

SUPREME COURT OF NORTH CAROLINA

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MICHAEL C. PIRO, )

Plaintiff, )

vs. )

REBECCA HADDEN McKEEVER, )  
L.C.S.W.; CYNTHIA SAPP, Ph.D.; )  
KAREN BARRY, M.F.T., LMFT; and )  
DAVIDSON COUNSELING )  
ASSOCIATES, )

Defendants. )

*From the North Carolina  
Court of Appeals  
COA15-351*

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BRIEF OF *AMICUS CURIAE* THE NATIONAL  
ASSOCIATION OF SOCIAL WORKERS

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BRIEF OF *AMICUS CURIAE* THE NATIONAL  
ASSOCIATION OF SOCIAL WORKERS

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*Amicus curiae* the National Association of Social Workers (“NASW”) respectfully submits this brief pursuant to North Carolina Rule of Appellate Procedure 28(i). NASW conditionally files this brief with its motion for leave to file a brief as *amicus curiae*.

**IDENTITY AND INTEREST OF AMICUS CURIAE**

NASW submits this brief as *amicus curiae* in support of Defendant-Appellee Rebecca McKeever, L.C.S.W. Established in 1955, NASW is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. The North Carolina Chapter of NASW has 5,000 members. Part of NASW's mission is to promote, develop and protect the practice of social work and social workers. In alignment with this mission, NASW establishes professional standards, resources and policies to support quality social work practice. The NASW has significant interest in this case because many of its members are actively involved in matters concerning the safety and protection of children. NASW's policy statement on child abuse and neglect supports the position that "[c]hild abuse and neglect investigations and substantiations are best conducted using a specially trained, multidisciplinary team, including social workers, law enforcement, and health and mental health professionals." Nat'l Ass'n of Soc. Workers, *Social Work Speaks* 42, 46 (8th ed. 2009). Social workers are also mandated by statute to report suspected incidents of child abuse. N.C.G.S. § 7B-301. A reversal of the trial court's order and Court of Appeals' decision has the potential to adversely impact the statutorily mandated work of social workers and the children and families they have a duty to protect.

**STATEMENT OF THE CASE AND STATEMENT OF FACTS**

*Amicus curiae* NASW adopts and incorporates by reference the Statement of the Case and Statement of Facts set forth in the Brief of Defendant-Appellee Rebecca McKeever. N.C. R. App. P. 28(f). In addition, NASW draws the Court's attention to the following facts:

Ms. McKeever is a North Carolina licensed clinical social worker who was an employee of Defendant Davidson Counseling Associates at the time of treatment of the child, N.P. (R pp 7-8, 12). In order to be licensed as a clinical social worker, North Carolina requires a candidate to meet education and training requirements that meet strict statutory standards and administrative regulations. *See, e.g.*, N.C.G.S. § 90B-7. Once licensed, a clinical social worker must maintain the standards of the profession, as well as those set out in North Carolina statutes and regulations. *See* Nat'l Ass'n of Soc. Workers, *NASW Standards for the Practice of Clinical Social Work* (2005); Nat'l Ass'n of Soc. Workers, *Code of Ethics of the National Association of Social Workers* (1999). Under NASW Standards of Practice of Clinical Social Work, a clinical social worker must develop specialized knowledge and understanding of therapeutic and preventative interventions.

In the present case, McKeever conducted therapy sessions with N.P. from May 2011 through September 2013. (R pp 8-9). Plaintiff was not within a

diagnostic and treatment relationship between McKeever and the child at any point. In fact, other than Plaintiff leaving a voicemail for McKeever “[i]n or about June, 2011,” there was never any contact or attempted contact between Plaintiff and Defendant McKeever. (R p 10). In addition, Plaintiff’s Complaint makes no allegations that McKeever was involved in the custody lawsuit between Plaintiff and the child’s mother, or the investigations by law enforcement, the Department of Social Services, or Pat’s Place Advocacy Center. (R pp 7-16).

North Carolina has codified mandatory reporting statutes that impose a duty to report suspected child abuse and provide immunity from any liability when such a report is made in good faith. *See* N.C.G.S. §§ 7B-301, -309. Moreover, North Carolina’s jurisprudence supports the contention that when a client/patient is a suspected victim of child abuse, the social worker does not owe a duty to the suspected or alleged abuser in connection with the treatment of the client/patient. McKeever was acting within the scope of the therapist-patient relationship when she treated N.P. To find liability here would undermine the policy and goals underlying North Carolina’s child abuse reporting statutes.

### ARGUMENT

#### **I. CHILD ABUSE PROTECTION IS A LEGISLATIVE PRIORITY AT THE FEDERAL AND STATE LEVEL.**

Child abuse, including child sexual abuse, is a pervasive national problem. Every year in the United States hundreds of thousands of children are the victims



of child abuse and neglect. Across the country, state and local child protective services estimated that 686,000 children were victims of abuse, neglect, or other forms of maltreatment. Div. of Violence Prevention, Ctrs. for Disease Control and Prevention, *Child Maltreatment: Facts at a Glance* (2014), at <http://www.cdc.gov/violenceprevention/pdf/childmaltreatment-facts-at-a-glance.pdf>. The youngest children are the most vulnerable with about twenty-seven percent of reported victims being under the age of three. *Id.* The total lifetime cost of child maltreatment in the United States is approximately \$124 billion each year. *Id.*

In view of these distressing statistics, federal and state governments have enacted laws and developed programs to protect children and prevent child abuse. The legislative framework in place anticipates that persons and agencies with child protection expertise, including social workers, will bring their specialized knowledge to bear in crafting and carrying out processes to best help child victims and children at risk of abuse.

