

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. YOR-24-218

KATRINA WELCH v. NAOMI CHAVAREE

On appeal from the Biddeford District Court

BRIEF OF KATRINA WELCH/APPELLANT

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SUMMARY OF THE ARGUMENT

The District Court erred when it found that Ms. Welch did not have standing to proceed with her Petition for De Facto Parentage. Ms. Welch has taken the role of a parent to the child during the parties' relationship and continued that role many years after the separation of the parties. There are multiple facts that are disputed; therefore, the court should have held a hearing before determining standing.

STATEMENT OF THE CASE

Katrina Welch and Naomi Chavaree were in a relationship from December 2017 through December 2020. (A. 13.) Ms. Chavaree was five months pregnant with Cordelia (D.O.B. [REDACTED]/2018) at the beginning of their relationship. (A. 13.) The parties lived together from May 2018 through February 2021. (A. 13.) During their relationship, Ms. Welch took on the role of a parent to Cordelia. Ms. Welch was involved in Ms. Chavaree's pregnancy, present at the birth of Cordelia and has been a consistent parent in Cordelia's life. (A. 13.) Ms. Welch was present in the hospital after Cordelia's birth and when she came home. (A. 13.) She got up in the night with her as a baby. (A. 14.) Cordelia calls Ms. Welch "Gaga". (A. 14.)

Since February of 2021, Ms. Welch has co-parented Cordelia with Ms. Chavaree. (A. 13-14.) This has included overnight visits with the child on a weekly basis. (A. 13-14, 27-29.) As a co-parent, Ms. Welch has been involved in the upbringing and care of Cordelia. This included being listed as a parent on school paperwork, taking her to medical appointments, coordinating childcare, paying for extra-curriculars, and being a financial provider for Cordelia's basic needs. (A. 29-30.) The child has also formed a bond with Ms. Welch's family, including referring to her mother as Nana. (A. 14.)

Ms. Chavaree contends she never discussed what role Ms. Welch would play in Cordelia's life. (A. 27.) However, following the separation, Ms. Chavaree

continued to allow Ms. Welch and Cordelia to maintain a parent-child relationship (A. 13-14,27-29.) In her own words, “I thought that because she had been a part of her life, and we had clear boundaries of the time they would spend together, that it would be helpful to have the Plaintiff (Katrina) remain involved.” (A. 27.) Following the separation, Ms. Welch has provided Cordelia with a consistent home, whereas Ms. Chavaree has frequently moved around, before eventually moving over three hours away from Cordelia’s home. (A. 10, 31.) Ultimately this relocation severed Ms. Welch’s relationship with her daughter Cordelia. (A. 13-14.)

Following this move, Ms. Welch filed her Complaint for De Facto Parentage on or about February 06, 2024 (A. 9-15.). Her Complaint included an affidavit outlining her role in Cordelia’s life. (A. 13-15.) Ms. Welch also filed a Motion for Expedited Hearing on contact. (A. 33-34.) Ms. Welch was concerned that Ms. Chavaree was moving Cordelia five hours away from her school, providers, friends, and family. (A. 33.) Ms. Welch was also concerned as to how this move would impact on her relationship with Cordelia. (A. 33.) Ms. Chavaree filed an Answer to the Complaint objecting to the status. (A. 25-32.) She also objected to the request for an expedited hearing. (A. 23-24.)

On April 8, 2024, the court issued an Order on Standing dismissing the Complaint for lack of standing. (A. 4-6.). On April 22, 2024, the Plaintiff filed Motion for Reconsideration and Additional Findings of Fact. (A. 20). On May 17,

2024, the court issued the Order on Plaintiff's Motion for Reconsideration and Additional Findings of Fact. (A. 7-8). In the Order, the court made the additional finding that the Plaintiff "has not shown that the relationship that the Plaintiff posits by affidavit between Plaintiff and child was, fostered or supported by another parent of the child and the person and the other parents have understood, acknowledged, or accepted that or behaved as though the person is a parent to the child." (A. 8.) This appeal followed.

