**STATE OF MAINE SUPREME JUDICIAL COURT**
**SITTING AS THE LAW COURT**

**LAW COURT DOCKET NO. YOR-24-218**

**KATRINA WELCH,**
**Appellant**

**v.**

**NAOMI CHAVAREE,**
**Appellee**

**ON APPEAL FROM THE YORK JUDICIAL CENTER, BIDDEFORD**

# BRIEF OF APPELLEE

**GREGORY J. ORSO, BAR #8568**
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## SUMMARY OF THE ARGUMENT

The District Court did not abuse its discretion in dismissing the instant action for De Facto Parentage. The Court found that the documents submitted in support of standing were factually deficient when compared to the requirements of the Statute and did not provide persuasive evidence of standing. The Court applied the appropriate legal standards, did not commit clear error in its factual findings, and did not abuse its discretion in dismissing this action for lack of standing under the Statute based upon the filings of Ms. Welch.

## STATEMENT OF THE CASE

### I. FACTUAL HISTORY

Naomi Chavaree was 5 months pregnant when she began a relationship with Katrina Welch. (App. at 27). The pregnancy was not planned with Ms. Welch, and it was understood that she was not going to be on the birth certificate and/or be a legal parent in this child's life. Id. The parties moved in together after Ms. Chavaree's daughter was born and resided together from approximately May 2018 to January 2021. Id. Ms. Chavaree made all the decisions involving her pregnancy and the future of her daughter independent of Ms. Welch. Id. There was never any conversation about what role Ms. Welch would play in Ms. Chavaree's daughter's life. Id. As Ms. Chavaree's partner, she had a role in her daughter's life, but her daughter was not dependent upon it, and Ms. Welch did not provide a home for her.

In the Fall of 2023, Ms. Welch moved into her new partner's home, and she did not show interest in being a permanent parent of Ms. Chavaree's daughter until Ms. Chavaree started a new relationship. (App. at 31). The relationship Ms. Chavaree had with Ms. Welch was not co-parenting and all of the decisions regarding her daughter were made by Ms. Chavaree. Ms. Welch never inquired about establishing more of a parental role or wanting more time with her daughter. (App. at 40). For a short period of time, Ms. Welch played the role of significant other for a person (Mr. Chavaree) who had a child. The relationship never proceeded to anything beyond

that and both parties moved on with their lives. It was only after Ms. Chavaree moved into a new home in Northern Maine with her significant other that Ms. Welch indicated she wanted a more permanent role in this child's life. (App. at 31).

## II. PROCEDURAL HISTORY

On or about February 6, 2024, Ms. Welch learned about Ms. Chavaree's new relationship and filed the current Complaint for De Facto Parentage. (App. at 31 and 9). Ms. Welch also filed a request for an expedited hearing. (App. at 33). Ms. Chavaree filed a timely Answer to the Complaint substantively denying all elements of Ms. Welch's claim. (App. at 25). Ms. Chavaree also filed a comprehensive and thorough Affidavit providing an accurate history of Ms. Welch's relationship with her daughter. (App. at 31-32). Ms. Chavaree objected to the request for an expedited hearing (App. at 23) as the only urgency to the situation was that Ms. Welch had recently found out that Ms. Chavaree was in another relationship. (App. at 31).

On or about April 8, 2024, the Court issued its decision on standing and dismissed the case. (App. at 4-6). The Court found that there were sufficient undisputed facts to allow the Court to conclude that the moving party had not made a prima facie case showing that she met all of the elements of the De Facto Parentage Statute by a preponderance of the evidence. (App. at 6). Ms. Welch filed a Motion for Reconsideration and Additional Findings of Fact on or about April 22. 2024. (App. at 20). The Court issued an additional detailed Order on Plaintiff's Motion for

Reconsideration and Additional Findings of Fact (App. at 7-8) and concluded that the "[c]ourt does not need to hold a hearing on standing in this case." (App. at 8).

## ISSUES PRESENTED FOR REVIEW

The question presented is whether the trial court abused its discretion in denying the Appellant's request for standing under the Maine Parentage Act, specifically, 19-A M.R.S. § 1891(2).

