

EXHIBIT 42

FILED
Court of Appeals
Division III
State of Washington
9/20/2018 3:39 PM

No. 35055-0-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION THREE

In re C.S., Child

WAYNE JANKE AND DORIS STRAND
Appellants

and

RONALD SIMON AND TERESA SIMON
Respondents

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

OPENING BRIEF OF APPELLANTS

PATRICIA NOVOTNY
NANCY ZARAGOZA
ZARAGOZA NOVOTNY PLLC
Attorneys for Appellants
3418 NE 65th Street, Suite A
Seattle, WA 98115
(206) 525-0711

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I. INTRODUCTION

This case involves a child, now nearly adult, who has grown up in two households – his parents, the Simons, and the household of Doris Strand and Wayne Janke, formerly friends of the Simons. Strand and Janke here appeal the trial court's order denying their petition for de facto parentage. However, C.S. is presently in their custody pursuant to an order granting their petition for nonparental custody, which the Simons have appealed (No. 35974-3-III).

The facts of C.S.'s upbringing are vigorously disputed and the procedural history of this case is long and complex. By contrast, this appeal raises one issue, an error of law. Specifically, when ruling on the petition for de facto parentage, the trial judge applied the incorrect standard of proof to the evidence – requiring clear and convincing evidence rather than proof by a preponderance. For this reason, Strand and Janke do not here engage in an analysis of the facts because it is first necessary for the court to evaluate them according to the correct legal standard. Accordingly, Strand and Janke ask this Court to remand the parentage action to the trial court for analysis under the correct legal standard.

II. ASSIGNMENT OF ERROR

The trial court abused its discretion by applying an incorrect legal standard, specifically, by requiring Strand and Janke to prove their de facto parentage petition by clear and convincing evidence, rather than by a preponderance, as our law provides.

Issues Pertaining to Assignments of Error

1. What is the correct standard of proof for the factors establishing de facto parentage, clear and convincing evidence or preponderance?
2. When a trial court applies the incorrect standard of proof, must the case be remanded for application of the correct standard?

III. STATEMENT OF THE CASE

After years of collaboration, the relationship between the Simons and Janke and Strand became strained, ending up in litigation concerning C.S. (DOB 09/24/2001). CP 635. After a trial on the de facto parent petition of Janke and Strand, the court denied the petition after reviewing whether the petitioners had proved the factors by “clear, cogent, and convincing evidence.” CP 644, 646, 647. The court compared the petitioners’ burden to “beyond a reasonable doubt . . . the highest burden possible because you’re taking away somebody’s liberty.” RP 1356. The court viewed the “clear, cogent, and convincing” standard as “pretty

close" to "beyond a reasonable doubt." RP 1357. See, also, RP 1375, 1378, 1379.

Janke and Strand timely appealed. CP 658-682. The appeal was continued and then stayed pending the unexpectedly long duration of the nonparental custody action, including another lengthy trial, which concluded finally with custody of C.S. being awarded to Doris Strand. (Wayne Janke had withdrawn from the litigation.) RP 1379 (court discussing the upcoming trial on the nonparental custody petition); CP 631-633 (Order on Adequate Cause). See No. 35974-3-III (Notice of Appeal, CP 974-988). The court found a "significant lack of parental ties between the child and the biological parents" and that the Simons caused "actual detriment to [C.S.]" by their conduct. Id.

C.S. will turn 17 next week.

IV. ARGUMENT

A. THE STANDARD OF REVIEW.

Whether the trial court applied the correct burden of proof and legal standard is a question of law this Court reviews *de novo*. *Home Builders Ass'n of Kitsap County v. City of Bainbridge Island*, 137 Wn. App. 338, 345, 153 P.3d 231 (2007). See, also, *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007) ("If the trial court's ruling is based on an erroneous view of the law or involves application of an

incorrect legal analysis it necessarily abuses its discretion”). Here, the trial court applied the incorrect standard of proof to the evidence before it.

B. THE STANDARD OF PROOF FOR DE FACTO PARENTAGE IS PREPONDERANCE OF THE EVIDENCE.

In Washington, a de facto parent petitioner must prove four (or five) factors. *In re Parentage of L.B.*, 155 Wn.2d 679, 684 n.2, 122 P.3d 161 (2005) (listing four factors and limiting the doctrine to adults who have “fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life”). In recognizing the de facto parent doctrine and in its subsequent decisions, the Supreme Court has never declared the standard of proof to be clear and convincing evidence. *See, e.g., Parentage of L.B., supra; In re Parentage of M.F.*, 168 Wn.2d 528, 228 P.3d (2010); *In re Custody of B.M.H.*, 179 Wn.2d 224, 236-239, 315 P.3d 470 (2013); *In re Custody of A.F.J.*, 179 Wn.2d 179, 183, 314 P.3d 373, 375 (2013).

This makes sense because a de facto parentage action is a parentage action, i.e., a dispute between parties in parity. It is not, like nonparental custody, a dispute between a parent and a nonparent, who are positioned differently with respect to their rights. In other parentage actions, proof is by a preponderance. *See State on Behalf of McMichael v. Fox*, 132 Wn.2d 346, 352, 937 P.2d 1075, 1078 (1997) (“proceedings brought under the UPA are civil actions governed by the rules of civil

procedure [citing RCW 26.26.120(1) and the] appropriate burden of proof is a preponderance of the evidence"). Therefore, it is unsurprising the Legislature's recent codification of the de facto parent doctrine specifies proof of the factors shall be by a preponderance. RCW 26.26A.440 (2)(c).¹

Yet, here, the trial court used a standard found in a Maine case, *Pitts v. Moore*, 90 A.3d 1169 (Maine 2014), as urged by the Simons. CP 644, 646, 647; RP 1325, 1355. This is a minority view among those states with similar equitable parentage doctrines; in fact, Maine's de facto parent doctrine bears more resemblance to Washington's nonparental custody action (e.g., Maine requires proof of harm to the child if de facto parent not recognized). In any case, it is not Washington's view.

C. THE REMEDY IS REMAND.

The court viewed the evidence presented through a lens distorted by a misapprehension of the petitioners' burden of proof. It required them to prove too much. The only remedy is for remand to the trial court for application of the correct standard.

V. CONCLUSION

For the foregoing reasons, Doris Strand and Wayne Janke respectfully asks this Court to vacate the order denying their de facto

¹ The law, passed in 2018, becomes effective January 1, 2019.

parentage petition and to remand for the court to analyze the evidence under the correct standard.

Respectfully submitted this 20th day of September 2018.

/s Patricia Novotny, WSBA #13604
/s Nancy Zaragoza, WSBA #23281
ZARAGOZA NOVOTNY PLLC
3418 NE 65th Street, Suite A
Seattle, WA 98115
Telephone: 206-525-0711
Fax: 206-525-4001
Email: patricia@novotnyappeals.com
nancy@novotnyappeals.com

ZARAGOZA NOVOTNY PLLC

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Transmittal Information

Filed with Court: Court of Appeals Division III
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Appellate Court Case Title: Wayne Janke, et al v. Ronald Simon, et al
Superior Court Case Number: 15-3-02130-1

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EXHIBIT 43

序号	姓名	性别	年龄	民族	文化程度	政治面貌	工作单位	现居住地	联系电话	身份证号码
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五、要领与善后 *Principles and Aftermath* 本章主要讨论：

DISPLAY DOCKET			SPOKANE SUPERIOR	06-10-30 10:06	11 OF 87
CASE#:			JUDGMENTS YES	JUDGE ID: 72	
TITLE: GRIEVE, WAYNE ETAL VS SIMON, RONALD ETAL					
NOTE1:					
NOTE2:					
CAUSE:	PFS PARENTING PLAN/CHILD SUPPORT		STATUS:	APP	DATE: 02/01/2017
CASE#	DATE	CODE	DESCRIPTION/NAME		SECONDARY
1	02 19 2016	TRMIN	JUDGE JULIE MCKAY TRIAL MINUTES		
2	02 19 2016	OR	JUDGE JULIE MCKAY ORDER RE: ATTENDANCE AT FUNERAL		
3	02 22 2016	MT	MOTION ENFORCEMENT OF ORDERS		
	02 22 2016	NTMTDK	NOTE FOR MOTION DOCKET 03-11-16 9:30AM JDG MCKAY		
	02 23 2016	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE DECLARATION OF GAL		
	02 26 2016	MTHRG	MOTION HEARING		
		JDG26	JUDGE JULIE MCKAY		
	02 26 2016	TRMIN	TRIAL MINUTES		
		JDG26	JUDGE JULIE MCKAY		
	02 29 2016	NT	NOTICE OF MEDIATION		

F1=Help Enter=Process F7=Bwd PgUp=Fwd PgDn=Cancel

2-19-2015 Motion Hearing was written
in error. It should have been 2-19-2016
as you can see from document 81 above.
the Scrivener's error will be corrected
7-10-20. Suzanne McBride

**Child Care
Free Child Care for your Child from
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第1回 読む力と書く力の発達 第2回 読む力と書く力の発達 第3回 読む力と書く力の発達

10:45:56 Monday August 2015

DISPLAY DOCKET		SPOKANE SUPERIOR		08-10-20	10:06	11 OF 87					
CASE#:		JUDGMENTS YES		JUDGE ID: 92							
TITLE:		JANKE, WAYNE ETAL VS SIMON, RONALD ETAL									
NOTE1:											
NOTE2:											
CAUSE PPS PARENTING PLAN/CHILD SUPPORT											
SUB#	DATE	CODE	DESCRIPTION/NAME	STATUS	APP	DATE : 02/01/2017					
		JDG26	JUDGE JULIE MCKAY			SECONDARY					
1	02 19 2016	TRMIN	TRIAL MINUTES								
		JDG26	JUDGE JULIE MCKAY								
2	02 19 2016	OR	ORDER RE: ATTENDANCE AT FUNERAL								
		JDG26	JUDGE JULIE MCKAY								
3	02 22 2016	MT	MOTION ENFORCEMENT OF ORDERS								
	02 22 2016	NTMTDR	NOTE FOR MOTION DOCKET								
	02 23 2016	CNRSE	01-11-16 9:30AM JDG MCKAY CONFIDENTL REPORT IN SEALED ENVELOPE								
	02 26 2016	MTHRG	DECLARATION OF GAL								
		JDG26	MOTION HEARING								
4	02 26 2016	TRMIN	JUDGE JULIE MCKAY								
		JDG26	TRIAL MINUTES								
5	02 26 2016	NT	JUDGE JULIE MCKAY								
			NOTICE OF MEDIATION								

fileHelp Enterprise Project 2003 SP1

2-19-2015 Motion Hearing was written
in error. It should have been 2-19-2016
as you can see from document 81 above.
The scrivener's error will be corrected
8-10-2016 Suzanne McBride

