

**FILED**

**DEC 20 2013**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By.....

NO. 317030-III

---

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

In Re the Parentage of J.B.R.

NATHANIAL A. YORK, Respondent/Petitioner

v.

LACEY SHOWS-RE, Appellant/Respondent Mother

and

JAMES A. CANDLER, Respondent Father.

---

BRIEF OF RESPONDENT

---

Scott D. Gallina  
WSBA No. 20423  
Attorney for Respondent  
Clark and Feeney  
The Train Station - Suite 102  
13<sup>th</sup> and Main Streets  
P.O. Box 285  
Lewiston, Idaho 83501  
(208) 743-9516

**TABLE OF CONTENTS**

PAGE

ISSUE ..... 1

    1.) Does Nathaniel A. York have standing to seek  
        De Facto Parent Status? ..... 1

A. COURSE OF PROCEEDINGS ..... 1

B. RELEVANT FACTS ..... 2

C. ARGUMENT ..... 3

    Nathaniel A. York Has Standing ..... 3

    Nathaniel A. York Has No Statutory Remedy ..... 7

    Fees Should Be Disallowed ..... 10

D. CONCLUSION ..... 10

**TABLE OF AUTHORITIES**

In re Parentage and Custody of A.F.J.,  
161 Wn.App. 803, 260 P.3d 889, (2011) . . . . . 9, 10, 11

In re Custody of B.M.H.,  
112713 WASC, 86895-6, Supreme Court of Washington  
(November 27, 2013) . . . . . 4, 6, 7

In re Custody of B.M.H.,  
267 P.3d 499, 165 Wn.App. 361 (Wash.App. Div. 2 2011) . . . . . 4, 6, 7

In re Parentage of L.B.,  
155 Wash.2d 679, 122 P.3d 161 (2005) . . . . . 3, 4, 5, 6, 7, 8, 9

In re Parentage of M.F.,  
168 Wash.2d 528, 532, 228 P.3d 1270 (2010) . . . . . 3, 4, 5, 7

## ISSUE

### 1.) **Does Nathaniel A. York have standing to seek De Facto Parent Status?**

#### A. COURSE OF PROCEEDINGS

- On May 25, 2012 Mr. York filed a Petition for Establishment of Parentage seeking to be declared the de facto parent of J.B.R., a female child he has parented since she was 2 years old. (C.P. 1)
- On February 7, 2013, the Guardian ad Litem filed a report with the court recommending a finding of de facto parent status and a split custody parenting plan. (C.P. 89)
- On April 1, 2013, Lacey Shows-Re, the child's biological mother, filed a Motion to Dismiss arguing that Mr. York could not establish standing as a de facto parent because his situation was analogous to that of a stepparent. (C.P. 97)
- On May 6, 2013, the court below entered an Order denying respondent mother's motion to dismiss. This interlocutory appeal was taken. (C.P. 114)

## B. RELEVANT FACTS

The relevant facts are set forth in the Guardian ad Litem's Report:

“Lacey and James Candler had Jada when they were in their late teens. They broke up when Jada was still an infant. Mr. Candler says that he tried to maintain a relationship with Jada after the break up. However, due to a combination of factors (which included Lacey's resistance to visitation) he did not pursue visitation. He quit trying to visit Jada when she was approximately two years old.

Nathan York was just out of high school when he and Lacey started dating; Jada was about 2 years old. They had Nataley during their 4 year relationship. During the time they were together, Nathan treated Jada as his child. Nathan did not force Jada to call him "daddy" however, she chose to do so. Apparently, Lacey didn't discourage the relationship. James Candler was not involved with Jada during the time Nathan and Lacey were together.

When Lacey and Nathan broke up, Nataley was an infant and Jada was about 6 years old. Nathan says he sought visitation with both girls, however, he claims that Lacey made it difficult and he gave up after awhile. His visits with Nataley and Jada were sporadic for about two years and then were more regular leading up to the filing of the current action. It appears that visitation was regular when Lacey and Nathan were getting along and then waned when they were in conflict.

During this time, he started dating and eventually married Kari Hooper. They have a 2 ½ year old girl and have been together for 7 years. Currently, Lacey lives with Brian Silleman and his teenage son. They have been together for about two years.”

(C.P. 91)

## C. ARGUMENT

### **Nathaniel A. York Has Standing**

As this Court is well aware, Washington's Supreme Court first recognized the de facto parentage doctrine in In re Parentage of L.B., 155 Wash.2d 679, 122 P.3d 161 (2005). There, the court examined whether a biological mother's former lesbian partner, who was neither biologically related to the child nor an adoptive parent of the child, had standing to petition for a determination of co-parentage of the child. L.B., 155 Wash.2d at 683-84, 688-89, 122 P.3d 161. Relying on its equitable powers and recognizing the common law status of a de facto parent, our Supreme Court determined that the former partner had standing to petition for a determination of co-parentage if she could establish that she had a de facto parent relationship with the child. L.B., 155 Wash.2d at 683, 122 P.3d 161. In so doing, the Court set out a five (5) part test, now familiar to this court and omitted here for brevity.

