

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/14/2023 4:14 PM  
BY ERIN L. LENNON  
CLERK

NO. 102511-4

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

R.T.L.,  
Appellant,

v.

K.M.,  
Respondent

---

**ANSWER OF RESPONDENT  
DEPARTMENT OF CHILDREN,  
YOUTH, AND FAMILIES  
TO PETITION FOR REVIEW**

---

ROBERT W. FERGUSON  
Attorney General  
JARED T. CORDTS  
Assistant Attorney General  
WSBA# 32130  
Office Code: OC638509  
1116 West Riverside Ave.,  
Suite 100  
Spokane, WA 99201  
509-456-3123

## TABLE OF CONTENTS

|  |    |
|--|----|
| A. INTRODUCTION .....  | 1  |
| B. IDENTITY OF RESPONDING PARTY .....  | 2  |
| C. RESTATEMENT OF THE ISSUE .....  | 2  |
| D. RESTATEMENT OF THE CASE .....   | 2  |
| E. ARGUMENT WHY REVIEW SHOULD BE DENIED.....   | 7  |
| 1. De Facto Parentage Generally.....   | 8  |
| 2. R.T.L. Cannot Satisfy the Criteria for Supreme Court Review .....                           | 13 |
| 3. R.T.L. Did Not Undertake Full and Permanent Responsibilities of a Parent of the Child ..... | 20 |
| F. CONCLUSION.....   | 28 |

## TABLE OF AUTHORITIES

### Cases

|  |            |
|--|------------|
| <i>C.E.W. v. D.E.W.</i> ,<br>845 A.2d 1146, 2004 ME 43 (2004).....                   | 21         |
| <i>In re Custody of A.F.J.</i> ,<br>179 Wn.2d 179, 314 P.3d 373 (2013).....          | passim     |
| <i>In re Dependency of C.R.O’F.</i> ,<br>19 Wn. App. 2d 1, 493 P.3d 1235 (2021)..... | 13, 14, 15 |
| <i>In re Dependency of N.G.</i> ,<br>199 Wn.2d 588, 510 P.3d 335 (2022).....         | 14, 15, 16 |
| <i>In re Parentage of L.B.</i> ,<br>155 Wn.2d 679, 122 P.3d 161 (2005).....          | passim     |
| <i>Matter of J.D.W.</i> ,<br>14 Wn. App. 2d 388, 471 P.3d 228 (2020).....            | 9, 14      |
| <i>Matter of L.J.M.</i> ,<br>15 Wn. App. 2d 588, 476 P.3d 636 (2020).....            | passim     |
| <i>Matter of L.T.</i> ,<br>25 Wn. App. 2d 260, 522 P.3d 1040 (2023).....             | 10         |
| <i>State v. Howland</i> ,<br>180 Wn. App. 196, 321 P.3d 303 (2014).....              | 15         |
| <i>Walker v. Riley</i> ,<br>19 Wn. App. 2d 592, 498 P.3d 33 (2021).....              | passim     |

### Statutes

|                     |    |
|---------------------|----|
| RCW 13.34.020 ..... | 26 |
|---------------------|----|

|                              |        |
|------------------------------|--------|
| RCW 13.34.069 .....          | 25     |
| RCW 13.34.069(4).....        | 25     |
| RCW 13.34.130 .....          | 26     |
| RCW 13.34.130(1)(b)(i).....  | 24     |
| RCW 13.34.130(1)(b)(ii)..... | 24, 26 |
| RCW 13.34.130(10).....       | 25     |
| RCW 13.34.130(6).....        | 25     |
| RCW 13.34.130(6)(a).....     | 24     |
| RCW 13.34.138(2)(a).....     | 25     |
| RCW 13.38.180(2)(a).....     | 25     |
| RCW 26.26 .....              | 8      |
| RCW 26.26A .....             | 9      |
| RCW 26.26A.100(3) .....      | 9      |
| RCW 26.26A.440 .....         | 8, 9   |
| RCW 26.26A.440(3) .....      | 10     |
| RCW 26.26A.440(3)(a).....    | 11     |
| RCW 26.26A.440(3)(b).....    | 11     |
| RCW 26.26A.440(3)(c).....    | 11     |
| RCW 26.26A.440(4) .....      | 12     |

|                            |        |
|----------------------------|--------|
| RCW 26.26A.440(4)(a).....  | 11     |
| RCW 26.26A.440(4)(b).....  | 11     |
| RCW 26.26A.440(4)(c).....  | passim |
| RCW 26.26A.440(4)(d).....  | 11     |
| RCW 26.26A.440(4)(e).....  | 11     |
| RCW 26.26A.440(4)(f) ..... | 11     |
| RCW 26.26A.440(4)(g).....  | 11     |
| RCW 26.26A.460(3) .....    | 9      |
| RCW 74.13.031(6).....      | 26     |
| RCW 74.13.031(7) .....     | 26     |

