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**COURT OF APPEALS, DIVISION II**
**OF THE STATE OF WASHINGTON**

In re the Parentage of T.D., a Minor Child,

Appellant,

v.

R.D., State of Washington Department of Children, Youth, and Families,

Respondents.

# BRIEF OF RESPONDENT STATE OF WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

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## I. INTRODUCTION

A year and a half after T. was removed from the care of his mother, R.D., and her spouse, T.D., because both were abusing and neglecting the child, T.D. filed a petition to establish de facto parentage. Since the child is dependent, the Department of Children, Youth, and Families (DCYF or Department) was named a party to the de facto parentage case. The Department filed an answer opposing the de facto parentage petition and similarly opposed T.D.'s motion for an adequate cause determination. The juvenile court agreed with the Department's position that abusing T. while he was in her care negated T.D.'s assertion of a bonded, parent-like relationship necessary for an adequate cause order, and the juvenile court denied T.D.'s adequate cause motion and dismissed the de facto parentage petition. The juvenile court similarly denied T.D.'s motion for reconsideration, reiterating in its order how a parental relationship necessary to establish de facto parentage does not include child abuse.

T.D. was represented by private counsel throughout the de facto parentage proceedings, but when filing her notice to appeal the juvenile court's order denying reconsideration, T.D.'s counsel also filed a motion for indigency without notice to the other parties in the case. T.D.'s motion also incorrectly identified the de facto parentage case as a dependency matter. The juvenile court granted T.D.'s motion for indigency ex parte, and

when the Department learned the indigency order had been entered, the Department filed a motion under CR 60 to vacate the order. The Department's motion to vacate explained how the de facto parentage matter was not a dependency case and further explained how there was neither a statutory nor constitutional right to counsel in family law matters. The motion to vacate the indigency order was granted, and T.D. amended her notice of appeal to include both the order denying reconsideration and the order vacating the indigency order.

## II. COUNTERSTATEMENT OF ISSUES

1. T. was removed from the care of T.D. and his mother because they abused and neglected him, and T.D. still has not accepted responsibility for the extent of the abuse she inflicted upon the child. Did the juvenile court abuse its discretion by denying T.D.'s adequate cause motion where T.D.'s relationship with the child was abusive rather than bonded and parental as necessary to establish de facto parentage?

2. The juvenile court vacated the indigency order after finding that the motion for indigency incorrectly identified the de facto parentage case as a family law matter. Did the juvenile court abuse its discretion by vacating the indigency order where there is neither a statutory nor a constitutional right to counsel in de facto parentage proceedings?

## III. COUNTERSTATEMENT OF FACTS

The Department removed T. from his mother, R.D., and her spouse, T.D., in September 2015 because they were abusing and neglecting him. CP 29-30. Five months prior to the removal, the Department received an

allegation that R.D. hit the child with a paint stick, which R.D. admitted to, and another referral that T. suffered an injury to his finger after T.D. spanked him. CP 213-14. There were also allegations that T.D. hit the child with a belt. CP 36. The Department opened a case for a Family Assessment Response, and T.D. and R.D. were provided services but no findings were made regarding the alleged abuse. CP 213-14; RCW 26.44.030(17)(b).

Law enforcement placed T. into protective custody after another referral came in about bruising on the child's wrist and head that the child reported were from T.D. and R.D. grabbing him. CP 212. The Department then filed a dependency petition. CP 212. At a Family Team Decision Making meeting shortly after T.'s removal, T.D. admitted to grabbing the child's wrist but claimed she did so to stop him from running through the home and jumping over the couch. CP 214. However, during a forensic interview on September 28, 2015, the child disclosed excessive discipline in the home, and T.D. and R.D. both received founded findings for physical abuse. CP 215. Because T. did not want to visit with T.D. or R.D., visits did not begin immediately when the child was placed in out-of-home care. CP 215.

