IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO: SC12-261

D.M.T.,

Appellant,

Fifth District Case No: 5D09-3559

Trial Court Case No:
05-2008-DR-25125
Eighteenth Circuit - Brevard

vs.

T.M.H.,

Appellee.

_____/

AMENDED INITIAL BRIEF OF APPELLANT

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The Appellant here, **D. M. T.**, the Petitioner in the trial court and the Appellee in the Fifth District Court of Appeal, shall be referenced as "Appellant".

The Appellee, **T. M. H.**, the Respondent below, shall be referenced as "Appellee".

The Appellant's child, to whom the Appellee sought parental rights, is referred to herein as "child" or "minor child".

The Index to Record on Appeal shall be referenced as (R-#), in which # shall be the page(s) cited from the Record on Appeal.

STATEMENT OF THE CASE AND THE FACTS

This case is on appeal[1] from a decision of the Fifth District Court of Appeal. The Fifth District held that Section 742.14, Florida Statutes, was unconstitutional, and remanded the case to the trial court to determine what parenting and time sharing rights should be awarded to the Appellee.

This case began in the Circuit Court, Brevard County, Florida. The Appellee requested parenting and time sharing rights with the minor child. The Appellant moved for summary judgment, because even based upon the facts as alleged by the Appellee, there was no legal cause of action for the Appellee to obtain parenting rights and time sharing rights for the minor child.

The trial court below granted Summary Final Judgment in favor of the Appellant. (R-303-305). In the trial court, the Appellee filed a Second Amended Petition to Establish Parental Rights and for Declaratory and Related Relief. (R-62-73). The said Second Amended Petition; the Request for Admissions filed by the Appellant (R-233-243) and the Appellant's Response thereto (R-291-295); the Request for Admissions filed by the Appellee (R-219-224) and the Appellant's Response thereto (R-283-288); and the Affidavit of Diran Chamoun (as contained in

[1] The Notice of Appeal was filed timely.

the Appellee's Appendix) alleged the following matters[2] upon which the Appellee claimed entitlement to establish parental rights regarding the minor child:

A. The Appellee was an egg donor, which said egg was subsequently fertilized by sperm in vitro, and implanted in the Appellant.

B. The Appellant is the birth mother of the minor child.

C. The Appellant is listed on the State of Florida birth certificate as being the mother of the minor child.

D. No other parent is listed on the said birth certificate.

E. The Appellee voluntarily signed a consent form waiving all parental rights to the egg and to any child that might result from the egg donation.

F. The Appellant and the Appellee sent out a birth announcement regarding the minor child.

G. The Appellant and the Appellee owned real property together.

H. The Appellant and the Appellee met together with medical professionals, including a fertility specialist (Diran Chamoun) and a psychologist.

[2] As set forth in Appellee's Response to Request for Admissions, these alleged matters are disputed, but for the purpose of Summary Judgment are considered as true.

I. Both parties contributed equally to the fertility treatments.

J. The Appellant and the Appellee held themselves out together to other third parties as intending to and actually raising a child together.

K. The Appellant and the Appellee participated together in the baptism ceremony for the minor child.

L. The Appellee paid "child support" to Appellant; and the said "support" was accepted by Appellant.

M. The Appellee spent time with the minor child, including overnights, after the relationship between the Appellant and the Appellee ended.

N. The Appellant actively discouraged and prevented the Appellee from having an on-going relationship with the minor child. The Appellant moved with the minor child away from the location of the Appellee.

O. The Appellant owned property in Brevard County, Florida.

P. The minor child was conceived and born in Brevard County, Florida.

Accepting each and every matter stated as true (as required in a Motion for Summary Judgment) for the purpose of the Motion for Summary Final Judgment, the Appellant filed her Verified Motion for Summary Final Judgment. (R273-282) The said Verified

Motion set forth the Florida law that demonstrated that even if all matters alleged by the Appellee were true, there was no legal basis for granting relief in favor of the Appellee. The trial court below conducted a hearing regarding Summary Judgment on August 24, 2009 (R1-29). At the hearing, legal arguments were made based upon the verified pleadings, Responses to Request for Admissions and the Affidavit presented by Appellee. No testimony of any witness was introduced or proffered. At the conclusion of the Hearing, the Court announced its ruling, granting summary judgment in favor of the Appellee.

