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No. 72562-9-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

SOLOMON M. MEKURIA ,

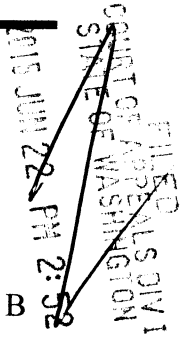
Appellant,

v.

ASTER MENFESU,

Respondent

REPLY BRIEF OF APPELLANT



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I. ARGUMENT IN REPLY

1. Mekuria's Parenting Right of His Child is Protected Under The Constitution. The Supreme Court of the United States has traditionally and continuously upheld the principle that parents have the fundamental right to direct the education and upbringing of their children. A review of cases taking up the issue shows that the Supreme Court has unwaveringly given parental rights the highest respect and protection possible. Stanosky v Kramer, 455 U.S 745 ("clear and convincing" proof standard is constitutionally required in parental termination proceedings.) Although both Lassister and Santosky yielded divided opinions, the court was unanimously of the view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interested protected by the 14th amendment." After five days of trial the court properly found the unavailability of regularly scheduled academic and administrative assistance for Eden. CP 404. However, while a fit parent is available the court allowed this part of parenting function as well as part of the day to day parenting function to be done by other people. CP 405, CP 322 line 19. It is not in the best interest of the child to make other people with different background perform the parenting function while a fit natural parent is available.

Santosky, 455 U.S., at 774 (Rehnquist, J., dissenting), and that "[f]ew consequences of judicial action are so gave as the severance of natural family ties," id., at 787. Pp. 12-15."

RCW 26.09.191 permits the court to put restrictions upon a party's decision making if it is found that the parent engaged in conduct listed in the section .191. The court made no such findings so the court cannot deprive Mekuria of his parental rights. Any preliminary determination of unfitness of a parent must be based on a ***well-founded allegation*** and any interference with a parent's fundamental right must be based upon a ***compelling*** **interest**, which must be ***narrowly*** drawn. In re Custody of Nunn, 103 Wn. App., 883, 14 P.3d 175.

RCW 26.09.002 reads in pertinent part:

> "....In any proceeding between parents under this chapter, the best interest of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities...

" RCW 26.09.002 further reads:

> "...residential time and financial support are equally important components of parenting arrangements.....Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental or emotional harm..."

Up on Menfesu's minor modification and under RCW 26.09.002 the court should have changed educational decision making authority and adjust residential time to the pre school for the child to enjoy the same existing pattern of interaction between her and the father consistent to the best interest of the child. Court records show that while the child was under Menfesu's care the child was exposed to different medical providers even far north in Bellingham where she was administered invalid vaccinations (vaccines not to be taken under that particular age of the child at the time.) However, the

court awarded Menfesu sole medical decision authority.

2. The trial court made no findings when it ordered the father to do 100% of the transportation to the transfer location. The court ordered the father to do 100% of the transportation to the exchange when there is no finding under Section 2.2 of the final parenting plan that the mother has any sort of disability that hinders her ability to perform the daily need of parenting function to provide transportation.

3. Menfesu's alleged blindness was before the court properly. Menfesu's alleged blindness was not on the record of the 2010 dissolution trial, RP 426 lines 10-16, RP 427 line 23, RP 453 line 22, and RP 452 line 17. Hence, the court properly questioned Menfesu about her alleged disability in order to determine its effect on her day to day parenting function. The court made itself clear it has obligation to find best interest of the child. RP 426 line 8. Noteworthy, Menfesu's attorney treats to take the court's action to Court Of Appeals. RP 452.

4. Private School fee allocations and the need for private school never tried, testified, cross examined. The court ordered the father to pay a portion of private school tuition (if the mother could no longer get a discount). But, there were no of the requisite factors for private school. In fact, they were not even testified to. There is no agreement between the parties to send the child to private school prior to enrolling the child to this private school. Upon the father's Reconsideration Motion, the court made new findings. CP 523.