T.D. was the child's primary caregiver before his removal, and in addition to physical abuse, T.D. provided inaccurate reports about the child to his medical providers that led to T.'s doctors prescribing numerous

medications and laxatives for symptoms the child never had and conditions for which he did not need treatment. CP 35. The child was on a strict diet because T.D. and R.D. claimed T. was allergic to any yellow-colored food or food with red dye, and the child was only eating gluten-free foods. CP 36, 215. T. was significantly underweight when he came into care and had protruding bones and bruising on his body. CP 36. However, after the child's placement in out-of-home care, doctors removed T. from the medications he was taking and the restrictive diet he was on while living with T.D. and R.D. CP 215. Since the intervention, T. has not had any allergic reactions to foods as previously reported by T.D. and R.D. and continues to gain weight at a healthy rate. CP 36, 215.

T.D. never established parentage of T. and was not named as a party to the dependency petition filed on September 22, 2015. Appellant's Appendix 2-3. Despite not being the child's parent, T.D. has been permitted to participate in R.D.'s weekly supervised visitation with the child. Appellant's Appendix 3. After more than a year of dependency, the Department filed a petition to terminate R.D.'s parental rights in March 2017, and T.D. filed a petition for de facto parentage the following month. Appellant's Appendix 3-4. The Department opposed the de facto parentage petition, conceding that T.D. had engaged in services but also asserting that T.D. had not engaged in a timely manner, nor had she accepted full

responsibility for the abuse she inflicted upon the child or her contribution to his continuing need for out-of-home care. CP 4-6.

### A. Motion for Adequate Cause Determination

T.D. filed a Petition for De Facto Parentage on April 12, 2017. Appellant's Appendix 1-4. Four months later, she filed a motion for an adequate cause determination. CP 12-13. With the motion, T.D. attached declarations from herself, R.D., and other family friends attesting to T.D.'s relationship with the child before his placement in out-of-home care, none of which mention the abuse T.D. inflicted on T. or acknowledge any inadequacies in T.D.'s parenting. CP 14-28. In contrast, the declarations filed with the Department's response cite T.D.'s ongoing refusal to accept responsibility for the abuse or acknowledge how the abuse contributed to the child's removal from the home and continued out-of-home care. CP 34, 36. The assigned social worker's declaration also relayed how T. told her he did not feel safe living with T.D. or R.D. CP 34.

After hearing argument from the parties, the juvenile court issued a letter ruling denying the adequate cause motion. Appellant's Appendix 42. In its letter ruling, the juvenile court highlighted how T.D. still did not acknowledge the abuse she inflicted upon T. or allege any facts to show the abuse would not resume if the child were returned to her care. Appellant's Appendix 41. In denying the motion, the juvenile court also emphasized

how a committed and responsible parental role necessary to establish de facto parentage does not include child abuse. Appellant's Appendix 42. Consistent with the juvenile court's letter ruling, an order was entered denying adequate cause and dismissing T.D.'s de facto parentage petition. Appellant's Appendix 13-17.

T.D. filed a motion for reconsideration, attaching a new declaration and a declaration previously filed in the child's dependency case. CP 51-54; 72-75. In contrast to the declarations filed with her adequate cause motion, T.D.'s declarations with her reconsideration motion acknowledged that T. was in the Department's custody because of "mistakes" and "poor choices" she made. CP 73, 78. T.D.'s declarations went on to explain how she at times used excessive force for discipline by spanking T. with her hand, but T.D. still denied hitting the child with anything other than an open hand or anywhere other than the child's bottom. CP 73, 78. T.D.'s declarations also made excuses for the marks and bruises found on the child's body, claiming they unintentionally occurred because of the way she played with him. CP 78-79, 81-82. T.D.'s declarations also did not acknowledge the unnecessary diet or medications the child was placed on because of her inaccurate reports to the child's doctors or the malnourishment he suffered as a result of those unnecessary interventions, instead blaming the child's condition on the doctors' orders. CP 82.

