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SUPREME COURT OF THE STATE OF WASHINGTON

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COURT OF APPEALS OF THE STATE OF WASHINGTON - DIVISION ONE

Case No. # 63919-6-1

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**Mary Franklin, Pro Se Appellant – Cross Respondent,  
Petitioner in Superior Court**

vs.

**Ms. Johnston  
Cross-Appellant, Petitioner for Supreme Court Review**

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***“Ms. Franklin’s Answer to Petition for Review Which Incorporates Counter  
Petition for Review.”***

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## I. Introduction

Ms. Franklin, *pro se*, in answer/response to Ms. Johnston's Petition for Review, foremost, reminds the court that Alec Franklin Johnston, born November 2005 (herein A.F.J.), has constitutionally grounded rights to two mothers. This venerable court consistently deems young children particularly vulnerable and voiceless, more so, when rendered by age, as in A.F.J.'s case, a silent party. I've protected and raised him from birth and he's now close to six years of age. Please not only give him your utmost consideration - protection, but fullest scrutiny of the facts, and apply facts through judicial litmus of his "best interests" standards – a cornerstone of family law.

Secondly, the law compels affirmative relief from the lower courts' errors contravening my rights to meaningful "due process" as claimed herein and in briefs to the appellate court. Acting *pro se*, I was the appellant/cross-respondent, in the Court of Appeals – Division One, and formerly the petitioner in a *de facto* parentage petition - cause no. 07-5-02508-2 KNT<sup>1</sup> emphatically denied by Ms. Johnston (CP 24, 26, line 5 - 9<sup>2</sup>) until trial transpired, and a non parental custody

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<sup>1</sup> CP 183 (1) "Order Setting Paternity Case" was signed on November 7, 2007 and trial set for September 29, 2008.

<sup>2</sup> CP 26, line 5-9, Section 1.6; "respondent denies petitioner...is not the psychological and/or *de facto* mother..." signed on March 3, 2008.

action under RCW 26.10 - cause no. 07-3-07493-1 KNT.<sup>3</sup> Trials in these matters were held April 2009 in the Superior Court of King County – Unified Family Court Division.

In the interest of judicial economy respectfully ask allowance that I am pro se, you take the same judicial notices asked of the appellate court as well as incorporate herein my previous appellate filings/briefs, previous Amicus Memorandums filed therein supporting my case, and review appellate rulings.

## II. NEW ISSUE ON CROSS PETITION FOR REVIEW

“Due process violations” compel your review and were instilled by the Superior Court and are now severely attenuated by the appellate court - it erroneously deemed all issues presented were not correctly preserved and subsequently truncated its review of the case and ignored meretricious arguments.

## III. RELIEF REQUESTED ON CROSS PETITION

**1. Summarily Reaffirm the Parentage Ruling** - the singularly unique case/s presented prevailed In re L.B. 's stringent thresholds and cannot reverberate an onerous precedent upon the foster care system; correct judicial analysis and evidentiary standards were met; in conclusion I am A.F.J.'s mother.

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<sup>3</sup> CP 1; trial originally set for October 6, 2008. See also CP 20, I. 24, CP 182; adequate cause was granted on January 11, 2009, see CP 19 - 21.

Notable, clerk's papers and verbatim reports loudly evince Ms. Johnston made permanent averments in courts of law that A.F.J indeed has and loves two mothers and would suffer he lose me as his mother<sup>4 5</sup>, and this should echo strongly across the court's hear and mind when reviewing this and other facts.

**2. Accept Appellant's Cross Petition for Review** based that constitutional impairments and "due process violations" are always of paramount concern to the court and compel analysis, and when proven, appropriate amelioration.

**3. Reverse lower court's errs and grant *affirmative relief*** on attorney fees (\$26,000 and interest), child support (\$215/month), the provisions of the parenting plan setting sole decision making defaulting to Ms. Johnston, and parenting provisions setting custody between parties along a 50/50 divide.

**4. Grant "true parity"** to Ms. Franklin - it is in A.F.J.'s best interest to do so.

#### **IV. Standard on Review**

Settled law deems when constitutional impairments and interpretation of law, as appellant queried on appeal are in play the venerable high courts are held to conduct their highest scrutiny, that of plenary - *de novo review*. When

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<sup>4</sup> CP 1089, lines 24 – 25 "*Ms. Johnston wants to co-parent Alec with Ms. Franklin. Though now estranged from Ms. Franklin, she believes that it is not in Alec's best interest to be taken away from Ms. Franklin.*"

<sup>5</sup> CP 1129 – 1143 ¶ 1.16 - "*Jackie testified she seeks a shared custody arrangement that is fair...*"

“interpretation of law is on review or in question their review is “de novo” - State v. Osman, 168 Wn.2d 632, 637, 229 P.3d 729 (2010).