There is no petition or counter petition or responsive claim in the record for the need of private school. The public policy factors for private school were not followed, not testified to, nor were they considered. The court simply ordered it. Payment of school tuition has never been tried. CP 408. The court simply ordered it when it issued the Permanent final Parenting Plan with out any finding of fact and conclusion of the law, as required by Rule CR 52.

"Where acceptable public schools are available, and there is no showing of ***special circumstances*** justifying the ***need*** for private school education, the noncustodial parent should ***not*** be obligated to pay for the private education of his or her minor children." In re Marriage of Stern, 57 Wn. App. 707, 720, 789 P.2d 807 (1990).

Allocation Of School Fee and The Need For Private School, never been tried. There are no findings and conclusions. Rule CR 52. But upon Mekuria's reconsideration motion the court made new findings without trying the allocation of school fee. So, it is reversible error.

Last year June 10, 2014, the Division Two Court of Appeals reversed a similar decision in non-published case # 437333-II. The father was ordered to pay a portion of private school. But, Division Two reversed, even though the mother in that case had sole decision making and the child had been in private school already. CP 411.

5(a). Menfesu's Misleasding Statements.

Menfesu states, "Mr. Mekuria argues the court erred when it did not find her to be a negligent parent because she is blind, ..." page 1.

Mekuria argues, the trial court erred in making no finding under section 2.2

of the final parenting plan that Menfesu has a disability of any kind.

In all pleadings Mekuria never said Menfesu can not parent because she is blind. RP 256 line 22, RP 258 line 15.

Mekuria's argument was not and never been a blind parent can not parent his own child. Menfesu states, "He argues that the court erred when it ordered sole-decision making to Ms. Menfesu for non- emergency and educational decisions....." page 1. Mekuria's argument is based on the court's findings of the unavailability of regularly scheduled academic and administrative assistance for Eden. CP 404. The mother's residence is visited by several people to help Menfesu in her parenting of the child. RP 385. According to Menfesu's declarations and testimonies multiple people come to her residence to help the child in her education. CP 405, CP 322 line 19. But a fit natural parent is available to help the child on those areas of parenting the mother can not. Mekuria further argues about the luck of stable medical provider and invalid vaccinations the mother obtained at the wrong age of the child while the child is under Menfesu's custody. The child has been visiting multiple medical providers such as Renton Community Center RP 375 line 14, Valley Medical Center RP 376 line 2-4 and also to the North as far as Bellingham where the child had been administered invalid vaccinations. CP 406.

Menfesu states, "He also appeals the decision to move the exchange point a five minute drive down the road to a location near Ms. Menfesu's home where she can wait inside, even though he agreed with the change at trial"

Mekuria's argues, there is no five minute drive half way between Mekuria's residence in Everett and Menfesu's residence in Renton. There is no finding's by the trial court that 100% of the transportation should be done by Mekuria. Mekuria's argument of transportation is based on the 2010 dissolution trial parenting plan which allocates the exchange few miles away from the mother's residence in Seattle. CP 654. Mekuria agreed to drive the extra mile in order to protect his child from hardship because of Menfesu's unwillingness to drive a car. RP 564. The trial court erred by ordering the Father to do 100% of transportation, meeting the Mother near her home instead of a mid-point."

Menfesu's states, "The GAL indicated that none of the information she reviewed supported the father's position that the mother was unable to parent." Page 6. Mekuria argues, GAL was appointed by the court under Mekuria's major modification petition. However, Mekuria's major modification was dismissed under revision filed by Menfesu. There is no new order appointing the GAL but the GAL produced a report after she had a one time meeting with Mekuria in her own office and one time meeting with Menfesu at King county courthouse. CP 328. The GAL never had home visits , RP 311, RP315. Never observed child and parent together, never seen the child in person. When asked weather she ever met the child, she responded, "no, I haven't." RP 307 line 10. According to the GAL's testimony, her investigations and recommendations are based on only the mother's petition and issues she raised. RP 313 line 1, 6.

