IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

IN RE M.C.,	)	
A Person Coming under,	)	
The Juvenile Court Law	)	Case No. B-222241
	)	Case No. B-223176
LOS ANGELES COUNTY	)	
DEPARTMENT OF CHILDREN	)	LASC No. CK-79091
AND FAMILY SERVICES,	)	
Petitioner and Respondent,	)	
	)	
v.	)	
	)	
I.V., et al.,	)	
Respondent and Appellant.	)	

APPLICATION OF THE CHILDREN'S ADVOCACY INSTITUTE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT M.C.

and

AMICUS CURIAE BRIEF OF THE CHILDREN'S ADVOCACY INSTITUTE IN SUPPORT OF RESPONDENT M.C.

Superior Court for the County of Los Angeles, Juvenile Division
The Honorable Marilyn Mackel, Commissioner Presiding

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APPLICATION OF THE CHILDREN'S ADVOCACY INSTITUTE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT M.C.

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The Children's Advocacy Institute respectfully requests leave to file the attached *amicus curiae* brief in support of Respondent M.C. in the above-captioned matter. California Rules of Court, Rule 8.200(c) provides that, "[w]ithin 14 days after the last appellant's reply brief is filed or could have been filed under rule 8.212, whichever is earlier, any person or entity may serve and file an application for permission of the presiding justice to file an amicus curiae brief." The final Appellants' reply brief was filed on November 12, 2010, meaning that this application and proposed brief are timely if filed on or by November 26, 2010.

This brief has been drafted entirely by the Children's Advocacy Institute (CAI), without compensation or monetary contribution from any party or counsel for a party, and has been served on all parties (proof of service attached). CAI contends that most of the discussion, citations, and points made in the attached proposed brief will not be presented by the parties in the case before the court.

Interest of the Amicus Curiae. CAI, founded in 1989 as part of the University of San Diego School of Law, is a nonprofit academic, research and advocacy center dedicated to improving the health, safety, and well-being of children and youth. CAI operates a legal clinic representing abused and neglected children in juvenile dependency court, as well as a

legal clinic representing accused children and youth in juvenile delinquency court; operates advocacy offices in Sacramento and San Diego, with a satellite office in Washington, D.C.; and engages in legal and budget research and public education. CAI's goal is to provide policymakers and the public with accurate, timely information about children's needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury.

Parent-child relationships are crucial to the well-being of a child. In today's world, determinating legal parental status and rights can be an extremely complex process, as the case before this court illustrates. But from a child's perspective, it is often quite simple. Any person—no matter what race, age, or gender—who brings a child into this world or who has assumed a legal or de facto parental role for that child should be held accountable for the attendant duties, including financial responsibilities, he or she owes to that child, and should also be granted parental status in order to enjoy the benefits of continuing that parent-child relationship. The case before this court presents an opportunity to provide clarification to thousands of California children regarding their legal relationship to — and the children's rights *vis-a-vis* — the adults in their lives acting in a parental role.

CAI submits this brief on behalf of the interests of children in having the law recognize and protect their significant relationships to the adults who they already have or will come to regard as members of their family. While this entails protecting the rights of parents to love, nurture, and raise their children free from unwarranted state interference, it may occasionally call for state action to protect a child's significant relationships with others, including but not limited to the child's parents.

Dated: November 23, 2010 Respectfully submitted,

_____

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Executive Director
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AMICUS CURIAE BRIEF OF THE CHILDREN'S ADVOCACY INSTITUTE IN SUPPORT OF RESPONDENT M.C.

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STATEMENT OF THE CASE

Amicus curiae Children's Advocacy Institute (CAI) adopts the factual presentation of the case as articulated in the opening brief of Appellant Jesus P.

SUMMARY OF THE ARGUMENT

When one views this case through a child's perspective, the outcome is self-evident: ***M.C. has three parents, each of whom has legal rights and obligations with respect to her, and with each of whom she is entitled to have a parent-child relationship.***

ARGUMENT

I. PAST HOLDINGS ON PARENTAL STATUS AND RIGHTS ARE NOT AUTHORITY FOR PROPOSITIONS NOT THEREIN CONSIDERED

This is a case of first impression. No prior case law exists that addresses the novel issues of parentage presented by the complex interpersonal relationships of the three adults and one child involved in the instant case.

With three adults adamantly vying for legal recognition of their parental rights *vis-à-vis* the child, M.C., and the court on the brink of setting new and momentous precedent, *amicus curiae* respectfully directs the court's focus to this simple question: what decision would best protect the

interests, rights and well-being of M.C., and of the countless other children who have already been or will be born into similar non-traditional familial structures? Instead of trying to strictly adhere to the existing line of precedents — none of which dealt with the question of how legal same-sex marriages impact questions of parentage — the court should instead use the guiding principles of those precedents as a roadmap that helps guide it through previously unchartered territory.

Amicus believes that is the precise course taken by the juvenile court below, which recognized the parental status of all three adults. *Amicus* notes the following grounds support the juvenile court's finding:

(1) Melissa, M.C.'s natural mother, has status as such.

