

91286-6

Supreme Court No. (to be set)  
Court of Appeals No. 46126-9-II (46133-1-II)  
**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

In Re the Dependency of:  
**L.C.B.-S. and L.P.B.-S.**

Minor Children,

**R.B. (father),**

Appellant.

---

Clark County Superior Court Cause No. 13-7-00704-7 and 13-7-00705-5  
The Honorable Judge Carin Schienberg

**PETITION FOR REVIEW**

Manek R. Mistry  
Jodi R. Backlund  
Skylar T. Brett  
Attorneys for Appellant/Petitioner

**BACKLUND & MISTRY**  
P.O. Box 6490  
Olympia, WA 98507  
(360) 339-4870  
backlundmistry@gmail.com

**FILED**  
FEB 11 2015  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON CRF

**TABLE OF CONTENTS**

**TABLE OF CONTENTS** ..... i

**TABLE OF AUTHORITIES** ..... ii

**I. IDENTITY OF PETITIONER**..... 3

**II. COURT OF APPEALS DECISION** ..... 3

**III. ISSUES PRESENTED FOR REVIEW** ..... 3

**IV. STATEMENT OF THE CASE** ..... 3

**V. The Supreme Court should grant review and determine how a person can establish *de facto* parentage of a dependent child. The Court of Appeals decision conflicts with *A.F.J.*, and presents an issue of substantial public interest. RAP 13.4(b)(1) and (4)**..... 6

A. R.B. is the *de facto* father of twin girls who have been found dependent as to their mother. .... 6

B. R.B. tried three different ways to maintain his legal relationship with his children, but was not even granted an opportunity to present evidence. .... 8

C. The Supreme Court should accept review and determine how a parent figure can establish *de facto* parentage of a dependent child... 9

**VI. CONCLUSION**..... 10

**Appendix: Court of Appeals Order, Commissioner’s Ruling**

**TABLE OF AUTHORITIES**

**WASHINGTON STATE CASES**

*In re Custody of A.F.J.*, 179 Wn.2d 179, 314 P.3d 373 (2013) ..... 6, 9

*In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005)..... 6

*In re Welfare of M.R.H.*, 145 Wn. App. 10, 188 P.3d 510 (2008)..... 7

**WASHINGTON STATUTES**

RCW 13.04.030 ..... 8

RCW 13.34.155 ..... 8

RCW 26.10 ..... 8

**OTHER AUTHORITIES**

RAP 13.4..... 6, 10

**I. IDENTITY OF PETITIONER**

Petitioner R.B., the appellant below, asks the Court to review the decision of Division II of the Court of Appeals referred to in Section II.

**II. COURT OF APPEALS DECISION**

R.B. seeks review of the Commissioner's Ruling entered on November 6, 2014 (Appendix, pp. 1-12) and the Order Denying Motion to Modify entered December 30, 2014 (Appendix, p. 13). A copy of each decision is attached.

**III. ISSUES PRESENTED FOR REVIEW**

**ISSUE 1:** What steps must a dependent child's father-figure take to establish *de facto* parentage?

**ISSUE 2:** Should the Supreme Court grant R.B. an evidentiary hearing to allow him to prove that he is the children's *de facto* father, where his long-term bonded parental relationship with the children was fostered by their mother and where the natural father has no role in the girls' life?

**IV. STATEMENT OF THE CASE<sup>1</sup>**

R.B. believed he was the biological father of L.C.B.-S. and L.P.B.-S., twin girls born in February of 2012. CP 131. He parented them from the time of their birth, and they bear his last name. CP 1, 131. He

---

<sup>1</sup> Because the juvenile court refused to hold an evidentiary hearing, these facts are taken from the declaration of counsel and the facts outlined in R.B.'s legal memorandum. R.B. had

attended them at the hospital, and lived with them and their mother after they came home. CP1-2, 131.

R.B. bathed, fed, and cared for the girls. CP 131. He took them to medical and WIC appointments, and supported them financially. CP 131. He cared for the twins on his own when their mother disappeared for extended periods, using drugs or spending time in jail. CP 16, 131.

The mother left with the twins and went to stay in a drug house. CP 2. R.B. tried to locate her and his daughters, but did not find them before the mother was arrested and the twins placed in protective custody. CP 1-2.

As soon as R.B. found out that the twins were in state custody, he came forward and told DSHS that he was the girls' father. CP 41. R.B. began regular visitation with the girls. CP 99. The twins immediately recognized R.B. and demonstrated a bond with him. RP 13. At the first visit, the girls searched for R.B. and called him "dada." RP 13-14. The girls looked to R.B. for comfort and to meet their needs. RP 13.

