

No. 2012-0384

**IN THE
SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE**

In re Guardianship of Matthew L

On Appeal from the Circuit Court for the 10th Circuit,
Family Division, Brentwood (Case No. 618-2008-GM-00052)

**BRIEF FOR THE NATIONAL ASSOCIATION OF SOCIAL WORKERS
AND NATIONAL ASSOCIATION OF SOCIAL WORKERS
NEW HAMPSHIRE CHAPTER, AS AMICI CURIAE IN SUPPORT OF
APPELLANT**

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Konner, Melvin, *Childhood* (1st ed. 1991)5

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National Research Council & Institute of Medicine, *From Neurons to Neighborhoods* (Jack P. Shonkoff & Deborah A. Phillips eds., 2000)6

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INTEREST OF AMICI CURIAE

Established in 1955, the National Association of Social Workers, or NASW, is the largest association of professional social workers in the world, with 145,000 members and chapters throughout the United States, in Puerto Rico, Guam, the Virgin Islands, and an International Chapter in Europe. The NASW New Hampshire Chapter has 750 members. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates professional standards and criteria, and develops policy statements on issues of importance to the social work profession. Consistent with NASW's policies and its *Code of Ethics*, NASW has also filed numerous amicus briefs in support of the maintenance of children's primary attachment relationships to nurturing parents. NASW similarly submits this brief in support of the best interests of the child in this case, and of all similarly situated children in the State of New Hampshire.¹

STATEMENT OF FACTS

Petitioner-appellee Mary S. and respondent-appellant Joan M. spent nearly four years together in a committed relationship. 10/23/2009 Order, Family Division Case No. 618-2008-GM-00052 (hereafter 10/23/2009 Order), at 2.² During that time, they decided to form a family together. *Id.* Both women participated in the process of selecting a sperm donor for Mary, who would bear the child, and following conception, Joan attended some of Mary's prenatal appointments. *Id.* The child, Matthew, was born on April 4, 2007. *Id.*

¹ Both parties have consented to the filing of this brief.

² Because this case centers around a young child, this brief refers to the parties as well as the child only by their first names and last initials.

The following month, Mary and Joan petitioned for permanent co-guardianship of Matthew. 10/23/2009 Order, at 3. The petition was granted in July 2007, and for nearly another year, Joan and Mary lived and raised Matthew together. *Id.* In fact, as the Family Division recounted in a 2009 order:

During the first year of Matthew's life, both Mary and Joan cared for Matthew and functioned as a family of two parents and a child. ... In the ["stereotypical nuclear family," Mary would be the "stay at home Mom" and Joan would be the "working Dad." ... Both picked up and dropped off Matthew at daycare. When Matthew started talking he referred to both Joan and Mary as his mother. He did not refer to other females as his mother. Matthew was presented as their child. For example, the child care workers treated both Mary and Joan as Matthew's parents. Joan's extended family embraced Matthew as Joan's son; and Joan's parents were referred to as "Papa and Gram."

Id.

In June 2008, following the end of Mary's and Joan's relationship (and co-habitation), Mary filed a petition to terminate the co-guardianship. 10/23/2009 Order, at 1. The Family Division denied that petition in October 2009, after appointing a guardian ad litem (GAL) and holding an eight-day hearing. *Id.* In its denial order, the judge stated that "Mary and Joan referred to each other both as Matthew's mother; encouraged Matthew to look to both of them as mothers; and held themselves out to others as Matthew's mothers." *Id.* at 4. The judge also found that "[b]oth Mary and Joan are excellent parents. Both love Matthew tremendously and show their love for him. ... [T]he GAL had no concerns with either Mary or Joan as a parent. The GAL noted that each has different qualities for nurturing Matthew." *Id.*³

In June 2010, Mary—who had not appealed the denial of her first termination petition (and who had accepted the child support from Joan that the family court ordered)—filed a

³ While her petition was pending, Mary sought to end Joan's contact with Matthew unilaterally. On Joan's motion, the family court responded by ordering regular visitation with Matthew for Joan.

