IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Parentage of M.F.	)	
	)	
	)	
JOHN CORBIN,	)	
	)	
Respondent,	)	No. 81043-5
	)	
v.	)	En Banc
	)	
PATRICIA REIMEN,	)	
	)	
Appellant.	)	Filed April 1, 2010
_____	)	

C. JOHNSON, J.—This case asks us 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 in this case. We affirm the Court of Appeals and hold that the de facto parentage doctrine does not apply under the circumstances present in this case.

FACTS

On December 15, 1993, M.F. was born to Patricia Reimen and Edward Frazier. Reimen and Frazier separated not long after M.F. was born, and their divorce was finalized in 1995. Their parenting plan granted primary residential custody to Reimen, and Frazier had alternating weekends and some holidays. Frazier has regularly met his child support obligations. Although Reimen and Frazier have not always followed the residential schedule set forth in the parenting plan, the plan has never been modified by a court. There have been no allegations that either Reimen or Frazier are "unfit" parents.

Soon after Reimen's and Frazier's separation, when M.F. was about 14 months old, Reimen and Corbin began dating. They married in 1995 and had two sons. Reimen and Corbin separated in 2000 and divorced in 2002. Their parenting plan granted custody of the two boys to Corbin about 45 percent of the time but the plan did not apply to M.F. However, M.F. usually accompanied the boys when they visited their father. Corbin later remarried a woman with two daughters of her own.

In this action, commenced almost three years after the dissolution of Reimen's and Corbin's marriage, Corbin moved to modify the parenting plan with Reimen, which governed their sons. From that point forward, M.F. stopped

accompanying her brothers to Corbin's house. Reimen and Corbin dispute why M.F. stopped seeing him.

In November 2005, we announced our recognition of the de facto parentage doctrine in *In re Parentage of L.B.* In March 2006, Corbin petitioned to be named M.F.'s de facto parent and sought residential time with her based primarily on *L.B.* Pursuant to CR 12(b)(6), Reimen moved to dismiss the petition. The trial court denied Reimen's motion and ruled that Corbin had presented a prima facie case. Reimen sought discretionary review with the Court of Appeals, which reversed. *In re Parentage of M.F.*, 141 Wn. App. 558, 561-62, 170 P.3d 601 (2007). We accepted review. 163 Wn.2d 1052, 187 P.3d 752 (2008). The American Civil Liberties Union of Washington and the Northwest Women's Law Center filed amicus briefs.

ANALYSIS

This case comes before us on a CR 12(b)(6) motion to dismiss presenting only a question of law, whether a stepparent may acquire de facto parent status when the child has two fit parents. We review this question de novo. *King v. Snohomish County*, 146 Wn.2d 420, 423-24, 47 P.3d 563 (2002).

This case requires us 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. In *L.B.*, the petitioner and respondent were involved in a long-term, committed same-sex relationship. They agreed to conceive a child with the intention of forming a family, and the petitioner gave birth. The parties shared parenting responsibilities for the child and held themselves out to the public as a family. Unlike most parents, however, the respondent, Carvin, had no legal parental status. After the relationship ended when L.B. was six years old, the petitioner terminated Carvin's contact with L.B., and Carvin then filed suit to establish her legal parental rights.

In our opinion, after discussing and analyzing various statutory provisions, we concluded that no statutory means existed by which the respondent could establish her parental status, and we found it necessary to fashion a common law remedy. We created this remedy to "fill the interstices that our current legislative enactment fails to cover in a manner consistent with our laws and stated legislative policy." *L.B.*, 155 Wn.2d at 707. We 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 Wn.2d at 689 (quoting *Bernot v. Morrison*, 81 Wash. 538, 544, 143 P. 104 (1914)). Taking into account the original intent and agreement of the parties and the lack of a statutory remedy, we fashioned a remedy to fulfill the

parties' agreement. But the factors prompting us to recognize a remedy in *L.B.* are not present in this case, as no statutory gaps exist to fill.

The legislature did envision the circumstances before us in this case. The statutory void confronting us in *L.B.* is absent here. As did the parties in *L.B.*, Reimen and Frazier chose to have children and form a family. But unlike in *L.B.*, Reimen's and Frazier's status as legal parents was established at the outset. In contrast, Corbin entered M.F.'s life as a stepparent, a third party to M.F.'s two existing parents. When Corbin entered her life, M.F.'s legal parents and their respective roles were already established under our statutory scheme. In the case before us, we perceive no statutory void and cannot apply an equitable remedy that infringes upon the rights and duties of M.F.'s existing parents.

