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CHOCTAW SUPREME COURT
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# IN THE CHOCTAW TRIBAL SUPREME COURT OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS

**IN THE MATTER OF:**
**T.K.F., A MINOR CHILD, *et al*** **APPELLANTS**

**v.** **CAUSE NO. SC 2016-01**

**MBCI DEPARTMENT OF SOCIAL SERVICES** **APPELLEE**

## OPINION AND ORDER

***(Per Curium)*** This matter comes before the Court on direct appeal filed by the Petitioners below following the Youth Court's granting of Appellee's Motion to Dismiss the Joint Petition for Adoption and that Court's subsequent denial of Petitioners' Motion to Reconsider. Appellants thereafter filed their Notice of Appeal on February 25, 2016. Following due submission of briefs by the parties, oral argument was held on February 15, 2017. Supplemental authorities were requested by the Court from both Counsel, which were thereafter received and also given due consideration. Therefrom this opinion and order follows.

## PROCEEDINGS BELOW

On May 22, 2015, Petitioner #1 (here Appellant #1) and Petitioner #2 (Appellant #2 or "natural mother"), who are an adult same-sex couple living together in a "committed relationship" filed a *Joint Petition for Adoption* in the Choctaw Tribal Youth Court ("Youth Court" or "Lower Court"). Petitioner #2 is the natural mother of the minor T.K.F., who was four years old at the time of the filing. The paternal rights of the natural father (here unnamed) had been terminated by order of the Tribal Youth Court on February 4, 2014, in Y.C. Cause No. 2013-165.[1] Petitioner #2's legal status at the time of the adoption petition filing was, and remains, that of biological mother and sole parent and custodian of T.K.F.

Pursuant to Choctaw Tribal Code § 11-5-2, the Mississippi Band of Choctaw Indians, Social Services Division ("MBCI"), was named as Respondent in the petition. By order dated October 20, 2015, titled ORDER OF CONTINUANCE AND BRIEFING SCHEDULE, the Tribal Youth

[1] An AMENDED ORDER TERMINATING PARENTAL RIGHTS was filed May 1, 2014, correcting certain deficiencies in the earlier order.

Court noted, "that since the nature of the case is new to the Court, the parties should submit briefs on the issue."

Following briefing by both parties, including opposing counsels' submissions of competing supplemental affidavits that each secured from the same tribal elders, the Lower Court on December 21, 2015, received testimony and entertained arguments from both parties.

By written OPINION AND ORDER dated January 28, 2016, the Youth Court denied Petitioner's *Joint Petition for Adoption,* finding in pertinent part: "At this time, several factors concerned this Court. As the petitioners are not married, they are [*not*] under any legal obligations to remain together. [Petitioner #1's] inability to be able to financially support the minor and herself other than from others causes this Court concern that the present and future of the welfare of the minor child. Furthermore, as the MBCI Tribal Code does not allow for same-sex adoption."

Petitioners filed their MOTION TO RECONSIDER JUDGMENT on February 5, 2015, and on February 19, 2016, the Court denied their request. Petitioners next filed before this Court their February 25, 2016, NOTICE OF APPEAL. The case was briefed by both parties and oral arguments were held on February 15, 2017, at the conclusion of which the case was submitted, subject to both parties' opportunity to submit supplemental authorities addressing unmarried couples' adoption rights. This opinion and order follows.

## FACTUAL BACKGROUND

Beyond the facts recited above, one of the four tribal elder affiants and both petitioners testified at the January 25, 2016, hearing. Petitioner #2 testified that she is the natural mother of T.K.F. Petitioners #1 and #2 had been in a relationship living together for over four years. [T. P. 57.] Both Petitioners were jointly raising the child in the home of Petitioner #1's mother. The natural father's rights were terminated over a year and a half before. Petitioner mother said she had been in the hospital "mostly all of last year." [T. P. 58.] She said Petitioner #1 solely provided for her son's care during these hospitalizations, and other times, ensuring him daily hospital visits with his mother. Sometimes they even stayed overnight with her as well. With a precarious health condition and required in-home dialysis, Petitioner #2 feared that without this adoption her son might go into a system she herself had lived in all her life. [T.P. 61.] Regarding guardianship as a possibility, the following dialogue the place:

