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U.S. COURT OF APPEALS

OCT 01 2019

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Arlena Minerva; Willes on behalf
of J.D.Z. in the control of the Child Safety
Services, on behalf of J.D.Z.,

Petitioner-Appellant,

v.

ARIZONA DEPARTMENT OF CHILD SAFETY)
Named as Department of Child Services (Safety))
in original Petition;)
MARICOPA COUNTY JUVENILE COURT,)
named as Juvenile Court in original Petition, et. al.)

Respondents-Appellees.

) No. 19-15723
) D.C. No.
) 2:19-cv-00068-JJT-JFM
) District of Arizona, Phoenix

DATE

INI

APPELLANT'S OPENING BRIEF



Arlena Minerva Willes
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Table of Authorities:

- 1. Miranda V. Arizona 384,436, 491**
- 2. Marbury V. Madison, 5 US 137,180 (1803)**
- 3. United States Supreme Court in US V. Minker, 350 US 179 at 187**
- 4. Reid V. Covert 354 US 1,5 (1957)**
- 5. Troxel V. Granville, 530 U.S 57 (2000)**
- 6. Mcfaul V. Randall-Owens V. District Lexis 78051 (Ed Mich Oct. 22, 2007)**

Rules and Titles of Law:

- 1. Pursuant to the Rules of Evidence Rule 201, A.R.S Title 13**
- 2. Pursuant to Federal Law Title 18: 5003 which prohibits the state taking any child over the objection of their natural parents without a hearing in a Court of Competent Jurisdiction anyone who knowingly violates this provision has no immunity.**
- 3. Pursuant to Federal Law title 18: 241 and 242 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.**

Issue on Appeal:

1. Judge J. Tuchi: Failed to render the appropriate Judgement on the Habeas Corpus filed record on January 7th, 2019.
2. Seeing the appropriate Judgement was not rendered after 30 days time frame the respondents are still in default and dishonor, for not producing the living body of my son (JD;Z Jonathon David; Zeek) back into my safe and loving care where he truly belongs and desires to be.
3. The listed Respondents had 30 days within issuing the writ of Habeas Corpus to appropriately reply and respond and up to this point from 1/7/19 to this present day over 8 months later the respondents have failed to produce a valid reason as to why they did not appropriately respond to my writ of Habeas Corpus on behalf of my son JD; Z.

Therefore, I, Arlena Minerva; Willes do move the Court to enter an order to release my child JD:Z (Jonathon David ;Zeek) Immediately back into my safe and loving care and Custody where he truly belongs.

Troxel V. Granville: 530 US 57 (2000) Done by Honorable Chief Justice Sandra Day O'Connor who stated " The Fundamental right of a parent is that the government should not interfere with it. "

The Listed Respondents not only had the Audacity to interfere with my God given rights to the upbringing of my beloved son, they also had the very Gall to withhold exculpatory evidence from the Juvenile court and withheld full disclosure from me for over a year. On June 27th, 2019, the Ninth District Court provided notice to the listed respondents that Judge J. Tuchis stay was lifted and my appeals would proceed in the Ninth District. A day after the respondents abetted by Officer Christine Britt, Mark White(Esquire)and Tracey Gleason (Esquire) had the very nerve to misrepresent facts to a grand jury (Ex Parte) 9 months after the respondents had unlawfully taken my child from me and insinuated that I attempted to murder my own son based on false allegations and tampered

documentation (Confidential Coverup Ex I) bates numbers 000071-000077 perjuring themselves falsely alleging that I, attempted to murder my own son!

Extreme and Outrageous: “ Extreme and Outrageous in Character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized Society.”

Mcfaul V. Randell-Owens, 2007 V District LEXIS 78051 (E.D. Mich. Oct. 22,2007).

Where I was thrown to the ground, a gun placed against the back of my head and told not to move or I would be shot. A jack booted agent masquerading as an FBI agent placed his boot on my back and double handcuffs were attached along with leg restraints. See recording of Exhibit A 2:

https://www.facebook.com/search/top/?q=arlena%20willes%20arrest&epa=SEARCH_BOX

The indictment openly proves the state of Arizona’s retaliation against me and openly shows the police department admitting this. See EX: A 3 - Letter from MCSO confirming there was no actual warrant for the unlawful arrest that took place at my home on July 12,2019. The Indictment also shows the warrant was allegedly served on July 15th, 2019 a day after my release, documenting there were no actual warrant prior to the Police department setting foot on my private property without a warrant to unlawfully arrest me out of retaliation. Strict proof of Amendment VI et. al ., Constitutional rights (Judicially noticed);

No Jurisdiction existed at the time of unlawful arrest as no prior warrant existed and two non applicable victims were listed as non-applicable.

