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STATE OF WASHINGTON

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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IN RE THE DEPENDENCY OF L.C.B.-S and L.P.B.-S.

R.B.,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Appellant R.B. appeals a juvenile court order denying a) his motion to establish de facto parentage; b) his motion to waive exclusive jurisdiction; and c) his motion to intervene in the dependency matter of two children, L.C.B.-S. and L.P.B.-S.

R.B. is not the biological or adoptive father of L.C.B.-S. and L.P.B.-S, and therefore he is not a “parent” under Title 13 and was correctly dismissed from the dependency matter. Under Chapter 13.34 RCW, which governs dependency cases, R.B. had no right to a full evidentiary hearing on his de facto parent claim. Still, the juvenile court heard his motion, and it correctly denied his claim.

Once the juvenile court considered and denied R.B.’s motion, there was no need for it to waive its exclusive jurisdiction to allow the motion to be reargued. Furthermore, intervention in dependency matters is not appropriate for most cases and was correctly denied here. R.B. failed to cite any statutory authority that conferred upon him a right to intervene, and because he is not a biological parent of the twins, he does not possess an interest that is not adequately represented by the Department or the children’s guardian ad litem.

The Department of Social and Health Services requests that this court affirm the juvenile court’s order.

## **II. STATEMENT OF THE ISSUES**

1. Does a non-parent have a right to a full evidentiary hearing regarding claimed status as a de facto parent in a dependency proceeding?
2. Did the juvenile court abuse its discretion in denying an alleged de facto parent's motion to waive exclusive jurisdiction?
3. Did the juvenile court abuse its discretion in denying an alleged de facto parent's motion to permissively intervene in a dependency proceeding?

## **III. STATEMENT OF THE CASE**

On June 24, 2013, the Vancouver Police Department placed two sixteen-month old twins, L.C.B.-S. and L.P.B.-S., into protective custody. CP at 2-3. The twins' mother, C.S., was arrested that day due to a felony warrant. CP at 3. At the time of her arrest, the mother and the twins lived with the mother's boyfriend, T.S. CP at 2-3.

The Department of Social and Health Services (Department) filed a dependency petition as to both twins on June 26, 2013, alleging that the twins were dependent pursuant to RCW 13.34.030(6)(b) and (c). CP at 1. The mother reported to the Department that the twins' alleged father was another man, G.M., who had been deported to Mexico. CP at 2. No father was listed on the twins' birth certificates, so both G.M. and John Doe were listed as alleged fathers on the dependency petitions. CP at 1.

On June 27, 2013, the court held a shelter care hearing regarding the twins. CP at 13. The mother and both alleged fathers failed to appear and all were found in default. CP at 13. The court ordered that the twins remain in licensed foster care. CP at 17.

About one month later, R.B., the appellant in this matter, visited the office of the Department of Social and Health Services and stated that he believed he was the father of twin girls in the state's care. CP at 37. The twins' hyphenated last names include R.B.'s last name. CP at 36. Based on this information, the Department amended the dependency petitions by adding R.B. as an alleged father. CP at 36. The Department then began to provide R.B. supervised visitation with the twins. CP at 129.

On August 13, 2013, the twins were found dependent as to John Doe by default. CP at 50-57. On August 20, 2013, the mother agreed to dependency as to each child, stipulating that the twins were dependent under RCW 13.34.030(6)(c). CP at 63-71. The twins were found dependent by default as to alleged father G.M. on September 24, 2013. CP at 80-87.

R.B. pursued DNA testing through the Office of Child Support Enforcement to determine whether he was the father of the twins. After several months, paternity testing determined that R.B. was not the

biological father of the twins. CP at 158-159. As such, R.B. failed to meet the definition of a “parent” under Title 13, and the Department moved to dismiss him from the dependency matter. CP at 55-59. R.B. opposed the motion to dismiss. CP at 128-129. R.B. alleged that he may be a de facto parent to the girls, and he asked that the dismissal hearing be set out so that he could fully brief the matter, and the court did so. CP at 128-129.

On December 9, 2013, R.B. filed a motion requesting the juvenile court establish him as a de facto parent to the twins; waive its exclusive jurisdiction; and allow him to intervene in the dependency. CP at 136.