EXHIBIT 44

Disposition Events

08/13/2018 Judgment ▾

Judgment Type
Domestic

Monetary/Property Award

Creditors: WITHERSPOON KELLEY

Debtors: SIMON, RONALD, SIMON, TERESA

Signed Date: 08/10/2018

Filed Date: 08/13/2018

Effective Date: 08/10/2018

Current Judgment Status:

Status: Active

Status Date: 08/10/2018

Monetary Award:

Fee: Principal, Amount: \$0.00

Total: \$0.00

Comment: Judgments this case: 1 Signed by: JUDGE MARYANN MORENO 2018-08-13 JD JUDGMENT INTEREST @ 12% PER ANNUM 24,379.21

Events and Hearings

09/10/2015 Order ▾

Comment

1: ORDER RE: STATUS OF CASE; FROM 15500185-5; COMMISSIONER MICHELLE RESSA;

09/10/2015 Transcript ▾

Comment

2: TRANSCRIPT DOCS FROM 155001855; DOCS 1-40;

09/10/2015 Transcript ▾

Comment

3: TRANSCRIPT DOCS FROM 155001855; DOCS 41-57;

09/10/2015 Transcript ▾

Comment

4: TRANSCRIPT DOCS FROM 155001855; DOCS 58-87;

09/10/2015 Confidential Report in Sealed Envelope ▾

Comment

5: CONFIDNTL REPORT IN SEALED ENVELOPE; TRANSCRIPT CONF DOCS FROM 155001855;

09/11/2015 Order ▾

Comment

6: ORDER RE VISITATION; COMMISSIONER MICHELLE RESSA;

09/14/2015 Declaration Affidavit ▾

Comment

7: DECLARATION OF DORIS STRAND;

09/17/2015 Order ▾

Comment

8: ORDER WAIVING FILING FEE FOR; REASSIGNING CASE NUMBER; COMMISSIONER MICHELLE RESSA;

09/17/2015 Declaration Affidavit ▾

Comment

9: DECLARATION RONALD SIMON;

09/17/2015 Declaration Affidavit ▾

Comment

10: DECLARATION DORIS STRAND;

09/17/2015 Confidential Report in Sealed Envelope ▾

Comment

11: CONFIDNTL REPORT IN SEALED ENVELOPE; EMAILS - GAL & ATTY;

09/18/2015 Temporary Restraining Order ▾

Comment

12: TEMP RESTRAINING ORDER (AUTO); JUDGE SALVATORE F. COZZA;

09/18/2015 Notice of Assignment ▾

Comment

13: NOTICE OF ASSIGNMENT - JDG MORENO; JUDGE SALVATORE F. COZZA;

09/24/2015 Order of Continuance ▾

Comment

14: ORDER OF CONTINUANCE; 09-25-2015F1; PRO TEM COM MATTHEW FISCHER;

09/25/2015 F1 8:30 am - Family Law Hearing ▾

Hearing Time

8:00 AM

09/25/2015 Hearing Continued Unspecified ▾

Comment

-: HEARING CONTINUED: UNSPECIFIED; COMMISSIONER ANTHONY M. RUGEL;

09/30/2015 Order of Continuance ▾

Comment

15: ORDER OF CONTINUANCE; 10-02-2015F1; COMMISSIONER RACHELLE E ANDERSON;

10/02/2015 F1 8:30 am - Family Law Hearing ▾

Hearing Time

8:00 AM

10/02/2015 Motion Hearing ▾

Comment

-: MOTION HEARING; COMMISSIONER ANTHONY M. RUGEL;

10/02/2015 Report ▾

Comment

16: STATUS REPORT;

10/02/2015 Order on Contempt ▾

Comment

17: ORDER ON CONTEMPT; COMMISSIONER ANTHONY M. RUGEL;

10/02/2015 Trial Minutes ▾

Comment

18: TRIAL MINUTES;

EXHIBIT 45

SUPERIOR COURT COMMITTEE REPRESENTATION OUTSIDE THE ASSOCIATION
Current as of April 2019

	Group	Representative(s)	Term Expires	Term Length	Appointing Authority	Staff Support
1.	Annual Conference Planning Committee	Theresa Doyle John Cooney	9/30/2020 9/30/2019	2 years	SCJA President-Judge	Judith Anderson
2.	Becca Task Force	Barb McInvaille, Co-Chair	N/A	N/A	Becca Task Force	Gina Cumbo GCumbo@ccyj.org Michelle Williams MWilliams@ccyj.org
3.	<u>Bench-Bar-Press Committee</u>	Lesley Allan Judith Ramseyer David Kurtz VACANCY	N/A	Indefinite	SCJA Appointment; Elected by SCJA Membership per Bylaws	Wendy Ferrell
4.	Bench-Bar-Press Steering Committee	Judith Ramseyer	N/A	Indefinite	BBP Chair	Wendy Ferrell
5.	Bench-Bar-Press Liaison Subcommittee "Fire Brigade"	Judith Ramseyer	N/A	Indefinite	BBP Steering Committee	Wendy Ferrell
6.	Block Grant Oversight Committee	James Orlando	N/A	N/A	SCJA	Cory Redman, DSHS Office of Juv. Justice RedmaCA@dshs.wa.gov
7.	Board for Judicial Administration (BJA)	Judith Ramseyer Kitty-Ann van Doorninck Jim Rogers (King Co.) Gregory Gonzales (Dist. 2,3,4) David Kurtz (Pierce/Snoh) Doug Federspiel (Dist. 5,6)	6/30/2021 6/30/2020 6/30/2021 6/30/2021 6/30/2022 6/30/2022	2 years 2 years 4 years for district appointments	By election of SCJA members in their respective districts	Jeanne Englert
8.	<u>BJA</u> Budget and Funding Committee	Doug Federspiel	6/30/2022	End of BJA term	SCJA	Ramsey Radwan

3
2
5

	Group	Representative(s)	Term Expires	Term Length	Appointing Authority	Staff Support
18	Child Support Schedule Workgroup (Governor's Office)	Richard Okrent Comm. Tami Chavez	TBD	TBD	SCJA President	Nancy Koptur
19	Children, Youth, and Family Services Advisory Committee	Michelle Ressa	N/A	N/A	SCJA Board	Mardy Beck, DCFS 902-7743
20	Children's Justice Taskforce	Sally Olsen	1/31/2020	3 years	Children's Administration Assistant Secretary, upon SCJA Nomination	Cindy Bricker Thomasenia James, CA 902-7966, Box 45710 jamt300@dshs.wa.gov PO Box
21	Commercially Exploited Children Statewide Coordinating Committee (SB5308)	Melissa Hemstreet Sean O'Donnell Barbara Mack RETIRED	6/30/2023, (extended from 6/30/2016, and extended from 6/30/2015)	2 years, then extended 1 more year, then 7 more	SCJA Board	Joslyn Wallenborn 206-389-2761 joslynw@atg.wa.gov
22	<u>Commission on Children in Foster Care</u>	Kitty-Ann van Doorninck (while President)	4/30/2020	1 year	Supreme Court upon SCJA nomination (always SCJA President)	Cindy Bricker
23	<u>Commission on Judicial Conduct</u>	John Erlick Ruth Reukauf (Alternate)	6/16/2022 6/16/2022	4 years	RCW 2.64.020 & SCJA Election	Reiko Callner
24	Council on Public Legal Education	Carol Murphy	12/01/2020	3 years from date of appointment, 2 terms max	CPLE Board upon SCJA nomination.	Judge Marlin Appelwick @ COA and Margaret Fisher

	Group	Representative(s)	Term Expires	Term Length	Appointing Authority	Staff Support
25	Court Improvement Program	Michelle Ressa, co-chair Gretchen Leanderson, co-chair Anne Hirsch Barbara Mack RETIRED	4/30/2021 4/30/2021 4/30/2020 4/30/2020	3 years	Supreme Court upon nomination	Cindy Bricker
26	Criminal Justice Treatment Account (CJTA)	Stephen Brown Gary Bashor, Alternate	12/31/2021 12/31/2021	3 years	SCJA Board	Crissy Anderson Tony Walton tony.walton@hca.wa.gov 360-725-9992
27	Department of Retirement Systems (<u>DRS</u>) Advisory Committee	Julie Spector	6/30/2021	3 years	SCJA Board	Rubi Reaume, rubir@drs.wa.gov 360-664-7311
28	Department of Children, Youth, and Families (DCYF) Oversight Board	Frank Cuthbertson	6/30/2022	4 years		sydney.forrester@gov.wa.gov Patrick Dowd
29	<u>Ethics Advisory Committee</u>	Michael Price Michael Evans	10/31/2020 10/31/2019	2 years	Supreme Court upon SCJA/Committee recommendation	Shannon Hinchcliffe
30	Expedited Data Exchange JIS Systems Changes Governance	Indu Thomas VACANCY	Indefinite	End of Project	SCJA	Kim Bush (Kathy helps with committee membership)
31	<u>Gender and Justice Commission</u>	Michael Evans Eric Lucas	6/30/2019 6/30/2019	3 years (2 term limit)	Supreme Court upon Commission nomination per their bylaws	Kelley Amburgey-Richardson
32	Governor's Opioid Criminal Justice Workgroup	Christine Schaller	N/A	N/A	Governor	Ahney King kingam@dshs.wa.gov