Q. And we've talked about guardianship. Do you understand the difference between guardianship?

A. Yes, I do.

Q. Regarding the temporary nature and the possibility that they may be taken away?

A. Uh-huh (affirmative response).

Q. But the adoption is the only way to secure [child's name] his mom or (unintelligible) parents?
A. Yes. [T.P. 61.]

Judge Peters next questioned and determined they had together applied for and were on the waiting list for housing. When asked how they supported her child, Petitioner #2 answered, "she goes to school, and I'm going back to school, and I'm on disability." [T.P. 62-63.]

Petitioner #1 also testified as to their four-year relationship, and joint raising of T.K.F., and her desire to adopt Petitioner #2's child. Regarding her employment until just recently, she said she was with Peco's, then transferred to the Walnut Grove Detention Center, was laid off, worked at Geyser Falls during the summer, and then went back to school. [T.P. 62-63.] The proceedings were concluded at the end of her testimony.

## Standard of Review

Both counsel acknowledge that to the extent this appeal presents questions of the interpretation of law, the standard of review by this Court is *de novo.* "Statutory interpretation is a matter of law which this court reviews *de novo*." *Adams v. Baptist Mem'l Hospital-DeSoto, Inc.* 965 So.2d 652, 655 (Miss. 2007). While interpretation of the law is reviewed *de novo*, a court's findings are reviewed for clear error. *Hewes v. Langston,* 853 So.2d 1237, 1241 (Miss. 2003). In *Brocato v. Mississippi publishers Corp.,* 505 So.2d 241, 244. (Miss. 1987) the Court ruled defendants on appeal are entitled to raise any alternative ground based on the pleadings in the Court below which would support the judgment here. The Mississippi Supreme Court noted in *Lee v. Memphis Publishing Company,* 195 Miss. 264, 14 So.2d 351, 353 (Miss. 1943): "[I]f the judgment of dismissal was correct on any ground raised by the plea, the same will be affirmed." *See also, Briggs v. Benjamin,* 467 So.2d 932, 934 (Miss. 1985); *Huffman v. Griffin,* 337 So.2d 715, 723 (Miss. 1976). In *Hickox v. Holleman,* 502 So.2d 626, 635 (Miss. 1987) this Court held, "an appellee is entitled to argue and rely upon in a ground sufficient to sustain the judgment below." (As cited in *Brocato, supra.*)

## Preliminary Statement

Appellants framed their primary Statement of Issues[2] and main briefing point of argument in such a broad way as to invite this Court to be a part of the ongoing national debate over the issue of the rights of same-sex couples. Appellee Tribe in response has obligingly largely acquiesced to Appellant's challenge by taking a position directly opposing lawful recognition of same-sex

[2] Issue No. 1 of Appellants' Brief reads: "DID THE TRIBAL COURT APPLY AN ERRONEOUS VIEW OF THE LAW WHEN IT FOUND THAT THE SAME-SEX ADOPTIONS WERE BANNED BY THE TRIBAL COURT?"

partners' rights, arguing the Tribal Court properly held that the *Choctaw Tribal Code,* Title XI, Chapter 7, does not authorize adoptions by same-sex couples. Appellee moreover asserts that the cited federal judicial decisions and agency regulatory amendments have no binding effect on the Tribe, nor do the *Bill of Rights* and the *Fourteenth Amendment* apply to Indian tribes so as to require such tribal Court recognition.

For the reasons and analyses set forth below, this Court instead follows the clear language and mandates of the Choctaw Tribal Code provisions to reach its gender-neutral conclusion on the narrow issue truly before us. In doing so, however, we set aside that portion of the Tribal Youth Court's grounds for its dismissal of the petition reading, "[f]urthermore, as the MBCI Tribal Code does not allow for same-sex adoption." Instead, we uphold her dismissal of this joint petition of adoption on alternate grounds as set forth hereafter.

