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THE SUPREME COURT OF WASHINGTON

Supreme Court No. 102039-2

Court of Appeals No. 381293

Spokane County Superior Court No. 20-3-02620-32

IN RE:
CARMEN FOWLER
Petitioner,

and

KEVIN LINHART
Respondent.

RESPONSE TO PETITION FOR DISCRETIONARY
REVIEW

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I. IDENTITY OF RESPONDENT

Respondent, KEVIN LINHART, is the responding party.

II. DECISION BELOW

Respondent respectfully requests this Court affirm the *Opinion*, entered by Division III on March 14, 2023, and the *Order Denying Motion for Reconsideration* entered on April 28, 2023.

III. STATEMENT OF FACTS

The sole child at the center of this matter, hereinafter referred to as “M.F.”, was born on August 20, 2012 to Carmen Fowler and Arvin Carmen¹. M.F.’s father, at the time of trial was incarcerated in Victorville with his current sentence ending in 2056². Mr. Carmen was sentenced to 50 years in prison for prescription drug trafficking and has never been a part of M.F.’s life³. Respondent Mother, Carmen Fowler, has struggled with substance abuse since she was 17 years old and was not very

¹ RP 9-10

² *Id.*

³ *Id.*

involved in M.F.'s life until late 2018⁴. When M.F. was just six (6) months old, Respondent abandoned M.F. in the care of her mother, Robin Brown, while she continued to use⁵.

Respondent's substance abuse began with alcohol and eventually turned to opiate and heroin abuse⁶. Respondent continued to struggle with substance abuse and was in-and-out of M.F.'s life until late 2018, when M.F. was already 6 years old⁷.

The Linharts have been a large part of M.F.'s life since birth⁸. Petitioner Erin Linhart was in the delivery room and was named M.F.'s godmother at birth⁹. Kevin is the only father figure M.F. has ever known¹⁰. The Linharts have been involved with M.F.'s caretaking and upbringing since birth, and became his sole and primary custodians in 2016¹¹. Before Respondent

⁴ *Id.*

⁵ RP 10

⁶ *Id.*

⁷ RP 11

⁸ RP 9

⁹ *Id.*

¹⁰ *Id.*

¹¹ RP 9-11

abandoned M.F., the Linharts would watch M.F. often as Respondent would drop him off with them and not return for days¹². The Linharts began with an aunt/uncle type relationship with M.F. in Respondent's absence¹³. At that time, Respondent was happy to have the Linharts in the picture, and happy that M.F. had people to depend on when she was down and unavailable to parent due to continued substance abuse¹⁴. Respondent would come to the Linharts home to visit M.F. at times, but the visits were sporadic and short¹⁵. Respondent has expressed gratitude for the Linharts' help with M.F. in the past and fostered their relationship with him on and off throughout the years; both explicitly and implicitly¹⁶.

Robin Brown, Respondent's mother, was granted Non-parental Custody of M.F. in August 2014, with Respondent joining the petition¹⁷. The Linharts remained extremely active

¹² RP 9

¹³RP 10

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ RP 338

in M.F.'s life while Ms. Brown had legal custody, having him most weekends (Thursday through Monday) and any other days they asked for or that Robin needed help¹⁸. This schedule continued until 2016, when the Linharts were granted primary custody¹⁹. Ultimately, Robin requested M.F. reside with the Linharts full time and asked that they adopt him multiple times²⁰. During this period, Respondent was using heroin, prostituting herself on backpage.com, and surrounding herself with very dangerous people²¹. In April 2016, the Linharts petitioned to terminate Respondent's parental rights in an effort to offer M.F. a stable and loving forever home²². In September 2016, it seemed as though Respondent was working on sobriety and getting her life together, so the Linharts agreed to give her

¹⁸ RP 9-11

¹⁹ RP 10

²⁰ *Id.*

²¹ RP 30; 386

²² RP 84-86

one more chance to step up and be M.F.'s mom²³. They dismissed their petition²⁴.

