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**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV  
Case Nos. 23AP1401 and 23AP1805**

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In re the marriage of Angela Marie Yadagiri and Narendra Yadagiri

Vishnu Chaitanya Alamuri,

Appellant,

v.

Angela Marie Yadagiri and Narendra Yadagiri,

Respondents.

2023AP1401

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In re the Support or Maintenance of R.K.Y.

Vishnu Chaitanya Alamuri,

Appellant,

v.

Angela Marie Yadagiri and Narendra Yadagiri,

Respondents.

2023AP1805

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On Appeal from the Circuit Court For Dane County, Honorable Stephen J. Ehlke,  
Presiding in Case No. 22FA1824

And

On Appeal from the Circuit Court For Dane County, Honorable Jacob B. Frost,  
Presiding in Case No. 19FA1846

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**BRIEF OF PETITIONER-APPELLANT**

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## STATEMENT OF ISSUES

1. Did the circuit court err in summarily denying Mr. Alamuri's Motion to Intervene in the circuit court cases regarding the paternity of a child that Mr. and Ms. Yadagiri previously claimed as their son, but now claim is a child of Mr. Alamuri's?

Answer: Yes.

2. Did the circuit court err in summarily denying Mr. Alamuri's Motion to Reopen in the circuit court cases regarding the paternity of a child that Mr. and Ms. Yadagiri previously claimed as their son, but now claim is a child of Mr. Alamuri's?

Answer: Yes.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Appellant, Vishnu Chaitanya Alamuri (“Vishnu”) believes that the issue on appeal can be fully developed and sufficiently addressed in the parties’ briefs, and therefore oral argument is not necessary. Nonetheless, Vishnu stands ready to provide oral argument if the Court of Appeals so requests.

Publication may be appropriate under Wis. Stat. § 809.23(1)(a) because the opinion will likely:

1. Enunciates a new rule of law or modifies, clarifies or criticizes an existing rule: Wisconsin children and families would benefit from having rules of priority between two state courts similar to the UCCJEA (Wis. Stat. Sec. 822) rules for courts in more than one state, to avoid contradictory decisions in two state courts with the same parties and the same issues;
2. Applies an established rule of law to a factual situation significantly different from that in published opinions: while there are many cases on the marital presumption and rebuttal of same when a spouse is trying to prohibit another man from claiming paternity, when a man other than the husband claims to be the father, or a guardian ad litem recommends for or against rebutting the presumption in those cases, there is very little case law regarding why a person not named in a paternity action may want to assert that the marital presumption should remain intact;

3. Decides a case of substantial and continuing public interest: a) it is not uncommon for the child support agency to initiate an action affecting the family, and for a party to fail to file their legal separation/divorce affecting the same parties in that first case, or fail to consolidate the cases, leaving room for contradictory decisions and forum shopping (court official and guardian ad litem; b) a guardian ad litem should always be present when the court is addressing the application of a requested rebuttal of the marital presumption, as the outcome is substantially similar to a termination of parental rights (TPR); c) a court should not consider genetic testing prior to determining whether or not it is the best interests of a child to consider the request to rebut the marital presumption; and d) the issue of paternity when there is a request to rebut the marital presumption should only be addressed at an evidentiary hearing that includes the required foundation before relying on otherwise unauthenticated genetic tests.



## STATEMENT OF THE CASE AND FACTS

Angela Marie Yadagiri (“Angela”) gave birth to a child RKY in Madison, WI on February 1, 2019. (19R.1) It is undisputed that Angela was married to Narendra Yadagiri (“Narendra”) at that time. Id. It is undisputed that Angela and Narendra (“Mr. and Mrs. Yadagiri” or “Yadagiris”) completed the relevant paperwork regarding the birth of RKY, in which they both reported being the parents of RKY<sup>1</sup>. Id., and (19R.9<sup>2</sup>) Mr. and Mrs. Yadagiri gave the minor child the Yadagiri surname. Id. As a result of the paperwork the Yagagiris completed, they were listed as RKYs parents on his birth certificate. Id. Angela and Narendra’s actions prevented the inquiry that would have been initiated regarding the paternity of RKY, but for the answers they provided on the legal documents. The actions of Angela and Narendra, while completing the legal paperwork, effectively terminated any other man’s parental rights or responsibilities for RKY.

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<sup>1</sup> The Petition indicates the name given to the child, and names the parents. The parties stipulated to those facts at the hearing, as demonstrated in the Judgment. (19R-8). Angela provides the changed Birth Certificate for RKY, and admits she removed Narendra from the original Birth Certificate, offering further evidence that he was originally on it. (19R.9, p.1-2)

<sup>2</sup> As there are two appeals that are consolidated, each with its own record, references to the Record in 2023 in 2023AP1401 regarding Dane Co. Case 22FA1824 will be cited as “22R”, and references to the Record in 2023AP1805 regarding Dane Co. Case 2019FA846 will be cited as “19R”.

### **TIMELINE OF PLEADINGS/PROCEDURES**

1) On May 22, 2019, the Dane County Child Support agency, by Attorney Andrea D. Brendemuehl, filed a Summons, Petition, and Motion in Dane County Case Number 19FA846, (hereinafter “2019 Action”) to establish a child support order, orders regarding health insurance for the minor child, and other relief as may be just, equitable and necessary. (19R.1, 19R.5) The petition named Angela as the Petitioner and Narendra as the Respondent, referring to both as the parents of RKY. (19 R.1) Neither named parent challenged jurisdiction at or before the July 8, 2019 hearing on the motion regarding RKY, nor did the challenge the allegations in the Petition. Rather, they voluntarily submitted to the court’s jurisdiction. At the hearing, Angela and Narendra admitted to being the parents of RKY. (19R.8) Court Commissioner Jamieson accepted the parties’ agreement that child support would be set at \$0. Other orders were entered, confirming Angela as RKY’s mother and Narendra as RKY’s father. Id. Angela and Narendra were provided a copy of the Judgment (“Judgment”) entered in 2019FA846 “In re the marriage/support/paternity of: RKY” at the hearing on July 8, 2019. Id. The order handed to them at the hearing provides notice of the process for seeking a review of an order, if a litigant believes the order is erroneous. Id. at p.3 Neither Angela nor Narendra filed for a de novo review of the Judgment naming them as the parents of RKY. (19R.15)

2) Later in 2019, Angela filed a paternity case naming Alamuri Chaitanya Vishnu as the father of RKY in Dane County (Case No. 2019PA520). That case was dismissed on March 12, 2020. [19 FA Doc 15]

3) On or about November 24, 2020, in an attempt to get a support order, a Complaint was filed in North Carolina ("NC") in Case No. 20CVD13132, listing Narendra as the Defendant. (19R. 9, p.3) It is presumed that Angela failed to disclose the Wisconsin court orders when she filed the action in NC. That presumption is based on her similar behavior of failing to disclose information in the Wisconsin cases (discussed further hereinafter). On March 30, 2021, an Order was issued in that case. Id. The Order reveals that the child support agency was not properly served, but waived notice, and that neither Angela nor Narendra appeared at the hearing. Id. The only appearance was by Melinda Wagoner, the child support attorney. Id. The Order reveals "that the Agency takes a voluntary dismissal with prejudice of this action." Id. Thereafter, without any testimony from the parties, and without any guardian ad litem ("GAL") to address what is in RKY's best interests, the Order states testing results determined Narendra was not the father of RKY, and "any name(s) listed on the birth certificate(s) shall be removed." Id. The Order, apparent test results, and a copy of a Wisconsin birth certificate which no longer lists Narendra as the father of RKY (issued on March 28, 2022) were all faxed by Angela to WI on April 28, 2022 . Id.

