

No. 46126-9-II Consolidated

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In Re the Dependency of

L.C.B.-S. and L.P.B.-S.,

Minor Children,

R.B. (father)

Appellant.

Clark Cause Nos. 13-7-00704-7 and 13-7-00705-5

The Honorable Commissioner Carin Schienberg

Appellant's Reply Brief

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ARGUMENT

I. THE COURT DID NOT PERMIT R.B. A MEANINGFUL OPPORTUNITY TO ESTABLISH *DE FACTO* PARENTAGE OF THE TWINS.

A. The juvenile court should have held a hearing to determine whether R.B. could establish *de facto* parentage.

The *de facto* parentage doctrine exists to “fill the interstices” in statutes concerning families. *In re Parentage of L.B.*, 155 Wn.2d 679, 707, 122 P.3d 161 (2005). The Supreme Court has provided that:

... 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.

Id. Still, the state argues that R.B. was not entitled to a hearing on his *de facto* parentage claim because such a hearing is not mentioned in the dependency statutes. Brief of Respondent, pp. 10-12.

But *de facto* parentage is not mentioned in *any* statute. The state misapprehends the nature of *de facto* parentage.

A *de facto* parent “stands in legal parity with an otherwise legal parent, whether biological, adoptive, or otherwise.” *In re Custody of A.F.J.*, 179 Wn.2d 179, 182, 314 P.3d 373 (2013) (internal citation omitted). Accordingly, a *de facto* parent would have the same role in a dependency case as any other parent. Still, the state argues that *de facto*

parentage is inapposite to a dependency proceeding because *de facto* parents are not included in the statutory definition of parent at RCW 13.04.011(5). Brief of Respondent, pp. 11-12.

First, as outlined above, *de facto* parents are not included in any statutory definition. That does not diminish the extent to which *de facto* parents enjoy the same legal rights and responsibilities as other parents. *A.F.J.*, 179 Wn.2d at 182.

Second, *de facto* parents would not “stand in legal parity” with other parents if they were excluded from dependency proceedings. If R.B. is able to establish his *de facto* parentage, he would be entitled to participate in the twins’ dependency case.

Indeed, *A.F.J.* addressed *de facto* parentage of a dependent child. *Id.* at 183-84. The Supreme Court did not preclude the *de facto* parent in the case from establishing that she had met the elements merely because of the child’s dependent status. *Id.*

B. The juvenile court declined to hear R.B.’s *de facto* parentage claim.

The standard for *de facto* parentage is the same regardless of the child’s legal status. *See e.g. A.F.J.*, 179 Wn.2d at 184 (regarding *de facto* parentage of dependent child); *In re Parentage of M.F.*, 168 Wn.2d 528, 530, 228 P.3d 1270 (2010) (regarding non-dependent child); *In re*

Parentage of J.A.B., 146 Wn. App. 417, 421, 191 P.3d 71 (2008) (regarding *de facto* parent status of a child's legal custodian); *In re Custody of M.J.M.*, 173 Wn. App. 227, 230, 294 P.3d 746 (2013) (regarding *de facto* parentage of previously-acknowledged father who was ruled out through DNA testing).

In all contexts, if the petitioner establishes a *prima facie* case that s/he meets the elements of *de facto* parentage, the court must hold a full evidentiary hearing. See *A.F.J.*, 179 Wn.2d at 183 (referring to finding that alleged *de facto* parent had presented adequate cause to proceed with petition); *M.F.*, 168 Wn.2d at 530 (referring to the trial court's ruling that the alleged *de facto* parent had presented a *prima facie* case *J.A.B.*, 146 Wn. App. at 421 (referring to a trial on the issue of *de facto* parentage); *M.J.M.*, 173 Wn. App. at 233 (detailing that a commissioner had entered an order of adequate cause to proceed to trial on the issue of *de facto* parentage).

Even so, the state argues that the juvenile court was not required to hold a hearing on R.B.'s *de facto* parentage claim because this was a dependency proceeding rather than a child custody case. Brief of Respondent, pp. 14-16. Instead, the state appears to argue that the court was free to consider R.B.'s *de facto* parentage petition in some other way

applying whatever standard it chose. The state does not point to any authority in support of that claim.

There are no statutes instructing courts how to proceed in adjudicating petitions for *de facto* parentage. The Supreme Court has set forth the procedure. *See e.g. In re Custody of B.M.H.*, 179 Wn.2d 224, 232, 315 P.3d 470 (2013). Still, the state argues that courts are only required to hold a hearing on a *de facto* parentage petition in child custody cases.¹ Brief of Respondent, p. 15. The department rests its argument on the fact that no statute compels a hearing in dependency cases. Brief of Respondent, pp. 13-16. But the state cannot point to any statute in the child custody context either. Again, the department misunderstands the common law nature of the *de facto* parentage doctrine.

Here, the juvenile court denied R.B.'s request to present oral testimony at the hearing at which he was dismissed from the dependency action. RP 1-3. In its written order, the court states that it is "not willing to use the dependency process to establish *de facto* parentage." CP 171. Still, the state argues that the court considered the merits of R.B.'s *de facto*

¹ In support of this argument, the state points to the statute regarding adequate cause hearings when a party to a parenting plan seeks a modification. Brief of Respondent, p. 15 (citing RCW 26.09.270). But a person seeking status as a *de facto* parent would not be a party to a parenting plan. The statute on which the state relies would not compel a hearing on a *de facto* parentage petition in a child custody case either. Instead, such a hearing is required by the Supreme Court's decisions regarding *de facto* parentage. *See e.g. B.M.H.*, 179 Wn.2d at 232; *M.F.*, 168 Wn.2d at 530.

parentage claim. Brief of Respondent, pp. 13-14. The department's argument is foreclosed by the plain language of the lower court's order in which the court refuses to consider the issue at all. The juvenile court did not hold a hearing on R.B.'s claim for *de facto* parentage.

