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No. 58658-1-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Parenting of:

MARNITA FRAZIER (DOB: 12/15/1993),

Child,

JOHN CORBIN,

Respondent,

v.

PATRICIA REIMEN,

Petitioner,

EDWARD FRAZIER,

Father.

REVIEW FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE JOHN LUCAS

BRIEF OF PETITIONER

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I. INTRODUCTION

This court accepted discretionary review of an order denying the mother's motion to dismiss her former husband's action for parental rights with his former stepdaughter based on his claim that he is a "de facto" parent. The stepfather commenced this action over three years after the parties' divorce, and with no regard for the child's existing parenting plan entered in her own parents' divorce. In allowing this action to proceed, the trial court has systematically substituted the former stepfather's parenting opinions for those of the child's parents, limiting the parents' residential time without any claim or proof that the child is being harmed and with no deference to the mother's assessment of what is in the child's "best interests." This court should reverse and dismiss the stepfather's "de facto" parentage action.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in denying the mother's motion to dismiss. (CP 15-18)
2. The trial court entered a number of "findings," many of which are actually legal conclusions, in deciding the motion to dismiss. Although these findings are superfluous to the legal issue

on review, the mother assigns error to the redlined findings in the appendix. (Appendix A)

3. The trial court erred in entering a temporary order making a “threshold determination” that the former stepfather is a “de facto” parent. (CP 20-27)

4. The trial court erred in appointing a guardian ad litem for the child and authorizing the guardian ad litem to recommend a specific residential schedule for the child. (CP 30-33)

5. The trial court erred in entering a temporary order providing that the child spend equal time with her stepfather and her mother “per the GAL recommendation,” and otherwise limiting the child’s contact with her mother. (CP 5-6)

III. STATEMENT OF ISSUE RELATED TO ASSIGNMENTS OF ERRORS

Whether a mother’s ex-husband can, over three years after their divorce, commence a “de facto” parentage action seeking residential time with his former stepdaughter, who has a living biological father and whose parents’ rights and obligations are defined by a parenting plan that the ex-husband has not petitioned to modify?

IV. STATEMENT OF FACTS

Petitioner Patricia Reimen and Edwin Frazier were divorced in 1995. (CP 157) They are the biological parents of Marnita ("Marni") Frazier, age 14 (DOB 12/15/1993), the subject of the current action. (CP 157) Reimen and Frazier's parental rights are governed by a parenting plan entered on August 2, 1995 in Chelan County. (CP 157) The parenting plan provides that Marni will reside primarily with the mother, with alternating weekend residential time and holidays with the father. (CP 69) The parents have joint decision-making. (CP 69)

Because of the father's work schedule as a corrections officer and the distance between the parents' homes, the parents did not rigidly adhere to the residential schedule in the parenting plan. (CP 69, 214) However, the father saw Marni on a consistent basis, including visits at the maternal grandparents' home in Wenatchee, where the father lives. (CP 69, 163) The father also consistently paid his child support obligation. (CP 69)

The mother married respondent John Corbin on October 14, 1995. (CP 157) They had two sons during their marriage. (CP 69) When Reimen and Corbin divorced on December 13, 2002 (CP 157), their parenting plan entered in Snohomish County designated

the mother as the primary residential parent for their sons. (See CP 41)

The Corbin/Reimen parenting plan did not provide for any residential time for Marni with her former stepfather. (CP 157-58) Nor did he seek residential time, as he could have at the time under RCW 26.09.240. Corbin's obligation to support Marni ended when he and Reimen divorced. RCW 26.16.205. Although Corbin relies on his voluntary payments for Marni, undertaken in his discretion, as a basis for his "de facto" parentage claims, he has never offered to or been required to pay child support. (CP 72-73)

After Corbin and Reimen divorced, the mother allowed Marni to occasionally accompany her brothers during their residential time with their father. (CP 160) However, Marni did not always participate in her brothers' residential time with their father, and sometimes traveled to Wenatchee to visit with her father while her brothers visited their father. (CP 70, 160-61)