## ARGUMENT

### I. STANDARDS OF REVIEW

In the instant matter, the trial court's determination of standing is reviewed for an abuse of discretion. "Review for an abuse of discretion involves resolution of three questions: (1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court's weighing of the applicable facts and choices within the bounds of reasonableness." Haskell v. Haskell, 2017 ME 91, ¶ 12 (citing McLeod v. Macul, 2016 ME 76, ¶ 6). In applying this standard, the Law Court will review issues of law de novo, see Young v. King, 2019 ME 78, ¶ 7, and issues of fact for clear error. See Martin v. MacMahan, 2021 ME 62, ¶ 24. Clear error exists when a finding is unsupported by any competent evidence in the record. See Bond v. Bond, 2011 ME 54, ¶ 16.

### II. LEGAL ARGUMENT

#### A. De Facto Parentage

De Facto Parentage is a creation of many years of case law in the Maine Court system and a statutory construction in response by the Maine Legislature. In 2015, the Maine Legislature created the Maine Parentage Act. See 19-A M.R.S. §1831, et.

seq. (PL 2015, c. 296, Pt. A. §1). This Statute was an attempt to codify this new development in the evolving family culture in Maine. It afforded parties who were not biological parents to seek parental rights and responsibilities for a minor child, see 19-A M.R.S. §1851, and afforded a process to seek those rights. See id. at §1891. A party seeking de facto parentage had to satisfy a two-step analysis in pursing this claim for parental rights. Id. First, the party seeking the designation would have to file an affidavit alleging certain specific facts to support the de facto parent relationship with the child. Id. at 1891(2)(A-D). A party opposing this petition would be permitted to file a response, and the Court would make its determination as to whether the moving party had met the elements of a prima facie case of de facto parentage as identified in 19-A M.R.S. §1891(3); see also Davis v. McGuire, 2018 ME 72, ¶ 14. If that occurs, the moving party is determined to have standing to "proceed to adjudication" of a de facto parentage claim. Id. at §1891(2)(D). Once past the initial hurdle of standing, the Statute identifies the criteria necessary to be met, and the standard to meet them, when adjudicating a de facto parentage case.[1] In the event standing is not met, then dismissal of the action is the appropriate step by the trial court.

[1]A party filing a de facto parent petition must make an initial showing of standing in order to allow it to proceed to the plenary hearing for de facto parentage. See 19-A M.R.S. ¶ 1891; accord Davis v. McGuire, 2018 ME 72, ¶ 13. 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. Fundamental Rights of Parents

"Parents have a fundamental right to direct the upbringing of their children, including the right to determine who may associate with [them]." Eaton v. Paradis, 2014 ME 61, ¶ 8. These protections are necessary "to protect against unwarranted intrusions into an intact family's life." Davis v. McGuire, 2018 ME 72, ¶ 14. Accordingly, "so long as a parent adequately cares for his or her children (i.e., is fit), there will *normally* be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." Davis v. Anderson, 2008 ME 125, ¶ 18 (citing Rideout and Troxel v. Granville, 530 U.S. 57, 65 (2000)). The United States Supreme Court made this clear when it stated that "[t]he liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65 (2000). Similarly, the Law Court has stated that

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B. The person has engaged in consistent 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 understood, acknowledged or accepted that or behaved as though the person is 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).

"[a] court order requiring . . . visitation against the wishes of a parent constitutes an infringement of that fundamental right." Conlogue v. Conlogue, 2006 ME 12, ¶ 12.

### C. The Court Did Not Err in Dismissing this Complaint

#### 1) The Court Did Not Make A Legal Error in this Case

The District Court did not make a legal error in this matter. It applied the correct legal standard and reviewed all of the material, amended its findings, and provided very clear and concise reasons for its dismissal of this action. An example of a trial court making a legal error occurred in Young v. King, 2019 ME 78, ¶ 9 when the trial court found against a petitioning de facto parent due to the fact that the other parent would not consent to the adoption of the minor child by the petitioning parent. Relying solely upon this criterion is legal error by the trial court and should be overturned. No such legal errors were made by the Court in this matter. The Court went into great detail with its findings and even added some additional findings at the request of Ms. Welch.

#### 2) The Court Made Appropriate Factual Findings

The Court certainly did not abuse its direction in determining that the Plaintiff did not meet its burden of persuasion with the documents she filed. In essence, the Appellant is making the argument that the factual findings made by the Court were incorrect and should have warranted a finding of standing pursuant to the Statute. Such findings by the Court are reviewed by the Law Court for clear error, and it is

clear in this case that the Court had a broad factual basis upon which to base its decision.