The Jack booted agents masquerading as “Process servers / FBI agents” did not read, brief or advise me, a law abiding American of my Miranda rights: Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them “ **Miranda v. Arizona 384 U.S. 436, 491 (1966)**. The acts of the Jack booted agents were extreme and outrageous for which this Court has a duty and a responsibility to act on its own motion to enter an order dismissing all “ charges” with extreme prejudice and enter an order sanctioning or

otherwise punishing those who joined the wrong doers in an appropriate manner and to administer above all the appropriate Judgement and Justice obeying the writ of Habeas Corpus in accordance to law.

A.R.S 13-4121; 13412 A person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may petition for an prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

My son's Via State appointed Attorney Diana Theos has maintained his unwavering position for over a year that I have done nothing to abuse or neglect him. My son Jonathon David; Zeek is on the Autism Spectrum and has been pleading with the respondents for over a year to come home to me, his mother. In their eyes, my crime was seeking to confirm Dr. Husam Mullah's medical opinion with another Doctor of my choice through and by my sons appointed PCP.

My Rights to Govern my son's Medical care was infringed upon by the State of Arizona and Maricopa County Juvenile Court, et al and my right to the upbringing of my own Child egregiously Violated by: Thunderbird Children's Medical Center, Arizona Department of Child Safety and workers listed on certificate of service, Phoenix Children's Hospital, AZ AG Mark Brnovich, Tyne Naven, Debbie Oelze, Nicolas Brian Hoskins, Timothy James Ryan, and The Workers at Southwest Human Development.

I Arlena Minerva; Willes filed a complaint against the Arizona Department of Child Safety and Maricopa County Juvenile Court, et al on January 7,2019. I also have medical documentation and other documentation to show that there was no blood in my son's stool the day before he was unlawfully taken. Everything they have falsely accused me of in utter retaliation keeps me and my son separated from each other. My son only wants to come home where he knows he is loved and knows that I do love him and am fighting for him. The respondents even went as far as to give my son over to his father in West Virginia to attempt to cover for

what they have done. His biological Father has not been there as I have in my son's life for 15 and a half years. I only want my son back into my safe and loving care where he truly belongs. Therefore, I move this Court to enter an order to release my son Jonathon David; Zeek back into my care and custody immediately in pursuant to law A.R.S 13-4121 and for any other relief, protection from further retaliation and sanctions this Court deems appropriate.

All I wanted was to confirm a doctor's opinion and my son was unlawfully stripped from my care for it! My son Jonathon David; Zeek and I have suffered severe emotional trauma not to mention how my son went through mental torture and physical trauma and torture by a surgery performed on my son against my consent and against his will. The Doctors told my son on the Autism Spectrum that they gave him a whole new colon instead of telling him the truth that they took out part of his colon. They took part of his colon to cover for their past misdiagnosis of my son (please review filed exhibit B): In Dr. Kristy Ingebo's own handwriting there is no Ulcer, review her misdiagnosis of " Chrons and Colitis " by stating it was H.P Pylori. Also please, review Dr. Husam Mullah's diagnosis of Chrons and Colitis, which was why I wanted to have his opinion confirmed with my sons PCP). In reality, because of Dr Kate Davenports misdiagnosis in December of 2016 and Dr. Kristy Ingebo's Misdiagnoses on 1/15/18, my son Jonathon David; Zeek's true diagnosis went undetected by Phoenix Children's Hospital for 2 years.

Pro-temp Michelle Carson signed an order September 9th, 2018 to have me forcibly removed from my son who is diagnosed on the Autism Spectrum for "trespassing"! My God-given right to govern my son's medical care as stated plainly in Arizona State Bill of Rights was stripped from me the day a hospital Social Worker at Banner Thunderbird made one retaliory phone call via the instruction of Dr. Husam Mullah stripping me of my rights as stated in The Arizona State Bill of Rights A.R.S 1-601 (A) August 4th, 2017

This Statute sets forth the broad rule of parents rights, “The liberty of parents to direct the upbringing, education, healthcare, and mental health of their own children is a fundamental right.”