Subsequently, our Supreme Court held that the de facto parentage cause of action was unavailable in a particular stepparent-stepchild context. In re Parentage of M.F., 168 Wash.2d 528, 532, 228 P.3d 1270 (2010). Reading the case broadly, Ms. Shows-Re now wishes for this court to extend

that ruling to **all** stepparents and further by analogy to accord Mr. York "stepparent" status rather than legal parity as was done in L.B.

This approach has been soundly rejected. In In re Custody of B.M.H., 112713 WASC, 86895-6, Supreme Court of Washington, En Banc November 27, 2013, the court clarified that the M.F. court actually intended to announce a narrow rule limited only to similar stepparent situations, not a sweeping rule applicable to **all** stepparents and former stepparents. In so doing, the court noted:

“Side by side, this case and M.F. illustrate that there is no single formula for all stepparents. M.F.'s biological parents separated shortly after her birth and shared parenting rights and responsibilities under a parenting plan. We found that the specific factual scenario in that case was contemplated by the legislature and addressed in chapter 26.10 RCW and that applying the equitable remedy would "infringe[] upon the rights and duties of M.F.'s existing parents." M.F., 168 Wn.2d at 532. But arbitrary categorical distinctions based on a petitioner's status as a stepparent or former stepparent would preclude many legitimate parent-child relationships from being recognized.”

*Id* at (page cite unavailable).

Thus, the Court of Appeals in rendering its decision in B.M.H. below (In re Custody of B.M.H., 165 Wn.App. 361, 267 P.3d 499, (Wash.App. Div. 2 2011) **did** extend de facto status to a former stepparent. That court stated plainly:

"Thus, when the former stepfather entered the child's life, the respective parental roles of the two existing parents " were already established under our statutory scheme." M.F., 168 Wash.2d at 532, 228 P.3d 1270. Because the existing parents' roles were established " at the outset," the court observed that the statutory void that was present in L.B. was not present in the case before it. M.F., 168 Wash.2d at 532, 228 P.3d 1270. By focusing on the factual and legal distinctions between the case before it and L.B, we believe that the M.F. court intended to announce a narrow rule limited only to similar stepparent situations, not a sweeping rule applicable to all stepparents and former stepparents. Our narrow reading of M.F. leads us to conclude that M.F. precludes stepparents and former stepparents from acquiring de facto parent status only when the child has two existing, fit parents."

*Id* at 165 Wn.App. 375

And further:

"In sum, we hold that where, as here, a child has only one existing parent *when a former stepparent enters the child's life*, the former stepparent may assert a de facto parentage claim." (Emphasis added).

*Id* at 165 Wn.App. 380

Therefore, a former stepparent was found ineligible for de facto status only when the child had two existing, fit parents at the time the stepparent enters the child's life. In M.F., the child's biological parents had a parenting plan and shared residential time and obligations. While the child in the case sub judice had two parents existing on the planet at the time Mr. York entered

her life, only her biological mother was acting in the capacity of a “fit” parent providing for the needs of the child.

The B.M.H. Court correctly (we assert) looked at whether or not a void in the child’s parenting paradigm had been filled by a person fitting the L.B. criteria rather than adhering to a mechanical bright-line stepparent rule.

Clearly, if a child has two fit, biological or adoptive parents filling those roles at the time the third person enters the child’s life, there is no need or method available or necessary to displace either of them by a de facto parent. However, where as here, one of the biological parents has absented himself from the child’s life, leaving that void to be filled by another de facto parent - whether a family friend, romantic partner, cohabitant, or stepparent - that person must be allowed to be recognized in the position they have filled in that child’s life if they meet the L.B. criteria. There is no need to remove discretion from the judicial officers most familiar with the case and able to assess the existing facts and needs of the parties and children in any particular case. J.B.R. did not have two fit biological or adoptive parents providing for her. Mr. York entered her life and assumed that role and simply wishes to continue that undertaking for both of his daughters, N.A.Y and J.B.R.

### **Nathaniel A. York Has No Statutory Remedy**

Ms. Shows-Re has asserted that Mr. York can always file a non-parental custody case under the UPA, though she knows that, much like L.B., he cannot meet the statutory criteria as the parties resided together and J.B.R. still resides with her mother. Very significantly however, the Court of Appeals in rendering its decision in B.M.H. below (In re Custody of B.M.H., 165 Wn.App. 361, 267 P.3d 499, (Wash.App. Div. 2 2011)), later affirmed by our Supreme Court as noted above, stated:

“We recognize, however, that the M.F. court characterized a nonparent's ability to establish a "custodial relationship" through the nonparental custody statute as a potential remedy that may prevent the nonparent from acquiring de facto parent status:

'Though our statutory scheme does not permit a stepparent to petition for parental status, this does not equate to a lack of remedy. The legislature has provided a statutory remedy for a stepparent seeking a custodial relationship with a stepchild by enabling stepparents to petition for custody.'