In both his memorandum of law and his counsel’s declaration in opposition to dismissal, R.B. described the extent of his relationship with the mother and her twins. CP at 128-129, 130-133. R.B. alleged that he and the mother had a romantic relationship, during which she became pregnant. CP at 130. R.B. and the mother lived apart during her pregnancy. CP at 130. R.B. alleged that shortly after the mother gave birth, they moved in together, and he lived with the mother and the twins for seven to eight months. CP at 128, 131. R.B. alleged that during these months he provided financial support for the twins and fed them, changed them, bathed them, and put them to sleep. CP at 128, 131. He also alleged that he attended some medical and WIC appointments for the

twins. CP at 128, 131. R.B. alleged that at times he cared for the twins by himself. CP at 128, 131. He stated that the mother later moved out with the twins. CP at 131.

Both the Department and the mother responded to R.B.'s motions. The Department renewed its motion to dismiss R.B. from the dependency matters because he did not meet the definition of a "parent" under RCW 13.04.011. The Department also argued that R.B. should not be considered a de facto parent by the dependency court and that R.B.'s motion for permissive intervention should be denied.

The mother filed both a memorandum of law and a declaration in opposition to R.B.'s motions. CP at 140-149, 150-152. She argued against permissive intervention and opposed a waiver of exclusive jurisdiction for R.B. CP at 147-148. The mother also opposed R.B.'s claim of de facto parentage and argued that R.B.'s brief relationship with the twins failed to meet the strict criteria required to establish an individual as a de facto parent. CP at 142.

In her declaration supporting her response, the mother described R.B.'s previous relationship with the twins. She declared that R.B. did not sign the twins' birth certificates or a paternity acknowledgement, but that at the time they did believe he was the father. CP at 150. She acknowledged that she, R.B., and the twins did live together, but she

described the living arrangement as “on and off for about six months.” CP at 151. The mother declared that R.B. occasionally provided her and the twins with some support but that he exaggerated the extent. CP at 150. She also declared that R.B. never fed, changed, or bathed the twins by himself as he had alleged. CP at 151. The mother declared that sometimes R.B. transported her and the twins to appointments but that she always attended these appointments with the twins by herself. CP at 151.

The mother described R.B. as very controlling and stated that on several occasions he kicked her and the twins out of the home. CP at 151. She also stated that R.B. had a criminal drug record in Mexico that he had not disclosed. CP at 151. She reported that R.B. never protested or tried to stop her from leaving with the twins; she further stated that R.B. always knew where they were after she left him. CP at 151. Finally, the mother opposed R.B. being provided visits with her twin daughters. CP at 151.

On January 14, 2014, the juvenile court held a hearing on R.B.’s motions. CP at 153. The commissioner heard argument from each party and considered each party’s briefing and pleadings. CP at 170. The court denied all three of R.B.’s motions. CP at 172. The court also ordered that R.B. be dismissed from the dependency matter. CP 160-161, 172.

The commissioner entered an order denying R.B.’s motions on February 11, 2014. CP at 170-172. The commissioner’s findings

incorporated both R.B. and the mother's descriptions of R.B.'s relationship with the twins. CP at 170-172. The commissioner found that R.B. lived with mother and the twins for six to eight months; that during this time he provided some financial support and drove the mother and the twins to doctor's appointments; and that R.B. contended he was still actively involved with the twins before the dependency action was filed. CP at 170-171.

In denying R.B.'s de facto parent claim the commissioner noted that the conditions to establish de facto parentage in Washington are very fact specific and narrowly construed. CP at 171. The commissioner found that "[t]he facts in this case do not rise to the threshold level required by the *L.B.* line of cases." CP at 171. The court further found that R.B. had no grounds to intervene in the matter, and the court held that R.B. "is not the biological parent, and the court finds insufficient cause to grant his request for an exclusive jurisdiction waiver." CP at 171.

R.B. moved to revise the commissioner's ruling. CP at 173. A hearing was held before a superior court judge on February 28, 2014. CP at 179. The court heard argument from all of the parties and considered each party's previous briefing and pleadings. CP at 182.

The superior court judge issued an oral ruling on March 7, 2014, and entered a written order on March 11, 2014. CP at 182. The court

found that R.B.'s previous actions with the twins were not a sufficient basis to establish de facto parentage. CP at 183. The court also denied R.B.'s motion to waive exclusive jurisdiction and his motion to intervene. CP at 184.