T.D. also attached a safety assessment completed by an independent child welfare consultant to her reconsideration motion. CP 86-113, 211-35. The independent child welfare consultant who completed the assessment reviewed documents from the dependency case and conducted interviews with T.D., R.D., and a parenting service provider who was still working with T.D. and R.D. at the time of the report. CP 212-13, 221. The consultant also observed a supervised visit between T.D., R.D., and T. CP 213. However, the consultant never interviewed the child alone, did not communicate with anyone at the Department, only spoke with one service provider, and did not speak with anyone else involved with the child's dependency case. *See* CP 212-35. Throughout the report, the consultant continually asserted that the Department had been unwilling to return the child because of T.D.'s founded finding for physical abuse, but there is no indication that the consultant ever reached out to the current social worker or anyone else at the Department to confirm her understanding of the Department's position or to discuss the child's case. CP 221.

Based on her review of the dependency case documents and interviews with T.D. and R.D., the consultant determined the child's removal from the home was proper and services were necessary to teach T.D. and R.D. to appropriately parent. CP 226. The consultant also determined T.D. and R.D. had learned from the parenting classes and other

services completed since the child's removal, and the consultant felt there were no longer any active safety threats at the time of her report. CP 225. While the consultant never spoke with anyone at the Department, the consultant blamed the child's continued out-of-home care on what she deemed a weak client/caseworker relationship. CP 226-27.

The safety assessment recommendations are premised on T.D. and R.D. taking responsibility for their past parental deficiencies, but nowhere did the report indicate T.D. had taken responsibility for bruising the child with excessive discipline or how the child was malnourished and underweight at the time he was placed in out-of-home care. *See* CP 212-35. The report mentioned how T.D. admit to grabbing the child's wrist, but the report also indicated T.D. excused her actions by saying they were necessary to prevent the child from running throughout the home and jumping over the couch. CP 214. Similarly, nowhere did the report indicate T.D. took responsibility for anything more than spanking the child with an open hand. *See* CP 212-35.

In denying reconsideration, the juvenile court again emphasized how abusing and neglecting a child negated an assertion of a bonded, parent-like relationship necessary to proceed with a de facto parentage petition. CP 244. T.D. appealed. CP 245.

## B. Motion for Order of Indigency

The same day that T.D.'s attorney filed the Notice of Appeal for the order denying reconsideration, T.D.'s attorney filed a Motion for Order of Indigency to have counsel appointed in the appellate case at public expense. Appellant's Appendix 5-7. T.D.'s motion for indigency classified the de facto parentage matter as a dependency case, not a family law matter. Appellant's Appendix 5. Without notice to the Department, T.D. obtained an order granting the motion the same day it was filed. CP 248-50.

When the Department learned that a motion for indigency had been filed in T.D.'s de facto parentage case and an indigency order entered without notice to the parties, the Department filed a motion to vacate the order under CR 60. Appellant's Appendix 8-11. The Department argued that T.D.'s indigency motion incorrectly identified the de facto parentage matter as a dependency case and cited no legal basis to justify entering an order of indigency in a family law matter. Appellant's Appendix 8-9. Through the private counsel who had represented her throughout the de facto parentage proceedings, T.D. responded to the Department's motion and asserted that she was eligible for appointment of counsel at public expense since she was attempting to obtain parental status through her de facto parentage petition. Appellant's Appendix 26.

Agreeing the Order of Indigency was improperly entered, the juvenile court granted the Department's motion to vacate. Appellant's Appendix 45-46. The juvenile court determined T.D. was indigent but had neither a statutory nor constitutional right to counsel on appeal at public expense in the de facto parentage matter. Appellant's Appendix 45. T.D. then filed an amended Notice of Appeal to include the Findings and Order Vacating Order of Indigency. Appellant's Appendix 35-37.

## IV. ARGUMENT

The juvenile court did not abuse its discretion by denying T.D.'s motion for an adequate cause determination where T.D.'s relationship was abusive rather than bonded and parental in nature as required to establish de facto parentage. The juvenile court also did not abuse its discretion by vacating the order of indigency, which never should have been entered since T.D. is not a parent and a de facto parentage petition is not a matter for which there is a statutory or constitutional right to counsel. The juvenile court's orders should be affirmed.