## DISCUSSION AND ANALYSIS

The briefs and arguments of both parties fixate mostly on the recent two opinions issued by the United States Supreme Court: *United States v. Windsor,* 133 S.Ct. 2675 (2013) and *Obergefell, et. Al., v. Hodges, 135 S.Ct. 2584 (2015).* Both rulings are considered the landmark cases on recognition of same-sex marriage: *Windsor* is seen as compelling federal recognition of same-sex marriages made lawful in any state wherein their marriage would be recognized as lawful; and *Obergefell* as more universally recognizing the right of same-sex couples to marriage in all states of the United States.

*In United States v. Windsor (supra)*, the U.S. Supreme Court on June 26, 2013, by a 5 – 4 majority vote declared that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional because it defined the terms "marriage" and "spouse" to apply in all federal statutes to only opposite-sex unions; even though many states by then recognized same-sex unions as valid marriages within their jurisdiction. Before *Windsor*, DOMA § 3 under any federal law referring to "marriage" or "spouse" had one meaning (namely lawful) as regards a heterosexual marriage, but a different meaning (not recognizable as lawful) in relation to same-sex marriages. This rule of interpretation applied even in those states where both types of marriage unions were legal. The *Windsor* decision changed that unequal treatment such that under the Fifth Amendment's due process clause guarantee of equal protection under law, the federal government now has to recognize the validity of same-sex marriages in those states whose statutes or court decisions make same-sex marriages legal.

Then, exactly two years to the day later, on June 26, 2016, the Supreme Court ruled in *Obergefell v. Hodges (supra)* that the Fourteenth Amendment requires all states to allow same-sex partners to marry under their state law and to also have recognized as lawful same-sex

marriages those granted them in other states. *Obergefell* said the state same-sex marriage bans are a violation of the Fourteenth Amendment's Due Process and Equal Protection Clauses. That Supreme Court case consequently requires that all states now recognize the validity of same-sex marriage.

## Summary of Petitioners' Arguments

What makes these two United States Supreme Court cases of such importance to the Appellants in this adoption case now before this Court is, they claim, that because they are a same-sex couple living in a "committed relationship," the Choctaw tribal code must be read in such a way as to allow them the right to adopt the minor child on the same basis as are other adopting married couples. After all, Appellants reason, since the *Windsor* case now requires the federal government to recognize same-sex marriages as lawful unions and since *Obergefell* now requires every state government to allow same-sex couples to lawfully marry and be married by state law, those two Supreme Court opinions together cover all bases under both state and federal law. They therefore reason that Title XI of the Choctaw Tribal Code must now be interpreted to mean that same-sex couples have the same standing to adopt under tribal laws as do heterosexual married couples.[3]

## Summary of Appellee's Arguments

The Appellee Tribal Department of Social Services brief argues that the Tribal Youth Court properly ruled that the Choctaw Tribal Code, Title XI, Chapter 7, does not authorize adoptions by same-sex couples when it granted the Tribe's Motion to Dismiss Appellants' adoption petition. Appellee takes the position that *Windsor, Obergefell*, the Bill of Rights, and the Fourteenth Amendment do not apply to Indian tribes because "they remain a 'separate people' with the power of regulating their internal and social relations" free of these constraints.[4] What controls instead, Appellee says, are CTC § 1-1-4 applying the ordinances, customs and usages of the tribe; and CTC §§ 11-7-1, 11-7-3, and 11-7-6 governing who may adopt and be adopted.[5]

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[3] Appellate counsel's initial brief did acknowledge that Mississippi remains a single "holdout state" in the union, still resisting acknowledging the lawfulness of same-sex marriages within their state boundaries. Mississippi does so through an ongoing federal appellate case that seeks to uphold a state law that would effectively block adoptions by same-sex couples.

