FILED
MAY 17, 2016
Court of Appeals
Division III
State of Washington

NO. 336522

IN THE COURT OF APPEALS OF THE STATE OF

WAHSINGTON DIVISION THREE

In the matter of the Custody of

S.S.-L.S.

Minor Children.

ANNA BARR, Respondent

ROBERT SKAGGS, Respondents.

BARBARA BARR, Appellant.

Yakima County Superior Court Case NO. **13-3-01029-4**

APPELLANT'S REPLY BRIEF

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I. LEGAL ARGUMENT

A. Mr. Skaggs' Offers No Legal Authority in Opposition to Ms. Barr's Issues on Appeal.

Mr. Skaggs' responsive brief is nothing more than an emotional plea to the court.

He makes no attempt to reconcile CR 56 with the non-parental custody act. He fails to address the Supreme Court's ruling in Keck *v. Collins*, 181 Wn.App. 67, 325 P.3d 306 (2014).

He submits no legal authority in opposition to Ms. Barr's argument that the court erred when it excluded statutorily prescribed materials such as confidential reports, criminal records reports, etc. when ruling on summary judgment.

He sets forth no legal authority that the trial court must *sua sponte* pursue the interests of the parent and/or monitor a parent's progress in a non-parental custody matter.

He ignores the plain language of RCW 26.10.032 and a petitioner's right to an evidentiary hearing after satisfying the initial threshold of adequate cause.

B. Mr. Skaggs fails to address the undisputed facts.

Mr. Skaggs does not address in his brief the fact that he asked CPS to return his children and that CPS refused to do so.

He does not dispute the fact that CPS contacted Ms. Barr to file a non-parental custody petition. He does not dispute the fact that CPS planned foster care placement for the children, unless Ms. Barr filed a non-parental custody action.

C. **There is No Basis to Award Per Se Attorney Fees against Ms. Barr.**

Ms. Barr Had Standing to File a Non Parental Custody Petition based upon the Undisputed Facts.

Ms. Barr maintains that she properly pled her case, properly followed the local rules, and promptly noted the matter for trial.[1]

Mr. Skaggs argues Ms. Barr set forth false information to gain standing. The record does not support Mr. Skaggs' argument. The undisputed facts gave rise to a reasonable inference of the facts alleged in Ms. Barr's Petition.

Ms. Barr's petition did not limit the allegations to "willful abandonment for an extended period of time", as Mr. Skaggs argues. Ms. Barr also alleged the children were taken into emergency custody by Child Protective Service (CPS). (CP 9).

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[1] If not for Ms. Barr's counsel moving the case along as swiftly as she did, it is unknown if and when Mr. Skaggs would have taken it upon himself to note the matter for a settlement conference, to eventually lead to a trial date.

Mr. Skaggs was in jail. CPS could find no suitable adult to care for the children. This created an emergency. RCW 26.27.231.

Ms. Barr also alleged *"substantial refusal to perform parenting functions"*. It is undisputed law enforcement found the children living with an elderly adult who accused Mr. Skaggs of spending his money on drugs and not on necessities for the children. It is undisputed law enforcement described the living arrangements as small, cluttered, and dirty. It is undisputed there was little food in the house. It is undisputed an elderly adult, suffering from dementia, called 911 to come get the children because she was unable to care for them. It is clear from these facts one could reasonably, and in good faith, allege: "Substantial refusal to perform parenting functions" can easily be inferred from these facts.

There were no false allegations. Ms. Barr told the truth; she did not deceive the court. Ms. Barr provided each and every material fact necessary for the court to make an informed decision whether to grant or deny Ms. Barr's motion for an ex parte order for emergency custody.

Ms. Barr disclosed that Mr. Skaggs had already been released from jail and that the children were not in her custody.

(CP 13). She told the court: "I was further advised that if no one came forward to seek custody of the children that they would become wards of the state." All of these facts were true. Ms. Barr did not mislead the court in any way.

Mr. Skaggs blames Ms. Barr for following the advice of CPS, i.e. to file the petition for non-parental custody. He claims Ms. Barr "chose to intercede". (CP 39) This is not supported by the facts contained record. He unreasonably blames Ms. Barr for caring about the safety and welfare of the grandchildren.