### A. The Juvenile Court Properly Denied T.D.'s Motion for Adequate Cause To Proceed With Her Petition for De Facto Parentage As To T., A Child She Abused and Neglected

A trial court's adequate cause determination is reviewed for abuse of discretion. *Matter of Custody of L.M.S.*, 187 Wn.2d 567, 574, 387 P.3d 707 (2017). '"A trial court abuses its discretion if its decision is

manifestly unreasonable or based on untenable grounds or untenable reasons."' *Id.* (quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)). A decision is manifestly unreasonable if not within the acceptable range of choices given the facts and legal authority applicable to the case, made on untenable grounds if the record does not support the factual findings, or made for untenable reasons if the facts do not satisfy the applicable legal standard or the decision is based on an incorrect standard. *Fowler v. Johnson*, 167 Wn. App. 596, 604, 273 P.3d 1042 (2012).

A de facto parent stands in legal parity with any other legal parent, and attaining de facto parentage status should be no easy task. *In re Parentage of L.B.*, 155 Wn.2d 679, 708, 712, 122 P.3d 161 (2005). To establish de facto parentage, a petitioner must show that: 1) the legal parent consented to and fostered the parent-like relationship between the petitioner and the child; 2) the petitioner lived in the same household with the child; 3) the petitioner assumed parenting responsibilities without expecting financial compensation; and 4) the petitioner has been in a parental role for a sufficient length of time to have established a bonded, dependent, parental relationship with the child. *Id.* at 708.

Establishing adequate cause is a high burden and is only met in "extraordinary circumstances." *L.M.S.*, 187 Wn.2d at 575, 576, 581. At a minimum, adequate cause means "evidence sufficient to support a finding

on each fact that the movant must prove." *In re Marriage of Lemke*, 120 Wn. App. 536, 540, 85 P.3d 966 (2004). T.D. asserts that adequate cause means she need only present a prima facie case. Brief of Appellant 16. However, the plaintiffs in *L.M.S.* made a similar argument, and the Washington State Supreme Court clarified how "courts need not take every allegation at face value" and that petitioners "still must satisfy a burden of production to show adequate cause." 187 Wn.2d at 582.

Adequate cause is something more than '"prima facie allegations which, if proven, might permit inferences . . . ."' *In re Marriage of Mangiola*, 46 Wn. App. 574, 577, 732 P.2d 163 (1987), citing *In re Marriage of Roorda*, 25 Wn. App. 849, 852, 611 P.2d 794 (1980); *but see In re Parentage of Jannot*, 149 Wn.2d 123, 124, 65 P.3d 664 (2003) (regarding standard of review). The primary purpose of the adequate cause threshold requirement is to prevent unnecessary hearings, which are by their "very nature disruptive to families, including parents and children," and the petitioning party is required to set forth specific facts supporting the requested order. *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 348, 227 P.3d 1284 (2010). "Just as parents' constitutional rights are long established, it is also true that children have rights regarding their well-being that are important factors properly guiding courts' custody decisions. Recognition of these rights is not offensive to the constitution." *Id.* at 346.

Here, the trial court correctly declined to find adequate cause to proceed with T.D.'s petition as she failed to show in the declarations she submitted that she had been in a parental role for a sufficient length of time to have established a bonded, dependent, responsible parental relationship with T. The declarations only show part of the relationship between T.D. and T. and make no mention of the physical abuse or malnourishment the child suffered while in T.D.'s care. The declarations neglect to mention how the child did not want to visit with T.D. or R.D. after his removal, which negates T.D.'s assertion of a bonded relationship with the child. Further, the child's statement about not feeling safe in the care of T.D. and R.D. defies T.D.'s assertion of a dependent, responsible parental relationship. The juvenile court ruled appropriately by not taking all of T.D.'s assertions at face value and did not abuse its discretion by denying the adequate cause motion.

