing that "*Obergefell* proscribes such disparate treatment." *Id.* at 566. Because the statute "denied married same-sex couples access to the 'constellation of benefits that the Stat[e] ha[s] linked to marriage,'" it could not stand. *Id.* (quoting *Obergefell*, 576 U.S. at 670).

Arkansas justified the perpetuation of its law with arguments similar to those this court relies on today. The state argued that "being named on a child's birth certificate is not a benefit that attends marriage ... [but] is simply a device for recording biological parentage ...." *Id.* at 566-67. Here, this court states that "the

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[1] While only one is relevant here, four of the five possible avenues of obtaining the presumption are directly linked to marriage. *See* 10 O.S. § 7700-204(A)(1–4). The statute is duplicated in full in footnote twelve of the majority opinion, where the word "married" or "marriage" appears eleven times.

plain language of the UPA makes it clear that part of the Legislature's intent was to establish the legal status of fatherhood in circumstances where that legal status concerns the biology of men." *Opinion*, *supra*, pg. 23-24. While I cannot quarrel with this court's statement regarding the likely intent of the Oklahoma legislature, the United States Supreme Court resoundingly rejected this justification in *Pavan*, stating: "The State uses [birth] certificates to give married parents a form of legal recognition that is not available to unmarried parents. Having made that choice, Arkansas may not, consistent with *Obergefell*, deny married same-sex couples that recognition." *Pavan*, 582 U.S. at 567.

The same principle must apply here. The presumption of paternity is a benefit that Oklahoma has decided to link to marriage. The state does not have to provide this benefit, but if it continues to do so, it must be equally available to same-sex spouses. Consistent with *Pavan*, I would read the presumption contained in § 7700-204(A)(1) as applying to Ms. Williams.[2] As such, Mr. Vaughn's petition

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[2] We may also strike the unconstitutional provision, making it inapplicable to any couple.

> When a statute grants benefits but violates equal protection, a court has "two remedial alternatives." *Califano v. Westcott*, 443 U.S. 76, 89, 99 S.Ct. 2655, 61 L.Ed.2d 382 (1979). "[A] court may either declare [the statute] a nullity and order that its benefit not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion." *Id.* (quoting *Welsh v. United States*, 398 U.S. 333, 361, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970) (Harlan, J., concurring in result)). State court judges face the same remedial alternatives when a benefit statute violates equal protection. *See Wengler*, 446 U.S. at 153 ....

for paternity was filed outside the relevant two-year statute of limitations and should have been dismissed. *See* 10 O.S. § 7700-607(A). I would order his petition for paternity dismissed and remand this matter to conclude the divorce proceedings between Ms. Wilson and Ms. Williams.

When faced with a statute that violates the Equal Protection Clause, this court has options. We can strike the offending statute, or we can construe the law to provide an equal benefit. *See* note 2, *supra*. The one thing we cannot do is go full ostrich, burying our judicial heads in the sand, pretending there is "nothing to see here." While I appreciate the desire not to tinker with the legislature's handiwork every bit as much as my colleagues, when the legislature abandons its own constitutional role and opts to leave clearly unconstitutional laws on the

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McLaughlin v. Jones, 401 P.3d 492, 498–99 (Ariz. 2017). Extension is the remedy the Arkansas Supreme Court opted for in *Pavan* on remand, *Smith v. Pavan*, 2017 Ark. 284, and the remedy as applied in each state court case cited as support in note 5, *infra*. Given that no party seeks the strong medicine of nullification, and it seems exceedingly unlikely that the legislature would prefer nullification in these circumstances, extension is almost assuredly the prudent course. *McLaughlin*, 401 P.3d at 499 ("Generally, the proper remedy is extension, not nullification." (citing *Sessions v. Morales-Santana*, 582 U.S. 47, 74 (2017)). However, given the majority's resolution, I have no cause to finalize my view on the appropriate remedy in this case.

books, it leaves us no choice but to fashion a judicial remedy.[3] This is not legislating from the bench—it's doing the job we were appointed to do.[4]

If the majority's error is not corrected on certiorari, same-sex partners in Oklahoma—and Oklahoma alone—will enjoy only second-class marriages.[5] They

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[3] What would this majority do, for example, if article 2, section 35 of the Oklahoma Constitution or title 43, section 3.1 of our statutes, were under review here? The former continues to profess that "[m]arriage in this state shall consist only of the union of one man and one woman," and both that "marriage between persons of the same gender performed in another state shall not be recognized as valid and binding in this state as of the date of the marriage." OKLA. CONST. art. 2, § 35; 43 O.S. § 3.1. If we can fix the obvious problem with those provisions, why can we not fix the problem identified here?

