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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Parentage of T.D. (minor)

T.D., Appellant

vs.

**R.D., State of Washington (DCYF),
Respondents**

Grays Harbor County Superior Court Cause No. 17-3-00129-5

The Honorable Judge Stephen E. Brown

Appellant's Opening Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. The trial court erred by dismissing the mother's *de facto* parentage petition.
2. The trial court erred by denying the mother's motion for adequate cause.
3. The trial court erred by entering Findings of Fact and Conclusions of Law No. 1. CP 47.
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13. The trial court erred by entering Finding No. 5 in Order Denying Reconsideration.
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ISSUE 1: Did T.D. allege specific facts that, if proved true, would establish a *prima facie* case qualifying her as a *de facto* parent?

ISSUE 2: Did the trial court err by denying T.D.'s motion for adequate cause and summarily dismissing her de facto parentage petition?

15. The trial court erred by vacating the order of indigency.
16. The trial court erred by entering Finding of Fact No. 1. AP 45.
17. The trial court erred by entering Finding of Fact No. 2. AP 45.
18. The trial court erred by entering Conclusion of Law No. 1. AP 46.

ISSUE 3: Where State involvement in a de facto parentage proceeding effectively terminates a de facto parent's legal rights, does the parent have a right to review at public expense?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

R.D. had one-year-old T. placed with her in 2008.¹ CP 5; Appendix (“AP”) 2. In 2010, R.D. met and fell in love with T.D. CP 14-15. The mother delayed introducing her son to her new girlfriend, to make sure that they were fully committed to each other and to parenting together. CP 15. Once that was clear, T.D. moved from Texas to Washington to be with the mother and her son. CP 14-16.

The mother and her partner raised T. together. The mother’s formal adoption of her son T. was completed in 2012. CP 5, AP 2. T.D. submitted to a background check for the adoption, and the home was approved. CP 15.

The mother and her partner married in 2015. CP 5, AP 2. Their son T. was part of the wedding ceremony. CP 16.

At first, the child called his mother’s wife by her first name. On his own, he decided to call her “mom”, sometimes “mama [T.D.]” CP 17.

In their household of three, T.D. supported the family with her job. CP 16. She also took on most of the cooking. CP 15. Both mothers helped their son with school. CP 15, 18. Both also helped him when he had a hard time, and both were able to comfort and calm T. CP 18. The couple

¹ Initials are used in this brief for the parties. Because some parties have the same initials, only a first name initial is used for the child here, T.

shared equally in housework, cleaning, and taking their son to and from school. CP 16, 18.

In September of 2015, both mothers' use of physical discipline led to a dependency case. CP 73, 213-215. The department placed the child in foster care, and a dependency petition was filed. CP 33. Although she was married to R.D., T.D. was not provided counsel or permitted to appear in the dependency proceeding. CP 77,

T.D. wanted to participate in the dependency, as she had participated in her son's life. She requested visits and services. CP 5, 82-83, 215. Because she was not T.'s legal parent, the department refused to pay for services. CP 218, 22. T.D. completed services at her own expense. CP 218, 222. She went, with her wife, to two separate sessions of weekly parenting classes, from which both graduated. CP 79, 90, 91. She obtained a domestic violence evaluation and completed one year of treatment. CP 79-80, 86-88. She also got a psychological evaluation with a parenting component, completed a mental health assessment, and attended many additional classes through "Parent to Parent". CP 79, 81, 89, 92-113, 195-209.

T.D. admitted that her poor parenting choices were the reason her son was removed from the home. CP 117. She acknowledged this in the dependency case months before the issues addressed here. CP 77-79. She

explained that parenting classes had helped her understand this had been inappropriate and helped her learn other ways to deal with her son's behavior. CP 73-74, 78. T.D. outlined to the court specific interventions she'd learned, detailing how she was taught to respond if the first effort did not yield results. CP 74, 78.

Having done the services, but still having no input into her son's future, T.D. moved to intervene in the dependency case, which was denied. CP 8. So, she filed a de facto parentage petition and sought an adequate cause determination. CP 12, AP 1-4. She submitted a declaration, as well as statements from her wife, friends, and neighbors. All confirmed that the three were a cohesive bonded family unit. CP 14-28. They described the child turning to each mother in turn for help or affection, noting that he treated them both the same: as his mother. CP 21-24, 27.

T.D. sought to establish that she had made changes. She indicated that she knew she'd used "excessive force", and she acknowledged that she was wrong. CP 73. Along with her wife, T.D. created strategies to include their son in family decisions. CP 75. She pointed out that her psychological evaluation concluded that her risk for abuse was "well below" the cut-off for predicting abuse or neglect. CP 74.

In a filing in the dependency case, months before her petition regarding de facto parent status, T.D. told the court some of what she learned:

Throughout the duration of the class I learned tools such as self time-out, age appropriate rewards, removal of certain privileges, age appropriate play and that for children “time-out” is not a punishment. I learned that time out is actually a quiet place for the child to reflect on their inappropriate actions and/or to reflect the negative behavior they displayed. The best way to teach our children is to **Role Model** ourselves. We did role playing on how to react age appropriately to different situations as well as to turn and to talk to each other. Overall, I conclude that the class was an eye opener on changes that I needed to make. We graduated from that parenting class in March, 2016.
CP 79.

The trial court granted concurrent jurisdiction, so that the petition regarding de facto parent status could be resolved.² CP 3, 8. Within the ruling denying revision of the grant of concurrent jurisdiction, the court noted that T.D. had been her son’s primary caregiver. CP 9.

The department responded by admitting many of the allegations. The department admitted that the child had resided with his mothers. CP 4. The department admitted that the mother had fostered a parent-like relationship between her son and her wife. CP 6.

The department did not contest that the three lived as a family for years. CP 6. The department did not contest that T.D. had assumed

² That dependency is cause number 15-7-00279-6.

obligations of parenthood without any expectation of financial compensation. CP 6, 35. Even so, the department denied that living with a child and acting as his parent for 6 years could establish a bonded dependent relationship parent-like in nature. CP 6.

The department noted “admit in part, denied in part” to the allegation that T.D. voluntarily engaged in services. The department claimed that her participation was not “timely”, and further that she had not “accepted responsibility for the abuse she inflicted upon the child”. CP 5. This was despite later filings, in which the social worker declared that “the Department acknowledges Mrs. [T.D.] has participated in the services requested.” CP 36.

The department further argued because T.D.’s behavior resulted in a “founded” finding of abuse in 2015, she could not establish adequate cause for a finding that she was a de facto parent. CP 29-30. The State acknowledged that T.D. had established three of the four factors required for de facto parentage³ but argued that she could not meet the fourth factor. This factor requires evidence that the petitioner has been in a

³ De facto parentage requires evidence that (1) the legal parent consented to and fostered a parent-like relationship; (2) the petitioner and child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of compensation; (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 L.B.*, 155 Wn.2d at 708.

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); *see* CP 31, 61-62. They set out two reasons: first, because the department had placed the child T., and second, because none of the declarations filed addressed the 2015 abuse. CP 31, 61-62.

To support its position, the department submitted a declaration by the supervisor of the social worker on the case. CP 35. She noted that “Mrs. [T.D.] was the primary person watching over [the child]...” CP 35, 63. She also swore that T.D. communicated with school and medical care providers.⁴ CP 35. The court heard brief argument on the matter. CP 56-70.

The trial court denied T.D.’s request for a de facto parent finding. CP 44-49. The court focused on the fourth factor, that “the petition 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.” CP 44. In its letter ruling, the judge emphasized that T.D. did not describe the abuse she had committed or show how it would stop should her son be

⁴ Of course, this social worker clearly saw these as reflecting negatively on the mother, R.D., and further criticized the content of T.D.’s communications on behalf of her son. CP 35.

returned to her care.⁵ CP 44. The court found fault with this purported failure to address the allegations that led to the dependency finding: “Assuming a committed and responsible parental role does not include child abuse.” CP 44-46.

T.D. moved for reconsideration, arguing that she had provided a factual basis to warrant a hearing on de facto parent status. CP 51-54. She reminded the court that parents in dependencies have made parenting mistakes, and the dependency process involves services for that reason. She urged the trial court to consider her efforts to remedy her parental deficiencies as proof of her bond with her son. CP 51-54.

T.D. submitted a supplemental declaration in support of the motion. CP 72. She acknowledged parenting mistakes that led to her son T.’s placement and provided documentation showing her participation in services. CP 73-115. Included in her materials were a psychological evaluation conducted by Dr. Steve Tutty and an independent assessment conducted by social worker Sonja Ulrich. CP 194-210.

Ms. Ulrich, who has 24 years of experience in child welfare cases, recommended that T. return to his parents’ care. CP 230-232. Her independent assessment outlined the allegations leading to T.’s placement.

⁵ The stepmother Tammy had made it clear in her filings that she would not be requesting placement should the court find her to be a de facto parent. CP 9.

CP 211-215. It also detailed the parents' participation and progress in services, including three parenting programs (Incredible Years, Triple P, and another 12-week parenting education program). CP 221-223.

Ms. Ulrich also outlined the State's position in the dependency: that the administrative finding against T.D. made return home impossible, regardless of her progress in services. CP 216, 218-221.

According to Ms. Ulrich, the social worker took the position that this was a matter of department policy – that official policy precluded return home if T.D. remained in the household because of her administrative finding.⁶ CP 218, 227. Ms. Ulrich suggested that the social worker's position was not only incorrect, but also that it seemed “nothing less than unethical.” CP 228.

In keeping with this “policy,” the caseworker told T. within six months of his initial placement that he would be adopted. CP 217-218, 231-232. This caused T. significant distress and resulted in ongoing behavior challenges that threatened the stability of his placement. CP 216-219.

Ms. Ulrich also outlined problems with T.'s relative placement. CP 219-220. These included an incident where the caretaker, frustrated with

⁶ This is not department policy. CP 218, 227.