Further, precedent does not support T.D.'s contention that quality of parenting is irrelevant to determining whether adequate cause exists. Brief of Appellant 16. In *L.B.*, both the child's mother and the child's partner are described as "taking a committed, active, and loving role" in the child's nurturing and upbringing. 155 Wn.2d at 682. The *L.B.* court further explained how legislative intent was "to effectuate the best interests of the child in the face of differing notions of family and to provide certain and

needed economical and psychological support and nurturing to the children of our state." *Id.* at 707. The *L.B.* court also emphasized how "recognition of a *de facto* parent is 'limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and *responsible parental role* in the child's life.'" *Id.* at 708 (quoting *C.E.W. v. D.E.W.*, 2004 ME 43, 845 A.2d 1146, 1152 (2004)) (emphasis added). The Washington State Supreme Court further reiterated how undertaking a permanent, unequivocal, committed, and responsible parental role limits who can be deemed a de facto parent. *In re Custody of A.F.J.*, 179 Wn.2d 179, 190, 314 P.3d 373 (2013).

T.D. asserts that whether a petitioner has undertaken a permanent, unequivocal, committed, and responsible parental role is a determination for the trial court and not a consideration at the adequate cause stage, but this interpretation is not supported by the text of *L.B.* and *A.F.J.* Accepting T.D.'s interpretation defies the purpose of an adequate cause threshold, which is to prevent an unnecessary hearing by requiring the petitioning party to set forth specific facts supporting the requested order. *E.A.T.W.*, 168 Wn.2d at 348. T.D. has not set forth facts to show that her relationship was bonded and parental in nature as required for the fourth element of de facto parentage or that she was in a responsible parental role as also required for a de facto parentage finding. Rather, the facts show an abusive

relationship warranting the child's removal from the home. The juvenile court did not abuse its discretion by denying adequate cause rather than letting the case proceed to an unnecessary trial.

T.D.'s reliance on *In re Parentage of J.B.R.* is also inapposite because the facts of that case are distinguished from the facts here. In that case, a guardian ad litem was appointed to investigate and report to the court about whether the child would benefit from a continuing parent-child relationship with the petitioner asserting de facto parentage. 184 Wn. App. 203, 206, 336 P.3d 648 (2014). The guardian ad litem relayed how the child had a close relationship with the petitioner and wanted to spend as much time with him as possible. *Id.* Here, in contrast, the record does not show that T. had a close relationship with T.D. or that the child wanted to spend time with T.D. To the contrary, T. felt unsafe in the care of T.D. and R.D. and did not want to visit after his placement in out-of-home care. CP 34, 215. Consequently, visitation did not begin immediately after his removal from T.D. and R.D. in 2015. CP 215.

T.D. also does not address *B.M.H.* despite the juvenile court citing the case in its letter ruling denying the adequate cause motion and again in its order denying reconsideration. Appellant's Appendix 19-20, 41-42. Similar to the cases described above, there is no indication that the petitioner in *B.M.H.* abused or neglected the child. Rather, the petitioner is described

as loving and nurturing, and the guardian ad litem assigned to the case determined it was in the child's best interest to have a continued relationship with the petitioner and that it would be detrimental for contact to terminate between the two. *In re Custody of B.M.H.*, 179 Wn.2d 224, 232-33, 315 P.3d 470 (2013). In contrast, T.D.'s own independent safety assessment filed with her reconsideration motion concedes that T. was properly removed from T.D.'s care. CP 226.

Finally, the juvenile court did not deny T.D.'s adequate cause motion solely because she received a founded finding for abusing and neglecting T. Rather, the juvenile court denied adequate cause because there was not evidence of a bonded, dependent, parental relationship necessary to proceed to a trial. T.D.'s declarations did not mention how T. did not want to visit with T.D. or R.D. after his removal or how T. told the social worker he did not feel safe in their care. T.D. expected the juvenile court to accept all of the declarations filed with her adequate cause motion as true, complete, and accurate depictions of her relationship with the child, but the juvenile court appropriately considered all of the information before it, including the information supplied by the Department, in denying T.D.'s motion.