	Group	Representative(s)	Term Expires	Term Length	Appointing Authority	Staff Support
33	<u>Interpreter Commission</u>	Theresa Doyle	9/30/2020 (2 nd term)	3 years (2 term limit)	Supreme Court upon Commission nom.	Robert Lichtenberg
34	Innovative Dependency Court Collaborative	Gretchen Leanderson Michelle Ressa	While FJLC Co-Chairs	N/A	SCJA Board	Cindy Bricker
35	Interstate Compact for Juveniles	David Keenan	9/30/2019	2 years	SCJA Board	Jeff Patnode 902-8406 PatnoJA@dshs.wa.gov
36	Judicial Assistance Services Program (JASP) Committee	Marilyn Haan Bruce Weiss Marybeth Dingledy, Chair Jackie Shea-Brown	6/30/2021 6/30/2021 6/30/2020 6/30/2020	2 years	SCJA Board	Judith Anderson
37	Judicial College	Joseph Burrowes – Dean Emeritus Indu Thomas – Dean Veronica Alicea-Galván – Assistant Dean	2/2020 2/2021 2/2022	3 years (1 year in each position)	Judicial College Trustees upon Dean nomination	Pam Dittman
38	Judicial Information System Committee (JISC)	Jeanette Dalton David Svaren	7/31/2020 7/31/2020	3 years	Supreme Court upon nomination	Vonnie Diseth
39	JIS Data Dissemination Committee	Jeanette Dalton David Svaren	7/31/2020 7/31/2020	3 years—same as term on JISC	See JISC appointment (2 superior court judge JISC members serve on this committee)	Jan Nutting
40	JIS "SCLUG"	David Svaren	10/31/2020	2 years	SCJA	Vicky Cullinane
41	JIS SC-CMS Court User Workgroup (CUWG)	Bruce Spanner Christine Schaller (alternate)	N/A	N/A	SCJA	Dexter Mejia & Marcea Basham
42	JIS SC-CMS Superior Court – Court Level User Group	Gretchen Leanderson (member representing FJLC specifically)	N/A	N/A	SCJA	Curtis Dunn

EXHIBIT 46

SB 6037 - 2017-18

Concerning the uniform parentage act.

Sponsors: Pedersen, Walsh, Takko, Fain, Rivers, Billig, Ranker, Cleveland, Kuderer, Van De Wege, Hobbs, Llias, Palumbo, Frockt, Hasegawa, Mullet, Hunt, Saldaña, Rolfes, Dhingra, Carlyle, Darneille, Chase, Conway, Nelson, Wellman, McCoy, Keiser

By Request: Uniform Law Commission

Bill History

2018 REGULAR SESSION

- Dec 20 Prefiled for introduction.
- Jan 8 First reading, referred to Law & Justice.
- Jan 16 Public hearing in the Senate Committee on Law & Justice at 10:00 AM.
- Jan 25 Executive action taken in the Senate Committee on Law & Justice at 10:00 AM.
LAW - Majority; 1st substitute bill be substituted, do pass.
Minority; do not pass.
Minority; without recommendation.
- Jan 26 Passed to Rules Committee for second reading.
- Feb 2 Placed on second reading by Rules Committee.
- Feb 7 **1st substitute bill substituted (LAW 18).**
Floor amendment(s) adopted.
Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 27; nays, 21; absent, 0; excused, 1.

IN THE HOUSE

- Feb 9 First reading, referred to Judiciary (Not Officially read and referred until adoption of Introduction report).
- Feb 21 Public hearing in the House Committee on Judiciary at 8:00 AM.
- Feb 22 Executive action taken in the House Committee on Judiciary at 12:30 PM.
JUDI - Majority; do pass.
Minority; do not pass.
- Feb 23 Referred to Rules 2 Review.
- Feb 26 Rules Committee relieved of further consideration. Placed on second reading.
- Feb 27 Rules suspended. Placed on Third Reading.
Third reading, passed; yeas, 50; nays, 47; absent, 0; excused, 1.

IN THE SENATE

- Feb 28 President signed.

IN THE HOUSE

- Feb 28 Speaker signed.

OTHER THAN LEGISLATIVE ACTION

Feb 28 Delivered to Governor.
Mar 6 Governor signed.
Chapter 6, 2018 Laws.
Effective date 1/1/2019.

1 (b) After the child becomes an adult, but only if the child
2 initiates the proceeding.

3 (2) A presumption of parentage under section 204 of this act
4 cannot be overcome after the child attains four years of age unless
5 the court determines:

6 (a) The presumed parent is not a genetic parent, never resided
7 with the child, and never held out the child as the presumed parent's
8 child; or

9 (b) The child has more than one presumed parent.

10 (3) Except as otherwise provided in section 514 of this act, the
11 following rules apply in a proceeding to adjudicate a presumed
12 parent's parentage of a child if the woman who gave birth to the
13 child is the only other individual with a claim to parentage of the
14 child:

15 (a) If no party to the proceeding challenges the presumed
16 parent's parentage of the child, the court shall adjudicate the
17 presumed parent to be a parent of the child.

18 (b) If the presumed parent is identified under section 406 of
19 this act as a genetic parent of the child and that identification is
20 not successfully challenged under section 406 of this act, the court
shall adjudicate the presumed parent to be a parent of the child.

22 (c) If the presumed parent is not identified under section 406 of
23 this act as a genetic parent of the child and the presumed parent or
24 the woman who gave birth to the child challenges the presumed
25 parent's parentage of the child, the court shall adjudicate the
26 parentage of the child in the best interest of the child based on the
27 factors under section 513 (1) and (2) of this act.

28 (4) Except as otherwise provided in section 514 of this act and
29 subject to other limitations in sections 501 through 523 of this act,
30 if in a proceeding to adjudicate a presumed parent's parentage of a
31 child, another individual in addition to the woman who gave birth to
32 the child asserts a claim to parentage of the child, the court shall
33 adjudicate parentage under section 513 of this act.

34 NEW SECTION. Sec. 509. ADJUDICATING CLAIM OF DE FACTO PARENTAGE
35 OF CHILD. (1) A proceeding to establish parentage of a child under
36 this section may be commenced only by an individual who:

37 (a) Is alive when the proceeding is commenced; and
38 (b) Claims to be a de facto parent of the child.

1 (2) An individual who claims to be a de facto parent of a child
2 must commence a proceeding to establish parentage of a child under
3 this section:

- 4 (a) Before the child attains eighteen years of age; and
5 (b) While the child is alive.

6 (3) The following rules govern standing of an individual who
7 claims to be a de facto parent of a child to maintain a proceeding
8 under this section:

9 (a) The individual must file an initial verified pleading
10 alleging specific facts that support the claim to parentage of the
11 child asserted under this section. The verified pleading must be
12 served on all parents and legal guardians of the child and any other
13 party to the proceeding.

14 (b) An adverse party, parent, or legal guardian may file a
15 pleading in response to the pleading filed under (a) of this
16 subsection. A responsive pleading must be verified and must be served
17 on parties to the proceeding.

18 (c) Unless the court finds a hearing is necessary to determine
19 disputed facts material to the issue of standing, the court shall
20 determine, based on the pleadings under (a) and (b) of this
21 subsection, whether the individual has alleged facts sufficient to
22 satisfy by a preponderance of the evidence the requirements of
23 subsection (4)(a) through (g) of this section. If the court holds a
24 hearing under this subsection, the hearing must be held on an
25 expedited basis.

26 (4) In a proceeding to adjudicate parentage of an individual who
27 claims to be a de facto parent of the child, the court shall
28 adjudicate the individual who claims to be a de facto parent to be a
29 parent of the child if the individual demonstrates by a preponderance
30 of the evidence that:

- 31 (a) The individual resided with the child as a regular member of
32 the child's household for a significant period;
33 (b) The individual engaged in consistent caretaking of the child;
34 (c) The individual undertook full and permanent responsibilities
35 of a parent of the child without expectation of financial
36 compensation;
37 (d) The individual held out the child as the individual's child;
38 (e) The individual established a bonded and dependent
39 relationship with the child which is parental in nature;

1 NEW SECTION. **Sec. 512.** ADJUDICATING PARENTAGE OF CHILD OF

2 ASSISTED REPRODUCTION. (1) An individual who is a parent under
3 sections 601 through 608 of this act or the woman who gave birth to
4 the child may bring a proceeding to adjudicate parentage. If the
5 court determines the individual is a parent under sections 601
6 through 608 of this act, the court shall adjudicate the individual to
7 be a parent of the child.

8 (2) In a proceeding to adjudicate an individual's parentage of a
9 child, if another individual other than the woman who gave birth to
10 the child is a parent under sections 601 through 608 of this act, the
11 court shall adjudicate the individual's parentage of the child under
12 section 513 of this act.

13 NEW SECTION. **Sec. 513.** ADJUDICATING COMPETING CLAIMS OF

14 PARENTAGE. (1) Except as otherwise provided in section 514 of this
15 act, in a proceeding to adjudicate competing claims of, or challenges
16 under section 508(3), 510, or 511 of this act to, parentage of a
17 child by two or more individuals, the court shall adjudicate
18 parentage in the best interest of the child, based on:

19 (a) The age of the child;

20 (b) The length of time during which each individual assumed the
21 role of parent of the child;

22 (c) The nature of the relationship between the child and each
23 individual;

24 (d) The harm to the child if the relationship between the child
25 and each individual is not recognized;

26 (e) The basis for each individual's claim to parentage of the
27 child; and

28 (f) Other equitable factors arising from the disruption of the
29 relationship between the child and each individual or the likelihood
30 of other harm to the child.

31 (2) If an individual challenges parentage based on the results of
32 genetic testing, in addition to the factors listed in subsection (1)
33 of this section, the court shall consider:

34 (a) The facts surrounding the discovery the individual might not
35 be a genetic parent of the child; and

36 (b) The length of time between the time that the individual was
37 placed on notice that the individual might not be a genetic parent
38 and the commencement of the proceeding.