4) On August 7, 2021, Child Support Attorney Wagoner filed an action in NC against Vishnu stating among other things that “the legal father Narendra Yadagiri, has been “dis-established” of paternity as evidenced by the attached DNA test results”. (19R.6, p.4, see also 19R.16, p.4-6]

5) October 18, 2021, Angela filed an action for Paternity, Support and Retroactive Support in North Carolina (21CVD9948) against Chaitanya Vishnu. (19R.10, p.3) A Motion to Dismiss was filed by Chaitanya. Id. See also (19R.16 p. 10-13). On March 16, 2022, the Court in NC opined it would not enter further orders absent a Wisconsin order that “dis-establishes” Narendra as the legal father as there are “2 conflicting orders”. (19R.16, p.2).

6) On April 28, 2022, Angela reported to the WI court that she removed Narendra from RKY’s birth certificate, and a hearing in NC against Alamuri Vishnu was pending. (R19.9) She included a birth certificate for RKY issued on March 28, 2022 which no longer listed her husband as the father, the March 30, 2021 NC Order finding that her husband was not the father, and what appears to be genetic tests ruling her husband out as the father of the minor child<sup>3</sup>. In a second filing on that same day, she included

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<sup>3</sup> The NC order to remove Narendra from RKY’s birth certificate was issued on 3/30/2021. The revised birth certificate obtained by Angela was issued on March 28, 2022, nearly a year after the order permitting the change, and just twelve days after the NC court granted a motion to dismiss Angela’s paternity action against Mr. Alamuri.

the order that was entered on March 16, 2022 that modified the prior order due to Vishnu's attorney informing the NC Court of the WI Orders.. (R.10)

7) A hearing was held before Honorable Mark R. Fremgen on June 2, 2022 to address Angela's request, and an order was issued that same day. (19R.15) Neither Angela nor Narendra appeared for the hearing, but Attorney Brendemuehl (this same attorney that attended the first hearing in which Angela and Narendra told Commissioner Jamieson that they were in fact the parents of RKY) did appear. Id. The Court entered findings that: Angela and Narendra got married when she was seven months pregnant; because they were married at the time of the child's birth Narendra is presumed to be the father; referenced the July 8, 2019 Judgment finding Angela and Narendra to be RKY's parents and no subsequent challenge to that Judgment; that Angela attempted to file a paternity action in Dane County (19FA520) to claim someone else as the father but that case was dismissed; that Angela moved to NC and sought a finding of paternity to remove Narendra from any financial responsibility for RKY, alleging he is not the biological father; there was no appointment of a GAL nor any order to rebut the presumption of paternity; and determined the information provided was insufficient basis to reopen the case pursuant to Wis. Stat. Sec. 806.07. Id. The Court ordered "no further action on this matter at this time". Id.

8) The next day (6/3/22), Angela asked to reschedule the hearing, and included a “Complaint” filed in NC naming Angela as a Plaintiff and “Chaitanya Vishnu” as the Defendant. (19R.16, p.4 and 19R.17, p 2, 4] That pleading states among other things, that Angela is a citizen and resident of North Carolina, RKY was born out of wedlock, and Narendra was “dis-established” of paternity by DNA test results<sup>4</sup>. (19R.16, p.4-6) Angela’s submission to the WI court included other pleadings from the NC case, including Vishnu’s Answer, Affirmative Defenses and Motion to Dismiss, in which Vishnu denies being the father of RKY and indicates his belief that Angela and Narendra claimed Narendra as the child’s father. (19R.16)

9) On June 6, 2022 Attorney Heather B. Jones filed a Notice of Appearance as Angela’s attorney. (19R.19) They filed another request to re-open and vacate the Judgment and subsequent orders, in which the Courts found and upheld the decision to apply the marital presumption. (19R.20) The motion requested that the Judgment finding Narendra to be the father, and subsequent orders adopting that finding be vacated so the North Carolina Court can proceed on the motion(s) Angela filed there. Id. In her affidavit in support of the motion, Angela swore that Narendra “is not the biological father or RKY”, in direct contrast to the position she and Narendra took when they presented their case to the Court on May 22, 2019. (19R.26) She went on to report that she and RKY are residents of NC and “this matter

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<sup>4</sup> Paragraph 6 of the Complaint indicates that a birth certificate is attached, but Angela did not provide that document with the pleading.

is before the North Carolina court.” Id. The brief filed on Angela’s behalf does not speak to RKY’s right to have a father properly adjudicated, spend time with him, or develop a relationship with him, rather the brief makes clear that Angela has one motive for filing her motions: to get child support. (19R.25) The brief states, among other things “Ms. Yadagiri is frantic because she receives no financial support for RKY....” Id. at p.2

10) On July 14, 2022 Attorney Brendemuehl efiled a letter indicating the court in NC dismissed the paternity action (21 CVD 9948) Angela filed there, and attached that Order. (19R.28) The Order states, “The Court grants the Defendant’s Motion to Dismiss and the Agency’s Complaint is dismissed without prejudice.” Id. Angela, through her attorney, acknowledged that their case in NC was dismissed. (19R.29)

11) On July 21, 2022 Court Commissioner Fremgen presided over the hearing for Angela’s latest motion to vacate the Judgment. (19R.30) The parties were present, Angela’s attorney was present, as was the attorney for the child support agency. Id. The Court’s findings included commentary on the fact that the parties “were and continue to be married”, which triggers the presumption that Narendra is the father; the parties wish to proceed with litigation in NC, despite that court’s recent dismissal of the case there; Angela’s affidavit report that both Angela and Narendra knew someone else was the biological parent of RKY when she appeared at the initial paternity hearing, admitted RKY was their son, and failed to report another potential father at that time; about NC jurisdiction; and the apparent lack of a basis to

vacate the judgment, but sufficient information to move forward on the Motion to Reopen to assess whether there is a sufficient basis to rebut the presumption of paternity per Wis. Stat. Sec. 891.41. Id. The Court appointed a GAL to weigh in on whether it would be in the best interest of RKY to rebut the presumption of paternity. Id.

12) Angela's newest Motion to Reopen/Vacate, initially heard on July 21, 2022 was set for further hearing on September 20, 2022. (19R.34) and Wisconsin Circuit Court Access. Appearances included Angela and her attorney, Heather Jones; Narendra; Guardian ad Litem Shelby Wallace; and Child Support Attorney Brendemuehl. Id. After considering the evidence (i.e. genetic tests Angela offered which state "Alamuri Vishnu Kumar" cannot be excluded as the biological father of RYK) and arguments, which are addressed in detail in the Order dated September 20, 2022, the Commissioner denied the request to vacate the judgment and overcome the presumption of paternity. Id. Reasons cited for this decision include: the parties remain married, the parties reside together with RKY, and there is conflicting information about RKY's relationship with Narendra. The Order also highlights information provided by the GAL, including: Angela has a very antagonistic relationship with Vishnu and reports that Vishnu has threatened her; Angela was charged with stalking Vishnu; and Narendra has stable and lucrative employment and an established parental role with RKY. Finally, the Order also includes the position of the Child Support Agency,



“The state supports the GAL recommendation that the parenthood presumption not be overcome for the reasons stated above as well as for the fact that the Petitioner applied for and received public assistance while in Wisconsin and never revealed the potential parenthood issue until several years later... Further, the state position is to ensure there is financial support for all children.”

Id. As indicated, the Court found an insufficient basis to overcome the presumption of paternity, and denied Angela’s Request to Reopen and Vacate the Judgment. Id.

13) Angela was arrested in North Carolina on August 4, 2022 and again on August 11, 2022. (19R.64, p.7-8) Her address was listed as 19202 Praxis Way, Cary NC.