**Rules**

|                     |              |
|---------------------|--------------|
| RAP 2.3(b)(2).....  | 15           |
| RAP 13.4(b).....    | 1, 8, 13, 33 |
| RAP 13.4(b)(1)..... | 13           |
| RAP 13.4(b)(2)..... | 13           |
| RAP 13.4(b)(3)..... | 20           |
| RAP 13.4(b)(4)..... | 20           |
| RAP 13.5(b)(2)..... | 15           |

**Regulations**

WAC 110-148-1560..... 25

**Laws**

LAWS OF 2018, ch. 6, § 509..... 9, 17

## **A. INTRODUCTION**

In March 2021, the Department of Children, Youth, and Families requested that dependent infant D.M. move from foster care into the care of a relative, D.M.'s maternal grandmother R.T.L., a request granted by the dependency court. Nearly one year later, and after D.M.'s father began to engage in the dependency, R.T.L. filed a petition for de facto parentage and sought intervention in the dependency. The dependency court and the Court of Appeals determined that R.T.L. did not set forth a prima facie case of de facto parentage.

R.T.L. cannot meet any of the criteria for further review by this Court under RAP 13.4(b). The decision by the Court of Appeals does not conflict with other decisions, and does not present a significant question of law or involve an issue of substantial public interest. As the Court of Appeals correctly held, R.T.L. did not establish a prima facie case of de facto parentage because she did not and could not undertake the full and permanent responsibilities of a parent of the child, when her

dependent infant granddaughter was temporarily placed by the dependency court with her as a relative caregiver. This Court should deny R.T.L.'s petition for review.

**B. IDENTITY OF RESPONDING PARTY**

Respondent, Department of Children, Youth, and Families, asks this Court to deny review of the decision by Division Three of the Court of Appeals in *R.T.L. v. K.M.*, No. 39276-7-III, 535 P.3d 882 (Wash. Ct. App. Sept. 28, 2023).

**C. RESTATEMENT OF THE ISSUE**

Did the Court of Appeals correctly conclude that R.T.L. could not establish facts sufficient to support a prima facie case of de facto parentage because in her role as a relative caregiver of a dependent child she could not undertake the full and permanent responsibilities of a parent?

**D. RESTATEMENT OF THE CASE**

In July 2020, K.M. gave birth to her infant daughter D.M. *See* CP 26-27. The Department of Children, Youth, and Families filed a dependency petition as to D.M. two days after her birth.



CP 260 (2 Finding of Fact (FF)). Neither parent appeared at the shelter care hearing, and the dependency court placed D.M. in foster care. CP 260 (3 FF).

In November 2020, K.M. entered an agreed order of dependency and disposition. CP 261 (5 FF). D.M. remained in foster care, with K.M.'s agreement. CP 261 (5 FF). At the first dependency review hearing, the dependency court maintained D.M. in foster care but noted that R.T.L., D.M.'s maternal grandmother, was the subject of a home study. CP 261 (6 FF); *see* CP 46 (K.M. is R.T.L.'s daughter). K.M. did not engage in the dependency, and by May 2022, the Department social worker had not had contact with K.M. for ten months. CP 75-76.

D.B., D.M.'s father, served a prison sentence until his release in February 2021. CP 27, 46, 434. D.B. agreed to entry of an order of dependency and disposition in March 2021; his order also maintained D.M. in foster care. CP 261 (7 FF). Between March 2021 and October 2021, D.B. did not visit D.M. CP 47.

On March 22, 2021, the dependency court commissioner granted the Department's motion to change D.M.'s placement from foster care to relative care with R.T.L. CP 26, 93, 106, 261 (8 FF), 434. Neither parent appeared for the hearing. CP 261 (8 FF).

