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

SOLOMON MEKURIA,

Appellant/Cross-Respondent,

v.

ASTER MENFESU,

Respondent/Cross-Appellant.

**Brief of the National Federation of the Blind
as *Amicus Curiae* in Support of Respondent/Cross-Appellant
Aster Menfesu**

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ORIGINAL

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INTERESTS OF AMICUS CURIAE

The National Federation of the Blind (“NFB”) is the nation’s oldest and largest organization of blind persons. The NFB has affiliates in all 50 states, Washington, D.C., and Puerto Rico. The NFB and its affiliates are widely recognized by the public, Congress, executive agencies of state and federal governments, and the courts as a collective and representative voice on behalf of blind Americans and their families. The organization promotes the general welfare of the blind by assisting the blind in their efforts to integrate themselves into society on terms of equality and by removing barriers that result in the denial of opportunity to blind persons in virtually every sphere of life, including education, employment, family and community life, transportation, and recreation.

The NFB has tens of thousands of members, many of whom are blind parents. The NFB thus has a critical interest in ensuring that courts understand the capabilities of blind parents and do not infringe on their fundamental right to parent as a result of unfounded assumptions and stereotypes. The NFB regularly is involved in education, legislation, and advocacy regarding the rights of blind parents. In this case in particular, because the trial court improperly assumed that Aster Menfesu would not be able to meet her child’s future educational needs solely because of her blindness, the NFB has a strong interest in ensuring that this Court

understands the full capabilities of blind parents like Ms. Menfesu. Through its experience and expertise in educating the public about the capabilities of blind individuals, the NFB is uniquely situated to provide this important information to this Court.

INTRODUCTION

The trial court in this case granted Mr. Mekuria the right to “petition the court to modify the decision making on educational issues without a showing of adequate cause any time after June 1, 2016,” because of its concern that Ms. Menfesu, who is blind, would not be able to provide for her daughter’s future academic needs. RP 406. The court opined that although Ms. Menfesu’s daughter “appears to be doing well in Kindergarten,” it had “concerns regarding her future academic success given the testimony regarding the mother’s ability to help the child with lessons given that she is legally blind.” RP 404. The court conceded that Ms. Menfesu’s current method of utilizing supports to assist her in providing for her daughter’s educational needs “appears to be working,” but, because of Ms. Menfesu’s blindness, wondered “how Eden [Ms. Menfesu’s daughter] will fare academically when the homework is more difficult and voluminous” and the once-per-week assistance from Ms. Menfesu’s friend “may prove insufficient.” RP 405-06. Thus, the court below granted Mr. Mekuria the right to modify custody in or after June

2016 based only on a showing “that he has been actively involved with [the daughter’s] school (including fulfilling any required volunteer hours and participating in parent-teacher conferences).” RP 406.

The trial court’s assumption that Ms. Menfesu’s blindness would prevent her from assisting her daughter academically as her daughter’s education progresses is without factual support and therefore a biased and discriminatory view of the capabilities of a blind parent. Blind parents throughout the country successfully care for their children and provide them with educational support and guidance at all ages. Like nearly all parents, blind parents do not raise their children in a vacuum. Whether they utilize technology to support a child’s academic success, utilize the assistance of public or private educational services or programs, or involve friends or relatives, blind parents are capable of fully providing for their children’s educational needs and serving their children’s best interests. To judge blind parents negatively when they use outside resources to enhance their parenting skills or to speculate that they will not be able to meet future parenting challenges because they are blind, rather than based on any evidence, unfairly and unlawfully discriminates against them on the basis of their disability.

STATEMENT OF THE CASE

The NFB adopts the Statement of the Case contained in Respondent/Cross-Appellant Aster Menfesu's brief.

ARGUMENT

I. The children of blind parents fare just as well, if not better in certain areas, than their peers raised by sighted parents.

There are hundreds of thousands of blind parents in the United States. One recent estimate put the number of blind parents of children under 18 at approximately 790,700, or 1.2% of all parents.¹ Where sighted parents rely on their eyes, blind parents use other adaptive techniques. They label medicine bottles, cans, and clothes in Braille or with other coding. They take temperature by touch or with talking thermometers. Sometimes they tie bells to their children's shoes.² As one blind mother has observed, "[n]o one is limited by blindness. We're only limited by attitude."³

¹ *Number and Characteristics of Parents with Disabilities Who Have Children Under 18, 2008-09*, Through the Looking Glass, <http://www.lookingglass.org/pdf/States-Data/TLG-Parents-with-Disabilities-US-Demographics.pdf> (last visited July 27, 2015).