The Appellee appealed the decision to the Fifth District Court of Appeal. After Briefing and Oral Arguments, the Fifth District issued its decision. The Court of Appeal ruled in favor of Appellee, and declared Section 742.14, Florida Statutes unconstitutional. The Appellant requested rehearing and rehearing en banc. Both requests were denied.

The Appellant timely filed her Notice of Appeal. This Appeal follows.

POINT ON APPEAL

THE DECISION OF THE DISTRICT COURT OF APPEAL INCORRECTLY DECLARED SECTION 742.14, FLORIDA STATUTES, AS UNCONSTITUTIONAL AND INVALID; SO THAT THE DISTRICT COURT DECISION SHOULD BE OVERTURNED AND THE DECISION OF THE TRIAL COURT GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLANT SHOULD BE AFFIRMED

SUMMARY OF ARGUMENT

The Appellant gave birth to a child for whom the Appellee, by statute (as it existed prior to the decision of the District Court of Appeal) and by written waiver, waived any claim of parental rights. The decision of the District Court of Appeal, below, granting Appellee parenting rights should be overturned.

The decision ignored the common law definition of legal and natural parent as codified by statute in all matters indicates that the birth mother is the legal and natural mother of a child. The Appellant, as the legal and natural mother, has substantial privacy rights and with the sole power to determine with whom the minor child may associate. The decision ignored established Florida precedent and statutory law. There is no protected class, so that strict scrutiny should not apply. No previously existing legal right was taken away from Appellee; so that there is no equal protection or due process issue requiring substantial state interest analysis. The decision of the District Court of Appeal improperly intruded upon a legislative prerogative.

The decision of the trial court granting Summary Final Judgment in favor of the Appellee was correct; and should be affirmed.

ARGUMENT

POINT ON APPEAL

THE DECISION OF THE DISTRICT COURT OF APPEAL INCORRECTLY DECLARED SECTION 742.14, FLORIDA STATUTES, AS UNCONSTITUTIONAL AND INVALID; SO THAT THE DISTRICT COURT DECISION SHOULD BE OVERTURNED AND THE DECISION OF THE TRIAL COURT GRANTING SUMMARY JUDGMENT IN FAVOR OF APPELLANT SHOULD BE AFFIRMED

STANDARD OF REVIEW: DE NOVO

The District Court of Appeal declared a Florida Statute invalid. Mandatory review by the Supreme Court of Florida is afforded when a statute is declared invalid. Rule 9.030(a)(1)(A)(2), Florida Rules of Appellate Procedure. The standard of review of a decision declaring a statute invalid is *de novo*. *See, e.g., Florida Dept. of Children and Families v. F.L.*, 800 So2d 602, 607 (Fla. 2004).

The trial court considered the matter on summary judgment. For the purposes of summary judgment, the matters as alleged by the Appellee were considered true and correct. The Appellee admitted she had signed a specific waiver of any rights to the child produced as a result of her egg donation. By basic contract law, the Appellee had waived any right to her donated genetic material.

The trial court ruled correctly as the law existed at the time of the trial court's Order by denying the Appellee her request for parenting and time sharing rights. Florida law,

until declared invalid by the Fifth District Court of Appeal, stated that the donor of an egg or a sperm specifically waives any claim to the child that may result from the donation. Section 742.14, Florida Statutes, specifically stated:

> The donor of any egg, sperm, or preembryo, other than the commissioning couple[3] or a father who has executed a preplanned adoption agreement under s. 63.212, shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children. Only reasonable compensation directly related to the donation of eggs, sperm, and preembryos shall be permitted.