T.'s behavior, threw a television and broke it. CP 219. A department supervisor expressed concern about the caretaker's parenting and apparent lack of empathy. CP 219-220. Ms. Ulrich also questioned the stability of the placement, in part because of the relatives' requests for emergency respite care when T.'s behaviors escalated. 219-220.

Ms. Ulrich concluded that the parents posed no active safety threats, and that any risk of future abuse or neglect had diminished so far that the child should have been returned home. CP 225-228. She outlined a proposed transition plan that would allow T.'s mothers to resume custody. CP 230-232.

The court considered the supplemental materials but denied reconsideration. CP 243-244. The trial judge included the following findings:

3. [T.D.] did not undertake a permanent unequivocal committed and responsible role in [the child]'s life ... in that she abused and neglected [the child] while he was living with her.
 4. [T.D.] cannot overcome the issue of abuse and the fact she did not meet the fourth factor by her subsequent services while [the child] was not residing with her.
 -
 6. [T.D.] has an administrative finding of abuse and neglect which she cannot overcome.
- CP 244.

T.D. timely appealed. CP 245; AP 5-7. The trial judge entered an Order of Indigency, and counsel was appointed. CP 248-249. Weeks

later, the trial court vacated the Order of Indigency at the department's request. AP 8-11, 45-38-40. An amended Notice of Appeal was filed to include that order as well. AP 35.

ARGUMENT

I. T.D. ESTABLISHED ADEQUATE CAUSE FOR A TRIAL ON HER DE FACTO PARENTAGE PETITION.

A. The Respondent has admitted three of the four criteria necessary for de facto parentage.

The Supreme Court has recognized a common-law claim of de facto parentage.⁷ *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005). A de facto parent “stands in legal parity with an otherwise legal parent, whether biological, adoptive, or otherwise.” *Id.*, at 708.

Accordingly, a de facto parent has all the rights of a legal parent. *Id.* This means that a de facto parent is entitled to participate in dependency and termination proceedings as a parent.

A common-law de facto parentage claim is initiated by filing a petition. *Id.*, at 683, 707-708. Four criteria⁸ apply to de facto parentage

⁷ Although the legislature has recently created a statutory framework for adjudicating a claim of de facto parentage, that provision does not go into effect until January 2019. See UNIFORM PARENTAGE ACT, 2018 Wash. Legis. Serv. Ch. 6 §§ 509, 909.

⁸ Although not an element, one “potential limitation on the reach of the [de facto parentage] doctrine” involves whether the person has “fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role” in the child’s life.⁸ *In re Custody of A.F.J.*, 179 Wn.2d 179, 190, 314 P.3d 373 (2013). This is “not properly speaking an element.” *Id.*

actions: (1) the legal parent consented to and fostered a parent-like relationship; (2) the petitioner and child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of compensation; (4) the petitioner has been in a parental role “for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.” *L.B.*, 155 Wn.2d at 708.

In this case, Respondent has admitted that Tammy meets the first three criteria. Accordingly, only the fourth factor is at issue on review.

B. T.D. was entitled to a trial because her pleadings outline facts which, if proved true, establish a prima facie case for de facto parentage.

T.D.’s Petition and supporting declarations set forth a prima facie case qualifying her as a de facto parent. CP 14-28, 72-234; AP 1-4.

Despite this, the trial court held that she failed to establish adequate cause to warrant a trial and refused to reconsider its ruling. CP 44-49, 243-244.

The Court of Appeals must reverse, because T.D.’s pleadings establish adequate cause.⁹

To demonstrate adequate cause for a hearing, “[a] petitioner must allege specific facts that, if proved true, would establish

⁹ It is not clear that the Supreme Court has adopted the “adequate cause” standard in de facto parentage cases. However, regardless of the proper standard, the pleadings filed here warrant a trial on the issue of de facto parentage.

a prima facie case.” *Matter of Custody of L.M.S.*, 187 Wn.2d 567, 576, 387 P.3d 707 (2017) (addressing nonparental custody petition). This standard applies in de facto parentage cases. *See In re Parentage of J.B.R.*, 184 Wn. App. 203, 212, 336 P.3d 648 (2014) (“[W]e now examine whether [petitioner] has set forth a prima facie case that meets the four-part *L.B.* test.”)

T.D. has met this standard because her pleadings outline “specific facts that, if proved true, would establish a prima facie case” that she qualifies as the child T.’s de facto parent. *L.M.S.*, 187 Wn.2d at 576. Because of this, she is entitled to a trial.

The State acknowledged that T.D. met the first three criteria under *L.B.* This concession is supported by the pleadings. CP 14-28, 72-234; AP 1-4.

First, with her wife and T.’s adoptive mother’s support, T.D. developed a parent-like relationship with the child T. CP 14-28, 35, 77-115. She maintained that relationship throughout the dependency by attending visits and participating in services. CP 5-6, 18, 36, 79-98, 215, 216, 218, 221-223.

Second, T.D. lived with the child T. for more than three years before he was removed from her care. CP 15, 29. She moved in with the

family in 2012; the two married in 2015 and remain a committed couple. CP 15, 16, 19, 73, 77.

Third, T.D. assumed the obligations of parenthood without expectation of compensation. CP 14-28. Indeed, she was the primary source of income for the family, and she participated in services at her own expense throughout the dependency. CP 16, 73, 197, 218, 222.

The pleadings also allege facts which, if proved true, would prima facie establish the fourth *L.B.* factor. T.D. was 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; *see* CP 14-28, 72-234.

R.D. introduced T.D. to her son T. in 2010, after T.D. committed to help raise the child. CP 15; AP 2. The three lived as a family starting in 2012, the same year R.D. adopted the child T.¹⁰ CP 15-16, AP 2. T. served as the ringbearer at the couple’s 2015 wedding. CP 16, 61. Both mothers shared parenting responsibilities during the time they lived together as a family. CP 14-28, 72-234. The pleadings establish facts which, if proved true, show that T.D. and the child T. had a bonded

¹⁰ Because the couple did not wish to delay the adoption, only R.D. appears on adoption paperwork. CP 213.

relationship, that he was dependent on her (and his mother), and that their relationship was parental in nature. CP 14-28, 72-234; AP 1-4.

As these facts show, T.D. submitted information meeting the requirements outlined in *L.B.* The specific facts set forth in the Petition and supporting materials would “if proved true,” establish a prima facie case for de facto parentage. *L.M.S.*, 187 Wn.2d at 576.

The trial court erred by refusing to find adequate cause. *See J.B.R.*, 184 Wn. App. at 212. The order must be reversed, and the case remanded for trial. *L.B.*, 155 Wn.2d at 712.

C. The trial court applied the wrong legal standard by resolving disputed facts at the adequate cause stage and by considering factors beyond the four criteria outlined in *L.B.*

As outlined above, a petitioner seeking adjudication of de facto parentage need only present a prima facie case meeting the four criteria outlined in *L.B.* *See L.M.S.*, 187 Wn.2d at 576; *J.B.R.*, 184 Wn. App. at 212. The pleadings here establish a prima facie case, and thus adequate cause for trial. CP 14-28, 72-234.

The initial showing at the adequate cause stage does not permit consideration of the quality of the parent-child relationship. *L.B.*, 155 Wn.2d at 708. Instead, under the fourth factor, a de facto parent need only allege specific facts showing that “the petitioner has been in a parental role

for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.” *L.B.*, 155 Wn.2d at 708.

Here, T.D. showed that she has been in a parental role at least since 2012.¹¹ CP 14-28, 72-234. She and the child T. have a bonded, dependent relationship, as evidenced by the numerous declarations outlining their connection. CP 14-28, 72-234.

Furthermore, the relationship is “parental in nature.” *Id.* The three lived together as a family. CP 14-28. T.D. cooked and cleaned, supported the child T. financially, acted in concert with her wife to provide discipline, and helped T. with his homework. CP 14-28. T. regards T.D. as one of his mothers. CP 17-18. She held herself out as his mother and was recognized as his parent by friends and neighbors. CP 14-28.

Indeed, even the Department acknowledged that T.D. was the child T.’s primary caretaker. CP 35, 197. Instead of disputing the fourth factor, the Department sought to defeat the Petition by focusing on the *quality* of her relationship with T. CP 30-31, 36. According to the Department, T.D. could not be recognized as T.’s parent because of an administrative finding that she had abused him. CP 30-31, 36. In essence, the department

¹¹ She continued to act as T.’s mother even after he was removed from her care and a dependency established. CP 14-28, 72-234.

opposed the Petition based on its perception of the quality of the parent-child relationship.

The quality of the relationship may come into play later in the process. As the Supreme Court has noted, one “potential limitation on the reach of the [de facto parentage] doctrine” involves whether the person has “fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role” in the child’s life. *A.F.J.*, 179 Wn.2d at 190.

However, this is “not properly speaking an element.” *Id.* Instead, it is (potentially) an issue for trial, insofar as the quoted language can be interpreted to allow a verdict against an otherwise qualified de facto parent based on proof of abuse or neglect. *Id.* Alternatively, the quality of the parent-child relationship may come into play if a de facto parent seeks custody. Here, T.D. seeks a de facto parentage determination so she can participate in the dependency and termination actions. CP 77; AP 2, 4. She is not seeking immediate custody of her son. AP 1-4.

At trial, the parties will have the opportunity to address the quality of the relationship. Both Petitioner and Respondent will be able to introduce evidence relating to the allegations of abuse (including the significance of the administrative finding) and T.D.’s participation in services.

Instead of granting Petitioner a trial to resolve disputed issues of fact, the trial court apparently resolved the disputed issues in favor of the State. Initially, the court refused to grant a trial because T.D. “failed to allege any facts which either acknowledge the abuse she inflicted upon the child or show that the abuse would not resume should the child be returned to her care.” CP 47.