(2) Irene, who was legally married to the child's natural mother when M.C. was born, has presumed parent status through a gender-neutral application of Family Code § 7611(a) (see *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 119–20).

(3) Jesus, M.C.'s biological father, has presumed parent status by application of *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849, by virtue of the fact that he attempted to assume his parental responsibilities as fully as Melissa allowed and his circumstances permitted, and he demonstrated a willingness himself to assume full custody of the child — not merely to

block adoption by others. ("[W]hen the father has come forward to grasp his parental responsibilities, his parental rights are entitled to equal protection as those of the mother." *Adoption of Kelsey S., supra,* 1 Cal.4th at p. 849.)

Irene's opening brief states that "the *Elisa B.* Court determined that there can be only two parents, not three", citing *Elisa B. v. Superior Court, supra,* 37 Cal.4th at 118–119.[1] *Amicus* respectfully disagrees with Irene's reliance on *Elisa B.*, which itself was a landmark opinion addressing a novel factual scenario that did not precisely fit into the confines of past caselaw. In considering whether there could be two parents, both of whom were women, the *Elisa B.* Court had to consider the implications of its prior decision in *Johnson v. Calvert* (1993) 5 Cal.4th 84, 88. In *Johnson*, three people claimed to be the child's parents: the husband, who undoubtedly was the child's father, and two women who presented conflicting claims to being the child's natural mother. In *Johnson,* the Court rejected the idea that both the wife and the surrogate could be the child's mother, stating that a child can have only one mother.

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[1] In *Elisa B.*, the Court noted that in a previous holding (*Johnson v. Calvert* (1993) 5 Cal.4th 84, 88), it rejected the argument that a child could have one father and two mothers under the facts presented in that case. However, the *Elisa B.* Court also explicitly noted that "**[w]e have not decided 'whether there exists an overriding legislative policy limiting a child to two parents'" (*Elisa** *B. v. Superior Court, supra,* 37 Cal.4th at 118 (fn. 4) (emphasis added)).

However, "[l]anguage used in any opinion is of course to be understood in the light of the facts and the issue then before the court, and an opinion is not authority for a proposition not therein considered" (*Elisa B. v. Superior Court, supra,* 37 Cal.4th at 118–119, citing *Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn. 2.) Accordingly, application of the *Johnson* holding must be limited to factual situations where the three people vying for paternal status are the biological father, the biological mother, and the surrogate mother.

That was not the factual situation presented in *Elisa B.*, and the *Elisa B.* Court properly branched off from the *Johnson* Court holding to address the unique factual scenario before it: two women both seeking status as the child's mother (one as natural and one as presumed), ***with an anonymous donor with no parental claims, expectations, or rights providing the sperm that was artificially inseminated into the natural mother.***

Just like the *Johnson* decision before it, the *Elisa B.* holding can only serve as authority for propositions therein considered. Inarguably, the *Elisa B.* Court did not consider the propositions presented herein, where three people are vying for parental status, and those people are the natural mother, the woman to whom the natural mother was legally married when the child was born, and ***the natural father who had a relationship with the natural mother,***

who very much wants to have a parental role in the child's life and who has taken appropriate and affirmative steps to do so.

Thus, this Honorable Court is being asked to define parental rights and status given propositions never before considered by a California court.

II. FAMILY CODE § 7612 APPLIES ONLY AFTER AN ANALYSIS OF THE CHILD'S BEST INTERESTS DETERMINES THAT THERE ARE A LIMITED NUMBER OF POSITIONS AVAILABLE FOR A PARENT TO FILL

Family Code § 7612(b) requires that when "two or more presumptions arise under Section 7610 or 7611 ***that conflict with each other***, or if a presumption under Section 7611 ***conflicts*** with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls" (emphasis added). The language of the statute itself leaves open the possibility that two or more presumptions may arise ***that do not conflict with each other***. As mentioned above, the *Elisa B.* Court explicitly acknowledged that legislative policy may allow a child to have more than two parents. (*Elisa B. v Superior Court, supra*, 37 Cal.4th at 118 (fn. 4).) The *Elisa B.* Court further recognized that Family Code § 7570 is an example of the Legislature specifically recognizing the importance to a child of having more than one parent as a source of both emotional and financial support. (*Id.* at 123.)

"The best interest of the child is the fundamental goal of the juvenile dependency system." (*In re William B.* (2008) 163 Cal. App. 4th 1220, 1227, *citing* Seiser & Kumli, California Juvenile Courts Practice and Procedure § 2.11 (Mathew Bender).) In order to determine whether or not two parental presumptions are, in fact, in conflict with each other, the Court must look at whether or not it is in the child's best interest to limit the number of parents available to the child. When the child's best interest are considered, particularly in light of the child's clear interest to have more than one source of both emotional and financial support, it may be clear, as is the case with M.C., that more than two people are appropriately acting and should continue to act as parents. When this is the case, the parents' multiple claims of presumption are not, in fact, in conflict because there is room in the child's life and in the child's best interest for the multiple parents to continue to legally parent the child.[2]

[2] While Appellant, Melissa V., asserts in her Opening Brief that the idea of a child having more than one parent, when taken to its logical conclusion, means that there would never be any need to terminate parental rights for any purpose. This is simply not true. Parental rights are terminated when it has been determined that it is no longer in the child's best interest to have, as a parent, the person whose rights have been terminated.

