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**NOV 26 2013**

**COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON**  
By \_\_\_\_\_

**NO. 317030-III**

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

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In re the Parentage of J.B.R.

NATHANIAL A. YORK, Respondent/Petitioner,

v.

LACEY SHOWS-RE, Petitioner/Respondent Mother

and

JAMES A. CANDLER, Respondent Father

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**BRIEF OF PETITIONER/APPELLANT**

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## I. ASSIGNMENTS OF ERROR

### Assignments of Error

1. The trial court erred in entering the order of May 6, 2013, denying respondent mother's motion to dismiss the *Petition for Establishment of De Facto Parentage*.

### Issues Pertaining to Assignments of Error

1. Can Mr. York rely on the common law doctrine of *de facto* parentage where he has other remedies available by statute?
2. Can Mr. York be deemed a *de facto* parent where there is no "statutory void" in J.B.R.'s parentage?
3. Can Mr. York be a *de facto* parent where he has not "fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life" within the meaning of the doctrine?

## II. STATEMENT OF THE CASE

It is undisputed that J.B.R. was born to Lacey Shows-Re and James Candler on October 4, 2000. CP 1, 21. It is also undisputed that James Candler was adjudicated to be J.B.R.'s biological father and ordered to pay child support in 2001. CP 2, 21-22, 44-52, 60.

Ms. Shows-Re began a relationship with Nathaniel York in 2002 and admitted that they mostly resided together with J.B.R. until 2006. CP 24-25. In December 2005, Ms. Shows-Re gave birth to the couple's child N.A.Y., whom Mr. York has acknowledged as his biological child. CP 25. About a month after that, the relationship ended; the parties moved into separate residences, and following the breakup Mr. York exercised only sporadic and brief visitation with his own biological child, and spent almost no time with J.B.R. for a disputed period of time. *Id.*

Beginning in approximately 2010, Ms. Shows-Re began efforts to get Mr. York to commit to a regular visitation schedule with N.A.Y, and by August or September 2011 the parties had arranged an alternating weekend schedule. CP 25-26. J.B.R. accompanied her younger sister on many, though not all, of these visits. CP 26. After a disagreement over Easter visitation, Ms. Shows-Re filed an action to establish a parenting

plan for N.A.Y. CP 26. In response, and some weeks later, Mr. York filed a petition for establishment of *de facto* parentage for J.B.R. on May 25, 2012. CP 1. From the time of her initial response, Ms. Shows-Re has maintained that Mr. York cannot meet the threshold test for standing under the *de facto* parent doctrine either factually or legally. *See, e.g.*, CP 22, 26, 97, 108-13. Nevertheless, on July 30, 2012, the trial court entered a temporary parenting plan which provided Mr. York with biweekly visitation. CP 53-58.

After being served with Mr. York's *de facto* parentage petition, the biological father James Candler retained counsel and filed a response and counterclaims. CP 59-64. Mr. Candler has also maintained that Mr. York cannot meet the threshold test for standing under the *de facto* parent doctrine since his initial response. *See, e.g.*, CP 60; RP 10-11.

Ms. Shows-Re filed a formal written motion to dismiss the petition based largely upon the Supreme Court's holdings in *In re Parentage of M.F.*, 168 Wn.2d 528, 532-35 (2010), and an accompanying memorandum of authorities. CP 97-98, 108-113. That motion was denied after hearing. RP 45-56; CP 114-17. However, the trial court encouraged Ms. Shows-Re to seek interlocutory appeal of the denial. RP 56-57.

### III. ARGUMENT

#### *Standard of Review*

Questions of law are generally reviewed *de novo*. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880 (2003). Whether the *de facto* parent doctrine can be applied to confer standing on a non-parent is explicitly a question of law to be reviewed *de novo*. *In re Parentage of M.F.*, 168 Wn.2d 528, 531 (2010) (citing *King v. Snohomish County*, 146 Wn.2d 420, 423-24 (2002)).

- A. The *de facto* petitioner cannot rely on the common law doctrine of *de facto* parentage because he has other potential remedies available by statute.**

Because it is a common law remedy, the *de facto* parent doctrine is not available to claimants who have another statutory remedy available. *In re Parentage of M.F.*, 168 Wn.2d 528, 532-35 (2010). “[W]e adopted the *de facto* parentage doctrine to correct a specific statutory shortcoming: the lack of remedy available to the respondent in *L.B.*, who was a ‘parent’ in every way but legally.” *Id.* at 533-34. This preliminary determination has been recognized as a threshold issue of standing before the factors set forth in *L.B.* can be addressed. *See, e.g., In re Parentage of M.J.M.*, 156 Wn.App. 746, 294 P.3d 746, 755 (67748-9-I; Jan. 28, 2013) (citing *M.F.*,

168 Wn.2d at 534).

The *de facto* parentage doctrine was first articulated by the Supreme Court in *In re Parentage of L.B.*, 155 Wn.2d 679, 707-08 (2005). In *L.B.*, the *de facto* petitioner was the former same-sex partner of the child's biological mother, who conceived the child through artificial insemination while the parties were in a committed relationship. *Id.* at 683-84. After the child's birth, the parties co-parented the child and held themselves out as a family, until the relationship ended some five years later and the biological mother cut off all contact between the petitioner and the child. *Id.* at 684-85. The Court in *L.B.* found the petitioner had standing to pursue a *de facto* parentage claim because the legislature had not enacted statutes governing the rights and responsibilities of adults in parenting arrangements for children born of artificial insemination. *Id.* at 707. "Washington common law recognizes the significance of parent-child relationships that may otherwise lack statutory recognition." *Id.* at 693 (citing *In re Custody of Stell*, 56 Wn.App. 356 (Div. I 1989); *In re Marriage of Allen*, 28 Wn.App. 637 (Div. III 1981)).

