

No. COA08-957

FIFTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

JULIA CATHERINE)
BOSEMAN,)
Plaintiff/Appellee,)
v.)
))
MELISSA ANN JARRELL,)
Defendant/Appellant, and Third)
Party Plaintiff,)
v.)
JULIA CATHERINE)
BOSEMAN, and NORTH)
CAROLINA DEPARTMENT OF)
HEALTH AND HUMAN)
SERVICES,)
Third Party-Defendants.)
))
)

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COURT OF APPEALS
OF NORTH CAROLINA

FROM NEW HANOVER COUNTY
07-CVD-625
COA08-957

**BRIEF OF *AMICI CURIAE* OF NORTH CAROLINA ASSOCIATION
OF WOMEN ATTORNEYS; NATIONAL ASSOCIATION OF SOCIAL
WORKERS; NORTH CAROLINA CHAPTER OF THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS; and NORTH CAROLINA
FOSTER AND ADOPTIVE PARENT ASSOCIATION**

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INTRODUCTION¹

Appellant is asking this Court to do something extraordinary, something that would expose Jacob, the child that Appellant and Appellee jointly planned and raised, to devastating consequences. She is asking this Court to: i) void a final adoption order, now over three years old, to which she fully consented, and thus, ii) destroy the parent-child status between Appellee and their child for reasons that are unconnected to Jacob's needs. If Appellant prevails, Jacob would be permanently denied access to the love, care, and the financial and emotional support of a parent who has cared for him his entire life. In addition to suffering a traumatic disruption in his family life, Jacob would also be deprived of automatic inheritance and other rights, such as Social Security benefits, flowing from his parent-child relationship with Appellee. Appellant asks this Court to destroy completely the parent-child status between Jacob and his second parent, and cause Jacob to suffer loss comparable to the sudden abandonment by a parent.

¹ A detailed statement of the interests of *Amici Curiae* is included in their concurrently filed Application for Leave to File a Brief *Amici Curiae*. *Amici* accept and adopt the Appellee's Statement of the Case, Statement of Questions Presented and Statement of Facts.

Amici Curiae agree with the Appellee that North Carolina law and public policy do not permit such a tragic result.² Rather, they mandate that the Court respect the 2005 final adoption order. As discussed below, more than two decades of peer-reviewed social science research firmly demonstrates the following principles: (1) children form significant bonds of attachment to parent figures early in life and these attachment bonds are central to the well-being and development of the child; (2) strong parent-child attachments develop despite the absence of a biological connection between parent and child; (3) when both same-sex parents participate in the child's upbringing, the non-biological parent functions fully as a parent and the child will perceive both individuals as true parents; and (4) when a child's attachment relationship with a parent is severed, the emotional and psychological harm to the child can be significant, and this is so regardless of the parent's sexual orientation and the absence of a biological tie to the child.

² For the purposes of brevity, *Amici Curiae* do not repeat the legal arguments set forth in Appellee's brief but instead focus on the social science research supporting her position. In addition, for all of the reasons set forth herein regarding the best interest of the child, *Amici* also fully support the lower court's ruling on custody based on the alternative finding that Appellant's actions in creating and nurturing a permanent parental relationship between the child and her other parent were actions inconsistent with a paramount parental rights, which legal conclusion properly allowed the court to order joint custody based on the best interest of Jacob and his well-being.

This empirical evidence strongly supports affirming the trial court's decisions. As set forth in the lower court's extensive factual findings, and as "readily admitted" by Appellant, Jacob has a loving parent-child attachment with Appellee. (R. pp. 253-54, ¶¶ 19, 35). Jacob is "happy, outgoing, respectful, intelligent, very athletic, friendly, delightful and kind to others," characteristics which the court found to be a "result of the loving and caring hands on rearing by [both Appellant and Appellee]." (R. p. 253, ¶ 23). Severing Jacob's relationship with his second parent in the face of this uncontroverted evidence places Jacob's emotional and psychological well-being in serious jeopardy.

Appellant has not, and cannot, articulate a valid reason why she is entitled to an exception to the laws that bar her late and collateral challenge to the 2005 adoption order. All children, regardless of whether they are part of families led by same-sex or heterosexual parents, have a pressing need for stability and permanency in their familial relationships. Appellant's failure to appreciate the consequences of severing one of Jacob's parental relationships does not except Jacob from the harm that would flow therefrom. Granting Appellant an exception to those rules would arbitrarily deprive Jacob and potentially other adoptive children of same-sex couples of the express statutory protections under Section 48-

2-607 and the policies underlying this State's adoption laws. *Amici Curiae* urge the Court to uphold the lower court's decisions.