III. THE JUVENILE COURT PROPERLY FOUND THAT BOTH IRENE AND JESUS ARE M.C.'S PRESUMED PARENTS

By virtue of her marriage to the child's natural mother when M.C. was born, Irene has presumed parent status through a gender-neutral application of Family Code § 7611(a) (see *Elisa B. v. Superior Court, supra*, 37 Cal.4th at 119–20). However, as discussed at length in Respondent M.C.'s Brief and in Jesus P.'s Respondent's Brief, Jesus also appropriately has presumed parent status by application of *Adoption of Kelsey S., supra,* 1 Cal.4th at 849, by virtue of the fact that he attempted to assume his parental responsibilities as fully as Melissa allowed and his circumstances permitted, and he demonstrated a willingness himself to assume full custody of the child — not merely to block adoption by others.

Given the complexity of so many relationships through which children are brought into this world, it would not serve the best interests of children to broadly declare that no more than two adults are entitled to parental rights *vis-à-vis* any one child. In addition to unfairly requiring a court to cancel out the rights of a person who has otherwise met one of the legal thresholds for establishing parental rights, such a holding would detrimentally impact the ability of children to form and cultivate relationships with their own family members (biological or otherwise). Courts must be allowed flexibility to consider the unique factual

circumstances presented in each case, and to recognize and respect the rights of all such individuals who can establish a legally cognizable parental relationship to a child. The Juvenile Court properly considered the best interests of M.C. and determined that M.C. is best served by having three parents, Melissa, Irene and Jesus.

IV. BY RECOGNIZING THE PARENTAL STATUS OF MELISSA, IRENE AND JESUS, THE COURT'S RULING PROPERLY GIVES M.C. CORRESPONDING RIGHTS WITH REGARD TO EACH OF THEM

In recognizing the parental status of Melissa, Irene, and Jesus, the court inherently — and appropriately — gives M.C. corresponding rights with regard to all three of her parents. M.C. had no choice or role in deciding who was married to whom when she was born. Nor did she play a role in deciding in whose home she has lived since the time of her birth. Under no circumstances should she — or any child — be penalized for the status or actions of her parents. (*See, e.g., Gomez v. Perez* (1973) 409 U.S. 535, 538 (holding it is "illogical and unjust" to deprive a child of important rights and benefits simply because the child's parents are not married.)

Allowing the court to recognize the parental status of all three adults will in turn give M.C. the right to expect all three adults to support and nurture her in an appropriate manner. What policy is served by denying a child the right to be emotionally and financially supported and nurtured by

three individuals, given that they each have established legally cognizable parental rights?

CONCLUSION

In today's society, traditional family units exist side-by-side with non-traditional family units. As we are witnessing in the instant case, the everchanging landscape of potential viable family units has resulted in familial relationships that are quite complex in comparison to the strictly male dad/female mom traditional family unit. In order to best serve the children of such non-traditional families, our courts must have the ability and flexibility to acknowledge that — in some cases — more than two individuals might be able to establish parental rights that are entitled to equal weight *vis-à-vis* the child. In so doing, the courts will properly be establishing that the child has legally enforceable rights and expectations with regard to each of those individuals.

For the foregoing reasons, *amicus curiae* Children's Advocacy Institute respectfully requests that this Court affirm the Juvenile Court's finding that M.C. has three parents, each of whom have rights *vis-à-vis* M.C. — and each of whom are obligated to provide M.C. with the emotional and financial support and nurturing that all parents are expected to provide to their children.

Dated: November 23, 2010 Respectfully submitted,

_____

ROBERT C. FELLMETH
State Bar #49897
Executive Director
Children's Advocacy Institute

CERTIFICATE OF WORD COUNT PURSUANT TO RULE 8.360

The text of *Amicus Curiae*'s Brief consists of 3,147 words as counted by the WordPerfect X3 program used to generate this brief.

Dated: November 23, 2010

Respectfully submitted,

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ROBERT C. FELLMETH
State Bar #49897
Executive Director
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DECLARATION OF SERVICE BY MAIL

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is 5998 Alcalá Park, San Diego, CA 92110. On November 23, 2010, I served the document described as: **APPLICATION OF THE CHILDREN'S ADVOCACY INSTITUTE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENT M.C.** and ***AMICUS CURIAE* BRIEF OF THE CHILDREN'S ADVOCACY INSTITUTE IN SUPPORT OF RESPONDENT M.C.** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, in the United States Mail at San Diego, CA, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed November 23, 2010 at San Diego, California.

_____

ELISA WEICHEL