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Division II
State of Washington
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No. 52042-7-II

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 Reply Brief

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ARGUMENT

I. THE TRIAL COURT SHOULD HAVE RESOLVED FACTUAL DISPUTES AT A TRIAL ON T.D.'S DE FACTO PARENTAGE PETITION.

The facts outlined in T.D.'s petition establish the four criteria required to establish standing as a de facto parent. *In re Parentage of L.B.*, 155 Wn.2d 679, 707-708, 122 P.3d 161 (2005). The basic facts are not in dispute.

Respondent's position is that T.D. is a "bad" parent. *See* Brief of Respondent, pp. 13. This will often be the stance taken by the opposing party, who is usually the biological parent. If an opponent's judgments could defeat a petition, then no case would ever proceed beyond the adequate cause stage.

Respondent's argument that T.D. is a bad parent may allow the department to prevail at trial. However, the court should hear the evidence to determine if the petition should be granted or denied. It should not have resolved disputed issues on the pleadings and dismissed the petition.

To demonstrate probable cause, the petitioner "must allege specific facts that, if proved true, would establish a prima facie case." *Matter of Custody of L.M.S.*, 187 Wn.2d 567, 576, 387 P.3d 707 (2017). Respondent correctly points out that "courts need not take every *allegation* at face

value.” Brief of Respondent, p. 12 (quoting *L.M.S.*, 187 Wn.2d at 582) (emphasis added). But this does not increase the petitioner’s burden.

Instead, the petitioner’s obligation is merely “a burden of production.” *Id.*, at 582. That is, the petition must set forth “specific facts” establishing the necessary elements rather than unsupported conclusions. *Id.*, at 576.

In *L.M.S.*, the petitioners alleged facts showing that a child’s biological father was “mostly absent from her life.” *Id.*, at 571. From this, they asked the court to conclude that he was unfit or that placement with him would cause actual detriment to the child. *Id.*, at 576.

The Supreme Court accepted the petitioners’ factual allegations as true. *Id.* Having accepted the asserted facts, it was not required to draw the asserted conclusions urged by the petitioners – that the father’s absence from the child’s life meant he was unfit and that placement with him would cause actual detriment. *Id.*, at 576-585.

T.D. is asking the court to accept as true the “specific facts” she has alleged in her petition. These specific facts are all that is necessary to establish adequate cause.

The fourth element required for de facto parentage is the only element disputed by Respondent. *See* Brief of Respondent, p. 13. The

essence of this element is the length of time the petitioner has occupied a parental role. *L.B.*, 155 Wn.2d at 708.

Under the plain language set forth in *L.B.*, a petitioner must allege facts showing that she or he “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.*

The common law de facto parentage action does not require the petitioner to allege that she or he has been a perfect parent. Instead, under the fourth element, the facts must show that the person has been in a parental role for a long enough period that it makes sense to adjudicate the matter. *Id.*

T.D. has done so in this case. The department admitted that the adoptive mother had fostered a parent-like relationship between T.D. and the child, and that the three had lived as a family for years. CP 6. That is all that is necessary to proceed to trial. *Id.*

The trial court erred by refusing to find adequate cause. The order must be reversed, and the case remanded for trial. *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.

Appellant rests on the argument set forth in the Opening Brief.

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

Appellant rests on the argument set forth in the Opening Brief.

CONCLUSION

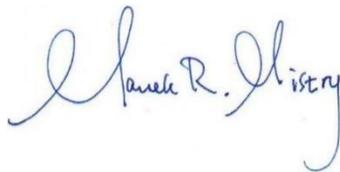
The Court of Appeals should reverse and remand the case for trial.

Respectfully submitted on October 26, 2018,

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CERTIFICATE OF SERVICE

I certify that on today's date:

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

T.D.
Confidential Address

R.D.
Confidential Address

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

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I filed the Appellant's 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 October 26, 2018.



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Transmittal Information

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