The stepfather moved to modify the brothers' parenting plan and eliminate his support obligation in August 2005. (See CP 74, 158) Although Marni began to resist visits with Corbin before he filed the modification action, she was particularly upset with Corbin after witnessing the service of the modification action on her

mother. (CP 74) On March 22, 2006, Corbin commenced this action in Snohomish County Superior Court, filing a "Petition for DeFacto Parent Rights" seeking residential time with Marni. (CP 313)

Corbin's petition alleged that Marni's biological parents had "consented to and fostered a parent like relationship for a period of eleven years" between him and Marni. (CP 314) Corbin claimed that he had "assumed . . . the obligations of parenthood," and that he had "established a bonded, dependent relationship with" Marni. (CP 314-15) Corbin also claimed that he and Marni's biological father "have developed a mutually respected friendship where we equally support each other's role as a father in Marni's life." (CP 243) Despite his claimed "respect" for Marni's father, however, Corbin's "de facto" parentage petition proposed a parenting plan that gave him and the mother equal residential time, but provided no time for the father. (See CP 170, 244)

On April 5, 2006, the mother moved to dismiss Corbin's petition under CR 12(b). (CP 218) The motion to dismiss was heard by the Honorable John Lucas in Snohomish County Superior Court on June 7, 2006. (CP 15-18, 68) The trial court held that the Supreme Court's decision in *Parentage of L.B.*, 155 Wn.2d 679,

122 P.3d 161 (2005), *cert. denied*, 126 S.Ct. 2021 (2006) establishing a common law cause of action in favor of a "de facto parent" was not limited to children who do not have two legal parents, but was intended to "provide[] an additional cause of action" irrespective of a stepparent's statutory cause of action under RCW ch. 26.10. (CP 17, 85) According to the trial court, the cause of action that is established by **L.B.** is not the same "because the statutory remedy is a much stricter burden." (CP 86)

Noting the four factors set out by the **L.B.** Court to establish standing as a de facto parent, the trial court held that a "clearly, stepparent situation" satisfied the first element – requiring the natural parent to consent to the parent-like situation, as well as the second element – requiring the petitioner and the child to live in the same household. (CP 86) The trial court found that Corbin satisfied the third element – requiring the assumption of obligations of parenthood without expectation of financial compensation – because "during the time of the marriage they were all a unit, they were all a family." (CP 86) Finally, the trial court concluded that Corbin had "established a bonded, dependent relationship parental in nature . . . just from the fact of the marriage and the length of the marriage." (CP 86)

The trial court entered its order denying the mother's motion to dismiss on August 8, 2006. (CP 15-18) The trial court had entered an order denying the mother's motion for revision of a commissioner's temporary order appointing a guardian ad litem and authorizing the guardian ad litem to recommend a specific residential schedule on August 4, 2006. (CP 30-33, 35-36) The mother timely sought discretionary review of both orders on August 9, 2006. (CP 11)

While the motion for discretionary review was pending, a pro tem commissioner ordered that Marni spend equal time with Corbin and her mother, "per the GAL recommendation." (CP 5-6, 10) The pro tem commissioner also ordered that the mother not text message her daughter, and decreed appropriate times for cell phone use by the mother. (CP 5-6) The pro tem commissioner had imposed this order, subjecting the mother to prosecution for contempt or custodial interference if she fails to comply, despite the mother's continued willingness to have the child engage voluntarily in more limited "conciliation" time with Corbin. (See CP 5-6, 79-80)

The pro tem commissioner's order provides no time for the child's father, and makes no effort to accommodate or even

recognize the existence of Marni's existing Chelan County parenting plan. (See CP 5-6)

A panel of this court granted discretionary review.

V. ARGUMENT

A. The Trial Court Erred In Interpreting *L.B.* To Create A Common Law Cause Of Action For A Stepfather As "De Facto Parent" Of A Child Who Has Two Living Parents.

Marni has a mother and a father. Their parental rights and obligations are governed by a parenting plan entered in their Chelan County divorce. The trial court erred in interpreting *Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005), to create a common law cause of action as a "de facto" parent for Marni's former stepfather.