In November 2021, D.B. began to engage in the dependency. *See* CP 93. He began engaging in services and had his first visit with D.M. in December 2021. CP 11, 93. He regularly visited D.M. thereafter. CP 93, 434.

On March 11, 2022, less than one year after the dependency court had placed D.M. with her, R.T.L. filed a petition for de facto parentage. CP 7-12. R.T.L. asserted that she had performed the "parental role fulltime" for D.M. since March 22, 2021. CP 9. R.T.L. also asserted that she held herself out as a parent, that K.M. and D.B. consented to the relationship, and that her bonded relationship with D.M. had existed for more than a year. CP 9-11. K.M. joined R.T.L.'s petition by filing a one-page joinder. CP 15. In April 2022, R.T.L. first sought leave

to proceed in the dependency case to pursue the de facto parentage action, but then filed a motion to intervene in the dependency in order to seek leave to proceed. CP 25-28, 42-44. D.B. opposed both of R.T.L.'s motions. CP 93-101, 124-55. The Department opposed intervention from a policy perspective, based on the implications of a ruling allowing a relative caregiver to intervene to seek de facto parentage. CP 116-23.

The court commissioner held a hearing on R.T.L.'s motions on June 10, 2022. CP 206, 211. The commissioner noted that the state and federal Indian Child Welfare Acts applied to the proceeding. CP 262 (19 Finding of Fact and Conclusion of Law (FFCL)). The commissioner found that the dependency had created the relationship between R.T.L. and D.M. CP 261 (10 FFCL). The commissioner then analyzed whether R.T.L. had alleged a prima facie case of de facto parentage such that she had standing to intervene in the dependency. CP 245-46, 261 (13 FFCL, 14 FFCL), 262 (21 FFCL). The commissioner concluded that R.T.L. could not meet all of the necessary elements to

establish de facto parentage, and could not intervene as a matter of right or permissively. CP 243, 246-250, 253-54, 263 (23 FFCL, 26 CL, 27 FFCL). The commissioner denied R.T.L.'s motion for intervention to allow R.T.L. to seek leave to proceed. CP 264.

R.T.L. moved to revise the commissioner's ruling on the motions for intervention and leave to proceed. CP 272-73, 302-03, 381-82. In October 2022, a dependency court judge found that R.T.L. did not meet all of the statutory elements to establish a prima facie case of de facto parentage, and denied R.T.L.'s motion for revision. CP 435-38.

R.T.L. appealed the dependency court's denial of her motion for revision. In April 2023, while the appeal was pending, the court commissioner dismissed the dependency after D.M. returned to D.B. *See* CP 488-89. The Department subsequently moved to dismiss R.T.L.'s appeal as moot.

In September 2023, the Court of Appeals affirmed the dependency court's order. *R.T.L. v. K.M.*, No. 39276-7-III, 535

P.3d 882 (Wash. Ct. App. Sept. 28, 2023). The court agreed that R.T.L.’s appeal was moot as to intervention in the dependency, but concluded her appeal was not moot as to the order denying revision, because it “likely has preclusive effect” on R.T.L.’s petition for de facto parentage. *R.T.L.*, 535 P.3d at 884. The court then determined that R.T.L. did not meet the statutory element in RCW 26.26A.440(4)(c) that required her to show she “undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation.” *Id.* at 885-86. The court concluded that, “a relative receiving placement of a child in the course of a dependency cannot establish a prima facie case for de facto parentage.” *Id.* at 886.

R.T.L. now seeks Supreme Court review.

#### **E. ARGUMENT WHY REVIEW SHOULD BE DENIED**

This Court should decline review because R.T.L. cannot satisfy the criteria for review under RAP 13.4(b). The decision by the Court of Appeals does not conflict with other decisions, and does not present a significant question of law or involve an

issue of substantial public interest. Where the de facto parentage requirements in RCW 26.26A.440 are met, grandparents, stepparents, and others can become legal parents. But here, as the dependency court and Court of Appeals properly concluded, R.T.L. does not establish a prima facie case of de facto parentage because she did not and could not undertake the full and permanent responsibilities of a parent of the child, when the dependency court temporarily placed D.M. with her as a relative caregiver. This Court should deny R.T.L.’s petition for review.