ARGUMENT

I. SOCIAL SCIENCE RESEARCH CONFIRMS THAT, WHERE THE PARENT IS FIT, THE ATTACHMENT RELATIONSHIP BETWEEN CHILDREN AND THEIR NON-BIOLOGICAL GAY & LESBIAN PARENTS SHOULD BE PROTECTED AND MAINTAINED

Respecting the integrity of the 2005 adoption order comports not only with the State's statutes and case law, but also with more than two decades of social science research that has been conducted pursuant to the scientific method and which has generally been subject to critical review by outside experts (typically during the peer review process that precedes publication in a scholarly journal or adoption of a position by a professional peer organization). These findings show that protecting the relationship between children and their parents is essential to children's healthy development and overall well-being, and this is so irrespective of the parents' sexual orientation or their biological connection to the child.

A. The Formation of Parent-Child Attachments is Critical To A Child's Healthy Development

Child development research overwhelmingly shows that children form strong bonds of attachment to their parents early in life, which strengthen and

develop as children grow older. See, e.g., John Bowlby, Attachment (2d ed. 1983); Melvin Konner, Childhood 84-87 (1991). An “attachment relationship” is defined as a “reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver” through which “children form their concepts of self, others and the world.” Beverly James, Handbook for Treatment of Attachment – Trauma Problems in Children 1-3 (1994).

The research findings illustrate that “what young children learn, how they react to the events and people around them, and what they expect from themselves and others are deeply affected by their relationships with parents.” Nat’l Research Council & Inst. of Medicine, From Neurons to Neighborhoods: The Science of Early Childhood Development 226 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000). Modern developmental psychology and neurology confirm that attachment relationships are the major environmental factor that shapes the development of the child’s brain during its period of maximal growth and create the central foundation of a child’s development. See Daniel J. Siegel, The Developing Mind: Toward a Neurobiology of Interpersonal Experience 67-120 (1999); see also American Academy of Pediatrics, Committee on Early Childhood, Adoption, and Dependent Care, Developmental Issues For Young Children in Foster Care, 106 Pediatrics

1145 (2000) (stating that “emotional and cognitive disruptions in the early lives of children have the potential to impair brain development”).

Among other things, “[attachment] relationships shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth.” Nat’l Research Council & Inst. of Medicine, supra, at 265; see also James G. Byrne, et al., Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments, 46 J. of Child Psychol. and Psychiatry 115, 118 (2005) (finding that secure attachment relationships provide children with a sense of emotional security, the ability to cope with stress, and protection against harm).³

B. Attachment Relationships Develop Despite The Absence Of A Biological Or Legal Connection Between The Parent And Child

Attachment bonds invariably develop regardless of whether the parent and child are biologically linked. See Joseph Goldstein, et al., Beyond the Best Interests of the Child 27 (2d ed. 1979) (concluding the parent-child relationship can develop without reference to biology); see also Leslie M. Singer et al., Mother-Infant Attachment in Adoptive Families, 56 Child Dev. 1543 (1985). In fact, a

child can develop an attachment relationship with any adult who:

on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs. The psychological parent may be a biological, adoptive, foster, or common-law parent, or any other person.

Goldstein, supra at 98. See also Nat'l Research Council & Inst. of Medicine, supra, at 234 (“[C]riteria for identification of attachment figures...[include] provision of physical and emotional care, continuity or consistency in the child's life, and emotional investment in the child.”).

It is the quality and nature of the interaction between parent and child, not any biological connection, that creates and sustains these attachment relationships that have such a critical impact on a child's development. See Susanne Bennett, Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families, 20 *Child & Adolescent Soc. Work J.* 159, 161 (2003) (“[T]he nature of the interaction...is more important than the person's legal or biological tie to the child.”); Ana H. Marty, et al., Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver, 175 *Early Childhood*

³ See also American Academy of Pediatrics, Committee on Early Childhood, Adoption, and Dependent Care, supra, at 1146 (“Attachment to a primary caregiver is essential to the development of emotional security and social conscience.”).