This initial failure to outline facts relating to the dependency allegations and her participation in services is not surprising, since the quality of the parent-child relationship is not an issue at the adequate cause hearing.¹² *L.B.*, 155 Wn.2d at 708. By initially denying her request for an adequate cause finding, the court strayed from the framework established by the Supreme Court. *Id.*

Nonetheless, T.D. addressed the court’s concerns through her Motion for Reconsideration. CP 51-234. The motion was accompanied by declarations acknowledging that she’d spanked her son T.,¹³ and outlining the many steps she’d taken to correct parental deficiencies. CP 72-234. She also submitted supporting information, including her own

¹² The allegations underlying the dependency and termination petitions are in dispute. T.D. is not a party to those proceedings, and thus has had no opportunity to contest the department’s claims in court.

¹³ She denied ever having spanked him with an object. CP 73.

psychological evaluation and the independent assessment conducted by Sonja Ulrich. CP 194-209, 212-235.

Even after considering these materials, the trial court refused to find adequate cause. According to the court, the four *L.B.* factors “did not contemplate situations of children who were the subject of abuse and neglect and dependency actions.” CP 244. The court improperly focused on the quality of the relationship – disputed by the parties – and cited language which the Supreme Court has pointed out is not an “element” of a de facto parentage claim. *A.F.J.*, 179 Wn.2d at 190; *see* CP 244.

The trial court’s departure from the framework set forth in *L.B.* is a legal error that requires reversal.¹⁴ Instead of reviewing the pleadings for facts sufficient to outline a prima facie case, the trial court resolved disputed issues and refused to find adequate cause. CP 44-50, 243-244.

A trial is the appropriate vehicle for resolving disputed factual issues. The disputed factual issues presented by this case include the abuse allegations and the adequacy of T.D.’s efforts to address any parental deficiencies through participation in services. These disputed factual issues do not relate to the four elements that must be alleged to secure a trial. *L.B.*, 155 Wn.2d at 708.

¹⁴ Legal errors are reviewed *de novo*. *Afoa v. Port of Seattle*, ---Wn.2d---, ___, 421 P.3d 903 (2018).

To meet the adequate cause threshold, a de facto parent need only “allege specific facts that, if proved true, would establish a prima facie case.” *L.M.S.*, 187 Wn.2d at 576. The elements that make up a prima facie case are set forth in *L.B. L.B.*, 155 Wn.2d at 708.

T.D. alleged such facts. CP 14-28, 72-234; AP 1-4. Indeed, she went beyond the requirements of *L.B.* by providing more information regarding the quality of her relationship with her son T. in her reconsideration motion. CP 51-234.

The trial judge should not have summarily denied the Petition at the adequate cause stage. The Court of Appeals must reverse the trial court’s orders and remand the case for trial. *See J.B.R.*, 184 Wn. App. at 212; *L.B.*, 155 Wn.2d at 712.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY CONCLUDING THAT AN ADMINISTRATIVE FINDING OF ABUSE OR NEGLECT IS AUTOMATICALLY SUFFICIENT TO DEFEAT A PETITION FOR DE FACTO PARENTAGE.

The trial judge apparently believed that an administrative finding of abuse or neglect is sufficient, by itself, to defeat a de facto parentage claim.¹⁵ CP 47, 244. This presents an issue of law, reviewed *de novo*. *Afoa*, ---Wn.2d at ____.

¹⁵ The court’s initial findings begin as follows: “[T.D.] has a founded finding for abusing the child.” CP 47. The court’s order denying reconsideration concludes by asserting that “[T.D.] has an administrative finding of abuse and neglect which she cannot overcome.” CP 244.

Court of Appeals precedent from another context suggests that an administrative finding of abuse or neglect should not necessarily defeat a prima facie case. *In re Adoption of S.H.*, 169 Wn. App. 85, 87, 279 P.3d 474 (2012). In *S.H.*, a couple petitioned to adopt their granddaughter despite administrative findings of abuse involving other children in the home. *Id.*, at 87, 91, 106-107. The trial judge dismissed the petition after concluding that the petitioners had not established a prima facie case. *Id.*, at 87, 99-100.

The Court of Appeals reversed. *Id.* Viewing the evidence in the light most favorable to petitioners, the court found that the couple had presented a prima facie case that the adoption was in the child's best interests, despite the administrative findings. *Id.*, at 105-107.

The court's decision in *S.H.* strongly suggests that administrative findings should not be given conclusive effect in child welfare cases. Although the administrative findings in *S.H.* pertained to children who were not the subject of the litigation, the case should provide guidance regarding the issue *sub judice*.

Although the parties agreed that a finding had been made, the department did not submit a copy of the administrative finding. Nothing shows the abuse or neglect alleged, the evidence produced in support of the allegation, or the basis for the administrative finding. Nor did the department show that T.D. received adequate notice of the allegations, that she had an opportunity to contest the matter, or that she was properly advised of her right to seek review of the finding.

The absence of information outlining the basis for the administrative finding, the parents' successful completion of numerous parenting classes and other services, and the professional opinion of an independent expert supporting reunification all weigh in favor of reversal here. By itself, the administrative finding should not defeat the de facto parentage petition.

Instead, the case should proceed to trial. At trial, the parties will have the opportunity to present evidence regarding the underlying allegations and the significance (if any) of the administrative finding. *Id.*

The trial court erred by refusing to find adequate cause based on the administrative finding. The Court of Appeals should reverse and remand the case for trial. *Id.*

III. THE TRIAL COURT ERRED BY VACATING THE ORDER OF INDIGENCY BECAUSE T.D. HAS A RIGHT TO REVIEW AT PUBLIC EXPENSE.

A trial court must enter an order of indigency for review of dependency and termination cases, as well as other cases “in which the party has a constitutional or statutory right to counsel at all stages of the proceeding.” RAP 15.2(b)(1)(B) and (F). If the court finds the person indigent but believes that the party is not entitled to review at public expense, it must transfer the appropriate records to the Supreme Court for a determination under RAP 15.2(c).

Here, the trial court erred by doing neither. AP 45-46. The court's decision is subject to review under RAP 15.2(h), which provides (in part) that "[a] party in a case of a type listed in section (b)(1) of this rule may seek review of an order of indigency or an order denying an order of indigency entered by a trial court." RAP 15.2(h). Here, the order vacating the order of indigency amounts to "an order denying an order of indigency." RAP 15.2(h).

This case involves the intersection of dependency/termination cases and other cases in which parents have a constitutional or statutory right to counsel. Because she is the child T.'s de facto parent and because the trial court proceedings effectively terminated her relationship with her son, T.D. has a right to review at public expense.

Substantive due process protects a parent's fundamental right to autonomy in child-rearing decisions. *Troxel v. Granville*, 530 U.S. 57, 65-66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). A de facto parent "stands in legal parity with an otherwise legal parent." *L.B.*, 155 Wn.2d at 708. Accordingly, a person who "can establish standing as a *de facto* parent [will] have a 'fundamental liberty interest[]' in the 'care, custody, and control' of [her child.]" *Id.*, at 710 (quoting *Troxel*, 530 U.S. at 65).

T.D. has alleged facts which, if proved true, establish a prima facie case for de facto parentage. *L.B.*, 155 Wn.2d at 708. Had her petition been

granted, she would have been able to participate in the dependency and termination proceedings. *Id.*

The department successfully opposed T.D.'s Petition. The State's involvement distinguishes this case from other cases involving de facto parentage. In general, such cases involve private parties litigating against each other. *See, e.g., L.B.*, 155 Wn.2d at 682-683; *J.B.R.*, 184 Wn. App. at 206. Court involvement is permitted in de facto parentage cases because it necessarily rests on "a showing that the legal parent 'consented to and fostered' the parent-child relationship" with the de facto parent. *L.B.*, 155 Wn.2d at 712.

By contrast, this case involves State action. The Department inserted itself into the process, *opposing* the legal parent's wishes. CP 29-43, 236-240. By persuading the trial court to dismiss the Petition at the adequate cause stage, the department effectively terminated T.D.'s rights as a de facto parent. Because of this, T.D. is entitled to review at public expense under RAP 15.2(b)(1)(B) and (F).

Furthermore, if the court believed that the case was not governed by [RAP 15.2(b)], it was obligated to follow the procedure outlined in RAP 15.2(c). Indeed, trial counsel referred to that procedure in her pleadings. AP 25. By failing to order the matter transferred to the Supreme Court, the trial court violated the requirements of RAP 15.2.

The trial court's Findings and Order Vacating Order of Indigency must be reversed and the Order of Indigency reinstated.¹⁶

CONCLUSION

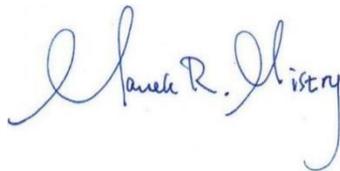
For the foregoing reasons, the Court of Appeals should reverse the trial court's orders and remand for trial.

Respectfully submitted on September 13, 2018,

BACKLUND AND MISTRY



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



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

¹⁶ Alternatively, the matter must be transferred to the Supreme Court for determination under RAP 15.2(c).

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

T.D.
PO Box 2288
Aberdeen, WA 98520

R.D.
213 N F Street., Apt 5
Aberdeen, WA 98520

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Office of the Attorney General
rachelr@atg.wa.gov
shsappealnotification@atg.wa.gov

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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 September 13, 2018.



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

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GRAYS HARBOR COUNTY
C. BROWN CLERK

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**SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY**

In re the De Facto Parentage of

TIMOTHY D DALTON

Minor

TAMMY DALTON

Petitioner

And

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

Respondents.