Unlike the claimant in *L.B.*, however, Mr. York is not without statutory remedies. This is not an artificial insemination case like *L.B.*,

wherein there is functionally only one legally cognizable parent; nor is Mr. York barred by any prohibition on recognition of a same-sex relationship. If Mr. York believes he can make a threshold showing of adequate cause, he has the opportunity to avail himself of the process set forth in RCW Chapter 26.10, which the Supreme Court has explicitly recognized as an adequate remedy at law for a claimant in Mr. York's position. *See, e.g., M.F.*, 168 Wn.2d at 532-33. Because Mr. York has at least the potential for a statutory remedy, as a matter of law he cannot have standing to ask for a common law remedy.

**B. The *de facto* petitioner cannot be deemed a *de facto* parent as a matter of law because there is no “statutory void” in J.B.R.'s parentage.**

Where there are two existing parents, the Court cannot apply an equitable remedy that infringes on the rights and duties of the child's existing parents. *M.F.*, 168 Wn.2d at 532-35.

In *M.F.*, the *de facto* petitioner was a former stepparent seeking custody of a child with two biological parents. The Court distinguished that case from its holding in *L.B.*, noting that *L.B.* involved the “competing interests of two parents”, the biological parent and the *de*

*facto* claimant, each standing in “equivalent parental positions.” *M.F.*, 168 Wn.2d at 532 (*emph. in original*). Similarly, in *In re Custody of B.M.H.*, Division II of the Court of Appeals was able to examine the application of the *de facto* parentage doctrine to a case where one biological parent was deceased. 165 Wn.App. 361 (Div II 2011). In contrast, *M.F.* required the Court to weigh “the competing interests of parents – with established parental rights and duties – and a stepparent, a third party who has no parental rights.” *M.F.*, 168 Wn.2d at 532. The Court in *M.F.* found that the stepparent could not claim *de facto* parent status because the child’s “legal parents and their respective roles were already established under our statutory scheme[; therefore,] we perceive no statutory void and cannot apply an equitable remedy that infringes upon the rights and duties of M.F.’s existing parents.” *Id.*

The case at bar puts the biological parents, especially the mother, in precisely the position that the Court in *M.F.* found untenable. Ms. Shows-Re has maintained from the outset of the case that an order creating a third parent, in addition to the two parents J.B.R. already has, necessarily infringes upon her own parental rights and responsibilities. There are no questions of material fact regarding the proposition that Ms.

Shows-Re is a capable and stable mother; no party has raised a credible inference that she is unfit. Exactly as in *M.F.*, the Court cannot carve out space for a third parent without necessarily eroding the rights and responsibilities of the other two. As a matter of law, because J.B.R. has two existing parents and there is no "statutory void" to be filled, the Petitioner's *de facto* claim cannot stand.

**C. The Petitioner/respondent mother is entitled to an award of attorney's fees and expenses.**

RCW § 26.09.140 provides for an award of attorney's fees and costs for "maintaining or defending any proceeding under [Chapter 26.09]" or "[u]pon any appeal" after consideration of the financial resources of both parties.

Ms. Shows-Re is an employed mother raising two children. She was previously found indigent in the trial court, both in the filing of the parentage case involving N.A.Y. and at the outset of this appeal. It has been financially difficult for her to defend against this action, both in the trial court and on the appeal mandated by the erroneous decision to deny her motion to dismiss the *de facto* petition. She therefore requests costs and attorney's fees pursuant to RCW § 26.09.140 and RAP 18.1. The

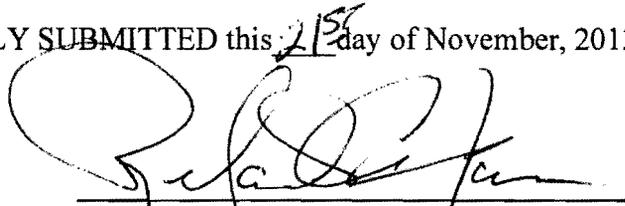
affidavit of financial need will be timely filed before decision on the merits as required by RAP 18.1(c).

#### IV. CONCLUSION

The *de facto* petitioner does not have standing to seek an equitable common law remedy when he has at least the potential for a statutory remedy available. More to the point, the *de facto* parentage claim cannot stand as a matter of law because J.B.R. has two existing parents; there is no statutory void to be filled by application of the doctrine to grant rights and responsibilities to a third party. The trial court therefore erred in denying the respondent mother's motion to dismiss the *de facto* petition.

The Petitioner/respondent mother respectfully requests that this Court reverse the order of the Superior Court denying her motion to dismiss and that this Court award her costs and attorney's fees pursuant to RCW § 26.09.140 and RAP 18.1.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of November, 2013.



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