[4] Appellant's brief p. 11, quoting *U.S. v. Kagama,* 118 U.S. 375, 381-382 (1886).

[5] They add in further support that: "An amendment adopted in 1982 (S*ee Choctaw Tribal Ordinance* 16-C, §11-7-6(2) reads:

> Any person whose parents **are both dead** may be adopted by an adult person or persons. PREFERENCE WILL BE GIVEN TO PROSPECTIVE ADOPTIVE COUPLES, RATHER THAN TO THE SINGLE PARENT.
> (Emphasis included in the original text)."

Appellee's brief at page 15 does say that the language of Tribal Code Title XI, Section 7, is silent as to whether a same-sex couple may adopt. Nonetheless, they argue that by tribal tradition homosexuality was forbidden. The affidavits of tribal elders which Appellee submitted and the opinions of three other male elders indirectly conveyed by one of those affidavits in combination with in-court testimony of one affiant, they maintain, show that a general tribal custom animus towards the notion of same-sex couples adopting prevails by Choctaw tradition. Everything pointed to, Appellee argues, confirms that the Youth Court's properly found "the Tribal Code does not permit same-sex adoption." Respondents' lower court brief also mentioned the availability of guardianship.

## Mississippi Adoption Law

The Tribal Youth Court judge's ruling, as noted earlier, cited Mississippi's statutory prohibition in §93-17-3(5) of same-sex couple adoption as further support for her decision to dismiss the adoption petition. The statutory language of Mississippi Code §93-17-3(5), *Adoption, Change of Name and Legitimation of Children* is unequivocal in its stating that "(5) Adoption by couples of the same gender is prohibited." That statutory ban of same-sex couple adoptions, however, is presently the subject of federal litigation in a case which at the federal district court level was captioned *Campaign for Southern Equality, et al. v. Miss. Dept. of Human Serv., et al., 2016 U.S. Dist. LEXIS 43897; 3.15cv578-DPJ-FKB* (S.D. Miss. March 31, 2016). Four same-sex couples residing in Mississippi seeking adoptions, either private or through the State's foster care system, challenge the aforementioned prohibition based upon violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The District Court applied the rationale of the *Obergefell* decision to find that §93-17-3(5) violates the Equal Protection Clause of the U.S. Constitution and enjoined the Department of Human Services from enforcement of the code section.[6] *Id.* at *38. The Appellees' Brief at page 14 mistakenly reported the State of Mississippi did not appeal that decision, and cited a May 3, 2016, newspaper article from *The Clarion Ledger,* as its information source.[7] Actually, and contrary to the impression conveyed by *The Clarion Ledger* article, only Mississippi's attorney general and one other named defendant conceded the issue: Mississippi Gov. Phil Bryant and a fourth named defendant continue to press their appeal before the U.S. Fifth Circuit Court of Appeals. Following that, "The Fifth Circuit quickly issued a published opinion declaring that "*Obergefell* . . . is the law of the land and, consequently, the law of this circuit and should not be taken lightly by actors within the jurisdiction of this court." *Campaign for Southern Equality v. Bryant*, 791 F.3d 625, 627 (5th

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[Appellee's brief, p. 12.]

[6] That stay of enforcement remains in place pending the final outcome of appeals.

[7] Appellees nonetheless pressed their argument that "while the outcome of this decision changed Mississippi law, that decision provides only persuasive authority and does not supersede Tribal law." [Appellee's brief, p. 14]

Cir. 2015) [hereinafter *CSE II*]. It returned the case to the district court on July 1, 2015, with an instruction to "act expeditiously on remand and . . . enter final judgment . . . by July 17, 2015, and earlier if reasonably possible." *Id.* In its next session, the Mississippi Legislature passed HB 1523. It sought to circumvent the enforced injunction on religious freedom grounds. Governor Bryant signed the bill into law on April 5, 2016. It, too, was enjoined and the case was ordered reopened. Needless to say, the status of Mississippi law in prohibition of same-sex couple adoptions still remains in limbo.

