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No. 63919-6-1

STATE OF WASHINGTON COURT OF APPEALS
DIVISION I

*In re Parentage and Custody of
Alec Franklin Johnston*

Mary Franklin, Pro Se
Appellant / Cross-Respondent

and

Jackie J. Johnston
Respondent / Cross-Appellant

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 OCT 11 AM 9:21

Appellant/ Cross - Respondent Rebuttal

Mary F. Franklin, pro se Appellant
c/o Seattle Legal Messenger
711 6th Ave N #100
Seattle, WA 98109
(206)443-0885- main
(206)728-2833- fax
email: Peter@SeattleLegalMessengers.com

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Procedural Complaints Non- Compelling

- 2. Find the *pro se* crafted brief unquestionably entails the nature of the challenge/s and the challenged findings argued in the text of the brief, invalidates a verity on appeal assumption?" For the court's clarification
Ms. Franklin refutes in argument FF #2.9, #2.10, #2.11, #T, #U, # W, #V(ii)(iii), #W, #Z, # AA, #BB, #CL 3.4
- 3. Deem "Sufficiency of the Records to Issues Raised" the appellate standard and dismiss argument appellant's brief is infirm.
- 4. If pro se brief is condemned for error, condemnation is also proscribed to response brief for sharing

similar non prejudicial flaws.

5. Whether the original court made unreasonable, inequitable determinations in light of the laws, circumstances, and crushing facts setting parentage, attorney fees, child support, and parenting plan?

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6. Was it inequitable of the court to enrich Ms. Johnston \$26,500 is attorney fees/costs when causative agent for the engrafted dependency, Ms. Franklin's entrapment as foster parent, erstwhile tactically ascribing Ms. Franklin the co-parent profiteering her parental rights; facts attenuated that DCFS solicited Ms. Franklin's actions to protect the child.

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7. If affirmed de facto parent is Ms. Franklin parentage in parity" or will she remain a second class parent, therein apportioned a greater financial burden for the care of the child setting 5th Amendment infringements.
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9. Whether the novel argument Ms. Johnston's 14th Amendment rights succumb in face of dependency creating her impotent under *In re L.B.* is invented?
10. Whether "due process" was violated when among other faults the original court entered the "*JDOEP – Order Setting Parentage and Other Relief*" sans Findings of Fact and Conclusion of Law; all orders contingent on a valid JDOEP now condemned as

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- 12. Whether the UPA is applicable in In re L.B. cause of action

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- 13. Determine the Court's tolerability of counsel falsifying the father's rights intact, giving misleading arguments, inviting the court's err in instilling the UPA in an *In re L.B.* common law action when a child's interests are at stake.
- 14. Whether the appellant *complains no valid issues*, reasonable in minds of other in the original cases or on appeal and committed intransigence; alternatively, proscribe this egregious finding as more deservingly earned by Ms. Johnston?

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**De Novo Fact Review in the Federal Appellate Courts,
50 Duke L.J. 1427 (2001)**

A. REBUTTAL TO CROSS ASSIGNMENT OF ERRORS

1. All Orders Are Condemned An Annulment Because The touchstone "JDOEP" Ordering Parentage Entered Sans Finding of Facts Creating CR 52 Violations and Pejorative Due Process Error

Cogent evidence coupled with Ms. Johnston declaring in two trials Ms. Franklin is Alec's "co-parent" crushes the cross-appeal.^{1 2 3 4 5 6} Ms. Johnston averred she'd honor a decree allocating fair custody;⁷ stated "we just deserve just to have the same amount of time with him⁸...he's got two mommies, I want him to have two mommies;"⁹ I want Ms. Franklin to help with decisions; anything less, harmful and detrimental to Alec Franklin Johnston.¹⁰ Unfortunately, the court's findings, based in part on

¹ CP 1088 – 1011 Memorandum of Mother Opposing Termination, date 4/7/2008; also see CP 1144 Amicus Brief of Ms. Franklin

² CP 1088, line 19, opening statement "Jackie Johnston gave birth to her first son in late November 2005. At the time she was sharing her life with Mary Franklin.

³ CP 1089, lines -25, "After the birth of Alec, Mary Franklin was there to help her and Alec. Jackie was committed to Mary Franklin and viewed her as her life partner with whom she would raise Alec...although she still believed that Alec should be with Ms. Franklin for the time being and as "co-parent" in the future...Ms Johnston wants to co-parent Alec with Ms. Franklin.

⁴ CP 1101, lines 1 -25, in conclusion "for the above stated reasons, Ms. Jackie Johnston, mother of Alec Franklin Johnston requests...dismiss the termination and permit the "third-party custody...to decide the custody arrangements for Alec and his two mothers.

⁵ CP 1068, # 3.9 Answer of Mother to Petition for Termination of Parent-Child Relationship, June 28, 2007. "Ms Johnston envisions something like a joint custody agreement.

⁶ See also CP 511, lines 1-25, See CP 512, line 1, See CP 518, lines 10-19 – facts confirmed in the family trial, see VR of Mary 30, 2009, pages 26-30

⁷ CP 527, VR April 16, 2008, lines 1, CP 530, lines 1-25

⁸ VR April 9, 2009, page 18, lines 1-25

⁹ VR April 9, 2009, page 15, lines 8-21, page 16, lines 1-25

¹⁰ VR April 13, 2009, See Closing Statements of Respondent.

the foregoing facts did not get entered before the "JDOEP"^{11 12} entered on May 22, 2009 as CR 52 requires.¹³ The order is sans substantive facts. The "Findings and Conclusions of Law" wasn't entered until May 26, 2009; see CP 713. In general, a litigant must wait for a final judgment before she can appeal as of right; See RAP 2.2(a)(1) and without the judgment's foundations articulated its impossible to know the full challenge needed. It was impossible for Ms. Franklin's attorneys' to effectively argue the attorney award after orally announced, then stipulated in the "JDOEP" setting \$20,000 against Ms. Franklin before withdrawing from the case.¹⁴ A deprivation to property implicating 5th Amendment infringement, Ms. Franklin's substantive and procedural due process rights were clearly violated.¹⁵ Remand is required. See VR of April 13, 2009 – Oral Ruling.