Ms. Barr had no idea that Mr. Skaggs' bail was revoked. Ms. Barr also had no idea that her grandchildren were in protective custody, until CPS called her (Ms. Barr). Ms. Barr did not choose to get involved. Ms. Barr did not call CPS – they called her. Ms. Barr acted solely upon the urging of CPS. Ms. Barr acted as any other loving grandparent would act under similar circumstances.

Mr. Skaggs argues: "Ms. Barr intentionally ended CPS's involvement when she filed the non-parental custody action." Here, Mr. Skaggs avoids the obvious. It was CPS that purposefully south out Ms. Barr's assistance in order to cease its own involvement in the children's' lives. It is clear the CPS social worker notified Ms. Barr to take emergency custody of the children

to avoid a dependency petition with juvenile. To blame Ms. Barr for following CPS's instructions (to file the petition) is to ignore the fact that CPS determined Mr. Skaggs was an unfit parent.

Mr. Skaggs argues he should be awarded attorney fees because Ms. Barr intentionally denied him the care and custody of his children for 20 months. Mr. Skaggs overlooks the fact that his actions gave rise to the facts that supported Ms. Barr's non-parental custody petition.

Mr. Skaggs further argues he should be awarded attorney fees because he was deprived of his children for 20 months without a finding of adequate cause. Ms. Barr maintains that adequate cause was found by the court on January 9, 2014.

The gravamen of Mr. Skaggs argument lies in the fact the January 9, 2014 order was titled "Temporary Order" and not "Order on Adequate Cause". Mr. Skaggs urges the court to favor form over substance, however, he cites no authority for the court to do so, especially under these facts where the children had lived with their grandmother for so long.

Though the title of the order did not formally pronounce "adequate cause", in substance that is exactly what it is was. Without adequate cause having been found by the Commissioner

that day on January 9, 2014, the children would have not remained with Ms. Barr, a court investigator would not have been appointed, there would be no order for visitation, there would have been no mediation, there would have been no settlement conference scheduled by the court administrator and attended by Ms. Barr, and there would have been no trial date scheduled by the court administrator. The parties, the court administrator, and the court, all proceeded reasonably by interpreting the January 9, 2014 order as a finding of adequate cause.

Under these facts, the Commissioner's January 9, 2014 order warranted a presumption that adequate cause had been found. It was error for the trial court to assume that adequate cause had not been found.

Mr. Skaggs goes to great length to paint himself the victim and that he should be awarded attorney fees. Mr. Skaggs is a far cry from being a victim in this case. He is not. Mr. Skaggs seeks to invoke the court's sympathies, yet he failed to file any motions with the court, not even a motion for expanded visitation or unsupervised visitation. The court house doors were always open to Mr. Skaggs, every Monday through Friday, during normal business hours.

Mr. Skaggs did not bother to even visit his children, not even once, during those 20 months. Mr. Skaggs did not even attend the mediation that was scheduled and took place on June 30, 2014. (CP 241).

Not only that, Mr. Skaggs could have availed himself to a Motion to Revise the Commissioner's Ruling. He chose not to do so. Instead, he ignored his children and 20 months later, waited to play the game of "gotcha".

There is no basis to award attorney fees, *per se*.

D. Mr. Skaggs Seeks to Impose an Affirmative Duty upon the Superior Court to Take Necessary Steps to Ensure Mr. Skaggs has Every Opportunity to Regain Custody of his Children.

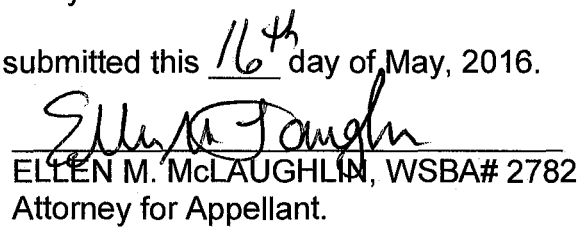
Mr. Skaggs would like to impose upon the trial court a duty to provide remedial services and any assistance needed to prevent the breakup of his family. However, he provides no authority for this proposition.

II. CONCLUSION

Mr. Skaggs appeals to the court's sympathies, offering no legal authority to substantively challenge or oppose Ms. Barr's

assertions in her brief. Ms. Barr is entitled to the relief requested as well as her attorney fees.

Respectfully submitted this 16th day of May, 2016.



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