In *L.B.*, the Court considered the parental rights of a woman who could not establish any legal right under the Uniform Parentage Act, RCW ch. 26.26, to a child whom she had raised since birth with the biological mother. The Court in *L.B.* held that a non-biological mother could maintain a common law parentage action when there was no other statutory mechanism to allow her to pursue her parental rights over the objection of the child's only other parent. 155 Wn.2d at 688-89, ¶ 14. The *L.B.* Court's holding was driven by the fact that "[o]ur legislature has been

conspicuously silent when it comes to the rights of children . . . who are *born into* nontraditional families” 155 Wn.2d at 695, ¶ 21 (emphasis added).

L.B. set forth a four-part fact-based test to establish standing as a “de facto” parent. That test requires that a third party show: 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. 155 Wn.2d at 708, ¶40.

The test enunciated in **L.B.** was derived from a Wisconsin Supreme Court case with a nearly identical fact pattern. 155 Wn.2d at 708, ¶40 (adopting test set forth in **Parentage of L.B.**, 121 Wn. App. 460, 482, 487, 89 P.3d 271 (2004), *citing Custody of H.S.H.-K*, 193 Wis.2d 649, 533 N.W.2d 419, *cert. denied*, 516 U.S. 975 (1995)). In fact, all of the cases relied on in **L.B.** holding that a third party can assert common law rights as a “de facto” parent present the same fact pattern - the child was born or adopted during the relationship between the legal parent and a third party, who agreed

to raise the child together. *L.B.*, 155 Wn.2d at 704-06, ¶36 (“These cases provide a well reasoned and just template for the recognition of de facto parent status in Washington,” citing *C.E.W. v. D.E.W.*, 2004 ME 43, 845 A.2d 1146, 1151-52 (2004); *In re Bonfield*, 97 Ohio St.3d 387, 393-94, 780 N.E.2d 241 (2002); *T.B. v. L.R.M.*, 567 Pa. 222, 234, 786 A.2d 913 (2001); *V.C. v. M.J.B.*, 163 N.J. 200, 227-28, 748 A.2d 539, *cert. denied*, 531 U.S. 926, 121 S.Ct. 302, 148 L.Ed.2d 243 (2000); *Rubano v. DiCenzo*, 759 A.2d 959, 975-76 (R.I. 2000); *In re Parentage of A.B.*, 818 N.E.2d 126, 131-33 (Ind. App. 2004); *In re Interest of E.L.M.C.*, 100 P.3d 546, 558-61 (Colo. App. 2004), *cert. denied*, 545 U.S. 1111 (2005); *A.C. v. C.B.*, 113 N.M. 581, 584-85, 829 P.2d 660 (Ct. App.), *cert. denied*, 113 N.M. 449 (1992)). None of these cases deal with a situation similar to the one here – where the child already has two parents who exercised their rights and responsibilities as parents before, during, and after the time when a “de facto” parentage relationship was allegedly developed by the third party.

The Wisconsin Court of Appeals recognized that its “de facto” parent test was limited to the facts and underlying policy described in *H.S.H.-K* by denying the doctrine’s application to grandparents seeking custody of their grandchild in *Custody of*

Jeffrey A.W., 221 Wis.2d 36, 584 N.W.2d 195, *rev. denied*, 222 Wis.2d 675 (1998). The Wisconsin court noted that the grandparents' claim was distinguishable from that in **H.S.H.-K**, where the parties were denied access to a legally recognized marriage and consequently also could not obtain a divorce that otherwise would have resolved custody and visitation issues attendant on the breakup of a long-standing, intact family. **Jeffrey A.W.**, 584 N.W.2d at 200.