14) On November 18, Angela filed another request for emergency hearing, stating she would be filing for divorce once she met the six-month residency requirement to do so in Wisconsin. (19R.35)

15) On November 19, 2022, Angela was arrested again for stalking Vishnu. She was served at her address, 19202 Praxis Way, in Cary, North Carolina, contrary to her assertions that she was living at that time in Wisconsin. She was released from jail three days later. (19R.64, p. 7, 9 and 19R65 p. 28)

16) On November 23, 2022 the NC Court issued an Ex Parte Domestic Violence Order of Protection in Vishnu’s favor against Angela. (19R.64, p. 11-16)

17) On November 28, 2022 Angela filed another request for emergency hearings or other means to undo the marital presumption, providing the same documents previously considered and deemed insufficient to support her requests. (19R.36) However, in this submission, Angela included a “Separation Agreement” which appears to be signed by both Angela and Narendra, with both signatures notarized by the same Notary in North Carolina on November 2, 2022. Id. at p. 31. In that document Angela and Narendra acknowledge that they have one child together based on the law and orders in Wisconsin. They claim the biological father is “Alamuri Kumar Vishnu”. Narendra agrees to Angela having all rights and offers to “give up parental rights”. Id. at p. 29. The agreement includes Narendra agreeing to pay for RKY’s health insurance and dental coverage until the court grants a “rebuttable presumption of paternity action regarding Alamuri Kumar Vishnu” and that “child support, uninsured and insured healthcare, child care... will continue as long as a child is a minor and economically dependent, in accordance with the laws of the State of Wisconsin.” Id. at 29-30. Thereafter the agreement indicates that RKY will be cared for by Angela and Narendra “will be held with 0 liability... and gives up any rights....” Id. at p.31.

18) On December 1, 2022 Angela filed a Summons and Petition With Minor Children for Legal Separation from Narendra in Dane County Case 2022 FA 1824 (“2022 Action”), using the state form FA-4108V Petition-With Minor Child. (22 R.1) In her pleadings, Angela lists RKY as a

“minor child we have together” adding handwritten notes “request rebuttal” and “not biological of Narendra”. Id. at p.5 She also adds “trying to have birth right of my son fixed due to wrong info given by WI child support agency”. Id. at p.7 Where asked if she was “a party... in other past court proceedings concerning the paternity, custody of or physical placement or visitation with the minor child listed” in this petition, she said “No”. Id. at p.8, ¶ 8. Where the pleading asks if she was “aware of a proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings related to domestic violence... concerning the children listed in this pleading, whether “in Wisconsin or in any other state”, she said, “No.” Id. at ¶. 9, Where the pleading asks if she and Narendra made written agreements or received orders from the “court about some or all of the matters in this action such as maintenance (spousal support), child support, legal custody or physical placement of the minor child, or property division”, she said “No”. Id. at ¶ 10. In other words, she failed to alert the court in this new case about any of the other cases regarding the minor child.

19) In the Confidential Petition Addendum she filed on December 1, 2022, Angela listed Vishnu Chaitanya Alamuri (with his birthdate and social security number) as “other party” in the legal separation case. (22R.2) She also filed what purports to be genetic tests which state, “The alleged father, Alamuri Vishnu Kumar” cannot be excluded as the biological father of the child....” 22R. 3)

20) Also on December 1, 2022, despite her answer on the Petition indicating that the parents had no agreements regarding issues to be addressed in the case, Angela also filed a “Marital Settlement Agreement with Minor Children”. (22R.4) Included within this document is the prior “Separation Agreement” the parties both signed in North Carolina on November 2, 2022. Id. The parties indicate the intent to continue to seek rebuttal of the marital presumption, but also acknowledge that per Wisconsin law and court orders, Narendra is the legally recognized father of RKY. (22R.4) On December 5, 2022, Angela filed another request in the 2019 FA case for “emergency hearing”, to “vacate order”, to “disestablish Narendra” and to establish paternity for “Alamuri Vishnu”. (19R.37) On that same day, Commissioner Fremgen responded to Angela’s additional requests for emergency hearings in the 2019 FA case. (19R.38) In the Findings of Fact and Order of the Family Court Commissioner, prior hearings with the commissioner and the judge are referenced, highlighting the fact that the judge denied Angela’s petition for paternity, the commissioner denied the requests to reopen and vacate, and the order dated September 20, 2022 was a “final” order, that was not timely challenged. Angela’s additional requests for relief were denied, and the court Ordered “No further action will be taken on this matter.” Id.

21) On December 6, 2022 Angela filed a Motion for De Novo Hearing of the December 5, 2022 order, seeking child support, maintenance, to “distablish” paternity and to vacate order. (19R.39)

22) On December 7, 2022 Judge Frost issued an Order on Angela's Motion for De Novo Hearing. (19R.40) The order summarized many pleadings in the case, and explained that when a de novo review was not timely requested, Commissioner Fremgen's September 20, 2022 Order became a final order. Id. The Judge denied the subsequent requests filed by Angela, explaining that they duplicated the same arguments decided by the Commissioner in the September 20, 2022 order, adding that the requests are baseless and foreclosed by that decision. Id.

23) On December 20, 2022 Commissioner Asmus, the court commissioner in the 2022 Action, authored a Memorandum about the competing court cases within Dane County and also in North Carolina regarding Angela and Narendra (the parties to the legal separation). (22R.18). The commissioner suggests that the GAL from the 2019 Action be appointed in the 2022 Action, prior to addressing the parties' request to rebut the presumption of paternity. Id. Thereafter the Memorandum states, "There is also a standing order in that case that no further action will be taken by the Court." Id. at 2. Without citing any case law or statute, the Commissioner interprets Judge Frost's Final Order, stating "No further action will be taken in the matter" as an indication that the new case is the only case to address the newest request to rebut the presumption, rather than opining that the issue should be returned to the court that has already repeatedly dealt with this issue. Id. However, the "no further action" comment is found in the Commissioner's order, that was appealed (by De

Novo review), and therefore the Judge's Decision supercedes that order. (19R.38) The Judge's ruling on the De Novo makes no such statement, but rather simply states that his order is a final order for purposes of an appeal. (19R.40)

24) On January 20, 2023, Vishnu was awarded an Amended Domestic Violence Order for Protection Consent Order against Angela. (19R.64, p.18-21) Angela filed a similar complaint against Vishnu, which was dismissed. Id. at p.17.

25) On February 20, 2023 Judge Ehlke appointed a new GAL, Attorney Ashley Richter, in the 2022 Action for legal separation. (22R.24)

26) On March 9, 2023 the GAL offered her recommendations regarding the marital presumption in a letter to the court. (22R.29) After having been involved with the parties for only two and a half weeks, she opined that it was not in the child's best interest to sustain the marital presumption. As the basis for that recommendation, she reported:

- a. First and foremost, neither party ever intended for Narendra to be RKY's legal father or parental figure in his life;
- b. Narendra was never held out to the public, close friends, or family as RKY's father;
- c. RKY has not been told that Narendra is his father;
- d. Narendra did not take on a parental role or develop a close bonded relationship with RKY;
- e. The parties did not live together as a family unit, other than for about four months;
- f. Narendra has not had contact with RKY since November 2022;
- g. RKY does not ask about Narendra;
- h. Narendra is considering returning to India; and
- i. No one intends for any conclusion in this action to alter the relationship between RKY and Narendra;

- j. And finally, the GAL raises the issue of whether or not the court has jurisdiction over the child in the legal separation case as Wisconsin was not the home state at the time this case was filed, and comments, “I do not believe this Court had jurisdiction to make orders on custody and placement

Id.