² For descriptions of these and other adaptive techniques, see Lori K. Baker, *Seeing Is Believing*, Family Circle, May 11, 1999, at 52-54, available at <https://nfb.org/images/nfb/publications/bm/bm99/bm990703.htm>; Gary Wunder, *To Be a Parent*, Braille Monitor, Jan 1986, at 30-34, available at <https://nfb.org/Images/nfb/Publications/bm/bm86/bm8601/bm860109.htm>.

³ Baker, *supra* note 2.

The NFB previously explained in *Parenting Without Sight: What Attorneys and Social Workers Should Know About Blindness*:

Though our adaptive techniques might surprise and even amaze you, try to keep in mind that to us they are generally unremarkable. If you catch yourself assuming that some problem is too daunting for us to solve, stop to give it careful thought. Try not to draw conclusions before you discuss the situation with us and listen to what we have to say. We have extensive experience living without sight, and most of us have developed excellent problem-solving skills. In addition, through support networks across the country, we can draw on the expertise of thousands of other blind parents who have gone before us. Be willing to learn from us and with us.⁴

Research on blind parents confirms the ability of blind parents to problem-solve and provide the same level of care as sighted parents.

According to scholar Paul Preston, “[d]espite the lack of appropriate resources for most disabled parents and their children as well as persistent negative assumptions about these families, the vast majority of children of disabled parents have been shown to have typical development and functioning and often enhanced life perspectives and skills.”⁵ Most methodologically-sound studies evaluating children of parents with

⁴ *Parenting Without Sight: What Attorneys and Social Workers Should Know About Blindness*, The National Federation of the Blind <https://nfb.org/Images/nfb/Publications/brochures/BlindParents/ParentingWithoutSight.html> (last visited July 27, 2015) (hereinafter “*Parenting Without Sight*”).

⁵ Paul Preston, *Parents with Disabilities*, in *International Encyclopedia of Rehabilitation* 8 (J.H. Stone & M. Blouin, eds., 2010), available at http://cirrie.buffalo.edu/encyclopedia/en/pdf/parents_with_disabilities.pdf.

disabilities, have “conclude[d] there is average to better-than-average development and functioning among children of disabled parents and found positive outcomes as well: enhanced coping and problem-solving skills; greater acceptance of difference; and, more positive attitudes towards disability.”⁶

One study concluded that blind mothers are just as capable of meeting their infants’ needs as sighted mothers, and can do so with relatively little assistance.⁷ Another study of blind mothers with young children found that the mothers’ blindness alone “was not a predictor of problems or difficulties in the children. Predictors of problem parenting were the same as those for non-disabled mothers – history of physical, sexual, or substance abuse in the mother’s family of origin.”⁸

Additional research has revealed that children raised by blind parents develop no differently from their peers raised by sighted parents.

A recent study on communication skills in infants of blind parents

⁶ *Id.* at 9.

⁷ Thomas J. Socha & Corey Staten, *Parenting by Touch, Sound, and Scent I: Towards a Positive Research Agenda* 8 (2005) (unpublished manuscript) (presented at the Disabilities Issues Caucus, National Communication Association, Boston, 2005), available at <http://ww2.odu.edu/~tsocha/socha-staten-nca-disabilities-caucus.doc> (citing M.A. Ware & L.O. Schwab, *The blind mother and providing care for an infant*, 65 *The New Outlook for the Blind* 169 (1971)).

⁸ Megan Kirshbaum & Rhoda Olkin, *Parents with Physical, Systemic, or Visual Disabilities*, 20 *Sexuality and Disability* 65 (2002) (citing C. Conley-Jung & R. Olkin, *Mothers with visual impairments or blindness raising young children*, 91 *Journal of Visual Impairment and Blindness* 14 (2001)).

concluded that “early and ongoing interaction with a blind primary carer is not associated with clear and pervasive/persistent atypicalities in social-communication skills development.”⁹ Instead, the infants in that study exhibited above-average visual reception skills and developmental abilities.¹⁰ The infants acted “in the same way as sighted infants of sighted adults” when communicating or interacting with sighted adults, but adapted their interactions with their blind parents by using more vocal communication.¹¹ One case study of a sighted infant raised by blind parents found the infant’s interactions with sighted adults to be normal and concluded that the baby was thriving.¹²

A study comparing sighted adolescents raised by blind and sighted parents made the following findings: (1) the children of blind parents had more positive peer interactions than the children of sighted parents; (2) there were no differences in the emotional state of the two groups; and (3) positive and negative feelings towards parents coexisted in both groups,

⁹ Atsushi Senju *et al.*, *The importance of the eyes: communication skills in infants of blind parents*, 280 *Proc. Royal Soc’y* 1, 5 (2013).