Dev. and Care 271, 273 (2005) (“[T]he quality of [children’s] attachment relationships is dependent on the nature of the interactions with their parents or other caregivers.”).⁴

C. Sexual Orientation Is Irrelevant To The Development Of Strong Attachment Bonds

Studies have also concluded that a parent’s sexual orientation is immaterial to the formation and importance of children’s attachments, and children are just as likely to form close bonds with same-sex parents. American Academy of Pediatrics, Family Pediatrics, Report of the Task Force on the Family, 111 Pediatrics 1541, 1550 (2003) (“Research has found that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships...”).

Where both same-sex parents participate in the child’s upbringing, the child will form a significant attachment relationship with each parent. A study

⁴ See also American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents, 109 Pediatrics 341 (2002) (finding that “[c]hildren’s optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes”); Raymond W. Chan, et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers, 69 Child Dev. 443, 454 (1998) (“[O]ur results are consistent with the general hypothesis that children’s well-being is more a function of parenting and relationship processes within the family...[than] household composition or demographic factors.”).

evaluating child development in lesbian families found that:

both women in the lesbian mother family were actively engaged in child care and a strong mutual attachment had been developed between [the non-biological] mother and the child. It seems therefore at odds with reality to consider a lesbian household as a single mother family unit.

A. Brewaeys, et al., Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families 12 Human Reproduction 1349, 1356 (1997). Likewise, a clinical evaluation of preschool children of lesbian couples determined that when both women in the relationship care for a child, the child becomes attached to both. Barbara M. McCandlish, Against All Odds: Lesbian Mother Family Dynamics, in Gay and Lesbian Parents, 23-38 (Frederick W. Bozett ed., 1987).

As with heterosexual parent relationships, the fact that Jacob is not biologically linked to Appellee does not affect their attachment relationship. See Brewaeys, supra, at 1354 (“[A]mong the lesbian mothers, the quality of the parent-child interaction [does] not differ significantly between the biological and the [non-biological] mother.”); S. Golombok, et al., The European Study of Assisted Reproduction Families: Family Functioning and Child Development, 11 Human Reproduction 2324, 2330 (1996) (finding that the lack of a genetic link between

one or both same-sex parents and the child did not have negative consequences for parent-child relationships). Indeed, here, the lower court made extensive factual findings demonstrating the strong parental attachment between Jacob and Appellee. See R. p. 253-54. Appellant herself “readily admits that [Appellee] is a very good parent who loves Jacob and Jacob loves her.” R. p. 254, ¶ 35.

D. Children Experience Severe Emotional And Psychological Harm When Their Attachment Relationships Are Severed

Continuity of the parent-child attachment relationship is essential to a child’s healthy development and overall well-being. Goldstein, supra, at 31 -33; see Marty, supra, at 274 (“[T]he quality of the attachment has profound effects on the child’s social adjustment.”); American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, supra, at 1145 (“Paramount in the lives of. . . children is their need for continuity with their primary attachment figures.”); Nat’l Research Council & Inst. of Medicine, supra, at 265; John Bowlby, Attachment and Loss: Retrospect and Prospect, 52 Am. J. Orthopsychiatry 664, 665-66 (1982).

Numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships].” Frank J. Dyer, Termination of Parental Rights in Light of Attachment Theory: The Case of

Kaylee, 10 Psychol. Pub. Pol’y & L. 5, 11 (2004); see also American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, supra, 15 at 1146 (“Interruptions in the continuity of a child’s caregiver are often detrimental”); Joan B. Kelly & Michael E. Lamb, Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children, 38 Family & Conciliation Courts Rev. 297, 303 (2000) (explaining that “relationships with parents play a crucial role in shaping children’s social, emotional, personal, and cognitive development, and there is a substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment”).

When a child’s attachment relationship with a parent has been forcibly severed, the psychological impact on the child can be astounding.

Young children typically have operated on the assumption that they could depend on the predictable availability of both parents. When that assumption proves incorrect, a child may question many other assumptions about the world; for example, whether he or she can count on the availability of any parent. Such concerns lead to insecure or avoidant attachment, interference with healthy object relations, and reorganization of cognitive understandings. The egocentrism of young children may lead them to conclude that a parent’s absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly devastating experience.