Menfesu's states, "At trial, Mr. Mekuria renewed his request for a major modification and argued that Ms. Menfesu was incapable of parenting due to her blindness. CP 80. He continued to maintain his position that Ms. Menfesu was both lying about her blindness, and that she was unable to perform parenting functions because of her blindness. RP 497-498." page 7. Mekuria argues, the court should make a finding about Menfesu's alleged blindness. And distribute parental responsibility based on the fitness and limitations of each parent for the best interest of the child. If there is no blindness, Mekuria asks the court to hold Menfesu accountable about her credibility. Menfesu alleges she is blind in one eye and see light and shadow on the other eye CP 19. This was not the case during the 2010 dissolution trial, the court did not find any disability in both parties to put restrictions in their parenting function. The court did not find Menfesu's alleged blindness in the record. RP 426 lines 10-16, RP 427 line 23, RP 453 line 22, and RP 452 line 17.

Menfesu's attorney testified on behalf of Menfesu: RP 428.

MS. HELM:.....I mean I could tell you what I know, but she can also tell you. I mean she is completely blind in one eye.

THE COURT:. Well I want to hear from your client, and I want information...

Menfesu's credibility: RP 436

THE COURT: That's fine.

Counsel, you represented to the Court that she is completely blind in one eye.

MS. HELM: I thought that's -- that's my understanding, but -- so I would -- I am -- it is a complicated disease, but I understand -- and it is not - when you ask things like can you see near or far, it is not quite that simple

because there's lesions or scars inside her retina that make spots where she can't see, and there is blurriness, so like looking at a page with words, she wouldn't see everything that is on that page. She might see bits of it. But in terms of getting her to describe what is going on with her left eye, if she covers her right eye and describes to us what she sees, if anything, maybe we can get a better picture.

Menfesu states, "The court did not feel that it had a duty to similarly inquire into the domestic violence that occurred prior to the divorce in 2010 (the basis for the Order for Protection entered before trial in 2009 and which remained in place until after the trial" page 8.

Mekuria argues, Pursuant to Caven v. Cven, 136 Wn.2d 800, (1998), RCW 26.09.191(1)(c) requires a finding by the court that there is 'a history of acts of domestic violence'. Mere accusations, without proof, are not sufficient to invoke the restrictions under the statue."

Menfesu states, "Mekuria objects to the testimony of Mr. Cantu. Ms. Menfesu requested at the beginning of trial to substitute Mr. Cantu for Ms. Frederick, the child's teacher, who had been on Ms. Menfesu's witness list, because she was unable to appear."

Mekuria argues, the reason offered to the trial court for the removal of Mrs. Frederic from a witness list was because Mr. Cantu is not allowing the teacher Mrs Frederic to testify therefore instead he offered himself to testify RP 8 line 20. Mr. Cantu read to the court a printed-paper designated as Eden's kindergarten report card. RP 34 line 16. Ms. Frederic who has first hand information of Eden's kindergarten performance was removed from the witness list. Mekuria had email communication with Ms. Frederic to learn about Eden's Kindergarten performance. CP 436.

Dear Mrs. Frederic,

I am the father of Eden Mekuria. I am concerned about Eden's performance at school. Please let me know how she is doing at school and if there is any advise I can provide to help improve her performance.

Thank You
Solomon Mekuria.

Mr. Mekuria,

Academically Eden is doing excellent work, but sometimes she needs a little extra time to finish her work. I have scheduled her conference for 12:40 pm to 1:00 pm on Wednesday, May 28th.

Thank you for the email.
Mrs. Frederick

Menfesu states "P 526. Before he was remarried, he had a friend take care of Eden while he was at work RP 72 After he remarried, his wife took care of Eden while he was at work." RP 83.

Mekuria argues, no where in the court document did Mekuria say other people would take care of his daughter other than some help from his wife. Mekuria works from 11 PM to 6 AM night shift since the 2010 dissolution trial. CP 136. Under the preschool schedule Mekuria had the child from Tuesday through Friday. In all those years Mekuria took care of his daughter himself all the time. CP 70. Under the current parenting plan schedule he takes care of his daughter all the time, CP 83, with the exception of some help he gets from his wife.