Here, the facts are equally distinguishable. There is absolutely no authority for the trial court's ruling here that a second man may be the child's "de facto" father, nor for the proposition that a child may have more than two parents, "de facto" or not. Indeed, "the claim that a State must recognize multiple fatherhood has no support in the history or traditions of this country." **Michael H. v. Gerald D.**, 491 U.S. 110, 131, 109 S. Ct. 2333, 105 L.Ed.2d 91 (1989). Our statutes in fact presume that a child has only two parents. See RCW ch. 26.16.125 (mother (singular) and father (singular) have equal rights and responsibilities as parents of children); RCW ch. 26.19 (child support scheme premised on one obligor parent and one obligee parent).

The difficulty in allowing multiple stepparents to petition for visitation rights was recognized by the New Jersey courts in *Klipstein v. Zalewski*, 230 N.J. Super 567, 553 A.2d 1384 (1988). The *Klipstein* court held that “there must be some limits on stepparent visitation rights because in our society it not difficult to conceive of a child having three, four, or even more stepfathers and there are not enough days in a week for the child to have visitation with all of them.” While a stepparent might have an interest in maintaining a loving relationship that he has developed with the child, the child also has an interest in “non-fragmented parental structure and a life not unduly burdened with visitation obligations.” *Klipstein*, 533 A.2d at 1386. “And if the those competing interests cannot be reconciled, it is the rights of the stepfather which must fall.” *Klipstein*, 533 A.2d at 1386.

In this case, contrary to the analysis of *Klipstein*, the trial court unwisely found that the mere “fact of the marriage and the length of the marriage” created a “prima facie” showing of the creation of “de facto” parental rights. (CP 86) The trial court’s broad interpretation of *L.B.*, allowing any third party to commence an action if he can arguably meet the fact-based test announced in *L.B.*, would open the floodgates to custody litigation and subject

parents and their children to multiple parenting plans established under constitutionally suspect criteria, creating a common law cause of action for any ex-spouse or cohabitant who ever shared a household with his partner's children. The trial court erred in interpreting *L.B.* to create a common law right of action for a stepfather as a "de facto parent" of a child who has two living parents.

B. The Trial Court Erred By Not Requiring The Former Stepfather To First Show Detriment To The Child Before Allowing Him To Proceed With An Action For Residential Time With The Child.

By allowing the child's former stepfather to pursue a common law cause of action as a "de facto" parent, the trial court ran afoul of a host of recent cases holding that the "much stricter" statutory and case law standard requiring a showing of detriment before the courts interfere with the rights of a child's parents is a constitutional imperative. See, e.g., *Custody of Smith*, 137 Wn.2d 1, 21, 969 P.2d 21 (1998), *aff'd Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed.2d 49 (2000) (former RCW 26.10.160(3) allowing visitation in "best interests" of child unconstitutional); *Parentage of C.A.M.A.*, 154 Wn.2d 52, 66, ¶¶29, 109 P.3d 405 (2005) (declaring unconstitutional RCW 26.09.240, which

presumed grandparent visitation in “best interests” of child); **Custody of Shields**, 157 Wn.2d 126, 149-50, ¶58, 136 P.3d 117 (2006) (detriment standard for stepparent custody under RCW 26.10.030; trial court erred in using “best interests” standard); see also **Custody of Stell**, 56 Wn. App. 356, 365, 783 P.2d 615 (1989) (detriment standard for psychological parent custody under RCW ch. 26.10); **Marriage of Allen**, 28 Wn. App. 637, 649, 626 P.2d 16 (1981) (detriment standard for stepparent custody despite “best interests” standard in former RCW 26.09.190).

Under the “heightened standard” recognized by our courts, “a court can interfere only with a fit parent’s parenting decision to maintain custody of his or her child if the nonparent demonstrates that the placement of the child with the fit parent will result in actual detriment to the child’s growth and development.” **Shields**, 157 Wn.2d at 144, ¶46. “[W]hen this heightened standard is properly applied, the requisite showing required by the nonparent is substantial and a nonparent will generally be able to meet this test in only extraordinary circumstances.” **Shields**, 157 Wn.2d at 145, ¶47 (citations omitted).