1 (3) The court may adjudicate a child to have more than two
2 parents under this chapter if the court finds that failure to
3 recognize more than two parents would be detrimental to the child. A
4 finding of detriment to the child does not require a finding of
5 unfitness of any parent or individual seeking an adjudication of
6 parentage. In determining detriment to the child, the court shall
7 consider all relevant factors, including the harm if the child is
8 removed from a stable placement with an individual who has fulfilled
9 the child's physical needs and psychological needs for care and
10 affection and has assumed the role for a substantial period.

11 NEW SECTION. **Sec. 514.** PRECLUDING ESTABLISHMENT OF PARENTAGE BY
12 PERPETRATOR OF SEXUAL ASSAULT. (1) For the purposes of this section,
13 "sexual assault" means nonconsensual sexual penetration that results
14 in pregnancy.

15 (2) In a proceeding in which a parent alleges that a person
16 committed a sexual assault that resulted in the parent becoming
17 pregnant and subsequently giving birth to a child, the parent may
18 seek to preclude the person from establishing or maintaining the
19 person's parentage of the child. A parent who alleges that a child
20 was born as a result of sexual assault may also seek additional
21 relief as described in this section.

22 (3) This section does not apply if:

23 (a) The person described in subsection (2) of this section has
24 previously been adjudicated in a proceeding brought under section 501
25 of this act to be a parent of the child, except as may be
26 specifically permitted under subsection (4) of this section.

27 (4) Unless section 309 or 507 of this act applies, a parent must
28 file a pleading making an allegation under subsection (2) of this
29 section not later than four years after the birth of the child,
30 except that for a period of one year after the effective date of this
31 section, a court may waive the time bar in cases in which a presumed,
32 acknowledged, or adjudicated parent was found in a criminal or
33 separate civil proceeding to have committed a sexual assault against
34 the parent alleging that the child was born as a result of the sexual
35 assault.

36 (5) If a parent makes an allegation under subsection (2) of this
37 section and subsection (3) of this section does not apply, the court
38 must conduct a fact-finding hearing on the allegation.

EXHIBIT 47

JUSTIA**Laws & Legal Resources.**

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In Re Parentage of LB

122 P.3d 161 (2005)

155 Wash. 2d 679

In re the Matter of the PARENTAGE OF L.B. Sue Ellen ("Mian") CARVIN, Respondent, v.
Page Britain, Petitioner.

No. 75626-1.

Supreme Court of Washington, En Banc.

Argued February 15, 2005.

Decided November 3, 2005.

*¹⁶³ Mr. Brian Haig Krikorian, Ms. Erica Krikorian, Seattle, for Petitioner/Appellant.

Ms. Patricia S. Novotny, Attorney at Law, Ms. Janet Marie Helson, Skellenger Bender, Ms. Nancy Lynn Sapiro, Northwest Women's Law Center, Seattle, for Appellee/Respondent.

Lorraine Alicia Rimson, Seattle, for Amicus Curiae, Amara Parenting and Adoption Services, Children of Lesbians & Gays, Wash. State Court Appointed Special.

H. Michael Fields, Seattle, for Amicus Curiae American Academy of Matrimonial Lawyers.

Aaron Hugh Caplan, Seattle, Leslie Cooper, New York City, for Amicus Curiae American Civil Liberties Union of Wash., Lesbian & Gay Rights Project of the ACLU.

Katherine Hunt Federle, Angela Lloyd, Columbus, OH, for Amicus Curiae Justice for Children Project.

Lisa Kay Barton, O'Brien Law Firm PLLP, Issaquah, for Amicus Curiae Justice for Children Project.

Jamie D. Pedersen, Laura Kristine Clinton, Kristin Johanna Borass, Preston Gates & Ellis LLP, Seattle, Shannon Minter, Courtney Joslin, National Center for Lesbian Rights, San Francisco, CA, Jennifer C. Pizer, Lambda Legal Defense & Education Fund, Los Angeles, CA, for Amicus Curiae National Center for Lesbian Rights & Children of Lesbians & Gays.

Matthew Jolly, Bellevue, for Guardian ad Litem Matthew Jolly.

BRIDGE, J.

¶ 1 In 1989, after dating for several months, Page Britain and Sue Ellen ("Mian") Carvin began living together as intimates. Five years later, they decided to add a child to their relationship and together artificially inseminated Britain with semen donated by a male friend. On May 10, 1995, Britain gave birth to a baby girl, L.B., and the partners began actively coparenting her, both taking a committed, active, and loving role in her nurturing and upbringing. Then, when L.B. was six years old, Britain and Carvin ended their relationship and an acrimonious spate of litigation over access to L.B. ensued.

¶ 2 We must now determine whether Sue Ellen Carvin, who is neither a biological nor adoptive parent, has standing under Washington law to petition our courts for a determination of coparentage with regard to L.B. We conclude that she does. We are also asked to decide, in the alternative, whether Carvin has standing to assert rights to visitation with L.B. under Washington statute. We conclude that she does not.

¶ 3 The equitable power of the courts to adjudicate relationships between children and families is well recognized, and our legislature has evinced no intent to preclude the application of an equitable remedy in circumstances such as these. Accordingly, we now hold, as did the Court of Appeals, that Washington's common law recognizes the status of

EXHIBIT 48

UNIFORM PARENTAGE ACT (2017)

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 22, 2017

ABOUT ULC

The Uniform Law Commission (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 126th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

UNIFORM PARENTAGE ACT (2017)

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

JAMIE PEDERSEN, Washington State Senate, 235 John A. Cherberg Bldg., P.O. Box 40643, Olympia, WA 98504-0643, *Chair*

MELISSA HORTMAN, Minnesota House of Representatives, State Office Building, Room 237, 100 Dr. Rev. MLK Jr. Blvd., St. Paul, MN 55155, *Vice Chair*

MARY M. ACKERLY, 782 Bantam Rd., P.O. Box 815, Bantam, CT 06750-0815

BARBARA A. ATWOOD, University of Arizona, James E. Rogers College of Law, 1201 E. Speedway Blvd., P.O. Box 210176, Tucson, AZ 85721-0176

LESLEY E. COHEN, 2657 Windmill Pkwy., #415, Henderson, NV 89074-3384

BART M. DAVIS, 2638 Bellin Cir., Idaho Falls, ID 83402

GAIL HAGERTY, Burleigh County Court House, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013

KAY P. KINDRED, University of Nevada Las Vegas, William S. Boyd School of Law, 4505 S. Maryland Pkwy., Box 451003, Las Vegas, NV 89154-1003

DEBRA LEHRMANN, Supreme Court of Texas, Supreme Court Bldg., 201 W. 14th St., Room 104, Austin, TX 78701

CLAIRE LEVY, 789 Sherman St., Suite 300, Denver, CO 80203-3531

DAVID C. McBRIDE, 1000 King St., P.O. Box 391, Wilmington, DE 19899

HARRY TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081

COURTNEY G. JOSLIN, University of California Davis School of Law, 400 Mrak Hall Dr., Davis, CA 95616-5203, *Reporter*

AMERICAN BAR ASSOCIATION ADVISORS

STEVEN H. SNYDER, 11270 86th Ave. N., Maple Grove, MN 55369-4510, *ABA Advisor*

MARY L. FELLOWS, P.O. Box 730, Grand Marais, MN 55406, *ABA Section Advisor*

EX OFFICIO

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EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

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to the child is the only other individual with a claim to parentage of the child:

(1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child.

(2) If the presumed parent is identified under Section 506 as a genetic parent of the child and that identification is not successfully challenged under Section 506, the court shall adjudicate the presumed parent to be a parent of the child.

(3) If the presumed parent is not identified under Section 506 as a genetic parent of the child and the presumed parent or the woman who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under Section 613(a) and (b).

(d) Except as otherwise provided in Section 614 and subject to other limitations in this [part], if in a proceeding to adjudicate a presumed parent's parentage of a child, another individual in addition to the woman who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under Section 613.

Comment

This substance of this section is largely carried over from UPA (2002). This section, however, consolidates into a single provision concepts that were previously included in several provisions of Article 6 of UPA (2002).

Subsection (a) is based on UPA (2002) § 607(a). Subsection (b) is based on UPA (2002) § 607(b)(1) and (2). Subsections (c) and (d) are based on UPA (2002) § 608.

SECTION 609. ADJUDICATING CLAIM OF DE FACTO PARENTAGE OF CHILD.

(a) A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

(1) is alive when the proceeding is commenced; and

(2) claims to be a de facto parent of the child.

(b) An individual who claims to be a de facto parent of a child must commence a proceeding to establish parentage of a child under this section:

- (1) before the child attains 18 years of age; and
- (2) while the child is alive.

(c) The following rules govern standing of an individual who claims to be a de facto parent of a child to maintain a proceeding under this section:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage of the child asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent, or legal guardian may file a pleading in response to the pleading filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of paragraphs (1) through (7) of subsection (d).

If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.

(d) In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear-and-convincing evidence that:

- (1) the individual resided with the child as a regular member of the child's

household for a significant period;

- (2) the individual engaged in consistent caretaking of the child;
- (3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- (4) the individual held out the child as the individual's child;
- (5) the individual established a bonded and dependent relationship with the child which is parental in nature;
- (6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual and the child is in the best interest of the child.

(e) Subject to other limitations in this [part], if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under Section 613.

Comment

This section adds a new means by which an individual can establish a parent-child relationship. This section is modeled on provisions that were recently enacted in Delaware and Maine, two states that adopted UPA (2002), and it reflects trends in state family law.

In most states, if an individual can establish that he or she has developed a strong parent-child relationship with the consent and encouragement of a legal parent, the individual is entitled to some parental rights and possibly some parental responsibilities. Some states extend rights to such persons under equitable principles. See, e.g., *Bethany v. Jones*, 378 S.W.3d 731 (Ark. 2011) (*in loco parentis*); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010) (in equity); *Boseman v. Harrell*, 704 S.E.2d 494 (N.C. 2010) (in equity); *McAllister v. McAllister*, 779 N.W.2d 652 (N.D. 2010) (psychological parent); *Marquez v. Caudill*, 656 S.E.2d 737 (S.C. 2008) (psychological parent); In re *Clifford K.*, 619 S.E.2d 138 (W. Va. 2005) (psychological parent).

