NO. 91286-6

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF L.C.B-S. and L.P.B-S.

R.B.,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

MATTHEW J. ETTER
Assistant Attorney General
WSBA No. 45506
1220 Main St., Suite 510
Vancouver, WA 98660
(360) 759-2100

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

L.C.B.-S and L.P.B.-S. are three-year-old twins who were removed from their mother's care by the Department of Social and Health Services based upon risk to their physical, psychological, and emotional well-being. R.B., the mother's former boyfriend, argues that this Court should accept review, claiming that individuals asserting de facto parentage of children involved in dependency actions under RCW 13.34 lack a way to have their interests adjudicated. He is incorrect and has failed to meet the standards governing this Court's acceptance of review under RAP 13.4.

The court of appeals decision does not conflict with this Court's decision in *In re Custody of A.F.J.*, 179 Wn.2d 179, 314 P.3d 373 (2013). R.B. conceded below that he was not requesting the court to find he is a de facto parent within the dependency case. A remedy is available to R.B. and other individuals seeking de facto parentage of children involved in dependencies through a motion for the juvenile court to waive exclusive jurisdiction pursuant to RCW 13.34.155. R.B. made such a motion and the superior court's denial was not an abuse of discretion. The court did not deny R.B.'s motion because the children were subject to dependency proceedings. Rather, R.B. failed to make a prima facie showing of the factors required to establish de facto parentage set forth by this court in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005).

R.B.'s petition for review does not raise an issue of substantial public interest. The lower court denied his motion to waive exclusive jurisdiction based upon facts specific to his relationship with the twins and their mother, not because the children were involved in a dependency. "[T]he de facto parentage doctrine is an equitable doctrine that affords trial courts flexibility to examine each unique case on a fact-specific basis." *A.F.J.*, 179 Wn.2d at 188. (internal citations omitted). Nothing in the court of appeals decision precludes individuals seeking to establish de facto parentage from requesting that a trial court waive exclusive jurisdiction under RCW 13.34.155. Each motion must be decided on the specific facts and circumstances of the case, and whether to grant the motions are within the sound discretion of the trial court. R.B.'s petition for review should be denied.

II. ISSUES PRESENTED

R.B. does not raise issues that meet the standards set forth in RAP 13.4(b). If review were granted, the issue would be:

1. Where R.B. failed to establish a prima facie case of de facto parentage, did the juvenile court err in denying his motion to waive exclusive jurisdiction so that he could file and proceed upon a petition for de facto parentage in superior court?

III. STATEMENT OF FACTS

On June 24, 2013, the Vancouver Police Department placed sixteen-month old twins, L.C.B.-S. and L.P.B.-S., into protective custody. CP at 2-3. The twins' mother, C.S., was arrested that day due to a felony warrant. CP at 3. At the time of her arrest, the mother and the twins lived with the mother's boyfriend, T.S. CP at 2-3. The twins were placed in foster care. CP at 17.

The Department of Social and Health Services (Department) filed dependency petitions regarding L.C.B.-S. and L.P.B.-S on June 26, 2013, alleging that the twins were dependent pursuant to RCW 13.34.030(6)(b) and (c). CP at 1. The mother reported to the Department that the twins' father was a man named M.S., who had been deported to Mexico. CP at 2. No father was listed on the twins' birth certificates, so the Department listed both M.S. and John Doe as alleged fathers on the dependency petitions. CP at 1.

In late July 2013, R.B., the appellant in this matter, visited the Department and stated that he believed he was the father of L.C.B.-S and L.P.B.-S. CP at 37. The twins' hyphenated last names include R.B.'s last name. CP at 36. Based upon R.B.'s representations, the Department amended the dependency petitions and added R.B. as an alleged father.

CP at 36. The Department then began to provide R.B. supervised visitation with the twins. CP at 129.

On August 13, 2013, the court found the twins dependent as to John Doe by default. CP at 50-57. On August 20, 2013, the mother agreed to dependency as to each child, stipulating that the twins were dependent under RCW 13.34.030(6)(c). CP at 63-71. The court entered default dependency orders as to alleged father, M.S., on September 24, 2013. CP at 80-87.

R.B. pursued DNA testing through the Office of Child Support Enforcement. After several months, paternity testing determined that R.B. was not the twins' biological father. CP at 158-159. The Department moved to dismiss him as a party from the dependency matter. CP at 55-59. R.B. opposed the motion, arguing that he was a de facto parent to the girls, and asked that the dismissal hearing be set out so that he could fully brief the matter. CP at 128-129.

On December 9, 2013, R.B. filed a motion requesting the juvenile court establish him as a de facto parent to the twins, waive its exclusive jurisdiction to allow him to further the petition in family court, or allow him to intervene in the dependency pursuant to CR 24(b). CP at 136.