CR 52(a)(2)(B)(4)¹⁶ requires findings of fact and conclusions of law in "connection with all final decisions in adoption, custody, and

¹¹ CP 701 "Judgment Order of Entry of Parentage and Other Relief – Attorney Fees, May 26, 2009

¹² VR May 22, 2009 Combined Presentation Hearing and Dependency Review Hearing

¹³ Oral findings of fact are not sufficient; see Wesco Distribution, Inc., 88 Wn.App. 712;

¹⁴ CP 689

¹⁵ 14th Amendment no state shall "deprive any person of life, liberty, or property without due process of law." U.S. Const. amend XIV, § 1 Where a party asserts deprivation of a protectable interests the court's employ the Mathews V. Eldridge, 424 U.S. 319, 334-335, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976) balancing test

1) the potential affected interest, 2) the risk of erroneous deprivation of that interest through the challenged procedures, and probable value of additional procedural safeguards, and 3) government's interest.

¹⁶ CR 52(a) requires all bench trials and petitions heard without jury require entry of facts to each item claimed.

divorce proceedings.” See also *Marriage of Stern*, 68 Wn. App. 922, 926, 846 P.2d 1387 (1993). CR 52(a) requires entry of written findings. *DGHL Enters. v. Pacific Cities, Inc.*, 137 Wn.2d 933, 977 P.2d 1231(1999); the judge died before entry of facts. Even where written findings of fact are entered, judgment can be remanded if the findings are inadequate to support the court's conclusions. See *Bowman v. Webster*, 42 Wn.2d 129,253 P.2d 934 (1953) (findings of fact were insufficient, case remanded). Generally, appellate review of factual findings is very limited. And you will uphold the lower court as long as there is “substantial evidence” in the record to support its’ decision. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959). Here, there’s no findings entered whatsoever ahead to support the “JDOEP.” When facts and basis entered May 26, 2010¹⁷ Ms. Franklin had already lost counsel, harm was cast, *pro se*; she was left with daunting task of reconsideration and appeal. The “Child Support and Parenting Plans are condemned to annulment because they attach to a defective order; remand is required.

2. The Cross Appeal Assignment of Errors Succumbs Overwhelming Evidence Including Ms. Johnston Declaring Ms. Franklin is Alec’s “parent.”

¹⁷ CP 713

Ms. Johnston not only penned but voiced Ms. Franklin the co-parent of Alec Franklin Johnston;¹⁸ there are no factual errors as she now asserts:

2.12(a) - describes a lovely child who loves both mommies.^{19 20} Ms. Franklin provided his primary care for most of his life.^{21 22 23}

2.12(I) - petitioner has shown clear, cogent evidence she's de facto parent;^{24 25 26}

2.12(K) - Parties jointly agreed to raise the child,^{27 28 29} Ms. Franklin participated in/ paid for his circumcision,³⁰ at Ms. Johnston's request gave Alec names reflecting each mother, Ms. Franklin took Alec home on overnight visits

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- 18 A name only Ms. Johnston had legal authority to proscribe
- 19 CP 527 - VR April 16, 2008, lines 2 – 4 “And I know that Mary loves Alec and I know that Alec loves Mary.”
- 20 CP 1167 - FF 1.16 Alec Franklin Johnston is bonded and attached to Ms. Franklin...Ms Johnston testified she seeks a shared custody arrangement.”
- 21 CP 535 VR April 16, 2008, lines 13 – 22 in part reads “I knew I was pregnant...I needed to be rescued and Mary Franklin rescued me.” See also CP 538, lines 9 – 11, “and I went back to Mary Franklin. I went back to live my life.”
- 22 CP 59 – “I continued to stay at Mary's place after Alec was involuntarily taken from my care.”
- 23 CP 637 VR April 8, 2009. “The other times I believe I didn't have to work because I was supported by Mary Franklin.”
- 24 CP 587 – 590 VR of Termination Trial of Parental Rights, Ms. Johnston acknowledging living with Ms. Franklin after CPS intervened.
- 25 VR March 30, 2009, page 8, page 9 Ms. Johnston acknowledges on 3/7/06 on DCFS Intake form under the section of parent/guardian she lists Mary Franklin as the co-parent and married for 2 years” See Exhibit 111.
- 26 VR March 30, 2009, page Ms. Johnston admits writing Ms. Franklin down on forms as “partner – next of kin” in Exhibit 111, and the date is 11/04/04.
- 27 CP 382 - Ms. Johnston's Trial Brief, “Jackie and Mary reconciled and discussed raising the child together.
- 28 CP 668 FFCL Continuing the Termination Trial - Exhibit # 36, therein FF # 1.16 notes that Ms. Johnston seeks a shared custody arrangement that is fair.
- 29 CP 286 – 289 – Respondent's letter “ entered as Exhibit # 5 CP 664 - “Please adopt Alec... I guess I do love crack more than Alec...he deserves you.... I'm sorry for everything but you got a son out of your terrible ordeal with me... Alec is yours. Love you always Jackie.
- 30 VR April 8 2009, page 23, lines “I talked with her about the circumcision. Do we have one? Do we not? She paid for it.”

while Ms. Johnston in treatment at PTS³¹, when she left PTS she and Alec went home to live with Ms. Franklin.^{32 33 34}

2.12(N) Ms. Franklin is not the same as traditional foster placement,^{35 36} she had hopes of permanency, she did not expect CPS to remove the child from their home and only became licensed because DSHS required her to do so³⁷; she went eight months without receiving payment.^{38 39}

2.12(O), third prong *L.B. met*, Ms. Franklin assumed obligation without expectation of compensation.^{40 41 42 43 44}

