

IN THE SUPREME COURT OF THE STATE OF NEVADA

Sebastian Martinez, and Mikaella Rae Flannery)
aka MIKAELLA RAE FREDIANELLI, a minor)
By Nevada State Welfare, as Guardian ad Litem,)

Plaintiff,)

vs.)

Kristi Rae Fredianelli and Tony Fredianelli)

Defendant)

Supreme Court No. 55073
District Court No. D373016
Due Date: 01/20/10

FILED

JAN 21 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

CIVIL PROPER PERSON APPEAL STATEMENT

SEBASTIAN MARTINEZ
261 Lenape Heights
Las Vegas, NV 89148
Appellant, in proper person

Appellant:

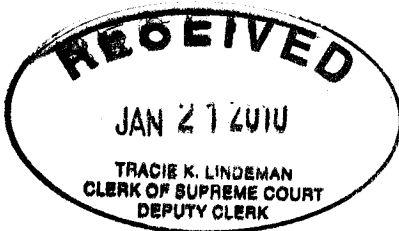
Sebastian Martinez

MICHAEL P. CARMAN
KUNIN & CARMAN
3551 E. Bonanza Road, Suite 100
Las Vegas, NV 89110

Respondent:

Kristi Rae Fredianelli

EDWARD KAINEN
300 S. Fourth Street
Las Vegas, NV 89101



10-01718

Judgment or Order you are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date

Name of Judgment or Order

November 12, 2009

Order

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 7/15/08.

Related Cases: TPO T-09-115835

Issues on Appeal. Does your appeal concern any of the following issues?

Check all that apply:

<input type="checkbox"/> divorce	<input checked="" type="checkbox"/> child custody/visitation	<input type="checkbox"/> child support
<input type="checkbox"/> relocation	<input type="checkbox"/> termination of parental rights	<input type="checkbox"/> attorney fees
<input checked="" type="checkbox"/> paternity	<input type="checkbox"/> marital settlement agreement	<input type="checkbox"/> division of property
<input type="checkbox"/> adoption	<input type="checkbox"/> prenuptial agreement	<input type="checkbox"/> spousal support
<input checked="" type="checkbox"/> other - briefly explain: <u>Jurisdiction</u>		

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

The order appealed from the order dismissing the above case. Appellant is the father of the minor child at issue. The child was born in Nevada. The child's mother was married at the time of the conception and birth of the child, but was not living with her husband. In fact, the mother, KRISTI FREDIANELLI, was going back and forth between Appellant and her husband in California. When KRISTI FREDIANELLI's husband, ANTHONY "TONY" FREDIANELLI, filed for divorce, KRISTI FREDIANELLI made her decision to reconcile with her husband. Appellant filed a custody action to obtain shared custody of the child. (It is noteworthy that Mr. Fredianelli stated Mrs. Fredianelli's residence as the State of Nevada in his divorce action; and

she was served in Nevada). KRISTI FREDIANELLI filed a TPO and alleged Appellant was not the child's father, but a 'stalker' and initially insinuated she did not know him! Significant evidence was produced that demonstrated Appellant and KRISTI FREDIANELLI were involved in a long term relationship, including *hundreds* of pictures of the child from birth, pictures of KRISTI and SEBASTIAN's family; pictures inside KRISTI's home; Appellant receiving the service of divorce papers from ANTHONY FREDIANELLI to KRISTI FREDIANELLI at her home in Nevada; ANTHONY FREDIANELLI failing to name the child at issue as his child in the parties divorce; and DNA testing confirming Appellant was the father of the child. With KRISTI FREDIANELLI not convincing the court that Appellant was a stalker by massive evidence, she pursued another angle in her attempt to keep the child from him.

In an attempt to muddy the waters, when KRISTI FREDIANELLI returned to ANTHONY FREDIANELLI, her attorney convinced the District Court Judge that the action should be amended to name ANTHONY FREDIANELLI as the presumptive father due to the existing marriage. ANTHONY FREDIANELLI was added to the complaint. ANTHONY FREDIANELLI was served the documents, which counsel admits to on the tape of July 8, 2008. However, the proof of service was not filed due to Appellant's counsel wrongfully retaining the file and refusing to release said proof of service without significant attorney fees.

Appellant obtained DNA testing and was confirmed that Appellant was the father of the child. He also again served ANTHONY FREDIANELLI. Appellant informed the court that the presumption of paternity had been overcome.