No. 17-3-129-5

PETITION FOR DECREE OF
DE FACTO PARENTAGE

COMES NOW Petitioner, Tammy Dalton, by and through her attorney Hannah G Campbell, and petitions the court for de facto parentage status, alleges as follows:

I. PARTIES

- 1.1 Petitioner Tammy Dalton is a resident of Grays Harbor County Washington.
- 1.2 Respondent Rene Dalton is a resident of Grays Harbor County Washington
- 1.3 Timothy Dalton is a dependent of the State of Washington.

1.4 Timothy Dalton was born on June 1 2007

PETITION

Page 1 of 4

Law Office of Scott A. Campbell, Inc.
A PROFESSIONAL SERVICE CORPORATION
Attorney at Law
115 South First Street * Montesano WA 98563
(360) 249-8482 Fax: (360) 249-8483

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II. JURISDICTION

2.1 Petitioner Tammy Dalton and Respondent Rene Dalton resided in Washington state with the child.

2.2 Grays Harbor County Superior Court, Juvenile Division has jurisdiction over the pending dependency matter involving the child, cause number 15-7-00279-6

2.3 The child is not an Indian child pursuant to RCW 26.27

2.4 Washington is the child's home state as the child lived in Washington with a parent or someone acting as a parent for at least the 6 months before this case was filed.

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III. STATEMENT OF FACTS

3.1 The child was placed with Respondent Rene Dalton by the Department of Social and Health Services in December 2008 when the child was one year old.

3.2 Respondent Dalton legally adopted the child on August 15, 2012.

3.3 Respondent Dalton started an intimate relationship with Petitioner in March 2010

3.4 The child was introduced to Petitioner in March 2010.

3.5 In January 2012, Petitioner moved into the same residence with Respondent Dalton and the child.

3.6 Petitioner and Respondent Dalton married on February 14 2015 in Aberdeen, WA.

3.7 A Dependency Petitioner was filed on September 22, 2015 as to the mother Rene Dalton, the only legal parent to the child.

3.8 The child was found to be a dependent of the State as to the mother, Respondent Rene Dalton, on December 2015.

3.9 Petitioner has not been able to participate in the dependency proceedings as she

1 is not a legal parent to the child.

2
3 3.10 Even though Petitioner cannot be a party to the dependency and is therefore not
4 subject to court order Petitioner has voluntarily engaged in any and all services requested
5 by the Department of Social and Health Services.

6 3.11 Petitioner and Respondent Rene Dalton remain married.

7 3.12 Petitioner and Respondent Rene Dalton participate in weekly supervised visitation
8 with the child.

9 3.13 A Petition to Terminate Parental Rights as to the mother Respondent Rene
10 Dalton, was filed March 7 2017

11 IV DE FACTO PARENTAGE

12 4.1 Petitioner satisfies the requirements articulated in In re Parentage of L.B., 155
13 Wash. 2d 679 122 P.3d 161 (2005), for de facto parentage as follows:

14 4.2 Respondent Rene Dalton consented to and fostered a parent-like relationship
15 between the child and Petitioner

16 4.3 The Petitioner and child lived together in the same household from January 2012
17 until the child went into foster care in September 2015

18 4.4 The Petitioner assumed obligations of parenthood through marriage to
19 Respondent Rene Dalton without any expectation of financial compensation.

20 4.5 Petitioner has been in a parental role for a length of time, more than six years,
21 sufficient to establish with the child a bonded, dependent relationship, parental in nature.
22

23 V PSYCHOLOGICAL PARENTAGE

24 In the alternative, if the court does not find Petitioner to be a de facto parent to
25 the child, Petitioner seeks psychological parent status as articulated in In re

1 Dependency of J.H., 117 Wash. 2d 460 815 P.2d 1380 (1991). Petitioner cared for the
2 child's physical and emotion needs for affection and care on a day-to-day basis,
3 establishing a psychological parent status with the child.
4

5 **VI. REQUEST FOR RELIEF**

6 WHEREFORE, Petitioner Tammy Dalton respectfully requests the Court issue a
7 parentage decree finding her to be the legal parent to the child Timothy Dalton according
8 to de facto parentage common law in the state of Washington. In the alternative,
9 Petitioner requests the court find her to be a psychological parent to the child. Petitioner
10 seeks legal status as a parent to be eligible to participate in the dependency proceedings.

11 DATED this 13th day of April 2017

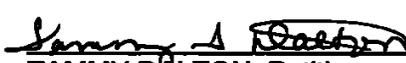
12 Respectfully submitted,
13 LAW OFFICE OF SCOTT A. CAMPBELL
14 Attorney for Petitioner

15 
16 HANNAH G. CAMPBELL, WSBA #50571

17 **VII. PETITIONER VERIFICATION**

18 I declare under penalty of perjury under the laws of the state of Washington that
19 the facts I have procided in this Petitioner are true and accurate.

20 DATED this 13th day of April 2017

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23 
24 TAMMY DALTON, Petitioner
25

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Motion Declaration for Indigency
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**SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY**

In re the De Facto Parentage of:)	
)	
TIMOTHY D. DALTON)	
)	
)	Minor.
)	
TAMMY DALTON,)	NO. 17-3-00129-5
)	
)	Petitioner,
and)	MOTION FOR ORDER OF INDIGENCY
)	
RENE DALTON;)	
STATE OF WASHINGTON, DEPARTMENT)	
OF SOCIAL AND HEALTH SERVICES)	
)	
)	
)	Respondents.

TAMMY DALTON, Petitioner, files a notice of appeal in the above-referenced dependency case and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense. TAMMY DALTON lacks sufficient funds to seek review in this case.

TAMMY DALTON, Petitioner, asks the court to order the following to be provided at public expense: all filing fees; attorney fees; preparation, reproduction, and distribution of briefs; preparation of verbatim report of proceedings; and preparation of necessary clerk's papers.

The following certificate is made in support of this motion.

DATED: 6/1/18

TAMMY DALTON, Petitioner

HANNAH G. CAMPBELL, WSBA #50571

CERTIFICATE

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1. Place an X next to any of the following types of assistance you receive:

- Welfare Poverty Related Veterans' Benefits
- Food Stamps Temporary Assistance for Needy Families (TANF)
- SSI Refugee Resettlement Benefits
- Medicaid Aged, Blind or Disabled Assistance Program
- Pregnant Women Assistance Benefits
- Other: _____

2. Do you work or have a job? yes no. If so, take-home pay per month: \$ _____

Occupation: STUDENT Employer's name & phone #: _____

3. Do you have a spouse or domestic partner who lives with you? yes no.

Does he/she work? yes no. If so, take-home pay per month: \$ 1097.00 TD

4. Do you and/or your spouse or domestic partner receive unemployment, Social Security, a pension, or workers' compensation? yes no

If so, which one? DISABILITY Amount: \$ 1014.00

5. Do you receive money from any other source? yes no. If so, how much? \$ _____

6. Do you have children residing with you? yes no. If so, how many? _____

7. Including yourself, how many people in your household do you support? 2

8. Do you own a home? yes no. If so, value: \$ _____ Amount owed: \$ _____

9. Do you own a vehicle(s)? yes no. If so, year(s) and model(s) or your vehicle(s):

10. 2000 CHEVY S-10 / 2014 CHEVY CAPTIVA Amount owed: \$ 0

11. How much money do you have in checking/savings account(s)? 5.00

12. How much money do you have in stocks, bonds or other investments? \$ 0

13. How much are your routine living expenses (rent, food utilities, transportation)? 1000.00

14. Other than routine living expenses such as rent, food, utilities, etc., do you have other expenses such as child support payments, court-ordered fines or medical bills, etc.? If so, describe: _____

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15. Do you have money available to hire a private attorney? _____ yes X no

I, TAMMY DALTON, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

6-1-18
Date

Tammy Dalton
TAMMY DALTON, Petitioner

Montesano, WA
City, State

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CAMPBELL LAW OFFICE

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STATE OF WASHINGTON
GRAYS HARBOR COUNTY SUPERIOR COURT

In re the De Facto Parentage of:

TIMOTHY D. DALTON,

Minor,

TAMMY DALTON,

Petitioner,

v.

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondents.

NO. 17-3-00129-5

DEPARTMENT'S
MOTION TO VACATE
ORDER OF INDIGENCY

The Department of Social and Health Services (Department), by and through its attorney, Rachel Rappaport, respectfully requests that the Order of Indigency entered June 8, 2018, be vacated.

I. STATEMENT OF FACTS

Tammy Dalton's Motion for Indigency incorrectly states that this is a dependency matter when this is actually a de facto parentage case. Tammy Dalton has been represented throughout these de facto parentage proceedings by private counsel, and the Department is a party to this case because Timothy Dalton (Timmy) is in the care and custody of the Department as a dependent child.

1 Tammy Dalton's Petition for De Facto Parentage filed under this cause number was
2 dismissed for lack of adequate cause. At the hearing on her motion for an adequate cause
3 determination, the Court found that the child abuse Tammy Dalton inflicted upon Timmy negates
4 her assertion of a committed and responsible role in the child's life as required for a finding of
5 de facto parentage. See Exhibit A: Order Denying Motion for Adequate Cause Determination and
6 Dismissing Petition for De Facto Parentage. Tammy Dalton's Motion for Reconsideration was also
7 denied, and the Court reiterated in its ruling denying the motion how Tammy Dalton's abuse of the
8 child did not show a permanent, unequivocal, committed, and responsible parenting role necessary
9 for de facto parentage. See Exhibit B: Order Denying Motion for Reconsideration.

10 On June 8, 2018, without notice to any of the parties to this case, Tammy Dalton filed a
11 Motion for Order of Indigency. The motion requested counsel at public expense to appeal the orders
12 denying her motion for adequate cause, dismissing the de facto parentage petition, and denying her
13 request for reconsideration. Tammy Dalton's motion cites no legal basis for her request and
14 incorrectly identifies this de facto parentage matter as a dependency case. Nonetheless, her motion
15 was granted ex parte the same day. Exhibit C: Motion for Order of Indigency and Order of
16 Indigency.