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- 31 CP 572 – 574 VR Testimony of Jackie Johnston, April 8, 2008. “She wanted to take him for overnight visits which she did.” See CP 566, lines 14 – 17. “My primary residence was with Mary Franklin.”
- 32 CP 539 – 540 VR Testimony of Jackie Johnston, April 16, 2008, lines 5 – 25 in part “so when you left PTS where did you go.” “Mary... what she needed me to do was live in a Clean and Sober Apartment...and then I probably stayed there two nights, and Alec and I were right back living with Mary Franklin.” See Also CP 540, lines 5 – 13.
- 33 CP 561 VR Testimony of Jackie Johnston, April 8, 2008, lines 6 – 25, “I was living with Ms. Franklin...from the moment I was terminated from Sea Dru Nar.” See also CP 562, lines 1 – 25. Ms Johnston acknowledges living with Ms. Franklin before and after dependency. See CP 563 – CP 567, lines 1-25 respectively, CP 571 lines 14-21
- 34 VR April 9, 2009 lines 1-25 “I don’t believe I paid it all. I think Mary Franklin helped.”
- 35 VR April 16 2009, page 26 lines 10 – 25 in part reads “I know he was gone for 72 hours...I know I wanted my son to be with Ms. Franklin. I just wanted him to come back and be with her. So she stepped up to the plate and she got him...I am CPS involved...I’m not supposed to be in the home anymore, but yet you know I still lived there.”
- 36 VR April 13, 2009, Closing Arguments; “not only did the commissioner tell her that the permanent plan was third-party custody, and the State said “we don’t do that,” your going to have to file your own, but Judge Doyle didn’t terminate and said “go through with the third party custody.”
- 37 CP 845 – Agreed Dispositional Order of Dependency- Section V, “Ms. Franklin shall begin process for foster parent licensing.
- 38 C.P. 411 - Exhibit # 81 Terminating Foster Care Payments, Dated October 24, 2008.
- 39 VR April 13, 2009, Closing Argument, Respondent’s Counsel, line foster payments started around September 2006....Mary has not cashed the State checks.”
- 40 CP 94, # 4 Declaration of Respondent “Mary has also sold the California home I dedded her with the understanding she would split the proceeds with me and she pocketed over \$150,000 in gain.
- 41 VR April 8, 2009 Ms. Johnston testified Ms. Franklin saved the house, assumed the mortgage payments, paid for the repairs, put \$8,000 before they left California. “So she saved it, so split the house. Split it.”
- 42 VR March 30, 2009, pages 78 “the fair thing to do was split it down the middle.
- 43 VR April 13, 2009, Closing Arguments, Respondent , page 38 lines 20 -25 “Yes she’s upset about her house being sold and she doesn’t get any of the money and

2.12(R) Its clear Ms. Franklin has been one of Alec's mother since birth,⁴⁵ attached and considers her his mommy, she's devoted to him⁴⁶; if she does not qualify under In re L.B., then no one would, the forth and fifth prongs satisfied.

CL 3.3 – petitioner has demonstrated by clear, cogent evidence she is the de facto parent of Alec Franklin Johnston.^{47 48 49 50}

3. The Errant "Fact Finding and Conclusion Law Is Inadequate to support: #2.9, #2.11, #T, #U, #V(iii), #Y, #Z, #AA, #BB. See arguments presented in original brief.

B. STATEMENT OF THE ISSUES – SEE TABLE CONTENTS

C. CORRECTING ERRORS IN COUNTERSTATEMENT OF THE CASE

1. Cross Appellant Falsifies The Father's Status; The Offense Screams Sanctions As the Attack Potentially Victimized the Child

Ms. Johnston participated in the trial terminating the Father's rights July 26, 2007,^{51 52} the severance noted as FF # 1.3⁵³ at her own

half the money is now placed in Alec's Trust Account as she believes it was supposed to be"

44 CP 59 # 7 – "Mary has sold a home in California. She received \$150,000 gain.."

45 VR March 26, 2009, pages 39-45 outlines the frequency of times Ms. Johnston referred to Ms. Franklin as her partner, next of kin, emergency contact etc.

46 VR April 9, 2009, page 14 -15, "My son. You know she's done a great job with Alec, absolute great job...He needs protection, you. He needs a lot of guidance. He needs to know he's ok. And Mary has done all that for him"

47 VR April 9, 2009, page 14 "I'm not going to risk damaging my son. He's got two mommies and I want him to have two mommies." Page 16 "I want to share my child....I cannot hurt my child and go "you cannot see Mommy Mary." Sorry no, I am not going to do that, Page 18 "we both deserve just to have the same amount of time with him." Page 19 "Easter's my favorite holiday; give him to me on Easter. You can have him on Christmas.' She affirms wanting participation in decisions involving the child. Page 23 "I want Mary Franklin to help me."

48 VR April 13, 2009, Closing Arguments, Respondent, see page 39 lines 1-18

49 VR April 13, 2009, Closing Arguments, Respondent, page 47, lines 16 – 20, "Mary is the psychological parent...she has done a wonderful job."

50 VR April 13, 2009, Closing Arguments page 56, lines 2-25

termination trial; documents reviewed by her counsel, Mr. McGlothlin, on May 9, 2008; see CP 83, entry of "5/9/2008" where counsel and Public Defender collaborating court strategy^{54 55 56 57} and the order is at CP 1070. Ms. Franklin filed her petitions November 7, 2007.⁵⁸ Ms. Johnston also hid the father's identity⁵⁹ during the discovery and from the state.⁶⁰ Mr. McGlothlin's placed his certified signature on interrogatories.⁶¹ This bodes a callous attack on Alec Franklin Johnston and compels sanctions under CR 11, CR 33⁶² and CR 26(g)⁶³ and shows an abusive⁶⁴ and

⁵¹ CP 1070, Section 1.2 "the mother has timely filed an answer on June 29, 2007 and is not a subject to this order." Termination of Parental Rights Order entered July 26, 2007.

⁵² CP 1070-1074, Termination of Parental Rights Order entered July 26, 2007.

⁵³ CP 1164 FF # 1.3 Father's Rights terminated by default, entered July 26, 2007

⁵⁴ CP 84, Mr. McGlothlin's fee statement, May 9, 2008 – "phone conference with B. Bock discussed division of responsibilities and trial strategy."

⁵⁵ See also CP 85 6/10/2008, 6/25/2008, CP 90 8/15/2008, 8/18/2008, and CP 91

⁵⁶ CP 83, Mr. McGlothlin's fee statement, May 9, 2008 – "Received and Reviewed FFCL and Order Continuing Termination Trial as To the Mother."

⁵⁷ CP 429 – Clerk's Minutes minute entry 9:28:25 of the Family Law Trail.

⁵⁸ CP 1-14

⁵⁹ CP 1002, Respondent's answer to Interrogatory Question No. 14 states "father is unknown." The document contains Mr. McGlothlin's certification and signature.

⁶⁰ CP 843, Section 10 - Agreed Order of Dependency; demonstrates respondent did not divulge father's identity as required by law to the state's inquiry; see also CP 895, Section B – Shelter Care Hearing orders publication to "unknown father;" see also CP 1060, father listed as unknown and dependency as to the father by default on May 11, 2006.