## Tribal Custom Law

This Court is unable from the record to clearly discern tribal custom and tradition in regard to the rights of couples in same-sex relationships to adopt, however, the facts in this case do not require resolution on this issue as the Court decides the matter on a gender-neutral basis.

## Choctaw Tribal Code

The Petitioners have based their status of being in an open, committed relationship as their rationale and legal entitlement to adopt minor child. This Court's analysis therefore leads us to an examination, in legal terms, of the *current* meaning which is to be ascribed to the words "committed relationship." Wikipedia lists among the range of everyday meanings associated with the term "committed relationship"; close friendships, courtship, long-term relationships, engagement, marriage, and civil unions. In law during the *pre-Obergefell* era that terminology was almost invariably utilized in proceedings to describe the relationships of same-sex partners. For example, in the year 2000 that term can be found mentioned in no less than 584 reported state or federal opinions and in 2005 they numbered no less than 544. By the year 2008 the number dropped to 466, and then to 407 by 2010. The decline in annual numbers thereafter became even more dramatic: 326 in 2012; 248 in 2013; 185 in 2014; and 121 in 2015 – the year the *Obergefell* opinion was handed down. By contrast, the number of states legalizing same-sex marriage steadily increased over this century, therefore strongly suggesting that the increasing number of states legalizing marriage by same-sex partners led to this diminishing of "committed relationship" case opinions. Appendix "A" to the *Obergefell* majority opinion lists 11 states and the District of Columbia enacting statutes legalizing same-sex marriage and 5 states whose courts have upheld their legality, the earliest being Massachusetts in 2003. *See, e.g., Goodridge v. Department of Public Health,* 440 Mass. 309, 798 N.E.2d 941 (2003). The year following *Obergefell* the term "committed relationship" more than halved to 60 – mostly pending same-sex litigation then winding down. A recent check for this present year finds its mentioning in only 16 cases using that term and only two do so in mentioning same-sex partners. Circumstances considered, Appellant Lower-Court Petitioners' characterization of theirs as being a "committed relationship" carries no special significance in and of itself such as being the functional

equivalent of a form of same-sex marriage union in the eyes of the law or in our interpretation of the tribal code.

The record before the Court furthermore indicates that even up to the February 15, 2017, date of oral arguments and final submission of the case for decision, the Petitioners never formally married under the laws of any jurisdiction. Petitioner #2 was pointedly questioned on Petitioners' marriage status by the Youth Court Judge at the January 28, 2016 hearing:

> JUDGE PETERS: Do you foresee yourself getting married?
> THE WITNESS: Yes.
> JUDGE PETERS: And do y'all have a date set already?
> THE WITNESS: Well, we were actually just looking for a judge.

(Tr. Trans. P. 63.)

Again, at oral argument on appeal when asked if the Petitioners were married, their counsel answered: "They're not and they were not at the time of the hearing of this matter in the lower court." (Oral Arg. Tr. P. 15.)

## Unmarried Couple Adoption Prohibition

The Court's conclusion therefore is that in relation to pertinent tribal code provisions we must construe this as a voluntary joint petition for adoption where an unmarried person seeks to adopt the child with the living natural parent whose custodial rights have neither been permanently relinquished nor involuntarily terminated. Such proceedings are often referred to as "co-parent or second parent" adoptions.

Turning then to CTC Title XI, Sec. 7 – Adoption, §11-7-1, we note that "[a]doption provides permanent substitute care for the child when his natural parents are unable, or unwilling, to care for him, or her, **and** have been legally freed of any ties to the child or children." CTC §11-7-2 captioned "Definitions" says at subsection (2) ""Adoption' means the act of adopting or the state of being adopted. It is a permanent plan, offering the most stability to the child who cannot return to his parents." All-controlling to this case is CTC §11-7-6 which, in pertinent part only, we next quote:

> §11-7-6 **Who May Adopt**
>
> **(1)** Any minor child subject to the jurisdiction of the Mississippi Band of Choctaw Indians may be adopted by any adult person, Indian or non-Indians (only if the non-Indian's next of kin is provided by the Indian

> Child welfare act of 1978, or there are conditions where the child is without a permanent home) as hereafter provided.
>
> (2) Any person whose parents are both deceased may be adopted by an adult person or persons. Preference will be given to approved prospective adoptive couples, who are tribal members or to a single person who is a tribal member.