T.D.'s reliance on *In re Adoption of S.H.* is also misplaced. 169 Wn. App. 85, 279 P.3d 474 (2012). First, *S.H.* involves a contested

adoption case where the petitioners had to prove that adoption was in the child's best interests by clear, cogent, and convincing evidence, which is a different burden than presenting evidence to surpass an adequate cause threshold. *Id.* at 105. Second, the founded finding in *S.H.* pertained to other children, not the child at issue in the adoption proceeding, and was relevant because it was the basis for the Department revoking the petitioners' foster care license. *Id.* at 88. Finally, the issue before the *S.H.* court was not whether a founded finding could be used against a parent asserting de facto parentage but whether a founded finding, in itself, precluded licensed foster parents from being eligible to adopt a child in the Department's care. *Id.* at 107. Not only is *S.H.* not instructive in T.D.'s case, but T.D. asks this Court to go beyond the text of that case to conclude that a founded finding cannot serve as support to defeat an assertion of a bonded, parental relationship necessary to establish de facto parentage. As such, T.D.'s application of *S.H.* should be rejected.

In the alternative, if this Court accepts T.D.'s arguments and determines that the juvenile court made an adequate cause determination using the wrong legal standard, the appropriate remedy is not a trial on the merits. Rather, the appropriate remedy is remand to the superior court as a "trial judge is in the best position to assign the *proper weight* to each of the varied factors raised by the submitted affidavits in a particular case."

*Jannot*, 149 Wn.2d at 127 (emphasis in original). If this Court reverses the juvenile court's adequate cause orders, the proper remedy is remand to the juvenile court for an adequate cause determination based on the proper legal standard, not remand for a trial on the merits of T.D.'s de facto parentage petition.

T.D. asserts that she would not be requesting immediate placement should her petition for de facto parentage be granted. Brief of Appellant 18. Nonetheless, she asks this Court to reverse the juvenile court's order denying her request for an adequate cause determination and let her proceed with her de facto parentage petition. Doing so would further delay permanency for T., who remains in out-of-home care three years after his removal. The juvenile court did not abuse its discretion by denying T.D.'s adequate cause motion, and the juvenile court's order should be affirmed.

### B. The Juvenile Court Did Not Abuse Its Discretion By Granting the Department's Motion to Vacate the Order of Indigency Where There Is Neither a Statutory Nor Constitutional Right to Counsel in Family Law Matters

A trial court's ruling on a CR 60(b) motion to vacate is upheld unless the trial court abuses its discretion. *In re Welfare of MG*, 148 Wn. App. 781, 792, 201 P.3d 354 (2009). Here, the juvenile court did not abuse its discretion by granting the motion to vacate the order of indigency. The motion for the order of indigency incorrectly identified the matter as a

dependency case rather than a family law matter for which there is neither a statutory nor a constitutional right to counsel at public expense, and the juvenile court properly vacated the order.

Motions for indigency may be granted only for the following types of cases: 1) criminal prosecutions or juvenile offenses under RCW 10.73.150; 2) dependency and termination cases under Chapter 13.34 RCW; 3) commitment proceedings under Chapters 71.05 and 71.09 RCW; 4) civil contempt cases directing incarceration; 5) orders denying petitions for a writ of habeas corpus under Chapter 7.36 RCW; or 6) any other case in which the party has a constitutional or statutory right to counsel at all stages of the proceedings. RAP 15.2(b)(1). Where the plain language of a statute is subject to only one interpretation, a court's inquiry ends and no further construction is needed. *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). Here, the language of RAP 15.2(b)(1) is clear on its face and T.D. does not argue otherwise, and her de facto parentage petition, a family law case, meets none of the criteria warranting an indigency order.