## V. SYNOPSIS OF ARGUMENT

### 1. **The Parentage Ruling is grounded in constitutional protections and cannot impart detriment upon the Foster Care System.**

a. Children have a liberty right to pursue a non-biological parent – child relationship.<sup>6</sup> See Moore v. City of East Cleveland, 431 U.S. 494, 504-05, 97 S. Ct. 1932, 52 L.Ed. 2d 531 (1977); see also Article 1, Section 3 of Washington State’s Constitution. See In re L.B. Importantly, a child’s viewpoint must be considered, even babies are shown to be attached and bonded almost immediately after birth, and the court must use the child’s viewpoint. In re Hall, supra, 99 Wn.2d at 851. A.F.J. views me as his mother and always has.

b. The facts fully satisfied In re L.B thresholds and were so singularly deserving and unique they’re insensate a reverberation on the foster care system. Precedent cannot be set because A.F.J. had two mothers prior and after inception of the engrafted dependency action – therein, court mandate forced Ms. Franklin, bereft party status or protection, to become foster licensed and licensure took over eight months to achieve, by then, Alec was

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<sup>6</sup> In re L.B. 121 Wn.App. 460, 485,89 P.3d 271, at 284. “Familial rights extend to children as well as parents.”

almost a year old. Relatives - fictive/natural, do not subjugate familial roles/ties nor renounce those ties entering the foster system; grandmothers, aunts, uncles, cousins, mothers, fathers - remain just that. Well known, statutory foster laws cannot trounce, eradicate familial ties without due process and trial on the evidence. Here, I assumed foster licensure as extension of being the mother of A.F.J. as the only means to protect his home and well being. Ms. Johnston instilled A.F.J. has two mothers.

**2. Issues of Attorney Fees and Child Support were correctly preserved and the due process violations therein require amelioration.**

a. Among other previous arguments, the UPA, not at bar, likewise RCW 26.10.080 cannot authorize Ms. Johnston's claims to fees in the *L.B.* action.<sup>7</sup> Fees required separation to their respective case before the bench could calculate a reasonable award. Per RCW 8.84.010.8, and RCW 8.84.030.9, and equitably, they belong to the me for vindicating the child's liberty rights, defending the

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<sup>7</sup> City of Bellingham v. Eiford Constr., 10 Wash.App. 606, 608, 519 P.2d 1330 (the right to costs and attorney fees and amounts thereof is governed by statute enforce at the time)

<sup>8</sup> RCW 8.84.010: The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, .... the following expenses: (1) Filing fees; (2) Fees for the service of process by a public officer, registered process server, or other means, as follows.....(5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files; (6) Statutory attorney and witness fees; and (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing..."

state's dependency interests, and for suffering harms, and entrapment into the dependency and foster care actions. In *Marriage of T.*, 68 Wash. App. At 355, 842 P.2d 1010 states a trial court's award remains undisturbed unless it was manifestly unreasonable or based on untenable reasons, and also states the UPA fee provision only governs in cases arising under that act. In *Connell v. Francisco*, 127 Wn.2d 339, 348-49, 898 P.2d 831 (1995); *State ex rel. T.A.W. v. Weston*, 66 Wn. App. 140, 147, 831 P.2d 771 (1992) ('an award of attorney fees should only be made for those issues for which attorney fees are authorized.').

**b.** I exhausted all channels of relief from fees in the Superior Court, therefore, preserve their review; additionally, they can be raised for the first time on appeal as noted below. August 2008, I argued against entry of interim attorney fees of \$6,500 based upon provisions of the UPA, In July 2009, I filed Motion for Reconsideration against the "JDOEP" setting an additional \$20,000 award conglomerated basis of the UPA and 26.26.140, and challenged the custodial time, and child support provisions of the parenting plan. Of special note, the "JDOEP" award entered May 22, 2009 coinciding on the day my attorney withdrew from the case, and was innately flawed since it omits basis for the awards. Requisite to mounting a claim and defense I had to await "basis" which

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<sup>9</sup> RCW 4.84.030: In any action in the superior court of Washington the prevailing party shall be entitled to his or her costs and disbursements..."

