STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
Case Nos. 23AP1401 and 23AP1805

In re the marriage of Angela Marie Yadagiri and Narendra Yadagiri

Vishnu Chaitanya Alamuri,

Appellant,

v.

Angela Marie Yadagiri and Narendra Yadagiri**,**

Respondents. 2023AP1401

In re the Support or Maintenance of R.K.Y.

Vishnu Chaitanya Alamuri,

Appellant,

v.

Angela Marie Yadagiri and Narendra Yadagiri**,**

Respondents. 2023AP1805

On Appeal from the Circuit Court For Dane County, Honorable Stephen J. Ehlke, Presiding in Case No. 22FA1824
And
On Appeal from the Circuit Court For Dane County, Honorable Jacob B. Frost, Presiding in Case No. 19FA1846

REPLY BRIEF OF PETITIONER/INTERVENOR-APPELLANT

SUBMITTED BY:

Your Family Law Center, S.C.
Ginger L. Murray, State Bar No. 1028352
Attorneys for Appellant
152 West Johnson Street, Suite 210
Madison, WI 53703
Phone: (608) 819-6800

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES

Changes to the Statement of the Issues in Joint Respondents' (hereinafter "Rs") Brief are neither insignificant nor supported by the facts in the record. Rather than address the succinct and applicable question posed in Alamuri's Brief, Rs' revisions assert that Alamuri is the biological father, then assert that the intervention he seeks is soley to dodge financial obligations. This reframing of the issues asserts facts not in the record. Alamuri has not been determined to be the biological father of RKY. Rs reframing of the Issues ignores Alamuri's assertion that the Rs' actions blocked any alleged biological father's rights to access or parent the child; that R's claims/assertions to the court were procedurally defective, included misleading or dishonest statements, and omissions; and the Court's rulings were not supported by the law.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Not surprisingly, the parties disagree about the importance of the issues raised in the appeals, and whether publication is warranted. Alamuri's reasoning is stated in the initial brief, and he relies on that position without further reply.

INTENTIONALLY LEFT BLANK

STATEMENT OF THE CASE

Also not surprisingly, the parties report the facts and statement of the case like ships passing in the night. Rs' initial sentence in this section skips past all the important historical facts and procedures to these problematic cases, to summarily report they are now divorced[1]. Rather than admit that Angela Yadagiri ("mom") was late in her pregnancy when they married, making it evident she was pregnant, Rs assert the birth occurred early in the marriage. Regardless, it is undisputed that the marital presumption applies. Rather than discuss Rs' choices when presenting themselves as parents of RKY on the birth certificate application; admitting to being RKY's parents to the child support attorney ("CSA") and the Court; stipulating to being RKY's parents at a hearing; and opting not to appeal the Judgment declaring them to be the parents; Rs brief suggests Narendra ("husband') was seemingly passively "deemed" the father due to the legal application of the marital presumption. Also within their opening paragraph, rather than acknowledging the Judgment found husband to be the father of RKY, Rs only mention the stipulation for $0 in support within that Judgment. To say Rs downplayed the significance of the legal history, application of the law to the facts, and the Judgment is an understatement.

Rs' second paragraph opens with reliance on the Courts' comment that Rs "spent years not living or acting married", without any explanation as to legal relevance of said statement, which can otherwise be interpretted as Rs were married for years. R. 58: 1-2. Rs most noteworthy assertion comes next, when they explain the lack of a parent relationship between husband and RKY, "… because- as everyone knew and genetic testing confirmed-Narendra was not RKY's biological father." *Id.* This assertion flies in the face of the Rs' attesting to Narendra being RKY's father when registering the birth of RKY in Wisconsin, in compliance with Wis. Stat. Sec. 69.14; Rs submitting to the jurisdiction in Wisconsin for the 2019

[1] See attached (demonstrative) Exhibit A: timeline of relevant history of the case.

Case and admitting husband is RKY's father, and GAL Wallace's report that husband has established a parental role more so thatn the putatuve father. *Id.* and 19R 34: 2. Rs had the right to challenge the marital presumption and argue that someone else was the biological father, or to appeal the Judgment. They did not. Rs repeatedly admitted to being the parents of RKY.

