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No. 63919-6-I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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MARY FRANKLIN, Appellant

v.

JACKIE J. JOHNSTON, Respondent/Cross-Appellant

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AMERICAN ACADEMY OF MATRIMONIAL LAWYERS  
AMICUS BRIEF

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2019/06/19 10:00 AM  
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## I. Statement of the Issues and Case

This Court has asked the Washington Chapter of the American Academy of Matrimonial Lawyers, Washington Chapter, (“AAML”) to brief the question: “Is the *de facto* parent doctrine available to foster parents, and did the trial court err in concluding that Mary Franklin, A.F.J.’s foster parent, is A.F.J.’s *de facto* parent?”

The AAML responds: Under the particular facts presented in this case, the *de facto* parent doctrine is available to Ms. Franklin; and, given the circumstances, the trial court’s decision was not error but was, in fact, supported by substantial evidence and should be affirmed.

We believe some supplementation of the appellate record and briefing is appropriate in this matter, as follows:

At a third dependency review hearing that occurred since entry of the May 26, 2010, a third party parenting plan order on November 2009, the court noted:

“Ms. Johnston, unfortunately did have a relapse with marijuana, and although we don’t have direct evidence that her use of the marijuana adversely affected the parenting of the child...we know that Ms. Johnston has had extraordinary struggles in –with drug addiction and is very vulnerable to drugs, and so its not hard to imagine that she would not be in shape to parent given her adverse reaction. So it is of grave concern to the Court that she used any drug --...” (Review hearing, November 9, 2009 RP 22).

## **II. Argument**

### **A. The Status of the Biological Father**

Ms. Johnston's brief raises a due process issue regarding the biological father. However, he was unknown to Ms. Franklin, his identity was not revealed by Ms. Johnston. Ms. Johnston did not know the man that impregnated her. There was no way to determine who he is and he was dismissed from these proceedings (trial exhibit 178). No appeal was taken from that order.

### **B. Substantial Evidence Supports the Findings Challenged by Ms. Johnston**

Ordinarily, as amicus, we would not speak to issues of the trial court's discretionary rulings. However, we see our role here as compelling us to point out allegations in parties' briefs that are not valid.

The standard on appeal is that the findings of fact are to be accepted if there is substantial evidence to support them. This Court's role as to questions of fact is to determine whether those findings support the conclusions of law and the judgment. The trial court's findings will not be disturbed on appeal if supported by substantial evidence. Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise. (*Group Health v. Department*

of Revenue, 106 Wn.2d 391, 722 P.2d 787 (1986)). Substantial evidence is defined as “evidence in sufficient quantum to convince the trier of fact as to the truth of the declared premise,” (*Hutchinson v. Holman*, 107 Wn.2d 693 at 712, 732 P.2d 974 (1987)). The following challenges by Ms. Johnston are supported by substantial evidence.

**1. Finding 2.12(A): That A.F.J. Loves Both His “Mommies”.**

Ms. Johnston described both adults as A.F.J.’s “mommies” to the guardian ad litem (CP 422). The GAL observed that the child is remarkably happy and content, good-natured, equally bonded to both parents, and that Franklin is and in every way has been in a parental role; that in A.F.J.’s mind she is his “mommie”. (trial exhibit 178, pages 7 and 11).

**2. Finding 2.12 (K): That The Parties Agreed To Jointly Raise A.F.J. As Co-Parents And Went To Live With Franklin Within A Few Weeks Of The Child’s Birth.**

When A.F.J. was born, Ms. Johnston lived at PTS in Tacoma (RP 16). Johnston and Franklin continuously cohabitated, living in the same dwelling at the same time, for 4-5 months after A.F.J.’s birth, although for a few weeks Johnston stayed part of the time in a “clean and sober” apartment in Tacoma (RP 15 and 16). They gave up the apartment in the

first week of January 2006 when Johnston came to live with Franklin at all times until A.F.J.'s removal by CPS for two days (RP 34-35).

There is no dispute that A.F.J. had been living with Franklin for his entire life since this two-day removal by C.P.S. Johnston does not challenge the finding that Franklin took care of him while he has lived with Franklin 99% of his life (Finding 2.12 (L)). It is therefore a verity on this appeal. (*McConiga v. Riches*, 40 Wn. App. 532, 700 P.2d 331 (1985)).