In his court filings, R.B. described the extent of his relationship with the mother and her twins. CP at 128-129, 130-133. R.B. reported

that he and the mother had a romantic relationship, during which she became pregnant. CP at 130. R.B. and the mother lived apart during her pregnancy. CP at 130. R.B. alleged that shortly after the mother gave birth, they moved in together, and he lived with the mother and the twins for seven to eight months. CP at 128, 131. R.B. alleged that during these months he provided financial support for the twins and fed them, changed them, bathed them, and put them to sleep. CP at 128, 131. He also alleged that he attended some of the twins' medical and WIC appointments. CP at 128, 131. R.B. alleged that at times he cared for the twins by himself. CP at 128, 131. He stated that the mother later moved out with the twins. CP at 131.

The Department renewed its motion to dismiss R.B. from the dependency matters because he did not meet the definition of a "parent" under RCW 13.04.011. The Department also argued that R.B. should not be considered a de facto parent by the dependency court and that R.B.'s motion for permissive intervention should be denied.

The mother argued against permissive intervention and opposed a waiver of exclusive jurisdiction for R.B. CP at 147-148. The mother also opposed R.B.'s claim of de facto parentage and argued that R.B.'s brief relationship with the twins failed to meet the strict requirements of Washington's common law de facto parent doctrine. CP at 142.

In a sworn declaration, the mother described R.B.'s previous relationship with the twins. She declared that R.B. did not sign the twins' birth certificates or a paternity acknowledgement, but that at the time they did believe he was the father. CP at 150. She acknowledged that she, R.B., and the twins did live together, but she described the living arrangement as "on and off for about six months." CP at 151. The mother declared that R.B. occasionally provided her and the twins with some support but that he exaggerated the extent. CP at 150. She also declared that R.B. never fed, changed, or bathed the twins by himself as he had alleged. CP at 151. The mother declared that sometimes R.B. transported her and the twins to appointments but that she always attended these appointments with the twins by herself. CP at 151.

The mother described R.B. as very controlling and stated that on several occasions he kicked her and the twins out of the home. CP at 151. She also stated that R.B. had a criminal drug record in Mexico that he had not disclosed. CP at 151. She reported that R.B. never protested or tried to stop her from leaving with the twins; she further stated that R.B. always knew where they were after she left him. CP at 151. Finally, the mother opposed R.B. visiting with the twins. CP at 151.

On January 14, 2014, the juvenile court held a hearing, denied all three of R.B.'s motions, and dismissed him from the dependency matter. CP at 153, 160-161, 172.

The commissioner entered an order denying R.B.'s motions on February 11, 2014. CP at 170-172. The commissioner's findings incorporated both R.B. and the mother's descriptions of R.B.'s relationship with the twins. CP at 170-172. The commissioner found that R.B. lived with the mother and the twins for six to eight months; that during this time he provided some financial support and drove the mother and the twins to doctor's appointments; and that R.B. contended he was still actively involved with the twins before the dependency action was filed. CP at 170-171.

In denying R.B.'s de facto parent claim, the commissioner noted that the conditions to establish de facto parentage in Washington are very fact specific and narrowly construed. CP at 171. The commissioner found that "[t]he facts in this case do not rise to the threshold level required by the *L.B.* line of cases."[1] CP at 171. The court further found that R.B. had no grounds to intervene in the matter, and held that R.B. "is not the biological parent, and the court finds insufficient cause to grant his request for an exclusive jurisdiction waiver." CP at 171.

[1] *L.B.*, 155 Wn.2d 679.

R.B. moved to revise the commissioner's ruling. CP at 173. A hearing was held before a superior court judge on February 28, 2014. CP at 179. During the hearing R.B. admitted that the juvenile court commissioner's decision not to extend the de facto parentage doctrine to the dependency proceedings was a reasonable interpretation of the law. RP at 3-4.

The superior court judge entered a written order on March 11, 2014. CP at 182. The court denied R.B.'s motion to waive exclusive jurisdiction and his motion to intervene. CP at 184. The order stated that "Mr. [B.] is not requesting the Court to find he is a de facto parent within the dependency case at this time." CP at 182. The court further found that R.B.'s previous actions with the twins were not a sufficient basis to establish de facto parentage. CP at 183. R.B. appealed only the order on revision. The court of appeals affirmed the superior court's order. Appendix A. R.B. then moved to modify the Commissioner's ruling, and the motion to modify was denied. Appendix B. R.B. now seeks review.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Standard of Review

Pursuant to RAP 13.4(b), a petition for review of a court of appeals decision will be accepted by the Supreme Court only:

> (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 another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or 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.B. fails to establish any of these criteria in his petition for review. R.B. cites to subparagraphs (1) and (4) of RAP 13.4(b) as bases for this Court to accept review. Petition for Review (Pet) 6, 9, 10. R.B. fails to identify a conflict between the court of appeals decision and *A.F.J.*, 179 Wn.2d 179 or any other Supreme Court decision as required by RAP 13.4(b)(1). R.B., and other individuals seeking to establish de facto parentage status of children subject dependency proceedings under RCW 13.34, may still seek a waiver of exclusive jurisdiction under RCW 13.34.155. Whether such waivers are granted is in the sound discretion of the juvenile court and does not raise an issue of substantial public interest. If an individual is unable to establish even a prima facie

showing of de facto parentage, it is not an abuse of discretion for a trial court to deny such motions and maintain exclusive jurisdiction over dependent children.