STANDARD OF REVIEW

A dismissal of a de facto parent petition for lack of standing without an evidentiary hearing, is reviewed for abuse of discretion. *Young v. King*, 2019 ME 78, ¶ 11-12, 208 A.3d 762. The court abused its discretion in declining to hold a hearing if (1) the facts in the petitioner's affidavit "could have led to a finding that [the petitioner] ha[s] standing" and (2) there are "material facts that the parties have disputed in their affidavits." *Id.*

ARGUMENT

II. THE DISTRICT COURT ERRED IN DENYING MS. WELCH STANDING TO PROCEED WITH HER DE FACTO PARENT PETITION

A person seeking standing as a de facto parent shall file an affidavit, under oath stating specific facts that support the existence of a de facto parent relationship. The court shall then determine based on the pleadings and affidavit whether the party seeking de facto parent status has presented prima facie evidence of the requirements set forth in 19-A M.R.S. § 1891(3). 19-A M.R.S. § 1891(2). The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child's life. Such a finding requires a determination by the court that:

- A. The person has resided with the child for a significant period of time;
- B. The person has engaged inconsistent caretaking of the child;
- C. A bonded and dependent relationship has been established between the child and the person, the relationship was fostered or supported by another parent of the child and the person and the other parent have an understood, acknowledged or accepted that or behaved as though the person as a parent of the child;
- D. The person has accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
- E. The continuing relationship between the person and the child is in the best interest of the child.

19-A M.R.S. § 1891(3). The Law Court has defined this further as a:

permanent, unequivocal, committed, and responsible parental role by looking to the elements of de facto parenthood employed in Massachusetts: A de facto parent is one who has no biological relation to the child [as a parent], but has participated in the child's life as a member of the child's family. The de facto parent resides with the child and, with consent and encouragement of the legal parent, performs a share of caretaking functions.

Pitts v. Moore, 2014 ME 59, ¶ 28 90 A.3d 1169. Citing *E.N.O. v. L.M.M.*, 429 Mass. 824, 711 N.E.2d 886, 891 (Mass. 1999). The Court has held that “the court may award contact to a person with significant bonds to the child who has had more than a limited relationship to the child.” *Pitts* at ¶19. “A person seeking de facto parentage status can satisfy the section 1891(3)(C) burden by demonstrating that the child's legal parent or parents have implicitly, through acts or omissions if not through words, fostered, supported, and accepted the person's parental role. *Martin v. MacMahan*, 2021 ME 62, ¶ 31, 264 A.3d 1224.

This case can be distinguished from *Davis* which involved a grandparent seeking de facto parent status. *Davis v. McGuire*, 2018 ME 72. In *Davis* the petitioner's complaint was dismissed as she was unable to demonstrate the mother never accepted the grandmother as a parent. *Davis* at ¶ 32. In this case, Ms. Welch did not intermittently assume responsibility for Cordelia, but was an active parent in her life based on Ms. Chavaree's actions and her own. Ms. Chavaree acknowledged, accepted and understood her to be a parent. Ms. Welch was highly involved in Ms. Chavaree's pregnancy as well as the birth of Cordelia. Cordelia lived with Ms. Welch

for almost three years. (A. 13.) During that time, Ms. Welch cared for Cordelia as a parent would. (A. 13-14.)

In the court's Amended Order, the court held that Ms. Welch had not sufficiently made a prima facie showing pursuant to 19-A M.R.S. § 1891(3)(C). (A. 8.) However, Ms. Welch states in her affidavit that it was intended that she would play a parental role in the child's life. This was shown through her statements where she described a consistent ongoing relationship, financial help, bringing the child to appointments, etc. Additionally, Ms. Chavaree allowed the relationship between Ms. Welch and child to continue. Though Ms. Chavaree claims there was no distinct discussion of Ms. Welch's role, it could be inferred that she had taken on the role of a parent to the child. Ms. Chavaree stated in her affidavit, "I thought because she had been part of her life, and we had clear boundaries of the time they would spend together, that it would be helpful to have the [Appellant] remain involved." (A. 27). While Ms. Chavaree does not admit that the coparenting relationship was a good one, she does admit in her affidavit there was that type of relationship between the parties. (A. 31.)

