SUPREME COURT

OF THE

STATE OF CONNECTICUT

JUDICIAL DISTRICT OF HARTFORD

No. AC 45186 , SC 20882

R. H. v. M. H.

BRIEF OF SHARED PARENTING COUNCIL OF CONNECTICUT, INC. AS AMICUS CURIAE

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STATEMENT OF ISSUES[1]

Did the trial court improperly delegate its judicial authority when the Defendant alleged that the trial court's visitation order gave the Plaintiff the authority to decide the nature and scope of the Defendant's visitation with the parties' minor child insofar as it allowed the plaintiff to change the defendant's visitation if the plaintiff reasonably determined, after consultation with the child's therapist, that the child was negatively impacted by the visitation"?

STATEMENT OF INTEREST

Shared Parenting Council (SPC) of Connecticut, is a duly incorporated Connecticut nonprofit organization located in West Hartford, CT, established in 2002, and formed for the primary purpose of facilitating Court reform that serves the best interests of children of separating and divorced parents. To that end, research shows that shared, equal parenting is the optimum method to ensure that the best interests of children are served. For this reason, SPC wishes to weigh in on the aforementioned issue of whether the trial court improperly delegated its authority to one parent. SPC is a primary stakeholder with regards to this decision whereas all of our members are or have been litigants in the Connecticut Family Courts. In pertinent part, 80% of the cases in family court involve one or both parties as *pro se* litigants. SPC's membership consists of a significant number of these *pro se* parties and has a vested interest in a well-functioning Family Court system, ensuring that both parents have an equal playing field and that each parent is afforded equal access and due process rights (both substantive and procedural.) SPC is positioned to draw on years of experience advocating for parents and children, offering this Court a unique perspective that may help it in resolving this case and similar high conflict cases.

[1] No monetary payments for services were made as part of this Brief. The cost of preparation and submission of the brief (paper, toner and similar) were born equally by counsel and Prof. Clapp. Counsel participated in writing the Statement of Interest and Certifications.

TABLE OF AUTHORITIES

Cases

Santosky v. Kramer, 455 U.S. at 753 (1982)

Statutes

Conn. Gen. Stat. Sec. 46b-56(c)

P.A. 21 104

Other Authorities

Linda Nielsen (2018) Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent–Child Relationships, Income, and Conflict in 60 Studies, Journal of Divorce & Remarriage, 59:4, 247-281. To link to this article: https://doi.org/10.1080/10502556.2018.1454204

Summary of studies showing by a substantial preponderance that children in shared-parenting families had better outcomes than children in sole physical custody families. https://sharedparentinginc.org/wp-content/uploads/2023/10/Shared-Parenting-Fact-Sheet.pdf

National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAAL. S), and the National Council of Juvenile and Family Court Judges (NCJFCJ). (2019). *Family Justice Initiative: Principles for Family Justice Reform.*

2002 CDCC Report; Final report of the Governor's Commission on Divorce, Custody and Child Support. Available from the Library of Congress with state logo or from https://sharedparentinginc.org/wp-content/uploads/2021/12/State-of-CT.-2002.-REPORT-OF-THE-GOVERNORS-COMMISSION-ON-DIVORCE-CUSTODY-AND-CHILDREN.pdf .

Marsha Kline Pruett's 2023 presentation on Massachusetts Family Resolutions Special Court (FRSC): https://sharedparentinginc.org/wp-content/uploads/2023/01/Marsha_Pruett_ADR_pgm_-Jan-2023.pptx.

Judge (Ret.) Elaine Gordon's powerful warning to parents who engage in litigation rather than focus on the long-term interests of their children. https://jud.ct.gov/Publications/videos/children_first.htm

Prof. Lysova's research on domestic violence and shared parenting: https://sharedparentinginc.org/wp-content/uploads/2021/12/Lysova-A.-2021.-Stacked-Against-Me.pdf;

Prof. Hines' research on male domestic violence victims: https://sharedparentinginc.org/wp-content/uploads/2021/12/Hines-D.-2021.-Research-on-Male-Victims-of-Domestic-Violence.pdf;

Prof. Fabricius' research on domestic violence: https://sharedparentinginc.org/wp-content/uploads/2021/12/Fabricius-W.-2021.-New-Findings-Regarding-Domestic-Violence.pdf.

ARGUMENT

Children are not well served by the precedent set by the Trial Court's decision to allocate all decision-making authority to the father. The Court can and should do much more to redirect petitioners away from litigation and toward professionals skilled in the emotional trauma felt by the Defendant upon separation from their children, redirecting litigation towards therapy and conflict resolution. Scientific evidence shows that children have better outcomes when they have access to both parents, grandparents, and other family members. In the absence of domestic violence, neglect or abuse warranting curtailing or termination of parental rights – following DCF standards of timely investigation – parents and families should determine the best interests of their children. In SC 20882, antagonistic and complex Court processes have defeated the Court's goal of serving the best interests of the children, one of whom will age out of the system in two years. In general, allocating all decision-making authority to one parent does not serve the best interests: i.e., the precedent set by the trial judge is incorrect.

