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No. 66035-7-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the de facto parentage of H.M.

MARIE MORGAN, Respondent,

v.

GEORGE MORGAN, Appellant,

RESPONDENT'S BRIEF

**Marie Morgan, Pro Se Respondent
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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 AUG 17 AM 10:35

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I. Introduction

It is clear what appellant is attempting to do with this appeal. By using contradicting arguments, George Morgan is trying to mask the fact that he failed to bring a de facto parentage action when he brought the third-party custody action. To do this, appellant tries to manipulate the elements of res judicata in a way that makes the two claims sound completely different. However, his arguments undercut one another. First, appellant fails to recognize that a third-party custody claim undeniably involves the elements of a de facto parentage claim. Second, in his attempt to distinguish the elements of a de facto parentage claims and a third-party custody claim, George Morgan argues that he is seeking custody and visitation of the child, not simply parenting rights. To say the two claims are so different as to not apply res judicata, while at the same time making one identical argument for the two claims, is not only confusing but actually bolsters Marie Morgan's case.

II. Argument

A. **The lower courts did not err in dismissing George Morgan's de facto parentage claim under the doctrine of res judicata because a third-party custody claim inherently involves the elements of a de facto parentage claim.**

Res judicata bars the re-litigation of a cause of action when the two causes of action have a “concurrency of identity” in (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made.” Rains v. State, 100 Wn.2d 660, 674 P.2d 165 (1983). Appellant’s brief fails to analyze three of these four important elements of res judicata. Rather, appellant focuses only on cause of action. It appears this was done to focus on only a portion of the legal doctrine rather than apply the entire doctrine of res judicata.

Nevertheless, as for the first factor, the subject matter in a de facto parentage claim and a third-party custody claim is nearly identical. The issue is always going to be whether a nonparent party will be given parental rights. As for the second factor, the appellant does analyze cause of action. However, his analysis is ignorant of the nature of the claim and the impact a ruling of de facto parentage will have on the natural mother. A de facto parent can make all the same decisions as the natural parent. Allowing a mother’s father to become the father of her daughter, which is confusing in its own right, will absolutely destroy Marie Morgan’s rights as a mother. Stated in another way, the third-party custody claim was

denied which preserved Marie Morgan's right to be the physical parent and sole decision maker for her child. If her father is deemed a de facto parent, Marie Morgan's status as sole decision maker will be stripped from her. This is all leaving aside the fact that appellant is asking this court to force upon the child a life of confusion when she has to call her grandfather dad.

The evidence presented in the two claims was and always will be substantially the same. While appellant distinguishes the two claims, he fails to recognize that the main difference is the third-party custody claim requires *more* evidence, whereas the de facto parentage claim requires far less information, but information that will come out during the third-party custody claim. The appellant is incorrect when he states "there is no need to present evidence of detriment to the child" in a de facto parentage claim. Rather, as this court held long before George Morgan filed this appeal, "...recognition of a person as a child's de facto parent necessarily 'authorizes [a] court to consider an award of parental rights and responsibilities . . . based on its determination of the best interest of the child.' A de facto parent is not entitled to any parental privileges, as a matter of right, but only as is determined to be in the best interests of the child at the center of any such dispute." In re Parentage of M.F., 168 Wn.2d 528, 228 P.3d 1270 (Wash. 2010). To argue otherwise is clearly an

attempt to circumvent the obvious nature of a de facto parentage claim and re-litigate the same issue.

The last part of the cause of action element is whether the two suits arise out the same transactional nucleus of facts that could have been decided in the previous case. Appellant's argument is the same flawed analysis, claiming the two actions require different evidence. However, as was the case in *In Re M.F.*, the two claims should have been, and easily could have been, combined into one case. *In re Parentage of M.F.*, 168 Wn.2d 528, 228 P.3d 1270 (Wash. 2010).

The third requirement for res judicata, one George Morgan failed to analyze, is whether the persons and parties in the first cause of action are the same. In this case, the parties are absolutely the same. It is unclear what appellant is arguing when he says "Emma Morgan could not have been a party to this suit," but the fact of the matter is that George Morgan, Marie Morgan, and Hunter Morgan were all parties to the third party custody claim. Thus, the parties are the same in both claims.

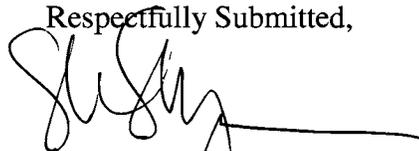
These two claims should have been brought together. The lower courts agreed and dismissed the de facto parentage claim. As mentioned before, Washington courts have consistently merged the two claims into one trial as they require substantially similar evidence and typically

identical parties, as seen in In Re M.F.. If George Morgan were to get another bite at the apple, the doctrine of res judicata would be determined useless in custody-type cases.

III. Conclusion

This appeal comes down to the application of res judicata. George Morgan tries to throw additional arguments at this Court in hopes that something will stick. Unfortunately, his timing with a de facto parentage claim is too late. Respondent respectfully asks this court to uphold the lower court decisions because they heard the evidence and determined what the best interests of Hunter Morgan are. That being said, should this Court rule in favor of appellant, respondent asks the Court issues at most a remand. Appellant improperly asked this court in argument paragraph C of appellant's brief that he be made the de facto parent. However, that is a factual issue that would have to be determined at the trial level.

Respectfully Submitted,



Marie Morgan
Respondent