This statutory provision alone, even without a waiver signed by the Appellant, ends any legal right for the Appellee to claim any parental rights regarding the minor child. This statutory provision combined with the specific, unequivocal waiver of parental interests and rights actually signed by the Appellee, established that there were no material facts in dispute, there was no legal basis for the Appellee to assert or be awarded any parental rights regarding the minor child, and that the trial court correctly granted the Appellant summary final judgment as

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[3] "Commissioning couple" is defined as a mother and a father (a woman and a man). Section 742.13(2), Florida Statutes; *See Lamaritata*, cited *infra*. There is no authority that a commissioning couple includes a same sex couple; and the clear statutory definition, as well as the general lack of recognition of non-parent rights and lack of status afforded to same sex couple relationships, as discussed throughout this Brief, indicate that Florida does not recognize any same sex couple as having the status of being a "commissioning couple".

a matter of law as the law existed at the time of the trial court decision.

The decision of the District Court of Appeal was contrary to a long and established line of precedents that would preclude the Appellee from having any parenting or time sharing rights with regard to the child herein. The Appellee merely donated genetic material. The donation of genetic material has not been recognized as a basis to award parenting rights and time sharing. In an analogous situation, [*Lamaritata v. Lucas* 823 So2d 316 (Fla. 2nd DCA 2002)], the donor of the sperm that was utilized to create a child entered into a contract with the birth mother of the child for the sperm donor to have contact with the child. The sperm donor exercised some contact with the minor child, but ultimately the child's mother ended all contact between the minor child and the sperm donor. The sperm donor sued for contact. The Appellate Court determined that the contract for a sperm donor to have contact was unenforceable. *Lamaritata, supra*. Biological donation is not the determining criterion. The *Lamaritata* father donated biological material (sperm) but did not become the legal father. Donating biological material did not create any legal basis to assert parental rights to the child resulting from the biological material. Even though the Appellee may have donated genetic material, the

process of implanting the fertilized embryo and permitting it to gestate to term, and be born, are also biological processes. The Appellant herein also may claim a "biological" participation in the child. However, as discussed, *infra*, the Appellant is the ONLY natural and legal BIRTH mother of the child.

Mere genetic participation is not sufficient to create a right to contact and parenting. Grandparental "rights" statutes, even though the grandparents are genetically related to the child in question, are not constitutional. *Richardson v. Richardson*, 766 So2d 1036 (Fla. 2000).

Agreements for contact are not enforceable. An agreement between a former lesbian partner and the birth mother of a child for contact by the non-biological parent with the child are unenforceable under Florida law. *Wakeman v. Dixon*, 921 So2d 669 (Fla. 1st DCA 2006), *rev. den.* 931 So2d 902 (Fla. May 15, 2006) (Table, NO. SC06-804). In the *Wakeman* case, the same sex couple had an actual written agreement providing that the partner (Wakeman) that was not the biological mother of the two children in that case would have parenting rights with regard to the children. Subsequent written agreements even included provisions that Ms. Wakeman was a "psychological parent" and that if the parties no longer lived together, each party would continue to facilitate a close relationship with both same sex

partners and the children. The *Wakeman* court rejected all claims based upon contract, psychological parenting and previous course of conduct. *Id.* at 672-673. The *Wakeman* decision relied upon the cases of *Taylor v. Kennedy*, 649 So2d 270 (Fla. 5th DCA 1994) [An agreement between a man who used to live with the mother of a child not related to the man to have contact with the child is unenforceable]; and *Lamaritata, supra.* [Agreement for contact between a sperm donor and the biological mother of child for the sperm donor to have contact with the child is unenforceable]. The *Wakeman* court specifically found that the Florida Constitution and the privacy provisions therein prevent the domestic partner of a biological parent (the birth mother is considered the biological parent) from claiming any parental rights with regard to the child. *Id.* at 671-672. As explained in *Wakeman*, fundamental constitutional rights to the love and companionship of a birth child, and the even more expansive privacy rights of the Florida Constitution (Article I, Section 23), provide fundamental constitutional protection to the Appellee against any and all claims by the Appellant with regard to Appellee's child. [Constitutional issues are discussed further, *infra*.] *See also, Lamaritata, supra; Taylor, supra.*

In *Music v. Rachford*, 654 So2d 1234 (Fla. 1st DCA 1995), the parties were involved in a lesbian relationship. The mother was

artificially inseminated during the relationship. The parties lived together until the child was three. However, once the parties separated, the birth mother had sole and exclusive authority to make all decisions regarding the child. The non-birth mother had no parenting rights to the child.