**3. Finding 2.12 (N): That Franklin Had Every Hope That She And Johnston Would Parent Together And Did Not Take Care Of A.F.J. With The Expectation Of Compensation While She Was A Foster Parent.**

When CPS took A.F.J. for two days (RP 35) Franklin did not know that the state had legal custody status. She had no prior experience with the system. (RP 35). She was told by the DCHS case manager that she could not get him back unless she were to apply to be his foster parent. She stated that in foster parent training they don't tell you it is a temporary transitional home (RP 46).

Franklin did not learn that she would be, as she put it on cross-examination, "mandated" to get money until April 2006 (RP 37). She received no payments while caring for A.F.J. until September 2006. The payments terminated in April 2008 and did not resume again until

February 2009. (RP 38). She did not request payment and in fact tried to refuse it by telling the dependency case manager, “I don’t need the money; I can take care of him myself; you have to take the money (RP 39)”. She also stated she told the case manager, “The payments were unnecessary. I loved the child. I was willing to sacrifice everything for him. Maybe some other foster parent needed the money. I didn’t need it; I didn’t want it...” (RP 77-78). This testimony was confirmed by the GAL when she talked to the case manager (trial exhibit 178, pages 8 and 11).

#### **4. Franklin’s Expectancy to be Co Parent**

The record shows that the parties discussed co-parenting after their breakup. (RP 47).

#### **5. Finding 2.12(R): The Court’s Alleged Failure To Find That Franklin Made A Permanent Commitment to A.F.J.:**

The trial court found that Franklin: “... has been devoted to him and has fully and unequivocally assumed a parental role – if she does not qualify as a *de facto* parent ... then no one would.” (Finding 2.12 (R)). Franklin told the state social worker that her “lifelong” commitment was to be A.F.J.’s co-parent with Ms. Johnston. (RP 47). Although the written finding omits the words “permanent” and “responsible,” the court in fact so found in its oral ruling (see, oral decision April 13,2009, p. 20). If

findings are expressed in words different than in a case or statutory rule, the appellate court can look at the oral decision to interpret written findings. (*In re Chubb*, 46 Wn.App. 530 at 532, 731 P.2d 537 (1987) and *In re Marriage of McKinney*, 14 Wn. App. 921 at 924, 546 P.2d 456 (1976).

Finding 2.12 (R) captures the required concept. Its reference to “irrevocable” is tantamount to “permanent”.

Thus, Johnston’s argument that the court’s failure to find “a permanent, unequivocal, committed and responsible parental role in the child’s life” (See *In re the Parentage of L.B.*, 155 Wn.2d 679 at 708, 122 P.3d 161 (2005)) is not fatal to its decision.

**C. Neither Franklin’s Failure to Obtain Custody Under RCW 26.10.030(1) Nor Her Legal Status As Foster Parent Bar Her From Invoking The *De Facto* Parentage Doctrine**

**1. Introduction**

Ms. Franklin did not appeal the finding that A.F.J. would not suffer actual detriment if custody were awarded to Ms. Johnston (see Finding 2.12(H)). That finding is fatal to a third party custody action under RCW 26.10.030(1) even though A.F.J. was not in Ms. Johnston’s physical custody (see *In re the Parentage of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010)). However, Ms. Johnston did not appeal the other part of

finding 2.12 (H): “There certainly was a showing, however, and admitted by Ms. Johnston, that A.F.J. would suffer detriment and would in fact be traumatized if he was cut off from contact with Ms. Franklin.” (CP 709).

Although Ms. Johnston stated she would not sever that contact, she could do so with impunity in the absence of an order defining legally enforceable residential rights as between Franklin and A.F.J. The question then becomes whether there are alternative bases for protecting the family relationship between A.F.J. and Ms. Franklin not available under RCW 26.10.

