

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

SUPREME COURT  
**FILED**

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IN RE CADEN C.,	)	No. S255839
	)	
A Person Coming Under	)	Court of Appeal
<u>the Juvenile Court Law.</u>	)	No. A153925,
	)	A154042
SAN FRANCISCO HUMAN SERVICES	)	
AGENCY,	)	San Francisco
Plaintiff and Appellant,	)	Superior Court
v.	)	No. JD153034
	)	
CHRISTINA C., et al.	)	
<u>Defendants and Respondents.</u>	)	

Deputy

**Application for Leave To File Brief As Amici Curiae**

**Proposed Amici Curiae Brief in Support of the Minor**

After Decision by the Court of Appeal  
First Appellate District, Division One  
Filed April 9, 2019; Modified April 10, 2019

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**Application for Leave To File Brief As Amici Curiae**

**To the Chief Justice, the Honorable Tani G. Cantil-Sakauye, and to the Associate Justices of the Supreme Court of California:**

Advokids, East Bay Children’s Law Offices, and Legal Services for Children request leave to file the attached proposed brief as amici curiae in support of the minor, Caden C. (Cal. Rules of Court, rule 8.200(c).)

Advokids is an Internal Revenue Code section 501(c)(3) nonprofit organization that advocates for the child welfare system to actually provide legal rights and protections to which every California foster child is entitled, including each child’s right to the safety, security, stability, and timely permanency required by law. Advokids was formed in 1992 and now operates a number of different statewide programs intended to promote the well-being of California foster children and to try to protect

from them the further additional traumas that are often inflicted upon foster children by the child welfare system itself.

Advokids' programs include a telephone hotline and website, State Bar-approved MCLE programs on child welfare law issues, as well as educational programs for social workers, foster parents and other caregivers, mental health professionals, foster family agencies, court-appointed special advocates (CASAs), and other child advocates on child welfare law, the social science and neuroscience research on child development, and how this research should inform the courts' decisions in child welfare cases.

Through its amicus curiae program, Advokids has participated in both state and federal appellate court cases involving the child welfare system and the legal interests of children, including *Adoptive Couple v. Baby Girl*, (2013) 570 U.S. 637\_[133 S.Ct. 2552]; *E.T. v. Cantil-Sakauye* (2011) 682 F.3d 1121; *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168; *In re Nichole S.* (2019) 39 Cal.App.5th 91; *In re Aurora P.* (2015) 241 Cal.App.4th 1142; and *In re Alexandria P.* (2014) 228 Cal.App.4th 1322.

The East Bay Children's Law Offices (EBCLO), is a nonprofit children's law firm based in Oakland and founded in 2009. EBCLO is appointed to represent children and youth in Alameda County's juvenile dependency, delinquency, and probate courts, and served nearly 2000 children in 2018. Dependency cases make up the vast majority of EBCLO's caseload. The organization's attorneys represent their clients at all hearings, including 366.26 hearings where termination of parental rights is at stake. After careful investigation and consideration of each client's circumstances, EBCLO attorneys argue for the permanent plan

that will achieve the client's wishes and best interests within the statutory framework.

Founded in 1975 as a nonprofit organization, Legal Services for Children (LSC) is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. LSC provides holistic advocacy through teams of attorneys and social workers in the area of abuse and neglect, immigration and education and empowers clients by actively involving them in critical decisions about their lives. LSC has represented abused and neglected children in child protection proceedings for more than forty years and believes children have a fundamental right to permanency, stability, and family relationships.

The primary issue before this court concerns the application of what is known as the beneficial parental relationship exception to adoption when adoption would otherwise be a foster child's permanent plan after reunification with a parent has failed. Because the interpretation of the exception directly affects the long-term safety, security, stability, and the physical and emotional well-being of many children in foster care, as well as their fundamental rights to belong to a family and to have a placement that is stable, Advokids, East Bay Children's Law Offices and Legal Services for Children have a significant interest in the issues presented.

