NO. 46126-9-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

In re the Dependency of:

L.C.B.-S. and L.P.B.-S.,

Minor Children.

ON APPEAL FROM THE
SUPERIOR COURT OF CLARK COUNTY

The Honorable Carin Schienberg, Court Commissioner

BRIEF OF RESPONDENT(C.A.S.)

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A. STATEMENT OF THE CASE

C.A.S., mother of L.C.B.-S. and L.P.B.-S., accepts the statement of facts set forth in the appellant's brief unless otherwise noted.

B. ARGUMENT

R.B.'s appeal pertains to the trial court's Order Denying Motions For Establishing *De Facto* Parentage, Permissive Intervention, and Waiver of Exclusive Jurisdiction entered on February 11, 2014. (CP 170).

The Order contained the court's findings and conclusions and dismissed R.B. from the case.

C.A.S. asks this court to affirm the ruling of the trial court denying R.B.'s motion to establish *de facto* parentage, motion for permissive intervention, and for waiver of exclusive original jurisdiction.

1. The trial court did not abuse its discretion when it dismissed R.B. from the case and declined to conduct an evidentiary hearing on his claim of *de facto* parentage

In order to establish *de facto* parentage, it is required for the petitioner to show that (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and 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. *In re Parentage of L.B.*, 155 Wn.2d 679, 708, 122 P.3d 161 (2005).

De facto parent status 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.*, 2004 ME 43, 845 A.2d 1146, 1152). Because the *de facto* parent stands in legal parity with an otherwise legal parent, whether biological, adoptive or other, it is important that the status as a parent be available only when all four factors set forth in *L.B.* and its progeny are met.

A full evidentiary hearing is not required in cases in which the petitioner cannot meet the threshold criteria set forth in *L.B.*

Here, R.B. petitioned the dependency court to be established as *de facto* parent to L.C.B.-S. and L.P.B.-S. The facts in this case, however, do not pass the threshold test set forth in *L.B.*

L.B. involved two women in an intimate relationship who had a child by artificial insemination. After the birth of the child, the women lived together as a family unit, and both shared the duties. When the child was six years old, the parties separated, and the biological mother ended the

relationship between her former partner and the child. *L.B.*, 155 Wn.2d at 683–84.

The factual scenario presented in *L.B.* is far different the one in the case at bar. R.B. sometimes took the children to doctor's appointments during the six to eight month period that they lived together. Finding of Fact 1 and 2. CP 170. Performing transportation and providing some degree of financial support does not denote consent by the mother that R.B. assumed a parent-like relationship or elevate R.B. to a parenting role.

R.B. did not live with the mother and the children as a family unit for a significant length of time. His presence in the home during that limited time frame cannot establish a parent child relationship. R.B. did not make a *prima facie* showing of *de facto* parentage. The court did not abuse its discretion by not holding an evidentiary hearing and dismissing R.B. from the dependency case.

2. The trial court did not abuse its discretion in denying R.B.'s motion for permissive intervention and concurrent jurisdiction

R.B. argues that the trial court erred in denying his motion for permissive intervention under CR 24(b)(2). CR 24(b)(2) provides that permissive intervention is available when "an applicant's claim or defense

and the main action have a question of law or fact in common."

A trial court's decision on permissive intervention in a dependency is within the court's discretion and will not be disturbed absent an abuse of that discretion. *In re J.H.,* 117 Wn.2d at 460, 815 P.2d 1380 (1991).

Dependency proceedings have a goal of reunification of families and protecting the best interests of the children. *In re Moseley,* 34 Wn.App. 179, 186–87, 660 P.2d 315 (1983). The focus at a dependency hearing is not whether a better 'parent' may exist, but whether the natural parent has sufficiently corrected identified deficiencies to allow reunification. Washington courts have made it clear that intervention in a dependency action by anyone who is not a child's natural parent will "rarely be appropriate." *In re Coverdell,* 39 Wn.App. 887, 891, 696 P.2d 1241 (1984). "Intervention in dependency cases prior to termination of parental rights is rarely appropriate" because the "focus ordinarily should be on the ability of the natural parents to care for the child, not on a comparison between the natural parents and the foster parents" *In re Dependency of J.S.,* 111 Wn.App. 796, 808, 46 P.3d 273(2002) (citing *Coverdell,* 39 Wn.App. at 890–91).

In this case, R.B.'s interests are in conflict with the mother's interests. A third party's adversarial participation in a dependency will have the

effect of shifting the focus of the proceeding from the ability of the natural parent to care for the child and to determine if the parent has corrected her parental deficiencies, to a comparison of the natural parent to the intervening party. Here, as in *In re Welfare of Coverdell*, intervention was improper because the R.B.'s interests are in direct conflict with the rights and interests of the mother.

Similarly, the court did not abuse its discretion by denying R.B.'s motion for concurrent jurisdiction. Here, the children's best interests were adequately represented by the Department and the CASA in the dependency court.

C. CONCLUSION

The trial court's denial of R.B.'s motions should be affirmed.

DATED: October 6, 2014.

Respectfully submitted,
THE TILLER LAW FIRM

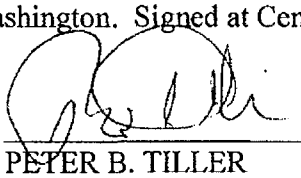
PETER B. TILLER-WSBA 20835
Of Attorneys for Respondent Mother

CERTIFICATE OF SERVICE

The undersigned certifies that on October 6, 2014, that this Brief of Respondent was filed by JIS to the Clerk of the Court, Court of Appeals,

Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and copies were mailed by U.S. mail, postage prepaid to Matthew Etter, Assistant Attorney General, 1220 Main Street, Ste. 510, Vancouver, WA 98660, Jodi Backlund, Attorney at Law, PO Box 6490, Olympia, WA 98507, Eugene Graff, Attorney at Law, 3214 NE 42nd St., Ste. C, Vancouver, WA 98663, and C.A.S., appellant (address is unknown at this time) true and correct copies of this Brief of Respondent.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on October 6, 2014.



PETER B. TILLER

TILLER LAW OFFICE

October 06, 2014 - 4:30 PM

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