Rs' third paragraph in this section, jumps to R's filing for legal separation in the 2022 Case, omitting any reference to the years in which Rs held themselves out as RKY's parents. Rs offer no reference to their many denied attempts to rebut or reverse the 2019 orders upholding the marital presumption consistent with the recommendations of the GAL in the 2019 case and the CSA working both cases[2]. App. 163-165. Rs offer no legal explanation to justify the forum shopping that occurred to get a different guardian ad litem (GAL), and a different result. Rather Rs, in a matter-of-fact tone, simply skip to their ability to convince Judge Ehlke to appoint a new GAL, and rebut the presumption at a non-evidentiary status conference, within three weeks of appointing that GAL. The final assertion in Rs' Statement of the Case speculates that Alamuri's motions were filed to dodge financial obligations of RKY. Rs rely on the Courts' opinion that "There is no legal right of a biological parent to ask a court to protect him from legal responisbiilty for his child" and to rely on the Courts' reasoning that to do so "would render a gross injustice". 19R. 53: 3. This assertion, the Courts' ruling, and reasoning are not supported by the law (as will be discussed in the legal argument hereinafter.)

Finally, Rs take a few shots at Alamuri's position, which include unfounded attacks for not including citations to support those positions.

- It requires little more than common sense to undertand that if married parents rely on the marital presumption, resulting in them being named as the parents of the child born during the marriage, they are

[2] See Ex. A

effectively blocking a putative father from learning of his potential biological connection to that child or otherwise allowing that putative father to obtain court orders to award the right to parent the child. However, there is case law that supports Alamuri's position. Application of the marital presumption, can fully block a putative father's rights, which has been determined not to violate the putative father's due process rights. *Michael H. v. Gerald D.*, 491 U.S. 110, 105 L. Ed. 2d 91 (1989). Even when there are genetic tests which indicate someone other than the husband is the biological father, which can rebut the marital presumption per Wis. Stat. Sec. 891.41, the husband may be equitably stopped from doing so. *Randy A.J. v. Norma I.J.*, 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630.

- Rs assert that Alamuri, without citation, impugns and speculates re GAL Richter's movtivations and findings. Rs Br. 8. This is simply inaccurate. First, while Alamuri recites the relatively abbreviated timeline for the GAL's recommendations, Rs' accusation that Alamari's speculations were "fueld entirely by the lngth of time" commited to the GAL's work is simply and clearly a misrepresentation. Alamuri's brief accurately reports GAL Richter's rationale for her recommendations, with citation to her letter in which those reasons are provided. Br. 14-15, citing 22R. 29. Alamuri's brief then points out GAL Richter's factors she relied upon which are inconsistent with the evidence presented in the 2019 case, including the GAL's report/recommendations in that case[3]: R's did admit to husband being the father to the CSA and the court, and R's did hold husband out to the public as the father (same surname and listing of husband as the father on the BC). Br. 15-16, 38-39. Alamuri then

[3] 19 R. 34: 2 paras. 3-4

points out what was not included in GAL Richter's rationale. *Id.* R's do not present evidence to negate Alamuri's argument, rather R's label the argument/citations as "speculation and baseless accusations…."

- It is undisputed that the Courts' Decision and Order, the subject of the appeal, credited the genetic testing. 19R. 58: 2. The record is void of any evidentiary hearing addressing the admissibility, authenticty, or chain of custody of said testing. Only Commissioner Fremgen's decisions acknowledged genetic tests, but ruled the evidence presented insufficent to reopen or reverse the longstanding, not appealed, application of the marital presumption. 19R. 15: 1, 34: 1-2 (incl. report/recommendations from GAL and CSA). Judge Frost deemed the Commissioner's Order to be a final order on the issue. 19R. 38:1 and 40. The NC court, after an evidentiary hearing, deemed those same genetic test results inadmissible. App. 162-163