Washington’s former third party visitation statute, RCW 26.10.160 (3) was deemed unconstitutional by the United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct 2054, 147 L.Ed 49 (2000). Our State Supreme Court held, therefore, that no statute exists for third parties to obtain rights of visitation. (See, *In re the Parentage of C.A.M.A.*, 154 Wn.2d 52, 109 P.3d 405 (2005)). Then, in *In re the Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005), our Supreme Court affirmed this Court’s decision that a same-sex partner of a biological mother, Ms. Carvin, had standing to prove herself to be a *de facto* parent under a common law *de facto* parentage doctrine. Ms. Carvin had the remedy of pursuing custody

under the then existing third party custody statute. However, that remedy did not bar her from establishing herself as *L.B.*'s *de facto* parent:

“Reason and common sense support recognizing the existence of *de facto* parents ...We thus hold that henceforth in Washington, a *de facto* parent stands in legal parity with an otherwise legal parent whether biological, adoptive or otherwise... *L.B.*, 155 Wn.2d 679 at 707-708, 122 P.3d 161...but only as is determined to be in the best interests of the child...” (Id. at 709).

In *In re the Parentage of M.F.*, 168 Wn.2d 528, 228 P.3d 1270 (2010), our State Supreme Court affirmed this Court's reversal of a trial court's determination that a stepfather third party (Mr. Corbin) who sought visitation was a *de facto* parent. It observed he had a statutory remedy to seek custody under RCW 26.10.030(1), (as did Ms. Carvin in *L.B.*) but deemed the *de facto* parentage doctrine unavailable to him because there were two fit parents who had established legal parenting rights prior to the appearance of Mr. Corbin. (See *In re the Parentage of M.F.*, 168 Wn.2d at 535).

On the surface these decisions may appear irreconcilable, but they are not. Both parties had established parent like relationships with fit parents. Both parties had standing to pursue custody under RCW 26.10.030(1). Both parties attempted to invoke and utilize the common law *de facto* parentage doctrine to establish visitation rights. Carvin got

more than visitation rights in *L.B.*; Corbin got nothing in *M.F.*. A close reading reveals that these two decisions are in harmony. The AAML believes that reason and common sense dictate that the relationship between Franklin and A.F.J. deserves legal protection, given the unique circumstances of this case, finding 2.12(H), and a proper reading of established case law.

**2. Having A Remedy To Sue For Custody Under RCW 26.10.030(1) Does Not Bar Franklin From Establishing Herself As *De Facto* Parent of A.F.J.**

That Mr. Corbin had a remedy to pursue custody under RCW 26.10.030(1) is not the reason he was barred from establishing himself to be a *de facto* parent. The key distinction between his family circumstances and those of Carvin, that lead to different outcomes, is that in his case the child *M.F.* had two biological parents who were both actively involved with him, and whose legal rights as fit parents were already established before Corbin came into *M.F.*'s life.

“When Corbin entered her life, *M.F.*'s legal parents and their respective roles were already established under our statutory scheme. In the case before us, we perceive no statutory void and cannot apply an equitable remedy that infringes upon the rights and duties of *M.F.*'s existing parents.” (*M.F.*, *supra* at 532).”

In *L.B.*, *supra*, the child had a relationship with only one biological parent when Carvin began a parental role with her at birth. Thus, the M.F. Court observed at page 532:

“In *L.B.*, we reasoned that no infringement occurs when there are ‘competing interest of two parents who are both in ‘equivalent positions’ ‘(citing *L.B.* at 710)... but in this case, we are faced with the competing interests of parents with established rights and duties – and a step parent, a third party who has no parental rights.”

Thus the M.F. court concluded:

But here, the petitioner is a third-party to the two already existing parents, which places him in a very different position than the respondent in *L.B.* These differences, as well as the presence of a statutory remedy... support our conclusion that the *de facto* parentage doctrine should not extend to the circumstances of this case. (emphasis supplied).

This is the distinction at the heart of the majority’s decision to bar Corbin from consideration as a *de facto* parent. Thus *M.F.* holds that where two parents have already legally established parental rights, a third party who subsequently plays a parental role has no standing to obtain visitation rights or any other parental rights under the *de facto* parentage doctrine. That party’s only remedy is a suit for custody under RCW 26.10.030 (1). Ms. Franklin is not such a party. Her family circumstances with A.F.J are more akin to those of Carvin’s with *L.B.*

Here, like *L.B.*, A.F.J.'s father had no legally established rights, and played no role in his life when Franklin commenced her *de facto* parentage action. Like *L.B.*, A.F.J. had only two adults serving as his parents: Johnston, with whom he only lived the first two-three months of his life, and Franklin, who served as A.F.J.'s other parent virtually his entire life. Thus, the *M.F.* case does not bar Franklin from qualifying as A.F.J.'s *de facto* parent because of these crucial differences in the family circumstances.