C. If the juvenile court considered the merits of R.B.'s *de facto* parentage claim, it erred by applying the wrong legal standard.

Once a person has made a *prima facie* showing of *de facto* parentage, the court must hold an evidentiary hearing to determine whether the elements have been met. *See e.g. B.M.H.*, 179 Wn.2d at 232.

The *prima facie* standard requires a court to consider the evidence in the light most favorable to the petitioning party. *See e.g. Alonso v. Qwest Commc'ns Co., LLC*, 178 Wn. App. 734, 743, 315 P.3d 610 (2013). If the court considered the merits of R.B.'s claim, it did so by adopting the mother's competing factual assertions. RP 170-71. Accordingly, the court applied the wrong legal standard. *B.M.H.*, 179 Wn.2d at 232.

If the state is correct and the court considered the merits of R.B.'s *de facto* parentage claim, reversal is still required because the court applied the incorrect legal standard.

D. R.B. presented *prima facie* evidence, entitling him to a hearing on his *de facto* parentage claim.

A *de facto* parent must demonstrate that:

1) the natural or legal parent consented to and fostered the parent-like relationship, (2) the petitioner and the 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

L.B., 155 Wn.2d at 708. The *de facto* parent must also prove that s/he has “fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life.” *Id.*

R.B. presented a *prima facie* case sufficient for an evidentiary hearing to determine whether he qualifies as a *de facto* parent. *L.B.*, 155 Wn.2d at 708. R.B. demonstrated that the twins’ mother gave the twins his last name, moved in with him, permitted him to care for the babies, and left them alone with him for up to a week at a time. CP 1, 131-32.

It was uncontested that R.B. and the twins lived together for a significant period of time. CP 131-32, 153-55. The mother did not claim that R.B. assumed the obligation of caring for the twins with an expectation of financial compensation. CP 153-55. R.B. demonstrated that the twins were bonded with him and relied on him for their care during visits. RP 13-14.

Indeed, the state appears to argue only that R.B. cannot establish that his relationship with the twins lasted long enough for him to establish

a parental relationship as required by element (4).² Brief of Respondent, pp. 16-19. The state relies on the fact that R.B. only lived with the girls for eight months. Brief of Respondent, p. 18. But R.B. demonstrated that he maintained a relationship with the girls even after their mother moved out. RP 13-14. When visits began during the dependency, the sixteen-month-old girls immediately recognized R.B., looked to him to meet their needs, and called him “Dada.” RP 13-14. The CASA opined that the children’s behavior demonstrated that there was no significant lapse in their relationship with R.B. RP 14.

Viewing the evidence in the light most favorable to R.B., he made a *prima facie* showing sufficient to entitle him to an evidentiary hearing on his *de facto* parentage claim.³ *L.B.*, 155 Wn.2d at 708.

The court erred by failing to consider the evidence in the light most favorable to R.B. and by refusing to hold an evidentiary hearing. *Alonso*, 178 Wn. App. at 743. The lower court’s order must be reversed and this

² The state also notes that the facts regarding the depth of R.B.’s relationship with the girls were disputed by the mother. Brief of Respondent, p. 17. But the mother’s version of the facts is irrelevant to whether R.B. has made a *prima facie* showing. *See e.g. Alonso*, 178 Wn. App. at 743.

³ In her brief, the mother attempts to minimize R.B.’s role in the girls’ lives by arguing that he merely provided occasional transportation and some financial support. Brief of Respondent (C.A.S.), p. 3. The mother ignore’s R.B.’s declaration providing that he bathed, fed, and cared for the girls, including for long periods of time while their mother was in jail or otherwise absent. CP 131. The mother fails to consider the evidence in the light most favorable to R.B., as required to make a *prima facie* showing.

case remanded for a hearing on the issue of whether R.B. has established *de facto* parentage. *L.B.*, 155 Wn.2d at 708.

II. THE COURT ERRED BY DECLINING TO PERMIT CONCURRENT JURISDICTION SO R.B. COULD ESTABLISH *DE FACTO* PARENTAGE IN FAMILY COURT.

R.B. relies on the argument set forth in his Opening Brief.

III. THE COURT ERRED BY DENYING R.B.'S MOTION TO INTERVENE.

R.B. relies on the argument in his Opening Brief.

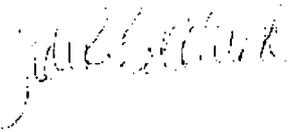
CONCLUSION

For the reasons set forth above and in R.B.'s Opening Brief, this case must be remanded for a hearing on R.B.'s motion for *de facto* parentage in either the juvenile or family court.

In the alternative, the case should be remanded to permit R.B. to intervene.

Respectfully submitted on October 14, 2014.

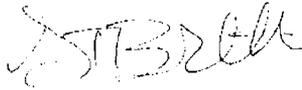
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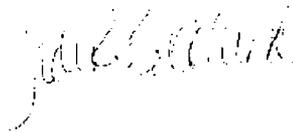
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on October 14, 2014.



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