A “psychological parent” cannot assert rights over the objection of a fit parent, as our Supreme Court recognized in **L.B.**

The Court defined a “psychological parent” as a “parent-like relationship ‘based on the day-to-day interaction, companionship, and shared experiences’ of the adult and child.” *L.B.*, 155 Wn.2d at 692, fn. 7 (citations omitted). The Court noted that while a psychological parent may have claims and standing above other third parties, “those interests typically yield in the face of the rights and interests of a child’s legal parents.” *L.B.*, 155 Wn.2d at 692, fn. 7. The Court noted that while the law recognizes the importance of a psychological parent, it does not establish a right to continue the relationship. 155 Wn.2d at 692, fn. 7, *citing Dependency of J.H.*, 117 Wn.2d 460, 469, 815 P.2d 1380 (1991).

While the stepfather in this case claims he is the child’s “psychological parent,” that does not make him the child’s “parent in fact.” See *L.B.*, 155 Wn.2d at 692, fn. 7 (defining de facto parent as being a “parent in fact,” *citing* Black’s Law Dictionary 448 (8th ed. 2004)). The trial court incorrectly held that the stepfather should be entitled to the same rights as if he were a legal parent based on his claim that he was a psychological parent. (See CP 84-85) Even if the stepfather could prove that he was the child’s psychological parent, his interest must yield to the interests and rights of the legal parents. *L.B.*, 155 Wn.2d at 692, fn. 7.

A former stepparent also cannot avoid the constitutional strictures of *Troxel, C.A.M.A.*, and *Shields* by referring to himself as a “de facto” parent. The stepfather in this case could not be a de facto parent. Recognition of de facto parentage is “limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.” *L.B.*, 155 Wn.2d at 708, ¶40. A stepparent’s parental role, to the contrary, lasts only as long as the marriage between the parent and stepparent exists. See RCW 26.16.205 (stepparent’s liability for support of stepchildren terminates upon entry of a decree of dissolution). To the extent the stepfather in this case could have made his parenting role “permanent” and “unequivocal” when the parties divorced, he declined to do so.

When the parties divorced in 2002, former RCW 26.09.240(2) allowed a third party who could prove by “clear and convincing evidence that a significant relationship exists with the child” to petition for an order granting visitation during a parent’s divorce. If he had met this evidentiary burden, the stepfather could have obtained a residential schedule with the child, evidencing his acceptance of a “permanent” role in her life. That order would have remained enforceable even though RCW 26.09.240 was

subsequently struck down in *C.A.M.A.*, 154 Wn.2d at 66, ¶29. See *Marriage of Anderson*, 134 Wn. App. 506, 512, ¶13, 141 P.3d 80 (2006) (stepparent visitation ordered under RCW 26.09.240 enforceable after *C.A.M.A.*, which applies prospectively only).

The court's use of an undeferential "best interests" standard also goes far beyond the limits imposed even by advocates of the "de facto" parent doctrine. The "de facto" parent concept gained credence, and traction, in the ALI Principles of Family Dissolution (2000). Although not directly credited by the majority opinion in *L.B.*, its definition of a "de facto" parent is similar to those recited in § 2.03 of the Principles. 155 Wn.2d at 706, fn. 23, 24. Without in any way conceding that the stepfather has or could have met those criteria in this case, or that the ALI Principles should be applied by the courts of this state, even under those liberal criteria this action should have been dismissed.

As the ALI Principles recognize, "[t]he requirements for becoming a de facto parent are strict, to avoid unnecessary and inappropriate intrusion into the relationships between legal parents and their children." ALI Principles, § 2.03, at 119. Even where a "de facto" parent has a claim, the ALI limits the authority to award primary care to the de facto parent:

The court . . . should not allocate the majority of custodial responsibility to a de facto parent over the objection of a legal parent . . . who is fit and willing to assume the majority of custodial responsibility unless the legal parent . . . has not been performing a reasonable share of parenting functions . . . or the available alternatives would cause harm to the child.