Argument Summary

Judge J. Tuchi made three errors in this case:

1. He misfounded me incapable to stand on my 16 year old son’s behalf (who is very articulate and also diagnosed on the Autism Spectrum. also his appointed counsel in the Juvenile Court, Diana Theos has stated and maintained his unwavering position to be back home in my safe and loving care and also maintaining his unwavering position that I did nothing to abuse or neglect him in any way.
2. Judge J.Tuchi failed to render the appropriate Judgement in regards to my writ of Habeas Corpus filed in according to law A,R,S 13-4147 on behalf of my son Jonathon David ; Zeek
3. Judge J. Tuchi also erred in determining that retaliatory actions from the respondents were not extreme and outrageous conduct done to both my son and I, allowing the respondents to inflict further Punitive damages and severe emotional trauma on both my son and myself. By their continual false allegations and defamation of my character and competency as a loving mother.

Lastly, Judge J. Tuchi also erred to put a stay on my appeals in an attempt to block my appeals from reaching the Ninth District Court of Appeals on April 19, 2019.

Argument

Issue 1: Finding of Trespass

- A. **Standard of Review:** The respondent's further retaliatory actions against me for legally fighting for my son's rightful return was not an appropriate response to my Writ of Habeas Corpus filed on behalf of my son JD; Z. The issue on Appeal is the fact that the appropriate Judgement on the Habeas Corpus was to render the release of my uniquely Created Biological property, my beloved son JD; Z (The time frame of 30 days was placed in Writ of Habeas Corpus therefore giving the respondents ample time to appropriately respond) Wherein no appropriate response was filed by the respondent's (Appellees) in (Phoenix)District Court. Therefore the respondent's by default placed themselves in default and dishonor. This issue should be thoroughly reviewed under a clearly erroneous Standard of Review.
- B. **Preservation of Appeal:** I, Arlena Minerva; Willes raised the defense to proceed with my appeal on July 9th, 2019 in direct answer to proceed with my appeal to the Ninth District Court of Appeals. The Ninth District Court of Appeals on August 22nd, 2019 ruled on this issue in its final order. (See 9th Cir. R. 30-1.2).
- C. **Discussion:** Judge J .Tuchi from Federal Phoenix District Court erred in finding that the respondent's actions were not retaliatory towards my son and myself. The Respondent's actions were in fact retaliatory from day one and increasingly thereafter the Ninth Circuit Court lifted Judge Tuchi's stay. They violated my right to seek and confirm Dr. Husam Mullah's Medical Opinion and in direct violation of my and my son's right to live in peace and safety without the states needless interference to make the appropriate Medical Decisions for my child (Jonathon David; Zeek). **Troxel V. Granville : “ The Fundamental right of a parent is that the government should not interfere with it .”**

Issue 2: Finding of Outrageous Conduct

- A. Standard of Review: Outrageous Conduct is determined by facts. The Court of Appeals have lifted Judge J. Tuchi denial to proceed with my appeal.
- B. Preservation of Appeal: Therefore this issue was preserved to proceed with Appeals and Opening Brief addressing the Ninth District Court of Appeals. (Pursuant to Docket entry No. 3).
- C. Judge J. Tuchi clearly erred in finding the respondent's retaliatory actions against my son JD; Z and myself were founded by the respondents. The Respondent's actions however, exceed the standard of Outrageous Conduct: Intentionally with malice to cause emotional distress of my son and myself.

There are three elements to establish emotional distress: The first element, the conduct must be extreme and outrageous for conduct to rise to the level of extreme and outrageous. It must be so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency and utterable and intolerable in a civilized society . **McFaul V. Randell-Owens V District LEXIS 78051(E.D. Mich. October 22,2007) .**

- 1. The respondents engaged in extreme and outrageous conduct**
- 2. The respondents engaged in conduct recklessly or with intent of causing the plaintiff severe emotional and physical distress.**
- 3. The plaintiff incurred severe emotional distress. The facts in this case clearly show that the respondents conduct meets the definition of extreme and outrageous.**

These retaliatory actions from the Respondents show that their actions against my son and myself show that they do exceed all possible bounds of decency, not only that but their actions were atrocious and intolerable. The Respondents actions were indeed intentional and meant to cause unnecessary emotional and physical distress for both my son JD;Z and myself, through and by their retaliatory actions.