No party, or counsel for any party, in this appeal has authored any part of the accompanying proposed amicus curiae brief. In addition, no



person or entity has made any monetary contributions to fund the preparation or submission of this brief.

Advokids, East Bay Children's Law Offices, and Legal Services for Children therefore respectfully request leave to file the attached proposed brief as amici curiae in this matter.

Dated: November 25, 2019

Respectfully submitted,

Janet G. Sherwood  
Attorney for Advokids, East  
Bay Children's Law Offices, and  
Legal Services for Children

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**Proposed Amici Curiae Brief in Support of the Minor**

**Introduction**

Parents have a fundamental right to maintain the parent-child bond and to the care, custody and companionship of their children. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306 (*Marilyn H.*)) However, the right is not absolute and may be abridged when it is necessary to do so to protect the welfare of the child. (*Id.* at p. 307.)

What is often overlooked in dependency proceedings is that “[c]hildren are not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent. [(Citation).]” *In re Jasmon O.* (1994) 8 Cal.4th 398, 419. “[C]hildren have a fundamental independent interest in belonging to a family unit [(Citation)], and they have *compelling rights* to be protected from abuse and neglect and to have *a placement that is stable, permanent,* and allows the caretaker to make a full emotional commitment to the child.” (*Marilyn H., supra*, 5 Cal.4th at p. 306; emphasis added.)

The primary issue in this case concerns what is known as the beneficial parental relationship exception (Welf. & Inst. Code<sup>1</sup> §366.26, subd. (c)(1)(B)(i)) to the juvenile court's statutory duty to order adoption as the permanent plan if the court finds that the child is likely to be adopted. This court's order granting review directed the parties to address whether proving that the parent made progress in addressing the issues that led to the dependency was necessary to prove the exception and to address the appropriate standard of appellate review. It appears that the parties agree on the appropriate standard of appellate review. (Christine C's Brief at p. 35; Agency's Brief at p. 50; Minor's Br. at p. 26.) Consequently, this brief addresses only the appropriate interpretation of the exception.

This court's "task is to interpret the statutory scheme as a whole in a manner that balances the interest of parents and children in each other's care and companionship, with the interest of abandoned and neglected children in finding a secure and stable home. ([Citations].)" (*In re Jasmon O.*, *supra*, 8 Cal.4th at p. 419.) Amici urge this court to recognize the critical importance of stability and permanency to the long-term physical and emotional well-being of children in foster care and to interpret the beneficial parental relationship exception to clarify that juvenile courts must not only consider the detriment that might result from terminating parental rights but must also consider the detriment that an otherwise adoptable child would suffer if that child is *not* adopted and is, instead, consigned to the insecurity and instability of long-term foster care.

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<sup>1</sup> All section references hereinafter are to the Welfare and Institutions Code unless otherwise indicated.

## Discussion

### I. The Statutory Scheme

#### A. Exception First Adopted

In 1982, the Legislature enacted a substantial revision of the juvenile court system with the intent of complying with recent federal law that discouraged reliance on long-term foster care for dependent children and encouraged efforts to establish permanent homes for these children by either making it possible to return them to parental custody or placing them in adoptive homes. (Stats. 1982, ch. 798, §§1-78; *Marilyn H.*, *supra*, 5 Cal.4th 295, 301-302.) That revision included the adoption of former Welfare and Institutions Code section 366.25, which first contained the concept of providing a permanent home for children in foster care who cannot be safely returned to parental custody. (See, Cal. Juv. Dependency Prac. (Cont. Ed. Bar 2019) Introduction to Dependency Law, §1.2, p. 4 [“Both the federal statute and SB 14 were designed to respond to the pervasive problem of foster care ‘drift,’ the phenomenon of children removed from their homes drifting from foster care placement to foster care placement for years, often never achieving a permanent home while under the court's jurisdiction.”].)

The new statute required the juvenile court to direct the county counsel or other appropriate official to file an action to free the child from parental custody and control under former Civil Code section 232 if the court found at a permanency hearing that the child could not be safely returned to the parent in the next six months and that it was likely that the child would be adopted. (Former §366.25, subd. (d)(1), as adopted by Stats. 1982, ch 798, §27.)