Unfortunately, Respondent quickly went back to old habits, and never had visits with M.F. during her short period of sobriety²⁵. On August 22, 2014, Appellant took a friend's vehicle without permission²⁶. Appellant was charged with possession of stolen property, to which she pled guilty to on January 26, 2015²⁷. M.F. moved solely into the Linharts home beginning December 2016 and has resided in their care ever since²⁸.

Robin again asked the Linharts to adopt M.F., so in January 2017, the Linharts filed another petition to terminate Respondent's rights and were granted temporary placement pending the termination hearing²⁹. Respondent did not see M.F.

²³ *Id.*

²⁴ RP 27

²⁵ RP 10

²⁶ RP 221

²⁷ *Id.*

²⁸ *Id.*

²⁹ RP 10

from Christmas 2016 until the Court ordered family counseling beginning in the fall of 2018³⁰. Beginning in December 2018, Respondent was granted visits for one hour per week with M.F., supervised at the Fulcrum Institute³¹. In April 2019, by agreement, Respondent's visits were expanded to 4 hour visits, once per week until mediation in July 2019³². Following mediation in August 2019, M.F. had residential time with Respondent every other weekend and every Wednesday overnight. In February 2021, this Court expanded Respondent's time, adding an additional overnight³³. The longest amount of time that M.F. has been in Respondent's care since he was six (6) months old is 4-5 overnights³⁴.

M.F. is the Linhart's son and an integral part of their family³⁵. M.F. was extremely distraught when he learned that

³⁰ RP 10

³¹ RP 11

³² *Id.*

³³ *Id.*

³⁴ RP 51

³⁵ RP 124

Respondent was his biological mother in the fall of 2018³⁶. M.F. has been calling the Linharts “Mom” and “Dad” for years and continues to refer to Respondent as “Carmen.” M.F. was present for the gender reveals and births of both the Linharts’ daughters and refers to them as his sisters³⁷. M.F. has been attending school in the Linhart’s school district since pre-school and they are extremely involved with his education³⁸. M.F.’s teachers know the Linharts as his parents³⁹. M.F. is a big part of the Linharts’ extended friends and families’ lives as well since he has been involved in holidays, events and celebrations with them since birth⁴⁰.

M.F. has never been overly excited for his visitations with Respondent⁴¹. The visits had a rocky start and M.F. immediately began regressing upon having weekly contact with

³⁶ RP 11

³⁷ RP 267

³⁸ RP 44

³⁹ RP 183

⁴⁰ RP 10

⁴¹ RP 11

Respondent⁴². He began having nightmares and potty accidents following visits⁴³. Prior to M.F.'s first extended visit following the February 2021 order, M.F.'s anxiety skyrocketed⁴⁴. M.F. had an emotional day at school and upon returning to the Linharts' home began having nightmares for many nights following the visit⁴⁵.

Kevin Linhart was rightfully deemed M.F.'s de facto parent and the Court of Appeals did not err in remanding this matter to readdress the factors based on the altered conditions following Erin Linhart's death. The Court of Appeals also did not err in providing the Court discretion to permit additional testimony as circumstances have rapidly changed since the filing of this appeal.

IV. ARGUMENT

a. The Opinion does not conflict with any decisions of the Washington Supreme Court per RAP 13.4(b)(1).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ RP 44

⁴⁵ *Id.*

Before a Washington trial court can adjudicate a claim for de facto parentage, the court must “initially determine whether the petitioner has standing⁴⁶.” First, the individual claiming to be a de facto parent of a child “must file an initial verified pleading alleging specific facts that support the claim to parentage of the child⁴⁷.” Then, “[i]f these pleadings raise ‘disputed facts material to the issue of standing,’ the trial court must hold an expedited hearing to resolve the disputed facts⁴⁸.”