B. The Court Of Appeals Decision Does Not Conflict With This Court's Decision In *In Re Custody of A.F.J.*

R.B. argues that the court of appeals decision "conflicts with *A.F.J.*, because it leaves a de facto parent no way to assert a right recognized by the *A.F.J.* court" *See* Pet at 9-10. R.B. is incorrect. First, he has failed to identify any "right" recognized by *A.F.J.*, a case involving the ability of foster parents to petition for de facto parentage. *A.F.J.*, 179 Wn.2d at 185. Second, *A.F.J.* does not create a new test for persons seeking to assert de facto parentage, it affirms the specific factors set forth by this Court in *L.B.*, 155 Wn.2d 679. Nothing in the court of appeals decision conflicts with the *L.B.* test, rather the court appropriately determined that the trial court did not abuse its discretion in denying R.B.'s motion for waiver of exclusive jurisdiction under RCW 13.34.155.

1. The Court of Appeals Decision Correctly Applied The Same Common Law De Facto Parent Test To R.B.'s Claim That This Court Used In A.F.J.

A.F.J. involved a biological mother and her former same sex partner who served as a parental figure and foster parent to the mother's child. *A.F.J.*, 179 Wn.2d at 182-84. The primary question before the

Court in *A.F.J.* was whether a de facto parent status could be established based partially on facts that arose during a foster care placement. *Id.* At 182. In both *A.F.J.* and the court of appeals decision in this matter, specific claims for de facto parentage were evaluated through a doctrine first recognized in 2005 by this Court in *L.B.*, 155 Wn.2d 679. The de facto parent doctrine is an equitable remedy available through common law; to establish de facto parentage, an individual alleging such a status must prove:

> 1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the prospective parent and the child lived together in the same household; (3) the prospective parent assumed obligations of parenthood without expectation of financial compensation; and (4) the prospective parent 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. In addition, recognition of a de facto parent is "limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life." *Id.*

In *L.B.* this Court noted that attaining de facto parent status "should be no easy task," and stressed that it is "a status that can be achieved only through the active encouragement of the biological or

adoptive parent by affirmatively establishing a family unit with the de facto parent and child or children that accompany the family." *Id.* at 712. Furthermore, as an equitable doctrine, the de facto parent doctrine affords trial courts flexibility to examine each case on a fact-specific basis. *See A.F.J.*, 179 Wn.2d at 188.

In *A.F.J.*, this Court reviewed the elements set out by *L.B.* and determined that the mother's former partner met the test, despite her status as a foster parent to the child for a period of time. *A.F.J.*, 179 Wn.2d at 190. In *A.F.J.* the biological mother and her same-sex partner agreed to raise the child together, agreed to give the child both of their names, and held each other out as co-parents. *Id.* at 188. The biological mother also told the Department that her partner was her "co-parent," "partner," and "next of kin." *Id.* at 189. At the time of trial, the child had lived with the mother's partner for three and a half years and the child considered the partner's home to be his home. *Id.*

R.B.'s case is strikingly different from that made by the de facto parent in *A.F.J.* R.B. is an ex-boyfriend of the twins' mother who lived with her and the twins for, at most, only eight months and had no contact with them after they moved out. R.B. did not sign the twins' birth certificates or acknowledge paternity. When the mother and the twins moved away from R.B., he left them to fend for themselves and did not

see them until months later when the girls were in the Department's care. The mother did not report R.B. as an alleged father to the Department, and she denied fostering a parent-like relationship between R.B. and the twins. R.B. never served as a foster parent to the twins, and his overall involvement with the twins amounted to him "sometimes" caring for them by himself during the brief period of time he lived with them and their mother. The court of appeals correctly concluded that "[t]he "facts" set forth in R.B.'s memorandum of law, even taken in his favor, fail to establish that he undertook a permanent, unequivocal, and committed role in the twins' lives." Appendix A at 9.

The ruling of the court of appeals does not conflict with this Court's decision in *A.F.J.* The findings of de facto parentage by the separate courts are different because the factual scenarios of each matter were different. While the court of appeals notes in its decision that "it is unclear what purpose would be served in the dependency proceedings by allowing R.B. to establish himself as the twins' de facto parent," the court still applied R.B.'s factual allegations to the *L.B.* test adopted by this Court and applied in *A.F.J.* Appendix A at 9-10.

Furthermore, the court of appeals applied the proper law correctly. It did not apply some different or new test for de facto parentage, thus causing confusion in the law. Nor did the court of appeals declare, as R.B.

alleges, that an individual may never assert de facto parentage over a dependent child. Rather, the court of appeals held that, even if de facto parentage is recognized in a dependency matter, R.B.'s specific case fails to rise to the high level required by this Court in *L.B.* and therefore the lower court did not err in denying his claim. The court's decision does not conflict with *A.F.J.* in any way, and R.B. fails to provide a basis to justify review pursuant to RAP 13.4(b)(1).