The Law Court's holding in Pitts v. Moore, 90 A.3d 1169, 1179 (Me. 2014) clearly articulates the standard for de facto parenting that one must show "that he or she has undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life." "Parents have a fundamental right to direct the upbringing of their children, including the right to determine who may associate with their children." Eaton v. Paradis, 2014 ME 61, ¶ 8. These protections are necessary "to protect against unwarranted intrusions into an intact family's life." Davis v. McGuire, 2018 ME 72, ¶ 14. Further, the initial review of standing has the same standard whether it is done through paperwork or following an evidentiary hearing. Libby v. Estabrook, 2020 ME 71, ¶ 14.

The Law Court's interpretation of the necessary showing of standing under the De Facto Parentage Statute dictates a dismissal of this action. A party who has not been understood to be the parent, but "intermittently assumes parental duties" is not recognized as a de facto parent. In Re Child of Philip S., 2020 ME 2, ¶ 22 (citing Philbrook v. Theriault, 2008 ME 152, ¶ 23). It is critical to recognize that there is a significant (and legal) significance between the distinction of the role of a nurturing and involved caregiver and one who is recognized as a de facto parent. See Davis v. McGuire, 2018 ME 72, ¶ 32. This is a critical component of this analysis and one that

was not lost on the Court in this matter. The simple fact that the putative parent had a bonded relationship or that the biological parent fostered that relationship did not satisfy the standard in this matter for creating de facto parentage. See id. It has also been held to be important by the Law Court that others in the community believed the putative parent to be the biological parent. See Libby v. Estabrook, 2020 ME 71, ¶ 17. That is not the case here. Further, the Law Court has stated that 22 months does not necessarily create a "significant amount of time" for residing with a child, see In Re Child of Philip S., 2020 ME 2, ¶ 20, which is not much different than the timeframe in this matter.

The petitioning party must make persuasive evidence of the elements of standing, see Young v. King, 2019 ME 78, ¶ 8, and the "mere existence of disputed facts in the affidavits of the parties is insufficient to justify an evidentiary hearing . . . ." Young v. King, 2019 ME 78, n.3.[2] The petitioner is subject to a burden of persuasion and "not merely one of production." Lamkin v. Lamkin, 2018 ME 76, ¶ 21. It is for this reason the Law Court has referenced them as "exacting standards." Id.

In reviewing these criteria, the Court must find that the party seeking parentage "has fully and completely undertaken a permanent, unequivocal, committed

[2] The showing necessary for standing in a de facto parentage case is greater than that required of a grandparents visitation act case. See Lamkin v. Lamkin, 2018 ME 76, ¶18.

and responsible parental role in the child's life." Martin v. MacMahan, 2021 ME 62, ¶ 28. Further, it is understood that part of the analysis requires a finding by the court that the (parental) relationship was supported and fostered by the other parent and it was generally accepted that the putative parent was the actual parent of the minor child. Martin v. MacMahan, 2021 ME 62, ¶ 29. "To hold otherwise would potentially allow the unilateral actions of one legal parent to cause an unconstitutional dilution of another legal parent's rights." Id.

In the instant matter, it was clear from the filings of Ms. Welch that she did not meet the exacting standards for standing under the Maine Parentage Act. In particular, the Court found that Ms. Welch simply recited statutory factors and did little to persuade the Court that she met the requirements of the Statute, failing to provide persuasive evidence of undertaking a "permanent, unequivocal, committed, and responsible parental role" in the child's life. (App. at 6). Further, in its amended Decision, the Court more specifically found that Ms. Welch did not show evidence of Ms. Chavaree supporting this "parental relationship," nor any evidence that either party understood, acknowledged, or accepted this parental role by the Appellant. (App. at 8).

**III. Conclusion**

For these reasons, Naomi Chavaree requests that the Law Court deny the Appellant's appeal and affirm the Court's decision denying the Appellant's standing in this action.

Respectfully submitted by:

Dated: August 13, 2024

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## CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2024, I caused two copies of the Brief for Appellee to be served upon the following counsel of record via regular U.S. Mail and one electronic copy via e-mail:

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