William Hodges, Interventions of Children of Divorce: Custody, Access, and

Psychotherapy 8-9 (2d. ed. 1991); see also Rayford W. Thweatt, Divorce: Crisis Intervention Guided By Attachment Theory, 34 Am. J. of Psychotherapy 240, 241 (1980) (explaining that upon separation from an attachment figure, children experience “a predictable sequence of behavior with four phases: denial, protest, despair, and detachment”).

For example, interference with children’s attachment relationships can lead to “aggression, fearful relationships, academic problems in school, and...elevated psychopathology.” Marty, supra, at 274; see also Byrne, supra, at 118 (“[T]hreats to or disruptions in the attachment relationships...lead to fear/anxiety.”); Nat’l Research Council & Inst. of Medicine, supra, at 265 (“[A]ttachments buffer young children against the development of serious behavior problems, in part by strengthening the human connections and providing the structure and monitoring that curb violent or aggressive tendencies.”).

The research demonstrates that the “extreme distress” experienced by a child upon termination of an attachment figure’s regular and customary role as a parent will occur even where there is no biological connection between them. See Fiona L. Tasker & Susan Golombok, Growing Up in a Lesbian Family: Effects on Child Development 12 (1997); Yvon Gauthier et al., Clinical Application of Attachment

Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care, 25 *Infant Mental Health J.* 379, 394 (2004) (explaining that children suffer greatly when separated from non-biological parent figures).⁵

Specific research on children in lesbian households demonstrates the same need for continuity, and resulting harm from disruption of attachment relationships, as that manifested in children of heterosexual parents. See, e.g., Tasker, supra, at 12 (twenty-year longitudinal study in the United Kingdom which found that cessation of the parent-child bond between a child and a lesbian non-biological parent “can cause the [child] extreme distress”). Researchers have found that, when lesbian couples separate, the children mourn for the absent caretaker just as they would for an absent biological or married parent after separation. See Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 *Am. J. Orthopsychiatry* 545, 547-51 (1981).

⁵ See also Mellisa Holtzman, Definitions of the Family as an Impetus for Legal Change in Custody Decision Making: Suggestions from an Empirical Case Study, 31 *Law & Social Inquiry* 1, 2-3 (2006) (“[W]here nonbiological attachments already exist, it is not to the child’s benefit to sever either those ties or the biological ties in order to satisfy the demands of exclusive parenthood.”).

II. NUMEROUS COURTS HAVE ACCEPTED THE SOCIAL SCIENCE RESEARCH IN RECOGNIZING THAT IT IS IN THE CHILD’S BEST INTEREST TO RESPECT A CHILD’S ADOPTION BY A SECOND PARENT

As discussed above, social science research overwhelmingly shows that it is in the best interest of children to protect and maintain their established attachment relationships. It is critical to children’s development, psychological health, and general well-being to foster and promote, rather than destroy, parental attachments, whether or not the parent is biologically related, and whether or not the parents are same-sex or heterosexual. No different conclusion is warranted here. It is beyond reasonable dispute that Jacob has a strong parent-child attachment to Appellee, whom he has known as his entire life as his “Mom” and whom Appellant represented, as part of the adoption proceeding, would – and did – share equally with the care, support, and nurturing of Jacob throughout his life. See R. p. 253, ¶ 18; id. at 150-52, 156-57.

Consistent with the social science, courts⁶ have respected the finality of an

⁶ *Amici* understand that Appellee will address in her brief the relevant North Carolina precedent. *Amici* therefore will not undertake to repeat Appellee’s analysis, but note that this State’s adoption law also make clear that “it is in the public interest to establish a clear judicial process for adoptions, to promote the integrity and finality of adoptions, [and] to encourage prompt, conclusive disposition of adoption proceedings” N.C. GEN. STAT. § 48-1-100(a). See also Section 48-1-100(c) (directing that “the needs, interests, and rights of minor