[4] All members of our judiciary take an oath to "support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma ...." OKLA. CONST. art. XV, § 1. But we do not swear to uphold these sacred instruments as we wish them to be or as we would interpret them, but as construed by Courts higher than our own. U.S. CONST. art. VI, cl. 2; OKLA. CONST. art. 1, § 1; *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."). A higher judicial body has already made the difficult, policy-laden decisions relevant to this appeal. Whether I, or any other judge on this court agrees or disagrees with those decisions is not relevant.

[5] As of June 17 , 2026, with one asterisk-riddled exception—*see In re Dennis*, 55,851 (La. App. 2 Cir. 7/17/24), 400 So. 3d 954, discussed herein following the bulleted cases below—every court in the country, state and federal, that has addressed this or a substantively similar issue since *Pavan* has held contrary to the majority opinion. In order of their issuance, they are:

- *McLaughlin v. Jones*, 401 P.3d 492, 498 (Ariz. 2017), *cert. denied*, 583 U.S. 1156 (2018) ("The marital paternity presumption is a benefit of marriage, and following *Pavan* and *Obergefell*, the state cannot deny same-sex spouses the same benefits afforded opposite-sex spouses.")
- *Appel v. Celia*, 98 Va. Cir. 140 (2018) (holding that "a child born through assisted conception to a woman in a same-sex marriage be considered a child 'born of the parties' for purposes of a final decree of divorce" because the relevant artificial insemination statute "discriminates in conferring a statutory benefit of marriage solely on the basis of whether a spouse of a gestational mother is a husband or a wife" which after *Pavan* and *Obergefell* "does not comply with constitutional requirements")
- *Chaisson v. State*, 2017-0642, p.12 (La. App. 4 Cir. 3/7/18), 239 So.3d 1074, 1081–82 (upholding a state agency's decision to amend a birth certificate to add as a parent the non-biological wife of a mother because the agency was required to "extend[] the same

benefits of marriage, *i.e.*, the presumption that the spouse of the birth mother is also the parent of the child, regardless of biological relation" to same-sex couples)

- *LC v. MG & Child Support Enf't Agency*, 430 P.3d 400, 402 (Haw. 2018) ("[T]he UPA's marital presumption of paternity applies equally to both men and women.")
- *Boquet v. Boquet*, 2018-798, p.6 (La. App. 3 Cir. 4/10/19), 269 So. 3d 895, 900 ("[U]sing the reasoning of *Pavan*, we find that we must apply [state disavowal and presumption of paternity statutes] in such a manner that ... the female spouse of a birth mother, has the same 'constellation of benefits' and obligations as those of a male spouse of a birth mother.")
- *In re Gestational Agreement*, 2019 UT 40, ¶ 36, 449 P.3d 69, 80 (holding that a gestational agreement law requiring one of the intended parents be a mother "unable to bear a child," "squarely violates *Obergefell* in that it deprives married same-sex male couples of the ability to obtain a valid gestational agreement—a marital benefit freely provided to opposite-sex couples")
- *Celia v. Appel*, 102 Va. Cir. 386 (2019) (holding that a state law allowing divorce only between "a husband and wife" violates the Equal Protection Clause, as recognized in *Obergefell* and *Pavan*)
- *Henderson v. Box*, 947 F.3d 482 (7th Cir. 2020), *cert. denied,* 141 S.Ct. 953 (2020) ("[A]fter *Obergefell* and *Pavan*, a state cannot presume that a husband is the father of a child born in wedlock, while denying an equivalent presumption to parents in same-sex marriages.")
- *Treto v. Treto*, 622 S.W.3d 397, 402 (Tex. App. 2020) ("[U]nder *Pavan*, we are to give effect to the ancillary benefits of a same–sex marriage, including the determination of maternity for the non–gestational spouse of a child born to the marriage.")
- *Kiviti v. Pompeo*, 467 F. Supp. 3d 293, 306 (D. Md. 2020) (relying on *inter alia* the common-law presumption of parentage and *Pavan* to conclude that statutory language applying to a child "'born ... of parents' does not limit the provision's application to those children who have biological relationships with both of their married parents")
- *Harrison v. Harrison*, 643 S.W.3d 376, 383 (Tenn. Ct. App. 2021) (construing Tennessee's statute regarding artificial insemination "in a non-gender-neutral manner, places it at odds with the United States Supreme Court's holdings in *Obergefell* and *Pavan* because ... it would deem a child born to a married woman as a result of artificial insemination to be the legitimate child of a male spouse of that woman but not the legitimate child of a female spouse of that woman")
- *Schaberg v. Schaberg*, 637 S.W.3d 512, 523 (Mo. Ct. App. 2021) ("Section 210.822 grants married couples the privilege of assuming that the non-birthing spouse is a natural parent, provided the child is born during their marriage.... Following the constitutional dictate of *Obergefell*, this presumption applies equally to non-birthing spouses in same-sex marriages or opposite-sex marriages.")