⁶¹ CP 991 – Attorney's Certificate of Compliance entered July 1, 2008.

⁶² Court Rule 33 – "Interrogatories to Parties;" "...each interrogatory shall be answered in writing under oath, unless objected to, in which event the reasons for objections shall be stated..."

⁶³ Court Rule 26(g) requires an attorney signing a discovery response to certify that the attorney has read the response after they make reasonable inquiry.

⁶⁴ CP 651, lines 11 -15

dishonest parent⁶⁵ and legitimately raises questions of Mr. McGlothin's ethics and duty as officer of the court. Like CR 11, CR 26(g) makes sanctions mandatory when a violation of the rule is found, "if a certification is made in violation of the rule, the court upon motion or upon its own initiative shall impose on the person who made the certificate.... to pay the amount of reasonable expenses incurred because of the violation, ...including reasonable attorney fees." An attorney has duty as an officer of the court to not abuse the judicial process and to conduct himself consistent with proper function of that system.⁶⁶ Misconduct, once tolerated, will breed more misconduct...;"⁶⁷ Appellant's original CR 11 claims are simply validated by this current abuse.

2. Correcting Other Errors in Ms. Johnston's Counterstatement of the Case

The parties were a family co-existent with a dependency created by Ms. Johnston's malfeasances, therein, she profited on a defense using Ms. Franklin as a parent⁶⁸ A protracted dependency by agreed

⁶⁵ CP 478 – Verbatim Report – Jackie Johnston Testimony April 23, 2008 lines 6 – 25.

"if a child observes a parent who's not honest, that's not good, is it? "No."

⁶⁶ Schwarzer, Sanctions Under the new Federal Rule 11 – A Closer look, 104 F.R.D. 181, 184 (1985)

⁶⁷ Schwarzer, 104 F.R.D. at 205

⁶⁸ C.P. 646, VR, April 8, 2008, lines 9 -25

dispositional order⁶⁹ with facts entered April 5, 2006, see Exhibit # 27;⁷⁰

⁷¹ Ms. Franklin labeled "adult responsible placement" ordered⁷² to become foster licensed; Ms. Johnston ordered not to reside with Ms. Franklin;⁷³

congruent to the 72 Hour Shelter Care Order entered January 31, 2006; see minutes entered as Exhibit # 25 and #26.⁷⁴ DCFS's September 2007 ISSP manifesto stated third-party custody the primary goal⁷⁵ and motioned for concurrent Jurisdiction.⁷⁶

April 2008, the termination trial started and was ultimately stayed; Fact Finding^{77 78} entered May 7, 2008, and the Verbatim Reports (VR - CP 454 through 659) of Ms. Johnston testimony⁷⁹ incorporated as records in the family cases. Ms Johnston announced desires for a fair custody arrangement,⁸⁰ and she used the terms custody, parent, and co-parenting interchangeably discussing Ms. Franklin; in one instance stating "my

69 CP 839 - Order of Dependency and Disposition as to Jackie Johnston, entered April 4, 2006;

70 CP 667 - Copy of the Exhibit List

71 CP 704 - 714, Findings of Fact, Conclusion of Law and Order of the Court, entered May 26, 2009.

72 Ms. Franklin contended the order was homophobic grounded.

73 CP 915, Section 5.3 "Responsible Adult Placement with the mother's paramour, Mary Franklin...DCFS will begin a home study of Ms. Franklin's home... Ms Franklin shall begin process for foster parent licensing. Mother shall not reside with Ms. Franklin."

74 CP 664 - Copy of the Exhibit List

75 CP 964 - ISSP Report September 17, 2007, see Section 2.10.

76 CP 970 Order for Concurrent Jurisdiction

77 CP 1166

78 FF 1.14 that Ms. Johnston has been diagnosed with a personality disorder with borderline characteristics difficult to treat.

79 CP 435, 10:57:45, Motion to Publish prior transcripts is Granted;

80 CP 465, VR April 23, 2008, line 1-25

preference is that we could have fairness with my son. You know fair - fair time, fair rights...my wish is that you know, that it be reasonable and fair for both of us..."⁸¹ Ms. Franklin is "definitely a parent to Alec," they love each other."^{82 83 84 85} See the Verbatim Reports of April 2008. Ms Johnston admitted she frequently lied,⁸⁶ had longstanding history abusing and selling drugs; a criminal history including stealing from Ms. Franklin, and domestic violence,^{87 88 89 90} harbored financial resentments,⁹¹ distorted her recidivism and occurrences in rehab.⁹² When she knew she was pregnant sought the rescue of Mary Franklin:⁹³ they lived together; when four months pregnant, assisted by Ms. Franklin, they returned to California and moved all her belongings into Ms. Franklin's home⁹⁴ and supported by Ms. Franklin^{95 96} living together before and after CPS

81 CP 511, VR April 23, 2008, line, CP 518, line 10 - 14

82 CP 499, VR April 23, 2008, line 9 25

CP 463, VR April 23, 2008, line 14-25.

84 CP 500, VR April 23, 2008, line 1-25

85 CP 466

86 CP 480, VR April 23, 2008, line 17-18

87 CP 480, VR April 23, 2008, line 1-25, CP 533, VR April 16, 2008, line 1-25

88 CP 542, VR April 16, 2008, line 1-25, CP 592 -598, Verbatim Report April 8 2008

89 CP 620 - 621, VR April 8, 2008 lines 1-25 respectively

90 CP 383 Mother Jackie Johnston's Trial Brief, "finally in February 2007 after a 9-day bender that involved taking Mary's motor home and landed Jackie in jail for six weeks.

91 CP 464, VR April 23, 2008, line 1-5

92 CP 482, VR April 23, 2008, line 1-20

93 CP 565

94 CP 586, Verbatim Report April 8, 2008 lines 1 - 13, C.P. 588 lines 1-17

95 CP 639, VR April 8, 2008, lines 9 - 11

96 CP 535, VR April 16, 2008, line 14 - 22

intervened.^{97 98} She acknowledged telling rehab providers coming into \$90,000, but vague how; squandering lots of money on drugs, and engaged in prostitution.⁹⁹ After leaving PTS immediately she and Alec lived with Ms. Franklin citing mothers' unhappy visitation policies.¹⁰⁰ Ms. Franklin's testified she had Alec from PTS 3-4 times a week for overnight stays, an arrangement lasting 3-4 weeks when Ms. Johnston left PTS.¹⁰¹ Piecing together Ms. Johnston's testimony the only time the parties' apart in the years before dependency were due to her treatments (at Ms. Franklin's insistence).¹⁰² Prior to pregnancy she was commuting between California and Washington, living in both places to be near Mary. The tactic of raising Ms. Franklin as other parent worked the trial was stayed, all cases consolidated to UFC court and the dependency cases linked with Ms. Franklin's petitions.¹⁰³

In the family cases Ms. Johnston refuted all claims; see CP 26 – 27.