LEGAL ARGUMENT

I. THE CIRCUIT COURT ERRED WHEN IT SUMMARILY DISMISSED ALAMURI'S MOTIONS TO INTERVENE AND TO REOPEN

Rs assert that there is a case that controls the outcome of this case, citing *Hendrick v. Hendrick*, 2009 WI App 33, 316 Wis. 2d 479, 765 N.W.2d 865. While there are similarities between that case and this case, there are more differences. In Henricks, the putative father and Intervenor ("Randy") was a party to the paternity action (2008AP723), Alamuri was not. Randy was able to present an argument regarding whether or not genetic testing should be performed, Alamuri was not. In Hendricks the court appointed the same GAL in both cases, which Randy alleged was a conflict. It was determined that having one guardian ad litem for a child in both the paternity and divorce cases

was not a conflict. The GAL's recommendations in both Henricks cases were consistent. In these cases, the Courts appointed two different GALs which resulting in contradictory recommendations and thereafter, contradictory orders. Mr. Hendrick abandoned the child, while Narendra has not. Randy had the opportunity to request an evidentiary hearing before genetic testing would be performed or the test results unsealed, but did not. Alamuri has no such opportunity. Prior to ordering testing, the Court determined that such testing would be in the minor child's best interest. Neither court in the cases on appeal had any such hearing. The Court in Hendricks opined that upon any party asking for testing, the Court shall order such testing, which it did. No such opportunities or requests were made in either case on appeal. Upon learning of the test results, Randy admitted to being the child's daughter, Alamuri has not, nor was he provided notice of any tests alleging he is the father as required by Wis. Stat. Sec. 767.84 (1)(b)(2). Judgment was entered finding Randy to be the biological father, the same is not true for Alamuri. *Id*.

In Hendricks, because Randy had his day in court in the paternity case in which he was determined to be the father. The Court of Appeals opined that the statue governing the determination of paternity does not depend on whether the husband of the child's mother has or has not been genetically determined to be the child's father. The Court ruled that any findings regarding genetic testing in the divorce were immaterial to Randy's interest, and his request to intervene in the divorce was denied. (2008AP722). Alamuri filed for intervention in both cases to address the reversal of the longstanding application of the marital presumption, which negated his need to intervene previously. Alamuri was summarily denied his request to intervene in both cases in which Rs now claim Alamuri is the biological father. Based on the completely distinguishable facts and processing of the cases, Alamuri asserts Hendricks is not controlling in his appeals. *Id*.

a. **Mandatory Intervention**: As stated in more detail in Alamuri's Brief, and Rs' Response, it is undisputed that to prevail on a claim of mandatory intervention, i) the motion to intervene must be timely, ii) the intervenor must have an interest relating to the subject of the action; iii) the intervenor's is situated such that the disposition of the action may impair or impeded his ability to protect his interest; and iv) the intervenor's interest must not be adequately represented by the existing parties. Alamuri meets all these requirements:

i. Timely: Alamuri's motions to intervene were timely.

Until the marital presumption was rebutted in a telephone status conference in the divorce action on March 10, 2023, Alamuri had no known reason to intervene. Even after that ruling, the longstanding, repeatedly upheld application of the marital presumption was intact in the 2019 Case.

It was not until Judge Frost, during a status conference, pivoted 180 degrees from his prior rulings in his 2019 case, and accepted the contradictory ruling in the 2022 case as the controlling order, therefore declaring his prior orders void on April 21, 2023. There was no GAL appointed in this case at the time of this hearing, as is required by Wis. Stat. Sec. 891.39

On April 26, 2023, the NC court deemed the genetic tests Rs produced to all courts, which the Courts' in these cases relied upon, as unauthenticated and inadmissible.

On May 8, 2023, Rs obtain their divorce, removing any indication of husband being RKY's father. Alamuri obtained an attorney, who requested but was repeatedly denied access to the efiling in the lower courts' cases, who was able to file Alamuri's Limited Appearance, and Motions to Intervene and Reopen the cases

on June 28, 2023. These filings were made within 60 days of the reversal of the longstanding application of the marital presumption in the 2019 Case. Alamuri relies on legal arguments in his Brief regarding the timeliness of his filings. Cases cited therein are more recent in time regarding filings deemed timely even after the time for filing an appeal has passed, than the cases relied upon by Rs.

As to the prejudice to the parties, Rs omit any assertion regarding the impact on RKY. Orders in the case demonstrate that although Rs stipulated to no support in the Judgment, husband provided support to RKY. GAL Wallace reports RKY that financial support and further asserts that RKY has a stronger connection to husband than to Alamuri. The NC courts granted Alamuri's Motion to Dismiss Rs' motion, and have matters in their jurisdiction on hold, awaiting the results of this appeal. GAL Wallace's report also addresses antagonistic relationship between mom and Alamuri, and that was offered before mom was arrested for stalking and Alamuri was granted a Domestic Violence Protection Order against her. 19R. 34: 2.