**3. Franklin's Legal Status As Foster Parent Does Not Preclude Her From Establishing Herself to be A.F.J.'s *De Facto* Parent**

**a. Whether Franklin Is A.F.J.'s Psychological Parent Has No Bearing On Whether She Is His *De Facto* Parent**

The holding in *In re the Dependency of J.H.*, 117 Wn.2d 460, 815 P.2d 1380 (1991) does not preclude application of the *de facto* parentage doctrine, for a third party who happens to be a foster parent, in the appropriate family circumstance. *J.H.*, *supra*, involved two adults who signed a contract to be the foster parents for two children up to one year. The contract, by its terms, required "...a return of the children to the home of their birth mother, placement with a relative or adoption by the foster parents." *J.H.*, *supra*, at 463 (1991). Due to conflict with the placement

agency on many issues, D.S.H.S decided to place the children with different foster parents. The foster parents sought intervention and to challenge the decision based upon the notion that they were the “psychological parents” of the two children.

The court held that foster parents who become the child’s psychological parent does not entitle them to procedural due process rights, or the right to challenge a removal of the child from their care. The court reasoned:

“While the law recognizes the importance of the psychological parent to the child, this recognition does not go so far as to establish a right on the part of a foster parent to have the foster family relationship continue permanently where the placement of the child is by its very nature temporary, transitional and for the purpose of supporting reunification with the legal parents.” *J.H., supra* at 469 (1991).

The placement of A.F.J. with Franklin as foster parent was not temporary. Neither would she have any greater rights as a psychological parent than to sue for custody under RCW 26.10.030(1) because the prerequisites of the *de facto* parentage doctrine cannot be satisfied by proof that the third party is the child’s psychological parent. Carvin argued that it should be. Her argument was rejected by the court. See *L.B., supra* 692, footnote 7 (2005). The biological parent, Britain, argued with validity that

“...granting parental status to... psychological parents would have wide ranging implications opening the door to claims by teachers, nannies...aunts, grandparents and every third party care giver.” L.B. *supra* at 691 (2005).

The court agreed. The court emphasized that the proof entitling one to the legal status of being a child’s *de facto* parent requires more. (L.B., *supra* at 691 (2005).

The majority’s discussion in L.B., *supra* expressly explains that the term psychological parent is not the same as *de facto* parent. In footnote 7 the court stated:

“Psychological parent is a term...used to describe a parent-like relationship which is based on day to day interaction, companionship and shared experiences of the child and adult...A person who, on a continuing basis, provides for a child’s emotional and physical needs...*De facto* parent: Literally meaning “parent in fact”...an individual who, in all respects functions as a child’s actual parent, meeting the criteria suggested herein.” L.B., *supra* 692 (2005).

A psychological parent could be an adult with whom the child does not reside as a family, or with whom the biological parent has no relationship: a day care provider; an aunt, uncle or friend. But none of these psychological parents could be *de facto* parents. A day care arrangement begins with the expectation of financial compensation.

**b. It Is The “Bonded, Dependent Relationship” Between Child And Adult Which Ultimately Determines *De Facto* Parentage**

It is the child's relationship with the adult as the other mom or dad rather than the role the adult plays that determines or precludes *de facto* parent status. If a relative or friend provides daily care without pay, that person may become the child's psychological parent, but she would not qualify as its *de facto* parent because she would not satisfy other criteria of *L.B.* as a *de facto* parent.

Here, A.F.J. has been raised to perceive Franklin and Johnston as his two "mommies" rather than as foster mom and real mom. In his world, as in *L.B.'s* with Carvin, Franklin was not his mother's lover or friend, but a parent in fact. There is no evidence, unlike with *J.H.*, *supra* that A.F.J. thought of Franklin as his "foster mom". In his perception of the world she is his mother. Johnston did not instill in him the view that Mary is your foster mom or foster parent. Their agreement was that Franklin would raise him as a co-parent with Johnston.

Franklin had to become his foster parent to prevent the baby from being taken from her. She raised him for 99% of his lifetime. This was not a temporary placement entered into with the understanding that he would be removed and placed with his biological mother, or failing that, another

placement unless Franklin were to adopt him. Thus, the trial judge accurately found,

“that A.F.J.’s placement with Franklin is not the same as a traditional foster home placement, or even with a relative. In both those situations, the understanding is that the placement will be temporary. Ms Franklin had every hope that she and Ms. Johnston would parent together. She did not want or expect A.F.J. to be removed from the home when she contacted C.P.S. and she became licensed as a foster parent only because D.S.H.S. required her to do so. Franklin’s relationship with, and commitment to, A.F.J. formed before she became licensed as a foster parent and she did not assume his care with the expectation of compensation.” Finding 2.12 (N).

