

IN THE
SUPREME COURT OF THE
STATE OF FLORIDA

ORIGINAL

D.M.T.,

Appellant,

v.

T.M.H.,

On Appeal from the 5th District Court of Appeal
Fifth District Case No. 5D09-3559

**BRIEF FOR THE NATIONAL ASSOCIATION OF SOCIAL WORKERS
AND NATIONAL ASSOCIATION OF SOCIAL WORKERS, FLORIDA
CHAPTER, AS AMICI CURIAE IN SUPPORT OF APPELLEE**

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INTEREST OF AMICI CURIAE

Established in 1955, the National Association of Social Workers (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, Florida Chapter has 5,900 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. NASW also frequently submits amicus briefs in courts around the country.

NASW's policy statement, *Foster Care and Adoption* (National Association of Social Workers, in *Social Work Speaks* 146-153 (8th ed. 2009)), espouses the principle that "[e]very child has a right to a permanent, continuous, and nurturing relationship with a parenting person or people who convey to the child an enduring sense of love and care." Other core principles include that "[t]he best interest of the child is the primary consideration when developing [a] permanency plan" and that "[d]ecision makers in child placement services always should be sensitive to the inherent trauma resulting from removing a child from family surroundings and

family members.” Finally, NASW’s policy states “[t]he child must ... be seen as the primary client whose need for a permanent plan must take priority.”

Consistent with these principles, NASW 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 Florida.

SUMMARY OF ARGUMENT

Florida law has long deemed the protection of children and the promotion of child welfare to be among the highest of priorities. That is pertinent here because substantial social-science research demonstrates that allowing appellant to perpetuate the total separation of appellee from the child that is the subject of this appeal could well cause the child 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 appellant’s effort to keep the child completely apart from appellee—who to NASW’s knowledge has never been alleged to be an unfit parent—should be rejected.

ARGUMENT

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

Appellant D.M.T. seeks to deny any parental rights to appellee T.M.H. and also seeks—based on her conduct to date—to perpetuate the total separation of appellee from their eight-year-old child. To allow this would be wholly inconsistent with fundamental tenets of Florida law, which consistently recognizes the overriding importance of children’s welfare. *See, e.g., Cheek v. Hesik*, 73 So. 3d 340, 344 (Fla. 1st DCA 2011) (“The best interests of the child are always the paramount concern in child custody and time-sharing matters.”); *Dinkel v. Dinkel*, 322 So. 2d 22, 23 (Fla. 1975) (similar); *Grooms v. Harvey*, 418 So. 2d 467, 468 (Fla. 2d DCA 1982) (“[T]he best interest and ultimate welfare of the child are paramount over the ‘rights’ of the other parties to the proceeding.”); *see also B.Y. v. Dep’t of Children & Families*, 887 So. 2d 1253, 1255-1256 (Fla. 2004) (“The first stated goal of chapter 39, Florida Statutes, is to provide for the care, safety, and protection of children ... and to promote the health and well-being of all children under the state’s care.” (internal quotation marks omitted)); *G.S. v. T.B.*, 985 So. 2d 978, 982 (Fla. 2008) (“In adoption proceedings, ... the court’s primary duty is to serve the best interests of the child[.]” (omission in original) (internal quotation marks omitted)). It would be wholly inconsistent with these tenets

because totally separating appellee from the child would likely inflict severe, possibly irreparable harm on the child. This is clear from three basic principles established by a wealth of social-science research: (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 (although of course here appellee *is* so 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, Attachment* (2d ed. 1982); Konner, *Childhood* 84-87 (1st ed. 1991); Ainsworth, *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 et al., *Mother-Infant Attachment in Adoptive Families*, 56 Child Dev. 1543, 1544 (1985); accord Seifert, *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 & 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, *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, *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 & 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 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. 1st DCA 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 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.”).¹

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)).

¹ A psychologist who recently provided expert testimony for appellant in the Circuit Court took the same position. *See* App’x B to Appellant’s 5/8/2012 Mot. To Review Trial Court Order Regarding Stay (hereafter Stay App’x B), at 20 (“The emotional bonds are built upon quality experience and interaction. The more quality, the better quality interactional experience, the better the attachment bond ... that’s formed.” (paragraph break 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.”), *quoted in In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 966-967 (Fla. 1995); *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 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)). Here, of course, the case for refusing to allow the forced total separation of appellee and the child is even stronger—substantially so—because appellee is not a “nonparent” but rather the woman from whose egg the child was conceived.

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 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." (emphasis added)). 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, *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 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, *Interventions for Children of Divorce* 8-9 (2d ed. 1991); Bemby & 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 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 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 & 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 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 18.²

² Here again, the psychologist recently called by appellant to testify in the Circuit Court took the same position. See Stay App’x B, at 20 (“The better the attachment bond, the most significant the loss that ... the child is going to experience negatively.”); *id.* (opining that “if that positive bond is built and then, all of a sudden, ruptures, the child is going to experience significant loss and ... confusion”).

D. Application To This Case

Application of the foregoing to this case makes clear that the Fifth District's decision should be upheld. The minor child is now eight years old. For much of the child's life—from the day of her birth to the time that appellant ended her contact with appellee—appellee was a steady 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 appellee and the child as a result of this consistent caregiving. Yet now, appellant seeks to deny appellee any parental rights—and also seeks, judging by her conduct in taking the child literally to the other side of the earth, to deny the child *any* contact with appellee.³ As explained, this poses a substantial risk of massive and perhaps irreparable psychological and social harm to the child.⁴ NASW submits that the present circumstances do not remotely warrant the infliction of such devastation. The law does

³ Indeed, appellant's pleadings in this litigation have stated explicitly that if she were to prevail, she would deny appellee any contact with their daughter. For example, appellant's December 28, 2011, motion to the 5th District for a stay of that court's mandate noted (at paragraph 10) her "position that the Appell[ee] should have no involvement with the minor child." (A copy of the motion was attached as Exhibit 1 to appellee's March 27, 2012, opposition—filed with this Court—to appellant's request for an extension of time to file her opening brief.)

⁴ Appellant's own psychological expert agreed that such separation would harm the child. *See* Stay App'x B, at 30 ("If there was consistent contact from [age] two and a half to four, yes, I believe that the child would experience a loss" by being separated from appellee.).

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."

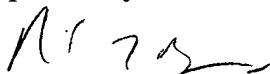
Syrovatka ex rel. Syrovatka v. Graham, 208 N.W.2d 281, 283 (Neb. 1973).

CONCLUSION

The decision of the Fifth District should be affirmed because it is consistent with extensive social-science research which establishes that allowing appellant to completely separate appellee from the child could cause grave and long-lasting harm to the child, in derogation of this state's longstanding—and correct—recognition that protecting the welfare and furthering the best interests of our children is of the utmost importance.

Dated: May 18, 2012

Respectfully submitted,



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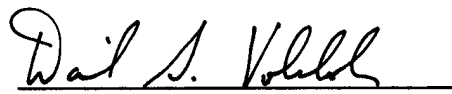
CERTIFICATE OF SERVICE

I certify that on this 18th day of May, 2012, a copy of the foregoing brief was sent by first-class U.S. mail, postage prepaid, to each of the following:

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).


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