17 II. ISSUE PRESENTED

18 Where the Motion for Indigency incorrectly identifies this matter as a dependency case
19 rather than a de facto parentage matter and there is no basis to enter an Order of Indigency or
20 appoint counsel at public expense for a party in a family law case, should the Order of Indigency
21 entered June 8, 2018, be vacated?

22 III. EVIDENCE RELIED UPON

23 Exhibit A: Order Denying Motion for Adequate Cause Determination and Dismissing
24 Petition for De Facto Parentage filed December 21, 2017
25 Exhibit B: Order Denying Motion for Reconsideration filed May 16, 2018
26 Exhibit C: Motion for Order of Indigency and Order of Indigency filed June 8, 2018

1 IV. ARGUMENT

2 An order may be vacated for mistakes or irregularity in obtaining an order. CR 60(b)(1).
3 An order may also be vacated for “[a]ny other reason justifying relief from the operation of the
4 judgment.” CR 60(b)(11). Here, the Order of Indigency obtained ex parte should be vacated
5 because the motion incorrectly states that this matter is a dependency case when this is actually
6 a de facto parentage matter, and appointing counsel in family law cases is contrary to established
7 law.

8 The Order of Indigency cites RAP 15.2 as the basis to appoint counsel, which allows
9 appointment of counsel at public expense in dependency cases but not in family law matters like
10 the one before the Court here. Motions for indigency may be granted only for the following types
11 of cases: 1) criminal prosecutions or juvenile offenses under RCW 10.73.150; 2) dependency
12 and termination cases under Chapter 13.34 RCW; 3) commitment proceedings under
13 Chapters 71.05 and 71.09 RCW; 4) civil contempt cases directing incarceration; 5) orders
14 denying petitions for a writ of habeas corpus under Chapter 7.36 RCW; or 6) any other case in
15 which the party has a constitutional or statutory right to counsel at all stages of the proceedings.
16 RAP 15.2(b)(1). Unlike dependency and termination matters where a fundamental parental
17 liberty interest is at stake, there is no constitutional right to counsel in family law cases. *See*
18 *King v. King*, 162 Wn.2d 378, 386, 174 P.3d 659 (2007). Whether to publicly fund actions other
19 than those that are constitutionally mandated is a decision for the legislature, not the courts.
20 *Id.* at 398.

21 Here, Tammy Dalton’s Motion for Indigency incorrectly categorizes this action as a
22 dependency case, a mistake warranting an order to vacate under CR 60(b)(1) and (11) since
23 counsel may be appointed at public expense for a dependency matter under RAP 15.2 but not
24 for a de facto parentage case.

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V. CONCLUSION

The Department respectfully requests that Tammy Dalton's Motion for Indigency be vacated under CR 60(b)(1) and (11) because of the mistaken assertion that this case is a dependency matter whereas this case is actually a de facto parentage matter for which there is no right to counsel at public expense.

DATED this 10th day of July, 2018.

ROBERT W. FERGUSON
Attorney General

 12141
RACHEL RAPPAPORT, WSBA No. 43600
Assistant Attorney General
Attorneys for DSHS

EXHIBIT A

2017 DEC 21 PM 4:36

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STATE OF WASHINGTON
GRAYS HARBOR COUNTY SUPERIOR COURT

TIMOTHY D. DALTON,
Minor,
TAMMY D. DALTON,
Petitioner,
v.
RENE DALTON,
STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,
Respondents.

NO. 17-3-00129-5
ORDER DENYING MOTION
FOR ADEQUATE CAUSE
DETERMINATION AND
DISMISSING PETITION FOR
DE FACTO PARENTAGE

This matter came before the Court upon Tammy Dalton's Motion for Adequate Cause Determination. The Department responded to the motion, and oral argument occurred on September 21, 2017. In a letter ruling issued on October 2, 2017, the Court found that there was not adequate cause to hold a full hearing or trial and further determined that the Petition for De Facto Parentage should be dismissed. The letter ruling is incorporated by reference, and a copy is attached to this order.

ORDER DENYING MOTION FOR
ADEQUATE CAUSE DETERMINATION
AND DISMISSING PETITION FOR
DE FACTO PARENTAGE

1

ATTORNEY GENERAL OF WASHINGTON
7141 Cleanwater Dr SW
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565

Department's Motion to Vacate Order of Indigency
Exhibit A - Page 1 of 5

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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1. Tammy Dalton has a founded finding for abusing the child. Tammy Dalton has failed to allege any facts which either acknowledge the abuse she inflicted upon the child or show that the abuse would not resume should the child be returned to her care.
2. In order to proceed with a petition for de facto parentage, the court must first determine that adequate cause exists. The test to determine adequate cause is the four-part test laid out in *In re Custody of B.M.H.*, 179 Wn.2d 224, 241, 315 P.3d 470, 478 (2013).
3. Tammy Dalton has not provided sufficient facts to show that the fourth factor, being in a parental role for a length of time sufficient to have established a bonded, dependent, parental relationship with the child, can be met.
4. The Petition for De Facto Parentage should not be viewed in a vacuum, and all of the relevant circumstances should be addressed, including the reasons for the child's removal from both his mother and Tammy Dalton and what has since taken place to address the issues that led to the removal.
5. Assuming a committed and responsible role in a child's life does not include child abuse.
6. There is not adequate cause to hold a full hearing or trial.
7. Since adequate cause does not exist, the Petition for De Facto Parentage should be dismissed.

II. ORDER

It is hereby ordered, adjudged, and decreed that the Motion for Adequate Cause Determination is denied. The Petition for De Facto Parentage is dismissed.

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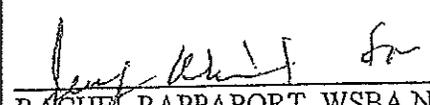
1 Dated this 21st day of ~~November~~ December, 2017.

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JUDGE/COMMISSIONER

Presented By:

ROBERT W. FERGUSON
Attorney General


RACHEL RAPPAPORT, WSBA No. 43600
Assistant Attorney General
Attorneys for DSHS

Approved for Entry:


HANNAH CAMPBELL, WSBA No. 50571
Attorney for Tammy Dalton

THE SUPERIOR COURT OF WASHINGTON
GRAYS HARBOR COUNTY

STEPHEN E. BROWN, JUDGE
DAVID L. EDWARDS, JUDGE
F. MARK McGAULEY, JUDGE
(360) 249-5311 Ext 4
JAMIE BATES, ADMINISTRATOR
(360) 249-5311 Ext 3

102 W. BROADWAY
ROOM 305
MONTESANO, WASHINGTON 98563

October 2, 2017

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OCT 05 2017

CAMPBELL LAW OFFICE

Rachel Rappaport
Attorney at Law
P.O. Box 40124
Olympia, WA 98504-0124

Hannah Campbell
Attorney at Law
115 S. First Street
Montesano, WA 98563-3601

Re: Tammy Dalton v Rene Dalton
Grays Harbor County Cause No. 17-3-00129-5
Re: Court's Decision on Motion for Adequate Cause Decision
De Facto Parentage of: T.D.D.

Dear Counsel:

I agree with the position of the Department on this motion. Ms. Tammy Dalton has not provided sufficient facts to show that the fourth required factor¹ can be met. Ms. Tammy Dalton has a founded finding for abuse of T.D.D. She failed to allege any facts which either acknowledge the abuse or show that the abuse would not resume should T.D.D. be returned to her care.

I cannot view the de facto parentage petition in a vacuum. All of the relevant circumstances should have been addressed, including the reasons for the removal of T.D.D. from his mother, Ms. Renee Dalton, and his step-mother, Ms. Tammy Dalton, and what has taken place since removal to address the circumstances that led to T.D.D.

¹ Establishing de facto parentage requires a showing 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. *Id.* at 708, 122 P.3d 161. 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." 155 Wn. 2d at 708, 122 P.3d 161 (quoting *C.E.W. v. D.E.W.*, 2004 ME 43, 845 A.2d 1146, 1152).

In re Custody of B.M.H., 179 Wash. 2d 224, 241, 315 P.3d 470, 478 (2013).

being taken into care and how that affects Ms. Tammy Dalton's committed and responsible parental role. Assuming a committed and responsible parental role does not include child abuse.

For the reasons stated above, there is not adequate cause (valid reasons) to hold a full hearing or trial. The Petition for De Facto Parentage should be dismissed.

Sincerely,



Stephen Brown
Superior Court Judge

SEB/bmm
Cc: file

EXHIBIT B

FILED

18 MAY 16 12:15

17-3-00129-5
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Order Denying Motion Petition
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STATE OF WASHINGTON GRAYS HARBOR COUNTY SUPERIOR COURT

IN RE THE DE FACTO PARENTAGE OF:

TIMOTHY D. DALTON,

Minor,

TAMMY DALTON,

Petitioner,

v.

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondents.

No.: 17-3-00129-5

**ORDER DENYING MOTION FOR
RECONSIDERATION**

This matter comes on for reconsideration of the Court's decision of December 21, 2017 denying Petitioner's Motion for Adequate Cause Determination.

I. FINDINGS

1. The Court affirms its findings that the four part test set forth in *In re Custody BMH*, 179 Wn.2d 224, 315 P3d 470 (2013) and *In re Parentage of LB*, 155 Wn.2d 706, 122 P3d 161 have not been met.

PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WA 99553
(360) 249-3951 FAX 249-6064

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2. The factors set forth in *In re Custody BMH* and *In re Parentage of LB*, supra, did not contemplate situations of children who were the subject of abuse and neglect and dependency actions.

3. Tammy Dalton did not undertake a permanent, unequivocal, committed and responsible role in Timothy's life as contemplated in *In re Parentage of LB*, supra, in that she abused and neglected Timothy while he was living with her.