In a proceeding to adjudicate de facto parentage, a trial court must determine whether “the individual demonstrates by a preponderance of the evidence that” the individual has met the seven statutory requirements enumerated in RCW 26.26A.440(4)⁴⁹. Specifically, the individual claiming to be a de facto parent of a child must evidence that:

(a) [t]he individual resided with the child as a regular member of the child’s household for a

⁴⁶ *In re Parentage of L.J.M.*, 15 Wash. App. 2d at 594, 476 P.3d at 641 (citing RCW § 26.26A.440(3))

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Wash. Rev. Code § 26.26A.440(4)

significant period of time; (b) [t]he individual engaged in consistent caretaking of the child; (c) [t]he individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation; (d) [t]he individual held out the child as the individual's child; (e) [t]he individual established a bonded and dependent relationship with the child which is parental in nature; (f) [a]nother parent of the child fostered or supported the bonded and dependent relationship required under (e) of this subsection; and (g) [c]ontinuing the relationship between the individual and the child is in the best interest of the child⁵⁰.

“If the trial court concludes that standing has been established, the final step is the actual adjudication of the de facto parentage petition⁵¹.” Unlike the actual adjudication of an individual's de facto parentage petition, “[t]o establish standing, a petitioner must only *allege* sufficient facts to satisfy the statutory requirement⁵².” Whereas, for the petitioner to prevail in a *full* adjudication proceeding, “the petitioner must

⁵⁰ *Id.*

⁵¹ *In re Parentage of L.J.M.*, at 595, 476 P.3d at 641 (citing RCW § 26.26A.440(4))

⁵² *Id.* at 596 (alteration in original)

demonstrate in a subsequent proceeding that the statutory requirements have been proved⁵³.”

The Opinion does not conflict with Supreme Court decisions in treating the threshold procedure as equivalent to a Summary Judgment. Mr. Linhart alleged sufficient facts that he met the threshold requirement and Ms. Fowler disputes them. To end the inquiry there would cause harm to children who have bonds with de facto parents simply because there is a disagreement as to the facts. What Ms. Fowler argues is essentially that the threshold hearing should be treated as a Summary Judgment, only in her favor.

The Opinion in no way states that Mr. Linhart cannot meet the threshold requirement, instead, allows for the remand to the Superior Court in order to make findings for Mr. Linhart as an individual given the untimely death of Mrs. Linhart. This was Ms. Fowler’s request, to have the Court address Mr. Linhart separately. Ms. Fowler then asks this Court to ignore

⁵³ *Id.* (second alteration in the original)

that Mr. Linhart has a right to adjudicate himself outside of the collective “Linharts” and asks for a conflicting decision that allows the threshold determination to be ignored.

Fowler’s continual appeals are retaliation for not being awarded custody. Her argument against the Opinion is that she believes she proved, without question, that Mr. Linhart did not meet the threshold determination. It is untrue that the Opinion agreed with this stance. The Opinion correctly recognized that due to the new circumstances since appeal, the Superior Court should make individual findings for Mr. Linhart. This does not negate that the Superior Court Commissioner, Superior Court Judge and Court of Appeals found that the threshold was initially met for the full adjudication of the de facto parentage of M.F.

The Opinion did not conflict with past Supreme Court Decisions. The Opinion should be affirmed.

V. CONCLUSION

This situation is the exact type of family dynamic the legislature intended to protect in enacting the de facto legislation. It was recognized when this statute was enacted that the typical family that once was, is not always going to remain in place. There is going to be changes in dynamics and families developed in ways unexpected when nonparental legislation began. The enacting of RCW 26.26A.440 was to ensure that as families evolve, so does the judicial system in order to meet the best interests of children in blended and untraditional family types. The outcome represents exactly what was intended when the legislature drafted this legislation.

The Opinion did not err. The Opinion did not conflict with decisions of this Supreme Court.

This Court should deny Ms. Fowler's petition, and affirm the Opinion of the Court of Appeals.

The undersigned certifies that the foregoing Response to Petition for Discretionary Review contains 1959 words not including the appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and this certificate of compliance.

RESPECTFULLY SUBMITTED this 21st day of August, 2023.

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CERTIFICATE OF ATTORNEY

I certify that on August 21, 2023 I arranged for delivery of a copy of the foregoing Response to Petition for Discretionary Review to the following:

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