Corbin argues that this court's recognition of his de facto parent status would not infringe on the parental rights of M.F.'s existing parents. In *L.B.*, we reasoned that no infringement occurs when there are "competing interests of *two parents*" who are both in "equivalent parental positions." 155 Wn.2d at 710. But in this case, we are faced with the competing interests of parents—with established parental rights and duties—and a stepparent, a third-party who has no parental rights.

An avenue already exists for a stepparent seeking a legal, custodial

relationship with a child. The legislature has created and refined a statutory scheme by which a stepparent may obtain custody of a stepchild. 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 Wn. 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 Wn. App. at 645. 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.

In 1987, the legislature approved of the result in *Allen* when it enacted a new set of statutes applicable specifically to third-party custody actions, chapter 26.10 RCW (Laws of 1987, ch. 460, § 25). The legislature expressed its intent to "continue the law relating to third-party actions involving custody of minor children. . . ." RCW 26.10.010. RCW 26.10.100, like former RCW 26.09.190, specified that "[t]he court shall determine custody in accordance with the best interests of the child." Following enactment of this new chapter, the Court of Appeals recognized the legislature's intent to continue the prior law in *In re Custody of Stell*, 56 Wn. App. 356, 365, 783 P.2d 615 (1989). In *Stell*, 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 Wn. App. at 365.

This court subsequently approved of the *Allen* standard as well, when we confirmed that under chapter 26.10 RCW, a third-party may be granted custody only by demonstrating that placement of the child with a fit parent will result in actual detriment to the child. *In re Custody of Shields*, 157 Wn.2d 126, 144, 136 P.3d 117 (2006). In *Shields*, as in *Allen*, the action was brought by a stepparent.

This intertwined judicial and statutory history illustrates the legislature's ongoing intent to create laws accommodating stepparents who seek custody on or following dissolution. 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.

Corbin argues that he has established a prima facie case that he is M.F.'s de facto parent. In *L.B.*, we set forth a multifactor test by which de facto parentage may be established.[1] As the Court of Appeals reasoned below, however, the correct

[1] In *L.B.*, we adopted the following criteria for a plaintiff to establish de facto parenthood:

> "(1) the natural or legal parent consented to and fostered the parent-like relationship, (2) the petitioner and the child lived together in the same household, (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, and (4)

starting point is not whether the de facto parent test has been met. The factors outlined in *L.B.* are relevant only if this court first decides that the de facto parentage doctrine applies to the circumstances presented in this case.

As noted above, we adopted the de facto parentage doctrine to correct a specific statutory shortcoming: the lack of remedy available to the respondent in *L.B.*, who was a "parent" in every way but legally. To fill this statutory gap, we created a common law method to establish parentage where, had the respondent been able to participate in traditional family formation, parentage would have or could have been established by statutory means. But here, the petitioner is a third-party to the two already existing parents, which places him in a very different position than the respondent in *L.B.* These differences, as well as the presence of a statutory remedy available to Corbin, support our conclusion that the de facto parentage doctrine should not extend to the circumstances in this case.

Moreover, the de facto parent test we applied in *L.B.* could not, in the stepparent context, be applied in a meaningful way. The elements of the test are ill-suited to determinations in the stepparent context because in most cases they will be

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> 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." 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."

L.B., 155 Wn.2d at 708 (citations omitted).

very easily satisfied. The first, for example, is that "the natural or legal parent consented to and fostered the parent-like relationship." *L.B.*, 155 Wn.2d at 708. We believe that in the vast majority of cases a parent will encourage his or her spouse, the stepparent, to act like a parent in relationship to the child. Similarly, the second factor will nearly always be met—that "the petitioner and the child lived together in the same household." *L.B.*, 155 Wn.2d at 708. The third element is that the petitioner assumed obligations of parenthood without expectation of compensation, and one only has to envision the stepparent attending school functions, helping the child get dressed in the morning, or engaging in the other numerous events that together make up family life with a child to see how easily this factor might be satisfied. The only variable in most cases, it would appear, is the length of time the stepparent has been in a parental role, and generally this would be merely a matter of how long the relationship with the parent endures—hardly a basis for deciding parental status.

CONCLUSION

Because no statutory void exists in this case, as it did in *L.B.*, we decline to extend the de facto parentage doctrine to the facts presented.[2] We thus affirm the

[2] Because we conclude that the de facto parentage doctrine does not apply here, we do not address Corbin's arguments concerning modification of the parenting plan between Reimen and Frazier.

Court of Appeals' decision.

AUTHOR:
Justice Charles W. Johnson

WE CONCUR:
Chief Justice Barbara A. Madsen

Justice Gerry L. Alexander

Justice James M. Johnson

Justice Richard B. Sanders

Justice Debra L. Stephens