Where the recommendations of the GALs appointed to represent the best interests of RKY are inconsistent; and genetic tests that were relied upon in both cases, without consideration of their admissibility, were deemed inadmissible after an evidentiary hearing in NC; the important issue of RKY's paternity should be addressed in something more than a telephone status conference or two, with all relevant parties appointed and provided an opportunity to be heard.

ii. Alamuri's interest: Alamuri's interest in cases in which the legally recognized parents now assert he is the biological parent of the child, is a clear interest in those cases, and Rs' pleadings admit his standing in their case.

Rs first reframe the issues in the appeals, claiming Alamuri is the biological father of RKY, and then assert Alamuri lacks an interest sufficient to intervene. These two positions are polar opposites. In the (sealed) confidential addendum in

the 22 Case, Rs list Alamuri as "other party". 19R. 2. It is difficult to understand how naming Alamuri as "other party" and alleging that Alamuri is the biological father of RKY, can be reconciled with Rs' later assertion that Alamuri lacks a sufficient interest to intervene in cases which address paternity and presumptions of paternity of RKY. Alamuri asserts the facts demonstrate his interest that meets the criteria for intervention.

iii. The current disposition of the cases, which reverse the longstanding application of the marital presumption, may or will impair or impede Alamuri's interest. His interest includes but is not limited to not being thrown into a parental role for a child to which he had no access to appointments during the pregnancy, nor access or invitation to the child's birth, nor any contact with RKY since birth (in 2019). Rs' choices have consequences. Rs' choices put Alamuri in a position in which the facts now make it nearly impossible to establish an attachment with RKY, or to share placement with his mother. Alamuri's interest and RKY's interest are further complicated by the fact that RKY is being raised by a mother against whom Alamuri has a restraining order, and she has been charged for stalking him.

iv. Rs assert that Alamuri's only "logical position" would be in support of rebutting the marital presumption, and that position was successfully taken by Rs, therefore Alamuri fails to meet the requirements to intervene. This argument fails to take into consideration why a man pursued by the mother 4-5 years after the birth of a child, for which the mother and her husband applied for legal documents and requested court orders confirming husband as the child's legal father, would assert that the longstanding marital presumption should be upheld whether by statute or through equitable estoppel. The issue when equitable estoppel is asserted is whether the actions/inactions of Rs who advocate for the rebuttal of the marital

presumption were so unfair as to preclude them from overcoming the public's interest in the marital presumption based on the results of the genetic tests. *Randy A.J. v. Norma* I.J., 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630

b. **Permissive Intervention**: Alamuri relies on his legal argument in his initial brief regarding this claim, which includes the same arguments regarding the timeliness of the filing; and addresses Alamuri's claims/defenses and those in the main action have a question of law or fact in common. Specifically, and summarily, both seek a legally supported finding regarding the appropriate paternity determinations for RKY in his best interest, after an evidentiary hearing at which the initial (and more involved) GAL in the 2019 case is reappointed, and all parties are provided an opportunity to be heard.

II. THE CIRCUIT COURT ERRED WHEN IT SUMMARILY DISMISSED ALAMURI'S MOTIONS TO REOPEN: ALAMURI RELIES ON HIS BRIEF IN SUPPORT OF THIS POSITION

III. RELIEF REQUESTED

Alamuri seeks a RULING that reverses the Decision and Order of the lower courts, grants Alamuri's Motions to Intervene, requires an opportunity to be heard on the Motion to Reopen, and remands the cases with instructions, including but not limited to:

1) Until there is an evidentiary hearing at which GAL Wallace is reappointed and appears, and all parties are allowed an opportunity to be heard, the orders rebutting the marital presumption shall be stayed, and the marital presumption of paternity will be upheld;
2) That prior to ordering any genetic testing of RKY, or considering any genetic testing of RKY, all parties including Alamuri and GAL Wallace shall be

provided an opportunity to address whether said testing is in RKY's best interest, and Alamuri shall have the right to object consistent with Wis. Stat. Sec. 767.84(1)(b)(2);

3) That prior to considering or relying on any offered genetic testing results the parties shall have an opportunity to be heard on the admissibility of said results;
4) That Alamuri shall be entitled to reimbursement for the costs of this appeal, and the legal costs incurred in the lower cases if he can prove that Rs' misrepresented the facts plead in the legal separation/divorce pleadings or in any other pleadings/evidence presented to the lower courts.

