

NORTH CAROLINA COURT OF APPEALS

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JOELLEN MASON,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	From Durham County
	)	04 CVD 5598
IRENE DWINNELL	)	
	)	
Defendant-Appellant.	)	

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BRIEF OF AMICI CURIAE  
NATIONAL ASSOCIATION OF SOCIAL WORKERS,  
NATIONAL ASSOCIATION OF SOCIAL WORKERS,  
NORTH CAROLINA CHAPTER

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No. COA07-176

FOURTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

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JOELLEN MASON,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	From Durham County
	)	04 CVD 5598
IRENE DWINNELL	)	
	)	
Defendant-Appellant.	)	

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**ARGUMENT**<sup>1</sup>

A large number of children are currently being raised by gay and lesbian same-sex couples. Many of these gay and lesbian parents lack a biological or legal connection to their children,<sup>2</sup> but nevertheless function on every level as genuine parents to their children. North Carolina law recognizes that persons who have established true, fully-developed parent-child relationships, with the support and encouragement of the biological parent (*i.e.*, psychological parents), may be granted

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<sup>1</sup> *Amici* accept and adopt the Statement of the Case, Statement of Questions Presented, and Statement of Facts as set forth in the brief of Plaintiff-Appellee.

<sup>2</sup> The term "legal" parent includes biological and adoptive parents.

custody where (1) the biological parent's conduct is found to be inconsistent with her paramount parental rights; and (2) custody in favor of the psychological parent is in the best interest of the child.

More than two decades of peer-reviewed social science research demonstrates that children form significant bonds of attachment to parent figures early in life, whether or not the parent is legally or biologically related, and whether or not the parents are same-sex or heterosexual. These empirical findings further establish that continuity of parent-child attachment bonds is critical to children's development, psychological health, and general well-being. Gay and lesbian psychological parents must, therefore, be given the opportunity to show that custody in their favor would meet the best interest of the child.

**I. CUSTODY RIGHTS SHOULD BE GRANTED TO GAY AND LESBIAN PSYCHOLOGICAL PARENTS WHEN IN THE BEST INTEREST OF THE CHILD.**

In North Carolina, a biological parent may lose her constitutionally protected right to custody of her child by either (1) a finding of unfitness of the biological parent, or (2) where the biological parent's conduct is inconsistent with her constitutionally protected status. See, e.g., Price v. Howard, 346 N.C. 68, 79 (1997); David N. v. Jason N., 359 N.C. 303, 307 (2005). Where unfitness or inconsistent conduct is

found, custody disputes between biological parents and third parties are determined based upon *the best interest of the child*.<sup>3</sup> Price, 346 N.C. at 79; Speagle v. Seitz, 354 N.C. 525, 530-31 (2001); see also N.C. Gen. Stat. § 50-13.2(a) (1995).

Inconsistent conduct need not "rise to the statutory level warranting termination of parental rights" before the best interest of the child test can be applied. Price, 346 N.C. at 79. "Unfitness, neglect, and abandonment clearly constitute conduct inconsistent with the protected status parents may enjoy," however "[o]ther types of conduct, which must be viewed on a case-by-case basis, can also rise to this level so as to be inconsistent with the protected status of natural parents." Id; see also Speagle, 354 N.C. at 530-31. For example, in Price the Court held that inconsistent conduct could be found to exist where the biological parent "not only created the family unit that [the psychological parent] and the child have established, but also induced them to allow that family unit to flourish in a

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<sup>3</sup> Third parties who establish a relationship with a child "in the nature of a parent child relationship" have standing to seek custody of that child, "even in the absence of a biological relationship." Ellison v. Ramos, 130 N.C. App. 389, 394 (1998); see also N.C. Gen. Stat. § 50-13.1 (1995).

relationship of love and duty with no expectations that it would be terminated." 346 N.C. at 83. In such cases, the psychological parent may be awarded custody when in the best interest of the child. Id. at 79.

Because significant emotional and developmental harm can result when a relationship between a parent and child is severed, it is critical that North Carolina recognize the rights of Plaintiff-Appellee and other psychological parents to petition for custody of their children, so that the best interest of the child can be appropriately considered.

**II. SOCIAL SCIENCE RESEARCH CONFIRMS THAT, IN APPROPRIATE CASES, THE BOND BETWEEN CHILDREN AND THEIR NON-BIOLOGICAL, NON-ADOPTIVE GAY & LESBIAN PARENTS SHOULD BE PROTECTED.**

Finding that Plaintiff-Appellee should be granted custody if found to be in her child, Mason's, best interest comports not only with North Carolina case law, but also with more than two decades of social science research that has been conducted pursuant to the scientific method and has generally been subject to critical review by outside experts. These social science findings demonstrate that (1) protecting the relationship between children and their parents is essential to children's healthy development and overall well-being; and (2) this is so irrespective of the parents' sexual orientation or lack of a biological or legal tie 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. 1982); 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 creates the central foundation of a child's development. See Daniel J.

Seigel, The Developing Mind: Toward a Neurobiology of Interpersonal Experience 67-120 (1999).

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. & Psychiatry 115, 118 (2005); American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, Developmental Issues For Young Children in Foster Care, 106 Pediatrics 1145, 1146 (2000) ("Attachment to a primary caregiver is essential to the development of emotional security and social conscience.").

**B. Attachment Relationships Develop Despite The Absence Of A Biological or Legal Connection.**

Attachment bonds invariably develop regardless of whether the parent and child are biologically or legally 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 or formal adoption). 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.

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, rather than any biological or legal connection, that creates and sustains these attachment relationships. Ana H. Marty, et al., Supporting Secure Parent-Child Attachments: The Role of the Non-parental Caregiver, 175 Early Childhood Dev. & Care 271, 273 (2005); see also The 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").

