

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORIGINAL

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

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

Plaintiff,

vs.

Kristi Rae Fredianelli and Tony Fredianelli

Defendant

FILED

NOV 10 2010

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

REPLY TO RESPONSE TO PROPER PERSON STATEMENT

COMES NOW Appellant, in Proper Person, and respectfully replies to the Response herein,
as follows.

This Reply is based upon all the records and files in this action, Points and Authorities,
Affidavit of the Appellant, and any argument that may be adduced at the time of hearing of this
Motion.


SEBASTIAN MARTINEZ
Appellant in Proper Person

DECEMBER 11, 2007 PROOF OF SERVICE

The Nevada Supreme Court ordered a response by Respondents to the following issue:
“Whether Mr. Fredianelli was proper serviced with the original and amended petitions as
indicated by appellant’s proof of service that was filed on December 11, 2007, and it appears that
Mr. Fredianelli failed to even challenge that service of process.”

Respondent acknowledged this was a suit to establish biological father of Mikaella, the minor
child at issue. On October 15, 2007, the court determined that Anthony, the husband of Kristi, the
biological mother, was a necessary party to the action. Appellant amended the petition naming
Anthony as a respondent. Appellant’s counsel filed a proof of service on December 11, 2007,
indicating that the amended petition was served on a person identified only as “Jane Doe” at 3657
Bayonne, San Diego, California. Respondent alleges this address was inappropriate, when in fact,

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1 this is the address provided to the court, to Judge Sanchez, as the address of Anthony Fredinelli.
2 Therefore, their allegation that this was never his address, but his mother's address, is inappropriate.
3 This is the address provided. See the transcript below, detailing the date, time and exact wording
4 of the parties and the court.

5 In fact, Respondent admits the discussion regarding substitute service, but Kristi's counsel
6 stated that "that service is not valid." That is incorrect. Under NRCP 4, substitute service is proper.

7 In fact, the Response provided does not answer the question asked of the court. Instead, the
8 Response indicates efforts to have Anthony served - and much of this is misinformation.

9 Lastly, Respondent responds to Appellants indication that he has been determined to be the
10 biological father of the minor child, and as such, is entitled to his rights as a parent, which rights
11 Respondents have sought to subvert since the filing of the action. To them, this is a game.
12 However, without this case open and active, the biological father of the child has not rights to the
13 child. This is clearly against public policy and not the intent of the statutes. Appellant is clearly a
14 necessary party to the action.

15 As for Respondent's allegations that Anthony was not served, or that paternity was never
16 "proven" or "established", Appellant provides the following transcripts:

17
18 **December 11, 2007 Proof of Service:**

19 10/15/07: 11:22 a.m.: Appellant's counsel, Ms. Piffer. "We request the court to issue an order
20 to allow out of state service because I believe Mr. Fredianelli resides in San Diego,
21 California."

22 10/15/07: 11:24:50 a.m.: Appellant's counsel, Ms Piffer, "I would ask Ms. Fredianelli could
23 give me the address were he might best be served on the record."

24 10/15/07: 11:25:30 a.m.: Counsel for Kristi Fredianelli, Bruce Shapiro: "Your Honor, I will
25 provide the street and address, I've got it in my office, she doesn't know the number
26 address."

27 10/15/07: 11:26:20 a.m. Kristi Fredianelli: "It's either 2728 or 2729 Bayonne St."
28

1 10/15/07: 11:26:52" a.m. Judge Sanchez: "So, Mr. Shapiro will double check the residential
2 address to make sure you've got the right one for purposes of service."

3
4 On December 11, 2007, proof of service was filed and a person identified only as "Jane Doe"
5 at 3657 Bayonne, San Diego, CA was named. This was clearly the address provided by Mr. Shapiro,
6 and provided by the court.

7 Addition, in the file, the UCCJEA declaration states 3657 Bayonne Drive, San Diego, CA
8 as the address of Anthony. This is the same address as on the proof of service.

9 **In court, it was stipulated to service; in the Appeal they claim service was not valid.**

10 Respondent's argument that this was not a valid address for Anthony must fail.

11 8/19/08 11:03:20 a.m. Mr Carman, Esq. states: "Mr. Martinez is the biological father."

12 8/19/08 11:03:28 a.m. Judge Sanchez states: "But she stipulates that this gentleman is the
13 biological father?"

14 8/19/08 11:03:30 a.m. Mr. Carman, Esq.: "I believe that's already ben determined by DNA
15 testing."