### **1. De Facto Parentage Generally**

This Court first recognized a common law right to de facto parentage in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005). The Court noted that the former version of the Washington Uniform Parentage Act (WUPA), former chapter 26.26 RCW, did not contemplate de facto parentage. *L.B.*, 155 Wn.2d at 707; *Matter of L.J.M.*, 15 Wn. App. 2d 588, 593, 476 P.3d 636 (2020). In the absence of statute, the Court exercised its equitable power to “fill the interstices that our current legislative

enactment fails to cover” to address the changing realities of the needs of children and families. *L.B.*, 155 Wn.2d at 689, 707.

The Washington State Legislature repealed former chapter 26.26 RCW in 2018, and replaced it with an updated WUPA, under chapter 26.26A RCW. *L.J.M.*, 15 Wn. App. 2d at 593-94; LAWS OF 2018, ch. 6, § 509. The updated WUPA contained provisions for the adjudication and establishment of de facto parentage. *See* RCW 26.26A.100(3), .440. The statute provides an avenue for legal parentage for individuals who, with a legal parent’s consent and encouragement, have formed a strong parent-child relationship with a child. *Matter of J.D.W.*, 14 Wn. App. 2d 388, 398, 471 P.3d 228 (2020).

A child having two genetic parents does not preclude the court from adjudicating another individual as a de facto parent of the child. *L.J.M.*, 15 Wn. App. 2d at 598. RCW 26.26A.460(3) states, “The court may adjudicate a child to have more than two parents under this chapter if the court finds that failure to recognize more than two parents would be detrimental to the

child.” WUPA thus allows a third person to become a de facto parent, if it is in the child’s best interests. *L.J.M.*, 15 Wn. App. 2d at 598. And a de facto parent stands on equal footing with otherwise legal parents. *Matter of L.T.*, 25 Wn. App. 2d 260, 266, 522 P.3d 1040 (2023).

In addition, the nature of the preexisting relationship between the individual and the child does not prohibit a finding of de facto parentage. *See L.J.M.*, 15 Wn. App. 2d at 600-01 (stepparents not excluded from de facto parentage consideration); *In re Custody of A.F.J.*, 179 Wn.2d 179, 188, 314 P.3d 373 (2013) (status as a foster parent does not necessarily bar recognition as a de facto parent); *L.T.*, 522 P.3d at 1045 (third-party custodian not prevented from de facto parentage). “Every petitioner for de facto parentage deserves an individual assessment of their case, regardless of any preexisting legal relationship to the child.” *L.T.*, 522 P.3d at 1045.

A petitioner seeking de facto parentage must first establish standing. RCW 26.26A.440(3); *Walker v. Riley*, 19 Wn. App. 2d



592, 598, 498 P.3d 33 (2021). The petitioner “must file an initial verified pleading alleging specific facts that support the claim to parentage of the child.” RCW 26.26A.440(3)(a). An adverse party may file a responsive pleading. RCW 26.26A.440(3)(b). The court then determines “whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence” the seven factors set forth in RCW 26.26A.440(4)(a) through (g). RCW 26.26A.440(3)(c). The seven factors are:

- (a) The individual resided with the child as a regular member of the child's household for a significant period;
- (b) The individual engaged in consistent caretaking of the child;
- (c) The individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- (d) The individual held out the child as the individual's child;
- (e) The individual established a bonded and dependent relationship with the child which is parental in nature;
- (f) Another parent of the child fostered or supported the bonded and dependent relationship required under (e) of this subsection; and
- (g) Continuing the relationship between the individual and the child is in the best interest of the child.

RCW 26.26A.440(4). “The trial court generally must assume the truth of the petitioner's allegations in making the sufficiency of facts determination.” *L.J.M.*, 15 Wn. App. 2d at 597. An appellate court reviews de novo the trial court’s determination of the factual sufficiency for the statutory requirements. *Id.*

If the petitioner establishes standing, the petitioner must then demonstrate the seven factors in RCW 26.26A.440(4) by a preponderance of the evidence in order to be declared a de facto parent. *Walker*, 19 Wn. App. 2d at 598; *L.J.M.*, 15 Wn. App. 2d at 596.

The trial court, in its order denying revision, considered whether R.T.L. made a prima facie case as to each of the seven statutory requirements of RCW 26.26A.440(4). *See* CP 435-38. The Court of Appeals focused solely on one element, RCW 26.26A.440(4)(c), as dispositive in upholding the order denying revision. *R.T.L.*, 535 P.3d at 885.