T.D. argues that she is entitled to counsel because she claims her case intersects with dependency and termination cases for which parents have a right to counsel, but this argument assumes T.D. is a parent, which she is not. T.D. argues that she is entitled to counsel because she is a de facto

parent, but her attempt to attain de facto parentage ended when her adequate cause motion was denied and her petition was dismissed. T.D. also asserts that the Department "effectively terminated T.D.'s rights as a de facto parent", but this is also inaccurate. Brief of Appellant 25. First, since T.D. never established de facto parentage, she never had parental rights that could be terminated. Second, the juvenile court, not the Department, denied T.D.'s adequate cause motion and dismissed the de facto parentage petition.

Further, unlike dependency and termination matters where a fundamental parental liberty interest is at stake, there is no constitutional right to counsel in family law cases. *See King v. King*, 162 Wn.2d 378, 386-87, 174 P.3d 659 (2007). Whether to publicly fund actions other than those that are constitutionally mandated is a decision for the Legislature, not the courts. *Id.* at 398. There are circumstances where a right to counsel could attach in a family law matter, but only where the family court is addressing a dependency issue. *See In re Dependency of E.H.*, 158 Wn. App. 757, 243 P.3d 160 (2010). In *E.H.*, the dependency court granted concurrent jurisdiction so a caretaker could pursue nonparental custody, and the right to counsel arose because the nonparental custody court was also permitted to hear the alternative plan of return home, which was a dependency issue pertaining to the parents for which they had a

statutory right to counsel. *Id.* at 763. In determining that the right to counsel attached, the appellate court explained,

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

*Id.* at 768.

Here, unlike *E.H.*, T.D. is not a parent, not a party to the dependency case, and the de facto parentage court is not hearing an issue under Chapter 13.34 RCW. There is no authority for a right to counsel simply because T.D. unsuccessfully asserted de facto parentage as to a dependent child. Under T.D.'s theory, any individual who asserts de facto parentage of a dependent child would be entitled to counsel at public expense, but this is not supported by the plain language of RAP 15.2(b)(1) or established precedent. T.D's de facto parentage petition was dismissed, she has no legal parentage as to T. that would entitle her to counsel under RAP 15.2(b)(1), and the order of indigency was properly vacated.

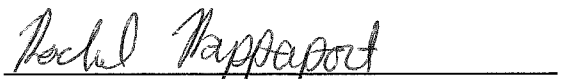
## V. CONCLUSION

The juvenile court did not abuse its discretion by denying T.D.'s adequate cause motion where T.D.'s relationship with the child was abusive

rather than bonded and parental in nature as necessary for a de facto parentage finding. Further, the juvenile court did not abuse its discretion by vacating the order of indigency where there is neither a statutory nor constitutional right to counsel in de facto parentage matter. The Department respectfully requests that the juvenile court's orders be affirmed.

RESPECTFULLY SUBMITTED this 15th day of October, 2018.

ROBERT W. FERGUSON
Attorney General



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## CERTIFICATE OF SERVICE

*Jeffrey S. Nelson*, states and declares as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein.

I certify that on October 15, 2018, I served a true and correct copy of this **BRIEF OF RESPONDENT STATE OF WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES** and this **CERTIFICATE OF SERVICE** via e-mail to the person indicated below as follows:

| | |
|---|---|
| **Attorney for Appellant**<br>Jodi R. Backlund<br>BACKLUND & MISTRY<br>Attorneys at Law<br>PO Box 6490<br>Olympia, WA 98507-6490 | ☐ By United States Mail<br>☐ By Legal Messenger<br>☐ By Facsimile<br>☒ **E-Service Via Court Portal (backlundmistry@gmail.com)**<br>☐ By Federal Express<br>☐ By Hand Delivery by: _____ |

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 15th day of October 2018, at Tumwater, Washington.

JEFFREY S. NELSON
Legal Assistant

## SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

## October 15, 2018 - 3:54 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 |

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