

No. 81043-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Parenting of:

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

Child,

JOHN CORBIN,

Petitioner,

v.

PATRICIA REIMEN,

Respondent,

EDWARD FRAZIER,

Father.

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STATE OF WASHINGTON  
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RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEFS  
OF NORTHWEST WOMEN'S LAW CENTER  
AND AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

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FILED AS  
ATTACHMENT TO EMAIL

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Respondent Patricia Reimen submits this answer to the amicus briefs filed by the Northwest Women's Law Center ("Law Center") and the American Civil Liberties Union Of Washington ("ACLU"). Neither brief provides any insight into the issue, common in the "blended" families of divorced parents, that is raised by this case.

The Law Center's amicus brief is a post-*Troxel* pastiche of cases considering the particular issues raised when, as in *L.B.*,<sup>1</sup> a child is born or adopted during a relationship between the legal parent and a third party with whom the legal parent agreed to raise the child.<sup>2</sup> Neither these cases, nor those involving two non-parents,<sup>3</sup> or a step-parent where no other court order governs the residential time of a child who has no relationship with her

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<sup>1</sup> *Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005), *cert. denied*, 126 S.Ct. 2021 (2006).

<sup>2</sup> See e.g., *C.E.W. v. D.E.W.*, 2004 ME 43, 845 A.2d 1146, 1151-52 (2004) (Law Center Br. 6, 15); *T.B. v. L.R.M.*, 567 Pa. 222, 234, 786 A.2d 913 (2001) (Law Center Br. 15); *V.C. v. M.J.B.*, 163 N.J. 200, 227-28, 748 A.2d 539, *cert. denied*, 531 U.S. 926 (2000) (Law Center Br. 16).

<sup>3</sup> *P.B. v. T.H.*, 370 N.J.Super. 586, 851 A.2d 780 (2004) (Law Center Br. 16).

biological father,<sup>4</sup> have anything to do with this case, where a former step-parent seeks to supersede an already existing parenting plan, over the objection of a fit parent, by filing an entirely new *de facto* parentage action.

Ironically, while filed in support of the petitioner and ostensibly seeking reversal of the Court of Appeals' decision, the Law Center's brief advocates precisely the harm standard that the mother proposed and the trial court rejected as "too hard" for petitioner to meet. (Law Center Br. 17: "It is also a reality that children may be harmed if the law fails to protect their relationships with adults who have functioned in all respects as their parents. . . ."). Given this conclusion, it is inexplicable why the Law Center is supporting the abusive litigation tactics employed by respondent's ex-husband in commencing this *de facto* action after things started going poorly for him in the legitimate dispute he and his ex-wife were having over *their* children's support and residential time.

The ACLU's amicus brief, on the other hand, is a set of pre-*Troxel* platitudes taken out of context from some of the cases establishing the family's constitutional due process right not to be

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<sup>4</sup> *Liebner v. Simcox*, 834 A.2d 606 (Pa. Super. 2003) (Law Center Br. 15); *Young v. Young*, 845 A.2d 1144 (Me. 2004) (Law Center Br. 14-15).

subjected to undue State interference that involve individuals who were not the “legal” parents of children they were raising.<sup>5</sup> Some of the cases cited by the ACLU also address the serious abuses of power that can occur when the State fails to honor protected parenting relationships – just as the trial court failed to do here.<sup>6</sup> That families “come in all shapes and sizes” is no surprise, is largely irrelevant to a determination of the “rights” of members of those families within the family itself, and certainly does not constitutionally compel a trial before identifying the individuals to whom substantive due process rights are extended, as appears to be advocated by the ACLU. (See ACLU Br. 9)

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<sup>5</sup> See e.g., *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (ACLU Br. 13) (grandparents raising grandchildren; housing authority rules violated substantive due process); *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (ACLU Br. 13) (acknowledging custodial aunt’s right to parent her niece without State interference).

<sup>6</sup> See e.g., *Duchesne v. Sugarman*, 566 F.2d 817 (2d Cir. 1977) (State’s failure to obtain judicial ratification for its removal of children from mother’s home deprived the mother of her liberty interest in family privacy without due process) (ACLU Br. 11), *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (indigent parent entitled to waiver of filing fees in appealing termination of parental rights) (ACLU Br. 10); *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (State must prove grounds for terminating parent’s rights by clear and convincing evidence) (ACLU Br. 11); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (unwed father was entitled to hearing on his fitness as parent before children could be taken from him in dependency proceeding instituted by the State after the death of the children’s natural mother) (ACLU Br. 11, 13).

Unfortunately, despite the gaping holes in the analytical fabric of amici's pleas for a parental blanket swaddling anyone with a past relationship with a child and the filing fee to commence a common law custody action against her parents, no one is "stitching a quilt" for respondent. Just as Tommy Granville and Kelly Stillwell learned when they came before this Court a decade ago,<sup>7</sup> Tricia Reimen now knows that no advocacy group champions the parental rights of a single mother whose individual interests can't be used to push the group's social and political agendas. Instead, respondent has been hounded into bankruptcy<sup>8</sup> because she could not afford to defend against her ex-husband's litigation tactics. This cold reality, all too common for women in respondent's position, also accounts in part for the brevity of this answer to amici. Neither respondent nor her counsel have the time, money, or energy to further address abstract political goals that will not be in any way compromised by the Court's decision considering the consequences of the parties' serial matrimony.

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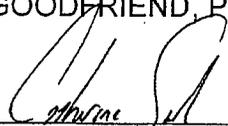
<sup>7</sup> *Custody of Smith*, 137 Wn.2d 1, 969 P.2d 21 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

<sup>8</sup> U.S. Bankruptcy Court, Western District of Washington, Cause No. 09-10880-TTG. The automatic stay does not affect this civil action concerning child custody or visitation. 11 U.S.C. § 362 (b)(2)(A)(iii).

The Law Center's *de facto* pride at being midwife to *L.B.*<sup>9</sup> has clearly trumped its *de jure* mission of protecting women, while the ACLU has forgotten that extending substantive due process to everyone who demands it will so dilute individual rights that they become meaningless. This Court should decline amici's invitation to address their social and political agendas, which are better considered (and, indeed, are being considered) by the Legislature.

Dated this 2nd day of March, 2009.

EDWARDS, SIEH, SMITH  
& GOODFRIEND, P.S.

By: 

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WSBA No. 9542

Attorneys for Respondent

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<sup>9</sup> "Of particular relevance in this case, NWLC served as co-counsel for the petitioner in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005)." (Law Center Motion 1)

### 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 2, 2009, I arranged for service of the foregoing Respondent's Answer To Amicus Curiae Briefs of Northwest Women's Law Center And American Civil Liberties Union of Washington, to the Court and counsel for the parties to this action as follows:

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**DATED** at Seattle, Washington this 2<sup>nd</sup> day of March, 2009.

*Carrie O'Brien*

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