Other states extend rights to such individuals through broad third party custody and visitation statutes. *See, e.g.*, Minn. Stat. § 257C.01-08; Tex. Fam. Code § 102.003(9).

In addition, by statute and through case law, several states recognize such persons as legal parents. *See, e.g.*, *Elisa B. v. Superior Court*, 117 P.3d 660 (Cal. 2005) (under the holding out provision of UPA (1973)); *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005) (under Washington state constitution); *In re S.N.V.*, 2011 WL 6425562 (Colo. App. 2011) (under the holding out provision of UPA (1973)); Del. Code Ann., tit. 13, § 8-201(c) (by express statutory provision); *Frazier v. Goudschaal*, 295 P.3d 542 (Kan. 2013) (under a provision based on UPA (1973)); *Partanen v. Gallagher*, 59 N.E.3d 1133 (Mass. 2016) (under a provision based on the holding out provision of UPA (1973)); Me. Rev. Stat. tit. 19-a, § 1891 (by express statutory provision); *Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014) (under the holding out provision of UPA (1973)); *Chatterjee v. King*, 280 P.3d 283 (N.M. 2012) (under the holding out provision of UPA (1973)).

To provide greater clarity to the parties and affected child, UPA (2017) addresses this issue through an express statutory provision. Under this new section, an individual who has functioned as a child's parent for a significant period such that the individual formed a bonded and dependent parent-child relationship may be recognized as a legal parent. This provision ensures that individuals who form strong parent-child bonds with children with the consent and encouragement of the child's legal parent are not excluded from a determination of parentage simply because they entered the child's life sometime after the child's birth. Consistent with the case law and the existing statutory provisions in other states, this section does not include a specific time length requirement. Instead, whether the period is significant is left to the determination of the court, based on the circumstances of the case. The length of time required will vary depending on the age of the child.

At the same time, however, the scope of this section is limited in several ways. First, this section includes a heightened standing requirement that must be satisfied by the individual claiming to be a de facto parent. This requirement is included to ensure that permitting proceedings by de facto parents does not subject parents to unwarranted and unjustified litigation. At the standing stage, under Section 609(c)(3), the requirements may be proved by only a preponderance of the evidence.

Second, the section sets forth a series of substantive requirements that must be satisfied before a court can adjudicate such an individual to be a parent. Some of these substantive requirements—the individual reside with the child for a significant period of time and the individual formed a bonded and dependent relationship with the child which is parental in nature—are based on factors developed under common law doctrine that is utilized in many states. *See, e.g.*, *In re Parentage of L.B.*, 122 P.3d 161, 176 (Wash. 2005), cert. denied, 547 U.S. 1143 (2006); *V.C. v. J.M.B.*, 748 A.2d 539, 551 (N.J.), cert. denied, 531 U.S. 926 (2000); *Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995). Accordingly, a court may look to those common law decisions for guidance.

Third, this section permits only the individual alleging himself or herself to be a de facto parent to initiate a proceeding under this section. This limitation was added to address concerns

that stepparents might be held responsible for child support under this theory of parentage. Finally, this section requires the proceeding to establish de facto parentage be commenced before the death of the child and the death of the individual alleged to be a de facto parent, and before the child attains 18 years of age. These safeguards protect against unwarranted and unjustified litigation.

This section is not intended to preclude legal actions based on other legal theories. *See, e.g., DeHart v. DeHart*, 986 N.E.2d 85 (Ill. 2013) (recognizing a cause of action for equitable adoption and contract for adoption in an action contesting the validity of a will).

SECTION 610. ADJUDICATING PARENTAGE OF CHILD WITH ACKNOWLEDGED PARENT.

(a) If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage, brought by a signatory to the acknowledgment or denial, is governed by Sections 309 and 310.

(b) If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under Section 602 and was not a signatory to the acknowledgment or denial:

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment.

(2) The court may permit the proceeding only if the court finds permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under Section 613.

Comment

Source: UPA (2002) § 609.

This section is based on UPA (2002) § 609. Section 609 of UPA (2002) addressed challenges both to adjudicated parents and to acknowledged parents. UPA (2017) separates these

Section 611, addressing challenges to adjudicated parents.

Subsection (a) clarifies that if the individual received notice of the action under Section 603, a proceeding to challenge the adjudication by the individual is governed by the rules governing collateral attacks on judgments.

As was true under UPA (2002), subsection (b) imposes a two-year limitations period on challenges to an adjudication of parentage of a child by an individual who was not a party to and did not receive notice of the prior proceeding. Other sections of the act likewise utilize a two-year limitations period. *See, e.g.*, Section 307; Section 608. As was true under UPA (2002), a challenge brought within this limitations period is subject to considerations related to the best interest of the child.

SECTION 612. ADJUDICATING PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.

(a) An individual who is a parent under [Article] 7 or the woman who gave birth to the child may bring a proceeding to adjudicate parentage. If the court determines the individual is a parent under [Article] 7, the court shall adjudicate the individual to be a parent of the child.

(b) In a proceeding to adjudicate an individual's parentage of a child, if another individual other than the woman who gave birth to the child is a parent under [Article] 7, the court shall adjudicate the individual's parentage of the child under Section 613.

Comment

This new section specifically authorizes the filing of a proceeding to adjudicate the parentage of individuals who are intended parents under Article 7. The rules regarding adjudications of parentage for individuals who are parents under Article 8 are set forth in Article 8.

SECTION 613. ADJUDICATING COMPETING CLAIMS OF PARENTAGE.

(a) Except as otherwise provided in Section 614, in a proceeding to adjudicate competing claims of, or challenges under Section 608(c), 610, or 611 to, parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

(2) the length of time during which each individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and each individual;

(4) the harm to the child if the relationship between the child and each individual is not recognized;

(5) the basis for each individual's claim to parentage of the child; and

(6) other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

(1) the facts surrounding the discovery the individual might not be a genetic parent of the child; and

(2) the length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

Alternative A

(c) The court may not adjudicate a child to have more than two parents under this [act].

Alternative B

(c) The court may adjudicate a child to have more than two parents under this [act] if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child's physical needs and psychological

needs for care and affection and has assumed the role for a substantial period.

End of Alternatives

Legislative Note: A state should enact Alternative A if the state does not wish a child to have more than two parents. A state should enact Alternative B if the state wishes to authorize a court in certain circumstances to establish more than two parents for a child.

Comment

UPA (1973) contained a provision addressing situations in which multiple individuals have a claim to parentage of a child. Section 4(b) of UPA (1973) provided guidance in such situations, although the guidance was vague. UPA (1973) § 4(b) ("If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.").

UPA (2002) eliminated that provision and did not expressly address how a court should resolve cases involving competing presumptions or claims of parentage. UPA (2002) did, however, include a provision that implicitly acknowledged the possibility of multiple claimants. UPA (2002), § 608 authorized a court to deny a request for genetic testing in cases in which a party sought to challenge a presumption of parentage. The section provided a list of factors that a court was directed to consider in such cases. The reality is, however, that whether or not the court orders genetic testing, the parties often know what the results of that genetic tests would reveal. In that way, the section concealed the purpose of the provision, which was to provide guidance to a court faced with competing claims of parentage between an alleged genetic parent and a presumed parent.

UPA (2017) addresses how to resolve cases between competing claimants directly. While UPA (2017) frames the issue differently, this section is consistent with the basic approach of UPA (2002) § 608. Thus, the factors included in this section are largely carried over from UPA (2002) § 608.

This section also expressly addresses another issue that UPA (2002) did not: whether a court may conclude that a child has more than two parents under the act. This is a question with which courts have increasingly been confronted.

The act provides two alternatives. Alternative A provides that a child cannot have more than two legal parents. Alternative B permits a court, in rare circumstances, to find that a child has more than two legal parents.

Alternative B is consistent with an emerging trend permitting courts to recognize more than two people as a child's parents. Four states expressly permit a court to find that a child has more than two legal parents by statute. *See* Cal. Fam. Code 7612(c); Del. Code Ann. tit. 13, § 8-201(a)(4), (b)(6), (c); D.C. Code § 16-909(e); Me. Rev. Stat. tit. 19-a, § 1853(2). In addition, courts in several other states have reached that conclusion as a matter of common law. *See, e.g., Warren v. Richard*, 296 So.3d 813, 815 (La. 1974). In addition, courts in some states have

concluded that a child had two legal parents and one equitable parent who was entitled to at least some rights and duties of a parent. *See, e.g., In Interest of P.S.*, 505 S.W.3d 106 (Tex. Ct. App. 2016) (3-way custody and visitation arrangement); *A.B. v. T.V.*, 2015 WL 7571451 (Pa. Super. Ct. 2015); *In re Parentage of J.B.R. Child*, 336 P.3d 648, 653 (Wash. App. Ct. 2014) (“The fact that [the child] has two living biological parents does not prohibit [the child’s stepparent] from petitioning for de facto parentage.”); *McAllister v. McAllister*, 779 N.W.2d 652 (N.D. 2010).

Again, Alternative B recognizes and reflects this trend in favor of recognizing the possibility that a child may have more than two legal parents. Alternative B, however, stakes out a narrow, limited approach to the issue by erecting a high substantive hurdle before the court can reach this conclusion: a court can determine that a child has more than two legal parents only when failure to do so would cause detriment to the child.

SECTION 614. PRECLUDING ESTABLISHMENT OF PARENTAGE BY PERPETRATOR OF SEXUAL ASSAULT.