M.F., 168 Wash.2d at 533, 228 P.3d 1270.

We do not read this language to mean that a nonparent's ability to file a petition under RCW 26.10.030(1) to seek custody of a child automatically precludes that nonparent from seeking and acquiring de facto parent status. Indeed, reading M.F. this broadly would seem to eliminate the de facto parent doctrine altogether because any "person other than a parent" may seek custody of the child under RCW 26.10.030(1).

Moreover, the M.F. court's analysis focused primarily on the fact that the child had two existing parents:

'Here, the [former stepfather] is a third party to the two already existing parents, which places him in a very different position than the [former partner] in L.B. These differences, *as well as the presence of a statutory remedy available to [the former stepfather]*, support our conclusion that the de facto parentage doctrine should not extend to the circumstances in this case.'

168 Wash.2d at 534, 228 P.3d 1270 (emphasis added).

The italicized language suggests that although the existence of the statutory remedy of nonparental custody may be a factor in determining whether the de facto parentage doctrine applies in a given case, it is not the determinative factor. Indeed, in L.B., the former partner's ability to file a nonparental custody petition did not prevent her from asserting a de facto parent claim." (Emphasis added).

*Id* at 165 Wash.App. 378.

As noted, Mr. Candler, J.B.R.'s biological father was wholly absent from her life for 10 years and provided no parenting to her whatsoever. It is laudable that Mr. Candler now wants to be involved in her life and he is, by all appearances, a fit person to be so involved. However, unlike a dependency, a finding of current fitness in no way affects the de facto analysis which instead focuses on the circumstances at the inception of the underlying relationship rather than present fitness of the parents.

The case which most adequately describes the application of the de facto equitable remedy as it fits within our State's philosophical framework

is In re Parentage and Custody of A.F.J., 161 Wn.App. 803, 260 P.3d 889, (2011). Therein, in according foster parents de facto status over the objection of the biological parent, the court stated:

"We can discern no reason to categorically exclude those individuals serving as foster parents from seeking de facto parent status. To the contrary, our decisions indicate that each determination of de facto parentage should be made based on the particular facts of each case, rather than by applying sweeping, categorical rules. As an equitable remedy, such a question is properly left to a case-specific inquiry." (Emphasis added)

*Id* at 161 Wn.App. 815

In the instant case, the mother's opposition to recognizing the de facto status that she helped create with Mr. York is unconscionable. She has chosen to ignore what is clearly in the best interest of J.B.R. and to oppose the relationship with Mr. York for opposition's sake alone.

In this case, as in A.J.F and L.B., Mr. York has no statutory remedy whereby he can attempt to have his relationship with a child whom he has raised since infancy legally recognized. As with Franklin, a third party custody action would not lie because mother is ostensibly fit and the child continues to reside with her. Mr. York, therefore, has no legal resort outside of a common law de facto parentage action to do what everyone knows is right for J.B.R.

### **Fees Should Be Disallowed**

Ms. Shows-Re is of sufficient means to retain private counsel and was ordered to pay one-half of the Guardian ad Litem's fee. Although the GAL stops short of declaring the appellant's actions to be taken in bad faith, a fair reading of the report as a whole gives that clear implication. Mr. York should not be penalized for asserting his rights in this matter nor should Ms. Shows-Re profit from her actions.

### **D. CONCLUSION**

The de facto doctrine's existence was recognized not to limit persons from seeking to establish parental status, but rather to address situations like the one presented in this case. Our courts have demonstrated a willingness to protect the relationships of children and their parents, while reserving the constitutional protections to biological parents who observe their rights and obligations toward their children however they came to be. The GAL's report sets forth the de facto factors and her findings in that regard. In closing, the A.F.J. court stated:

"Applying the de facto parentage doctrine to these unusual circumstances does not require us to extend the doctrine beyond its intended scope and does not open the floodgates of de facto parentage claims to those undeserving of such a classification. RCW 13.34.020 declares that " the family unit is a fundamental resource of American life which should be

nurtured." Our holding today is consistent with this public policy goal. Recognizing Franklin's relationship with A.F.J. as a de facto parent-child relationship nurtures the family unit that the parties intentionally formed. Franklin is one of A.F.J.'s mothers, and she should be recognized as such."

Id at Id at 161 Wn.App. 823, 824

Whether or not Mr. York is positioned to enjoy such favored status is a question to be answered by the trial court after a hearing on the merits. But it is clear that such a hearing should be allowed to take place in light of the alignment of the parties in this case. Mr. York should not be so easily removed from J.B.R.'s life by simply labeling him as a "de facto stepparent" and applying an exclusionary rule that has been determined not to exist in our State's jurisprudence.

DATED this 18<sup>th</sup> day of December, 2013.

Respectfully submitted,

By



Scott D. Gallina

WSBA No. 20423

Attorney for Respondent Nathaniel A. York