

**FILED**

No. 318133-III

NOV 27 2013

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

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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NIKKI N. WATTLES,  
APPELLANT/PETITIONER.

VS.

TRISTA C. WORRELL,  
APPELLEE/RESPONDENT,

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BRIEF OF RESPONDENT TRISTA C. WORRELL

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## Statutes

RCW 26.26.530

RCW 26.26.555

## A. Statement of the Case

This matter commenced with dual petitions to dissolve a registered domestic partnership, identified as 13-3-00737-0, [CP 1-14], and 13-3-00746-9, [CP 26-32]. The domestic partnership was registered 06/08/09. [CP 164-165] Both petitions address a minor child named Alayden. [CP4; 28-29]

I asked the Court to find me as Alayden's de facto parent. [CP 32] and Ms. Wattles' petition alleges she is Alayden's legal parent, [CP 4]. The actions were consolidated. [CP 397-400]. At the time the actions were commenced, Alayden was 3 years old. He was born 07/04/09. [CP 4; 29; 543-545]

On 05/07/13, the commissioner adjudicated my request to be named Alayden's de factor parent, [CP 170-172; 187; 566-567]. Similarly, the revision Court also denied revision.

## C. Argument

### 1. The Parentage Statutes Do Not Apply in This Case; as my De Facto Parentage Status Was Determined Pursuant to Common Law, Not the Uniform Parentage Act.

RCW 26.26.555 states:

- (1) "Unless specifically required under other provisions of this chapter, *a minor child is a permissible party*, but is not a necessary

party to a proceeding under RCW 26.26.500 through 26.26.630.

- (2) If a minor ... is a party, or if the court finds that the interests of the child are not adequately represented, the court shall appoint a guardian ad litem to represent the child as guardian or in any other capacity."

**RCW 26.26.555. [emphasis added].**

RCW 26.26.530 states:

- (1) Except as otherwise provided in subsection 2 of this section, a proceeding brought by a presumed parent, the person with a parent child relationship with the child, or another individual to adjudicate the parentage of a child having a presumed parent must be commenced not later than four years after the birth of the child. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

**RCW 26.26. 530.**

Alayden was born on July 4, 2009, and this action was commenced in March of 2013.

Obviously, the child was more than two years old when this action began, and if I was seeking a determination of parentage under pursuant to the Uniform Parentage Act, then RCW 26.26.530 would apply. However, I never requested relief pursuant to RCW

26.26 et seq. in my response to the Petition for Dissolution of the Registered Domestic Partnership. In my response, filed 4/3/13, I alleged that I was the de facto parent of Alayden Worrell, and set forth bases in fact supporting my claimed de facto parental status. That the common law, not the Uniform Parentage Act, RCW 26.26. et. seq, controls in this case, was clearly articulated by the Washington Supreme Court.

“Absent a controlling Statute, the Washington State Supreme Court addresses a dispute of a minor’s custody based on the paramount and controlling consideration of the welfare of the child. In such actions, the superior court has large power and discretion regarding the custody of minor children. As this power is not statutorily granted, it necessarily follows that the large power and discretion, resting with the superior courts over such matters, arises out of common law jurisprudence...”

In re the Parentage of L. B. Win. 2d 679, 697-698, 122 P.3d 161 (2005).

“In defining the scope of our courts’ authority, we have previously established that the superior courts of this state are courts of general jurisdiction and have power to hear and determine all matters legal and equitable in all proceedings known to the common law, except in so far as those have been expressly denied; that

the jurisdiction of a court of equity over persons, as well as property, of infants has long been recognized; and that the right of the state to exercise guardianship over a child does not depend on a statute asserting that power.”

In re the Parentage of L. B. Win. 2d 679, 697, 122 P.3d 161 (2005), *citing* In re Welfare of Hudson, 13 Win.2d 673, 697-98, 126 P.2d 765 (1942).