ALI Principles, § 2.18, at 384 (see Comment b., at 385: “This section gives priority to a legal parent . . . over a de facto parent . . .”). Other sections afford priority to a legal parent by creating a presumption in favor of legal parents in allocation of custodial responsibility § 2.08(1)(a), decisionmaking § 2.09(2), and access to school and health records. § 2.09(4). Further, the ALI Principles presume that a “de facto” parent’s rights will be established by an individual who has “maintain[ed] the parental relationship” within six months of filing the action. ALI Principles § 2.04(1)(c), at 134.

The action being pursued by the stepfather in this case violates each and all of these ALI Principles. These limitations on the “de facto” parenting doctrine are the minimum necessary to prevent violation of the parents’ constitutional rights, and under our state’s law the trial court erred in allowing the stepfather’s action to go forward absent allegations and proof of harm to the child. The trial court’s reasoning, premised as it is solely on the parties’

previous marriage and necessarily equating the stepparent relationship with “de facto” parenting, was clearly and improperly calculated to evade the constitutional imperatives of *Troxel*, *C.A.M.A.*, and *Shields*. This court should reverse and dismiss.

C. If An Alleged De Facto Parent Can Seek Visitation With A Child Who Has An Existing Parenting Plan, He Must First Meet The Adequate Cause Threshold To Modify That Parenting Plan.

The child already has an existing parenting plan. To the extent her former stepfather is allowed as a “de facto” parent to petition for visitation rights, he must do so in the context of a modification action under RCW 26.09.260. Before the parenting plan can be modified, the former stepfather must meet the adequate cause threshold by showing (1) that there has been a substantial change in circumstances since the prior parenting plan was entered; (2) that the modification is in the best interests of the child and is necessary to serve the best interests of the child; and (3) that the child has been integrated into the family of the petitioner with the consent of the other parent[s] in substantial deviation from the parenting plan; *or* (4) that the child’s present environment is detrimental to the child’s physical, mental, or emotional health and the harm likely to be cause by a change of environment is

outweighed by the advantage of a change to the child. See RCW 26.09.260(1), (2).

The consequences of allowing an alleged “de facto” parent to pursue his own parenting plan without modifying the existing parenting plan is most apparent in the pro tem family law commissioner’s temporary order establishing a split residential schedule between the mother and ex-husband “in the child’s best interests,” completely ignoring the residential schedule already established in the child’s existing Chelan County parenting plan. (See CP 5-6) As a consequence of the court’s order, the child’s residential schedule is now governed by two conflicting orders. If the mother follows one order, she leaves herself open for a charge of contempt based on the other.

The Supreme Court could not have intended to subject children and their parents to multiple inconsistent parenting plans based on its *sui generis* “de facto” parent analysis in **L.B.** A party who claims to be a “de facto” parent to a child who already has an existing parenting plan should be required to meet the adequate cause threshold set forth in RCW 26.09.260 in order to seek visitation rights.

VI. CONCLUSION

The trial court's overbroad interpretation of *L.B.* to allow a stepparent to assert "rights" as a "de facto" parent over three years after his divorce from the child's mother was error. The trial court's holding invades the parents' constitutional right to raise their child without undue state interference. This court should reverse and dismiss the stepfather's "de facto" parentage action.

Dated this 15 day of March, 2007.

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WSBA No. 34515

By: 
Rebecca J. Torgerson
WSBA No. 32956

Attorneys for Petitioner

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on March 15, 2007, I arranged for service of the foregoing Brief of Petitioner, to the court and counsel for the parties to this action as follows:

Office of the Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
James D. Shipman Podrasky & Shipman 3631 Colby Ave. Everett, WA, 98201-4713	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Patricia Novotny Attorney at Law 3418 NE 65th Street, Suite A Seattle, WA 98115	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
Rebecca J. Torgerson Brewer Layman P.O. Box 488 Everett, WA 98206-0488	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-mail
Christine Wakefield Nichols Guardian Ad Litem P.O. Box 1918 Snohomish, WA 98291	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Edwin Frazier 2130 Columbia View Wenatchee, WA 98801	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

DATED at Seattle, Washington this 15th day of March, 2007.