August 2008, Ms. Johnston motioned on the UPA RCW 26.26.140 and "need," for interim fees despite her attorney declaring services pro bono or

97 CP 539 - 540, VR April 16, 2008 line -25, line-25 respectively; see CP 588 - 589

98 Willful violation of a court order entered under dependency, RCW 26.44.063, is a misdemeanor.

99 CP 599, VR, April 8, 2008 lines 1 – 25, C.P. 600, line 1

100 CP 574, VR April 8, 2008, line 1 -

101 C.P. 655 - 656 VR, April 8, 2008 lines

102 CP 561 – 565, VR April 8, 2008 lines 1 -25 respectively

103 CP 1152 State's Motion to Continue Termination Trial Fact Finding and Consolidate the Dependency, Termination, Third Party Custody, and Parentage Action and Motion to Refer to UFC; See CP 1161, Motion Granted

discounted; Ms. Franklin was assessed and paid \$5,000 in attorney fees and \$1,500 GAL fee.^{104 105} On March 13, 2009 Ms. Franklin's financial declaration showed a net monthly income of \$5,535.36 for household expenses of \$5,485.65 which included \$670.00*¹⁰⁶ for the care of the child, pension of \$13,000 at age 50, attorney reserve of \$24,000 against estimated legal fees of \$40,000, with fees incurred to date of \$72,485 (CP 392 – 397). Amounts substantiated in the records.^{107 108 109} On CP 394, Ms. Franklin impugned Ms. Johnston as shielding income from the court. Of special relevance petitioner's Exhibits (CP 400 – 420), # 2, 3, 11, 12, 14, 25 – 27, 28 – 36, 42 – 55, 57-65, 81¹¹⁰ and 83¹¹¹ were not objected. Ms. Johnston's testimony held incongruencies. For example, on leaving "PTS", she first told the court she stayed "probably two months at a Clean and Sober housing in Tacoma."^{112 113} The relapse triggering the dependency she said "...I used probably twice...got away with it...and

104 CP 142 Order Requiring GAL

105 CP 220, Order Requiring Interim Attorney Fees

106 Ms. Franklin's support of the child was never acknowledged by the court.

107 CP 412 - Exhibit # 97 – Petitioner's Bank Statements

108 CP 415 - Exhibit 136 – 139

109 Ms. Franklin Motioned for an Emergency Stay of Contempt proceedings with the Appellate court, attached as Exhibit is updated Financial Declarations through November 2009 showing attorney fees and costs incurred of over \$205,000,

110 C.P. 411 - Exhibit # 81 Terminating Foster Care Payments, Dated October 24, 2008.

111 C.P. 411 - Exhibit # 83 Grant Deed Signed by Jackie Johnston March 30, 2005.

112 VR April 8, 2009, page 24 lines 20-25.

113 VR March 30, 2009, pages 31 – 32 does not match testimony given at the termination trial

then I did it again, and when Mary asked me I admitted to it;¹¹⁴ statements, controverted by the Agreed Facts and Dispositional Order of Dependency.¹¹⁵ See VR March 30, 2009, page 41-43, she was impeached for false statement.^{116 117} In composite, Ms. Johnston acknowledged the couple together to November 2006, Alec was a year old when she had her "last relapse,"¹¹⁸ the couple sharing a bed,¹¹⁹ the child's nursery set up in their room in Mary's house, and confirmed Mary had given her more chances than she thought possible¹²⁰ and involved in her drug treatment¹²¹ and admitting it was the most committed relationship she ever had.¹²² She finally admitted stealing Ms. Franklin's motor home and the arrests of November 2006.^{123 *124} Ms. Johnston liquidated real estate in 2007; see VR March 30, 2009, pages 4 - 5, 12, 36 - 40; on page 60, admitting to business partners buying and selling homes in her name but she did not get the 25,000 capital gains as reported on her income tax? Ms. Johnston was

114 VR April 8, 2009, page 25 lines 12-16

115 CP 841-843

116 VR March 30, 2009, pages 17 - 19

117 VR April 9, 2009, pages 33 - 36

118 VR April 9, 2009, page 28, lines 7 - 20.

119 VR March 30, 2009, page 45

120 VR March 26, 2009, page 39

121 VR April 9, 2009, pages 37 - 340

122 VR March 30, 2009, page 81

123 *VR March 30, 2009, page 96; contradictory testimony stating the only item she took from Ms. Franklin's house was the lap top and omits the RV and cash that she admitted earlier taking.

124* VR April 9, 2009, page 46 -47

driving without valid license violating the law.¹²⁵ Ms. Johnston's psychiatric disease of borderline personality with antisocial, histrionic, traits examined; See Verbatim Reports of April 2009. Ms. Johnston's criminal convictions again discussed.¹²⁶

The trial ended April 13, 2009, closing arguments concluded at 10:59:02 and oral rulings given at 11:15:03.¹²⁷ At closing, Ms. Johnston's counsel in power point slide show¹²⁸ requested attorney fees^{129 130} asking court's judicial notice of financial declarations; Ms. Franklin's attorney made no rebuttal to attorney fees? See VR of April 13, 2009 – Closing Argument. Mary Franklin vindicated the child's constitutional rights establishing de facto parentage but penalized \$20,000 in fees without a basis given; presentation of final orders set for May 22, 2009 coinciding with the next dependency hearing. See VR of April 13, 2009 – Oral Ruling.