Thus, a careful reading of *L.B.* reveals that it is the person’s role as parent and the child’s perception of that person in the particular family circumstances – not the person’s status as foster parent – that governs whether the *de facto* parentage doctrine applies.

**c. The Legal Status Of The Adult Is Not The Determining Factor In *De Facto* Parent Analysis**

Case law does not hold that a person’s legal status, as relative, foster parent, or step-parent, bars that party from being considered a child’s *de facto* parent. *M.F.* at 534, contains discussion as to why a step-parent “...in most cases...” could fulfill the *de facto* parent prerequisites and why the doctrine should not be available, but the comments there are unnecessary to the Court’s decision because the court stated several times

and held that the doctrine is not to be extended only in “...*the circumstances in this case.*” 168 Wn.2d at 534 (emphasis supplied). Those circumstances are where the child already has two fit biological parents whose parental rights have been previously established. The Court’s conclusion, that most stepparents will fulfill the requirements to be *de facto* parents, does not shed much light on the circumstances of A.F.J.’s situation. A review of two of the four *L.B.* factors is helpful.

The first factor, that the natural or legal parent fostered the parent like relationship, is worded in the singular because only one legal or biological parent was involved in that case. Where two biological or legal parents are involved, both would have to consent to the parent like relationship.

The fourth factor, that the third party has been in a parental role, does not mean for example, that A.F.J. was raised to believe Franklin is his “foster mother”; or in *M.F.*’s case, that the child was raised to believe that Corbin was his “step-father”. Instead it means that the child believes the third party is the child’s other mother, as was the case with both *L.B.* and A.F.J., or father, which was not the case with *M.F.*

It is precisely the nature of the bonded relationship and the child’s perception of the person’s behavior as parent, not the legal status of the

adult as foster parent or step-parent, that governs whether he or she is in the particular parental role to qualify as a *de facto* parent.

**d. The Child's Rights To Perpetuation Of The Parenting Familial Relationship**

A final reason that Franklin's status as foster parent does not disqualify her from being A.F.J.'s *de facto* parent, is A.F.J.'s right to perpetuation of the relationship. The notion that it is the duty of the courts to protect the rights and interests of children of this state, even against their parents, has long been established. See, *In re Deming*, 192 Wn. 190 at 200, 73 P.2d 764 (1937) and *Ball v. Smith*, 87 Wa2d 717 at 720, 556 P.2d 936 (1976).

In *L.B.*, *supra* the majority predicated its conclusion that the common law serves as a basis for remedy where a statute fails to speak to the specific family situation involved is:

“...especially true when the rights and interests of those least able to speak for themselves are concerned.” *L.B.*, *supra* at 707.

The following year, the author of that decision, Justice Bobbe Bridge, in a concurring opinion, wrote:

“In my mind, decisions about a child's welfare should be premised to a greater degree than our current precedent allows on the concept that a child has a fundamental right to a stable and healthy family life. That right should include

independently valued protections of a child's relationship with...adults other than his or her biological parents with whom the child has formed a critical bond." *In re Custody of Shields*, 157 Wn.2d 126 at 151, 136 P.3d 117 (concurring opinion 2006).

In *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), Justice Stevens noted that the Supreme Court's jurisprudence has already recognized "a child's own complementary interest in preserving relationships that serve her welfare and protection." (*Troxel, supra* at 88). He too emphasized that children have a fundamental liberty interest in preserving intimate relationships they have formed. (*Troxel v. Granville, supra*, at 88-89). Although the other justices rationalized their conclusions on different grounds, none of them disputed these observations of Justice Stevens.

### **III. Conclusion**

Most foster parents will not qualify to be a child's *de facto* parent. The nature of the contractual arrangement that creates foster parent status will ordinarily fail the stringent pre-requisites, established in *Parentage of L.B.* Most foster parents enter the child's life with the understanding that their role is temporary and with the expectation of financial compensation. As significant as that adult may become to the child over time, the child, in most cases, nevertheless, perceives that person, not as mom or dad, but

as his or her foster mom or foster dad. In those scenarios the person does not fulfill the requirements necessary to qualify as the child's *de facto* parent.