## **2. R.T.L. Cannot Satisfy the Criteria for Supreme Court Review**

The Supreme Court will only accept review in limited circumstances:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). R.T.L. seeks review under all four criteria. *See* Pet. at 9. But the decision by the Court of Appeals here does not conflict with another decision and does not present a significant question of law or issue of substantial public interest.

First, the decision here does not conflict with either a decision of the Supreme Court or a published decision of the Court of Appeals. RAP 13.4(b)(1), (2). R.T.L. argues that the decision conflicts with a number of prior decisions, including *In re Dependency of C.R.O'F.*, 19 Wn. App. 2d 1, 493 P.3d 1235 (2021), *In re Dependency of N.G.*, 199 Wn.2d 588, 510 P.3d 335

(2022), *In re Custody of A.F.J.*, *supra*, and *Walker v. Riley*, *supra*.<sup>1</sup> Pet. at 5-6, 9-18. To the contrary, while Division Three did not directly address prior precedent in its decision, given the facts of this case, the decision follows the reasoning set forth in the line of cases interpreting de facto parentage.

*R.T.L.* does not conflict with *C.R.O’F.* or *N.G.* In *C.R.O’F.*, an aunt sought intervention in her legally free nephew’s dependency to file a de facto parentage petition. *C.R.O’F.*, 19 Wn. App. 2d at 5-6. The aunt did not care for the nephew during the dependency. *See id.* at 4. The trial court denied intervention, concluding that the aunt could not meet the statutory requirements for de facto parentage. *Id.* at 7. The Court of Appeals noted that *C.R.O’F.*’s aunt had set forth a prima facie case that she was a de facto parent, based on her assertions that

---

<sup>1</sup> *R.T.L.* also alleges that the decision here conflicts with other decisions but provides no argument in support apart from citation. Pet. at 5-6, 9; *see, e.g., In re Parentage of J.D.W.*, 14 Wn. App. 2d 388, 471 P.3d 228 (2020) (cited in Pet. at 5, and internally cited in quotation from *N.G.* in Pet. at 10).

she had raised and cared for six-year-old C.R.O’F. for most of his life, and satisfied the requirements for intervention as a matter of right. *Id.* at 11-12.

In *N.G.*, our Supreme Court interpreted the meaning of “substantially alters the status quo” for purposes of RAP 2.3(b)(2) and RAP 13.5(b)(2) to require an “immediate effect outside the courtroom,” adopting the holding elucidated in *State v. Howland*, 180 Wn. App. 196, 321 P.3d 303 (2014). *N.G.*, 199 Wn.2d at 592, 593, 596. The Court next considered whether the trial court’s order granting permissive intervention met this interpretation. *Id.* at 592. J.R., who took placement of N.G. and his half-sibling at shelter care, had sought intervention and de facto parentage. *Id.* at 591-92. N.G.’s lengthy relationship with J.R., combined with the siblings’ placement with J.R., furthered the dependency’s goal of “preserving N.G.’s family unit.” *Id.* at 601. The Court concluded that permissive intervention did not have an effect outside the courtroom, because N.G. remained in J.R.’s custody and intervention to seek de facto parentage did not

change the goal of the dependency itself. *Id.* at 601-02. Again, the Court's focus in *N.G.* concerned interpretation of court rules. *Id.* at 593-94.

*R.T.L.* also does not conflict with *A.F.J.* The Supreme Court in *A.F.J.* held that "a person's status as a foster parent does not necessarily bar recognition of a person as a de facto parent." *A.F.J.*, 179 Wn.2d at 188. For context, in *A.F.J.*, two women engaged in a long on-and-off relationship with periods during which they lived together. *Id.* at 182. When one of the women became pregnant, the two decided to raise the child together. *Id.* at 182-83. The expectant mother considered the other woman to be her domestic partner. *Id.* at 182. The expectant mother struggled with substance use, gave birth while in a treatment program, and moved in with her partner after discharge from the program, only to relapse. *Id.* at 183. The Department became involved and at shelter care the dependency court placed the child with the mother's partner. *Id.* When the mother could not overcome her substance use, the Department filed for

termination, but the partner filed a petition for de facto parentage, which the superior court granted. *Id.* at 183-84. The Supreme Court affirmed, noting that the child had lived with the partner both before and during the dependency, the women had agreed to give the child both their names, the women held each other out as co-parents, and the biological mother testified in her termination trial that she wanted her partner to adopt the child. *Id.* at 188-89.