R.B. then filed this appeal.

#### IV. ARGUMENT

The juvenile court was correct in denying R.B.'s motions to be established as a de facto parent, to waive exclusive jurisdiction, and to intervene in the dependency proceedings. Chapter 13.34 RCW, due process, and applicable case law did not require the court to allow more procedure in considering R.B.'s motion to be established as a de facto parent. In addition, waiver of exclusive jurisdiction and intervention were not in the children's best interests.

##### A. **In A Dependency Proceeding, A Non-Parent Does Not Have A Right To A Full Evidentiary Hearing Regarding Claimed Status As A De Facto Parent**

The de facto parent doctrine is an equitable remedy available through common law that was first recognized by the Washington Supreme Court in 2005. *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005). To establish de facto parentage, an individual alleging such a status must prove:

1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the prospective parent and the child lived together in the same household; (3) the prospective parent assumed obligations of parenthood without expectation of financial compensation; and (4) the prospective parent 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. In addition, recognition of a de facto parent is “limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child’s life.” *Id.* Furthermore, a de facto parent is not entitled to any parental privileges, as a matter of right, but only as is determined to be in the best interests of the child at the center of any such dispute. *Id.* at 708-9.

The *L.B.* court noted that attaining de facto parent status “should be no easy task,” and stressed that it is “a status that can be achieved only through the active encouragement of the biological or adoptive parent by affirmatively establishing a family unit with the de facto parent and child or children that accompany the family.” *Id.* at 712.

**1. The Dependency Process Is Governed By Chapter 13.34 RCW Which Provides No Right To A Full Evidentiary Hearing On De Facto Parentage**

The juvenile court was not required by statute to provide a full evidentiary hearing beyond the procedure that was afforded R.B. in this case.

Dependency proceedings are governed by statute. Chapter 13.34 RCW provides the procedural structure through which dependency cases are tried within the juvenile court. JuCR 1.2. The Basic Juvenile Court Act provides that the juvenile court shall have exclusive jurisdiction over all proceedings relating to children alleged or found to be dependent as provided in Chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161. RCW 13.04.030(1)(b).

Chapter 13.34 RCW and the Juvenile Court Rules describe the different types of hearings afforded parents in the dependency process. Parents are entitled to a shelter care hearing within 72 hours of children first being removed from their home. RCW 13.34.060; RCW 13.34.065. Pursuant to 13.34.110, the juvenile court must hold a fact-finding hearing on the dependency petition, and a dispositional hearing. RCW 13.34.110. Chapter 13.34 RCW further provides the type and timing of review hearings that the juvenile court must hold for dependent children. RCW 13.34.138; RCW 13.34.145.

Lacking in the dependency statute is any mention of a right to a hearing for a non-related individual to pursue de facto parent status. R.B. has failed to cite anything within Chapter 13.34 RCW that entitles him to such a hearing.

Furthermore, the legislature never intended for alleged de facto parents to be accorded party status in a dependency proceeding. RCW 13.04.011(5) states that “parent” or “parents” as used in Chapter 13.34 “means the biological or adoptive parents of a child.” Chapter 13.34 RCW refers at numerous points to the child’s “parent, guardian or custodian” or the child’s “parent, guardian, or legal custodian.” *See, e.g.*, RCW 13.34.030(6)(c); RCW 13.34.040(2); RCW 13.34.060; RCW 13.34.070. Moreover, those sections that pertain to notice to parties, placement of the child, or due process rights refer to the child’s “parent(s), guardian or legal custodian.” *See* RCW 13.34.060(2); RCW 13.34.062(1); RCW 13.34.070; RCW 13.34.080; RCW 13.34.090; RCW 13.34.130.

In contrast, Chapter 13.34 contains no mention of individuals alleging de facto parentage of a dependent child. The provisions contained in this chapter clearly indicate that the legislature intended for only biological or adoptive parents, guardians, and legal custodians to be treated as parties in a dependency action. The legislature did not intend

for alleged de facto parents such as R.B. to be accorded the same status, and Chapter 13.34 RCW affords no rights to such an individual.