second petition to terminate the guardianship. The Family Division rejected several of Mary's claims on the ground that they could have been presented as part of her first petition. It allowed other claims to proceed to trial. In the middle of trial, however, the judge sharply shifted the burden of proof. *See* 4/19/2012 Order, Family Division Case No. 618-2008-GM-00052 (hereafter 4/19/2012 Order), at 1. He held that because of this Court's decision in *In re Reena D.*, 163 N.H. 107 (2011), Mary no longer had the burden to prove, by a preponderance of the evidence, either (a) that supplementation of parental care and supervision was no longer necessary to provide for Matthew's essential physical and safety needs, or (b) that termination of the co-guardianship would not adversely affect him. *See id.* at 1-2. Rather, Joan had the burden to prove, by clear and convincing evidence, both that such supplementation was necessary and that termination would adversely affect Matthew. *Id.*

The judge refused Joan's request to continue the trial in order to give her an opportunity to prepare evidence necessary to carry her newly imposed burden. Not surprisingly, given the mid-trial burden shift and the lack of time to prepare in response to it, the judge found that Joan had not carried her burden on the supplementation point. It therefore granted the petition to terminate the guardianship, without addressing whether termination would adversely affect Matthew. Joan has appealed to this Court.

SUMMARY OF ARGUMENT

New Hampshire law has long deemed the promotion of child welfare to be among the highest of priorities. That is pertinent here because substantial social-science research demonstrates that allowing Mary to effectuate the total separation of Joan from Matthew could well cause him severe, and possibly permanent, harm. This research establishes: that children form powerful "attachment bonds" with their parental caregivers; that these bonds are essential

to healthy childhood development; that they are based on the quality of care, and can form without regard to any biological or legal relationship between the child and the adult; and that severance of these attachment bonds can cause lasting psychosocial damage to children. This undisputed research leaves no doubt that Mary’s effort to keep Matthew completely apart from Joan—whom the trial judge found after hearing extensive testimony to be an “excellent parent[,],” *see supra* p.2—should be rejected.

ARGUMENT

EXTENSIVE SOCIAL-SCIENCE RESEARCH ESTABLISHES THAT COMPLETELY SEPARATING JOAN FROM THE CHILD COULD CAUSE THE CHILD SEVERE AND PERMANENT HARM

Mary seeks to deny any parental rights to Joan, and also seeks, based on her conduct to date, to effectuate the total separation of Joan from five-and-a-half-year-old Matthew. To allow this would be wholly inconsistent with fundamental tenets of New Hampshire law, which consistently recognizes the overriding importance of children’s welfare. *See, e.g., In re Martin*, 160 N.H. 645, 647 (2010) (“When determining matters of child custody, a trial court’s overriding concern is the best interest of the child.”); *In re Miller*, 161 N.H. 630, 640 (2011) (“RSA chapter 461-A, the Parental Rights and Responsibilities Act, ... codifies the ‘best interests of the child’ criteria, setting forth twelve factors that the court must consider[.]”); *In re Huff*, 158 N.H. 414, 417 (2009) (“The best interests of the child guide *all* custody decisions in New Hampshire.” (emphasis added)). It would be inconsistent with these tenets because totally separating Joan from Matthew would likely inflict severe, possibly irreparable harm on him. This is clear from three basic principles established by a wealth of social-science research (and confirmed by expert testimony in this case): (1) children form with their parents, and others in a parental role, strong attachment bonds that play a critical role in healthy child development; (2) these bonds depend on the quality and duration of care provided by an adult,

not on whether the adult is biologically or legally related to the child; and (3) severing these attachment bonds can cause severe, even permanent, developmental harm to children. NASW addresses each point in turn.

A. Child-Parent Attachments Are Critical To Healthy Child Development

Decades of social-science research demonstrate that children, particularly infants and other young children, naturally develop powerful “attachment” bonds with parents or parent-like caregivers who provide consistent love and support. The research also demonstrates that these bonds, which grow stronger over time, lay the foundation for children’s healthy development, particularly in terms of their relationships with other individuals. *See generally, e.g.,* Bowlby, John, *Attachment* (2d ed. 1982); Konner, Melvin, *Childhood* 84-87 (1st ed. 1991); Ainsworth, Mary D. Salter, *Attachment and Other Affectional Bonds Across the Life Cycle*, in *Attachment Across the Life Cycle* 33-51 (Parkes et al. eds., 1991); *Attachment from Infancy to Adulthood* (Grossmann et al. eds., 2005).

