

*In re Marriage of Katare*

No. 85591-9

CHAMBERS, J. (concurring) — I substantially concur with the majority. However, I respectfully disagree with its conclusion that Brajesh Katare’s conduct has not crossed the line to intransigence. Because I conclude it has crossed that line, I would grant Lynette Katare’s request for attorney fees. *See In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992) (citing *Eide v. Eide*, 1 Wn. App. 440, 445, 462 P.2d 562 (1969)).

Like something out of a Charles Dickens novel, this case has dragged on for years and years. We are currently hearing the third appeal. In the first appeal, the Court of Appeals noted that the trial court’s travel restrictions were supported by the evidence. *In re Marriage of Katare*, 125 Wn. App. 813, 830-31, 105 P.3d 44 (2004). It remanded merely for clarification in light of an ambiguity in the trial court’s findings. *Id.* at 831. Since that time, petitioner Brajesh Katare has repeatedly reasserted arguments that had been rejected and has escalated the costs by raising new and increasingly extreme arguments. While the trial court found the father’s conduct did not support an award of attorney fees two years ago, the court predicted that it “could support a finding of intransigence in the future.” Clerk’s Papers (CP) at 181. In my view that time has come.

I certainly agree with many of the sentiments expressed in the chief justice’s

dissent. Our courts should not admit evidence based on racial profiling, and we judges absolutely should not make our decisions based on racial animus.

“[T]heories and arguments based upon racial, ethnic and most other stereotypes are antithetical to and impermissible in a fair and impartial trial.” *State v. Dhaliwal*, 150 Wn.2d 559, 583, 79 P.3d 432 (2003) (Chambers, J., concurring); *see also State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011) (reversing conviction based on prosecutor’s racially charged misconduct); *cf. State v. Ladson*, 138 Wn.2d 343, 351, 979 P.2d 833 (1999) (excluding evidence seized on pretextual exercises of authority). Some of the expert testimony submitted in this case does not meet these standards. Judges should be quick to sustain objections to testimony that cast cultural and ethnic aspersions, if not take bolder steps. But I am in no way persuaded that Judge Mary E. Roberts based her decision on racially charged factors. Judge Roberts listened to the testimony and concluded that “[t]he risk of abduction by the father and the best interests of the children justify limitations” on foreign travel. CP at 153, 156. Based on that evidence, the judge took steps to prevent Brajesh Katare from taking the children out of the country without their mother’s consent. It is not our role to reweigh the evidence, and I cannot say Judge Roberts abused her discretion.

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AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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