4. Tammy Dalton cannot overcome the issue of abuse and the fact she did not meet the fourth factor by her subsequent services while Timothy was not residing with her.

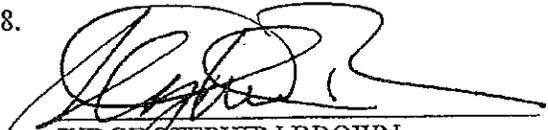
5. Tammy Dalton has not shown that substantial justice was denied in the original motion.

6. Tammy Dalton has an administrative finding of abuse and neglect which she cannot overcome.

II. ORDER

The Motion for Reconsideration is denied.

DATED this 16th day of MAY, 2018.


JUDGE STEPHEN BROWN

JENNIFER L. WIELAND
Senior Civil Deputy
WSBA# 12141

HANNAH CAMPBELL
Attorney for Petitioner
WSBA# 50571

EXHIBIT C

2018 JUN -8 PM 1:06

17-3-00129-5
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Motion Declaration for Indigency
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SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

In re the De Facto Parentage of:)
)
TIMOTHY D. DALTON)
Minor.)
)
TAMMY DALTON,)
Petitioner,)
and)
)
RENE DALTON;)
STATE OF WASHINGTON, DEPARTMENT)
OF SOCIAL AND HEALTH SERVICES)
)
Respondents.)

NO. 17-3-00129-5

MOTION FOR ORDER OF INDIGENCY

TAMMY DALTON, Petitioner, files a notice of appeal in the above-referenced dependency case and moves the court for an Order of Indigency authorizing the expenditure of public funds to prosecute this appeal wholly at public expense. TAMMY DALTON lacks sufficient funds to seek review in this case.

TAMMY DALTON, Petitioner, asks the court to order the following to be provided at public expense: all filing fees; attorney fees; preparation, reproduction, and distribution of briefs; preparation of verbatim report of proceedings; and preparation of necessary clerk's papers.

The following certificate is made in support of this motion.

DATED: 6/1/18

TAMMY DALTON, Petitioner

HANNAN G. CAMPBELL, WSBA #50571

CERTIFICATE

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1. Place an X next to any of the following types of assistance you receive:

- Welfare Poverty Related Veterans' Benefits
- Food Stamps Temporary Assistance for Needy Families (TANF)
- SSI Refugee Resettlement Benefits
- Medicaid Aged, Blind or Disabled Assistance Program
- Pregnant Women Assistance Benefits
- Other: _____

2. Do you work or have a job? yes no. If so, take-home pay per month: \$ _____

Occupation: STUDENT Employer's name & phone #: _____

3. Do you have a spouse or domestic partner who lives with you? yes no.

Does he/she work? yes no. If so, take-home pay per month: \$ 1014.00 TD

4. Do you and/or your spouse or domestic partner receive unemployment, Social Security, a pension, or workers' compensation? yes no

If so, which one? DISABILITY Amount: \$ 1014.00

5. Do you receive money from any other source? yes no. If so, how much? \$ _____

6. Do you have children residing with you? yes no. If so, how many? _____

7. Including yourself, how many people in your household do you support? 2

8. Do you own a home? yes no. If so, value: \$ _____ Amount owed: \$ _____

9. Do you own a vehicle(s)? yes no. If so, year(s) and model(s) or your vehicle(s):

10. 2000 CHEVY S-10 / 2014 CHEVY CAPTIVA Amount owed: \$ 0

11. How much money do you have in checking/savings account(s)? 5.00

12. How much money do you have in stocks, bonds or other investments? \$ 0

13. How much are your routine living expenses (rent, food utilities, transportation)? 1000.00

14. Other than routine living expenses such as rent, food, utilities, etc., do you have other expenses such as child support payments, court-ordered fines or medical bills, etc.? If so, describe: _____

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15. Do you have money available to hire a private attorney? ___ yes X no

I, TAMMY DALTON, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

10-1-18

Date

Tammy Dalton

TAMMY DALTON, Petitioner

Montesano, WA

City, State

2018 JUL 27 AM 10:14

17-3-00129-5
RSP 47
Response
3571484



**SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY**

In re the De Facto Parentage of:

TIMOTHY D. DALTON

Minor.

No. 17-3-00129-5

TAMMY DALTON,

Petitioner,

RESPONSE TO MOTION TO
VACATE ORDER OF INDIGENCY

and

RENE DALTON;
STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

Respondents.

HANNAH G. CAMPBELL DECLARES AS FOLLOWS:

This declaration responds to the Department's Motion to Vacate the Order of Indigency, filed July 11, 2018. When related to a dependency matter, a party alleging a de facto parentage relationship is eligible to appointed counsel pursuant to RAP 15.2(b)(1)(F). As such, the court should not vacate the order of indigency.

Under RAP 15.2(b)(1)(F), the court shall grant an order of indigency in "any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceedings". In the alternative, the court shall grant an order of indigency pursuant to RAP 15.2 (c) and (d) in cases not governed by subsection (b) of RAP 15.2.

A petitioner who proves he or she is a de facto parent stands in parity to any other

1 legal parent, making the status much different and more all-encompassing than the status of
2 a third party parent. 21 Wash. Prac., Fam. And Community Prop. L. § 49:41. A finding of de
3 facto parentage places the parent in “legal parity with an otherwise legal parent, whether
4 biological, adoptive, or otherwise.” In re Parentage of L.B., 155 Wn. 2d 679, 122 P.3d 161
5 (2005), In re Custody of B.M.H., 179 Wn. 2d 224, 315 P.3d 470 (2013); In re Custody of A.F.J.,
6 179 Wn. 2d 179, 314 P.3d 373 (2013). Parents have a fundamental right to autonomy in child-
7 rearing decisions, and this liberty interest is protected as a matter of substantive due process
8 under the constitution. Troxel v. Granville, 530 U.S. 57 (2000); In re Parentage of C.A.M.A.,
9 154 Wn. 2d 52, 109 P.3d 405 (2005).

10
11
12
13 Petitioner, Ms. Tammy Dalton, alleged a prima facie case for de facto parentage. See
14 Attachment A – Petition for De Facto Parentage.

15
16 If related to a question of dependency, indigent parents shall be appointed counsel in
17 domestic matters not in dependency court. In re Dependency of E.H., 158 Wn. App. 757, 243
18 P.3d 160 (2010). In E.H., the juvenile court granted concurrent jurisdiction in a domestic matter
19 involving the same children as a dependency. E.H., 158 Wn. App. at 762, 243 P.3d at 162.
20 The court found the parents to have a constitutional right to counsel in the domestic matter.
21
22 Id.

23
24 Similarly to E.H., the juvenile granted concurrent jurisdiction over Ms. Dalton's Petition
25 for De Facto Parentage on April 26, 2017. Ms. Dalton, by analogy, stands in the same legal
26 posture, if found to be a de facto parent, as the legal parents in E.H. Therefore, this court has
27 the authority, pursuant to RAP 15.2, to enter an order of indigency.
28

29
30 The Department argues that Ms. Dalton's Motion for Indigency “incorrectly categorizes
31 this action as a dependency case, warranting an order to vacate under CR 60(b)(1) and (11)”.
32 In the body of the motion, the term “dependency” is included but it was a holdover term from
33
34

1 a stock form. The heading and cause number on the Motion for Indigency explicitly state the
2 case is a domestic matter.

3
4 Because Ms. Dalton is eligible for indigent representation upon appellate review of her
5 de facto parentage claim, the court should not vacate the Order of Indigency entered in the
6 above entitled matter.
7

8 I declare under penalty of perjury of the laws of the state of Washington that the
9 foregoing is true and accurate.

10
11 Respectfully submitted this 27th day of July 2018.

12
13 

14 HANNAH G. CAMPBELL, WSBA #50571

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FILED
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**SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY**

In re the De Facto Parentage of
TIMOTHY D DALTON

TAMMY DALTON

And
RENE DALTON,

**STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES**

Respondents.

No. **17-3-129-5**

**PETITION FOR DECREE OF
DE FACTO PARENTAGE**

COMES NOW Petitioner, Tammy Dalton, by and through her attorney Hannah G Campbell, and petitions the court for de facto parentage status, alleges as follows:

I. PARTIES

- 1.1 Petitioner Tammy Dalton is a resident of Grays Harbor County Washington.
- 1.2 Respondent Rene Dalton is a resident of Grays Harbor County Washington
- 1.3 Timothy Dalton is a dependent of the State of Washington.

1.4 Timothy Dalton was born on June 1 2007

PETITION

Page 1 of 4

Law Office of Scott A. Campbell, Inc.
A PROFESSIONAL SERVICE CORPORATION
Attorney at Law
115 South First Street • Montesano WA 98563
(360) 249-8482 Fax: (360) 249-8483

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Attachment A
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II. JURISDICTION

2.1 Petitioner Tammy Dalton and Respondent Rene Dalton resided in Washington state with the child.

2.2 Grays Harbor County Superior Court, Juvenile Division has jurisdiction over the pending dependency matter involving the child, cause number 15-7-00279-6

2.3 The child is not an Indian child pursuant to RCW 26.27

2.4 Washington is the child's home state as the child lived in Washington with a parent or someone acting as a parent for at least the 6 months before this case was filed.

III. STATEMENT OF FACTS

3.1 The child was placed with Respondent Rene Dalton by the Department of Social and Health Services in December 2008 when the child was one year old.

3.2 Respondent Dalton legally adopted the child on August 15, 2012.

3.3 Respondent Dalton started an intimate relationship with Petitioner in March 2010

3.4 The child was introduced to Petitioner in March 2010.

3.5 In January 2012, Petitioner moved into the same residence with Respondent Dalton and the child.

3.6 Petitioner and Respondent Dalton married on February 14 2015 in Aberdeen, WA.

3.7 A Dependency Petitioner was filed on September 22, 2015 as to the mother Rene Dalton, the only legal parent to the child.