Child support first surfaced in memo May 18, 2009,¹³¹ declarations and memorandum¹³² were sent to the court. On May 22nd the court heard limited argument, preoccupied with the dependency, entered the

125 VR April 13, 2009, Closing Argument, page 54 21-25

126 VR March 26, 2009, page 27 – 35

127 CP 452 - 453

128 VR April 13, 2009, Closing Arguments, page 17, line 21

129 VR April 13, 2009, Closing Arguments, page 18, line 13-20.

130 VR April 13, 2009, Closing Arguments, page 46, lines, 1 – 25, "you agreed to take judicial notice of."

131 CP 692

132 CP 691

"JDOEP;" reserved the Child Support, Phase 1 Parenting Plan, and Fact Finding statement and issued these on May 26, 2009.¹³³

All arguments Ms. Franklin promulgated on appeal were all first presented to the trial court on reconsideration which was denied by the court without any analysis provided on July 25, 2009 (CP 714).

Ms. Johnston filed for contempt to collect child support and motioned the U.S. Bankruptcy court to deny Ms. Franklin's petition therein on grounds of arrear child support on cross-appeal denounces Mary's parentage? See filed appellate pleadings. In November 2009, through writ garnishing wages and bank accounts, Ms. Johnston seized approximately \$10,000 leaving Ms. Franklin a balance of -\$150.00 to perfect her appeal.

D. REPLY ARGUMENTS TO RESPONDENT / CROSS APPELLANT'S BRIEF

1. The Pro Se Appeal Questions Law; Its Customary Then The Review Is De Novo; Necessary, too Ensure Alec Franklin Johnston's Liberty Rights and Best Interest Remain At Heart Of Appeal.

a) Pro Se litigants are given deference, rules softened to accommodate their disadvantage.^{134 135}

¹³³ CP 763, CP 756

¹³⁴ *Haines v. Kerner*, 404 U.S. 520 (1971) Plaintiff-inmate filed pro se and in finding plaintiff's complaint legally sufficient, Supreme Court found that pro se pleadings should be held to "less stringent standards" than those drafted by attorneys.

¹³⁵ *Elmore v. McCammon* (1986) 640 F. Supp. 905 "... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws." *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd

Your obsequiousness to the lower courts is not the standard in de novo review,^{136 137} therein; you owe no formal deference to the reasoning or conclusions of the court below with authority to review questions of fact and law. Please, review in “fresh light” to ensure Alec Franklin Johnston’s best interest remain at the heart of this appeal.¹³⁸

2. Verities on Appeal Is Waived When the Nature Of The Parties Challenges Are Clearly Evident in Argument; Each Party Fails Full Subscription of Error to Arguments Made.

Parties’ failure to assign error is excusable and verities not assumed when their briefing makes the nature of the challenge clear and the challenged finding is argued in the text of the brief. See *Noble*, 114 Wn. App. at 817; RAP 1.2(a). Here, the parties’ challenges are clear; fundamentally, Ms. Johnston alleges the “court’s absolute failure and complete inability” setting Ms. Franklin’s parentage and Ms. Franklin abusing the court system but forgets to set error to FF 2.2(L) “Ms.

240; in *Pucket v. Cox*, 456 2nd 233 pro se pleadings are to be considered without regard to technicality; pro se litigants’ pleadings are not to be held to the same high standards of perfection as lawyers.

¹³⁶ See generally Chad M. Oldfather, *Appellate Courts, Historical Facts, and the Civil-Criminal Distinction*, 57 VAND. L. REV. 437, 444–66 (2004) (describing and critiquing justifications for deference to trial-level fact finding).

¹³⁷ The primary example involves questions of “constitutional fact.” See generally Henry P. Monaghan, *Constitutional Fact Review*, 85 COLUM. L. REV. 229 (1985); see also generally Adam Hoffman, Note, *Corralling Constitutional Fact: De Novo Fact Review in the Federal Appellate Courts*, 50 DUKE L.J. 1427 (2001) (defining and critiquing the version of the constitutional fact doctrine applied by the Supreme Court).

¹³⁸ *State v. Koome*, 84 Wn.2d 901, 907 530 P.2d 260 (1975); *Id.* “...Parental prerogatives are entitled to considerable deference they are not absolute and must yield to the fundamental rights of the child or important interests of the state.”

Franklin acted and Ms. Johnston treated her in every way as a parent;" **FF 2.2(J)** where the court found Ms. Johnston came back to Washington to be with Ms. Franklin when she discovered she was pregnant eschewing her family,¹³⁹ and Ms. Franklin expended large funds caring and keeping Ms. Johnston in treatment; or **FF 2.12(P)** the transfer of the California property not compensation for Alec's Care but toward large damages and expenses incurred by Ms. Franklin created by Ms. Johnston; **FF 2.12(S)**, the court said it's in Alec's best interest to have Ms. Franklin established as his de facto mother. Error is not assigned to the Child Support and Parenting Plan despite alleging the cornerstone parentage ruling absolutely illegal. These omissions are not critical because this court is astute to apply these logical associations on review.

In Ms. Franklin's brief she refutes attorney fees, child support, residential schedule, shared and potential exclusion in decision making, and seeks clarity on the meaning and entitlements of "parity" as de facto parent.

3. Sufficiency Of The Record Is The Standard; Citations To The Record and Authorities Is Adequate, Any Small Error Mitigated By De Novo Review.

A party claiming error must provide a record operative or sufficient to errors claimed; State v. Blight, 89 Wn.2d 38, 47, 569 P.2d

¹³⁹ CP 710 Fact Finding and Conclusions of Law, section 2.12(L)

1129 (1977).¹⁴⁰ RAP 9.2(b) holds that the party seeking review has the burden of perfecting the record so that the appellate court has before it the evidence relevant to the issue.¹⁴¹ Ms. Franklin believes she's provided records is sufficient and asked that records of the engrafted case are reviewed as well. In *Fox v. Fox*, 49 Wn.2d 897, 898, 307 P.2d 1062 (1957) (stating that, on appeal, findings of a trial court made on conflicting evidence are not disturbed so long as they are supported by the record).

4. Estoppel Is Equitable, and Necessary Protection; Ms. Johnston's penned and voiced Ms. Franklin as Co-Parent of Alec Franklin Johnston and now tries to kill this bond.

The Washington Supreme Court held that collateral estoppel promotes the policy of ending disputes by preventing the relitigation of a determinative fact after the party's full and fair opportunity to present a case. *McDaniels v. Carlson*, 108 Wash.2d 299, 303 (1987). On her own volition, Ms. Johnston declared in oath, penned and voiced with representation of counsel in two trials she wanted to "co-parent" with Ms. Franklin, whereby, she envisioned joint custody, called Ms. Franklin parent. Facts irrefutable, equitably, should be examined under the framework and principles of estoppel. In CP 1157, the state's motion to continue the termination trial at Section C hits this principle on the "T" -

¹⁴⁰ Overruled on other grounds, *State v. Crutchfield*, 53 Wn. App. 916.