will receive only a subset of the "'constellation of benefits that the Stat[e] ha[s] linked to marriage.'" *Pavan*, 582 U.S. at 566 (quoting *Obergefell*, 576 U.S. at 670). The ability to adopt cannot cure this inequality. Adoptions cost money, time, and effort. Presumptions are free, instantaneous, and effortless. To suggest a same-sex couple's ability to adopt a child gives the couple a benefit equal to a presumption based on marriage either misunderstands the problem or simply ignores it.[6]

- *Interest of D.A.A.-B.*, 657 S.W.3d 549, 561 (Tex. App. 2022) ("[W]e reach the inexorable conclusion that the Family Code gives spouses in same-sex marriages the same opportunity to assert their parentage to a child born during the marriage, as it gives to spouses in opposite-sex marriages.")
- *A.I.A.K. v. T.M.K.*, 695 S.W.3d 118, 128 n.5 (Mo. Ct. App. 2024) ("[T]he UPA must be construed (or applied if it cannot be so construed) to permit the recognition of a 'legal' parent and child relationship for opposite-sex married couples to the same extent as would be permitted for same-sex married couples.")
- *Olbera v. Sykes*, 2026 WL 860644, at *6 (Ind. Ct. App. Mar. 30, 2026) ("[I]t is apparent to us that the marital presumption of parentage (biological fatherhood under the terms of the statute and in the case of opposite-sex couples) must be afforded to women in same-sex marriages.")

The only "but see" is *In re Dennis*, 55,851 (La. App. 2 Cir. 7/17/24), 400 So. 3d 954. But that is an unusual case for a number of reasons, which I will not belabor here. I will only note that the plurality opinion appears to have no precedential effect in any jurisdiction—including the Second Circuit in Louisiana—because, while it was ostensibly issued by a three-judge panel, both panel members "concur[red] in the result" only. *Id.* at 966. In such circumstances in Louisiana, it would appear the opinion is not precedential. *See Cox, Cox, Filo, Camel & Wilson, LLC v. LWCC*, 2021-00566, p. 2 (La. 3/25/22), 338 So. 3d 1148, 1159, (Crichton, J., concurring in the result) (noting that the absence of agreement on reasoning results in no majority opinion).

[6] Ms. Wilson's argument that Oklahoma's 1967 statutes related to artificial insemination, *see* 10 O.S. §§ 551-553, play any part in the relevant analysis is the reddest of red herrings. It is undisputed that those statutes were not followed here, and the statutes do not dictate parentage in such an instance. Ms. Wilson argues, in effect, that the Uniform Parentage Act does not apply to births that occur via artificial insemination. But the UPA plainly contradicts this claim. It "applies to determination of parentage in this state." 10 O.S. § 7700-703. That Ms. Williams may have had an *additional* path to parentage under our artificial insemination statutes *if* the parties elected to follow that law is of no consequence to the question presented in this appeal.

As reflected above, the United States Supreme Court has interpreted the United States Constitution to require any benefit linked to marriage to be provided equally to all married couples. The judges of the majority fashion an interpretation of Oklahoma law that, however sincerely held, is contrary to *Obergefell* and *Pavan*, which are "the fundamental and paramount law of the nation." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). I cannot join an opinion that stands in defiance of the law as clearly articulated by the United States Supreme Court. I dissent.

June 18, 2026