C. The Petition Does Not Present An Issue Of Substantial Public Interest Warranting Review By This Court

R.B. alleges that his case presents an issue of substantial public interest warranting review by this Court, but fails to provide explanation, briefing, or argument to support his assertion. This Court should therefore consider the argument waived. RAP 13.4(c)(7); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Even if R.B.'s 13.4(b)(4) argument is considered, the denial of R.B.'s motion to waive exclusive jurisdiction was based upon facts specific to his relationship with the twins and their mother. Thus, R.B.'s petition fails to raise an issue that affects a broad public interest and review should be denied.

1. During Oral Argument Before The Superior Court, R.B. Conceded That The Juvenile Court's Decision Not To Extend The De Facto Parentage Doctrine To This Dependency Proceeding Was A Reasonable Interpretation Of The Law

As noted by the court of appeals in its decision, R.B. appealed the superior court's Order on Motion for Revision, and therefore the court of appeals reviewed the superior court's ruling, not the commissioner's. Appendix A at 7. While arguing before the superior court, R.B.'s counsel conceded that the juvenile court's denial to extend the de facto parent doctrine to this dependency matter was a reasonable interpretation of the law. RP at 3-4.

In addition, the superior court order, the order on appeal in this case, states that R.B. "is not requesting the Court to find he is a de facto parent within the dependency case at this time." CP at 182. R.B. should not be allowed to now argue the court's ruling was improper when he himself conceded the matter before the superior court. RAP 2.5(a); *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011); *Zehle v. Peterson*, 147 Wash. 475, 476, 266 P. 684 (1928).

Furthermore, while the court of appeals noted R.B.'s concession and thus waiver of argument, it still gave R.B. the benefit of the doubt and reviewed his claim. The court of appeals applied the proper law to R.B.'s specific circumstances and correctly determined that he had not shown any

error by the lower courts. R.B. has failed to demonstrate an issue of substantial public interest that provides a basis for review under 13.4(b)(4).

2. R.B. Was Clearly Provided A Forum For His Claims, And The Court of Appeals Decision Does Not Preclude Other Individuals From Bringing De Facto Parentage Claims Of Dependent Children

While R.B. alleges that he was not provided a forum for his action, the record shows that the juvenile and superior courts both considered and heard his claims through the statutory remedy of a motion for waiver of exclusive jurisdiction under RCW 13.34.155. This method remains available to other individuals who seek to establish de facto parentage over dependent children. R.B.'s petition does not involve a substantial public interest, and there is no need for this Court to review this matter.

The court of appeals properly upheld the denial of R.B.'s motion for a waiver of exclusive jurisdiction. R.B. conceded before the superior court that he was not asking it to find him a de facto parent in the dependency proceeding, and given R.B.'s inability to present even a prima facie case of de facto parentage, the court's denial of R.B.'s motion to waive exclusive jurisdiction was a proper use of its discretion. R.B. confuses not being provided a forum, with not having an adequate case to

present in such a forum. His motion was heard, and it was denied because of his weak case, not because the children at issue were dependent.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (citations omitted). Stated another way, an abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997); *In re Guardianship of Johnson*, 112 Wn. App. 384, 388, 48 P.3d 1029 (2002). The court of appeals decision properly determined that the lower court did not abuse its discretion in denying R.B.'s motion to waive exclusive jurisdiction given the high burden required by the de facto parentage law. In addition, whether a trial court abused its discretion in making a decision based on specific facts is not an issue of substantial public interest.

R.B.'s petition further fails to raise an issue of substantial public interest because the court of appeals decision does not restrict a petitioner with a stronger case for de facto parentage of a dependent child from pursuing such a motion; nor does the decision restrict a juvenile court from waiving its exclusive jurisdiction for such a matter to be heard in family law court. Rather, the court of appeals decision upholds this

Court's position that such motions must be decided on the specific circumstances of the case, and the decision to grant the motions are within the sound discretion of the trial court. The denial of R.B.'s specific motion does not preclude other individuals from pursuing de facto parentage claims of dependent children, and as such, R.B. fails to raise an issue of substantial public interest.

In *A.F.J.*, this Court was clear that the de facto parentage doctrine is an equitable doctrine that affords trial court's flexibility to examine each unique case on a fact specific basis. *See A.F.J.*, 179 Wn.2d at 188. This Court also declared in *A.F.J.* that, "[w]e leave it in the able hands of trial judges to determine whether, in each case, the elements have been met without imposing ratification limitations on the scope of the judge's review." *Id.*

Whether a trial court abused its discretion in making a decision based on particular facts does not present an issue of substantial public interest. R.B. was provided a forum, his specific motions were considered, and the lower court did not abuse its discretion in properly denying his motions. Furthermore, the court of appeals decision does not prevent future petitioners from pursuing a de facto parentage claim of a dependent child. The decision rightfully leaves such discretion with the

trial courts. There are no issues involving a substantial public interest in this matter, and review by this Court should be denied.