The turnaround time from the date of appointment of the GAL to the date she was asked to give her recommendation, is quite remarkable. In contrast, in Dane County, custody recommendations are due within 120 days, unless an extension is granted. Dane County Local Rule 407 (4). Even in the faster paced Motions for Relocation, the evaluator is allowed 60 days to produce recommendations. Dane County Local Rule 407(7). Unlike most recommendations which list the work that was accomplished (persons interviewed, records reviewed, etc.) to help obtain sufficient information to offer a recommendation, the letter provided in this case did not outline the sources of information. Given the rationale offered, it is self-evident that the opinions of the attorney for the Child Support Agency and the GAL in the 2019 Action were not known or considered. Given the rationale offered it appears this GAL was unaware of the initial birth certificate that named Narendra as the father of the child due to the answers the parties provided on the legal paperwork to obtain RKY's birth certificate, and/or that the parties both told the Child Support Attorney, and more importantly, Commissioner Jamieson that they were the parents of RKY. The recommendations are silent about the facts that RKY has never met Vishnu,

has never lived with Vishnu, has no relationship established with Vishnu, was not held out to the families as a child of Vishnu, and that Vishnu has been the victim of not one instance, but several instances of Angela harassing and stalking him... or the other reasons the GAL in the 2019 Action offered to support her recommendation that the marital presumption remain intact. The recommendation in the 2022 Action makes no mention of the fact that Wisconsin was the home state prior to and at the time the Judgment was entered in the 2019 Action. The recommendation makes no mention that the court in 2019 Action has the ability to issue orders regarding the parties, custody, placement and support. Id.

27) On March 10, 2023, Judge Ehlke held a telephone status conference (not an evidentiary hearing) with telephone appearances by Angela and her new attorney, Jon Christopher Manzo, Narendra, and GAL Ashley Richter. (22R.31) It is noteworthy that Attorney Brendemuehl, the attorney for the child support agency assigned in both the 2019 and 2022 Actions was not present. Id. No testimony was solicited to confirm the reasons the GAL listed as the basis for her recommendations were truthful. (Tr. @ 22R.74) There is no indication that the chain of custody, or authentication was established prior to offering the genetic tests for the courts consideration, which is contrary to the rules as assigned in Paternity of S.J.K, 135 Wis 2d 80, 400 N.W. 2d 48 (Ct. App. 1986). Id. Rather, based



on the stipulation of the parties, the Court found that it was in the child's best interest to rebut the marital presumption, which was consistent with the recommendations of the GAL who had been appointed less than three weeks earlier. and (22R.31 and 22R.74)

28) On April 21, 2023, a zoom status conference was held in the 2019 Action, with appearances by Child Support Attorney Brendemuehl, Angela with Attorney Jon Christopher Manzo, and Narendra, but no appearance by either GAL. (19R80) At that status conference, Child Support Attorney objected to the Court accepting the letters filed by Angela as a motion to reopen and vacate the judgment, as was being suggested by the Court. Id She goes on to argue "basically what Ms. Yadagiri's asking for is just to create a complete falsehood". Id. at p. 9-13. She goes on to argue that there is no legal basis to reopen the case. She then refers to the paternity action Angela tried to and reports that Judge Bailey-Rihn found that, if anything, the fraud that was perpetrated was a fraud on the child. She then really hits the nail on the head when she argues,

"The parties got married when they were -- when Ms. Yadagiri was seven months pregnant. They purposely chose to sort of essentially TPR the other man in that action, and now they're trying to undo everything; but that doesn't mean that what was entered in this case was a falsehood or not real. There is no mistake. There was -- they intentionally got married at that point. There's no fraud. There's no misrepresentation. I don't see a basis to open. I certainly don't see a basis to vacate the order. The order was proper. It continues to be proper. He was the legal father for years...." Tr. P. 10: 8-19 (19R. 80, p.10)

After Angela's attorney argues that genetic testing proves Narendra was never the father of the child, Attorney Brendemuehl asserts,

“ -- but we ultimately have many, many cases where there’s a difference between biological father and legal father. And in a number of cases, a guardian ad litem recommends against the legal father’s presumption being overcome; and that person remains the legal father for various reasons in various cases -- many times. So it really depends on the facts of each case. And there’s years -- I’ve been doing this for a long time, and for many years, a number of men would waive their right to have DNA testing or something else or get testing later after they’ve been the child’s father for 15 years, the child knows no other father, there’s -- you know, the guardian ad litem recommends against it. So in general, because I specialize in this area of law, then, yes. I have seen a number of things where there’s very much a huge difference between biological and legal father. They do not equate at times.”

Tr. (19R.80, p. 12: 22-23, and p.16: 5-17:1)

Having just heard the child support attorney comment on the fact that decisions regarding the application of the marital presumption include the GAL, Angela’s attorney argued that the “guardian ad litem in this case has declined to appear; so they’re not concerned with what we’re doing here. They have no concerns with regard to it.” Id. at p. 18:15-18. However, that is not accurate. A letter from the office of Attorney Shelby Wallace, the GAL appointed in the 2019 Action who recommended against overcoming the marital presumption, was filed on April 17, 2023 to address her role at the April 21, 2024 Status Conference. (19R.58) The letter reminds the judge that Atty. Wallace was the GAL appointed in this case, and alerts him to the fact that she is not currently appointed. The letter comments on the fact that another GAL was appointed in the 2022

Action. The letter makes clear that due to not being reappointed Attorney Wallace is not planning to appear for the Status Conference or other hearings unless reappointed by the Court. A review of the record in the 2022 Action reveals that at the time of this status the GAL in that case had already been released as well, as evidenced by letter from that GAL to the judge which was very similar to the letter written by Attorney Wallace. (22R.33)

Ultimately, the court treated Angela's request as a motion to reopen under 806.07(1)(g) and granted that motion, stating "it is no longer equitable that the judgment in this case should have prospective applications... I'm not going to vacate it, but I'm going to declare it void going forward, meaning that it's been superceded by the case in Judge Ehlke's case, and that it no longer should have any application to either of these parties or anyone else.

29) On April 26, 2023 Angela presented what she had been offering to the Wisconsin courts as reliable genetic test results to the NCa court (23 CVD443-910) to support her claim that Mr. Alamuri is probably the biological father of the minor child. These genetic test results were offered in both WI cases, and relied upon by court officials in both cases. ((19R.10, p. 2 (test results), (19R.15 (commissioner's order refers to "apparent " testing)), (19R.16 (NC orders that relied on test results: case was later dismissed when test results were challenged, and NC pleadings)), (19R.20,

19R.25-27 (Motion to Reopen and supporting documents)), (19R.34, p.1 ¶ 1(d) (Order)), (19R.36, p.13 (Request for Emergency Hearing)), (19R.46 (another request for hearing filed by Angela)) and ((22R.3 (test results)), (22R.29 (GAL recommendations)), (22R.31 (Order)), (22R.47 (Divorce Judgment))). Attorney John G. Miskey IV, Vishnu's attorney, objected to the admission of those alleged genetic test results in the NC court, and they were deemed inadmissible, because they could not be authenticated. (19R.64, ¶. 6) That April 26, 2023 ruling was not shared by Angela with the Wisconsin courts.