¹⁴¹ *State v. Jackson*, 36 Wn. App. 5 10, 5 16,676 P.2d 5 17, 102 Wn.2d 689,689 P.2d 76 (1984); RAP 9.2(b).

“it would be in the child’s best interest to have this court preside over the third-party matter and consider the evidence of the termination trial...so the third party custody trial is not a re-litigation of the termination trial.

5. The Novelty Arguments of Ms. Johnston’s 14th Amendment Rights Succumb in Face of Dependency, Ms. Franklin Had Statutory Remedy, and Rehashing Ms. Franklin Was Paid^{142 143} to Care For Alec are Mythical Renderings of the Laws and Facts.

a) Ms. Franklin is in a clear statutory chiasm; the parties’ relationship predated domestic partnership laws, gay marriage caput; theirs no conceivable way for “Mary” to be a “stepparent” as occurred *In re M.F., In Marriage of Allen, or In re Stell.*^{145 146} The child was never legally available for adoption; see RCW26.33. Under RCW 13.34.155,

142 WAC 388-25-0001-In addition to medical assistance and other services that may be provided to meet the specific needs of a foster child, the department provides licensed foster parents with monthly foster care maintenance. This payment is for the benefit of the child; the child’s welfare payment is pursuant to RCW 74.13.020.

143 It also known that the support payment lags 30 days behind the support period

144 WAC 388-148-0535 requires licensees’ have sufficient regular income, at least, an amount that meets current TANF standards for the number of persons in your home, to maintain their own family, without the foster care payments made for the children in care. RCW 74.15.020 (c) “Foster-family home” means an agency which regularly provides care on a twenty-four hour basis to one or more children...”

145 *In re Custody of Stell*, 56 Wash.App. 356, 365, 783 P.2d 615 (1989). the court reasoned that the legislature’s stated intent to “continue” the prior law and its reenactment of the language in former RCW 26.09.190 in RCW 26.10.100 indicated that it also intended to continue judicial interpretations of those sections. *Stell*, 56 Wash.App. at 365, 783 P.2d 615.

146 In *In re Marriage of Allen*, the Court of Appeals reasoned that the “best interests of the child” standard, according to which custody was to be determined under the former Washington custody statute, applied only to actions between parents. 28 Wash.App. 637, 645, 626 P.2d 16 (1981) (discussing former RCW 26.09.190 (1973)). Between a parent and a nonparent, a “more stringent balancing test” was required. *Allen*, 28 Wash.App. at 645, 626 P.2d 16. The court held that a nonparent may overcome a parent’s rights only by a showing of either parental unfitness or actual detriment to the child.

parties' must be in agreement for third party custody. *In re D.R.M.*, 109 Wash.App. 182, 34 P.3d 887 (2001) the non biological parent had not adopted the child; *In re L.B.*, Wash.2d 679, 122 P.3d 161 (2005). Third party custody cannot be confused with status of "parent;" it's a custodial arrangement with reversibility, albeit, difficult to accomplish; see RCW 26.10. Therein, Alec would call Ms. Franklin his "custodian" versus calling her "mom;" a cataclysmic distinction. In reminder, Ms. Franklin did the state's bidding setting the RCW 26.10 petition or she potentially risked their ire; the lower court appreciated the bind she was in. *In re L.B.* the Court concluded that a common law remedy is available when, in the absence of applicable statutes, the court is called upon to "administer justice according to the promptings of reason and common sense." *L.B.*, 155 Wash.2d at 689, 122 P.3d 161 (quoting *Bernot v. Morrison*, 81 Wash. 538, 544, 143 P. 104 (1914)). If doubts of *In re L.B.* applicability linger, then we simply turn to *Allen, L.B. Stell, In re M.F.* which lacked the crucial element we have here, of the parent wanting to co-parent, labeling the petitioner a parent, and telling the bench it was her plan for joint custody. Ms. Johnston did not refute FF 2.12(S) that it's in Alec's best interest to have Ms. Franklin adjudicated as his parent, nor the residential schedule spilt 50/50. Ms. Johnston "profiteered" her parental rights defending termination by establishing Ms. Franklin the other parent

knowing under RCW 26.10 victorious petitioners' a rarity, most likely a ploy to dupe the court, now seems backfired on her. Putting Ms. Franklin through the sieve of *In re. M.F., Allen, and Stell*, what comes out, by all witnesses, including Ms. Johnston, is a wonderful de facto mother named Mary Franklin, and permissible under *In re L.B. Alec Franklin Johnston*, her de facto son, who's flourished under her care.

b) Its idiocy to say liberty Rights Succumb in Dependency:

Inapposite, dependency is a public child - welfare program intended to protect children, help parents' alleviate problems, with emphasis to reunite families; not all dependencies lead to a child's removal.¹⁴⁷ DSHS must consult with the parents the welfare of their children; the parent can direct out of home placement, voluntary adoption, and third party designee according like any parent as it comports in the best interest of the child standard faced by all parents; see RCW 13.34.125. Pursuant to RCW 13.34.260, absent good cause, the state must follow the wishes of the natural parent concerning any "out-of-home placement". Anyone, including a parent may petition dependency on behalf of their child, even over DSHS objections; see RCW Chapter 13.34. RCW 13.34.155 (1) allows "the court to hear and determine issues related to chapter RCW

¹⁴⁷ RCW 13.34.130(1)(a) provides for disposition other than removal of the child. See the Washington State Juvenile Act.

26.10, but the parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. Our State Constitution, articles 1 and 3 accords greater 14th Amendment protections¹⁴⁸ by actually guarantying the right to counsel in dependency and parental right termination proceedings for under-funded parents.^{149 150}

c) **Foster Parents act as trustee of the child's support payment paid by the state.** A Dependency¹⁵¹ and for that matter RCW 26.10 custody does not deprive the parent their salient, underlying obligation of supporting their child;^{152 153} see RCW 74.20A.010, WAC 388-25-0215,¹⁵⁴ and WACs 388-14A-8100, -8105, -8110, -8120 (explaining duty of parent to provide support and how support is collected and used). DSHS is

¹⁴⁸ *Lassiter v. Department of Social Services*, 452 US 18, 37 (1981)], *Id*, made clear to terminate parental rights the state must "meet requisites of the Due Process Clause;" freedom of personal choice in matters of family life is a fundamental liberty interest protected by the 14th Amendment.