adoption order by a same-sex parent, even where the state had laws excluding gay couples from marriage and/or domestic partnerships. See, e.g., Goodson v. Castellanos, 214 S.W.3d 741, 748-49 (Tex. Ct. App. 2007) (“The destruction of a parent-child relationship is a traumatic experience that can lead to emotional devastation for all the parties involved, and all reasonable efforts to prevent this outcome must be invoked when there is no indication that the destruction of the existing parent-child relationship is in the best interest of the child.”); see also In re Adoption of K.S.P., 804 N.E.2d 1253, 1260 (Ind. Ct. App. 2004) (“Allowing a second parent to share legal responsibility for the financial, spiritual, educational, and emotional well-being of the child in a stable, supportive, and nurturing environment can only be in the best interest of that child.”); Hobbs v. Van Stavern, 249 S.W.3d 1, 4 (Tex. Ct. App. 2006) (noting that the legislature “made no exceptions to the six-month limitation [on challenging adoptions] – not for challenges to purportedly void adoption orders, not for good cause, and not for public policy reasons.”); Schott v. Schott, 744 N.W.2d 85, 89 (Iowa 2008) (holding

adoptees are primary. **Any conflict between the interests of a minor adoptee and those of an adult shall be resolved in favor of the minor.**”) (emphasis added). See also Fakhoury v. Fakhoury, 171 N.C. App. 104, 112, 613 S.E.2d 729, 734 (2005), *rev. denied*, 621 S.E.2d 622 (N.C. 2005) (“[The NC adoption chapter] also requires that the interests of the child take precedence over the interests of anyone else.”).

that district court which granted a second parent adoption had jurisdiction to do so, and even if that court misinterpreted the statute, such adoptions are not void).

Similarly, recognition of the primacy of the child's interests has led numerous other courts to recognize second parent adoptions even where state adoption statutes are silent as to their validity. See, e.g., In re M.M.D., 662 A.2d 837, 861 (D.C. 1995) ("Such a narrow construction would produce the unreasonable and irrational result of defeating adoptions that are otherwise indisputably in the best interests of children."); Adoption of B.L.V.B., 160 Vt. 368, 376, 628 A.2d 1271, 1276 (1993); In re Petition of K.M., 274 Ill.App.3d 189, 199, 653 N.E.2d 888, 895 (Ill. App. Ct. 1995). Specifically, courts have recognized that granting second parent adoptions assists children by validating what is clearly their reality of living with two adults functioning as parents. See, e.g., Adoption of Two Children by H.N.R., 285 N.J.Super. 1, 11-12, 666 A.2d 535, 541 (N.J. Super. Ct. App. Div. 1995) ("The twins are, by reason of their upbringing, daily lives, and ties of mutual affection, the children of both Mary and Hannah, and no court order granting or denying the adoption will change that."); Adoption of Tammy, 416 Mass. 205, 207, 619 N.E.2d 315, 316 (Mass. 1993) ("Both women jointly and equally participate in parenting Tammy, and both have a strong financial

commitment to her.”).

In sum, decades of social science research confirm that it is in the best interest of children to protect and maintain their established attachment relationships, and the lower court correctly concluded that it was in the best interest of Jacob that both Appellee and Appellant be recognized as his legal parents. A result to the contrary would be inconsistent with North Carolina’s adoption statutes and strong public policy prioritizing the interests of children above all.⁷ And, as the social science also demonstrates, the consequences of severing Jacob’s parent-child relationship with Appellee – a consideration remarkably absent from Appellant’s brief – would be harmful, if not devastating.

⁷ Children, of course, have no control over the composition of the family into which they are adopted, or whether their adoptive second parent happens to be of the same-sex or different-sex than their biological parent. The United States Supreme Court has made clear that it is improper to penalize children for the actions or the legal status of their parents. See Trimble v. Gordon, 430 U.S. 762, 770, 97 S.Ct. 1459, 1465, 52 L.Ed.2d 31 (1977) (in striking down inheritance law that discriminated against illegitimate children, noting “Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual as well as an unjust way of deterring the parent.”).

CONCLUSION

For the reasons above, the lower court's orders respecting the finality of the adoption order and granting joint custody of Jacob to Appellant and Appellee should be affirmed.

Respectfully submitted this the 31st day of October, 2008.

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CERTIFICATE OF COMPLIANCE

This Brief complies with North Carolina Rule of Appellate Procedure 28(j). The Brief was prepared in Microsoft Word, using Times New Roman 14-point font. According to the word count function, the word count, including footnotes and headings, but excluding cover, index, table of authorities, list of counsel, and certificates, is less than 3,750 words.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief of *Amici Curiae* was served upon counsel for the parties by depositing a copy in the United States Mail, postage pre-paid and addressed as follows:

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This the 31st day of October, 2008.

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