A collective reading of the afore quoted provisions leads us to the inescapable conclusion that for a child to be eligible for adoption by a single applicant, the child must first have been legally freed of any ties of the natural parents. The various scenarios by which this "legally freed" status may come about are through the death of the parent(s); involuntary termination of all parental rights to the child; or the voluntary, permanent signing away or all parental rights to the child by both parents. Potentially, too, any combination of any two of the above would suffice under those circumstances in those situations where the identity of the natural father is identified.

This statutory scheme makes no allowance for any adoption to take place whenever the parties seeking this joint adoption are unmarried. This is so, no matter how otherwise close, long-standing, or committed (short of marriage) the parties may be. It is so, too, notwithstanding that one of the two may be the natural (or even adoptive) parent of the proposed adoptee. Reinforcing this statutory configuration is the further proviso of CTC §11-7-6(2) that where both parents of the proposed adoptee are deceased, a single adult person's preference shall be secondary to that of approved prospective adoptive couples.[8]

The Tribal Code Section 7 adoption statutory distinction between the rights of a single person and a couple is neither unique nor invidiously discriminatory on its face or as long as proper in application. At oral argument, this Court invited both parties to provide supplemental authorities on this question. No less than nine states allow joint and second parent adoption for couples who are married or have a civil union or domestic partnership.[9]

## Guardianship

None of what has been set forth above is to say that Petitioners here are without a statutory source of help in their difficult situation. CTC §11-7-23 is the provision of the Tribal Court providing tribal court jurisdiction, authority, and a panoply of procedural protections and

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[8] Furthermore, CTC §11-7-6(5) even further narrows that class of adopting individuals such that "[a] married man, who is separated, but not legally divorced from his wife, cannot adopt a child, nor can a married woman, who is separated, but not legally divorced from her husband, adopt a child.

[9] States listed were Hawaii, Iowa, Nevada, New Hampshire, Oregon, Rhode Island, Washington, Connecticut and Vermont. In Connecticut and Vermont, second parent adoption is available statewide regardless of marital status, but joint adoption is only available for married couples.

supervisory powers in relation to the establishment of guardianships over minor children in circumstances such as that of T.K.F.

Counsel for Petitioners at the Lower Court proceedings addressed the question as to why a legal guardianship would not suffice for them. To that point he argued:

> And, lastly, Your Honor, and this is -- while we don't have a guardianship case before this Court, I think it's really important to speak about it because this was mentioned and suggested in the respondent's brief.
>
> Now, we use harsh language because it is. The reality is harsh. Ultimately, for guardianship, it's insulting and it just -- it misses the whole point, Your Honor. [Lower Court Tr. P. 18.]

Although different counsel argued for Petitioners at this Court level, his purported view against guardianship was equally vacuous:

> I do not believe that it's proper to tell the mother there should be a guardianship. That's governmental interference in her life. It serves no legitimate governmental purpose. [Appellate Oral Arg. Tr. P. 58.]

It mystifies this Court as to how or why a court decree of guardianship is any more "governmentally intrusive" than the process of courts' issuances of adoptions. As to the characterizing of the laws of guardianship as being "insulting" to Petitioners, the Court likewise lacks understanding as to any offensiveness. Statutory powers of courts to establish, award, oversee, and terminate guardianships are fundamental to the jurisprudence of all 50 states, the District of Columbia, American territories and protectorates, and presumably every tribal or CFR Court system. Guardianship is also critical to the protection of their citizenry incapable of taking care of themselves or their own matters. Furthermore, they are gender-neutral in application, whether the Guardian be a person or an agency.