Menfesu states, "Mr. Mekuria states in his brief that Ms. Menfesu placed Eden in St. Anthony's "without his knowledge, permission nor consent." However, Mr. Mekuria was notified about the school in advance of the start

of school. RP 98, 347-348." page 27.

Mekuria argues, Menfesu placed Eden to a private school **without Mekuria's knowledge, permission nor consent,** never been notified until after Menfesu enrolled the child in the private school. Menfesu herself testified:

"*After I got her enrolled, I told him that she was going to start school over at St. Anthony's, but I don't exactly remember the date.*" RP 347.

6. Unpublished Court Of Appeal Opinion.

Citation of unpublished opinions are prohibited under Washington State Rule 14.1. Menfesu violated this rule by citing the parties unpublished opinion. In this Unpublished opinion The Court Of Appeals did not say that there is a finding of vision impairment in the 2010 dissolution trial, only affirmed Judge Cahan's ruling.

Attorney fee

Menfesu's attorney stated, "....The Northwest Justice Project, a state and federally-funded civil. legal services provider,..." page 42

Menfesu is not qualified to be represented with public money.

"An indigent person has a constitutional right to free legal counsel only in action which involves an imminent or direct treat of imprisonment." Re 75 Wn 2d 368 THE STATE OF WASHINGTON Respondent v. JACK D PORTER as sheriff of King County Respondent.To meet the requirements of GR 34 for free legal service as "Indignant person,"

Menfesu's attorney described Menfesu's income as Supplemental Security Income (SSI), page 42, as opposed to Social Security Disability Income

(SSDI) RP 418 line 12. Menfesu demonstrated to the trial court she was able to send the child to private school paying $300 per month, CP 359.

GR 34 (3) states: (3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:
(A) he or she is currently receiving assistance under a needs-based,means-tested assistance program such as the following:
(i) Federal Temporary Assistance for Needy Families (TANF); (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);
(iii) Federal Supplemental Security Income (SSI); (iv) Federal poverty-related veteran's benefits; or
(v) Food Stamp Program (FSP); or
(B) his or her household income is at or below 125 percent of the federal poverty guideline; or
(C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or
(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.

There is no credibility on the attorney fee request and it should be denied.

Menfesu's attorney over estimated Mekuria's yearly gross income. Mekuria's has no ability to pay because of change of circumstance outlined in his opening brief review. Mekuria's financial declarations CP 546, CP 630, CP 641.

A party relying on RCW 26.09.140 "must make a showing of need and of the other's ability to pay fees in order to prevail." Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 808, 929 P.2d 1204 (1997) (citing In re Marriage of Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985)).

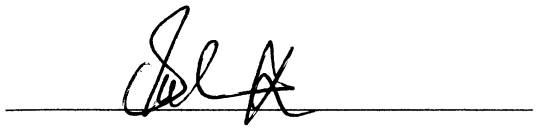
II CONCLUSION

Menfesu raised school fee payment as issue after she placed the child to a private school with out prior knowledge of the father. The need to send Eden to a private school was not petitioned. Menfesu placed the child to the private school and demonstrated to the court she is capable of sending the child to private school. Now, Menfesu anticipates she can not afford the school fee in the future. This by itself is enough to show to the court Menfesu's misuse of educational decision making authority by placing Eden to private school she can not afford. The court properly found the unavailability of regularly scheduled academic and administrative assistance for Eden. While the father is available, this child struggles in her education looking for someone to help her in her homework.

Eden had been administered with multiple invalid vaccinations under Menfesu's failure in medical decision making authority. Again, another demonstration for inadequate use of Menfesu's decision making authority. For the reasons set forth above, this court should reverse the trial court's orders regarding decision making authority. Mekuria asks this court orders the trial court to make a finding regarding the alleged disability of Menfesu. What is in the best interest of a child "is a determination that often turns on credibility of the parties". In re Marriage of Venable, 118 Wn. App. 1049, 2003 Wash. App. LEXIS 2826 (2003).

Finally, Mekuria asks this court to hold accountable Menfesu's attorney for the various misleading statements to the court as outlined on this reply brief and the opening brief.

Dated: June 22, 2015



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