I. Importance of Parenting Time

The argument emphasizes the significance of parenting time for children and rightly highlights that it should not be denied unless there is clear and convincing evidence of danger (physical, emotional, psychological). This approach aligns with the best interests of the child. Research evidence discussed below overwhelmingly supports a central role for parental involvement.

II. Problems with the Court System Illustrated by *R.H. v M.H.*

The 2002 final report of the Governor's task Commission on Divorce, Custody and Child Support chaired by the Hon Ann Dranginis and Thomas Foley (hereafter, "2002 CDCC Report") is available from the library of Congress or at www.sharedparentinginc.org/wp-content/uploads/2021/02/CDCC_FinalReport.htm).

This report clearly states the problem now addressed by the Supreme Court in SC 20882:

> However, a small minority of parents engage in persistent conflict because of anger, characterological or mental health problems, or the force of personality. These families over consume system resources pursuing their conflict and frequently harm their children in the process. The ability of this population to use the constitutional right of access to the courts as a means for revenge or punishment against the other parent is an unintended negative consequence of the legal process.

Unfortunately, cases similar to *R.H. v M.H* remain and are all too common today because the adversarial environment in family court encourages parents to litigate rather than collaboratively negotiate the emotional, financial, and logistical problems associated with parenting from split households. The Hon (retired) Elaine Gordon's May 22, 2013 video observes that based on years with Family Court, litigation typically harms children and the damage to them extends throughout their lives (https://jud.ct.gov/Publications/videos/children_first.htm).

In 2017, the Family Justice Advisory Committee and the Family Justice Initiative (FJI), established under the National Center for State Courts, were tasked to study the handling of domestic relations cases across the country. In 2018, they presented their data in *The Landscape of Domestic Relations Cases in State Courts.*[2] Based on that data, the FJI highlighted the need to turn parents away from litigation:

> "Offer families a choice of dispute resolution options to promote problem-solving and to minimize the negative effects that the adversarial process has on families during the court process and afterwards."

Several decisions by the Hon Judge Moukowsher point out that Connecticut courts fail to focus "laser like" on the best interests of children. Instead, the Court has allowed precedent and procedure to be used so as to prolong conflict in processes that are too lengthy and expensive. In the case of *R.H. v M.H* which began in 2019, one of the children will age out of the Court system in 2025. Family Court was too slow in 2002, and it is still too slow to adapt to the rapidly changing needs of children.

[2]. National Center for State Courts (NCSC), the Institute for the Advancement of the American Legal System (IAAL. S), and the National Council of Juvenile and Family Court Judges (NCJFCJ). (2019). *Family Justice Initiative: Principles for Family Justice Reform.*

III. Discourage litigation and demand focus on Children

The trial judge in SC 20882 leans very heavily on the mental health professionals and family counselors. How could their involvement have been enhanced from the beginning of the case rather than as part of an adversarial process?

A better outcome could have been achieved if the following principles would have been applied:

Set a very high bar for filing adversarial motions.
Triage and Pathways has taken a step in this direction by eliminating the short calendar; much more could be done. A high bar to filing adversarial motions was imposed much too late in this case and in all high conflict cases that continue to clog the court system, over 20 years after the CDCC final report. In a better designed court of equity, the children would have benefited from continued contact with MH, and she would have recognized the importance of focusing on her mental health and on her children.

Suggested Methods for raising the bar

- Require thorough use of Alternative Dispute Resolution (ADR) such as therapeutic and family counseling resources as a pre-condition for filing certain adversarial motions (e.g., contempt motions) with trained staff using rigorous standards similar to those used by DCF to determine if each parent has engaged sufficiently with ADR.
- Connecticut has many skilled and trained divorce mediation experts, many of whom are former divorce lawyers who now specialize in ADR. A list can be found at: https://sharedparentinginc.org/wp-content/uploads/2023/09/CT-Mediators.pdf. Attorneys who mediate should be given appropriate authority to file with the Court with no fee.
- Charge a fee for most motions, with the fee clearly designated for ADR conducted within the Family Court system by trained specialists. Implement sanctions for motions used as litigation abuse with the obvious intent to antagonize.
- Quickly conduct a DCF-like investigation of cases that appear to be abusing the Family Court. Use rigorous standards of Court abuse similar to DCF's standards for child abuse or neglect. The "best interest" standard establishes the legal justification for such administrative procedures: the *R.H. v M.H.* case illustrates how children are neglected, and how they suffer, by the current adversarial (rather than collaborative) process.