¹⁰ *Id.*

¹¹ *Id.*

¹² Lauren Adamson *et al.*, *The Development of Social Reciprocity Between a Sighted Infant and Her Blind Parents: A Case Study*, 16 *J. Am. Acad. Child Psychiatry* 194, 201, 204 (1977).

although the children with blind parents had a higher intensity of positive feelings towards their parents.¹³

II. Blind parents can participate in and assist with their children's learning.

Although the trial court expressed concern about Ms. Menfesu's ability to keep up with her child's educational needs, blind parents have many tools for teaching their children at any age. Blind parents can read with their children by using print/Braille books, which feature clear Braille pages alongside print pages.¹⁴ The parent reads aloud from the Braille page while the sighted child follows along looking at the printed words and pictures.¹⁵ Ms. Menfesu testified at trial that she is currently on a waiting list to take Braille classes at the Washington Services for the Blind. RP 440-41. Even without Braille though, audio recordings of books, when coupled with a print copy of the book, also allow blind parents and sighted children to read together.¹⁶ Ms. Menfesu testified that she currently reads with her daughter by using a combination of audio and print books. RP 344.

¹³ Ilana Duvdevany, *et al.*, *The Social Life and Emotional State of Adolescent Children of Parents Who Are Blind and Sighted: A Pilot Study*, 101 *Journal of Visual Impairment & Blindness* 160, 165-67 (March 2007).

¹⁴ *Parenting Without Sight*.

¹⁵ *Id.*

¹⁶ *Id.*

When it comes to assisting with homework assignments, some blind parents find it helpful to hire a tutor or volunteer older student to assist their children with homework.¹⁷ Other parents ask teachers to email them notes and homework assignments so that they can access the assignments on computers, tablets, or smartphones using screen access software that converts the text to speech or allows the parents to read the text in Braille using a refreshable Braille display.¹⁸ New technology makes assisting children with homework even easier. With the recent release of the KNFB reader app for smartphones, blind parents can photograph homework assignments or pages of a textbook using their phones and use the app to convert the text into an accessible format that they can listen to or read independently in Braille.¹⁹ Commercially available scanners like the Kurzweil 1000 perform the same function of making printed text accessible to blind readers.²⁰ Whether by utilizing technology or the assistance of individuals, blind parents like Ms. Menfesu can offer their children the same educational support as any other parent.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See KNFB Reader, <http://www.knfbreader.com/> (last visited July 27, 2015).

²⁰ See *Kurzweil 1000*, Kurzweil Education, <https://www.kurzweiled.com/products/kurzweil-1000-v14-windows.html> (last visited July 27, 2015).

III. The trial court's findings about Ms. Menfesu's ability to provide for her daughter's future educational needs were unlawfully based on unfounded speculation and bias against blind parents.

Blind parents, like all other parents, have a fundamental right to raise their children under the United States Constitution. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). When courts allocate parental responsibilities, “the best interests of the child” is the controlling standard. RCW 26.09.002. For parents with disabilities, courts should consider both the best interests of the child and “the moral and legal obligation of society to respect the civil rights of its physically handicapped members, including their right not to be deprived of their children because of their disability.” *In re Marriage of Carney*, 598 P.2d 36, 37 (Cal. 1979). The National Council on Disability recommends that “a parent’s status as disabled should be irrelevant to the [best interests] analysis without an evidentiary showing of [a] nexus between the parental disability and a detrimental impact on the child.”²¹

This nondiscriminatory analytical framework is required under Title II of the Americans with Disabilities Act (“ADA”), which mandates that “no qualified individual with a disability shall, by reason of such

²¹ National Council on Disability, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children* 156 (2012), available at <http://www.bazelon.org/LinkClick.aspx?fileticket=kqARf93Rqy0%3d&tabid=640> (hereinafter “*Rocking the Cradle*”).

disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Although several courts had previously held otherwise,²² the United States Departments of Justice and Health and Human Services clarified earlier this year that Title II of the ADA applies to state court proceedings to terminate parental rights.²³ Accordingly, the ADA also applies to state court child custody proceedings, which are similarly programs or activities of the state.²⁴ In

²² See *In re Anthony P.*, 101 Cal. Rptr. 2d 423 (Cal. Ct. App. 2000); *In re Antony B.*, 735 A.2d 893 (Conn. App. Ct. 1999); *M.C. v. Dep’t of Child. & Families*, 750 So. 2d 705 (Fla. Dist. Ct. App. 2000); *In re Adoption of Gregory*, 747 N.E.2d 120 (Mass. 2001); *In re Kayla N.*, 900 A.2d 1202 (R.I. 2006); *In re B.S.*, 693 A.2d 716 (Vt. 1997).