The Washington State Supreme Court recognized that, “...there is no indication...that the Washington Legislature intended to provide the sole means of obtaining custody, and the state’s jurisprudence strongly suggests the continued viability of common law custodial actions.” “...Washington’s visitation scheme can be seen as largely a codification of common law jurisprudence, with no evidence that the enactment of statutes governing visitation was designed to preempt the court’s equitable jurisdiction over circumstances not within the statute’s contemplation.”” .

**Id., at 699-700.**

I have no standing under the Washington Uniform Parentage Act, RCW 26.26 et. seq.; as I am not the child, biological mother of the child, a man whose paternity of the child is to be adjudicated, the division of child support, an authorized adoption agency, a representative authorized by law to act for a deceased, incapacitated, or minor; or an intended parent under a surrogate

parentage contract as defined by RCW 26.505. **RCW 26.26 et.**

**seq.**

Not until *In re the Parentage of L.B.* 121 Wn. App. 460, 89 P.3d 271 (2004) had a Washington Court been asked to determine parentage of the same-sex partner of a biological parent conceived by artificial insemination. *In re the Parentage of L.B.* 121 Wn. App. 460, 472, 89 P.3d 271 (2004). The Uniform Parentage Act is not dispositive in this case, and this Court does retain jurisdiction pursuant to the common law jurisprudence.

**2. “Constitutional Considerations require that Children be Parties to Actions Determining Their Parentage.”**

The appellate court in *Re the Parentage of L.B.* 121 Wn. App. 460, 491, 89 P.3d 271 (2001) determined that the child should be named a party and that a guardian ad litem should be appointed to represent the child in the action. I have set forth below the statement made by the Court in that case. Though the Uniform Parentage Act does not apply in this case, there are constitutional considerations because I am asking the Court to determine Alayden’s parentage.

**3. There is No Timeline As to When a Guardian ad Litem Should be Appointed.**

Under *Parentage of L.B.*, the court stated that the petitioner in that matter did not have standing under RCW 26.26 the parentage statute, to assert her status as a legal parent; however, she did have standing to prove she was a *de facto* parent and if so determined, to petition for the corresponding rights and obligations of parenthood. 155 Wn.2d at 39. Additionally, it may be noteworthy to point out that procedurally, after *L.B.* was decided at the appellate level, the trial court appointed a guardian ad litem to investigate the matter, prior to a trial establishing Carvin as a *De facto* parent. *L.B.* at 687, footnote 4.

Because *L.B.* was decided based upon the common law, Specifically because no statutory provision applied to that relationship, there is no specific statutory provision regarding appointment of a guardian ad litem in a case involving the investigation of a parenting plan in a *de facto* parenting matter. However, as the court in *L.B.* so aptly stated:

“Our state's current statutory scheme reflects the unsurprising fact that statutes often fail to contemplate all potential scenarios which may arise in the ever changing and evolving notion of familial

relations. Yet simply because a statute fails to speak to a specific situation should not and does not in our common law system, operate to preclude the availability of potential redress. This is especially true when the rights and interests of those least able to speak for themselves are concerned. We cannot read the legislature's pronouncements on this subject to preclude any potential redress to Carvin or L.B. In fact, to do so would be antagonistic to the clear legislative intent that permeates this field of law- to effectuate the best interest 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."

Parentage of L.B. at 47.

**4. All four factors regarding the De Facto Parentage have been met.**

I believe I have met all criterias for the defacto parentage. This has been proved not only through Commissioner Anderson, but with Judge Price as well. I did show by burden of clear and cogent evidence that I am in fact Alayden's de facto parent. Factor or "prong" number one is whether the natural or legal parent consented to and fostered the parent-like relationship, [CP 604]. There are letters in the court file that were given to Ms. Worrell [myself] by Ms. Wattles in her own handwriting signed by her years ago back when these decisions were being decided and contemplated that indicated that that was their plan to form a family

together, [CP 605]. I do think prong one by clear and cogent evidence has been met, [CP606].

Prong two talks about the petitioner and the child living together in the same household, and that obviously occurred. There is nothing in the case law that says how long they needed to reside in the same household, [CP606]. So prong two has been met by clear, cogent and convincing evidence, [CP606].