V. CONCLUSION

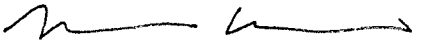
R.B. has failed to meet the elements of either RAP 13.4(b)(1) or (b)(4). R.B.'s petition for review fails to demonstrate how the court of appeals decision conflicts with this Court's ruling in *A.F.J. A.F.J.*, 179 Wn.2d 179. R.B. conceded that he was not requesting for the lower court to find he is a de facto parent within the dependency case, and the denial of his motion to waive exclusive jurisdiction was not an abuse of discretion.

In addition, R.B. fails to identify any matters of substantial public interest raised in his petition for review. R.B.'s motions were denied based upon facts specific to his relationship with the twins, not because the children were dependent. The court of appeals decision does not preclude other individuals from seeking de facto parentage over a

dependent child. The petition does not raise an issue of substantial public interest, and review should be denied.

RESPECTFULLY SUBMITTED this 30th day of March, 2015.

ROBERT W. FERGUSON
Attorney General



MATTHEW J. ETTER
Assistant Attorney General
WSBA No. 45506

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE DEPENDENCY OF:	Nos. 46126-9-II and 46133-1-II (consolidated)
L.C.B.-S. and L.P.B.-S., Minor children.	RULING GRANTING COURT'S MOTION ON THE MERITS TO AFFIRM

R.B. appeals the superior court's March 11, 2014 Order on Motion for Revision, which denied his motions to waive exclusive jurisdiction and to intervene in the dependency proceedings regarding L.C.B.-S. and L.P.B.-S. A clerk of this court initially set the matter for accelerated review under RAP 18.13A. Because the superior court's order is not a juvenile dependency order, an order terminating parental rights or a dependency guardianship order, accelerated review under RAP 18.13A is not appropriate. However, the parties have briefed and argued the appeal. Therefore, this court considers R.B.'s appeal as a motion on the merits under RAP 18.14. Concluding that R.B.'s appeal is clearly without merit, this court grants the motion on the merits and affirms the superior court's order.

FACTS

C.S. is the mother of L.C.B.-S. and L.P.B.-S., twin girls born in 2012. On June 26, 2013, the Department of Social and Health Services filed dependency petitions as to the

twins after C.S. was arrested on an outstanding felony warrant related to a methamphetamine charge. The petition alleged that C.S. lived with a man named T.S. in a known drug house and was neglecting to care for the twins. It also alleged that M.S. and John Doe were the alleged fathers of the twins.

On August 6, 2013, the Department filed an amended dependency petition, naming R.B. as the third alleged father of the twins. The petition alleged that R.B. had come into the Department's office after learning the twins were placed into protective custody and informed the Department that he believed he was their father. As such, the Department allowed the twins to have visits with R.B.

C.S. entered into an agreed dependency order as to the twins on August 20, 2013. Default orders of dependency were entered as to John Doe on August 13, 2013, and M.S. on September 24, 2013.

On November 12, 2013, the Department also learned that R.B. was not the biological father of the twins. It then moved to dismiss R.B. as a party in the dependency proceedings.

On November 26, 2013, R.B.'s attorney filed a declaration to show that R.B. might be able to establish himself as a *de facto* parent of the twins. In the declaration, she asserted that when the case was filed, R.B. believed he was the biological father of the twins and had reported:

> [H]e lived with the mother and the girls for seven to eight months total, with some absences by the mother. He reports he took the girls to doctors' appointment and to WIC appointments and other appointments. He reports that he fed and bathed the girls and put them to sleep. He celebrated their birthday. He reports he cared for the girls by himself for up to one week. He provided direct financial support.

Clerk's Papers (CP) at 131.

R.B.'s attorney also stated that before the dependency action began, R.B. had attempted to establish paternity and regularly visited with the twins. She stated that "[b]y all reports, [R.B.] has a bond with the girls." CP at 132. Based on these facts, she believed that R.B. might meet the criteria as a *de facto* or psychological parent of the twins, and she asked that the Department's motion to dismiss be continued to fully brief the issue.

On December 13, 2013, R.B. moved the juvenile court

> to recognize his status as a *de facto* parent or to allow him to intervene [in the dependency proceedings] pursuant to CR 24(b), to allow testimony in support of this motion, and to waive exclusive jurisdiction of the juvenile court to allow [him] to further th[e] petition in family court.

CP at 139. To support this motion, R.B. filed a memorandum of law that included a "Summary of Facts" section. CP at 133-34. In this section, R.B. stated the following: R.B. dated C.S. for more than a year when she became pregnant; C.S. told R.B. that he was the twins' father and included R.B.'s last name in their hyphenated names; after the twins were born, they and C.S. moved in with R.B. and lived with him for around eight months; R.B. provided financial support for both C.S. and the twins; R.B. provided child care at night; he fed the children, gave them bottles, changed their diapers, put them to bed, and sang to them; he attended some medical and WIC appointments and sometimes cared for the twins completely by himself.