30) On April 28, April 29, and May 1, 2023 Angela Krattinger made payments totaling \$2,178.21 to a child care provider in North Carolina, according to a statement showing transactions from 1/1/23 on a report generated on 5/9/2023. (19R.65 p. 51) She also provided proof of payment for other child care centers in North Carolina for childcare: July through September of 2022 at La Petit Academy, and September-October 2022 at Kiddie Academy. Id. at p. 47-50. The La Petite Academy billing statement was billed to the "Yadagiri Family" at the Chinqua Pine Dr. NC address, which is the same address Angela listed for Narendra when she filed the Summons with Minor Children on December 1, 2023. (22R.1) This address is also the address listed for her current motor vehicle registration for the Infiniti awarded to her in the divorce case, and registration for other vehicles. (19R.65 p. 12)

31) On May 8, 2023 the court granted an Order on Parties Oral Stipulation to Turn Petition for Separation into Divorce. (22R.46) That order states, “As the action for legal separation was filed on December 1, 2022, this could be done as of May 1, 2023 as the Petitioner would meet the statutory residential requirements as of that date.” Id. Likewise, the transcript from the final hearing reveals the Court’s comment, “I’ll find that the facts in the Petition are true except since the filing of the Petition, Ms. Yadagiri’s been in Wisconsin for at least six months, so allowing this to be converted from a legal separation to a divorce.” Tr. (22R.69, p. 17: 21-25) Wis. Stat. Sec. 767.301 explains the residency requirement for annulment, divorce and legal separation. While a party can file for a legal separation upon residing in the county for at least 30 days, the rule requires that at least one party to the action must be a bona fide resident of this state for not less than 6 months next preceding the commencement of the action. When considering December 1, 2022 as the starting point as was done by the Commissioner, the final date at which the residency requirement would be satisfied, would be not earlier than June 1, 2023, rather than May 1, 2023. When a divorce action was brought before the residency requirement was met, an action was never commenced and the petition could not be amended after the requirement was met. Siemering v. Siemering, 95 Wis. 2d 111, 288 N.W.2d 881 (Ct. App. 1980).

32) Also on May 8, 2023 a stipulated divorce hearing was held by Commissioner Asmus with appearances by Angela with Attorney Jon Christopher Manzo and Narendra. As indicated, the court granted a judgment of divorce. The Judgment, which included child-related orders, referenced a Marital Settlement Agreement entered into by the spouses. However, the parties did not include any terms regarding custody or placement of the minor child in their agreement. Commissioner Asmus signed “Findings of Fact, Conclusions of Law, and Judgment with Minor Children” that same day. Although it is undisputed that RKY was born during the marriage, where the Order is to identify minor children born or adopted by the parties before or during the marriage, the box for “none” was checked. Thereafter, where the Order allows a court to make a finding that a child born to a female during the marriage is not the other party’s child, RKY is listed, but where the form asks for the “basis of finding” the child not to be a marital child, no explanation is provided. (22R.47, p.2-3)

33) On June 21, 2023 Vishnu filed a Notice of Special Limited Appearance in the 2019 Action. (19R.61) On June 28, 2023 Vishnu Notice of Motion and Motion to Reopen, Notice and Motion to Intervene, Affidavit in Support of Brief in Support of Motion to Intervene and to Reopen, with Exhibits Part One, and Exhibits Part Two in the 2022 Action and the 2019 Action. (19R. 62-66 and 22R.51-54), and filed a Notice of Special Limited Appearance in the 2019 Action. (19R.50) With those pleadings, a written request was made to allow Vishnu’s counsel to opt into the efilings for the

case. (19R.67 and 22R.56) The Brief in Support of Motions to Intervene and Reopen in the 2022 Action was filed on July 6, 2023. (22R.55)

34) Attorney Manzo efiled a letter on July 24, 2023 to Judges Ehlke and Frost, in which he reports having been provided a proposed order “as drafted by the court” and indicates that his client has no objection to that order. (22R.57) No such proposed order was efiled or provided to Vishnu or his attorney.

35) On July 25, 2023 a Decision and Order (“Decision”) was efiled, which was signed by Judge Frost on July 24, 2023 and Judge Ehlke on July 25, 2023. (19R.69 and 22R.58) Although prior to that date the two cases regarding Angela, Narendra and RKY had been separate, the Decision included both case captions and both Judges. In the opening paragraph, it is stated that “Neither party believed Mr. Yadagiri as Raj’s father.” This flies in the face of the undisputed facts that Angela and Narendra prepared legal paperwork giving the child the Yadagiri surname, and reporting Angela and Narendra as the child’s parents, which is proven by the fact that the initial Birth Certificate named both of them as the child’s parents. This statement in the opening paragraph of the Decision contrary to the fact that Angela and Narendra represented themselves as the minor child’s parents when communicating with the Child Support Attorney before the September 2021 hearing, and more importantly representing themselves as the child’s parents to the Court during that hearing. This statement in the opening paragraph flies in the face of the fact that when the Judgment listed Angela

and Narendra as the parents of the minor child, neither of these clearly capable litigants filed any objection to that Judgment.

The Decision states that the 2022 Action superseded the 2019 Action for all practical purposes, without citing any legal authority for that statement. In actions affecting the family, in which actions are filed in two different states, the rule is that the first court to issue orders has continuing and exclusive jurisdiction. Wis. Stat. Sec. 822.22 This statute is based on a model statute from the UCCJEA (Uniform Child Custody Jurisdiction Enforcement Act), and is adopted in similar form in all 50 states as well as other jurisdictions. Arguably, the same should be said for cases filed before more than one court within the state or same county. The point is that competing orders are to be avoided. Arguably, the orders in the 2019 Action should have prevented any orders regarding the marital presumption, as that issue was tried and decided on multiple occasions in the 2019 Action<sup>5</sup>. To prevent competing orders in actions affecting the family would be consistent with the continuing and exclusive jurisdiction principle in family cases as well as the principles of res judicata, and furthermore would serve the courts by preventing parties from forum shopping<sup>6</sup>.

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<sup>5</sup> Issues regarding competing jurisdictions in actions affecting the family and arguments regarding claim/issue preclusion res judicata and/or estoppel were fully developed in contemporaneously filed Motion to Reopen, which was summarily dismissed. (19R.66)

<sup>6</sup> The Yadagiris' request to undo their stipulation that RKY is their son was heard by Commissioner Fremgen multiple times, Judge Frost, Judge Baily-Rihn, Commissioner



The Decision and Order (“Decision”) issued in both WI Actions addresses topics such as “living or acting married”, relies on genetic testing deemed inadmissible in a NC evidentiary hearing without any testimony or authentication in the WI cases, summarily offers that the many hearings and orders issued by Commissioner Fremgen and previously fully supported by Judge Frost in the 2019 Action are now “reasons not important to this decision”, assumes and attacks Vishnu’s motives for filing his motions, and then morally attacks Vishnu with comments such as, “Moreover, even if Mr. Alamuri’s goal was honorable....” (19R.69)

36) On November 21, 2023 the Court of Appeals ordered that the 2019 and 2022 Actions regarding Angela, Narendra and RFK be consolidated, as stipulated by all parties. That Order set the deadline of December 11, 2023 for appellant’s brief.

### **STANDARDS OF REVIEW**

The appellate court reviews de novo a circuit court order addressing a motion to intervene as of right under Wis. Stat. § 803.09(1). See Helgeland v. Wisconsin Muns., 2008 WI 9, ¶41, 307 Wis. 2d 1, 745 N.W.2d 1.

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Asmus, Judge Ehlke and at least one court official in NC. (19R. 30), (19R.40), (22R.31), (22R.46)

The appellate court reviews a decision regarding a motion for permissive intervention under an erroneous exercise of discretion standard. Id. To withstand appellate scrutiny, the circuit court's exercise of discretion must be based on the facts appearing in the record and the appropriate and applicable law, as well as being the product of a rational mental process. Hartung v. Hartung, 102 Wis. 2d 58, 66, 306 N.W.2d 16, 66 (1981). "A circuit court engages in an erroneous exercise of discretion when it fails to consider relevant factors, bases its award on factual errors, makes an error of law, or grants an excessive or inadequate award." Rohde-Giovanni v. Baumgart, 2004 WI 27, ¶18, 269 Wis. 2d 598, 613. When reviewing a circuit court's exercise of discretion issues of law are still subject to de novo review. Id., ¶19.