Ms. Chavaree continued to allow the relationship between the Appellant and child for three years after their separation. Throughout her affidavit she claims Ms. Welch did not have a role as parent and she never intended for her to take on a parental role of the child. However, the child continued to stay with Ms. Welch for

weekly overnights even after the expiration of the parties' relationship. She also allowed Ms. Welch to pay for half of childcare costs as recently as 2023. (A. 30.) Consistent weekly contact is certainly consistent with that of a parent-child relationship. Ms. Chavaree goes on in her affidavit to say she "received no financial compensation from the Plaintiff (Appellant)." Ms. Chavaree's claims in her affidavit contradict her notion that she never intended for Ms. Welch to take on the role of a parent when she allowed the relationship between them, and the child, to be similar to that where if the child were biologically that of the Appellant. The court could have reasonably granted standing based on how the Appellee behaved in regard to the relationship of the child and Ms. Welch.

Ms. Welch's affidavit provided the court sufficient information to conclude that she resided with the child for a significant period of time, she has engaged in consistent caretaking of the child for the entirety of her life, there is a bonded relationship between Ms. Welch and Cordelia, that relationship was supported by Ms. Chavaree's continued contact between the two, Ms. Welch has taken on a full and permanent responsibilities of the child, and it is in the best interest of the child to continue the relationship.

a. The court abused its discretion when it did not conduct a hearing when there were disputed material facts.

The court abuses its discretion in declining to hold a hearing if (1) the facts in the petitioner's affidavit "could have led to a finding that [the petitioner] ha[s]

standing" and (2) there are "material facts that the parties have disputed in their affidavits." *Young v. King*, 2019 ME 78, ¶ 11, 208 A.3d 762. In the *Libby* case the court declined to hold a hearing and dismissed his petition after review of the affidavits. *Libby v. Estabrook*, 2020 ME 71, ¶ 10. On appeal, the judgment was vacated and remanded for an evidentiary hearing. *Id.* at ¶20. The court concluded that "Libby's assertions, if believed, could have led to a finding that he has standing." *Id.* at ¶ 16. In that case, Libby and the mother had co-parented for most of the child's life. *Id.* The Court determined that because Estabrook's affidavit generated "disputed material facts that must be resolved to determine Libby's standing, the court went beyond its discretion in declining to convene an evidentiary hearing to resolve those factual disputes." *Id.* at ¶ 19. This case is similar to *Libby* as Ms. Chavaree's affidavit generates a dispute of material facts regarding Cordelia's upbringing. Ms. Chavaree also makes contradictory statements in her affidavit. Therefore, the court should have conducted a hearing to determine Ms. Welch's standing to proceed with her Petition.

Under 19-A M.R.S. § 1891(2)(c), and as stated in *Young*, the facts in Ms. Welch's affidavit could have led to a finding that she had standing on their face. Ms. Welch's affidavit outlines the functions that she undertook as her role of parent to Cordelia. She resided with the child for three years, then had regular visitation with the child when the parties separated, she has consistently been a caregiver to the

child since birth, Ms. Chavaree behaved as though Ms. Welch was a parent to the child, Ms. Welch has accepted responsibilities as a parent would, and given the above, the continuing of the relationship would be in the best interest of the child.

The facts as sworn by both parties in their affidavits clearly show there are several material facts in dispute that would justify the need for a hearing. In *Young* the person seeking standing as a de facto parent claimed that the parent allowed others in the community, such as a childcare provider, to understand him to be the parent of the child. *Young v. King*, 2020 ME 78, ¶ 12, 208 A.3d 762. The Court determined that the contested facts needed to be resolved and remanded the matter for an evidentiary hearing. *Id.* “Requiring a preliminary hearing on the issue of standing where, as here, material facts are contested appropriately balances our recognition that parental rights disputes can be heavily factbound and that [t]he facts are often infused with nuances and coated with an emotional overlay. *Id.* at ¶13 citing *Kinter v. Nichols*, 1999 ME 11, ¶ 7, 722 A.2d 1274 (internal citations omitted).

For example, Ms. Welch’s affidavit makes claims that her name was on school paperwork as the child’s parent, a claim to which Ms. Chavaree gives no response to. The parties also disagree to the extent that Ms. Welch was involved financially and in day-to-day decision making. Given the clear dispute of the facts, the court should have held a hearing to determine whether the Appellant had standing.

CONCLUSION

For the foregoing reasons the judgment should be vacated and remanded for an evidentiary hearing.

Dated this 16th day of July, 2024.

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CERTIFICATE OF SERVICE

I certify that two copies of the foregoing Brief of Appellant have been served upon Counsel for Appellee, Gregory Orso, Esq.

Dated this 16th day of July, 2024.

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