 Tara D. Friesen

FILED
 COURT OF APPEALS DIV #1
 STATE OF WASHINGTON
 2007 MAR 16 AM 11:05

FILED

AUG 08 2006

PAUL L. DARRIS
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

In re the Parenting of:

MARNITA FRAZIER (DOB: 12/15/93),
Child,

and

JOHN CORBIN,

De Facto Parent/Petitioner,

PATRICIA REIMEN,

Biological Mother, Respondent

NO. 06-3-00974-8

ORDER OF JUDGE LUCAS
ON RESPONDENT'S
MOTION TO DISMISS
PURSUANT TO CR12(b)6

This matter came before the Honorable Eric Z. Lucas on the Respondent's Motion to Dismiss under CR (12)(b)(6) and for Attorney Fees. The Court reviewed and considered the pleadings submitted by the parties in this action:

1. Petition for De Facto Parent Rights, filed March 22, 2006;
2. Respondent's Motion to Dismiss, filed April 5, 2006;

JUDGE LUCAS ORDER
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PODRASKY & SHIPMAN
3631 Colby Avenue
Everett, Washington 98201
Telephone (425) 258-6846

1 3. Petitioner's Memorandum in opposition to the motion, filed May
2 18, 2006;

3 4. Reply Memorandum of Respondent, filed June 6, 2006.

4 The Court also heard oral argument from James D. Shipman, counsel
5 for Petitioner John Corbin, and Rebecca J. Torgerson, counsel for Respondent
6 Patricia Reimen.

7 Based on the above the Court finds as follows:

8 1. Respondent, Patricia Reimen, has brought this motion claiming
9 that stepparents do not have de facto parent rights under the case of *In re*
10 *Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005). The Court does not
11 agree with that analysis.

12 2. Footnote 7 of *in re Parentage of L.B.* notes that cases from our
13 jurisdiction and other jurisdictions have inconsistently applied the terms "loco
14 parentis," "psychological parent," and "de facto parent." This confusion was
15 reflected in Carvin (in the L.B. case), seeking recognition as a de facto or
16 psychological parent.

17 3. The Court in *L.B.* applied the definition of psychological parent to
18 biological parent, stepparent, or other person unrelated to the child. This
19 general definition also applies to de facto parents, and *L.B.* therefore provides
20 a general cause of action if a party can establish the criteria provided in *L.B.*
21 for a de facto parent.

1 4. The cause of action provided in *L.B.* is not the same as a third
2 party custody action. The statutory remedy is a much stricter burden.

3 5. The four factors in *L.B.* are:

4 (1) the natural or legal parent consented to and fostered the
5 parent-like relationship;

6 (2) the petitioner and the child lived together in the same
7 household;

8 (3) the petitioner assumed obligations of parenthood without
9 expectation of financial compensation;

10 (4) the petitioner has been in a parental role for a length of
11 time sufficient to have established with the child a bonded,
dependent relationship parental in nature.

12 6. Clearly there is a prima facie showing in this case.

13 7. *In re Parentage of L.B.* was not limited to the facts of same sex
14 parents.

15 8. The Court does not find intentional delay and will not award fees
16 to either side in this case.

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19 BASED ON THE ABOVE IT IS HEREBY ORDERED:

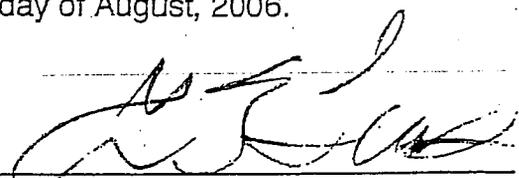
20 1. Respondent's Motion to Dismiss Action under CR 12(b) and for
21 Attorney Fees is denied.

22 2. Both parties request for attorney fees is denied.
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26 JUDGE LUCAS ORDER
27 Page 3

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1 DONE IN OPEN COURT THIS 9th day of August, 2006.

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3 
4 JUDGE ERIC Z. LUCAS

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JUDGE LUCAS ORDER
Page 4

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