Attachment relationships are a central factor in the development of children’s brains during a period of great growth, and thus lie at the heart of children’s healthy development. “Research ... has shown that the development of a secure, emotional attachment to caregivers (usually parents) is important for healthy psychological adjustment, not only in infancy, but in later childhood as well.” Singer, Leslie M., et al., *Mother-Infant Attachment in Adoptive Families*, 56 *Child Dev.* 1543, 1544 (1985); accord Seifert, Meghann M., *Sibling Visitation After Adoption*, 84 *B.U. L. Rev.* 1467, 1487 (2004) (“A strong and healthy parent-child relationship is crucial to child development. The parent-child relationship lays the groundwork for the child to develop other close relationships in the future.”); Jackson, Joseph S. & Lauren G. Fasig, *The Parentless Child’s Right to a Permanent Family*, 46 *Wake Forest L. Rev.* 1, 3 (2011) (“As developmental science demonstrates, attachment relationships are foundational in

the formation of the self, critical to healthy psychological adjustment, and necessary for the acquisition of self-regulation and social competence, capacities essential to meaningful autonomy.”); Siegel, Daniel J., *The Developing Mind* 67-120 (1999).

Children with strong and positive attachment bonds—which derive from the consistent availability of a responsive caregiver—develop a powerful sense of security and confidence that enables them to deal effectively, throughout their lives, with stressful situations and interact more successfully with others. *See, e.g.*, National Research Council & Institute of Medicine, *From Neurons to Neighborhoods* 265 (Shonkoff & Phillips eds., 2000) (“[Attachment] relationships shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth[.]”); Onorato, Nicole M., *The Right To Be Heard*, 4 *Whittier J. Child & Fam. Advocacy* 491, 496 (2005) (“[S]tudies indicate that the working models that develop early in life remain stable throughout the lifespan and continue to [a]ffect individual development of interpersonal relationships, emotional regulation, and coping mechanisms.”). Indeed, studies have found statistically robust correlations between strong parent-child attachment bonds for young children and successful relationships with other children, as well as reduced aggressive behavior in later years. *See, e.g.*, Dallaire, Danielle H. & Marsha Weinraub, *Infant-Mother Attachment Security and Children’s Anxiety and Aggression at First Grade*, 28 *J. Applied Dev. Psychol.* 477, 489 (2007).

In short, as one commentator summarized:

Extensive research, including several *twenty-year longitudinal studies* spanning the period from birth to young adulthood, has shown that a child’s secure and healthy development depends on having one or more sensitive and responsive attachment figures who can correctly read signals for help, provide comforting support and useful assistance, and help the child learn to understand,

appropriately express, and regulate emotions; understand social situations; and acquire important life skills.

Shaver, Phillip R., et al., *What's Love Got To Do With It?*, 16 Va. J. Soc. Pol'y & L. 491, 493 (2009) (emphasis added) (footnote omitted). The findings yielded by this body of research have long been recognized by courts. *See, e.g., Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513 (1982) ("It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents."); *see also Wakeman v. Dixon*, 921 So. 2d 669, 675 (Fla. Dist. Ct. App. 2006) (Van Nortwick, J., specially concurring) ("A person develops a parent-child relationship with the child through day-to-day interaction, companionship, and emotional caring for the child. This relationship fulfills the child's psychological needs for a parent, in addition to providing for the child's physical necessities of daily living.").

B. Child-Parent Attachments Can Form Irrespective Of Whether A Biological Or Legal Child-Parent Relationship Exists

Social science also establishes that the development of parent-child attachment bonds is not based on whether the adult is biologically or legally related to the child. *See, e.g., Goldstein, Joseph, et al., Beyond the Best Interests of the Child* 27 (2d ed. 1979); Singer et al., 56 Child Dev. at 1550. Instead, what creates and sustains attachment relationships is the quality of the interaction between adult and child. As one commentator explained, "research suggests that it is the proximity to the caretaker and the consistent, stable pattern of responses from the caregiver that is essential for the development of attachment." Onorato, 4 Whittier J. Child & Fam. Advocacy at 495 (footnote omitted); *see also* Goldstein et al. at 19 ("Whether any adult becomes the psychological parent of a child is based ... on day-to-day interaction, companionship, and shared experiences.").