DNA testing determined that R.B. was not the biological father of the twins. He has not challenged this determination. There is also no dispute that R.B. was not the “legal custodian” or “dependency guardian” for the twins. The twins were alleged, and later found to be, dependent. CP at 1, 50-57, 63-71, 80-87. As such, all matters involving the children were subject to the juvenile court’s exclusive jurisdiction and all proceedings were governed by Chapter 13.34 RCW.

Because Chapter 13.34 RCW provides no right to a full evidentiary hearing for an individual to pursue de facto parentage of a dependent child, and furthermore does not even consider such an individual a proper party to a dependency action, the juvenile court in the present case was under no statutory obligation to provide such a hearing. As such, the court’s refusal to do so was appropriate.

**2. The Juvenile Court Soundly Exercised Its Discretion When It Denied R.B.’s De Facto Parent Motion**

R.B. alleges that the juvenile court refused to consider his de facto parentage claim at all, and furthermore, that he presented a prima facie case that entitled him to a full evidentiary hearing. Brief of Appellant (Br. Appellant) at 9-10. A review of the record shows that the juvenile

court clearly entertained R.B.'s de facto parentage claim, even though it had no statutory obligation to do so. Further, contrary to R.B.'s assertion otherwise, no appellate case directs that a juvenile court presiding over a dependency matter must hold an evidentiary hearing when a non-parent presents a prima facie case on a de facto parent claim. Finally, and importantly, the facts simply do not support a finding of de facto parentage here.

**a. The Juvenile Court Clearly Considered R.B.'s Motion To Establish De Facto Parentage**

Nothing in Chapter 13.34 RCW requires the juvenile court to entertain a non-parent's claim of de facto parentage. While R.B. alleges that the court refused to entertain his claim, the record shows otherwise. After R.B. objected to being dismissed from the dependency matter, the juvenile court set over the dismissal hearing and allowed him to brief the issue of de facto parentage, even though it had no obligation to do so under RCW 13.34. The juvenile court then held a hearing in which it considered R.B.'s pleadings and oral arguments. CP at 153.

Following the hearing on R.B.'s motion, the juvenile court issued an order including findings of fact and conclusions of law. CP at 170-172. In finding number six the court found that "[t]he facts in this case do not rise to the threshold level required by the *L.B.* line of cases. The court is

not willing to use the dependency process to establish de facto parentage.” CP at 171. Read together, as they are included in the same finding, these two sentences show that the juvenile court considered R.B.’s claim, found that it did not meet the threshold level required by de facto parent law, and as such, the juvenile court was not willing to use the dependency process to establish de facto parentage under these facts.

The court considered R.B.’s motion, including the written testimony in the form of declarations, and simply did not find in his favor. While R.B. takes issue with the outcome of the decision, he certainly was given the opportunity to be heard on his de facto parentage claim even though he did not have an established right to be heard..

**b. Under Chapter 13.34 RCW, R.B. Has No Statutory Right To An Adequate Cause Hearing On His De Facto Parent Claim**

R.B. also alleges that he presented a prima facie case of de facto parentage that required the court to hold a full evidentiary hearing. Unlike in custody cases, there is no statutory right to an adequate cause hearing in a dependency case. As such, the court did not violate any procedural requirements when it declined to hold a full evidentiary hearing.

The juvenile court had no obligation to hold an evidentiary hearing on R.B.’s de facto parentage claim. First, as stated above, under RCW 13.34, the juvenile court was in no way required to provide R.B.

with a hearing of any kind, let alone a full evidentiary hearing. Still, the juvenile court afforded R.B. an opportunity to be heard and the denial of R.B.'s motion was a sound exercise of the court's discretion. The court correctly concluded that R.B.'s brief relationship with the twins did not qualify him as a de facto parent.

In custody cases, parties seeking modification of a parenting plan or custody decree are afforded, by statute, the opportunity to submit opposing affidavits to the court. *See* RCW 26.09.270. The statute then requires the court to consider the affidavits and to deny the motion unless it finds that the affidavits establish adequate cause for a hearing. *Id.* It is because of this statutorily directed procedure that adequate cause hearings occur in custody cases, not because any case law directs it.