16 8/19/08 11:03:39 Mr. Carman, Esq.: "I don't believe that's a contested issue. Mr. Martinez
17 is biologically related to the child."

18 Clearly, the allegation that the paternity has not been established must also fail. This is a
19 desperate attempt to continue to deny the biological father any and all access to the child. They have
20 succeeded for the past 13 months. This charade must end for the benefit of the child.

21 10/15/07: Appellant's Attorney, Ms. Piffer:

22 "In earlier pleadings she admits that she has not lived with here husband under the
23 statute for six months prior to this child being conceived, they waive their right to this defense in
24 their answer and counterclaim and again in this opposition to my original motion."

25 10/15/07: 11:20 a.m. Ms. Piffer, Esq.: "We have a paternity test, she's admitting my client is
26 the biological father."

27
28

1 10/15/07: 11:21 a.m. Judge Sanchez: "The contact is critical, and if he is confirmed as the
2 biological father we need to get this going."

3 Kristi's counsel, Bruce Shapiro NEVER disputed paternity. Neither did her first attorney,
4 Douglas Crawford, Esq.

5 Letter sent by Bruce Shapiro states:

6 "It is become clear to Kristi that this custody litigation is not in Mikaella's best interest.
7 Therefore, if there is not an immediate agreement that Kristi will be awarded primary physical
8 custody, and permission to move to San Diego, with Sebastian having reasonable visitation, Kristi
9 will consider requesting that Sebastian's custody action be dismissed and her husband declared to
10 be the natural father."

11 This letter was sent 10/9/07 and was filed by Appellant as an exhibit many times, including
12 but not limited to Motion to Reconsider Dismissal, filed 11/12/09.

13 8/19/08 11:12 a.m. Judge Sanchez: "She is very young and it's critical that your bond to be
14 maintained with her."

15 8/19/08: 11:15:15 a.m., Mr. Carmen, Esq.: "My clients mom was caring for her son
16 temporarily in the State of California when they served her."

17 The games played by Respondents, and each of them, to keep the child from
18 Appellant, is not in the child's best interest.

19 4/28/09: 9:48 a.m. Judge Duckworth: "Looking at the Statute, the natural mother and the man
20 presumed to be the father under NRS 126.051 must be made parties, but if more than one man is
21 presumed to be the natural father only a man presumed pursuant to subsections 2 and 3 is an
22 indispensable party, and 2 and 3 addresses the genetic testing."

23 4/28/09: 9:51:50 a.m. Judge Duckworth: "DNA testing is a conclusive presumption."

24 4/28/09: Judge Duckworth: "Looking at minutes from hearing that occurred last
25 October"... "This hearing was to see if defendant stipulated to paternity. The
26 biological father has been confirmed. Mr. Carman said they proposed a timeshare
27 for Plaintiff and he has been having visitation. Further, they are not disputing
28 Plaintiff's paternity. Mr. Carman stated the defendant will stipulate the paternity."

1 4/28/09 10:22:58 a.m. Judge Duckworth: "It's clear to me that he's knows about these proceedings
2 for some time..." "and at no point in time in two years has Mr. Fredianelli indicated any interest of
3 becoming involved."

4 4/28/09 10:17:46 a.m. Judge Duckworth: "I am troubled by the fact he's aware of these
5 proceedings based upon the ofference that have been made, but he has yet to make a single
6 appearance in this case. In no point of time in my review of the file was there ever any suggestion
7 that Mr. Fredianelli intended to assert rights as the child's father, I judge don't see that anywhere in
8 two years...."

9 Clearly, Respondents misrepresent the facts to the Supreme Court. The best interest of the
10 child requires that the biological father - who has been trying to have a relationship with the child
11 since birth - be entitled to proceed in the custody matter before the Nevada Supreme Court.

12 For the court's information, Appellant sought to file a temporary emergency custody action
13 in California to have a relationship pending appeal; however, due to the appeal, the California court
14 refused to hear the matter. The child has not had contact with Appellant for 13 months due to these
15 proceedings, brought in bad faith, with unclean hands, by Respondents and each of them.

16 **CONCLUSION**


17 Based upon the facts herein, Appellant requests his Appeal be granted; and he be allowed a
18 relationship with his child.

19 **CONCLUSION**

20 Based on the forgoing, Appellant requests the above prayed for relief be granted.

21 DATED and DONE this 8 day of Nov, 2010.

22
23
24 
SEBASTIAN MARTINEZ
Appellant in Proper Person

25
26 Sworn and subscribed
27 before me this 8th day of Nov 2010.
28 
Emily Stevens
Notary Public