Those are not the circumstances that presented themselves here, which is why Franklin's legal status, labeled "foster parent" cannot, *per se*, preclude her from qualifying as A.F.J.'s *de facto* parent. In the unusual circumstances in which a child has a relationship with one biological parent, who supports the child's perception that the other party who raises them, is also their mother or father – not their foster mom; not their step mom; and who plays that role without the expectation of financial compensation our State Supreme Court stated that reason and common sense dictate that non-biological parent is the child's *de facto* parent. This is true even if he or she also happens to be the child's foster parent.

Where that unique relationship of child and *de facto* parent is established, the child deserves that the relationship between the child and that person will be afforded legal protection, for the sake of the child and consistent with the child's best interests. That is the relationship A.F.J. has had with Franklin, virtually since his birth.

In our view, this Court's decision needs to make two things clear: First, that a third party's legal status as foster parent does not preclude, *per*

se, the Court from legally protecting the relationship between the child and that adult as the child's *de facto* parent. Second, the fact that a cause of action exists to sue for *custody* under RCW 26.10.030(1) does not, of itself, bar a third party action for residential parenting time and other parental rights if all factors that constitute *de facto* parentage can be fulfilled.

DATED this 13th day of December, 2010.

Respectfully submitted,

[see attached.]

American Academy of  
Matrimonial Lawyers,  
Washington Chapter

[see attached.]

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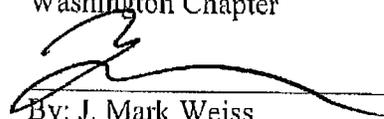
Peter S. Lineberger  
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se, the Court from legally protecting the relationship between the child and that adult as the child's *de facto* parent. Second, the fact that a cause of action exists to sue for *custody* under RCW 26.10.030(1) does not, of itself, bar a third party action for residential parenting time and other parental rights if all factors that constitute *de facto* parentage can be fulfilled.

DATED this 13th day of December, 2010.

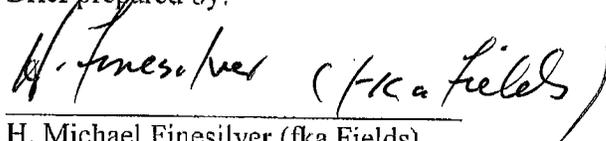
Respectfully submitted,

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By: J. Mark Weiss  
Its President  
W.S.B.A. #17357

Brief prepared by:



H. Michael Finesilver (fka Fields)  
Author, AAML  
W.S.B.A. #5495

[see attached.]

Peter S. Lineberger  
Co-Author, AAML  
W.S.B.A. #24104

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

MARY FRANKLIN, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 JACKIE J. JOHNSTON, )  
 )  
 Respondent/Cross-Appellant, )  
 \_\_\_\_\_ )

DECLARATION OF  
SERVICE

~~RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
DEC 13 2010~~

I, Lester Feistel, state and declare as follows:

I am a Paralegal in the Law Offices of Anderson, Fields, McIlwain  
& Dermody, Inc., P.S. On the 13<sup>th</sup> day of December, 2010, I placed true  
and correct copies of the AAML Amicus Brief with Seattle Legal  
Messengers for delivery on December 13, 2010 to:

Dennis J. McGlothlin  
Robert J. Cadranell, II  
Olympic Law Group PLLP  
1221 E Pike St Ste 205  
Seattle, WA 98122-3930

Robert S. Bock  
810 3rd Ave Ste 800  
Seattle, WA 98104-1695

2010 DEC 13 PM 4:43  
2010 DEC 13 PM 4:43

ORIGINAL

Lori L. Irwin  
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1401 E. Jefferson Street, Suite 500  
Seattle, WA 98122-5574

Mary Franklin  
c/o Seattle Legal Messengers  
711 – 6<sup>th</sup> Avenue North, #100  
Seattle, WA 98109

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF  
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
AND CORRECT.

DATED at Seattle, Washington, on this 13th day of December,  
2010.



Lester Feistel

Anderson, Fields, McIlwain & Dermody  
207 E. Edgar Street  
Seattle, Washington 98102  
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