Here, R.B. is essentially arguing that the juvenile court in the instant case should have acted similarly to a court in a child custody proceeding, and that it erred by not doing so. However, in dependency cases there is no such procedural requirement, thus the juvenile court in the instant case did not violate any procedural requirement. When the legislature intends for specific procedure to be followed, it provides such procedure through statute, as in RCW 26.09.270. Chapter 13.34 RCW provides no such procedural requirement or framework, and therefore the juvenile court did not err in not providing R.B. with a full evidentiary

hearing. Furthermore, R.B. has failed to cite any case law that requires a juvenile court to provide a full evidentiary hearing for a de facto parentage claim made by a non-parent. The denial of R.B.'s motion was a sound exercise of the court's discretion.

**c. After Holding a Hearing On R.B.'s Motion, The Juvenile Court Properly Determined That R.B.'s Brief Relationship With The Twins Did Not Rise To The Level Of A De Facto Parent**

The facts of this case are readily distinguishable from other cases in which de facto parent status was granted because R.B. was clearly unable to meet the strict criteria required to establish him as a de facto parent.

The seminal case that created the de facto parent status in Washington is *L.B. L.B.*, 155 Wn.2d 679. *L.B.* involved a same-sex couple that held themselves out as a family unit and co-parented a child until the child was six years old. *L.B.*, 155 Wn.2d at 685. This set the standard for the type of relationships subsequent courts have determined meet the strict requirements of the de facto parent doctrine: one in which the alleged de facto parent has established a full and complete undertaking of a permanent, unequivocal, committed and responsible parental role in the child's life. See, e.g., *In re Parentage of J.A.B.*, 146 Wn. App. 417, 191 P.3d 71 (2008) (affirming that mother's former boyfriend who lived

with and raised child for around eight years was child's de facto parent); *In re Custody of M.J.M.*, 173 Wn. App. 227, 294 P.3d 746 (2013) (affirming that acknowledged father who raised and lived with child for twenty-seven months was child's de facto parent); *In re Custody of B.M.H.*, 179 Wn.2d 224, 315 P.3d 470 (2013) (allowing step-parent, who was actively involved in child's life for ten years, to pursue de facto parentage); *In re Custody of A.F.J.*, 179 Wn.2d 179, 314 P.3d 373 (2013) (granting former same-sex partner who raised child for three and a half years de facto parent status).

As the twins' mother argued, R.B.'s relationship with the twins clearly lacked the depth and sustained length of time required to establish de facto parentage. By R.B.'s own representations, the duties of parenthood he assumed were limited to him providing "some" financial support and "some" rides to "some" appointments. CP at 128, 131.

In addition, the mother disputed that she consented to or fostered a "parent-like" relationship between R.B. and the twins; in her declaration she indicated that she and the twins left R.B. when the twins were around six-months-old. Both parties agreed that the mother refused to allow R.B. contact with the twins after leaving, and in her declaration the mother makes it clear that she was not supportive of R.B. receiving visitation

while he was considered an alleged father in the dependency process. CP at 151.

Furthermore, R.B.'s eight-month (at most) relationship with the twins fails to meet the doctrine's element that "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 mother alleged that R.B. kicked her and the twins out several times during their time residing together. CP at 151. In addition, this eight-month period of time in which R.B. did live with the twins was followed by another eight-month period of time in which he did not – even before the dependency petitions were filed. Clearly, on these facts, no permanent co-parenting relationship was created.

R.B. alleges that the de facto parent in *M.J.M.* was able to establish his status through living with the child for fourteen months, but the *M.J.M.* court's findings actually reflect that the de facto parent physically cared for the child nearly every day, as the only father the child knew, for the first sixteen months of the child's life, and that the child then continued to live with the de facto parent until the child was twenty-seven months old. *M.J.M.*, 173 Wn. App. at 236. The eight-month relationship R.B. alleges he had with the girls, followed by eight months of no relationship, pales in comparison to the petitioner's case in *M.J.M.*

De facto parent status should be granted to individuals in only exceptional circumstances – because it places a third party into the shoes of a legal parent. After considering both R.B. and the mother’s pleadings and arguments, the juvenile court found that “[t]he facts in this case do not rise to the threshold level required by the *L.B.* line of cases.” CP at 171. This finding was supported by substantial evidence given R.B.’s brief and non-permanent relationship with the twins.

**B. The Juvenile Court Soundly Exercised Its Discretion By Denying R.B.’s Motion To Waive Exclusive Jurisdiction**

Under the Basic Juvenile Court Act, the legislature has granted juvenile courts exclusive original jurisdiction over all proceedings relating to children alleged or found to be dependent. RCW 13.04.030.