Course of conduct or previous contact has never been recognized as a basis for parenting and time sharing rights. *O'Dell v. O'Dell*, 629 So2d 891 (Fla. 2nd DCA 1993); *Meeks v. Garner*, 598 So2d 261 (Fla. 1st DCA 1992). *Fischer v. Fischer*, 544 So2d 1079 (Fla. 2d DCA 1989); *Tamargo v. Tamargo*, 348 So2d 1163 (Fla. 2d DCA 1977). *See also, Music, supra; Wakeman, supra;* and *Lamaritata, supra.*

Florida law has long disfavored providing certain rights based on same sex relationships. There is no recognition of same sex marriage or rights, constitutionally or statutorily. Florida Constitution, Article 1, Section 27; Sections 741.212(1), 741.212(3), Florida Statutes. There is a statutory prohibition against same sex couples adopting a child. Section 63.042(3), Florida Statutes. [This law is currently under appellate review.]

In contravention of this long line of established Florida precedent, and in contravention of the clear legislative intent and the Florida constitutional intent not to afford rights to

same sex couples, the District Court determined that Section 742.14, Florida Statutes, was unconstitutional. By declaring that Section 742.14, Florida Statutes, was unconstitutional, the Fifth District then determined that the Appellee had parenting rights; and remanded the action back to the trial court to determine the Appellee's parenting, custody and time sharing rights.

The District Court has created a unique and unsupportable legal fiction that a child may have two mothers (and by implication), two fathers. At common law, the birth mother was the "mother" of any child. The Florida Legislature adopted this common law principle by statutory scheme. See Section 2.01, Florida Statutes. Courts are required to follow the common law. *Duval v. Thomas,* 114 So2d 791, 795 (Fla. 1959). Florida Statutes provide as follows:

> 382.02 (10) "Live birth" means the complete expulsion or extraction of a product of human conception *from its mother,* irrespective of the duration of pregnancy, which, after such expulsion, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, and definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. [Emphasis added]

The child's birth mother's name MUST be placed on the birth certificate. Section 382.13(1)(g), Florida Statutes, provides as follows:

> Regardless of any plan to place a child for adoption after birth, the information on the birth certificate as required by this section *must be as to the child's birth parents* unless and until an application for a new birth record is made under s. 63.152. [Emphasis added]

Paternity - the determination of the FATHER - is also established by statutory scheme:

> 382.13(3)(c) If the mother is not married at the time of birth, the parent who will have custody of the child shall select the child's given name and surname.
>
> 382.13(2)(c) If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency established pursuant to s. 409.2557, regarding the benefits of voluntary establishment of paternity. Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2).

There is simply no statutory scheme under Florida law to permit the designation of two same sex persons as birth parents. Florida does not recognize any child being permitted to have two fathers. *Daniels v. Greenfield,* 15 So.3d 908, 911(Fla. 4th DCA 2009) *See also* 23 Fla. Prac., *Florida Family Law* § 6:5 (2011)

Once the legislature has adopted the common law by statute to determine matters such as "birth mother" (the legal mother of a child), paternity and similar matters regarding any child, only the legislature may revise that statutory scheme. Common law, especially when approved by statute, and further implemented by statute, remains the law in Florida until modified by statute. *Choctawhatchee Elec. Co-op., Inc. v. Major Realty Co.,* 161 So2d 837, 839 (Fla. 1st DCA 1964).