The statute also set forth several exceptions to the court's obligation to make a referral order for the filing of a civil action to terminate parental rights. The first of these exceptions provided that a referral was not required if the court found that "[t]he parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship." (Former 366.25, subd. (d)(1)(A).) Assuming regular visitation, the only requirement for applying the exception was a finding that the child would benefit from continuing the parental relationship. (*In re Cory M.* (1992) 2 Cal.App.4th 935, 951.)

#### B. The Detriment Requirement is Added.

In 1987, the Legislature again overhauled the statutory scheme based on recommendations from the Senate Select Commission on Children and Youth, a legislatively created task force convened to study existing dependency law and recommend changes. (*Marilyn H., supra*, 5 Cal.4th at pp 302, 303.) The result was S.B. 243. (Stats. 1987, ch 1485.) The new legislation emphasized providing timely permanency and stability for the child if the child's parents were not in a position to resume custody after a maximum of 18 months of reunification services were provided to the parent. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253.)

One of the major changes S.B. 243 made was to modify the procedure for terminating parental rights. The legislation eliminated the need to file a separate civil action pursuant to former Civil Code section 232 to terminate parental rights and provided that all termination proceedings for all dependent children be heard in the juvenile court as part of the regular review process. (*Id.* at p. 247.)

Section 366.26 was adopted as part of S.B. 243 but did not go into effect until January 1, 1989 and applied only to children who were adjudged dependent after that date. (*Marilyn H, supra*, 5 Cal.4th at pp. 303-304; Stats. 1987, ch 1485, §47.) Section 366.26, subdivision (c)(1) reiterated much of the language of former section 366.25, including the former's exceptions to referrals for adoption, but amended the preface to the individual exceptions to provide that the court must terminate parental rights if child is likely to be adopted "unless the court finds that termination would be detrimental to the minor due to one of the following circumstances: ...."

While the original version of the exception only required a showing that there had been regular visitation and that the child would benefit from continuing the relationship, section 366.26 added an additional requirement before the juvenile court could find that the exception applied—the court must also find that terminating that relationship would be "detrimental" to the child.

The first published case to interpret the new version of the exception was *In re Autumn H.* (1994) 27 Cal.App.4th 567 (*Autumn H.*) That court interpreted the exception to mean that

the relationship promotes the well-being of the child *to such a degree as to outweigh the well-being the child would gain in a permanent home* with new, adoptive parents. In other words, the court balances *the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.* If severing the natural

parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be *greatly harmed*, the preference for adoption is overcome and the natural parent's rights are not terminated.

(*Autumn H. supra*, 27 Cal.App.4th at p. 575; emphasis added.) *Autumn H.* has been consistently followed and applied by appellate courts since it was decided in 1994. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349 (*Jasmine D.*).

C. The Exceptions to Adoption Become “Compelling Reasons” Not To Terminate Parental Rights

In 1997, Congress passed the Adoptions and Safe Families Act (Pub. L. No 105-89 (Nov. 19, 1997) 111 Stat. 2115), which amended a number of provisions of existing federal child welfare law to make explicit the primacy of child safety in placement decisions and imposed timelines for moving children to permanency. (Cal. Juv. Dependency Prac., *supra*, §1.5, at p. 7.)

One of those provisions was 42 U.S.C. section 675(5)(E) (Pub. L. No. 105-89, *supra*, §103, 111 Stat. 2118), which requires states, in cases where the child has been in foster care for the last 15 of the past 22 months, to file a petition to terminate parental rights, or to join in any existing action to terminate parental rights. There are very limited exceptions to this federal mandate, one of which is that “the State agency has documented in the case plan (which shall be available for court review) a ‘compelling reason’ for determining that filing such a petition would not be in the best interests of the child.” (42 U.S.C. §675(5)(E)(ii).)