The Supreme Court decided *A.F.J.* in 2013, before the Legislature repealed and replaced the WUPA. LAWS OF 2018, ch. 6, § 509. The Court analyzed the de facto parentage claim using the four part test elucidated in *L.B.*<sup>2</sup> *A.F.J.*, 179 Wn.2d at

---

<sup>2</sup> The four part test adopted by the *L.B.* court required “(1) the natural or legal parent consented to and fostered the parent-like relationship, (2) the petitioner and the child lived together in the same household, (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.” *L.B.*, 155 Wn.2d at 708.

184-85. That test did not include the element at issue here, that the de facto parent “undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation.” RCW 26.26A.440(4)(c); *A.F.J.*, 179 Wn.2d at 190. However, the Court recognized that whether a de facto parent fully and completely undertook “a permanent, unequivocal, committed, and responsible parental role” could serve as a “potential limitation” to de facto parentage. *A.F.J.*, 179 Wn.2d at 190; *see L.B.*, 155 Wn.2d at 708.

*A.F.J.*, then, stands only for the proposition that the mere status of a prospective de facto parent as a foster parent does not bar a court’s consideration of facts both inside and outside the foster parent relationship when determining de facto parentage. *A.F.J.*, 179 Wn.2d at 187-88. But in *R.T.L.*, there *were* no facts outside of the caregiver relationship for the court to consider. *R.T.L.* did not have a parental role in D.M.’s life prior to the dependency proceeding and cared for D.M. for one year entirely within the bounds of the dependency. The Supreme Court in



*A.F.J.* concluded by writing, “While we recognize that a de facto parentage relationship will not arise out of a foster care relationship, foster parent status itself is no bar.” *Id.* at 190. *R.T.L.* does not conflict with *A.F.J.* because the de facto parentage at issue here arose solely out of a foster care relationship.

Lastly, *R.T.L.* does not conflict with *Walker*. In *Walker*, the Court of Appeals considered whether the child’s grandmother could hold herself out as the parent of the child and whether the child’s mother consented to the parent-like relationship. *Walker*, 19 Wn. App. 2d at 602-07. As will be discussed below, the court drew a distinction between a parent and a caretaker, a distinction further developed in *R.T.L.* And despite *R.T.L.*’s continued argument that both D.B. and K.M. “fostered” de facto parentage, Pet. at 15, the Court of Appeals did not address that issue in its decision. In any event, as legal custodian of the child, the Department, rather than the parents, fostered the relationship between *R.T.L.* and D.M., because

“[g]iven the realities of dependency and termination actions, it is the State that consents and fosters the parent-like relationship, not the natural or legal parent.” *A.F.J.*, 179 Wn.2d at 187.<sup>3</sup>

Finally, the issue before this Court does not present a “significant question of law” under the state or federal constitutions and is not an issue of “substantial public interest.” RAP 13.4(b)(3), (4). Essentially, *R.T.L.* is a matter of statutory interpretation implicating a small subset of the population. The Court of Appeals adequately considered the issue, and no further review is necessary.

### **3. R.T.L. Did Not Undertake Full and Permanent Responsibilities of a Parent of the Child**

To establish de facto parentage, R.T.L. must show that she undertook the “full and permanent responsibilities of a parent of the child without expectation of financial compensation.” RCW

---

<sup>3</sup> The *A.F.J.* court further said that, “Even in situations where the legal parent has previously fostered a relationship between the foster parent and the child, such as, for example, with an aunt, uncle, or cousin, such relationships will rarely, if ever, be parental in nature.” *A.F.J.*, 179 Wn.2d at 187.

26.26A.440(4)(c). A de facto parent stands in legal parity with an otherwise legal parent, but this legal recognition is ““limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.”” *L.B.*, 155 Wn.2d at 708 (quoting *C.E.W. v. D.E.W.*, 845 A.2d 1146, 1152, 2004 ME 43 (2004)). While R.T.L. may have cared for D.M. without expectation of financial compensation, she did not and could not undertake the full and permanent responsibilities of a parent because, as a court-ordered relative caregiver of a dependent child, she lacks authority to undertake this role.