Prong three, the petitioner assumed obligations of parenthood without expectation of financial compensation, [CP606]. Based on what I've seen in declarations and really telling are pictures and I have to say what struck me in those pictures that it does appear that Ms. Worrell has been a parent, [CP607]. Ms. Worrell giving a rather dirty cake-filed face kiss to Aladen. And again, that's not something that a person who is not a parent is likely going to do to a child that is not their own child. So just some comments to support my finding that really I thought the evidence was quite overwhelming of that relationship. So I do think prong three has been met, [CP 608-609].

Four is the petitioner has been in a parental role for a length of time sufficient to establish with the child a bonded, dependent

relationship, parental in nature. A lot of my comments I just made do, you know, factor into this comment or this factor as well, [CP 609]. As I commented before we do often have parents who are parents living outside the household and we have a three and a half year old, almost four year old, who in this particular case I do find identifies with Ms. Worrell as momma Trista and has done so since he was born. It's supported by relationships with other family members who used that moniker. It's supported by those pictures, [CP609]. So for all those reasons I do find that Trista Worrell is de facto parent to Aladen and I would like findings entered to that effect. They've been extensive findings it's, I think, a very important issue, [CP610].

Commissioner Anderson went through each prong and explained why she declared me the de facto parent. I believe that I have met all requirements regarding the de facto parentage.

#### D. Conclusion

Ms. Wattles, in her appellant brief, relied upon the Court of Appeals case, In re the Parentage of L. B. 121 Wn. App. 460, 89 P.3d 271 (2004), the most important part of the citation is the Appellate Court remanded the case back to the superior court so that the child could be named a party to the action and a guardian ad litem could be appointed and respond to the petition on behalf of the child.

"We do point, sua sponte, that the child L. B. is a necessary party to the common law parentage action. Although the 2002 UPA does not name the child as a necessary party but only as a permissive party... our Supreme Court in *State v. Santos*, 104 Wn.2d 142, 146-47, 702 P.2d 1179 held that constitutional considerations require that children be parties to actions determining their parentage, and that the child must not be a party in name only. Accordingly, **following our remand**, we direct that the court promptly appoint a guardian ad litem for L. B, that the guardian be served with Carvin's petition, and that the guardian answer the petition on behalf of the child."

In re the Parentage of L. B. 121 Wn. App. 460491, 89 P.3d 271 (2004). [emphasis added]

The Court of appeals recognized that there was a common law de facto parentage status in Washington State, but did not determine whether the mother in that action satisfied the requirements to obtain that status because the Court ordered that

matter to be remanded back to the superior court so that the child could be named a party and a guardian ad litem could be appointed for the child. The biological mother petitioned for review by the Washington Supreme Court.

In a more recent case, In re the Parentage of Q. A. L. D.M.G., 146 Win. App. 631, 191 P.3d 934 (2008), the appellate court remanded to the superior court for the purpose of appointing a GAL to represent the child's interests in determining whether DNA tests should be conducted, and whether the child should initiate proceedings to adjudicate parentage. Voiding the Commissioner's Order as well as Judge Price's decision is not warranted, would substantially prejudice myself, is not in the best interests of the child, and would result in a substantial waste of judicial resources. The Court should deny this appeal, and remand this back to the trial court so that Alayden could be named a party and a guardian ad litem could be appointed for him.

I would like to also add that this process has already begun in the Superior Court. I filed a motion for a GAL on 9/17/2013 which was granted by Commissioner Anderson (See exhibit A). This decision was under review by Judge Linda Tompkins who also

upheld my motion for a GAL (See exhibit B). You may also noticed that with both of those court orders, Ms. Wattles also put in for a motion to vacate the commissioner's decision declaring me a de facto parent which was denied on both occasions (See Exhibits A & B). It is very apparent that Ms. Wattles wants to drag this out further by trying to attempt for a fifth time at taking my rights away to our son.