²³ Letter from Vanita Gupta, Acting Assistant Attorney General, Civil Rights Division, U.S. Dep’t of Justice, Jocelyn Samuels, Director, Office for Civil Rights, U.S. Dep’t of Health and Human Services, and Susan M. Pezzullo Rhodes, Regional Manager, Office for Civil Rights, Region I, U.S. Dep’t of Health and Human Services, to Erin Deveney, Interim Commissioner, Department of Children and Families, Massachusetts Executive Office of Health and Human Services 10 n. 11 (Jan. 29, 2015), available at http://www.ada.gov/ma_docf_lof.doc.

²⁴ Although the few courts to have previously considered whether the ADA applies to child custody proceedings have held that it does not, those courts’ decisions were based on the lack of precedent supporting the ADA’s application, rather than on an independent analysis. See *In re Rodgers*, No. 5:06CV00071, 2006 WL 2728661, *1 (W.D. Va. 2006) (noting that it was “unaware of any authority under the ADA in which the court’s authority can be invoked in a child custody case based on the disability of a parent”); *Curry v. McDaniel*, 37 So. 3d 1225, 1233 (Miss. Ct. App. 2010) (holding “we find no persuasive authority which supports the proposition that the ADA applies or was intended to apply to child-custody determinations”); *Arneson v. Arneson*, 670 N.W.2d 904, 911 (S.D. 2003) (refusing to apply the ADA in a child custody case because “no authority supports the extension of the ADA into parental custody disputes”). The United States Departments of Justice and Health and Human Services’ recent clarification that the ADA applies in termination of parental rights proceedings creates new persuasive support

passing the ADA, Congress envisioned addressing discrimination in child custody decisions. The House Report on the ADA notes the discrimination individuals with disabilities face in “securing custody of their children” and in being “deemed an unfit parent” solely because of their disabilities.²⁵ Thus, courts in child custody proceedings must not discriminate against parents with disabilities by limiting their parental rights solely because of their disabilities.

To honor the constitutional and statutory rights of parents with disabilities, courts must focus on a parent’s capabilities, rather than on her disability. In *In re Dependency of T.L.G.*, for example, this Court held that a parent’s disability, in that case mental illness, “is not, in and of itself, proof that a parent is unfit or incapable.” 108 P.3d 156, 168 (Wash. Ct. App. 2005). Instead, courts “must examine the relationship between the [disability] and parenting ability.” *Id.*

Yet rather than recognize that Ms. Menfesu’s utilization of parenting supports positively contributes to her parenting ability and serves her daughter’s best interests, the trial court viewed these supports as evidence of Ms. Menfesu’s blindness-related limitations. RP 405-06 (describing how a friend assists Ms. Menfesu with her daughter’s

for holding that the ADA also applies in child custody proceedings, which are also programs or activities of the state.

²⁵ H.R. Rep. 101-485, pt. II, at 41 (1990); H.R. Rep. 101-485, pt. III, at 25 (1990).

schoolwork and with other tasks, acknowledging that “this plan appears to be working,” but expressing concern about Ms. Menfesu’s ability to parent in the future). This view is unfortunately all too common. Even though 68% of parents with disabilities report receiving assistance with parenting from their family or friends,²⁶ courts tend to evaluate parents with physical disabilities who rely on these types of supports negatively.²⁷

In child custody cases involving parents with disabilities, scholars note that “[n]egative speculations about the future are common and often seem to be based on stereotypes rather than on evidence.”²⁸ The NFB estimates that among blind parents, as many as one in four households have been visited by child protective services employees.²⁹ These interventions stem not from parenting that endangers children, but from misconceptions about the capabilities of blind parents.³⁰ Parenting issues that are normal among all parents, sighted and blind, are given elevated scrutiny when it comes to blind parents. For example, blind parents in Missouri had their newborn removed from their custody after the mother’s

²⁶ *Rocking the Cradle* at 240-42.

²⁷ *Id.* at 173.

²⁸ Megan Kirshbaum, Daniel Taube, and Rosalind Lasian Baer, *Parents with Disabilities: Problems in Family Court Practice*, 4 J. Ctr. for Families, Child., & Cts. 38 (2003).

²⁹ *Parenting Without Sight*.