## **LEGAL ARGUMENT**

### **I. THE CIRCUIT COURT ERRED WHEN IT SUMMARILY DISMISSED THE MOTION TO INTERVENE**

Wis. Stat. Sec. 803.09 governs when a person shall or may be permitted to intervene in an action. Wis. Stat. Sec. 803.09(1) states that anyone who timely files for intervention shall be allowed to intervene when the movant claims an interest relating to the property or transaction which is the subject of the action, and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability

to protect that interest, unless the movant's interest is adequately represented by existing parties. Vishnu asserts that he has a claim for intervention as a matter of right. Wis. Stat. Sec. 803.09(2) allows "anyone" upon a timely motion to seek permission to intervene in an action when that person's claim or defense and the main action have a question of law or fact in common. In the event the Court does not find that Vishnu has the right to intervene as a matter of right, the Court should permit him to intervene through application of Wis. Stat. Sec. 803.09(2).

a. Mandatory Intervention

The Court of Appeals held that Wis. Stat. Sec. 803.09(1) grants an intervention as a matter of right, when the intervenor's interest is of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment. Helgeland v. Wis. Municipalities, 2006 WI App 216, 296 Wis. 2d 880, 724 N.W.2d 208. Angela and Narendra's decision to give RKY the Yadagiri name and have Narendra listed as the father of RKY on his Birth Certificate effectively terminated Vishnu or any other possible biological father from knowing of their potential offspring. The issue of paternity/application of the marital presumption was addressed in both WI cases. The initial Judgment (adopting Angela and Narendra's stipulation that RKY was their son) and all Orders in the 2019 Action issued by Commissioner Fremgen and Judge Frost prior to the Judge Ehlke's ruling in the 2022 Action all found Narendra to be the legal father of

RKY. After her request to reopen and vacate the Judgment in the 2019 Action, Angela named Vishnu in a WI paternity case which was dismissed by Judge Baily-Rihn, and then in a NC paternity complaint, which was also dismissed. (19R.18 p.2) Angela's pleadings in the 2022 Action refer to Vishnu, and actually list him as a party. (22R.1, p.7 and 22R.2 p.1) Judge Ehlke was at least the fifth court official Angela asked to undo the Stipulated Judgment finding her and Narendra to be RKY's legal parents, having already repeatedly made that request of Commissioner Fremgen, Judge Frost, Judge Baily-Rihn, and the NC court.

Angela offered what purports to be genetic testing that concludes "The alleged father, ALAMURI VISHNU KUMAR, cannot be excluded as the biological father of the child...." (22R.3 p.1) Relaying on those results, and the GAL's recommendations (which also relied on those result), the Court decided to rebut the marital presumption in the 2022 Action. That ruling was thereafter adopted in the 2019 Action, thereby allowing Angela to proceed with paternity actions against Vishnu. It could not be any clearer that the final orders in the WI cases are of "direct and immediate character" regarding Vishnu's legal position, and he stands to either gain or lose by direct operation of those orders.

In order to prevail on a request to intervene as a matter of right, pursuant to Wis. Stat. Sec. 803.09(1), the person requesting intervention must meet four requirements: 1) that the motion to intervene be made in a timely fashion; 2) that the movant claim an interest sufficiently related to

the property or transaction which is the subject of the action; 3) that the movant be situated such that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and 4) that the movant's interest not be adequately represented by the existing parties. Id.

1. Timeliness of the Motion: Under Wis. Stat. Section 803.09, a non-party to a circuit court action may intervene in an appeal brought by another party, even after the time for filing a notice of appeal has passed. City of Madison v. Wis. Emp't Rels. Comm'n, 2000 WI 39, 234 Wis. 2d 550, 610 N.W.2d 94. Timeliness is not defined by statute, and no precise formula exists to determine whether a motion to intervene is timely. Timeliness is a determination necessarily left to the discretion of the circuit court. State ex rel. Bilder v. Delavan, 112 Wis. 2d 539, 334 N.W.2d 252 (1983).

The courts have established a two-part test. First, the court must determine whether, in view of all the circumstances, the intervenor acted promptly and second, whether the intervention will prejudice the original parties. Id.

Promptness can be further broken down into two factors: when the proposed intervenor discovered its interest was at risk and how far litigation has proceeded. See Roth v. LaFarge School Dist. Bd. of Canvassers, 2001 WI App 221, P17, 247 Wis. 2d 708, 634 N.W.2d 882. Post judgment motions for intervention will be granted only upon a strong showing of

justification for failure to request intervention sooner. Olivarez v. Unitrin Property & Casualty Insurance Co., 2006 WI App 189, 296 Wis. 2d 337, 723 N.W. 2d 131, 05-2471. After unsuccessfully exerting other efforts to gain access to sealed settlement records, a newspaper was permitted to intervene nine months after the action's dismissal. C.L. v. Edson, 140 Wis. 2d 168, 409 N.W.2d 417 (Ct. App. 1987) The court of appeals reversed a circuit court's denial of a motion to intervene, observing that such a motion should be viewed "practically, not technically, with an eye toward 'disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" Wolff v. Town of Jamestown, 229 Wis. 2d 738, 601 N.W.2d 301 (Ct. App. 1999)(quoting State ex rel. Bilder v. Township of Delavan, 112 Wis. 2d 539, 548-49, 334 N.W.2d 252, 257 (1983). The decision reversing direction and voiding the prior orders applying the marital presumption in the 2019 case was part of Judge Frost's ruling during the April 21, 2023, status conference. The initial ruling rebutting the marital presumption was issued by Judge Ehlke in the 2022 Action on March 10, 2023, and incorporated in a final order on May 8, 2023. (22R.31, 22R.47) Vishnu had no immediate notice of those decisions. He hired a WI attorney and filed a Notice of Special Appearance in both WI cases on June 21, 2023, and motions/ supporting affidavits were e-filed on June 28, 2023. Mr. Alamuri was denied access to efilings, despite repeated requests, as addressed in the October 12, 2023, Order in this Appeal. Given the case law finding a motion to intervene was timely even after the appeal

deadline passed, surely filing such motion before the appeal deadline is timely.

As for causing prejudice to the parties of the case, vacating the newest orders in the WI cases will simply put the parties back in the position they created: Narendra will remain the legal father of RKY as was attested to when he and Angela completed the paperwork for RKY's birth certificate, when they gave RKY their last name, and when they came to court and admitted they were RKY's parents.

2. Movant claims an interest sufficiently related to the property or transaction which is the subject of the action: See opening paragraph within the "Mandatory Intervention" section hereinabove, which are hereby incorporated herein. Vishnu is alleged to be the father of RKY, who was born to the Yadagiris, and the subject of both WI cases. Angela has made those allegations in the WI cases and NC pleadings. Vishnu's claim that the marital presumption applied to RKY should continue to apply, is exactly on point with the many findings and orders in the WI cases prior to Judge Ehlke's involvement. Vishnu seeks to have the Findings and Orders that the marital presumption has been rebutted vacated, as those orders are directly related to paternity cases Yadagiris filed against him.