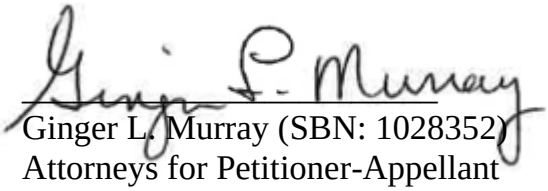
CONCLUSION

It is well known there is a long history of legal battles to allow women to choose whether or not to carry or terminate a pregnancy, without any obligation to alert the potential father. While Angela did not terminate the pregnancy of RKY without telling the father, the effect of her moving to Wisconsin in time to give birth to RKY here, and presenting themselves as the legal parents under the protections of the marital presumption available in Wisconsin had the same effect on Alamuri or any other alleged biological father. While stated differently, the CSA make a similar argument, that Rs' application to include husband as the named father on RKY's birth certificate, stipulation and admission to husband being determined RKY's father in the Judgment, and to continue down that path for years, effectively terminated Alamuri or any other alleged biological father of his parental rights. The right to parent a child is a constitutionally protected right. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000). That said, the marital presumption is afforded even greater protection. See Randy A.J. v. Norma I.J., 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630, and Michael H. v. Gerald D., 491 U.S. 110, 105 L. Ed. 2d 91 (1989). Also, Wis. Stat. Sec. 767.803 states, that even if the father and mother of a nonmarital child enter into a lawful marriage or a marriage which

appears and they believe is lawful . . . the child becomes a marital child, and is entitled to a change in birth record under Wis. Stat. Sec. 69.15 (3) (b), and shall enjoy all of the rights and privileges of a marital child as if he or she had been born during the marriage of the parents. This section also provides that even children of all marriages declared void under the law are nevertheless marital children. These provisions and cases, along with all the requirements set forth in Wis. Stat. Sec. 767.80 surely stand for the position that the adjudication of paternity should not be the subject of forum shopping until you get the desired result, should not be the subject of little more than a 10-15 minute status conference especially without all interested parties being (appointed) and allowed to be heard, but rather all interested parties should be (appointed) and allowed to present legal arguments and evidence at a duly noticed hearing. The alleged fathers, and the children at the heart of these hearings deserve nothing less.

For the reasons stated herein, and in his initial brief, Alamuri asserts that the Circuit Courts' summary dismissal of the Motions to Intervene and to Reopen the cases was in err.

Dated: January 23, 2023.

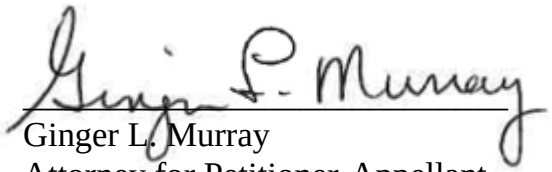


Ginger L. Murray (SBN: 1028352)
Attorneys for Petitioner-Appellant
152 W. Johnson St., Suite 210
Madison, WI 53703

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(8)(b) and (c)

I certify that this brief conforms to the rules contained in Wis. Stat. 809.19(8)(b) -(c)(2), for a brief produced with a proportional serif font. The length of this brief as defined in Wis. Stat. Sec. 809.19(9)(c)(2) is 8 pages and consists of 2,246 words.

Dated: January 23, 2023.



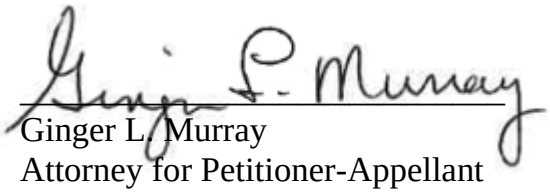
Ginger L. Murray
Attorney for Petitioner-Appellant
State Bar No. 1028352

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I certify that I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. Rule 809.19(12).

I further certify that the electronic copy of this brief is identical in content and format to the printed form of this brief filed as of this date.

Dated: January 23, 2023.



Ginger L. Murray
Attorney for Petitioner-Appellant
State Bar No. 1028352