After several months of visits, a DNA test established that R.B. was not the twins' biological father.<sup>2</sup> CP 99. The state moved to dismiss

---

"expect[ed] these facts to be supported through testimony." CP 133. The mother and DSHS will have the opportunity to present contrary facts should an evidentiary hearing be held.

<sup>2</sup> There were two other alleged fathers listed on the twins' dependency petitions. CP 1. The twins were found dependent as to both of those alleged fathers by default. CP 54-

R.B. as a party to the dependency case. CP 166-70. R.B. opposed the motion. CP 131-39. He moved to the court to permit him to establish that he is a *de facto* parent to the twins. CP 131-39. In the alternative, he asked the court to: (a) waive its exclusive jurisdiction over the case to permit him to establish *de facto* parenthood in family court; or (b) allow him to intervene in the dependency case. CP 131-39.

A superior court commissioner heard argument on R.B.'s motions, but refused to hold an evidentiary hearing (despite the existence of contested facts). CP 153-155, 191. However, the commissioner did enter findings of fact, resolving contested issues against R.B. CP 81-82. The commissioner denied R.B.'s motions and dismissed him as a party to the dependency. CP 181-83, 171.

R.B. sought revision of the commissioner's decision. CP 185-189. At the revision hearing, the twins' CASA confirmed that R.B.'s role was "parental in nature" and that he was bonded with the twins before the dependency action began. RP 13.

The superior court denied the motion for revision. CP 193-194. The judge entered findings of fact, again resolving contested issues against R.B. despite the lack of an evidentiary hearing. CP 194.

---

63, 84-92. Neither purported father came forward to engage in the dependency process. CP 123.

A Court of Appeals commissioner considered the merits of R.B.'s case and affirmed the lower court's decision. Ruling, pp. 1, 7, 12. R.B.'s motion to modify was denied. Order Denying Motion to Modify.

**V. THE SUPREME COURT SHOULD GRANT REVIEW AND DETERMINE HOW A PERSON CAN ESTABLISH *DE FACTO* PARENTAGE OF A DEPENDENT CHILD. THE COURT OF APPEALS DECISION CONFLICTS WITH *A.F.J.*, AND PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST. RAP 13.4(B)(1) AND (4).**

A. R.B. is the *de facto* father of twin girls who have been found dependent as to their mother.

*A de facto* parent "stands in legal parity with an otherwise legal parent, whether biological, adoptive, or otherwise." *In re Custody of A.F.J.*, 179 Wn.2d 179, 182, 314 P.3d 373 (2013) (internal quotation omitted). R.B. was the twins' *de facto* parent, and should have been treated as a parent in the dependency action.

*A de facto* parent must demonstrate that "the natural or legal parent consented to and fostered the parent-like relationship." *In re Parentage of L.B.*, 155 Wn.2d 679, 708, 122 P.3d 161 (2005). The twins' mother consented to and fostered R.B.'s role as their father. She either believed he was the biological father or allowed him to believe that he was. CP 1, 131. R.B. cared for the mother at the hospital after the twins' birth. RP 1-2. The children bear his name. CP 1.

A *de facto* parent must also show that he “and the child[ren] lived together in the same household.” *Id.* R.B. resided with the twins when they came home from the hospital. CP 131. They remained with him even when the mother left the house for a week at a time. CP 16, 131.

To be a *de facto parent*, a person must assume the “obligations of parenthood without expectation of financial compensation.” *Id.* Here, R.B. bathed, fed, and cared for the girls. CP 131. He put them to bed. CP 131. He took them to medical and WIC appointments. CP 131. He supported them financially. CP 131.

Finally, a *de facto* parent is one who “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.” *Id.* R.B. resided with the twins for the eight months following their birth. CP 131. This is a significant period of time for a newborn. *See In re Welfare of M.R.H.*, 145 Wn. App. 10, 28, 188 P.3d 510 (2008) (discussing what constitutes the foreseeable future for a young child).

Furthermore, when the twins were taken into protective custody, R.B. identified himself as the father and began regular visitation. CP 1-2, 41, CP 99. The twins immediately recognized R.B. and demonstrated a bond with him. RP 13. At the first visit, the girls searched for R.B. and



called him “dada.” RP 13-14. The girls looked to R.B. for comfort and to meet their needs. RP 13.

R.B. tried to maintain his relationship with them even when a DNA test showed he was not the girls’ biological father. CP 131-139. The CASA confirmed that his role was “parental in nature,” and that he was bonded with the twins. RP 13.

For all these reasons, R.B. qualifies as the twins’ *de facto* parent. He should have had the opportunity to obtain an order declaring him their *de facto* father.

B. R.B. tried three different ways to maintain his legal relationship with his children, but was not even granted an opportunity to present evidence.