This conclusion comports with everyday experience. A child, particularly a younger child, has little or no understanding of the difference between a biological parent, an adoptive parent, or a parent-like figure with whom she has no legal or biological relationship. What the child knows—and what drives her attachment—is who feeds her, dresses her, reads to her, sings to her, plays with her, brushes her teeth and hair, takes her to the doctor, puts band-aids on her scrapes, comforts her when she is sad, helps her with her homework, tucks her into bed at night, and does the countless other tasks of a parental caregiver. That person, as courts and commentators have recognized, can be a biological parent, an adoptive parent, or someone else; to a child, such matters of legal status are entirely immaterial. *See, e.g., In re Autumn H.*, 32 Cal. Rptr. 2d 535, 538-539 (Ct. App. 1994) (“The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. The relationship arises from day-to-day interaction, companionship and shared experiences.” (citation omitted)).

Indeed, the U.S. Supreme Court has not only recognized this point, but also given it constitutional significance, holding that biological connections between a child and an adult are not by themselves sufficient to justify special constitutional protection. *See Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (“[T]he mere existence of a biological link does not merit [substantial] constitutional protection.”); *cf. Caban v. Mohammed*, 441 U.S. 380, 397 (1979) (Stewart, J., dissenting) (“Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.”). What matters instead, the Court has repeatedly explained, is the interaction that creates attachment relationships with children:

[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy

of daily association, and from the role it plays in “promot[ing] a way of life” through the instruction of children as well as from the fact of blood relationship.

Smith v. Organization of Foster Families for Equality & Reform, 431 U.S. 816, 844 (1977) (second alteration in original) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231-233 (1972)), quoted in *Lehr*, 463 U.S. at 261.

Other courts, similarly recognizing researchers’ findings in this area, have looked to the duration and quality of a parent-child relationship when resolving disputes similar to the one presented in this appeal. As another state’s highest court explained:

Several of our sister states have found that [a] nonparent has standing to seek custody or visitation of [a] child when the child was conceived by artificial insemination with the intent that the child would be co-parented by the parent and her partner, *and the parent and her partner had thereafter co-parented the child for a period of time.*

Mullins v. Picklesimer, 317 S.W.3d 569, 575-576 (Ky. 2010) (emphasis added) (citing *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005); *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. Ct. 1996); *In re Custody of H.S.H.-K.*, 533 N.W.2d 419 (Wis. 1995); and *A.C. v. C.B.*, 829 P.2d 660 (N.M. Ct. App. 1992)); see also *T.B. v. L.R.M.*, 786 A.2d 913, 918-919 (Pa. 2001) (One “parent’s rights do not extend to erasing a relationship between her partner and her child *which she voluntarily created and actively fostered* simply because after the parties’ separation she regretted having done so.” (emphasis added) (internal quotation marks omitted)).

C. Disruption Of Attachment Relationships Can Permanently Harm Children

Just as courts have recognized that children form attachment bonds with caregivers, and do so without regard to biological or legal relationships, so they have recognized that disrupting a child’s attachment bonds can severely harm him or her. See, e.g., *Hernandez v. Lambert*, 951 P.2d 436, 441-442 (Alaska 1998) (“Adoptive custody results in the rapid development of lasting and powerful psychological ties between adoptive parents and children,

especially young children. Once formed, these bonds can seldom be severed without irreparable damage to the child's well-being.”). And this too is supported by social-science research. In fact, “numerous empirical findings ... provide a solid research basis for predictions of long-term harm associated with disrupted attachment and loss of a child's central parental love objects.” Dyer, Frank J., *Termination of Parental Rights in Light of Attachment Theory*, 10 Psych. Pub. Pol. & L. 5, 11 (2004).

Children who form attachment bonds have a deep-seated belief that they can depend on the continued availability of the adult or adults with whom they have the attachment. Disabusing them of that belief, by severing the bond, has profound negative effects, such as imbuing the child with an equally deep-seated reluctance to depend on and trust others, or a belief that her own shortcomings are to blame for the severed attachment bonds. See Byrne, James G., et al., *The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. Child Psychol. & Psychiatry 115, 118 (2005) (“[T]hreats to or disruptions in the attachment relationships ... lead to fear/anxiety[.]”); Jackson & Fasig, 46 Wake Forest L. Rev. at 27-28 (“Disruption [of attachment bonds] causes children to not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.” (internal quotation marks omitted)); Hodges, William F., *Interventions for Children of Divorce* 8-9 (2d ed. 1991); Bembry, James X. & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 Child & Adolescent Soc. Work J. 177, 182-183 (1999).