was finally published May 26, 2009 found buried within the court's "Findings and Conclusion of Law." Additionally, a manifest error/s is unmistakable, evident, or has an impact and makes a difference with "practical and identifiable consequences" and notably can be raised for the first time on appeal; RAP 2.5(a)(3).<sup>10</sup> In *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.ed 2d 531 (1977), the court recognized that non-nuclear family members are entitled to the same substantive due process protections as traditional family members. RAP 2.4(a) dictums the courts will, at the instance of the appellant, review the decision or parts of the decision designated in the notice of appeal. Generally accepted, an appellant is deemed to have waived any issues that are not raised specifically as assignment or failed such assignment by text in the body of the brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

**c.** Ms. Johnston has no constitutional or statutory entitlement to counsel in cases involving parentage or third party custody; this right is reserved where parental rights are being severed.<sup>11</sup>

**d.** Fundamental or 'Constitutional' rights are enumerated in the Bill of Rights. Supreme Court case law overrides all lower jurisdictional laws including family courts procedures. The Fourteenth Amendment prohibits the state from depriving any person of "life, liberty, or property (i.e. any fundamental right), without due

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<sup>10</sup> *State v. Lynn*, 67 Wn.App. 339, 345-46, 835 P.2d 251 (1992); RAP 2.5(a)(3).

<sup>11</sup> *King v. King*, 162 Wash.2d 378, 395 174 P.3d 659, 668 (2007).

process of law. “Due Process Clause “guarantees more than [a] fair process.” Washington v. Glucksberg, 521 U.S. 702, 719 (1997). It includes a substantive component to the process that “provides heightened protection against government interference with certain fundamental rights and liberty interests.” Id., at 720; see also Reno v. Flores, 507 U.S. 292, 301302 (1993).

e. Due process violations exist in the fact that provisions of the UPA, a statute not at bar was instilled and form court’s basis of all attorney awards. Pertaining to final attorney fees, parenting plan, and child support, neither party in brief to trial raised these issues. Instead, Ms. Johnston raised fees during closing argument circumventing adequate notice and depriving adequate time to prepare counter argument. The court allowed Ms. Johnston to contemporize fees up through 9.5 days of trial to amount tripling expenses published and did not give Ms. Franklin the same treatment.

f. *In re L.B.* states that parity shall be applied between parents when it is in the child’s best interest to do so. More than mere “parental fitness” must be considered if a tie breaker is needed to determine sole decision making. The tie breaker resides in settled law under RCW 26.09 and 26.26 differentially viewing the parent with the larger parental historical role in the child’s life, when that role has been stellar, for both custodial placement and decision making. Ms. Johnston had never provided substantially to the care of her child, had nominal –supervised

time twice a week with him, and later found to be relapsing on drugs and had an on-going dependency action against her, all this in addition to being diagnosed with Borderline Personality Disorder – anti social tendency. The court noted Ms. Johnston had trouble controlling her emotions, had entered trial breaking the law by driving herself and child without a valid driver's license. See Verbatim Reports of April 2009.

#### **VI. Conclusion**

For the reasons set forth above and prior briefs and Amicus filings in defense of my positions and incorporated by reference, I respectfully request this Court deny Ms. Johnston's Petition, conversely, allow my questions of due process violations attenuated by the appellate court rise for your review.

**RESPECTFULLY SUBMITTED** this 15<sup>th</sup> Day of July 2011 to Court of Appeals of the State of Washington – Division One.

  
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**Mary Franklin, Appellant, Cross-Petitioner**

### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, the following is true and correct: On July 15, 2011 I arranged service of the foregoing "*Ms. Franklin's Answer to Petition for Review Which Incorporates Counter Petition for Review.*" to the parties in this action as follows:

Office of Clerk, Division 1  
Court of Appeals  
600 University St.  
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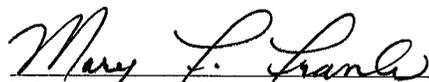
Declaration Notification by Facsimile and Hand  
Delivery to the Court's Clerk office

Dennis McGlothlin  
Olympic Law Group  
1221 E. Pike St, Suite 205  
Seattle, WA. 98122  
(206) 527-7100 – FAX

By U.S. Postal Service, regular delivery

Seattle Legal Messengers is my authorized and appointed agent to receive documents and facsimiles on my behalf. Agency is located at: 711 6th Ave N #100 Seattle, WA 98109. (206) 443-0885 – Main (206) 728-2833 – Fax.

Respectfully Submitted This Day, Friday, July 15, 2011

 Date: 7.15.2011  
Mary F. Franklin, pro se, Appellant