This finding extends to attachment bonds between children and their same-sex parents. 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, 167-68 (2003) (finding, in a qualitative study of lesbian couples, that "quality of care was the salient factor

in the establishment of an attachment hierarchy" and that "the nature of the interaction...is more important than the person's legal or biological tie to the child").

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

The research consistently shows that in all relevant respects lesbians and gay men parent as heterosexuals do. See, e.g., G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality: Research Applications for Public Policy* 197, 198 (John C. Gonsiorek & James D. Weinrichs eds., 1991) (concluding that "[t]he research is *extraordinarily clear* in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children") (emphasis added).

It is no surprise, then, that studies have 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 lesbian parents. See The Am. Acad. of Pediatrics, *Family Pediatrics: Report of the Task Force on the Family*, 111 *Pediatrics*, 1541, 1550 (2003) (finding "that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships"); A. Brewaeys, et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*,

12 Human Reproduction 1349, 1358 (1997) (finding the non-biological mother in lesbian families "was regarded by the child as just as much a 'parent' as the father in the heterosexual families").

Moreover, the lack of a biological or legal link does not impact the child's feelings for the same-sex parent. 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 the lack of a genetic link between a same-sex parent and child does not negatively impact parent-child relationships).

Where, as is the case here, both same-sex parents participate in the child's upbringing, the child will form a significant attachment relationship with each parent. A study evaluating child development in lesbian families found that

[b]oth 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.

Brewaeys supra, at 1356 (1997); see also Barbara M. McCandlish, Against All Odds: Lesbian Mother Family Dynamics, in Gay and Lesbian Parents 23-38 (Frederick W. Bozett ed., 1987). The

record in the case sub judice likewise reflects that Plaintiff-Appellee was actively engaged in caring for her child, Mason, on a regular basis and formed a deep attachment relationship with him. (R p 134-43).

**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 also Marty, supra, at 274 ("[T]he quality of the attachment has profound effects on the child's social adjustment."); The Am. Acad. 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.

Because children typically assume that they can depend on the predictability of both parents, severance or curtailment of the parent-child bond can be "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").

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 The Am. Acad. of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, supra, 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). 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 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.").

Studies of children of divorced parents confirm the psychological harm that can result when a child is separated

from a parent to whom he or she is attached. See, e.g., Judith S. Wallerstein & Sandra Blakeslee, Second Chances: Men, Women and Children a Decade After Divorce (1989) (Children who do not maintain contact with parents suffer a continuing sense of loss and sadness.); Judith Wallerstein & Joan B. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce 307 (1980) (finding that self-image of children from divorced families is "firmly tied to their relationship with both parents").

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 parent and child. Fiona L. Tasker & Susan Golombok, Growing Up in a Lesbian Family: Effects on Child Development 12 (1997); see also 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).

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 (finding that cessation of the parent-child bond between a

child and a lesbian psychological parent "can cause [the child] extreme distress"). In fact, 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).

**E. A Child's Health and Well-Being Is Best Served By Nurturing and Maintaining Attachment Bonds.**

In light of the importance of the parent-child bond to the overall health and well-being of children, researchers believe that children generally benefit from continued contact with both parents. See Michael E. Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 Vir. J. of Social Pol'y & the Law 98, 103, 113-14 (2002) (explaining that everyday activities with both parents promote and maintain trust and confidence in the parents, while strengthening child-parent attachments); Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?*, 54 J. Marriage & The Fam. 837, 838 (1992) ("Children who maintain contact with both parents tend to be better adjusted.").

The findings are no different for children of same-sex parenting relationships. As one prominent researcher explains, when a lesbian couple that has jointly raised a child since

birth separate, "it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child's relationship with both parents." Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Develop. 1025, 1037 (1992); see also Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, The Am. Acad. of Pediatrics, Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents, 109 Pediatrics 339 (Feb. 2002) available at <http://www.aap.org/policy/020008.html> (advising that children of gays and lesbians need and deserve the same permanence and security in parental relationships as children of heterosexual parents); American Psychoanalytic Association, Position Statement on Gay and Lesbian Parenting (May 16, 2002) available at <http://www.apsa.org/ABOUTAPSAA/POSITIONSTATEMENTS/GAYANDLESBIANPARENTING/tabid/471/Default.aspx> (concluding that gay and lesbian parents are capable of meeting the best interest of the child and should be afforded the same rights as heterosexual parents); Nat'l Assoc. of Social Workers, Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social World Speaks 245, 247 (2006) (stating that gays and lesbians should "be granted all rights, privileges, and responsibilities that are granted to heterosexual people, including but not limited to...child custody").

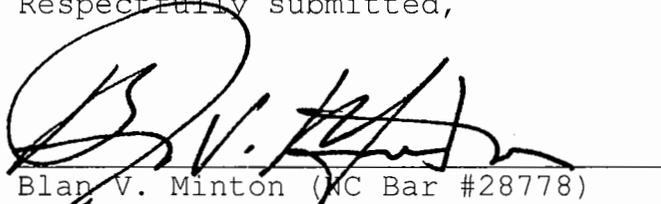
More than two decades of social science research confirms that it is in the best interest of children to protect and maintain their established attachment relationships. Both parents in a same-sex relationship must be given the opportunity to establish that custody in their favor would further the best interest of the child. This is especially so for parents, such as Plaintiff-Appellee, who have functioned as true parents to their children since birth, and have done so with the consent and encouragement of the biological parent.

CONCLUSION

The Order: Permanent Custody entered by the trial court on June 1, 2006 should be affirmed.

Dated: April 20, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of April, 2007,

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