In affirming the trial court’s order denying revision, the Court of Appeals determined the meaning of “full and permanent responsibilities of a parent” by interpreting the plain language and ordinary meaning of “full” and “permanent,” relying on the terms’ dictionary definitions. *R.T.L.*, 535 P.3d at 885. Based on the definitions of those terms, the court concluded that, “to undertake full and permanent parental responsibilities, a de facto parent must

have all the rights a typical parent would have and those rights must not be subject to alteration.” *Id.*

Division Two of the Court of Appeals separately considered the meaning of “full and permanent responsibilities” in *L.J.M.*, 15 Wn. App. 2d 588, in the context of a stepfather’s petition for de facto parentage. In *L.J.M.*, L.J.M.’s stepfather had been involved in the child’s life since 2014 and married L.J.M.’s mother in 2015. *L.J.M.*, 15 Wn. App. 2d at 591. L.J.M. was born in 2010, but his biological father did not play a role in L.J.M.’s life. *Id.* In 2019, the stepfather filed a petition for de facto parentage in order to establish a legal connection to L.J.M. as a “third parent.” *Id.* at 591-92. The trial court denied the petition and found that the stepfather did not allege facts sufficient to show that, as a stepfather, he undertook full and permanent responsibilities of a parent. *Id.* at 592-93.

The Court of Appeals reversed the trial court’s order, finding that a petitioner seeking recognition as a de facto parent does not need to have exclusive parental responsibilities, only

full and permanent responsibilities. *Id.* at 597, 603. The stepfather coached L.J.M.’s sports teams, attended parent teacher conferences, and maintained a savings account for L.J.M., all of which supported the stepfather’s allegation that he had undertaken full parental responsibilities. *Id.* at 599. In addition, the stepfather had lived with L.J.M., while married to L.J.M.’s mother, for over four years. *Id.* This suggested that the stepfather’s “parental responsibilities are permanent, rather than temporary or transitory.” *Id.*

*Walker v. Riley*, 19 Wn. App. 2d 592, is also instructive. In *Walker*, E.L. lived with her maternal grandmother for 13 years under a nonparental custody order. *Walker*, 19 Wn. App. 2d at 595. E.L.’s grandmother then filed a petition for de facto parentage, alleging that she performed the parenting duties for E.L. *Id.* at 596. The trial court found that the grandmother had not “held out” E.L. as her own child, and denied the petition. *Id.* at 597. The Court of Appeals reversed, and concluded that “holding a child out as one’s own is to assert a status as a parent

or parent-like as opposed to a caretaker.” *Id.* at 604. The court further clarified the difference between a parent and a caregiver, in that “[w]hereas a person who holds themselves out as a parent will make major decisions for a child, such as education, extracurricular activities, religion, health care, and residence, a caretaker will not.” *Id.*

Here, the nature of the legal relationship between R.T.L. and dependent child D.M. prevented R.T.L. from having authority to undertake the full and permanent responsibilities of a parent. In a dependency, the court can order a child removed from the child’s home and into the custody and care of a relative or the Department. RCW 13.34.130(1)(b)(i). An out-of-home placement can only be made if reasonable efforts have been made to eliminate the need for removal and any services provided have failed to prevent the need for out-of-home placement, and there is no parent available to care for the child. RCW 13.34.130(6)(a). The Department has the authority to place a child in its custody and care with a relative, another suitable person, or foster care. RCW 13.34.130(1)(b)(ii).

The court must give preference to placement with a relative. RCW 13.34.130(6). For Indian children, family placement has explicit preference. RCW 13.38.180(2)(a). Relative caregivers serving as placement must comply with court orders and any conditions set by the court. RCW 13.34.130(10). Noncompliance with the court's order by a placement can result in the child's removal. RCW 13.34.130(10). If the court finds that the reason for the child's removal no longer exists, the court may return the child to the parent. RCW 13.34.138(2)(a).

Once a child is placed in the custody of the Department, the court enters an order granting the Department certain authority and responsibility over the child. *See* RCW 13.34.069. The Department can enroll the child in school, authorize medications, and grant permission for extracurricular activities. RCW 13.34.069(4). The Department has the authority to consent to "emergency and routine medical services" for a child in its custody. WAC 110-148-1560.