November 27, 2013

Respectfully submitted,

  
\_\_\_\_\_  
Trista Worrell  
Respondent

**FILED**

NOV 27 2013

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

Law Office of DC Cronin

NOV 27 2013

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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

|   |  |
|---|--|
| In re:<br><br>NIKKI WATTLES<br><br>Appellant,<br>and<br><br>TRISTA WORRELL<br><br>Respondent. | NO. 318133<br><br>COVER SHEET EXHIBIT A<br>COMISSIONER'S RULING<br>ON MOTION FOR GAL |
|---|--|

I, Trista Worrell, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

SIGNED at Spokane, WA on November 27, 2013.

Submitted by:

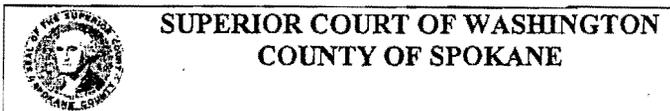
  
\_\_\_\_\_  
TRISTA WORRELL

FILED

SEP 17 2013

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

(Clerk's Date Stamp)



SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

Petitioner(s): Nikki Watties

vs.

Respondent(s): Trista Worrell

CASE NO. 13-3-00737-0

ORDER RE MOTION TO VACATE  
(OR) MOTION TO NAME CHILD A PARTY  
& APPOINT A GAL

I. BASIS

Petitioner moved the court for: for an order vacating  
The court's May 7, 2013 ORDER RE ESTABLISHMENT OF  
De facto Parentage status of the respondent. Respondent  
moved the court for an order naming the child a party to this  
action and appointing a guardian ad litem to represent the child

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

The court's oral findings of fact & conclusions of law  
are fully incorporated herein by this reference - The court  
finds that pursuant to State Parentage of LB; 121 Wn. App. 460;  
89 P.3d 271 (2004) that the child must be named a party in this  
action & that a guardian ad litem must be appointed to represent

ORDER  
CI-03-0300 (Rev 03/2001)

THE CHILD AS A PARTY IN THIS CASE. IT  
IS NOT IN THE CHILD'S BEST INTEREST TO VACATE THE  
COURT'S PRIOR ORDER RE ESTABLISHMENT OF THE  
RESPONDENT'S STATUS AS THE CHILD'S DE FACTO PARENT.

PAGE 1 OF 2

THE TRIAL COURT WILL ULTIMATELY DETERMINE WHETHER THE  
RESPONDENT IS THE DE FACTO PARENT OF THE CHILD

III. ORDER

IT IS ORDERED that:

① The petitioner's motion to vacate the court's prior rulings re the establishment of two respondents status as de facto parent to the child is denied. ② The child shall be named a party in this action. ③ A guardian ad litem shall be appointed for the child at a hearing to be set on the family law motion calendar at 08:30 a.m. on October 1, 2013. ④ The scope of the GAL's appointment shall be to represent the child as a party to this action, file a response to the petition for dissolution of this registered domestic partnership and advocate for the child's best interests. ⑤ The parties shall file updated financial declarations and current income verification documents in the court file in advance of the October 1, 2013 hearing. Payment for the GAL fees shall be addressed at the 10/1/13 hearing.

Dated: 9/17/13

*Maceleda*  
 Judge/Court Commissioner

Presented by:

Approved by:

*Ellen M. Hendrich*  
 WSBA 33496  
 Attorney for respondent

*Wk (Rm)*

(5) The GAL is ~~not~~ <sup>will</sup> ~~will~~ <sup>NOT</sup> file a formal GAL report. The court is expecting the GAL to file declarations if necessary.

(4) cont. The GAL will investigate the de facto parentage factors of LB. *Wk (Rm)*

**FILED**

Law Office of DC Cronin

NOV 27 2013

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NOV 27 2013

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

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

|   |  |
|---|--|
| In re:<br><br>NIKKI WATTLES<br><br>Appellant,<br>and<br><br>TRISTA WORRELL<br><br>Respondent. | NO. 318133<br><br>COVER SHEET EXHIBIT B<br>JUDGE LINDA TOMPKINS<br>RULING ON MOTION FOR<br>GAL |
|---|--|

I, Trista Worrell, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

SIGNED at Spokane, WA on November 27, 2013.