3.8 The child was found to be a dependent of the State as to the mother, Respondent Rene Dalton, on December 2015.

3.9 Petitioner has not been able to participate in the dependency proceedings as she

1 is not a legal parent to the child.

2
3 3.10 Even though Petitioner cannot be a party to the dependency and is therefore not
4 subject to court order Petitioner has voluntarily engaged in any and all services requested
5 by the Department of Social and Health Services.

6 3.11 Petitioner and Respondent Rene Dalton remain married.

7 3.12 Petitioner and Respondent Rene Dalton participate in weekly supervised visitation
8 with the child.

9 3.13 A Petition to Terminate Parental Rights as to the mother Respondent Rene
10 Dalton, was filed March 7 2017

11 **IV DE FACTO PARENTAGE**

12 4.1 Petitioner satisfies the requirements articulated in In re Parentage of L.B., 155
13 Wash. 2d 679 122 P.3d 161 (2005), for de facto parentage as follows:

14 4.2 Respondent Rene Dalton consented to and fostered a parent-like relationship
15 between the child and Petitioner

16 4.3 The Petitioner and child lived together in the same household from January 2012
17 until the child went into foster care in September 2015

18 4.4 The Petitioner assumed obligations of parenthood through marriage to
19 Respondent Rene Dalton without any expectation of financial compensation.

20 4.5 Petitioner has been in a parental role for a length of time, more than six years,
21 sufficient to establish with the child a bonded, dependent relationship, parental in nature.

22 **V PSYCHOLOGICAL PARENTAGE**

23
24 In the alternative, if the court does not find Petitioner to be a de facto parent to
25 the child, Petitioner seeks psychological parent status as articulated in In re

PETITION

Page 3 of 4

Law Office of Scott A. Campbell, Inc.
A PROFESSIONAL SERVICE CORPORATION
Attorney at Law
115 South First Street • Montesano WA 98563
(360) 249-8482 Fax: (360) 249-8483

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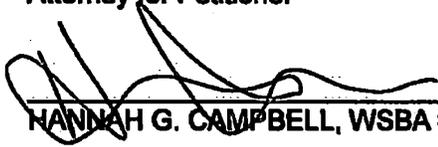
Dependency of J.H., 117 Wash. 2d 460 815 P.2d 1380 (1991). Petitioner cared for the child's physical and emotion needs for affection and care on a day-to-day basis, establishing a psychological parent status with the child.

VI. REQUEST FOR RELIEF

WHEREFORE, Petitioner Tammy Dalton respectfully requests the Court issue a parentage decree finding her to be the legal parent to the child Timothy Dalton according to de facto parentage common law in the state of Washington. In the alternative, Petitioner requests the court find her to be a psychological parent to the child. Petitioner seeks legal status as a parent to be eligible to participate in the dependency proceedings.

DATED this 13th day of April 2017

Respectfully submitted,
LAW OFFICE OF SCOTT A. CAMPBELL
Attorney for Petitioner



HANNAH G. CAMPBELL, WSBA #50571

VII. PETITIONER VERIFICATION

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided in this Petitioner are true and accurate.

DATED this 13th day of April 2017



TAMMY DALTON, Petitioner

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**STATE OF WASHINGTON
GRAYS HARBOR COUNTY SUPERIOR COURT**

In re the De Facto Parentage of:

TIMOTHY D. DALTON,

Minor,

TAMMY DALTON,

Petitioner,

v.

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondents.

NO. 17-3-00129-5

REPLY IN SUPPORT OF
DEPARTMENT'S
MOTION TO VACATE
ORDER OF INDIGENCY

The Order of Indigency should be vacated because Tammy Dalton is not a parent, and as already outlined in the Department's motion to vacate, there is no legal authority to appoint counsel for a party in a family law case.

Tammy Dalton is not a de facto parent nor does she have any legal parentage to Timmy, and her response incorrectly relies on court rules and caselaw applicable to parents. Tammy Dalton's de facto parentage case did not make it past the adequate cause stage because of the abuse she inflicted upon Timmy before his removal by the Department almost three years ago, and she

1 | incorrectly asserts that the right to counsel attaches just because she is a party to a case involving a
2 | dependent child where the dependency court granted concurrent jurisdiction. Parents have a right
3 | to counsel in dependency proceedings, but the right to counsel does not extend to individuals
4 | asserting parentage. *See* RCW 13.34.090. Tammy Dalton does not explain how the right to counsel
5 | attaches to her petition for de facto parentage nor can she provide such authority since none exists.

6 | Tammy Dalton's reliance on *In re Dependency of E.H.* is misplaced because *E.H.* addresses
7 | the right to counsel for a parent pertaining to a dependency issue, not an individual petitioning for
8 | parentage status as to a dependent child. 158 Wn. App. 757, 760, 243 P.3d 160 (2010). In *E.H.*, the
9 | dependency court granted concurrent jurisdiction so the caretaker could pursue nonparental
10 | custody. *Id.* at 762. The right to counsel issue did not arise with the caretaker but instead arose with
11 | the parents because the nonparental custody court was granted concurrent jurisdiction to hear the
12 | alternative plan of return home, which was a dependency issue pertaining to the parents. *Id.* at 763.

13 | In determining that the right to counsel attached, the appellate court explained,

14 | Accordingly, in a consolidated proceeding to consider a nonparental custody
15 | petition together with a permanency plan of return home, the 'return home' portion
16 | of the proceeding is a 'proceeding [] under [chapter 13.34 RCW]' that gives the
17 | parents a right to counsel under RCW 13.34.090(1). Additionally, because the
18 | 'return home' portion of the proceeding is a 'stage [] of a proceeding in which a
19 | child is alleged to be dependent,' the parents have a right to appointed counsel under
20 | RCW 13.34.090(2).

19 | *Id.* at 768.

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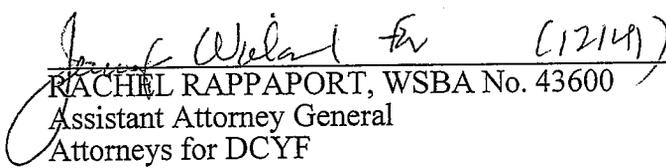
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1 Here, unlike *E.H.*, Tammy Dalton is not a parent, not a party to the dependency case, and
2 the de facto parentage court is not hearing an issue under Chapter 13.34 RCW. There is no authority
3 for Tammy Dalton's contention that the right to counsel attaches simply because she has
4 unsuccessfully asserted de facto parentage as to a dependent child, and the Department's motion to
5 vacate should be granted.

6 DATED this 31st day of July 2018.

7 ROBERT W. FERGUSON
8 Attorney General

9  (1214)
10 RACHEL RAPPAPORT, WSBA No. 43600
11 Assistant Attorney General
12 Attorneys for DCYF

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**SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY**

In re the De Facto Parentage of:

TIMOTHY D. DALTON

Minor.

Superior Court No. 17-3-00129-5
COA No. 52042-7-II

TAMMY DALTON

Petitioner,

**AMENDED NOTICE OF APPEAL TO THE
COURT OF APPEALS – DIVISION II**

and

RENE DALTON;
STATE OF WASHINGTON, DEPARTMENT
OF SOCIAL AND HEALTH SERVICES

Respondents.

TAMMY DALTON, Petitioner, seeks review by the designated appellate court of the Order Denying Motion for Adequate Cause Determination and Dismissing Petition for De Facto Parentage, entered December 21, 2017, the Order Denying Motion for Reconsideration, entered May 16, 2018 and the Findings and Order Vacating Order of Indigency, entered August 22, 2018.

A copy of the decisions are attached to this notice.

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Dated: August 29, 2018

CAMPBELL LAW FIRM, INC., P.S.
Attorney for Petitioner



HANNAH G. CAMPBELL, WSBA#5057

Attorney for Petitioner
Hannah G. Campbell, WSBA#50571
115 S 1st Street
Montesano, WA 98563
360-249-8482

Attorney for Respondent
Rachel Rappaport
PO Box 40124
Olympia, WA 98504

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the Notice of Appeal to the Court of Appeals – Division II filed with the Grays Harbor County Superior Court Clerk’s Office, and a true copy was filed with the Court of Appeals, Division II and sent to the following attorneys of records through the appellate courts portal:

Rachel Rappaport
Attorney General of Washington
PO Box 40124
Olympia, WA 98504
(360) 586-6565
RachelR@ATG.WA.GOV

Respectfully submitted this 29th day of August 2018.



HANNAH G. CAMPBELL, WSBA #50571
CAMPBELL LAW FIRM, INC., P.S.
Attorney for Petitioner
115 S 1st Street
Montesano, WA 98563
360-249-8482
hannah@graysharborattorney.com

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Order Denying Motion Petition
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STATE OF WASHINGTON
GRAYS HARBOR COUNTY SUPERIOR COURT

TIMOTHY D. DALTON,

Minor,

TAMMY D. DALTON,

Petitioner,

v.

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL
AND HEALTH SERVICES,

Respondents.

NO. 17-3-00129-5

ORDER DENYING MOTION
FOR ADEQUATE CAUSE
DETERMINATION AND
DISMISSING PETITION FOR
DE FACTO PARENTAGE

This matter came before the Court upon Tammy Dalton's Motion for Adequate Cause Determination. The Department responded to the motion, and oral argument occurred on September 21, 2017. In a letter ruling issued on October 2, 2017, the Court found that there was not adequate cause to hold a full hearing or trial and further determined that the Petition for De Facto Parentage should be dismissed. The letter ruling is incorporated by reference, and a copy is attached to this order.