The facts upon the record also show extreme and outrageous conduct on the part of all listed respondents in their personal and professional capacities. Judge J. Tuchi's Ruling's Therefore, was clearly in error and all listed parties are liable under the intent to cause emotional distress. Under all three elements of Outrageous Conduct, I move the Court to enter an order to release my son Jonathon David; Zeek (Listed as JD;Z in original petition) back into my safe , loving care and custody and release my son JD;Z from the 'Control" of The Arizona Department of Child Safety and Maricopa County Juvenile Court, et al and to squash and dismiss all false allegations and charges made by the STATE OF ARIZONA, listed as a non applicable victim, against I, a loving Mother who has never hurt anyone or never set out with the intent of hurting anyone.

Federal law pursuant to title 18 5003 -Prohibits the State from the taking of any Child away from the objection his natural parents without a hearing in a Court of Competent Jurisdiction. Anyone who violates this provision has no immunity. Title 18 5003.

Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

Issue 3: Excessive Damages for Outrageous Conduct

Troxel V. Granville ,530 U.S 57 (2000) : Is a case which the Supreme Court of the United States , Citing the Constitutional right of Parents to direct the upbringing of their own children without state interference ,also striking down a Washington State Law that allowed any third party to petition State Courts for Child Visitation rights over parents objections.

The Court Also held, “The interest of the parents in the care, custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this court.” Chief Justice Sandra Day O'Connor.

That Fundamental right, My fundamental right as a loving mother was infringed upon by the Respondents. Over the top of my beloved son’s cries, not to take his Mother away from him and over his cries to be released back into my safe and loving care. The Respondents acted as if my rights to govern my son’s medical care were terminated by the State from the very beginning with the sole intent from day one to sever my rights regarding the care , custody and control of my child.

Since September 5, 2018, they have inflicted severe emotional distress and trauma to both my son JD;Z diagnosed on the Autism Spectrum and to myself, over a year long period of our needless separation. Because the State of Arizona “infringed” on my fundamental right to govern my son JD;Z’s medical care and the right to make medical decisions for my son based on one retaliatory phone call.

Plurality: The plurality held that “ Choices parents make about the upbringing of their own children are indeed a fundamental right sheltered by the 14th amendment of the Constitution against the states unwarranted : Usurpation , Disregard or disrespect . This principle must inform the understanding of the Special weight that Troxel requires Courts to give to parents Decisions over their own children.

As in Troxel V. Granville Case, This case is equally complicated and because Outrageous Conduct is found equally in both cases, the issues in this case is just as valid as was in the Troxel V. Granville case. (2000).

- A. Standard of Review: damages may only be reversed if there is a clear abuse of discretion.
- B. Preservation of Appeal: This is preserved by the Ninth district Courts final order.
- C. Discussion: The appropriate Judgement was never rendered on the Writ of Habeas Corpus by Judge J. Tuchi. He egregiously erred as stated in issues 1 and 2 and Therefore allowed the Respondents to further inflict severe trauma and emotional distress on my son and me as in regards to their continual retaliation.

Judge J. Tuchi abused his discretion and his judicial power in not administering the appropriate Judgement on writ of Habeas Corpus. Furthermore he should have recused himself seeing he by conflict of interest.

His decision was based on the ties he had with his wife working for the AG's Office and for the Arizona Department of Child Services. He joined the Respondents in their retaliation and wrong doing in his abuse of Judicial Power in a direct attempt to stay my appeals on April 19, 2019.

Filed since January 7th, 2019, is clear and convincing evidence that my son JD;Z and I suffered loss and punitive damages that were intentionally and with premeditated malice, inflicted by the Respondents in direct violation of my son's JD;Z and my constitutional rights.

Conclusion:

For the above reasons stated in My Opening Brief, I hereby move the Court to enter the following orders:

1. I, Arlena Minerva; Willes move to enter an order that the Ninth District Court administer the appropriate Judgement on the writ of Habeas Corpus filed on behalf of my son JD;Z in appropriate manner according to law A.R.S 13-421. And release

the living body of my beloved son back into my safe and loving care and custody where he truly belongs.

2. Any relief, Protection (Injunction), Sanctions this court deems appropriate.

Dated Sept 25th, _____, 2019

Respectfully Submitted by Special Divine Appearance

Arlena Minerva Willes autograph of Appellant

Certificate of Service :

I, Arlena Minerva Willes appellant do certify that on

Sept 25th, _____, 2019 I filed this Opening brief with the Ninth District

Court of Appeals . I am sending a Copy therefore to each listed respondent on certificate of Service as listed below :

CC: Arizona Department of Child Safety : Olivia Douma , Sandra Leslie (Olivia Douma's Supervisor), Lynn Hart (Sandra Leslies Supervisor) , Lisa Burns , Kristina Harrison, Sabrin Tawil, Melissa Kevitt , Rosemary Villa , Merlin Romero (Rosemary Villa's and Tatum Renaud's Temporary Supervisor) , Tatum Renaud , (Francisco Seantz III Tatum Renaud's new Supervisor) and Jessica Anthony (Head program Manager).