R.B. argues that the juvenile court was unwilling to adjudicate his de facto parent claim and therefore it should have waived its exclusive jurisdiction to allow him to pursue his claim in family court.

First, as detailed above, the juvenile court in fact did consider and adjudicate R.B.’s de facto parent claim. As such, there was no need to waive exclusive jurisdiction to adjudicate a claim that had already been heard and ruled upon.

Second, the structure of the dependency statute shows that the legislature deemed fit to grant the juvenile court exclusive jurisdiction.

RCW 13.04.030. Under RCW 13.34.155, the decision to waive exclusive jurisdiction is completely within the juvenile court's discretion. Here, the court heard R.B.'s claim, denied his motion, and as a result, determined that waiver of exclusive jurisdiction was not necessary. In addition, the twins' mother opposed such a waiver. The court's denial of R.B.'s motion was a sound exercise of its discretion.

Finally, it was not in the children's interests to waive exclusive jurisdiction. Children have a right to speedy resolution of these proceedings. In RCW 13.34.020 the legislature declared that "the right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter." Furthermore, as the court in *C.R.B.* stated, "the State and the child have a strong interest not only in establishing a stable and permanent home for the child, but also in doing it as soon as possible." *In re Dependency of C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

In the present case, the juvenile court considered and ruled on R.B.'s de facto parentage claim. Not only was there no reason for the court to then waive its exclusive jurisdiction, but to do so would have further drawn out the dependency matter and would have been counteractive to the legislature's clear declaration that the matter be

resolved in a speedy fashion. The court's denial of R.B.'s motion was a sound exercise of its discretion and should be upheld.

**C. The Juvenile Court Properly Denied R.B.'s Motion for Intervention**

CR 24(a) and (b) govern intervention. The standard of appellate review of denial of a motion to intervene depends on whether intervention was requested as a matter of right or permissively. When reviewing the denial of intervention as a matter of right under CR 24(a), the appellate court reviews whether the lower court committed an error of law. *Westerman v. Cary*, 125 Wn.2d 277, 302, 892 P.2d 1067 (1994). A decision regarding permissive intervention rests within the discretion of the court and is reviewed for abuse of discretion. *Id.* at 304; *In re Dependency of J.H.*, 117 Wn.2d 460, 472, 815 P.2d 1380 (1991).

**1. R.B. Has No Right To Intervene Under CR 24(a)**

As an initial matter, in the proceedings before the juvenile court R.B. moved for permissive intervention under CR 24(b). In R.B.'s Appellant Brief he argues that the juvenile court should have allowed him to intervene as a matter of right under CR 24(a). This argument was never made before the lower court. As such, R.B.'s argument should not be considered on appeal. RAP 2.5(a); *Metcalf v. Metcalf*, 57 Wn.2d 612, 616, 358 P.2d 983 (1961).

Furthermore, CR 24(a) does not grant an individual alleging de facto parent status the right to intervene in a dependency proceeding.

CR 24 provides in relevant part:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

CR 24.

First, there is no statute that confers on an individual alleging de facto parent status an unconditional right to intervene in a dependency action. This is further evidenced by R.B.'s failure to cite any statute that grants him such an unconditional right.

Second, the Washington Supreme Court has determined that "[t]he interest which the intervener seeks to protect must be one recognized by the law." *J.H.*, 117 Wn.2d at 468. Again, R.B. does not cite any statute that grants him a legal interest in this matter. In addition, R.B. has no legal interest in the twins as he has never been awarded "legal custody" of them. Thus, R.B. does not have a legal interest sufficient to mandate intervention in the dependency action under CR 24(a)(2) as a matter of right. *J.H.*, 117 Wn.2d at 471.

R.B. cites *In re Dependency of J.W.H.* to support his argument that he possesses a right to intervene. There is a key distinction between the individuals granted intervention in *J.W.H.* and R.B. In *J.W.H.* the court held that the children's relatives, who were third party custodians of the children, had a right to intervene. *In re Dependency of J.W.H.*, 147 Wn.2d 687, 700, 57 P.3d 266 (2002). Here, R.B. possesses no such status as to the children in this case. Because R.B. did not have a right to intervene in the dependency under CR 24(a), the juvenile court properly denied his motion to intervene and did not commit error of law.