- (a) In this section, “sexual assault” means [cite to this state’s criminal rape statutes].
- (b) In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man from establishing that he is a parent of the child.
 - (c) This section does not apply if:
 - (1) the man described in subsection (b) has previously been adjudicated to be a parent of the child; or
 - (2) after the birth of the child, the man established a bonded and dependent relationship with the child which is parental in nature.
 - (d) Unless Section 309 or 607 applies, a woman must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child. The woman may file the pleading only in a proceeding to establish parentage under this [act].
 - (e) An allegation under subsection (b) may be proved by:
 - (1) evidence that the man was convicted of a sexual assault, or a comparable crime in another jurisdiction, against the woman and the child was born not later than 300 days

EXHIBIT 49

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8 Superior Court of Washington
9 County of Spokane

10 In re:

11 Christopher Simon,
12 Child,

No. 15-3-02130-1

13 Wayne Janke & Doris Strand,

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER RE: DE FACTO
PARENTING

14 vs
15 Petitioners,
16 Teresa Simon & Ronald Simon,
17 Respondents.

NO MANDATORY FORM

18 I. BASIS

19 This matter having been tried to the Court commencing Monday, October 17, 2016 and concluding
20 Thursday, October 27, 2016, the Court having heard testimony from Wayne Janke, Doris Strand,
21 Kimberly Kamel, Maureen Weisbeck, Rose Hone, Teresa Simon, Ronald Simon, Jayn Courchaine, and
22 Sheila Thorne, the Court having reviewed the exhibits admitted during the trial, the Joint Trial Manage-
23 ment Report of the parties, the Report of the Guardian ad Litem, the Memoranda of the parties and having
24 heard and considered the motions in limine and arguments of counsel, and being otherwise fully informed
in the premises hereby enters the following:

25 Findings And Conclusions And Order - Page 1 of 14
Re: De Facto Parentage

The Law Office of D.C. Cronin
Dennis C. Cronin, Attorney at Law, P.S.
724 N. Monroe Street
Spokane, WA 99201
Phone: 509-328-5600 Fax: 509-328-5646

349

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II. FINDINGS OF FACT

2

A. PROCEDURAL FACTS

3 01.) Christopher Simon was born on 09-24-2001

4 02.) Teresa Simon and Ronald Simon are the parents of Christopher Simon.
1 biological

5 03.) On March 19, 2015 Christopher Simon filed a CHINS petition in the Spokane County Superior Court
6 Juvenile Division.

7 04.) On March 30, 2015 an assessment was filed by DSHS case worker Sheila Thorne MSW.

8 05.) On April 01, 2015, Christopher Simon dismissed the CHINS Petition. *was dismissed*

9 06.) On March 31, 2015, Wayne Janke and Doris Strand filed a petition for a declaration of de facto
10 parentage and a motion for entry of ex parte orders ~~supported by an untrue declaration from Doris Strand,~~
11 ~~an untrue declaration from Wayne Janke and other documents.~~

12 07.) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon
13 suffers from years of untreated bipolar and schizophrenia. *which was untrue*

14 08.) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon
15 uses illegal drugs.

16 09.) Among other untrue statements, the March 31, 2015 declaration of Doris Strand indicated Christo-
17 pher had lived in her home his entire life until a few weeks ago.

18 10.) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon
19 used drugs daily.

20 11.) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon
21 and Ron Simon have long term stability issues, drug and alcohol issues, and mental health issues.

22 12.) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated he and Doris
23 Strand had Christopher in their home since he was one week old.

24 13.) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated Christopher's

1 parents, Teresa and Ronald Simon, never cared.

2 14.) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated Christopher's
3 biological parents never seemed to care about him or want him around.

4 15.) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated the Janke
5 Strand home has always been Christopher's home not the other one.

6 16.) On March 31, 2015, an ex-parte order was issued placing Christopher with Doris Strand and Wayne
7 Janke and restraining Teresa Simon and Ronald Simon from any contact with Christopher Simon. Prior to
8 securing the order Doris Strand and Wayne Janke failed to secure leave to proceed from Juvenile Court.

9 17.) On April 01, 2015, an order was entered dismissing the CHINS proceeding.

10 18.) On April 03, 2015, the ex parte order of March 31, 2015 was reissued after a hearing to quash and a
11 guardian ad litem was ordered to be immediately appointed pursuant to In Re: L.B., 155 Wn. 2d 692.

12 19.) On April 15, 2015, Teresa Simon and Ronald Simon filed their response to the petition denying the
allegations and requesting the petition be dismissed and Christopher Simon returned to their custody

14 20.) On April 24, 2015, an agreed order was entered without prejudice and without drawing any conclu-
15 sions maintaining Christopher in the care of Doris Strand and Wayne Janke based upon an initial contact
16 from the guardian ad litem prior to her formal appointment.

17 21.) The April 24, 2015 order was specifically reviewable upon completion of a mental health evaluation
18 of Christopher ordered by the Court the provider to be agreed upon by the parties and the guardian ad
19 litem.

20 22.) On April 27, 2015, the guardian ad litem was formerly appointed.

21 23.) On September 11, 2015 an order was entered regarding visitation for Ronald Simon

22 24.) On November 17, 2015, new counsel appeared for Teresa Simon and Ronald Simon.

23 25.) On January 06, 2016, new counsel substituted for Ronald Simon.

24 26.) On January 11, 2016, the guardian ad litem filed her first "partial" report which did not address de

facto parenting or adequate cause.

2 27.) On February 12, 2016, the Court entered an order that the determination of the existence or non
3 existence of a de facto parenting relationship should be determined as a threshold matter in a testimonial
4 proceeding with examination and cross examination of witnesses and presentation of exhibits, if any and
5 that the de facto issue would be tried first.

6 28.) On February 12, 2016 the guardian ad litem was ordered to address the de facto parenting factors in
7 her report of investigation.

8 29.) The Court also determined the guardian ad litem was not an expert for purposes of determining de
9 facto status or investigation.

10 30.) On February 12, 2016 trial was continued to May 16, 2016.

11 31.) On May 23, 2016, the guardian ad litem requested instruction on ongoing duties.

12 32.) On June 17, 2016, the Court ordered that the guardian ad litem's obligations for investigation were
13 complete.

14 33.) On _____, the guardian ad litem filed her second report addressing de facto parenting.

15 34.) On October 10, 2016, Ronald Simon filed a motion in limine regarding scope of trial issues and
16 presentation.

17 35.) On October 17, 2016, trial commenced and the motion in limine was granted.

B. TRIAL PRESENTATION

19 36.) Ronald Simon and Teresa Simon claim Christopher resided with them primarily although Mr. and
20 Mrs. Simon acknowledge Christopher spent considerable time with Wayne Janke and Doris Strand.

21 37.) Ronald Simon and Teresa Simon deny ever giving consent to Wayne Janke and/or Doris Strand to be
22 a parent for Christopher or the establishment of a parent child relationship between Christopher and
23 Wayne Janke and/or Doris Strand.

24 38.) Ronald Simon and Teresa Simon claim Christopher did not really live with Wayne Janke and Doris

Strand but did visit on lots of weekends, and overnights, and went hunting with Wayne Janke and went
2 camping with Wayne Janke and Doris Strand.

3 39.) Ronald Simon and Teresa Simon indicated Wayne Janke and Doris Strand did not assume financial
4 responsibility for Christopher but did pay for lots of stuff.

5 40.) Ronald Simon and Teresa Simon do not agree that Wayne Janke and Doris Strand played any sort of
6 parental role but don't deny Christopher has a bonded relationship with Wayne Janke and Doris Strand.

7 41.) Wayne Janke and Doris Strand testified Christopher lived with them all of his life from about one
8 week after birth and that they provided all essentials, school supplies, extra-curricular activities.

9 42.) Wayne Janke and Doris Strand indicate Christopher referred to them as "Mom" and "Dad." And the
10 school records indicate they were the first contact and many people believed they were Christopher's
11 parents. *Christopher refers to Janke/Strand as mom + dad*

12 43.) Christopher Simon is a good student, he's very active in sports, very engaged, he's a good kid, he's a
13 good boy and he knows what's going on.

14 44.) Mr. Simon and Ms. Strand originally had a relationship as friends when they worked together at
15 Albertsons.

16 45.) Eventually Mr. Janke became friends and Mr. Simon married Teresa Simon.

17 46.) The relationship between Doris Strand, Ronald Simon Teresa Simon and Wayne Janke was very,
18 very, close.

19 47.) It is unclear when Christopher began spending time at the Janke/Strand residence. It started very
20 minimally and then expanded *over time*

21 48.) Originally there were other care providers for Christopher and Ms. Strand was paid for care giving.

22 49.) Christopher's caregivers changed over the years.

23 50.) The first overnight between Christopher and Doris Strand was in Idaho on Mother's day.

24 51.) Doris Strand asked for permission from Ronald Simon and Teresa Simon for the overnight visit.

52.) Wayne Janke and Doris Strand were very physically active people with Christopher which was great
2 for a young boy.

3 53.) Teresa Simon and Ronald Simon believed Christopher should have these experiences as a young
4 child. It was all good.

5 54.) In 2013, 2014, 2015 Christopher was frequently going back and forth a lot between the Simon home
6 and the Strand/Janke residence, so much so, that the four adults devised a schedule similar to a visitation

7 schedule referenced by a text message to change the schedule from Christopher to Ronald Simon and a
8 De Janke /Strande had a board for scheduling at the Janke/Strand residence. Changes to schedule were also
9 by text message.

55.) Wayne Janke and Doris Strand and Mr. and Mrs. Simon each took trips with Christopher.

56.) For years there was no hesitation by Teresa Simon or Ron Simon to authorize such trips between
11 Christopher and Wayne Janke.

57.) In 2012-2013 there was a trip to Disneyland and then the booking of a trip to the Bahamas without
13 consent.

58.) There was a discussion between Ronald Simon and Teresa Simon and Doris Strand and Wayne Janke
15 "you know you need to let me know you want to do this first or let me give permission. I need to give
16 permission."

59.) Wayne Janke and Doris Strand requested permission for the trips from Ronald Simon and Teresa
18 Simon after the trips were arranged which began an over stepping of boundaries by Wayne Janke and
19 Doris Strand.

60.) The over stepping of boundaries escalated with the fateful booking of the Hawaii trip without
21 permission from Teresa Simon or Ronald Simon that really caused all of this to escalate.

61.) It is a given that Wayne Janke and Doris Strand enjoyed considerable time with Christopher and that
23 Christopher was provided for on a daily basis.