ORDER DENYING MOTION FOR
ADEQUATE CAUSE DETERMINATION
AND DISMISSING PETITION FOR
DE FACTO PARENTAGE

1

ATTORNEY GENERAL OF WASHINGTON
7141 Cleanwater Dr SW
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565

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I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1. Tammy Dalton has a founded finding for abusing the child. Tammy Dalton has failed to allege any facts which either acknowledge the abuse she inflicted upon the child or show that the abuse would not resume should the child be returned to her care.
- 2. In order to proceed with a petition for de facto parentage, the court must first determine that adequate cause exists. The test to determine adequate cause is the four-part test laid out in *In re Custody of B.M.H.*, 179 Wn.2d 224, 241, 315 P.3d 470, 478 (2013).
- 3. Tammy Dalton has not provided sufficient facts to show that the fourth factor, being in a parental role for a length of time sufficient to have established a bonded, dependent, parental relationship with the child, can be met.
- 4. The Petition for De Facto Parentage should not be viewed in a vacuum, and all of the relevant circumstances should be addressed, including the reasons for the child's removal from both his mother and Tammy Dalton and what has since taken place to address the issues that led to the removal.
- 5. Assuming a committed and responsible role in a child's life does not include child abuse.
- 6. There is not adequate cause to hold a full hearing or trial.
- 7. Since adequate cause does not exist, the Petition for De Facto Parentage should be dismissed.

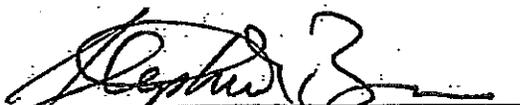
II. ORDER

It is hereby ordered, adjudged, and decreed that the Motion for Adequate Cause Determination is denied. The Petition for De Facto Parentage is dismissed.

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Dated this 21st day of ~~November~~ ^{December}, 2017.


JUDGE/COMMISSIONER

Presented By:

ROBERT W. FERGUSON
Attorney General


RACHEL RAPPAPORT, WSBA No. 43600
Assistant Attorney General
Attorneys for DSHS

Approved for Entry:


HANNAH CAMPBELL, WSBA No. 50571
Attorney for Tammy Dalton

THE SUPERIOR COURT OF WASHINGTON
GRAY'S HARBOR COUNTY

STEPHENE BROWN, JUDGE
DAVID L. EDWARDS, JUDGE
E. MARK McCAULEY, JUDGE
(360) 249-5311 Ext 4
JAMIE BATES, ADMINISTRATOR
(360) 249-5311 Ext 4

102 W. BROADWAY
ROOM 305
MONTESANO, WASHINGTON 98569

October 2, 2017

Rachel Rappaport
Attorney at Law
P.O. Box 40124
Olympia, WA 98504-0124

Hannah Campbell
Attorney at Law
115 S. First Street
Montesano, WA 98563-3601

Re: Tammy Dalton v Rene Dalton
Grays Harbor County Cause No. 17-3-00129-5
Re: Court's Decision on Motion for Adequate Cause Decision
De Facto Parentage of T.D.D.

Dear Counsel:

I agree with the position of the Department on this motion. Ms. Tammy Dalton has not provided sufficient facts to show that the fourth required factor¹ can be met. Ms. Tammy Dalton has a founded finding for abuse of T.D.D. She failed to allege any facts which either acknowledge the abuse or show that the abuse would not resume should T.D.D. be returned to her care.

I cannot view the de facto parentage petition in a vacuum. All of the relevant circumstances should have been addressed, including the reasons for the removal of T.D.D. from his mother, Ms. Renee Dalton, and his step-mother, Ms. Tammy Dalton, and what has taken place since removal to address the circumstances that led to T.D.D.

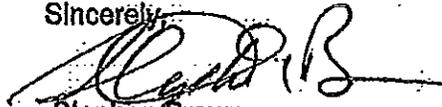
¹ Establishing de facto parentage requires a showing that (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation; 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. *Id.* at 708, 122 P.3d 161. 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." 155 Wn. 2d at 708, 122 P.3d 161 (quoting *C.E.W. v. D.B.W.*, 2004 ME 43, 845 A.2d 1146, 1152).

In re Custody of B.M.H., 179 Wash. 2d 224, 241, 315 P.3d 470, 478 (2013).

being taken into care and how that affects Ms. Tammy Dalton's committed and responsible parental role. Assuming a committed and responsible parental role does not include child abuse.

For the reasons stated above, there is not adequate cause (valid reasons) to hold a full hearing or trial. The Petition for De Facto Parentage should be dismissed.

Sincerely,



Stephen Brown
Superior Court Judge

SEB/bmm
Co: file

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Order Denying Motion Petition
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GRAYS HARBOR CO.
C. BROWN CLERK



STATE OF WASHINGTON GRAYS HARBOR COUNTY SUPERIOR COURT

IN RE THE DE FACTO PARENTAGE OF:

No.: 17-3-00129-5

TIMOTHY D. DALTON,

Minor,

**ORDER DENYING MOTION FOR
RECONSIDERATION**

TAMMY DALTON,

Petitioner,

v.

RENE DALTON,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondents.

This matter comes on for reconsideration of the Court's decision of December 21, 2017 denying Petitioner's Motion for Adequate Cause Determination.

I. FINDINGS

- The Court affirms its findings that the four part test set forth in *In re Custody BMH*, 179 Wn.2d 224, 315 P3d 470 (2013) and *In re Parentage of LB*, 155 Wn.2d 706, 122 P3d 161 have not been met.

PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WA 98563
(360) 219-9351 FAX 219-6954

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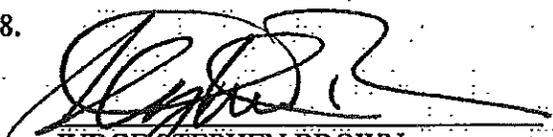
- 2. The factors set forth in *In re Custody BMH* and *In re Parentage of LB*, supra, did not contemplate situations of children who were the subject of abuse and neglect and dependency actions.
- 3. Tammy Dalton did not undertake a permanent, unequivocal, committed and responsible role in Timothy's life as contemplated in *In re Parentage of LB*, supra, in that she abused and neglected Timothy while he was living with her.
- 4. Tammy Dalton cannot overcome the issue of abuse and the fact she did not meet the fourth factor by her subsequent services while Timothy was not residing with her.
- 5. Tammy Dalton has not shown that substantial justice was denied in the original motion.

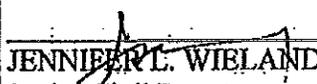
6. Tammy Dalton has an administrative finding of abuse and neglect which she cannot overcome.

II. ORDER

The Motion for Reconsideration is denied.

DATED this 16th day of MAY, 2018.


 JUDGE STEPHEN BROWN


 JENNIFER L. WIELAND
 Senior Civil Deputy
 WSBA# 12141

HANNAH CAMPBELL
 Attorney for Petitioner
 WSBA# 50571

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Findings of Fact and Conclusions of Law
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SUPERIOR COURT OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

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In re the De Facto Parentage of:)
)
TIMOTHY D. DALTON)
)
Minor.)
)
TAMMY DALTON,)
)
Petitioner,)
)
and)
)
RENE DALTON;)
)
STATE OF WASHINGTON, DEPARTMENT)
)
OF SOCIAL AND HEALTH SERVICES)
)
Respondents.)

NO. 17-3-00129-5
FINDINGS AND ORDER VACATING
ORDER OF INDIGENCY

This matter came on for hearing on August 1, 2018 on the Department's Motion to Vacate Order of Indigency. The Court having been fully advised makes the further Findings and Order.

I. FINDINGS OF FACT

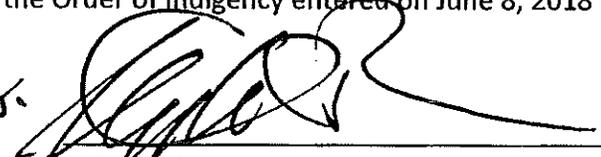
1. Tammy Dalton is indigent but does not meet any of the criteria listed in Rules on Appeal (RAP) 15.2 for appointment of counsel on appeal.
2. Tammy Dalton is not a legal parent to Timothy Dalton and therefore does not have a constitutional or statutory right to counsel on appeal at public expense.

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II. CONCLUSIONS OF LAW

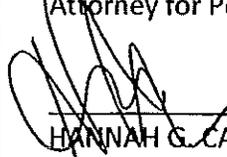
1. The granting of the Order of Indigency was an error of law under CR 60(b)(11).

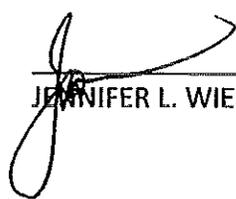
IT IS THEREFORE ORDERED that the Order of Indigency entered on June 8, 2018 is vacated.

DATED: July 22, 2018 
JUDGE BROWN

CAMPBELL LAW FIRM
Attorney for Petitioner

Senior Civil Deputy


HANNAH G. CAMPBELL, WSBA #50571


JENNIFER L. WIELAND, WSBA #12141

BACKLUND & MISTRY

September 13, 2018 - 1:05 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52042-7
Appellate Court Case Title: In Re The Parentage of: T.D., Appellant v R.D., State of WA DSHS, Respondents
Superior Court Case Number: 17-3-00129-5

The following documents have been uploaded:

- 520427_Briefs_20180913124757D2763114_3316.pdf
This File Contains:
Briefs - Appellants
The Original File Name was 520427 In re the Parentage of TD Opening Brief w Appendix.pdf
- 520427_Motion_20180913124757D2763114_7045.pdf
This File Contains:
Motion 1 - Other
The Original File Name was 520427 In re the Parentage of TD Motion for Appendix etc.pdf

A copy of the uploaded files will be sent to:

- RachelR@ATG.wa.gov
- shsappealnotification@atg.wa.gov

Comments:

Motion for Permission to Submit Appendix and for Other Relief Appellants Opening Brief with Appendix

Sender Name: Jodi Backlund - Email: backlundmistry@gmail.com

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Phone: 360-339-4870

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