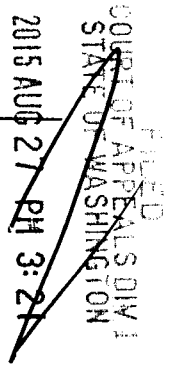
IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

No. 72562-9-1



SOLOMON MEKURIA
Appellant

V.

ASTER MENFESU
Respondent

APPELLANT'S ANSWER TO BRIEF OF THE NATIONAL FEDERATION OF THE BLIND (NFB) AMICUS CURIAE SUPPORTING RESPONDONT/CROSS-APPEALANT ASTER MENFESU

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INTRODUCTION

On August 10, 2015, appellant, Mekuria, received a letter from Appeal Court Division One, granting motion to file amicus curiae brief in support of Menfesu. On August 13, 2015, Mekuria filed reply to oppose motion for leave to participate as amicus curiae filed by the National Federation of the Blind (NFB), in part stating that the NFB's motion to file amicus brief supporting Menfesu is improper because the trial court's finding in regard to the parties' daughter educational and administrative assistance need is based on the findings of substantial evidence, not an assumption. Furthermore, the NFB's brief is a duplicate of the arguments already made on Menfesu's brief. There is no actual finding of blindness neither in the court record nor in this trial. There is substantial evidence in the record indicating the allegedly blind parent is, in fact, not blind, and furthermore, the court called into question and found Menfesu's testimony dubious throughout trial.

DISCUSSION

A. Trial court made no finding of a physical impairment that Interferes with the performance of parenting functions – NFB's role in this matter is moot.

The trial court made no finding in Section 2.2 of the Final Parenting Plan that the mother has a physical impairment that interferes with the performance of parenting functions. CP 370, CP 379.

The National Federation of the Blind claims discrimination practices of the judge. But, there are two major problems inherently with this claim that make their argument moot, and render them inappropriate as a "friend of the court".

(1) There is NO finding that the mother was incapable of parenting, or that she even has a handicap that interferes with the performance of parenting functions. Again, see "Does not apply" in Section 2.2 of the Final Parenting Plan. CP 370.

(2) The trial judge expressed concern about future issues based upon the mother's own admission and witness testimony that she needs help in a parenting function (the child's education). CP 405. If NFB has a concern, it should be that a parent alleges he/she needs someone else to make up for their own parenting deficiencies. NFB is attacking the trial court for the court's concerns which are affirmed by the mother's own admission that she cannot help the child with homework and needs someone else to do it for her while the child's own father is available.

Discrimination claim is only inserted here to prejudice the trial court in Mekuria's appeal. The most incriminating evidence on record that the mother is exaggerating or not telling the truth about her alleged blindness are the pictures of her driving a car, driving an auto racing video game, holding up a camera in which she is the photographer. CP 117 EX. B.

B. NFB's argument is contrary to RCW 26.09.191 public policy

NFB's moot argument violates the public policy created by the people through the Legislature. Their attack should be on the Legislature. It is misplaced. The Legislature gave power and authority to a judge who has the discretion under RCW 26.09.191(3)(b) to make a finding, based upon the evidence that a parent has a long-term physical disability that interferes with the performance of parenting functions. The court did NOT make such a finding, so, again, the NFB's argument is misplaced and moot. To attack the trial court's judge discretion or ability to make such a finding is to attack the Legislature-given authority under RCW 26.09.191.

Indigent parents are not afforded a public defender in dissolution or other custody battles because a Constitutional right is not at stake because even if the court puts restrictions, those restrictions are not termination of parental rights as is an adoption case or a juvenile dependency case or non-parental custody case where BOTH parents are at risk for no visitation.

The NFB seeks to undermine the trial courts discretionary powers to make findings about any RCW 26.09.191 (3) (b) issue of disability and "open the floodgates" that anyone with disability can claim "discrimination" and have such rulings overturned.

C. The trial court's finding is based on the findings on substantial evidences, not an asumption.

The trial court's finding in regard to the parties' daughter educational need

is based on the findings of substantial evidence, CP 405, not an assumption.

> *"Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a faire-minded, rational person of the truth of the declared premise." IN RE: Marriage of Lawrence P. Fahey.*

The court properly made its findings after cross-examinations, testimonies, and evidences brought before the trial court. But, NFB's concern is an exaggerated one. Menfesu was deprived of nothing. The court said that it would consider the possibility of hearing a modification. There is no harm or no prejudice in that. NFB's claims is exaggerations of the facts.

During trial Menfesu represented herself with unclean hands. On one hand Menfesu claims blindness with her own words, while on the other hand she represented herself with no disability of sight impairment by her own testimony and evidences CP 404, CP 405. Menfesu, asserting two contradictory positions in the court proceeding and now seeks an advantage by taking a clearly inconsistent positions. Again, RCW 26.09.191 (3) (b), authorizes the trial court to preclude or limit any provision of the parenting plan if the court finds any disability on either parent. Hence, Menfesu's alleged blindness (if true) is not an exception to the statute.

D. NFB is not being a friend to the COURT but to the MOTHER

The intent of NFB'S amicus curiae brief is solely duplicating the arguments made on Menfesu's filed briefs, in effect, merely expanding the length of those briefs.

An amicus curiae is to be a friend of the court, not a friend of a party.Leigh, 535 F.Supp. at 420

When the party seeking to appear as amicus curiae is perceived to be an interested party or to be an advocate of one of the parties to the litigation, leave to appear amicus curiae should be denied."
Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp., 149 F.R.D. 65, 82.

E. The NFB's brief testified supporting Menfesu and misquoted the trial court's brief.

On page two of the NFB's brief, the NFB testified by affirming menfesu's alleged blindness: "...because of its concern that Ms. Menfesu, WHO IS BLIND, would not be able to provide for her daughter's future academic needs." However, the trial court's concern was not Menfesu's blindness (by her own testimony CP 404). The trial court's concern was Menfesu's testimony regarding her inability to help the child in her lessons and future academic success and the unavailability of regularly scheduled academic and administrative assistance for Eden. CP 404. On this same page, the NFB's brief omitted the trial court's opinion which in parenthesis states, "by her testimony." CP 404.

CONCLUSION

The brief filed by the National Federation of the Blind encourages Menfesu (*who never attempted to find job or learn brail for the past seven years CP 303*) to continue this kind of life style is un lawful and could not in any way benefits the parties child. On the contrary, the trial court's finding in this regard is proper and consistent with RCW 26.09.004 (2), such as attending the daily needs of the child appropriate to the developmental level of the child, attending the child's education, and RCW 26.09.002,

in any proceedings, the standard by which the court determines and allocates the parties parental responsibility is the best interest of the child.

Dated : August 27, 2015

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Appellant, Prose.
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PROOF OF SERVICE

Solomon Mekuria declares under penalty of perjury : on August 27, 2015, I served by certified mail a copy of, APPELLANT'S ANSWER TO BRIEF OF THE NATIONAL FEDERATION OF THE BLIND (NFB) AMICUS CURIAE SUPPORTING RESPONDONT/CROSS-APPEALANT ASTER MENFESU to:

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I declare under penalty of perjury that the foregoing is true and correct.

August 27, 2015.