¹⁴⁹ RCW 13.34.090(2) guarantees right to counsel.

¹⁵⁰ JuCR 2.4(a); see RCW 14.34.090(2); *In re Grove*, 127 Wn.2d 221, 897, P.2d 1252 (1995)

¹⁵¹ RCW 26.10; the natural parent is obliged child support for children removed from their custody

¹⁵² Chapter 74.20A RCW and Chapter 388-14A WAC provide the authority and procedures for the division of child support to collect financial support from the parent to pay for a child in foster care..."

¹⁵³ WAC 388-14 A states (1) the division of child support (DCS) is the part of the department of social and health services that provides child support enforcement services for the state of Washington under Title IV-D of the federal Social Security Act. DCS acts as the Washington state support registry (WSSR) under chapter 26.23 RCW. WAC 388-14A-5000, WAC 388-14A-1025 provides (1) the division of child support (DCS) provides support enforcement services when: (a) the department of social and health services pays public assistance or provides foster care services.

¹⁵⁴ WAC 388-25-0125 states the "parents of children in foster care must provide financial support for their child in accordance with rules contained in chapter 388-14A WAC."

required by statute "to provide child welfare services and make support payments as needed; RCW 74.13.031(6). WAC 388-25-0210(2) is the regulation requiring the parent to reimburse DSHS for its' expenses.

Omitted in arguments are the complexities, training,¹⁵⁵ obligations, liabilities, and expenses endured by foster licensees' to obtain and maintain licensure;¹⁵⁶ their home is licensed, open to state invasion, seizure, inspection, and censure on even unsubstantiated or superficial complaints, and on duty 24/7. It's evident by Ms. Franklin's financial declaration she was actually supporting the child. Blood relative licensees' may choose to receive foster care payments if they opt not to receive TANF benefits on behalf of the child in their care, see RCW 74.15.030; regardless of becoming licensed aunts, grandmothers, uncles licensees remain grandmother, aunt, uncle; so true for Ms. Franklin, she was a "parent" before and after licensure.¹⁵⁷ Ms. Franklin's license took almost a year to get, and Alec's support status terminated October 2008,

¹⁵⁵ WAC 388 and other laws requires that all prospective foster parent and adoptive parents at private expense for eligibility complete orientation class, pre-training class called Foster Parent and Adoptive Parent Preparation Course (PRIDE) setting 40 hours or curriculum; after licensure, obtain thirty-six (36) hours or continuing education every three years. See *DSHS website*. Additionally outfit their home to DSHS standards, maintain burdensome paperwork, and undergo monthly inspection.

¹⁵⁶ The WAC 388-148 List of Articles demonstrates the body of work a foster licensee must engage in to qualify, maintain, and certify their home; support distribution lags thirty days from period covered.

¹⁵⁷ 388-148 WAC. The relative caring for the child in out-of-home placement may apply to be the representative payee for Supplemental Security Income.

Ms. Franklin either did not cash¹⁵⁸ the checks or applied them as appropriate to Alec's enrichment; there's never been any accusation she misappropriated funds for personal payment or gain.

6. Intransigence: MS. Johnston Best Avoid the Mirror!

You may award attorney fees and costs based on "intransigence" of a party if demonstrated by litigious behavior, bringing excessive motions, frivolous action, or discovery abuses. See *Gamache v. Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859(1965). If established, you need not consider the parties' resources; In re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). In re Marriage of Mattson, 95 Wn. App. 592, 606, 976 P.2d 157 (1999) (A party's intransigence in the trial court can also support an award of attorney fees on appeal.). Ms. Johnston has shifted her stories to suite her defense, falsified arguments in her cross-appeal; she's filed numerous motions in the lower court and U.S. Bankruptcy Courts attempting to gain child support yet attempts death of the parentage ruling on appeal, driving up huge costs in all courts. In the "mirror of intransigence" it's Ms. Johnston's reflection shinning through.

E. CONCLUSION

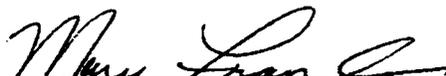
Facts show the parties' tried a life partnership, lived off Ms. Franklin's largess, and succumbed to the duress of Ms. Johnston's

¹⁵⁸ VR April 13, 2009, Closing Argument, Respondent's Counsel, line foster payments started around September 2006....Mary has not cashed the State checks."

transgressions. The leveraged threats of break up and ultimatums by Ms. Franklin cajoled Ms. Johnston into necessary life saving treatments; circumstances normal to most couples faced drugs and violence. Unforeseen was the court's condition Ms. Franklin become foster licensed and the dependency; the parties lived together and co-parented until Alec was a year old co-existent with dependency. Ms. Johnston has averred these facts.

The requisite *In re L.B.* is not a harmonious relationship just that parties intended a "familial" in nature relationship, the family lived together, the natural parent instilled the de facto parent, the de facto parent acted in everyway a parent without expectation of payment. Additionally, here, we have the natural parent averring Ms. Franklin Alec's parent with hopes of future co-parenting word that should matter in the court's analysis. Ms. Franklin has not acted duplicitously and she's done the best she can to adhere to the Rules of the Appellate Court; her brief has merits that deserve consideration asks forbearance under

Truthfully completed, Ms. Franklin's declaration incorporated within, dated on this day, October 7, 2010; City of Seattle in King County, State of Washington.


Mary F. Franklin, *pro se*, Appellant

Declaration of Service

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below Date I mailed or caused delivery of a true copy of the foregoing Appellant's Response Brief to:

1. **Court of Appeals – Division 1** By Facsimile/Seattle Legal Msg
Also, by U.S. Postal Service
Regular Mail Service
2 Copies

2. **Olympic Law Group** By U.S. Postal Service
1221 E. Pike St. Ste 205 Regular Mail
Seattle, WA. 98122 1 Copy
c/o Dennis McGlothlin

At the regular residence or office thereof, Date this Day October 8, 2010
In Seattle Washington, King County.


Mary F. Franklin

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 OCT 11 AM 9:21