62.) Teresa Simon was forthcoming in her testimony that a routine was established with schooling and

2 Doris Strand as a babysitter with Doris Strand often picking Christopher up after school as did Ms.
3 Simon.

4 63.) Teresa Simon testified about trips and holidays together and a desire to expose Christopher to what
5 could be given to him and thus allowed the activities with Wayne Janke and Doris Strand because she
6 thought the activities would be good for Christopher and Teresa Simon and Ron Simon liked to see
7 Christopher involved in those things. They also celebrated holidays and the Simon household

8 64.) According to Teresa Simon, Wayne Janke and Doris Strand began to over step their boundaries but
9 they didn't say much because they were good friends.

10 65.) According to the testimony, Wayne Janke and Doris Strand were able to buy Christopher and
11 alienating him from them and Teresa and Ronald Simon continued to feed him, clothe him and shelter
12 him and pay his expenses.

13 66.) Throughout Christopher's life, Mr. and Mrs. Simon continued to buy Christopher clothes and gifts, to
14 feed him, to pay expenses for him, to pay for dental care, and to pay for orthodontic care.

15 67.) Teresa Simon was forthcoming she is diagnosed with bipolar disorder that is managed and that there
16 was no difficulty she may have had.

17 68.) Teresa Simon was forthcoming that in her distant past she had a problem with drugs which she over-
18 came. There's no evidence to the contrary.

19 69.) Ronald Simon *agrees that* testified to Ms. Strand and Mr. Janke spending considerable time with Christopher.

20 70.) Ronald Simon confirmed that Doris Strand would babysit off and on but not as much time as Ms.
21 Strand claimed.

22 71.) Ronald Simon worked three nights a week with Albertson's until he retired and attended to his rental
23 homes in the day. He had eight or ten homes and he remodeled them.

24 72.) Ronald Simon also attended all parent teacher conferences for Christopher.

25 73.) Ronald Simon engaged in the pick up and drop off of Christopher to school and functions and

1 activities.

2 74.) Ronald Simon and Teresa Simon never walked away, never stopped parenting, and continued to
3 support Christopher, continued to pay his health care needs and, as the many, many, photographs
4 illustrate, were actively involved in Christopher's life.

5 75.) The Court is aware of the guardian ad litem's interviews of persons who thought Christopher's
6 parents were Wayne Janke and Doris Strand.

7 76.) The testimony and report of the guardian ad litem were not helpful.

8 77.) Wayne Janke and Doris Strand continued to ask Ronald Simon and Teresa Simon for permission to
9 do things with Christopher until 2012 when Wayne Janke and Doris Strand began overstepping their
10 boundaries.

11 78.) Ronald Simon and Teresa Simon allowed the activities because of Christopher's close association
12 with Wayne Janke and Doris Strand.

13 79.) The Court is also aware the initial allegations about Ronald Simon and Teresa Simon by Doris Strand
14 and Wayne Janke ~~were untrue~~. *haven't been proved inaccurate.*

15 80.) The initial untrue declarations were used to form a large part of the Commissioners issuing restraining
16 orders and allowing Christopher to reside with Wayne Janke and Doris Strand.

17 81.) There was some level of coaching of Christopher in attempting to alienate him from his parents.

18 82.) Ms. Hone testified she was the mother of Christopher's best friend.

19 83.) Ms. Hone was also Christopher's third grade teacher.

20 84.) Ms. Hone always believed Ms. Strand was Christopher's mother

21 85.) They had contact over the years regularly.

22 86.) Since the Christopher and her son were best friends they did a lot of things together and her son
23 would stay over at the Ms. Strand's and Mr. Janke's home.

24 87.) On one occasion, Ms. Hone's son did spend an overnight at the Simon's

- 88.) Ms. Hone is the teacher who has a sign in sheet that Ms. Strand signed as Christopher's mother.
- 2 89.) Ms. Weisbeck is the administrator of Bowdish Middle School.
- 3 90.) Ms. Weisbeck first had contact with Christopher concerning a bullying issue at school.
- 4 91.) Ms. Weisbeck's sole contact was with Ms. Strand who she thought was Christopher's mother until it
5 came to light the Simons were Christopher's biological parents.
- 6 92.) Ronald Simon told Ms. Weisbeck Christopher lived with Wayne Janke and Doris Strand and Wayne
7 Janke and Doris Strand were the primary contact.
- 8 93.) Jayn Courchaine has been involved with Mr. and Mrs. Simon since 1988.
- 9 94.) Ms. Courchaine was involved in the Simon's life right after Christopher was born.
- 10 95.) Ms. Courchaine would be over at the Simon home about once or twice a week during 2001 and 2003.
- 11 96.) According to Ms. Courchaine's observations, Christopher spent at least one half his time with Mr.
12 and Mrs. Simon.
- 13 97.) She was out of Spokane for several years until 2009 but returned.
14 She would go to the Simons home and Chris would be there at least half the time
- 15 98.) According to Ms. Courchaine's observations the relationships between Christopher and Ronald
16 Simon as very good.
- 17 99.) Ms. Courchaine loaned Teresa Simon money for Ms. Strand of about \$5,000.
- 18 100.) In the CHINS petition filed by Christopher in March of 2015 stated "my real parents have stepped
19 in when I turned 13." He also stated "Wayne and Doris have raised and taken care of me since I was one
20 week old."
- 21 101.) Sheila Thorne works with the Department of Social and Health Services Children's Administration
22 as a CHINS family assessor and is an MSW.
- 23 102.) Ms. Thorne has done a lot of these cases and has talked with lots of people.
- 24 103.) Ms. Thorne is pretty well trained in sizing up situations.

104.) Ms. Thorne testified Christopher was coached with his CHINS petition and statements therein.

2 105.) Ms. Thorne indicated Mrs. Simon was very appropriate in her reaction to the CHINS and wanted
3 her son to be heard.

4 106.) Ms. Thorne wrote in her assessment Teresa Simon stated "we planned to raise the child mutually,
5 but they aren't giving me my time."

6 107.) The school records indicate the Janke/Strand address but the telephone number is for Mr. and Mrs.
7 Simon until fifth grade when the number is Ms. Strands.

8 108.) The school records indicate in the 5th grade the parental guardian is switched and flipped back to
9 Ms. Strand and Mr. Janke then in 7th grade back to the Simons.

10 109.) The school district for Christopher's school is not Mr. and Mrs. Simon's neighborhood.

11 110.) The school district for Christopher's school is the Strand/Janke neighborhood.

12 111.) Everyone desired for Christopher was to attend school at Ponderosa which is in the Strand/Janke
13 school district.

14 112.) It made sense Mr. and Mrs. Simon would say Christopher resided at the Janke/Strand address within
15 the school district in order to allow Christopher to continue to attend those schools.

16 113.) As time went on Mr. and Mrs. Simon stopped paying Ms. Strand for childcare.

17 114.) Ms. Strand and Wayne Janke paid for many things for Christopher but Wayne Janke and Doris
18 Strand did not pay for health care, did not pay for out of pocket medical, and did not pay Christopher's
19 dental costs.

20 115.) Ronald Simon and Teresa Simon testified to lots of receipts for expenses they paid on behalf of
21 Christopher but there was no similar documentation from Wayne Janke or Doris Strand corroborating
22 their alleged claims of expenses paid for Christopher.

23 116.) For 2012, 2013, and 2014 Wayne Janke claimed Christopher Simon on his federal income tax return
24 as an exemption. He received a refund in 2014 and lower taxes as a consequence.

117.) It is reasonable to infer there was an agreement between Mr. and Mrs. Simon and Wayne Janke to
2 reimburse Wayne Janke and Doris Strand for expenses paid for Christopher.

3 It is reasonable to infer that the 5,000 loan, gifts, and gift cards given to Ms. Strand by Ronald and
4 Teresa Simon was to reimburse Ms. Strand for expenses for Christopher.

5 118.) It is reasonable to infer that payment of Doris Strand's surgery by Ronald Simon and Teresa Simon
6 was to reimburse Ms. Strand for expenses for Christopher.

7 119.) It is reasonable to infer the financial assistance and labor assistance from Ronald Simon to fix Mr.
8 Janke's home was to reimburse Mr. Janke for expenses for Christopher.

9 120.) Ronald Simon and Teresa Simon are not wealthy people.

10 121.) Ronald Simon and Teresa Simon are fit parents.

11 122.) Wayne Janke and Doris Strand are not credible.

12 123.) Additional facts are set forth in the transcript of the Court's oral decision and incorporated herein.

13 The Court having entered the above findings of fact now hereby enters the following:

14 III. CONCLUSIONS OF LAW

15 01.) The Court has reviewed all of the published case law in Washington concerning de facto parenting
16 and there is not a published case in Washington with a similar fact pattern as presented in the case at bar.

17 02.) The de facto parent doctrine is an equitable doctrine which looks to the equities of a situation. If a de
18 facto parenting relationship is established the de facto parent stands in legal parity with the biological
19 parent. Deference is given to the parents of the child and those parental rights have the protection of the
20 state. Consequently, Petitioners must make a threshold showing that the natural parents consented to and
21 fostered the parent child relationship.

22 03.) The burden of proving a de facto parent status is upon the petitioners. They have the rowing oar. If a
23 person is deemed a de facto parent they're entitled to certain rights that they wouldn't have otherwise.
24 And the burden is a burden of clear, cogent, and convincing evidence.

1 04.) To diminish parental rights requires extraordinary and compelling reasons.
2 05.) As enunciated in In re: Parentage of L.B., 155 Wn. 2d 679, 708, 122 P. 3d 161 (2005) there are four
3 factors the Court looks at when determining a de facto status. Those factors are: (1) the natural or legal
4 parent consented to and fostered the parent-like relationship, (2) the petitioner and the child lived together
5 in the same household, (3) the petitioner assumed obligations of parenthood without expectation of finan-
6 cial compensation, (4) the petitioner has been in a parental role for a length of time sufficient to have
7 established with the child a bonded, dependent, relationship parental in nature. In addition, recognition of
8 a de facto parent is limited to those adults who have fully and completely undertaken a permanent,
9 unequivocal, committed, and responsible parental role in the child's life. This additional requirement is
10 sometimes referred to as a fifth factor. In re: De Facto Parentage and Custody of M.J.M., 173 Wn. App.
11 227, 294 P. 3d 746 (2012).

