NO. 287289-III

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

FILED

JUL 26 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

In Re the Matter of

SHAWN BEACH
Appellant

v.

RACHELL JOHNSTON
Respondent/Cross-Appellant

APPELLANT/CROSS-RESPONDENT REPLY BRIEF

Robin D. Andrews
Co-Counsel for Appellant
WSBA #25163

900 North Maple, Suite 200
Spokane, WA 99201
509.624.4922

NO. 287289-III

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION III

FILED

JUL 26 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

In Re the Matter of

SHAWN BEACH
Appellant

v.

RACHELL JOHNSTON
Respondent/Cross-Appellant

APPELLANT/CROSS-RESPONDENT REPLY BRIEF

Robin D. Andrews
Co-Counsel for Appellant
WSBA #25163

900 North Maple, Suite 200
Spokane, WA 99201
509.624.4922

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. STATEMENT OF THE CASE.....1

II. ARGUMENT 1

THE TRIAL COURT PROPERLY HELD
THAT MR. BEACH IS DE FACTO
FATHER OF ANGEL BEACH.....1

III. CONCLUSION.....4

TABLE OF AUTHORITIES

Washington Cases:

In Re Parentage of M.F., 81043-5 (WASC)(April 1, 2010).....1, 2, 3

In Re Parentage of L.B., 155 Wn.2d 679, 122 P.3d 161 (2005).....1, 2, 3, 4

***Washington Statutes*:**

RCW 26.10.100.....4

I. STATEMENT OF THE CASE

Facts stated in Mr. Beach's opening brief are sufficient to address the issues raised here.

II. ARGUMENT

THE TRIAL COURT PROPERLY HELD THAT MR. BEACH IS DE FACTO FATHER OF ANGEL BEACH.

Ms. Johnston's reliance on *In Re Parentage of M.F.*, 81043-5 (WASC)(April 1, 2010), is misplaced because Mr. Beach is not a third party invading the domain of two fit parents but is instead the only father that Angel Beach has ever known.

In *M.F.*, the court was asked to decide whether the common law de facto parentage doctrine, recognized in *In re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005), extends to a stepparent/stepchild relationship. The Court of Appeals declined to extend the doctrine to *M.F.*, and the Supreme Court affirmed that ruling, holding that "the de facto parentage doctrine does not apply *under the circumstances present in this case*." *In Re Parentage of M.F.,* 81043-5 (WASC)(April 1, 2010) (emphasis added). *M.F.* presented only one question of law--whether a

stepparent may acquire de facto parent status when the child has two fit parents. The Supreme Court noted in their decision that *M.F.* required them to "examine our holding in *In re Parentage of L.B.* and decide whether the doctrine of de facto parentage should extend *to the facts before us in this case.*" *Id.* (emphasis added). This short decision reference to "*the facts before us in this case*" several times.

In *M.F.,* Mr. Corbin entered the child's life as a third party stepparent to M.F.'s two existing parents. By the time Mr. Corbin came into the picture, M.F. had two *legal* parents with established roles in his life. Mr. Corbin nevertheless argued that recognition of his de facto parent status would not infringe on the parental rights of M.F.'s existing parents. In *L.B.*, the Supreme Court reasoned that no infringement occurs when there are "competing interests of *two parents*" who are both in "*equivalent parental positions.*" *L.B.,* 155 Wn.2d at 710 (emphasis added). In *M.F.*, however, the Supreme Court was faced with the competing interests of parents—with established parental rights and duties—and a stepparent, a third-party who has no parental rights.

In the current case, there are only the competing interests of two parents, Ms. Johnston and Mr. Beach, and realistically, both are in equivalent parental positions. As such, the facts of this case basically

mirror the facts in *L.B.* except that this court is dealing with a heterosexual couple. Mr. Beach is a parent to Angel Beach in every sense of the word. He is not a third party to two already existing parents, though certainly Angel Beach has an unrecognized and unacknowledged and uninvolved biological father. Indeed, the biological contribution is the only contribution that this man has made to Angel's life. Ms. Johnston chose Mr. Beach as the man who would be a real and true father to Angel, and the parties planned and raised her together as a unit, as mother and father, from shortly after Angel's conception until trial terminated Mr. Beach's rights to Angel.

M.F. notes that the de facto parent test we applied in *L.B.* cannot, in the stepparent context, be applied in a meaningful way because the elements are usually easily satisfied. The first element is that "the natural or legal parent consented to and fostered the parent-like relationship." *L.B.*, 155 Wn.2d at 708. In this case, Ms. Johnston took this element one step further when she allowed, and even encouraged, the father-daughter relationship between Mr. Beach and Angel to grow even after her relationship with Mr. Beach ended. The same holds true with the second factor, "the petitioner and the child lived together in the same household," and the third factor, that a partner assume the obligations of parenthood

without expectation of compensation—even after the parties separation Angel continued to reside at times with Mr. Beach and Mr. Beach continued to support her as needed. *L.B.*, 155 Wn.2d at 708. Mr. Beach has been Angel's father from the day of her birth forward and there is no other father present to compete with his interests.

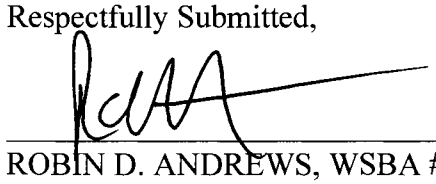
L.B. concluded that statutes do *not* prove the exclusive means of obtaining parental rights and responsibilities. *L.B.,* 155 Wn.2d at 707. As the dissent in *M.F.* notes, in the four years since *L.B.* was announced, the legislature has expressed no discontent with that holding. There is nothing in *L.B., M.F.,* or our state's statutory scheme that precludes a stepparent from filing a de facto petition. Moreover, *RCW 26.10.100*, requires that "[t]he court shall determine custody in accordance with the best interests of the child." Mr. Beach filed a de facto petition because he wanted parental status. It is the best interests of Angel Beach that the court recognize Mr. Beach as her father and put him in parity with her biological mother.

III. CONCLUSION

The trial court's ruling that Shawn Beach is a de facto parent to Angel Beach is proper. As such, he should stand in parity with Ms. Johnston, thus rendering this a custody matter between two parents.

DATED this 22nd day of July, 2010.

Respectfully Submitted,



ROBIN D. ANDREWS, WSBA #25163
Co-Counsel for Appellant

CERTIFICATE OF DELIVERY

I declare under penalty of perjury that on July 22, 2010, I served a copy of this Brief of Appellant on Co-Counsel, Matthew Dudley by courier service to his office located at 2824 E. 29th Avenue, Suite 1B Spokane, WA 99223; and Respondent 's counsel, Thomas N. Tremaine, Northwest Justice Project, by courier service to his office located at 1702 W. Broadway Avenue, Spokane, WA 99201.

Date: July 22, 2010

ROBIN D. ANDREWS
Co-Counsel for Appellant