Change the public narrative about Family Court

- Conduct wide advertising to the general public that Family Court will maintain a "laser like" focus on the importance of parenting time and responsibility. A public relations blitz is needed. The Parental Education

Program (PEP) can and should be refocused on a curriculum common throughout Connecticut that places Judge Elaine Gordon's powerful video (https://jud.ct.gov/Publications/videos/children_first.htm) center stage. In short, tell parents (and lawyers) that the old adversarial model is over and that weaponization of their case by escalated and multiple motions will no longer be tolerated. The public narrative must be changed to zero tolerance for anything other than a child focused process. This will not be easy, but similar transformations – e.g., our understanding and legal treatment of minority and disadvantaged communities – have occurred within a decade.
- Require psychological and therapeutic intervention at the outset of cases similar to *R.H. v M.H.,* prior to filing adversarial motions.

Judicial has several avenues for implementing changes
Judiciary has ample power to implement changes, and a responsibility to do so.

- The Supreme Court can interpret relevant statutes so as to implement changes.
- The legislature helped implement changes to the process and procedure relevant to *Triage and Pathways*. Within a few months of announcing *Triage and Pathway,* the legislature passed, and the governor signed PA 21-104 (substitute House Bill 6505). This eliminated the short calendar and other technical changes pertaining to the Judicial Department.
- Judiciary can create innovative pilot programs to create a more family friendly environment responsive to high conflict cases. A noteworthy example is the Massachusetts Family Resolutions Special Court (FRSC) serving four counties and operating in the Hampshire Probate and Family Court. FRSC is based on a successful pilot program with advice from Smith College professor Marsha Pruett. Her 2023 PowerPoint presentation covers empirical results from the pilot: https://sharedparentinginc.org/wp-content/uploads/2023/01/Marsha_Pruett_ADR_pgm_-Jan-2023.pptx .

The 2002 CDCC Report says:

> The court has the responsibility to manage these high conflict cases in ways that pass constitutional muster, and protect and respect the interests of children, <u>without rewarding high conflict parents with inappropriate availability of the court.</u> The system's role is to help these families establish parenting plans and otherwise make arrangements that work well for their children. The system also has a responsibility to help keep both parents involved in parenting, where that is consistent with the children's best

interest, and at the same time help these families reduce conflict for the benefit of the children." [emphasis added.]

IV. Guardrails for Administrative Processes

SPC proposals include considerable transfer of adversarial court processes to the administration of Alternative Dispute Resolution (ADR) resources by skilled professionals. Guardrails are necessary to prevent abuses of authority and ensure individuals best positioned with proper credentials provide the services that best meet the families' needs.

1. Guardian Ad Litems (GALs) should have a therapeutic license such as an LCSW or MD or PhD and minimum training and continuing education requirements. Similarly, considerations should be entertained whether Family Relations officers and any court personnel advising on the child's best interests would have relevant training and be versed in relevant research.
2. Consideration of trauma-informed care models, as defined below, (as the Family Court process itself can be a source of trauma) and establishment of best practices.

DCF trauma informed care models

Therapeutic models similar to DCF trauma informed care models and best practices can be established within the family court.

- Substance abuse and behavioral health issues require pragmatic and timely responses, i.e., families need a court that is both nimble and flexible in these cases. Many of these high conflict cases have a mental health component. When a parent is suffering from addiction or mental health issues, typically the children will benefit from some sort of contact - even if that means supervised visitation. The U.S. Supreme Court has acknowledged as much, noting that the fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the state. *Santosky v. Kramer*, 455 U.S. at 753 (1982). In *R.H. v M.H.* this would have required skilled ADR at the outset, to convince the defendant. to seek help as a path to benefit her children. Instead, the courtroom setting encouraged the Defendant to fight the system.

- Struggling parents in Family Courts are treated very differently than similar parents involved with DCF. In DCF, numerous wraparound

support services are quickly offered to parents and DCF is obligated to exhaust all reasonable efforts/services — usually without cost — to ensure the strengthening of the family. However, in Family Court intervention is lethargic and untimely, sometimes taking 6-9 months or more just to get a hearing, and parents are required to pay for these services. Meantime, a parent may go significant time without seeing their child, resulting in further emotional damage to the parent/child relationship.

- Family Court litigants would benefit from the same urgency and resources as given to families involved with DCF. Family Courts should operate under the same obligation to exhaust all support and advocacy services to maximize chances of successfully strengthening the family. If measured by a time standard alone, the Family Courts in Connecticut are failing. Litigation is not a successful parenting model.