12 06.) And, as to factor one the focus primarily is whether or not there was intent and whether the Simons
13 were intending that they were giving consent and allowing Ms. Strand and Mr. Janke to foster a parent
14 like relationship.

15 07.) Burdens of proof have many different levels. In a regular civil case you've got preponderance of the
16 evidence—a tipping of the scales. It is not much. Then you have the criminal arena where the burden is
17 "beyond a reasonable doubt." And that is the highest burden. "Clear Cogent and convincing is very close
18 to beyond a reasonable doubt. It is a very high burden placed on certain types of cases, cases that deal
19 with terminating parental relationships with a child and granting a parental relationship with a child.

20 08.) In In re: Custody of B.M.H., 179 Wn. 2d 224, 234, 315 P. 3d 470 (2013) it was observed the Court in
21 parentage and custody cases affords "considerable deference to parents as the court balances their funda-
22 mental right to make decisions regarding the care, custody, and control of their children with the interests
23 of other parties and the need to ensure stable and safe environments for children. In re: Custody of Smith,
24 137 Wn. 2d 1, 13-14, 969 P. 2d 21 (1998), aff'd sub nom, Troxell v. Granville, 530 U.S.57, 120 S. Ct.

1 2054, 147 L. Ed. 2d 49 (2000)." In all cases the Courts defer to the parents of the child.

2 9.) The published opinion In re: Parentage of M.F., 168 Wn. 2d 528, 228 P. 3d 1270 (2009) is instruc-

3 tive. In M.F. the Washington State Supreme Court held the child already had two existing parents, they

4 have rights, they have duties, they are involved parents and here the Simons not only existed but were

5 involved in Christopher's life. See also, In re: Parentage of J.B.R., 184 Wn. App. 203, 336 P. 3d 648

6 (2014); In re: Custody of B.M.H., 165 Wn. App. 361, 267 P. 3d 499 (2011), affirmed in relevant part,

7 reversed in part on other grounds, 179 Wn. 2d 224, 315 P. 3d 470 (2013). In such a circumstance to

8 recognize third parties as de facto parents would put these people in conflict.

9 10.) In In re: Custody of A.F.J., 179 Wn. 2d 179, 314 P. 3d 373 (2013) it was indicated that the de facto

10 parent doctrine is an equitable doctrine that affords a trial court flexibility to examine each unique case on

11 a fact specific basis and the determination is left in the able hands of trial judges to determine whether, in

12 each case, the elements have been met without imposing limitations on the scope of the judge's review.

13 11.) In In re: B.M.H., supra., it was held that when a parent is otherwise fit, a third party has a high

14 burden under RCW 26.10 to justify interference with a parents constitutional rights. "Attaining de facto

15 status is no easy task."

16 12.) In In re: Marriage of Allen, 28 Wn. App. 637, 648, 626 P. 2d 16 (1981) it was observed "where the

17 reason for deferring to parental rights—the goal of preserving families---would be ill served by main-

18 taining parental custody, as where a child is integrated into the nonparent's family, the de facto family

19 relationship does not exist as to the natural parent and need not be supported."

20 13.) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that

21 Ronald Simon and Teresa Simon intended to consent to and fostered a parent child relationship between

22 Christopher Simon and Wayne Janke and Doris Strand.

23 14.) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that the

24 parental family unit of Ronald Simon and Teresa Simon was not and is not worthy of continued support.

1 Parents have a fundamental right to make decisions concerning the care, custody, and control of their
2 children.

3 15.) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that the
4 family unit of Ronald Simon, Teresa Simon, and Christopher Simon should not be supported.

5 16.) Wayne Janke and Teresa Simon failed to establish by clear, cogent, and convincing evidence they are
6 de facto parents.

7 17.) Additional Conclusions as may be set forth in the transcript of the Court's oral decision are incorpo-
8 rated herein.

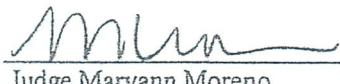
9 The Court having entered the foregoing Findings of Fact and Conclusions of Law now hereby enters
10 the following:

11 IV. ORDER

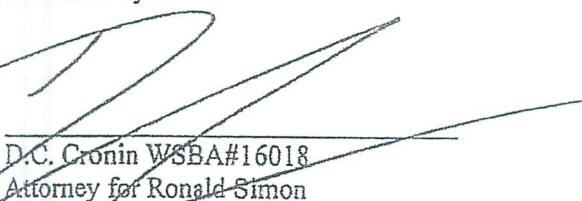
12 4.1) The petition for establishment of de facto status is denied and dismissed.

13 4.2) The transcript of the Court's oral decision is incorporated herein.

14 7-6-17

15 
16 Judge Maryann Moreno

17 Presented by:

18 
19 D.C. Cronin WSBA#16018
20 Attorney for Ronald Simon

21
22
23
24
25
Gloria Porter WSBA#24662
Attorney For Teresa Simon

Spencer Harrington WSBA#3507
Attorney for Doris Strand and Wayne Janke

Kimberly Kamel WSBA#30041
Guardian ad litem

Findings And Conclusions And Order - Page 14 of 14
Re: De Facto Parentage

The Law Office of D.C. Cronin
Dennis C. Cronin, Attorney at Law, P.S.
724 N. Monroe Street
Spokane, WA 99201
Phone: 509-328-5600 Fax: 509-328-5646

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EXHIBIT 50

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FILED

JUL 21 2017

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

Superior Court of Washington
County of Spokane

In re:

Wayne Janke & Doris Strand,

No. 15-3-02130-1

Petitioners,

ORDER DEFERRING DECISION
AND REUNIFICATION

vs

Teresa Simon & Ronald Simon,

NO MANDATORY FORM

Respondents.

(OR)

I. BASIS

1.01) This matter came on for trial Monday, July 17, 2017 at 9:00 AM. through Tuesday, July 18, 2017 at 2:00 PM.

1.02.) Present for trial were Doris Strand, representing herself, the GAL, Kimberly Kamel, Ronald Simon, with counsel D.C. Cronin and Tamara Murray, and Teresa Simon with counsel Kelsey Kittleson.

1.03.) Wayne Janke failed to appear for trial or have counsel appear on his behalf. Respondent's asked for dismissal of Mr. Janke's petition.

1.04.) The Court having heard the testimony of the Guardian ad litem, Doris Strand, Maria Goff, Sheila Thorne, Ashley Hopkins, Ronald Simon, and having considered the exhibits admitted during trial, the previous orders and decisions of the court, and the memoranda of counsel, and having also heard the arguments of Ms. Strand, counsel for Mr. Simon and counsel for Ms. Simon and otherwise being fully advised in the

Order - Page 1 of 3

The Law Office of D.C. Cronin
Dennis C. Cronin, Attorney at Law, P.S.
724 N. Monroe Street
Spokane, WA 99201
Phone: 509-328-5600 Fax: 509-328-5646

premises now hereby Orders, Adjudges, and Decrees:

II. ORDER

2.01.) The petition of Wayne Janke for non-parental custody is dismissed with prejudice.

2.02.) The Court defers a ruling and entry of a final decision and judgment until January 02, 2018.

2.03.) Pending the Court's final decision and judgment, immediate reunification counseling with April 1

Cathast and Teresa Simon and Ronald Simon and C shall commence for the purpose of returning

C Simon to Teresa and Ronald Simon's home. Ms. Strand shall attend individual counseling with Ms. Cathcart at her own expense; or a counselor recommended

2.04.) If Ms. Cuthcart is unavailable, the parties, counsel shall forthwith submit written proposals to the Court by

and the Court will select the counselor without further argument.

2.05.) Pending further order, C [REDACTED] Simon shall commence residential time with Teresa Simon and

Ronald Simon no later than after a couple of sessions with the reunification counselor and preferably before

commencement of school or as ordered by the Court. Duration and frequency as determined by Ms. Carr (or appointed counselor).

2.06.) The Court will monitor this matter and have bi-monthly reviews as to the status of the reunification

counseling and the cooperation of all parties and C [redacted] (and Ms. Strand's counselor if not Ms. Cathcart)

2.07.) The reunification counselor shall provide the Court (copies to the parties and GAL) with bi-monthly

reports to which the parties shall have an opportunity to respond as desired. The court will then consider the report and responses without further argument and issue whatever further orders are necessary.

2.08.) All parties and C _____ shall cooperate with the reunification process.

2.09.) All parties and C [REDACTED] shall be kind and respectful to each other and promote the reunification process in good faith.

2.10.) Respondent's requests for attorney fees and costs, including from Wayne Janke, are reserved until entry of final judgment. The GAL's request for fees and costs against Mr. Janke is preserved despite his dismissal.

Dated this 21 day of July 2017

Order - Page 2 of 3

The Law Office of D.C. Cronin
Dennis C. Cronin, Attorney at Law, P.S.
724 N. Monroe Street
Spokane, WA 99201
Phone: 509-328-5600 Fax: 509-328-5601

* the court found actual detriment but is reserving ruling until 11/2/2018

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M. Moreno

Judge Maryann Moreno

Presentment:

D.C. Cronin
D.C. Cronin WSBA#16018
Attorney For Ronald Simon

Approved as to Form:

Kimberly Kamei
Kimberly Kamei WSBA#
Guardian Ad Litem

Muse #44258
for

Approved as to Form

Kelsey Kinteson
Kelsey Kinteson WSBA#43968
Attorney For Teresa Simon

Approved as to Form:

Did not Appear

Doris Strand
Petitioner

Order - Page 3 of 3

The Law Office of D.C. Cronin
Dennis C. Cronin, Attorney at Law, P.S.
724 N. Monroe Street
Spokane, WA 99201
Phone: 509-328-5600 Fax: 509-328-5646

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