R.B. argued that the doctrine of *de facto* parentage had been significantly expanded over the last 10 years and should be recognized by the juvenile court in the dependency proceedings based on his relationship with the twins. He also requested

that, if the juvenile court did not recognize *de facto* parentage within the dependency statute, the court should allow him to intervene in the dependency action under CR 24(b).

C.S. filed a Memorandum of Law Re: *De Facto* Parentage, arguing that R.B.'s brief relationship with the twins did not meet the strict requirements of Washington's common law *de facto* parent doctrine. C.S. also asserted that she did not consent to or foster a "parent-like" relationship between R.B. and the twins. CP at 149. As such, she asked the juvenile court to deny R.B.'s motion to establish himself as a *de facto* parent or intervene in the dependency proceedings. In support of her argument, C.S. filed a sworn declaration that averred: she and R.B. thought that he was the father of the children but R.B. did not sign the twins' birth certificates or acknowledge paternity; she and R.B. lived together on and off for about six months after the twins were born; he exaggerated the extent to which he provided support to her and the twins; he sometimes provided diapers and wipes if needed; he did not change the twins' diapers and never fed or bathed them by himself; he sometimes drove her and the twins to medical, WIC, and other appointments but did not attend the appointments; he kicked her and the twins out of his home on several occasions when they lived together; and after she moved out with the twins, he did not protest or try to stop her or provide any support, financial or otherwise.

The Department also opposed R.B.'s motion, arguing that he did not meet the definition of "parent" as used in chapter 13.34 RCW and should therefore be dismissed from the dependency proceedings. CP at 158. It also argued that a dependency proceeding was not the correct venue to establish *de facto* parentage, as such a claim had to be proven by clear, cogent, and convincing evidence and would likely require a full factual hearing given the disputed facts. The Department asserted that if R.B. wished to

be recognized as a *de facto* parent, he had to file a separate action in family court. And it argued that the juvenile court should not allow R.B. to intervene in the dependency proceedings under CR 24(b) because he provided no legal basis for such intervention.

On January 21, 2014, a juvenile court commissioner heard argument from R.B., C.S., the Department, and the court-appointed special advocate (CASA). The commissioner entered a written order on February 11, 2014, finding that R.B. was not the biological father of the twins and refusing to use the dependency proceedings to establish *de facto* parentage. The commissioner also found that the facts were insufficient to justify permissive intervention or waive exclusive jurisdiction. As such, the commissioner denied R.B.'s motions to establish *de facto* parentage, to intervene, and to waive exclusive jurisdiction.

On February 21, 2014, R.B. moved the superior court for revision of the commissioner's order under RCW 2.24.050. He argued that: (1) the juvenile court's findings were not adequately supported by the evidence because the court refused to allow testimony even though the facts were contested; (2) he established a common interest and should have been allowed to intervene in the dependency action; and (3) the juvenile court should have waived exclusive jurisdiction so he could attempt to establish *de facto* parentage in family court, as such waiver was in the twins' best interests and would have had minimal likely effect on C.S.'s interest.

On February 28, 2014, the parties appeared before a superior court judge on R.B.'s motion for revision. During the hearing, R.B. admitted that the juvenile court commissioner's decision not to extend the *de facto* parentage doctrine to the dependency proceedings was a reasonable interpretation of the law. But he asked the superior court

to review de novo his motion to waive exclusive jurisdiction so that he could bring a *de facto* parenting action in family court. And he asked that his motion to intervene in the dependency proceedings be granted if he were able to establish himself as a *de facto* parent.

On March 7, 2014, the superior court made an oral ruling that R.B.'s involvement in the twins' lives for eight months after they were born was not sufficient enough time to establish *de facto* parentage. It found that R.B. did not have a legal interest in the children and should not be permitted to intervene in the dependency proceedings. Finally, the superior court ruled that it was not allowing concurrent jurisdiction, so that R.B. could file a *de facto* parenting action in family court action, because R.B. had left the twins without support children after C.S. moved out and did not re-enter the twins' lives for a period of time.

On March 11, 2014, the superior court entered a written Order on Motion for Revision. In this order, the court indicated that it had considered R.B.'s motions to intervene and waive exclusive jurisdiction and that R.B. had not requested the court to find that he was a *de facto* parent within the dependency proceedings. In its findings of fact and conclusions of the law, the superior court found that R.B. was not the biological father of the twins and that, although he made efforts to help C.S. and the twins, his actions were not sufficient to establish *de facto* parentage. The court also found that R.B. did not have "legal interests or issues of fact with the parties in the dependency case." CP at 194. As such, it denied R.B.'s motion to waive exclusive jurisdiction and his motion to intervene. On April 9, 2014, R.B. filed a Notice of Appeal of the superior court's March 11, 2014 Order on Motion for Revision.