This Court's inclusive interpretation of CTC Title XI's interplay between its adoption statutory prohibition of unmarried couple adoptions (whether joint or second parent) and its guardianship provisions clearly passes the "heightened scrutiny" test of laws that discriminate against a particular group of people – here the group classification "unmarried couples." By one recent Stanford sociologist's longitudinal study started in 2009 and tracking more than 3,000 people, unmarried couple break-ups, even of relationships having lasted six years, were approximately 150% higher than were those of married couples, and that margin only became higher in later

years.[10] With the death of a natural parent, payment of qualifying Social Security death benefits under a guardianship would be court supervised, but unsupervised to the unmarried surviving adopting partner. Guardianship offers courts opportunity to reassess the state of guardian-ward relationships at the time the family unit becomes so reconstituted, and also periodically thereafter. It affords greater protection of wards from the full range of potential abuses, including "rehoming" – the practice of quickly giving away to new families through a basic" power of attorney" document – a notarized statement declaring the child to be in the care of another adult. Circumvention of federal and tribal ICWA laws can be reduced as well by bans of adoptions by unmarried couples.

## Conclusion

During oral arguments before this Court, Appellate Counsel for the Tribe informed the Court that Title XI of the Tribal Code is actually going through a full revamp by an eight-person committee, but that to date there has been no action taken by the Tribal Council to enact any changes into law. Regardless, the specific factual situation presented was decided on a purely gender-neutral basis. Nonetheless, it serves as a sharp reminder of the urgent need for legislative guidance through revisionary enactments to Title XI addressing this, and other growing complexities of our ever-diversifying family living structures. Matters of such fundamental importance should not default unto our Courts to determine.

In this instant case this Court needs to go no further than to reverse that portion of the Tribal Youth Court decision reading, "[f]urthermore, as the MBCI Tribal Code does not allow for same-sex adoption." Instead, we uphold her dismissal of this joint petition of adoption on alternate, gender-neutral grounds that the MBCI Tribal Code makes no allowance for any adoption to take place whenever the parties seeking a joint adoption are unmarried.

For the reasons set forth above, this Court reverses that portion of the Tribal Youth Court ruling on same-sex adoption, but affirms the Tribal Youth Court Judge's order granting dismissal on the alternate ground that the Tribal Code makes no allowance for any adoption by a person seeking joint adoption with another party to whom not married.

Accordingly, dismissal on alternate grounds of the Joint Petition for Adoption is ORDERED AFFIRMED.

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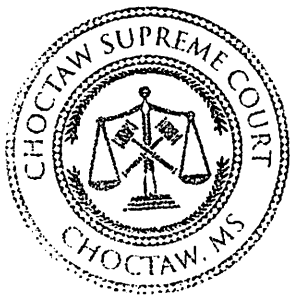
[10] Study results of Stanford University Sociologist Michael Rosenfeld, as reported in the online article "How the chance of breaking up changes the longer your relationship lasts," The Washington Post, March 18, 2016, Roberto A. Ferdman. https://www.washingtonpost.com/news/wonk/wp/2016/03/18/how-the-likelihood-of-breaking-up-changes-as-time-goes-by/?utm_term=.f1fb06dcaaa2

SO ORDERED, this the 26th day of May, 2017.

Chief Justice

Associate Justice

Brenda Toineeta Pipestem
Associate Justice



**CERTIFICATE OF SERVICE**

I do hereby certify that I have this, the 26th day of May, 2017, caused to be forwarded by the United States Mail or Hand Delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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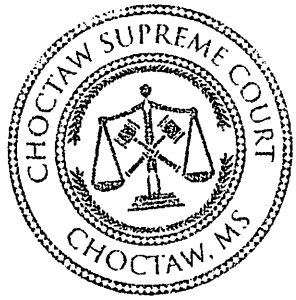
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