Under NRS 126.051, there is a *presumption* of paternity of the husband, which is Mr. Fredianelli in this matter. Father believes this presumption is overcome under NRS 126.051(2) and (3).

Specifically, NRS 126.051(1) indicates that a man is presumed to be the father if he and the mother were married during the conception and birth of the child.

However, NRS 126.051(2) states,

“2. A conclusive presumption that a man is the natural father of a child is established if tests for the typing of blood or tests for genetic identification made pursuant to NRS 126.121 show probability of 99 percent or more that he is the father except that the presumption may be rebutted if he establishes that he has an identical sibling who may be the father.”

That is, “a conclusive presumption that a man is the natural father of a child *is established* if tests....”; not ‘may be established’; not ‘may leave another as the presumptive father’; but a conclusive presumption...*is established*...” with DNA testing.

Therefore, under NRS 126.051(2), the presumption is overcome, and Mr. Fredianelli is NOT a necessary party to this action. Father requests the court make an order confirming that Mr. Fredianelli is not a necessary party to this action under NRS 126.051(2).

Looking further to NRS 126.151(3), it states:

“A presumption under subsection 1 may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.”

Logic dictates that the child is the child of SEBASTIAN MARTINEZ, and ANTHONY FREDIANELLI is no longer a necessary party to this action.

Attorney for KRISTI FREDIANELLI and/or ANTHONY FREDIANELLI sought to have the matter dismissed due to lack of jurisdiction since ANTHONY FREDIANELLI, now a disinterested third party, was not timely served. In spite of previously acknowledging service on the record, and NOT filing a timely response. He was served. He took advantage of the lack of Affidavit of Service only to distract the court’s attention from the real issues in this matter:

CUSTODY OF THE CHILD. Whether or not the proof of service was wrongfully withheld from filing, Mr. Fredianelli was served, and had an obligation to respond if he was interested. He did not do so. This is a show of bad faith, and unclean hands. The child should not be punished due to these tactics.

Appellant argued that ANTHONY FREDIANELLI was no longer a necessary party, and that if the matter is dismissed, it should be dismissed as to ANTHONY FREDIANELLI only. If he had ground, he would have a right to reopen the case.

The court dismissed the case even in light of the evidence he was no longer a necessary party to the action. SEBASTIAN MARTINEZ, the confirmed father of the child, is unable to have contact with his child, all against the best interest of the child.

Appellant contends ANTHONY FREDIANELLI was served; served was admitted; the presumption he was the father was overcome by DNA testing - and his own filing of a divorce failing to claim the child as his own; and that it is inappropriate to dismiss this matter due to lack of jurisdiction. This court, and this court alone, has jurisdiction over the child at the time of filing of this matter. Appellant requests the court dismiss ANTHONY FREDIANELLI as a necessary party, and that Appellant be provided the opportunity to pursue his rights as the child's father. The child is now removed to California by this action, and without this court confirming jurisdiction, Appellant is unable to have a relationship with his child. The actions of KRISTI FREDIANELLI and ANTHONY FREDIANELLI are an abuse of process, meant solely to keep Appellant from a relationship with his child; and NOT in any respect in consideration of the child's best interest.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

1). The court erred by proceeding to address custody when counsel admitted service on

ANTHONY FREDIANELLI.

2) The court erred by not acknowledging the presumption of paternity was overcome by the DNA

testing; evidence ANTHONY FREDIANELLI failed to claim the child on his own divorce

action; and other evidence; and thus, ANTHONY FREDIANELLI was NOT A NECESSARY

PARTY TO THIS PATERNITY AND CUSTODY MATTER.

3). The court erred by dismissing due to a lack of jurisdiction. In fact, jurisdiction over

ANTHONY FREDIANELLI is not necessary after overcoming he is a necessary party in this

matter. The issue of custody was properly before this court.

CERTIFICATE OF SERVICE


I certify that on the date indicated below, I served a copy of this completed appeal statement upon all parties to the appeal as follows:

By mailing it by first class mail with sufficient postage prepaid to the following addresses of the parties served by mail:

MICHAEL P. CARMAN, Esq.
3551 E. Bonanza Road, Suite 110
Las Vegas, NV 89110

EDWARD KAINEN, Esq.
300 S. Fourth Street
Las Vegas, NV 89101

Dated this 18 day of JANUARY, 2010.



Person Mailing