CC: Maricopa Juvenile Court : Jean West , Brian Strickman ,Pro Temp Nicolas Brian Hoskins and Timothy James Ryan , Diana Theos , Daniel saint (III terminated Counsel), Daniel Hernacki (Terminated Counsel) , Jeff Myers (terminated Counsel), adding Judge Bernard Owens to attempt to sever my God Given rights and Custody over my beloved son (JD:Z) . Mark Brnovich , Tyne Naven and Debbie Marie Oelze.

Et al:

CC: Southwest human development : Drue Kaplan , Raquel Vasquez, Carla White , Suzanne Shunk , Kelcie Blackson and Jackie Thatcher

CC: Maricopa County Superior Court : Commissioner Monica Garfinkel, Judge G. Fish , Tracy Gleason , Robert Swinford and Laura Anderson all hired for cause of fraud and swindle

CC : Deputy County Attorneys : Mark White and Tracey Gleason and Laura Anderson ,(Hired for fraud and Swindle).

Abetting the Respondents for Cause for Fraud and Swindle : Detective Christine Britt Badge Number 15962 (whose Investigation was conducted 100 percent on here say) and Detective Michael Cobbley badge number (11177) , Commissioner Monica Garfinkel and Judge G. Fish and Also Commissioner Jane Mclaughlin (For Violating my right to privacy Through issuing a “search warrant” Ex Parte 2107140 of my social media Account because according to Detective Christine Britt I was talking about My sons Medical Condition and how he was unlawfully taken to begin with).

CC: Phoenix Children’s Hospital : Dr.Kristy Ingebo, Dr. Kafle , Dr .Liz Collyer And Doctor David Notrika , Belinda Torres and Jesse Hillhouse (Hospital Social Workers), Elizabeth Metcalf (Hospital Social Worker), Brandi Scott (Paralegal for PCH) , Julie Baumgarth (Nurse Practitioner)

CC: Thunderbird Children’s Medical Center: Dr. Husam Mullah , Mary Wagner (RN Case Manager), Patty Thompson (Social Worker under the direction of Dr. Husam Mullah made the retaliatory phone call to Arizona Department Of Child safety), and Dr. Jennifer Stevens .

The Constitution Protects The Rights of American Families

- **The Constitution Protects The Fundamental Rights of Parents to make Decisions Concerning the Care , Custody , Upbringing, Management and Control over their own Children . Troxel V. Granville (2000 530 U.S 57, 66**
- **The right to Family Association is Sheltered against the Government or States urupation , disregard or disrespect . MLB V S. L. J (1996) 519 U.S 102, 116.**
- **In the area of “ Child abuse “ , social workers are constrained by the substantive and proceedural garuntees of the Constitution. Suspected Child abuse does not permit a social worker (ANY SOCIAL WORKER) to ignore a parent’s constitutional rights. Wallis V . Spencer (9th Circuit 2000) 202 F 3d 1126, 1130.**
- **Any motive to protect a child from suspected abuse does not override a parents Constitutional rights. Frantz V. Lytle (10th Circuit) 997 F. 2d 784, 792-793. Calabretta V. Floyd (9th Circuit 1999) 189 F. 3d 808.**

Certificate of Compliance

Dec 3, 2018 - Reply **briefs** may not exceed 14,000 **words** or, if handwritten or typewritten, 25 pages. See **9th Circuit** Rule 32-1.

I, Arlena Minerva; Willes Certify that this brief complies with the requirements of the United States Court of Appeals for the Ninth Circuit.

Word Limits : My brief has 17 pages which has not exceeded more than 25 pages and the 14,000 word limit requirement.

Included Sections: In the arguments Section, before arguing each issue on appeal, I have the following separately titled sub-sections:

1. The standard of Review: I let the Court of Appeals know which Standard to use in reviewing the issue, I also cite case law, titles and statutes That supports using that Standard of Review.
2. Preservation: I let the Court of Appeals know where in the record on Appeal I raised the issue to the district Court and where the district Court ruled on the issue.

I understand that my brief may be rejected if I fail to comply with these rules.

Arlena Minerva, Willes Autograph of Appellant