In an attempt to respond to the wide-spread problem of child abuse, Congress passed the Child Abuse Prevention and Treatment Act (“CAPTA”). CAPTA was first signed into law on January 31, 1974, and reauthorized in 1978, 1984, 1988, 1992, 1996, 2003, and 2010. 42 U.S.C. § 5101 *et seq.*; 42 U.S.C. § 5116 *et seq.* Federal grants to states under CAPTA mandate that these states have

child abuse and neglect laws in effect which meet federal minimum requirements. *See* 42 U.S.C. § 5106(a)(1)(2). The main objective of CAPTA and the state laws it underpins is, first and foremost, to keep children safe from physical and emotional harm.

The primary emphasis on protecting children from abuse is well founded considering the significant psychosocial and economic damages to both the child victim and to society once abuse occurs.

Child abuse and neglect have known detrimental effects on the physical, psychological, cognitive, and behavioral development of children. These consequences . . . include physical injuries, brain damage, chronic low self-esteem, problems with bonding and forming relationships, developmental delays, learning disorders, and aggressive behavior. Clinical conditions associated with abuse and neglect include depression, post-traumatic stress disorder, and conduct disorders. Beyond the trauma inflicted on individual children, child maltreatment also has been linked with long-term, negative societal consequences. For example, studies associate child maltreatment with increased risk of low academic achievement, drug use, teen pregnancy, juvenile dependency, and adult criminality. Further, these consequences cost society by expanding the need for mental health and substance abuse treatment programs, police and court interventions, correctional facilities, and public assistance programs, and by causing losses in productivity.

Nat'l Clearinghouse on Child Abuse & Neglect Info., *Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect* (2001) (internal citations omitted).

**A. North Carolina Social Workers are Mandated by Statute to Report Suspected Child Abuse.**

The fight against child abuse is also a legislative priority at the state level.

The statutory framework of North Carolina's Juvenile Code dealing with abuse and neglect is carefully crafted to protect children and prevent child maltreatment while simultaneously respecting the constitutional rights of juveniles and parents. *See* N.C.G.S. § 7B-100(3). Children who are victims of child abuse or neglect are generally not in a position to report such maltreatment, and those who cause the maltreatment usually do not seek aid voluntarily. Therefore, in accordance with CAPTA, North Carolina law requires that "[a]ny person who has cause to suspect" child abuse must report the case and that all such reports be investigated to substantiate the accuracy of the report. N.C.G.S. §§ 7B-301, -302, -311. The General Assembly is serious about protecting North Carolina's children:

Government has no nobler duty than that of protecting its country's lifeblood -- the children. For this reason, all fifty states have codified mandatory reporting statutes that impose a duty to report suspected or observed child abuse upon specified persons or institutions, particularly those that work regularly with children. North Carolina's reporting statutes, however, impose this duty universally -- everyone, not just officers of the state, physicians, teachers, administrators, social workers or clergy, shares the state's role as *parens patriae* in this regard for all North Carolina children.

*Dobson v. Harris*, 352 N.C. 77, 80, 530 S.E.2d 829, 833 (2000) (citation omitted).

By mandating the reporting and investigation of suspected child abuse, the General Assembly has implemented a framework to ensure its goal of preventing

maltreatment at its earliest stages. *See* N.C. Gen. Stat. § 7B-1300 (prevention of abuse and neglect is “a priority of this State”); *see also Dobson, supra*, 352 N.C. at 80, 530 S.E.2d at 833-34 (“North Carolina’s reporting statutes similarly give rein to [the] doctrine of *parens patriae*, providing procedures clearly intended to encourage the participation of all citizens in swiftly detecting and remedying child abuse or neglect.”). It is clear that the reporting and screening phase of North Carolina’s abuse and neglect laws foster the state’s interest in preventing child abuse and promoting the safety and well-being of children and families before permanent psychological and/or physical harm occurs. *See Dobson*, 352 N.C. at 78, 530 S.E.2d at 832 (“[T]he legislative intent of these statutes is that citizens are vigilant in assuring the safety and welfare of the children of North Carolina.”).

**B. North Carolina’s Juvenile Code Provides Child Abuse Reporting Immunity, So Long as the Reporter Was Acting in Good Faith.**

The state interest in protecting minors from abuse and neglect is supported by strong statutory incentives to report their occurrences. *Dobson*, 352 N.C. at 82, 530 S.E.2d at 834-34. In order to encourage citizens to report circumstances that prompt them to believe a child is in jeopardy, without fear of potential liability, N.C.G.S. § 7B-309 provides immunity from liability to those who act in accordance with the reporting statute. The statute provides:

Anyone who makes a report pursuant to this Article . . . or otherwise participates in the program authorized by this Article, is immune from

civil or criminal liability that might otherwise be incurred or imposed for that action provided that the person was acting in good faith.