ANALYSIS

R.B. argues that the juvenile court erred by: (1) refusing to hold an evidentiary hearing even though he presented prima facie evidence that he qualified as a *de facto* parent; (2) failing to grant concurrent jurisdiction to permit the issue to be addressed in family court; and (3) denying his motion to intervene in the dependency action. He asserts that the case must be remanded for an evidentiary hearing in either juvenile court or family court or to permit him to intervene in the dependency action.

Under RCW 2.24.050, all commissioner rulings are subject to revision by the superior court. On a motion for revision, the superior court reviews the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner. *In re Marriage of Moody*, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). Therefore, this court reviews the superior court's ruling, not the commissioner's. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004); *State v. Hoffman*, 115 Wn. App. 91, 101, 60 P.3d 1261 (2003), *reversed on other grounds*, 150 Wn.2d 536 (2003). Although R.B. asks this court to conclude that the juvenile court erred, this court must look at the superior court's March 11, 2014 Order on Motion to Revision because that is what R.B. appealed.

Evidentiary Hearing

First, R.B. argues that the juvenile court erred by failing to hold an evidentiary hearing to permit him to establish *de facto* parentage. He argues that once a person makes a prima facie showing of *de facto* parentage, the court must hold an evidentiary hearing to determine whether the elements have been met. R.B. argues that he made such a showing by demonstrating that: (1) C.S. consented to and fostered a parent-like

relationship with the children; (2) he cared for the children like a parent for a significant period of time; and (3) the children were bonded to him and called him "dada." Mot. for Acc. Rev. at 9-10.

At oral argument before the superior court on February 28, 2014, R.B. conceded that the juvenile court's decision not to extend the *de facto* parentage doctrine to the dependency proceedings was a reasonable interpretation of the law. Therefore, the superior court did not specifically address the *de facto* parentage issue in its Order on Motion for Revision. However, assuming that R.B. has not waived the issue of establishing de facto parentage and may still raise it in his appeal, R.B. fails to demonstrate any error by the juvenile or superior courts.

Chapter 13.34 RCW governs dependency proceedings in juvenile court. RCW 13.04.011(5) defines a parent for purposes of chapter 13.34 RCW as "the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings." *See also* RCW 13.34.030(6)(c) (establishing dependency where child has "no parent, guardian, or custodian"). There is nothing in chapter 13.34 RCW that allows an individual, who is not a biological or adoptive parent, guardian, or custodian of the children, to establish himself or herself as a *de facto* parent in a dependency proceeding. The primary purpose of a dependency action is to allow courts to order remedial measures to preserve and mend family ties, and to alleviate the problems which prompted the State's initial intervention. *In re Dependency of A.W.*, 53 Wn. App. 22, 27, 765 P.2d 307 (1988), *review denied*, 112 Wn.2d 1017 (1989). Here, the dependencies were necessary to provide C.S. and the twins' biological father with services so they could adequately care for the twins. R.B. is not seeking services to alleviate a parenting

deficiency. Thus, it is unclear what purpose would be served in the dependency proceedings by allowing R.B. to establish himself as the twins' *de facto* parent.

Further, even if *de facto* parentage is recognized in a dependency proceeding, R.B. fails to demonstrate that his involvement in the twins' lives rose to the level required by *In re Parentage of L.B.*, 155 Wn.2d 679, 692 n.7, 122 P.3d 161 (2005), *cert. denied*, 547 U.S. 1143 (2006). In *L.B.*, 155 Wn.2d at 708, the Washington Supreme Court held that to establish standing as a *de facto* parent, the individual must show:

> (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.

In addition, recognition of a *de facto* parent 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)).

The "facts" set forth in R.B.'s memorandum of law,[1] even taken in his favor, fail to establish that he undertook a permanent, unequivocal, and committed role in the twins' lives. R.B. only lived with the twins for eight months and had no contact with them after C.S. moved out. *Cf. L.B.*, 155 Wn.2d at 684 (same-sex couple held themselves out as family unit and co-parented child for six years); *In re Parentage of J.A.B.*, 146 Wn. App. 417, 419, 191 P.3d 71 (2008) (affirming that mother's boyfriend who helped raise child

[1] Unlike C.S., R.B. did not provide a declaration sworn under penalty of perjury. Even though this court could ignore his "facts" for that reason, it chooses to address them.

for seven years was child's de facto parent) Although R.B. believed he was the father of the twins, there was no evidence that he signed the their birth certificates or acknowledged their paternity. And he only "sometimes" cared for them by himself. CP at 134. Therefore, R.B. fails to present prima facie evidence that he undertook a permanent, unequivocal, and committed role in the twins' lives. The juvenile court did not err in not holding an evidentiary hearing or in not recognizing him as the twins' *de facto* parent.

Jurisdiction

R.B. next argues that the juvenile court should have granted concurrent jurisdiction to permit him to raise the issue of *de facto* parentage in family court. Citing RCW 13.34.155, he notes that "[t]he court may grant a motion for transfer to family court upon a finding that it would be in the child's best interests." Mot. for Acc. Rev. at 12. R.B. asserts that the juvenile court abused its discretion here by failing to enter a finding about whether concurrent jurisdiction was in the twins' best interests.