RCW 13.04.030(1)(b) gives the juvenile court exclusive jurisdiction over dependent children. In keeping with this statute and RCW 13.34.155, R.B. asked the juvenile court for an order declaring him the children’s *de facto* father. CP 131-139. The commissioner, the superior court judge, and the Court of Appeals all rejected this effort. CP 81-83, 171; Ruling, pp. 1, 12; Order Denying Motion to Modify.

In the alternative, R.B. asked the court to grant the family court concurrent jurisdiction to hear a petition under RCW 26.10. RCW 13.34.155(2)(g) (as amended by 2009 c 526). The commissioner, the

superior court, and the Court of Appeals rejected this effort as well. CP 81-83, 171; Ruling, pp. 1, 12; Order Denying Motion to Modify.

R.B. also asked the court to allow him to intervene as a party. CP 133, 135, 138, 139. The juvenile court commissioner and the superior court rejected his request. CP 81-83, 171. The Court of Appeals refused to review his argument on the grounds that he hadn't properly preserved the issue. Ruling, pp. 11-12; Order Denying Motion to Modify.

C. The Supreme Court should accept review and determine how a parent figure can establish *de facto* parentage of a dependent child.

The decision of the Court of Appeals leaves R.B. with no forum in which to prove that he is the twins' father. Since no one else has stepped into that role, the appellate court's decision leaves L.C.B.-S. and L.P.B.-S. without a father.<sup>3</sup>

The Supreme Court should accept review and reverse the Court of Appeals. The court should outline the method through which a *de facto* parent may maintain a legal relationship with a child alleged or found to be dependent.

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.*

---

<sup>3</sup> Furthermore, at the time B.R. was dismissed from the dependency case, their mother was not ready to parent the children.

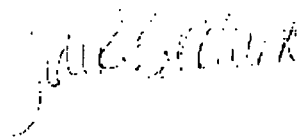
court. RAP 13.4(b)(1). In addition, this case raises an issue of substantial public interest which should be resolved by the Supreme Court. RAP 13.4(b)(4).

## VI. CONCLUSION

The Supreme Court should accept review. RAP 13.4(b)(1) and (4). The court should reverse the Court of Appeals and remand for an evidentiary hearing, at which R.B. should have the opportunity to show that he is the twins' *de facto* father.

Respectfully submitted January 29, 2015.

### BACKLUND AND MISTRY



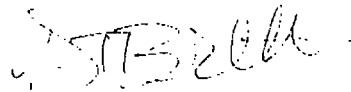
---

Jodi R. Backlund, No. 22917  
Attorney for the Appellant



---

Manek R. Mistry, No. 22922  
Attorney for the Appellant



---

Skylar T. Brett, WSBA No. 45475  
Attorney for Appellant

## CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review,  
postage pre-paid, to:

R.B.  
403 N. Morrison Road  
Vancouver, WA 98664

And:

Attorney General of Washington  
1220 Main St Ste 510  
Vancouver WA 98660

and I sent an electronic copy to:

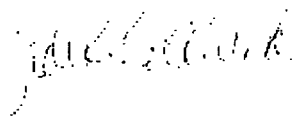
Peter Tiller, attorney for the mother  
ptiller@tillerlaw.com

through the Court's online filing system, with the permission of the  
recipient(s).

In addition, I electronically filed the original with the Court of  
Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE  
LAWS OF THE STATE OF WASHINGTON THAT THE  
FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on January 29, 2015.



---

Jodi R. Backlund, WSBA No. 22917  
Attorney for the Appellant

**APPENDIX:**

# 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.,  
Minor children.

Nos. 46126-9-II and 46133-1-II  
(consolidated)

RULING GRANTING COURT'S  
MOTION ON THE MERITS TO  
AFFIRM

FILED  
COURT OF APPEALS  
DIVISION II  
2014 NOV -6 PM 4:21  
STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

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,<sup>1</sup> 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

---

<sup>1</sup> 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



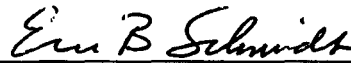
raises the issue of intervention by right under CR 24(a) for the first time on appeal. Accordingly, this court will not consider R.B.'s argument. RAP 2.5(a); *State v. Canfield*, 154 Wn.2d 698, 707, 116 P.3d 391 (2005).

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 6<sup>th</sup> day of November, 2014.



---

Eric B. Schmidt  
Court Commissioner

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

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 30<sup>th</sup> 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 11:00  
STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

## BACKLUND & MISTRY

January 29, 2015 - 12:05 PM

### Transmittal Letter

Document Uploaded: 4-461269-Petition for Review.pdf

Case Name: In re LCB-S and LPB-S

Court of Appeals Case Number: 46126-9

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: \_\_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Manek R Mistry - Email: [backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)

A copy of this document has been emailed to the following addresses:

[matt.etter@atg.wa.gov](mailto:matt.etter@atg.wa.gov)