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3. The movant be situated such that the disposition of the action may as a practical matter impair or impede the movant's ability to protect

that interest: See opening paragraph within the “Mandatory Intervention Section hereinabove, which is hereby incorporated herein. As can be seen by a review of the NC orders, they will only proceed against Vishnu if the rebuttal of the presumption is upheld. Clearly a denial of the request to intervene will impair his ability to protect his interest which he seeks through his request to reopen and have the marital presumption continue to be applied to the paternity of the minor child. (NC decisions found in 19R.16 and 19R.28)

4. Movant’s interest is not adequately represented by existing parties: Angela and Narendra’s interests are diametrically opposed to Vishnu’s interests, which are not currently or recently represented by an existing party. Originally, both Mr. and Mrs. Yadagiri attested to answers within legal paperwork to be named as parents on RKY’s birth certificate, gave RKY the Yadagiri name, presented to the court that RKY was their son, and Narendra had every intention of serving as the father of the child. Those positions were consistent with Vishnu’s position, which he asserted since made aware of the claim that he is RKY’s biological father. However, the parties have since engaged in a campaign in both the WI and NC to have Narendra “dis-established” as RKY’s legal father and have Vishnu found to be the now nearly five-year-old child’s father. Not only do the parties not adequately represent Vishnu’s interests, but they also engaged in numerous filings in WI and NC arguing the complete opposite position of Vishnu. Although all the orders in cases in both states either ruled in favor of



applying the marital presumption or dismissing the Yadagiri's numerous claims, Judge Ehlke's ruling during a telephone status and the Judgment of Divorce adopting that order changed everything.

Perhaps the most compelling position is that of RKY: in his nearly five (5) years of life, Narendra has been his only father figure. Mr. and Mrs. Yadagiri created this situation and deprived any potential biological father from learning about the pregnancy, birth, and early years of RKY's life. As explained by the initial GAL, Attorney Wallace, who had time to investigate her case, RKY lived with and reportedly has a relationship with Narendra; Angela and Vishnu have a "very antagonistic relationship" and Angela was arrested for stalking him; Narendra has stable and lucrative employment; and Narendra has established a parental role with RKY, more so than Vishnu. (R.34, p.2) Since that recommendation to the court, Angela has now been charged of two crimes against Vishnu (8/11/2022 and 11/19/2022), and Vishnu obtained a Domestic Abuse Injunction against her which was issued on 11/23/2022 and amended by Consent 1/20/2023 to remove the findings, making it easier for Angela to find employment. (22R.53, p.12-14) and (22R.54, p. 1-4, 31-32)

Allowing intervention to reopen the newest orders that now rebut the marital presumption honors the child's experience of only knowing Narendra, who married his mother while seven months pregnant, as his father. The initial, deliberate, and prominent barrier for any introduction of

RKY to any other potential father was based on the Yadagiri's choice to be named as parents, choice to assign their last name to the child, and choice to declare in court that RKY is their son. For all the reasons stated, the facts support the finding that a motion was timely filed.

b. Permissive Intervention

Wis. Stat. Sec. 803.09(2) allows "anyone" upon a timely motion to seek permission to intervene in an action when that person's claim or defense and the main action have a question of law or fact in common. For the same reasons already stated in the arguments seeking application of mandatory intervention, Vishnu asserts those same facts and legal arguments are more than sufficient to meet this lower standard.

The issue of timeliness is already fully addressed above.

Vishnu's legal argument and facts to be relied upon to support his claims regarding the application of the marital presumption as it relates to the paternity of RKY are exactly the same claims/defenses addressed in the main action (WI cases).

c. Other: In addition, Vishnu can provide the 'rest of the story' that the Yadagiri's failed to include in their positions/submissions offered in the WI cases: Angela's choice to leave out material information in her Petition in the 2022 Action which would otherwise have alerted Judge Ehlke to the orders regarding paternity in the other cases; the genetic testing the Yadagiris convinced GAL Richter and Judge Ehlke to rely upon, without an evidentiary hearing and/or authentication, at status/review hearings in WI,

was in fact deemed inadmissible at the evidentiary hearing in NC; evidence obtained in the NC case and research prove that Angela did not meet the jurisdiction requirements to seek a divorce in WI; there is a strong argument to be made (consistent with GAL Richter's comments to the court, and comments in the Decision denying Vishnu's motions) that the court in the 2022 case did not have jurisdiction to issue any orders relating to RKY, but the court in 2019 Action had continuing and exclusive jurisdiction stemming from proper jurisdiction of the Yadagiri's and RKY. (22R.) and (22R.60)

Not only did the WI courts rely on genetic testing done in NC that was deemed inadmissible in the NC court, but they also failed to comply with the requirement that the chain of custody, or authentication, must be established prior to the admission of genetic testing. Paternity of J.S.C., 135 Wis 2d 820, 400 N.W.2d 48 (Ct App. 1986). Furthermore, even when admissible genetic tests show another man to be the natural father, which can be used to rebut the marital presumption per Wis. Stat. Sec. 891.41, equitable estoppel may preclude rebutting the presumption after considering the actions and inactions of the parties advocating for the rebuttal of the presumption. Randy A.J. v. Norma I.J., 2004 WI 41, 270 Wis. 2d 630.

Wisconsin Statutes provide additional rules that address when someone other than the husband can and cannot be considered in paternity cases, which were not addressed in the Decision. First, as addressed in the

Order issued by Commissioner Fremgen which was reversed by Judges Ehlke and Frost in the Decision, Wis Stat. Sec. 891.41 sets forth the rules regarding the marital presumption applied when a child is conceived or born during a marriage; and Wis. Stat. Sec. 767.855 allows for dismissal of a paternity action if it is determined that adjudication of the alleged father is not in the minor child's best interest, regardless of whether tests have been performed or what the results of any such test may be.

The Decision ignores all the well-established reasons why the marital presumption should remain intact as Ordered repeatedly by Commissioner Fremgen, and previously confirmed by Judge Frost. Rather the Decision simply refers to those Orders as "reasons not important to this decision." (19R.69, p.2 ¶. 3)

The Courts offer no opinion as to the factors established by case law as set forth hereinbefore, which are to be used when assessing the viability of a Motion to Intervene. Rather, the Decision focuses on Chapter 767 and comments that only specific persons (grandparents, great grandparents, stepparents or similar persons) have a right to intervene in a divorce action. Id. at p.3. The Decision then states that even if the right to intervene exists, it is solely to allow that third-person to seek visitation right with a child of the parents... not to participate in other aspects of custody, placement or divorce." These assertions are simply not accurate. While Wis. Stat. Sec. 767.43 does allow specific persons to seek visitation, that is not the end of the means by which intervention is allowed in family actions. As already

discussed, potential fathers are permitted to engage in paternity cases, even when the mother is married. Furthermore, Wis. Stat. Sec. 767.201 specifically provides that the rules of civil procedure generally govern procedure and practice in an action affecting the family. Therefore, the Court's ruling that "general civil procedural statutes" for intervention is not applicable "under Chapter 767" is simply also not accurate. Rather Wis. Stat. Sec. 767.201 specifically states that motions pursuant to chs. 803 (intervention) govern procedure in family cases.

The Decision focuses on the belief that it is Vishnu is unworthy of court time to seek an order "thrusting legal responsibility for his child on another person... the legal right to avoid liability for child support. Nonsense." (19R.69)

The Decision gives no consideration to the actions/inactions of the Yadagiris who denied any potential biological father from knowing or being involved in the pregnancy, the birth of RKY, or his early years which include many major milestones and are when most children form bonds with their caregivers, as addressed in Randy A.J. v. Norma I.J., 2004 WI 41, 270 Wis. 2d 630. The Decision does not comment on the Yadagiris' representing themselves as RKY's parents when naming the child, providing information to name them as parents on RKY's original birth certificate, and representing to the court that RKY was their son, and they would provide for him.

The Decision makes no mention of the concerns and recommendations<sup>7</sup> offered by GAL Wallace, and the Child Support Attorney, that rebutting the marital presumption was not in the child's best interest.