Submitted by:

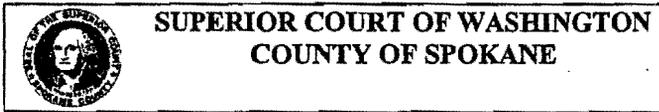
  
\_\_\_\_\_  
TRISTA WORRELL

FILED

OCT 10 2013

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK

(Clerk's Date Stamp)



SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

Nikki Wattles

Plaintiff(s),

vs.

Trista Worrell

Defendant(s).

CAUSE NO.: 13-3-00737-0

ORDER Re Petitioner's Motion  
to REVISE Commissioner Anderson's  
9/17/13 ORDERS & FINDING re THE NAMING  
of child a party + appointing a GAL ~~"correct~~

~~THE MISTAKE" OF NOT DOING SO PRIOR TO  
DETERMINATION OF DE FACTO PARENT STATUS~~

I. BASIS

Petitioner moved the court for an order revising Commissioner

Anderson's 9/17/13 ORDERS that: 1) DENIED Petitioner's motion to vacate

Commissioner Anderson's 5/7/13 order re de facto parentage; 2) named the  
child a necessary party, appointed a guardian ad litem; and 3) decision  
that Commissioner Anderson reviewed all documents in the court  
file list ON THE MOTION STATUS SHEET IN ADVANCE OF THE 5/7/13 hearing +  
ruling and 4) that naming the

After reviewing the case record to date, and the basis for the motion, the court finds that: child a party +

The court's oral findings of fact + conclusions  
of law are fully incorporated herein  
by this reference.

\* AND APPOINTING A GAL TO REPRESENT THE CHILD ~~"CORRECT THE MISTAKE" OF~~  
~~NOT HAVING DONE SO PRIOR TO THE 5/7/13 DE FACTO PARENTAGE DETERMINATION.~~

III. ORDER

IT IS ORDERED that:

1. MOTION TO REVISE COMMISSIONER ANDERSON'S 9/17/13 ORDER THAT

(a) DENIED PETITIONER'S MOTION TO VACATE COMMISSIONER ANDERSON'S 5/7/13 RULING ESTABLISHING RESPONDENT'S DE FACTO PARENTAGE STATUS; (b) GRANTED RESPONDENT'S MOTION TO NAME THE CHILD A NECESSARY PARTY AND APPOINT A GAL TO REPRESENT THE CHILD. (c) DECISION THAT COMMISSIONER ANDERSON REVIEWED ALL DOCUMENTS IN THE COURT FILE LISTED ON THE MOTION STATUS SHEET BEFORE THE HEARING & HER RULING ON 5/7/13 ESTABLISHING RESPONDENT'S STATUS AS THE CHILD'S DE FACTO PARENT IS HEREBY DENIED.

2. MOTION TO REVERSE COMMISSIONER ANDERSON'S 9/17/13 FINDING THAT NAMING THE CHILD A NECESSARY PARTY AND APPOINTING A GUARDIAN AD LITEM TO REPRESENT THE CHILD AFTER THE COURT FOUND THE RESPONDENT IS \*

Dated: 10/10/13

*Linda G. Tompkins*  
HONORABLE LINDA G. TOMPKINS  
Superior Court Judge

\* THE CHILD'S DE FACTO PARENT "CURES THE MISTAKE" BY NOT HAVING DONE SO PRIOR TO THE 5/7/13 HEARING WHEN DE FACTO PARENT STATUS WAS FOUND

IS ALSO HEREBY DENIED.

Presented by:

Approved by:

*Ellen M. Heudrick*  
WSBA 33696  
Attorney (limited appearance)  
for Respondent

*Robert M. Smith* 16046  
Attorney for Petitioner