Pregnancy by assisted reproductive technology did not exist in the common law. Therefore, statutory provisions are required. Matters of public policy are involved in determining whether assisted reproductive technology should be permitted. Should it be allowed? Under what conditions? Making of social policy are matters that are normally and customarily determined by the legislature. *State v. Ashley,* 701 So2d 338 (Fla. 1997). *See also,* as cited by the dissent in the District Court of Appeal, *Sorenson v. Secretary of Treasury of U.S,* 475 U.S. 851, 865, 106 S.Ct. 1600, 89 L.Ed.2d 855 (1986) ("The ordering of competing social policies is a quintessentially legislative function.") *T.M.H. v. D.M.T.*, _____ So3d ____, _____ (Fla. 5th DCA 2011) (Dissent). As stated by the Dissent, declaring Section 742.14, Florida Statutes, as invalid and unconstitutional, removes the determination of all assisted reproductive matters "'outside of

the arena of public debate and legislative action.'" Id.,_____ So3d ____, _____ (Fla. 5th DCA 2011) (Dissent). See also, *O'Dell v. O'Dell*, 629 So2d 891 (Fla. 2nd DCA 1993).

The decision of the District Court failed to recognize the high constitutional privacy and procreation rights afforded to the legal and natural mother of the child. Appellant, like all legal and natural parents, has a constitutionally protected right to the love and companionship of her child. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) [Unwed father cannot be denied custody of his child when child's mother dies.]; *Lassiter v. Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 33, 101 S.Ct. 2153, 68 L.Ed.2d 640). There is a fundamental liberty possessed by parents in the "care, custody and management" of their own children, *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct 1388, 71 L.Ed.2d 599 (1982), and for child rearing, *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Indeed, privacy rights regarding parental rights to children include the decisions of conceiving children or continuing a pregnancy, through constitutional protections regarding contraception, procreation and abortion. *Carey v. Population Servs., Int'l*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977); *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86

L.Ed. 1655 (1942); and *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

The State of Florida's constitutional guarantee of privacy in parental rights matters is even more expansive than that afforded by the Constitution of the United States. Florida Constitution, Article 1, Section 23. Parents cannot be required to allow non-parents to have contact with a minor child. *Richardson v. Richardson*, 766 So2d 1036 (Fla. 2000); *see also*, *von Eiff v. Azieri*, 720 So2d 510 (Fla. 1998). [Parent cannot be required to permit parents of deceased other parent to visit with the child]; *Wakeman, supra;* and *Calle v. Calle*, 625 So2d 988 (Fla. 3rd DCA 1993). [Father entitled to custody instead of children's adult sister and grandmother.]

The rights of legal and natural parents to the love and companionship of their children has even been called a "Godgiven legal right", a rule older than the Constitution of the United States or the English common law. *State ex rel Sparks v. Reeves*, 97 So2d 18 (Fla. 1957).

There is no equal protection or due process violation herein. The majority decision in the District Court incorrectly applied a strict scrutiny and/or lesser review standard to this case. There is no applicable case under Federal or Florida law which determines that same sex orientation and relationships are

a protected class. Therefore, strict scrutiny does not apply. The cases regarding same sex relationship have not created new rights based upon gender orientation. The cases that have determined that constitutional implications are involved regarding the denial of "rights" to same sex couples have been situations in which a right EXISTED, and then was TAKEN AWAY from the same sex couple. For example, in California, the California State Supreme Court determined that same sex couples could marry. A voter initiative then passed, determining that there would be no same sex marriages in California. Taking away the existing right (to marry as set by the California Supreme Court) did have constitutional implications, and without a compelling state interest would be unconstitutional. *Perry et al v. Brown et al*, ____ F3d ____, 2012 WL 372713 (C.A. 9 Cal 2012); *Cf. Romer et al v. Evans et al*, 517 US 620, 116 S.Ct 1620, 134 L. Ed 2nd 855 (1996).

Indeed, the decision below creates a new equal protection dilemma. The decision of the District Court of Appeal creates an unequal status of the female donor of an ova and the male donor of sperm. As the Appellant herein became pregnant and gave birth as a result of assisted reproductive technology - and the Appellant and the Appellee were not a one male, one female, commissioning couple - both the Appellee and the unknown male

sperm donor waived any parental rights to the child. The decision in the District Court of Appeal below creates and bestows parental rights on the female donor. The male donor, however, is left out in the cold, like in *Lamaritata, supra;* frozen out from any parenting rights to the child.