³⁰ *Id.*

awkward first attempts at breast feeding.³¹ Even though early struggles with breast feeding are common among sighted mothers, for blind mothers this type of universal difficulty is used to confirm decision makers' biases about blind parents and can become grounds for limiting parental rights.

These assumptions about blind parents' limitations are unfounded and violate blind parents' fundamental right to parent under the United States Constitution and their rights under the ADA. The court below erred in two respects. First, the court's entire line of questioning into Ms. Menfesu's blindness and blindness skills was inappropriate given the lack of any evidence of any harm to Ms. Menfesu's daughter. *See* RP 417-51. Only had there been evidence that Ms. Menfesu's daughter was not thriving would the court's line of questioning have been a valid means of assessing whether a nexus existed between a poor parenting outcome and Ms. Menfesu's blindness.

Second, the court drew biased conclusions from Ms. Menfesu's testimony about the assistance she receives. Given Ms. Menfesu's daughter's successful academic progress, had Ms. Menfesu been sighted, the court never would have raised concerns about problems down the road for her daughter's academic success. Evidence that a sighted parent enlists a friend to help her daughter with her homework would be

³¹ *Rocking the Cradle* at 114.

considered indicative of a parent who goes above and beyond to support her child's education. Instead, the trial court viewed this support as illustrative of Ms. Menfesu's limitations as a blind parent. It assumed that Ms. Menfesu would not meet future challenges based solely on her blindness, despite the evidence that she adeptly meets current ones.

Under the best interests standard, however, the ends, rather than the means, are what matter. Thus, if a child is flourishing, it makes no difference whether a parent helped the child with or without assistance. *See, e.g., In re L.J.D.*, 352 S.W.3d 658 (Mo. Ct. App. 2011) (holding that even if a disability "renders a parent unable to provide adequate care for a child alone, [that disability] does not provide a basis for termination if the parent has access to additional support" which would make the parenting adequate); *In re Marriage of Lang*, 668 N.E.2d 285 (Ind. Ct. App. 1996) (upholding sole custody award to quadriplegic mother who had "around the clock caregivers to assist her with the child"). Thus, if Ms. Menfesu supports her daughter's academic progress by enlisting the assistance of a reader and this method works for her daughter, as the evidence shows it does, then no negative assumptions should be drawn from Ms. Menfesu's receipt of assistance. Responsible parents – both sighted and blind – regularly seek academic assistance for their children. As the National Council on Disability notes, "[r]egardless of whether or not they have a

disability, all parents need supports, both formal and informal, to help them in parenting. And yet, interdependent parenting practiced by parents with disabilities is perceived as inadequate.”³² Private tutors would be out of business if all parents were expected to help with homework on their own. Ms. Menfesu’s decision to engage others to help her address her daughter’s needs shows that Ms. Menfesu is resourceful and values her daughter’s education. The court below had no reason to presume that Ms. Menfesu would not utilize her own skills and resources or seek appropriate assistance from outside professionals and friends to continue to ensure her daughter’s continuing academic development.

Accordingly, the trial court’s order giving Mr. Mekuria a blank check to come back to court in 2016 and move to modify custody, based solely on Ms. Menfesu’s blindness, rather than on any evidence of harm to their daughter, discriminates against Ms. Menfesu on the basis of her disability and is thus unlawful.

CONCLUSION

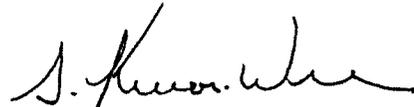
For the reasons set forth above, this Court should reverse the trial court’s ruling permitting Mr. Mekuria to move to modify the parenting plan in June 2016 without a proper legal basis and instruct the trial court to base its findings and conclusions on the evidence, rather than on

³² *Id.* at 269-70.

speculation about how Ms. Menfesu's blindness will impact her parenting abilities in the future.

Dated August 5, 2015.

Respectfully submitted,



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PROOF OF SERVICE

Katrin E. Frank declares under penalty of perjury:

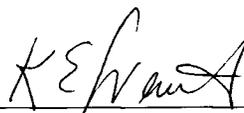
On August 5, 2015, per agreement of counsel, I served by email a copy of this Brief on

Attorney for Respondent/Cross-Appellant Aster Menfesu
Elizabeth A. Helm
Northwest Justice Project
401 2nd Ave S Ste 407
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bethh@nwjustice.org

I also emailed, and instructed ABC Legal Services to deliver a copy of this Brief by August 6, 2015, to

Appellant Pro Se
Solomon Mekuria
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SolomonMMekuria@yahoo.com

I declare under penalty of perjury that the foregoing is true and correct. Dated August 5, 2015.



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