**2. The Juvenile Court Properly Denied R.B.'s Motion For Permissive Intervention Under CR 24(b)**

The trial court soundly exercised its discretion in denying R.B.'s request for permissive intervention under CR 24(b). R.B. was unable to show that he possessed either a conditional right to intervene under any statute or that he possessed a legal interest not adequately represented by the Department or the Court Appointed Special Advocate (CASA) for the twins.

CR 24(b) provides in relevant part:

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right; or, (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the

intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

CR 24(b).

First, no statute confers upon an individual alleging de facto parent status a conditional right to intervene in a dependency action, so R.B. may not be permitted to intervene under CR 24(b).

Second, the court in *In re Welfare of Coverdell*, 39 Wn. App. 887, 890, 696 P.2d 1241 (1984) (*Coverdell II*), has held that in most cases, permissive intervention is not appropriate during dependency proceedings. *See also In re Dependency of J.S.*, 111 Wn. App. 796, 808-09, 46 P.3d 273 (2002) (“[a]s a general rule, intervention in dependency cases prior to termination of parental rights is rarely appropriate”).

The issue of non-party intervention was carefully considered in *In re Baby Girl Coverdell*, 30 Wn. App. 677, 637 P.2d 991 (1981) (*Coverdell I*) and in *Coverdell II*, *supra*, 39 Wn. App. 887. In *Coverdell II*, the court reemphasized its language in *Coverdell I* that “[the foster mother] has shown neither a right to intervene under a statute nor does she possess a legal interest not adequately represented by DSHS or the guardian ad litem.” *Coverdell II*, 39 Wn. App. at 890, quoting *Coverdell I*, 30 Wn. App. at 680. R.B. was unable to show a legally recognized interest in the current matter, and therefore he has no question of law or fact in common with the dependency action. As such, the trial

court properly denied his motion for permissive intervention under CR 24(b).

The trial court's denial of R.B.'s motion for intervention was also proper because he failed to establish that he had a claim or defense in common with a question of law or fact in the dependency action. R.B. cited no such claim or defense in his motion for intervention. The primary purpose of a dependency proceeding is to address parental fitness and child welfare, and the trial court did not abuse its discretion when it denied R.B.'s motion to intervene, thus preventing him from introducing custody and parentage issues into the dependency matter.

In addition, intervention is not appropriate where the interests of the interveners are adverse to the parties. The adversarial participation of an intervener in a dependency action "has a tendency to shift the focus of the proceeding from the ability of the natural parent to care for the child to a comparison of the natural parent" to the intervener. *Coverdell II*, 39 Wn. App. at 890-91. The Washington State Supreme Court has held that even long-term foster parents had no right to intervene in a dependency proceeding, and that intervention is appropriate only to the extent the rights of the interveners do not conflict with the rights of the parents. *J.H.*, 117 Wn.2d 460 (citing *In re Welfare of Maurer*, 12 Wn. App. 637, 530 P.2d 1338 (1975); *Coverdell I*, 30 Wn. App. 677;

*Coverdell II*, 39 Wn. App. 887; *In re Welfare of Schulz*, 17 Wn. App. 134, 561 P.2d 1122 (1977)). Also, CR 24(b)(2) cautions the court to consider whether intervention will prejudice the rights of the original parties.

In the present case, the twins' mother was in support of the Department's motion to dismiss R.B. from the matter. She expressed concern about the impact that R.B. would have on the dependency as to her children. Allowing R.B. to intervene would have made him an adversarial participant in the dependency and would have inappropriately shifted the focus of the proceeding. Therefore, the trial court properly denied R.B.'s request for intervention, and this denial was not an abuse of discretion.

## V. CONCLUSION

R.B. is not the biological or adoptive father of L.C.B.-S. and L.P.B.-S, and therefore he was appropriately dismissed from the dependency matter. R.B. had no statutory right to a hearing, let alone a full evidentiary hearing, on his de facto parent claim. Still, the juvenile court heard his motion, and it correctly denied his claim.

In addition, the court's denial to waive exclusive jurisdiction was a sound exercise of its discretion. Furthermore, the court's denial of R.B.'s motion to intervene was not an abuse of discretion.

The Department requests that this court affirm the juvenile court's order denying R.B.'s motions.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of October, 2014.

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