These feelings, in turn, can lead to “aggression, ... academic problems in school, and ... elevated psychopathology.” Marty, Ana H., et al., *Supporting Secure Parent-Child Attachments*, 175 Early Childhood Dev. & Care 271, 274 (2005). It can also cause eating

disorders, drinking problems, and sleep disruptions. *See* Simms, Mark D., et al., *Health Care Needs of Children in the Foster Care System*, 106 *Pediatrics* 909, 912 (2000). Indeed, “there is a substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment.” Kelly, Joan B. & Michael E. Lamb, *Using Child Development Research To Make Appropriate Custody and Access Decisions for Young Children*, 38 *Fam. & Conciliation Cts. Rev.* 297, 303 (2000); *accord, e.g.*, Gauthier, Yvon, et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care*, 25 *Infant Mental Health J.* 379, 394 (2004). These effects are wide-ranging: As a leading authority puts it, “[t]he child regresses along the whole line of his affections, skills, achievements, and social adaptation.” Goldstein et al. at 18.

D. Application To This Case

Application of the foregoing to this case makes clear that the Family Division’s decision should be reversed. Matthew is now five-and-a-half years old. As the family court found, Joan has been an “excellent parent[,]” *see supra* p.2—a reliable provider of not only food, shelter, clothing, and the other physical necessities of life, but also the love, comfort, and emotional support vital to healthy development. There should be no serious question that strong attachment bonds formed between Joan and Matthew as a result of this consistent caregiving. Indeed, the evidence in this case confirms that such bonds have formed: As recounted in the Family Division’s order denying Mary’s first petition to terminate the guardianship, two experts who testified “agree that attachment [had] occurred between Matthew and both Joan and Mary.” 10/23/2009 Order, at 5. One of the experts further stated that “if the attachment is severed, harm results” and that “the loss of a primary caregiver is a trauma.” *Id.* The other expert, meanwhile, opined that “both Joan and Mary are primary attachment figures” and that “Joan was an irreplaceable attachment figure” for Matthew. *Id.* This expert further testified

that “the loss of a caregiver like Joan w[ould] definitely be encoded in [Matthew’s] brain as a life experience” and that “Matthew would experience the stress of the loss of Joan if that occurred.” *Id.* This expert also stated that “in addition to the adverse developmental effects from the loss, Matthew [would] suffer[] pain from the separation; that is, Matthew is likely to experience separation anxiety and distress over the loss of an important relationship. This is real pain experienced by a real feeling human being[.]” *Id.* at 6-7.⁴

Despite this potential for grave harm, the family court granted the petition to terminate the guardianship—thereby creating a strong risk that the child will be permanently separated from Joan. NASW submits that the present circumstances do not remotely warrant the infliction on Matthew of the social and psychological devastation that would likely result. For reasons explained in Joan’s brief in this Court, the law does not require it. Nor do fundamental notions of decency and justice. To the contrary, as another state’s high court observed in a somewhat similar case, “[t]o disturb the present relationship at this late date would be a cruel travesty on justice.” *Syrovatka ex rel. Syrovatka v. Graham*, 208 N.W.2d 281, 283 (Neb. 1973).

CONCLUSION

The decision of the family court should be reversed because it is inconsistent with extensive social-science research which establishes that allowing a complete separation of a child from a parent with whom the child has established an attachment relationship is likely to cause the child grave and long-lasting harm, in derogation of this state’s longstanding—and proper—recognition that protecting the welfare and furthering the best interests of our children is of the utmost importance.

⁴ This testimony, of course, was given over three years ago, about a child who at that time was not yet three years old. The attachment between Joan and Matthew, and hence the harm to Matthew from severing the attachment, is all the greater now given the continued care and support that Joan has provided Matthew since then.

Dated: September 18, 2012

Respectfully submitted,

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I certify that on this 18th day of September, 2012, two copies of the foregoing were sent by first-class U.S. mail, postage prepaid, to each of the following:

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