Under RCW 13.04.030, the juvenile court has exclusive original jurisdiction over all proceedings relating to children alleged or found to be dependent. RCW 13.34.155(1) grants a juvenile court hearing a dependency petition the discretion to also hear and determine issues related to chapter 26.10 RCW in a dependency proceeding "as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child." Further, RCW 13.34.155(2)(g) permits the juvenile court to grant a motion to transfer issues related to the establishment

or modification of a parenting plan to the family law department of the superior court if the court makes a written finding that it is in the child's best interests.

In arguing that the juvenile court abused its discretion by failing to enter a finding about the twins' best interests, R.B. misconstrues the juvenile court's obligations under RCW 13.34.155. The juvenile court is not required to enter findings regarding the child's best interests when it maintains exclusive jurisdiction of a dependent child. RCW 13.34.155(1) and (2)(g) only require consideration of the children's permanent plan or best interests when the juvenile court decides to hear issues related to chapter 26.10 RCW or grants a motion to transfer a parenting plan issue to the family law department of the superior court. Because the juvenile court did neither here, it did not abuse its discretion in failing to enter a finding regarding the twins' best interests.

Intervention

Finally, R.B. argues for the first time on appeal that he had a right to intervene in the dependency action. Quoting CR 24(a), R.B. states that:

> A new party has a right to intervene in an action when, *inter alia*: 'the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicants interest is adequately represented by existing parties.'

Mot. for Acc. Rev. at 13-14. He asserts that this rule can apply in a dependency case if the person has a valid interest related to a dependent party which is not adequately protected by the other parties. R.B. argues that his interest in the twins was not represented by the Department or C.S., giving him the right to intervene. But while R.B. argued permissive intervention under CR 24(b) in the juvenile and superior courts, he

raises the issue of intervention by right under CR 24(a) for the first time on appeal. Accordingly, this court will not consider R.B.'s argument. RAP 2.5(a); *State v. Canfield*, 154 Wn.2d 698, 707, 116 P.3d 391 (2005).

CONCLUSION

R.B. fails to demonstrate the superior court erred in denying his motion to waive exclusive jurisdiction or intervene in the dependency proceedings or that the juvenile court erred in refusing to hear evidence on his *de facto* parent claim or in rejecting his claim of *de facto* parent status. Accordingly, it is hereby

ORDERED that the superior court's Order on Motion for Revision is affirmed.

DATED this 6th day of November, 2014.

Eric B Schmidt
Eric B. Schmidt
Court Commissioner

cc: Jodi R. Backlund
Manek R. Mistry
Skylar T. Brett
Peter B. Tiller
Matthew J. Etter
Hon. Gregory Gonzales

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE DEPENDENCY OF:

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

No. 46126-9-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated November 6, 2014, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 30th day of December, 2014.

PANEL: Jj. Johanson, Maxa, Sutton

FOR THE COURT:

Johanson, C.J.
CHIEF JUDGE

cc:

Peter B. Tiller
Matthew Joseph Etter
Skylar Texas Brett
Jodi R. Backlund

FILED
COURT OF APPEALS
DIVISION II
2014 DEC 30 AM 11:08
STATE OF WASHINGTON
BY
DEPUTY

NO. 91286-6

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE WELFARE OF: L.C.B.-S and L.P.B.-S.	DECLARATION OF MAILING

The undersigned on oath states that:

That I am a citizen of the United States and competent to be a witness herein.

That I am over the age of eighteen years; that on the 30th day of March, 2015, I mailed to Jodi R. Backlund, Backlund and Mistry, P.O. Box 6490, Olympia, WA 98507-6490 and Peter B. Tiller, P.O. Box 58 Centralia, WA 98531-0058 a copy of the Respondent's Answer to Petition for Review in regards to the above-referenced case. The document was sent by regular mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington, this 30th day of March, 2015.

SHERYL L. CADWELL

ATTORNEY GENERAL OF WASHINGTON
1220 Main Street Suite 510
Vancouver, WA 98660
(360) 759-2100

OFFICE RECEPTIONIST, CLERK

To: Cadwell, Sheryl (ATG)
Cc: Etter, Matt (ATG); Nelson, Melissa (ATG); 'ptiller@tillerlaw.com'; backlundmistry@gmail.com
Subject: RE: Case No. 91286-6

Received 3-30-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Cadwell, Sheryl (ATG) [mailto:SherylC2@ATG.WA.GOV]
Sent: Monday, March 30, 2015 4:04 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Etter, Matt (ATG); Nelson, Melissa (ATG); 'ptiller@tillerlaw.com'; backlundmistry@gmail.com
Subject: Case No. 91286-6

Dear Clerk,

Attached please find the Respondent's Answer to Petition for Review. My Declaration of Mailing is attached also.

Sincerely,

Sheryl L. Cadwell
Legal Assistant II
Attorney General's Office
☎(360) 759-2100
(360) 759-2109

My schedule is 7:30am-4:30pm M-F


Think before you print.