The Decision makes no mention that the reasons offered by GAL Richter in the 2022 Action conflict with known facts. For example, GAL Richter asserts:

- a. First and foremost, neither party ever intended for Narendra to be RKY's legal father or parental figure in his life; Narendra was never held out to the public, close friends, or family as RKY's father. This contradicts the facts that the Yadagiris had Narendra listed as RKY's father, gave RKY the Yadgiri name, and stipulated in the 2019 Action that RKY was their son.
- b. Narendra did not take on a parental role or develop a close bonded relationship with RKY. This contradicts the report of GAL Wallace who was able to identify sources for her information, other than the Yadagiris;
- c. The question about whether or not the court has jurisdiction over the child in the legal separation case as Wisconsin was not the home state at the time this case was filed, and comments, "I do not believe this Court had jurisdiction to make orders on custody and placement..." Yet, she does not suggest that the Court pause to figure out whether or not further consideration should be given before rushing into an order reversing multiple orders issued by Commissioner Fremgen and Judge Frost on this very issue.

The Decision makes no mention that GAL Richter had nothing to say about RKY having no connection with any male figure other than Narendra, that RKY has never met Vishnu, and that Angela

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<sup>7</sup> List of concerns are detailed in paragraphs 12 and 20 herein.

was charged for two crimes against Vishnu and was the Respondent in a Domestic Abuse Injunction granted to Vishnu, which appears to be a disaster in the making for coparenting should Angela persist in her efforts to have Vishnu determined to be the father of RKY.

## **II. THE CIRCUIT COURT ERRED WHEN IT SUMMARILY DISMISSED THE MOTION TO REOPEN**

Vishnu's Motion to Reopen, and supporting documents, fully developed legal arguments to substantiate the request to reopen and vacate the orders reversing/rebutting the marital presumption that had been in place for years. Those legal arguments in support of the request to reopen include:

- 1) Wis. Stat. Sec. 806.07(1)(c) based on evidence of fraud, misrepresentation or other misconduct of an adverse party as applied primarily to Angela's failure to disclose material information in her petition in the 2022 Action, which may well have interfered with Judge Ehlke's ability to be aware of all the prior cases/orders before he decided to make a ruling on the marital presumption at a status within about two weeks of appointing a guardian ad litem to assess the best interests of the child;
- 2) Analysis and comparison of the mechanisms available per UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) as set forth in Wis. Stat. Ch. 822 which is applied in situations with competing interstate

jurisdictions, and needed application to the subsequent action affecting the family in the 2022 Action;

3) Similar analysis and comparison of the mechanisms available pursuant to UIFSA (Uniform Interstate Family Support Act) as set forth in Wis. Stat. Ch. 769, and needed application to the subsequent action affecting the family in the 2022 Action;

4) That Wis. Stat. Sec. 767.855 should have been applied because moving forward regarding the “alleged father” was not in the child’s best interest;

5) The implications of Wis. Stat. Sec. 767.863 on the facts in this case;

6) The longstanding precedent that “the marital presumption has been found to be one of the strongest presumptions known to law according to Estate of Lewis, 207 Wis. 155 at 158, 240 N.W. 818, 819 (1932);

7) Challenges to personal jurisdiction in the 2022 Action and Divorce Judgment, and the implications of Wis. Stat. Sec. 806.07(1)(d) and Neylan v. Vorwald, 124 Wis.2d 85, 368 N.W. 2d 648 (1985) which support the argument that the last order in the 2019 should be void as should the orders regarding the marital presumption in the 2022 Action;

8) Application of Wis. Stat. Section 806.07(1)(h) which allows relief from judgment based on “other” reasons justifying relief, and related case law;



9) Laches as an affirmative, equitable defense, as Angela was in the best position to know who was the likely biological father and chose not to reveal any concern that anyone other than her husband was the father when completing paperwork for RKY's birth certificate and acknowledging their parentage of RKY in court, Narendra's presumed knowledge that he married Angela when she was 7 months pregnant and his knowledge about whether or not he was the biological father or if someone else might be, and his failure to address that when completing the birth certificate paperwork or when in court stipulating that RKY is his son;

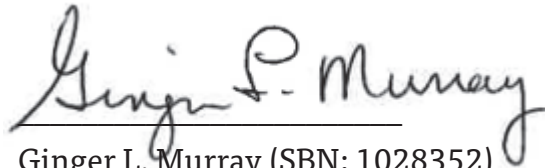
10) Res Judicata and/or Collateral Estoppel: arguing the Yadagiris should have been barred from seeking a different ruling on the same issue in a series of courtrooms other than the court that issued the initial and subsequent orders. Reliance on the doctrine of claim preclusion, which stands for the position that a final judgment on the merits in a prior action is conclusive and bars subsequent actions between the same parties or their privies as to all matters that were or might have been litigated in the prior action. In re Mayonia M.M. 202 Wis.2d 460, 551 N.W.2d 31 (Ct.App. 1996) citing In Re Chad M.G., 194 Wis. 2d 690, 694, 535 N.W.2d 97, 99 (Ct. App. 1995). The application of res judicata, with its companion, collateral estoppel, based on principles of fundamental fairness as the parties in the 2022 Action already had an opportunity for a full and fair determination of the application of the marital presumption for RKY in the 2019 Action.

11) Application of principles grounded in estoppel and equities which stand for the position that the marital presumption should not be rebutted when the presumed father and mother are bad actors as explained in the ruling in Randy A.J. v. Norma I.J., 2004 WI 41, 270 Wis. 2d 630.; etc.

### CONCLUSION

Based on the foregoing, it is appropriate for the Court of Appeals to reverse this lower Courts' Decision denying the Motion to Intervene and remand the matter to the circuit court with instructions regarding how to proceed with the Motion to Reopen/Vacate the orders rebutting the marital presumption.

Dated: December 11, 2023.

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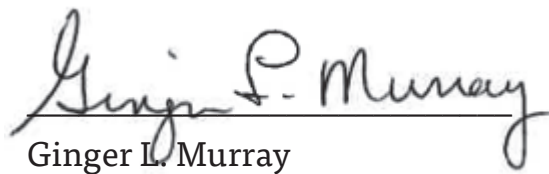
Ginger L. Murray (SBN: 1028352)  
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**CERTIFICATION OF COMPLIANCE WITH**  
**WIS. STAT. § 809.19(8)(g)**

I certify that this brief conforms to the rules contained in Wis. Stat. Secs. 809.19(8)(b)(bm) and (c), Stat. for a brief produced with a 13-point body text, maximum of 60 characters per full line, and produced with, Tisa Offc Serif Pro, a proportional serif font. The length of the Facts, Argument, and Conclusion of this brief is 42 pages and consists of 10,665 words.

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

Dated: December 11, 2023.

A handwritten signature in black ink, reading "Ginger L. Murray". The signature is fluid and cursive, with the first name "Ginger" and last name "Murray" clearly distinguishable. It is positioned above a horizontal line.

Ginger L. Murray

Attorney for Petitioner-Appellant

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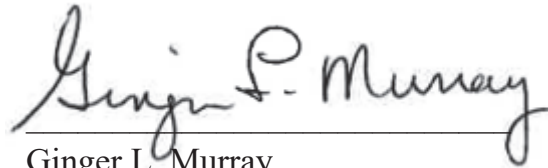
**CERTIFICATION OF COMPLIANCE WITH WIS. STAT. §§ 809.19(12)(13)**

I certify that I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. Rule 809.19(12).

I further certify that the electronic copy of this brief is identical in content and format to the printed form of this brief filed as of this date.

I certify that I have submitted an electronic copy of this appendix, which complies with the requirements of s. 809.19 (13).

Dated: December 11, 2023.

A handwritten signature in black ink, reading "Ginger L. Murray". The signature is written in a cursive, flowing style. The first name "Ginger" is written with a large, stylized 'G'. The last name "Murray" is written with a large, stylized 'M'. The middle initial "L." is written in a smaller, more formal script between the first and last names.

Ginger L. Murray

Attorney for Petitioner-Appellant

State Bar No. 1028352