Finally, as pointed out by the Dissent, the Appellee did not present or preserve the constitutional issues for consideration.

The decision below opens the door to other public policy implications arguably based in part on genetics or other biological matters. As stated above, male sperm donors may be able to assert rights to children. Grandparents and others with a genetic link to a child may assert parenting and time sharing rights. Applying any kind of "best interest of child" standard (the standard traditionally reserved for parenting and time sharing disputes between a male and a female legal and natural parent) without considering the birth, natural and legal parent determination, also is fraught with possible implications. A pecunious boyfriend or stepfather upon the end of the relationship with the natural and legal mother of child may assert that the "best interests" of the child would be served by living with the unrelated former "parent" who could provide a better economic lifestyle for the child. Even without the more

pernicious claim of the pecunious boyfriend or stepfather in effect buying custody of the child as being in the "best interest" of the child, all former relationships and stepparents could be afforded status to request time sharing based upon the previous relationship with the child. All of these matters raise competing public interests and may have arguments for or against such an expansion of parent and parent-like rights. However, as public policy, and competing public policy arguments, all such decisions should be left to the legislature - recognizing the overarching and fundamental right to the love and companionship possessed by natural and legal parents to their children (which said concept may well cause any legislative initiative to be determined to be unconstitutional).

The decision of the District Court of Appeal failed to give proper deference to the legislative prerogative. No suspect class was affected. No previously granted right was taken away by legislative or voter action. Any change in the common law/statutorily enacted definition of "natural and legal" parent, or "birth" parent, should therefore be considered a public policy matter, to be determined by the legislature. The long line of Florida precedent should be followed. The decision of the District Court of Appeal below should be overturned; and

Section 742.14, Florida Statutes, should be reaffirmed as constitutional and valid.

Once the District Court decision is overturned, the trial court's determination was correctly decided. As there are no material facts in dispute and the facts as alleged, when applied to the law, clearly favor the Appellant, the trial court below correctly granted the Appellant summary judgment as a matter of law. There is no legal basis for the Appellee to assert or to be awarded any parental rights with regard to the minor child. The decision of the trial court below to grant Summary Final Judgment should be affirmed.

CONCLUSION

The essential facts are undisputed: The Appellant is the birth mother; and the only legal and natural parent of the minor child. As the legal and natural parent of the child, the Appellant is afforded with substantial privacy rights and with the sole power to determine with whom the minor child may associate. Any matter, even if true, regarding the relationship between the parties, and between the Appellee and the child, does not create any legal basis for the Appellee to assert any parental rights with regard to the minor child, or any basis to be awarded any parental rights with regard to the minor child.

The decision of the District Court of Appeal was wrongly decided. The decision applied an improper legal standard. The decision declared a statute unconstitutional and invalid, without any legal or constitutional basis. The decision of the District Court of Appeal improperly intruded upon a legislative prerogative.

Therefore, the trial court correctly granted Summary Final Judgment in favor of the Appellee. The decision of the District Court of Appeal was incorrectly decided. The decision of the District Court of Appeal should be overturned. The decision of the trial court should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Initial Brief and of the Appendix was furnished by U.S. Mail to ROBERT A. SEGAL, ESQUIRE, 2627 West Eau Gallie Boulevard, Suite 102, Melbourne, Florida 32935 and SHANNON McLIN CARLYLE, B.C.S, CHRISTOPHER V. CARLYLE, B.C.S., The Carlyle Appellate Law Firm, 1950 Laurel Manor Drive, Suite 130, The Villages, Florida 32162 this 16 day of April, 2012.

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CERTIFICATE OF COMPLIANCE REGARDING FONT AND SIZE

The undersigned further certifies that the font and size in this Amended Initial Brief and the Appendix filed with this

Amended Initial Brief is Courier New, 12 point, in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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