N.C.G.S. § 7B-309. The statute further directs that “[i]n any proceeding involving liability, *good faith is presumed.*” *Id.* (emphasis added).

Therefore, under sections 7B-301 and -309, the responsibility to report suspected child abuse is conjoined with immunity from civil or criminal liability. This responsibility is also conjoined with the statutory presumption that these reports are made in good faith. See *Dobson*, 352 N.C. at 82, 530 S.E.2d at 834. “Significantly, the North Carolina Juvenile Code provides immunity not merely conditioned upon proof of good faith, but a good faith immunity, one which endows a reporter with the mandatory presumption that he or she acted in good faith.” *Id.* at 82, 530 S.E.2d at 835. Consequently, McKeever is entitled to statutory immunity based on a presumption of good faith. Plaintiff’s conclusory and general allegations are insufficient to defeat this statutory presumption.

Investigations into reports of suspected abuse will inevitably find, in some cases, that the suspected abuse did not occur. This result should not deprive a person who complies with his or her duty to report suspected abuse of the statutory grant of immunity provided to encourage such reports. In order to ensure the efficacy of the child abuse and neglect reporting laws, courts must appropriately apply statutory immunity to reports of suspected abuse or neglect and

investigations that follow. Fear of being subjected to protracted litigation will otherwise deter reports from those who suspect that a child is the victim of abuse.

**II. EXTENDING A SOCIAL WORKER'S DUTY OF CARE TO A THIRD PARTY ALLEGED ABUSER OUTSIDE THE THERAPIST-PATIENT RELATIONSHIP WOULD OFFEND PUBLIC POLICY.**

In the case at hand, Plaintiff alleges negligence, which implicates a legal duty owed by McKeever to Plaintiff. (R p 13). *See Guthrie v. Conroy*, 152 N.C. App. 15, 25, 567 S.E.2d 403, 410 (2002). Creating such a duty of care to a non-patient third party would unreasonably extend the legal concept of duty, impede a number of worthy public policy goals, jeopardize effective treatment, and would negatively impact federal and state child abuse reporting and enforcement statutes enacted to keep children safe from harm.

Further, current North Carolina law does not impose a duty of care on health care professionals toward third parties. In *Russell v. Adams*, the Court reasoned that “[h]ealth care providers must be ‘free to recommend a course of treatment and act on a patient’s response . . . free from the possibility that someone other than the patient might complain in the future.’” 125 N.C. App. 637, 640, 482 S.E.2d 30, 32-33 (1997) (quoting *Lindgreen v. Moore*, 907 F. Supp. 1183, 1189 (N.D. Ill. 1995)). To further this goal, the Court in *Russell* found that health care providers “owe a duty to their patient and not to anyone else so as not to compromise this primary duty.” *Id.* at 640, 482 S.E.2d at 33; *see also Iodice v. U.S.*, 289 F.3d 270,

279 (4th Cir. 2002) (North Carolina has an “apparent wariness of health care claims by third parties, evidenced both by its flat out ban on medical malpractice suits by third party victims, and the total absence of ordinary negligence cases permitting recovery against a health care provider by a third party victim.”).

Under a rule imposing a duty of care to third parties, therapists would be compelled to consider possible side effects of treatment choices on non-patient third parties which could impede their treatment because of the threat of liability. *See J.A.H. v. Wadle & Assocs.*, 589 N.W.2d 256, 263 (Iowa 1999). An extension of such duty to individuals outside the therapist-patient relationship, who tenuously claim to be directly affected by the conduct of the social worker, invites abuse of the concept of duty and places an unreasonable restraint on the social worker in situations involving abuse. Moreover, such an extension of duty would erect a barrier to compliance with and effective enforcement of the statutes requiring reporting of child abuse. Therefore, in cases involving possible child abuse, the potential for harm to the alleged abuser (here, a parent) does not negate the importance of effective treatment, nor does it create a duty of the social worker toward an alleged abuser who is not the client. In order to promote compliance with mandated reporting laws and effective treatment of the abused child, the duty of care required in the therapist-patient relationship should not encompass or extend to third party alleged abusers.

*Amicus curiae* NASW urges this Court to take this opportunity to confirm the importance of the statutory policy encouraging reporting of child abuse and to promote effective treatment by rejecting Plaintiff's theory that the duty of social workers and other health care practitioners be expanded to include a duty of care to those not within the therapist-patient relationship.

### **CONCLUSION**

*Amicus curiae* the National Association of Social Workers supports the position that imposing liability on social workers and other health care providers in good faith efforts of reporting suspected child abuse would have serious and detrimental consequences on this State's interest in preventing and remedying child maltreatment. For the foregoing reasons, the decision of the Court of Appeals should be affirmed.



This the 18<sup>th</sup> day of May, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Brief of *Amicus Curiae*  
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