

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
THIRD DIVISION**

**CASE NO. 60CV-13-2662**

**M. KENDALL WRIGHT and JULIA WRIGHT, et al.,                      PLAINTIFFS**

**v.**

**NATHANIEL SMITH, MD, MPH, et al.,                                      DEFENDANTS**

**PLAINTIFFS' MOTION FOR CLARIFICATION OF JUDGMENT**

Plaintiffs, for their Motion for Clarification of Judgment, state:

1.        Pursuant to the Court's inherent powers and Arkansas Rule of Civil Procedure 60(b), Plaintiffs respectfully move this Court to clarify or correct its May 9, 2014 "Order Granting Summary Judgment in Favor of the Plaintiffs and Finding Act 144 of 1997 and Amendment 83 Unconstitutional" to clarify that by granting Plaintiffs' Motion for Summary Judgment, the Court's Order intended to, and did, declare invalid and enjoin the enforcement of all of the Arkansas laws challenged by Plaintiffs in this case.

2.        In Plaintiffs' Third Amended Complaint For Declaratory and Injunctive Relief, Plaintiffs stated: "Plaintiffs bring this action to challenge the constitutionality of Arkansas Constitutional Amendment 83 (hereinafter "Amendment 83"), Ark. Code Ann. § 9-11-208, Ark. Code Ann. § 9-11-107, and Ark. Code Ann. § 9-11-109 (hereinafter 'referenced statutes'), all of which exclude same-sex couples from marriage and forbid recognition of lawful same-sex

marriages entered into in other states.” Third Amended Complaint for Declaratory and Injunctive Relief, at para. 1.

3. Similarly, Plaintiffs’ Motion for Summary Judgment included in its prayer for relief a request that the Court declare invalid and enjoin the enforcement of “Amendment 83, the referenced statutes, and all other Arkansas statutes that prevent same-sex couples from marrying or from having their lawful marriage entered into other states recognized in Arkansas.” Plaintiffs’ Motion for Summary Judgment and Incorporated Memorandum of Law, at 42.

4. By granting Plaintiffs’ Motion for Summary Judgment, it is plain that the Court’s Order was intended to grant the relief requested with respect to all of the laws Plaintiffs challenged in their Complaint and referenced in their Motion for Summary Judgment.

5. Nonetheless, because a question has arisen as to whether the Order includes Ark. Code Section 9-11-208 and otherwise grants the full scope of relief requested, Plaintiffs request that this Court:

a. Clarify that the title of the May 9, 2014 Order should be: “Order Granting Summary Judgment In Favor of the Plaintiffs and Finding Acts 144 and 146 of 1997 and Amendment 83 Unconstitutional.”

b. Clarify the second paragraph on page 1 of the May 9, 2014 Order as follows:

“The state laws at issue in this matter include Act 144 of 1997 of the Arkansas General Assembly, Act 146 of the 1997 Arkansas General Assembly and Amendment 83 to the Arkansas Constitution. Act 146 is codified as Ark. Code Ann. § 9-11-208, which declares that it is the public policy of Arkansas to recognize ‘the marital union only of man and woman,’ prohibits the issuance of marriage licenses to same-sex couples, and states that marriages between ‘persons of the same sex are prohibited in the state’ and are

void and unenforceable. Act 144 states that a ‘[m]arriage shall be only between a man and a woman. A marriage between persons of the same sex is void.’ Ark. Act 144 of 1997, § 1 (codified at Ark. Code Ann. § 9-11-109). The Act further provides that a marriage which would be valid by the laws of the state or country entered into by a person of the same sex is void in Arkansas. *Id.* at § 2 (codified at Ark. Code Ann. § 9-11-107).”

c. Clarify the second full paragraph on page 13 of the May 9, 2014 Order as follows:

THEREFORE, THIS COURT HEREBY FINDS the Arkansas constitutional and legislative ban on same-sex marriage through Acts 144 and 146 of 1997, and Amendment 83, and all other Arkansas laws that prevent same-sex couples from marrying or from having their lawful marriages recognized, are unconstitutional, and hereby enjoins the enforcement of those laws.

d. Reissue the order *nunc pro tunc* so that the corrected order is effective as of May 9, 2014.

6. Under longstanding Arkansas law, “trial courts have the inherent authority to correct a decree to accurately reflect the judgment that was actually rendered.” *Lord v. Mazzanati*, 339 Ark. 25, 27 (Ark. 1999); *see also McGibbony v. McGibbony*, 12 Ark. App. 141, 143 (Ark. App. 1984) (confirming that a trial court has the inherent power to make “his earlier order say clearly what he intended it to say when he made it”). Arkansas Rule of Civil Procedure 60(b) similarly provides that a court “may at any time . . . correct clerical mistakes in judgments, decrees, orders, or other parts of the record and therein arising from oversight or omission.” As the Arkansas Supreme Court has explained of former Arkansas Rule of Civil Procedure 60(a) (now rule 60(b)), that provision “is merely a restatement of Arkansas’s well-

settled law, empowering the trial court to enter nunc pro tunc judgments to cause the record to speak the truth.” *Lord*, 339 Ark. at 28.

**Dated: May 15, 2014**

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I, undersigned counsel, do hereby state that a true and correct copy of the foregoing document was served upon the following counsel via email:

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