V. Scholarly research evidence will help overcome opposition

Some groups have opposed shared parenting policies, giving reasons that are not based on factual evidence. But epidemiologic research overwhelmingly shows that children with shared parenting do better, regardless of socio-economic levels and parental conflict. Reviewing all shared parenting studies, Professor Linda Nielsen concluded that *"**Children in shared-parenting families had better outcomes than children in sole physical custody families.** The measures of well-being included: academic achievement, emotional health (anxiety, depression, self-esteem, life satisfaction), behavioral problems (delinquency, school misbehavior, bullying, drugs, alcohol, smoking), physical health and stress-related illnesses, and relationships with parents, stepparents, and grandparents."*

Neither shared parenting nor weekend visitation should be used in cases threatening the other parent, child abuse or neglect as determined by DCF or similar investigation. But DCF cases passing a rigorous test for denying parenting time are relatively rare. Policies based on a presumption that domestic violence occurs are not in the best interests of children. Moreover, shared parenting prevents parental alienation, a form of child abuse that deliberately separates a child from a loving parent. Several leading domestic violence experts are advocates for shared parenting, e.g., professors Emily Douglas and Denise Hines.

A video where several professors present their research findings related to domestic violence is at https://www.youtube.com/watch?v=It0sz5AareY&t=822s.

Outlines of these presentations are at https://sharedparentinginc.org/wp-content/uploads/2021/12/Lysova-A.-2021.-Stacked-Against-Me.pdf; https://sharedparentinginc.org/wp-content/uploads/2021/12/Hines-D.-2021.-Research-on-Male-Victims-of-Domestic-Violence.pdf; and https://sharedparentinginc.org/wp-content/uploads/2021/12/Fabricius-W.-2021.-New-Findings-Regarding-Domestic-Violence.pdf.

Scientific evidence illustrating the connection between shared parenting and outcomes for children, including those with positive, negative and neutral findings, are summarized at https://sharedparentinginc.org/wp-content/uploads/2023/10/Shared-Parenting-Fact-Sheet.pdf.

CONCLUSION

SC 20882 exemplifies the failure of the court to effectively implement solutions focused on the best interests of the children, and to do so in a timely manner. In this case, one of the children is close to aging out of the Court system after over four years of litigation adversely affecting both children.

Accordingly, we recommend that the court consider enacting the following in these matters to assure a healthy shared parenting relationship between the parties for the benefit the entire family:

- The Court could have done earlier interventions in the case to protect and enhance the children's relationships with both parents including steering the parents away from litigation and towards skilled interventions.
- *Triage and Pathways* will be more effective if the court implements a high bar for filing adversarial motions, requiring parents to exhaust alternative dispute resolution channels before litigating.
- The public narrative about Family Court must be changed to support zero tolerance for any solution that is not focused "laser like" on how the family can better parent children.
    - The Parental Education Program (PEP) should be refocused to clearly warn parents about the pitfalls in litigation.
    - A public relations blitz should send a clear message that is communicated directly to parents whenever they or their lawyers make an inquiry or file a motion.

- Public policy needs to be shaped by scholarly research findings, not by the emotions of self-interested groups. Research overwhelmingly shows that children benefit from high levels of contact with both fit parents unless the parents have been proven to be abusive and neglectful.
- Family Court should follow DCF-like standards for investigating claims of family violence or neglect.

Accordingly, this court must uphold the majority opinion. Allocation of all decision-making authority to one parent is almost never good for the children. If SC 20882 had been handled by skilled professionals from the beginning, the children would have had a better chance of having good relationships with both parents today.

Respectfully Submitted,
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CERTIFICATION

This is to certify that in accordance with Conn. Prac. Bk. §60-4 and §62-7 and all applicable rules of appellate procedure:

1) The brief and party appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law.

2) I further certify that a copy of the Defendant/Appellant's brief and Appendix was mailed on October 19, 2023, to the following parties and trial judges as required by Practice Book § 62-7, 66-3, and have been delivered electronically to the last known email address of each counsel of record for whom any mail address has been provided:
   a. Appellant, MH Identity Protected (requested counsel for the Appellee to send as address/contact information unknown).
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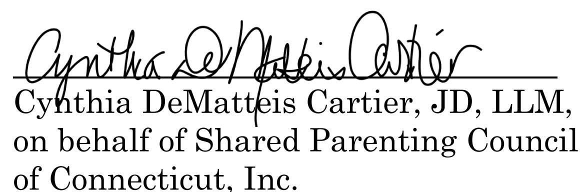
3) The brief and party appendix filed with the appellate clerk are true copies of the brief and party appendix that were submitted electronically and comply with all provisions of this rule (P.B §67-2(g) & §67-2A).

4) The word count of this amicus brief does not exceed 4,000 words and the font is 14-point and 12-point Century.

5) No deviations for the appellate practice rules have been requested/approved from PB sec 67-2A.

Attorney Submitting Amicus Curiae Brief



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