In contrast, a court-ordered relative placement has only the authority granted to them through the dependency court's order and otherwise recognized in statute. A dependency court that orders a dependent child removed from a parent can place the child only in the home of: 1) a licensed foster parent; 2) a relative; or 3) another suitable person approved by the court. RCW 13.34.130(1)(b)(ii). The Department must monitor placements of children in out-of-home care. RCW 74.13.031(6). When a child is placed in the Department's custody, it is the Department's duty—and not that of the caregiver—to provide for the child's "routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed." RCW 74.13.031(7). Further, a caregiver who has placement of a dependent child does so only as long as the dependency court orders that placement to remain, and in the meantime the parents work to achieve safe return home. *See generally* RCW 13.34.020, RCW 13.34.130 (authorizing out-of-



home placement only when in-home placement cannot be ordered). Thus, out-of-home placement of a dependent child is necessarily intended to be temporary, while the child's parents attempt to achieve safe reunification.

Here, the Department, under the legal authority granted in the shelter care hearing order, had custody and control of D.M. R.T.L.'s legal authority to act in a parental role for D.M. was legally limited to any authority the Department temporarily delegated to her, or that the dependency court ordered. R.T.L. could not act as a parent given the many decisions that she could not make on her own and that required Departmental approval. R.T.L. did not undertake the full responsibilities of a parent, and could not have done so given her limited legal authority regarding D.M.

R.T.L. also did not undertake permanent parental responsibilities. D.M. remained in the care and custody of the Department, and D.M.'s placement could change at some point in the future if R.T.L. did not comply with the court's order. Also,

R.T.L. could have, at any time, chosen to no longer act as caregiver for D.M. While R.T.L. certainly served an important role in providing stability to her granddaughter, the parent-like relationship that she had with D.M. arising from placement of the child with her in the dependency case was temporary, not permanent. *See L.J.M.*, 15 Wn. App. 2d at 599.

#### **F. CONCLUSION**

The Court of Appeals correctly concluded that R.T.L., as a relative placement who provided care for a child during a dependency, could not undertake the full and permanent responsibilities of a parent of the child, and thus could not establish a prima facie case for de facto parentage. R.T.L. fails to meet any criteria for review under RAP 13.4(b). This Court should deny R.T.L.'s motion for discretionary review.

This document contains 4,934 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of  
December, 2023.



---

JARED T. CORDTS  
Assistant Attorney General  
WSBA# 32130  
Office Code: OC638509  
1116 West Riverside Ave.,  
Suite 100  
Spokane, WA 99201  
509-456-3123

**CERTIFICATE OF SERVICE**

I certify that I served all parties, or their counsel of record, a true and correct copy of the Department of Children, Youth and Families’ Answer of Respondent Department of Children, Youth, and Families to Petition for Review to the following addresses:

Craig A. Mason  
Mason Law  
1707 West Broadway  
Spokane, WA 99201  
masonlawcraig@gmail.com

- US Mail
- Legal Messenger
- Hand delivered
- E-mail:
- Service completed via the Appellate Portal

Jennifer Dobson  
Nielsen Koch & Grannis, PLLC  
2200 Sixth Avenue, Suite 1250  
Seattle, WA 98121  
dobsonj@nwattorney.net

DATED this 14<sup>th</sup> day of December, 2023, at Spokane, Washington.



Deanna Marengo  
Legal Assistant

**SPOKANE DIVISION - SHS / AGO**

**December 14, 2023 - 4:14 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,511-4  
**Appellate Court Case Title:** R.T.L. v. K.M.  
**Superior Court Case Number:** 22-3-00495-7

**The following documents have been uploaded:**

- 1025114\_Answer\_Reply\_20231214161013SC661446\_8473.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Resp\_Marq\_Final.pdf*

**A copy of the uploaded files will be sent to:**

- Sloanej@nwattorney.net
- dobsonj@nwattorney.net
- masonlawcraig@gmail.com
- masonlawlori@gmail.com
- nielsene@nwattorney.net

**Comments:**

---

Sender Name: Deanna Marengo - Email: deanna.marengo@atg.wa.gov

**Filing on Behalf of:** Jared Thomas Cordts - Email: jared.cordts@atg.wa.gov (Alternate Email: )

Address:  
1116 W. Riverside, Ste. 100  
Spokane, WA, 99201-1106  
Phone: (509) 456-3123

**Note: The Filing Id is 20231214161013SC661446**