In 1998, the Legislature again amended the Welfare and Institutions Code intending to bring the state into compliance with the new federal requirements. (Stats. 1998, ch 1056; see, Ass. Hum. Srvs. Comm. Analysis of A.B. 2773 (1997-1998 Reg. Sess.)<sup>2</sup>, as amended 4/14/1998, pp. 1, 4.) Among other things, the bill amended section 366.26, subdivision (c)(1)(A)<sup>3</sup> to “[require] the court to find a compelling reason not to terminate parental rights.” (Stats. 1998, ch 1056, §§17.1, 36; Ass. Hum. Servs. Comm. Analysis, *supra*, at p. 2.)

It is not entirely clear that the Legislature intended to add an additional element to the showing that must be made before the juvenile court may find that one of the existing exceptions applies, as opposed to merely defining what would constitute “compelling reasons” for the purposes of complying with the federal law. Whatever the Legislature may have intended, the appellate courts quickly interpreted the addition of the “compelling reasons” language as creating an additional element to the existing exceptions that must be proved in order to establish the exception. (*Jasmine D.*, *supra*, 78 CalApp.4th 1339, 1349 [“This amendment ... makes it plain that a parent may not claim entitlement to the exception provided by [former] subdivision (c)(1)(A) simply by demonstrating some benefit to the child from a continued relationship with the parent, or some

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<sup>2</sup> Available online at

<< [http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab\\_2751-2800/ab\\_2773\\_cfa\\_19980506\\_184112\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_2751-2800/ab_2773_cfa_19980506_184112_asm_floor.html) >> [as of 11/19/19].

<sup>3</sup> The beneficial parental relationship exception was renumbered to become subdivision (c)(1)(B)(i) in 2007 as part of an amendment to add a new exception for placement with relatives who were unwilling to adopt but were still willing to provide permanency. (Stats. 2007, ch 583, §28.5.)



detriment from termination of parental rights.” In any case, the parties’ briefs all treat the issue as settled (Christine C.’s Br. at p. 30 [assumes “compelling reason” is a third element of the exception “from its inception”]; Agency’s Br. at pp. 49 [treating “compelling reason” as an additional element of the exception]; Minor’s Br. at p. 25 [citing cases that have addressed the “compelling reason” language].)

The legislative history of the exception and its interpretation by the appellate courts illustrate an intent to prioritize permanency over maintaining a parental relationship and to narrow the exception to only the most compelling of circumstances. At first, the existence of a beneficial relationship alone was sufficient for the exception to apply. Then, with the 1987 amendments, a beneficial relationship was not enough--there also had to be a showing that terminating that relationship would be detrimental to the child. With the 1998 amendment, there must now be a finding that the circumstances supporting the decision to grant the exception are so compelling that they overcome the child’s right to the permanency of adoption.

## **II. A Showing of Parental Rehabilitation Is Not Required to Establish the Exception.**

The Court of Appeal did *not* hold that parental rehabilitation must be proved before a juvenile court makes a finding that the beneficial parental relationship exception applies. The confusion arose in this case because the juvenile court based part of the rationale for its conclusion that the exception applied on a finding that Christine had made substantial progress in her case plan. The Court of Appeal’s discussion of Christine’s failure to change her behavior is in the context of assessing whether that finding was supported by substantial evidence. (Slip Opinion at pp. 24-

25.) The court concluded that Christine's relapse into drug use and irrational behavior in the period shortly before the section 366.26 hearing nullified any basis for the juvenile court's finding that Christine had made substantial progress in her case plan. (*Id.* at pp. 25-28.) It did not hold that a showing of parental rehabilitation was required in every case in which the exception is raised.

The court's additional discussion of Christine's failure or inability to reform her behavior was in the context of applying the exception to the factual circumstances in this case. Christine's behavior at the time of the section 366.26 hearing and its destabilizing influence on Caden was certainly relevant to determining whether any benefit that may result from the parent-child relationship outweighed the benefits of adoption and whether the juvenile court had abused its discretion in ignoring the evidence concerning the other needs of the child in finding that the exception applied. The Court of Appeal concluded that the juvenile court had abused its discretion in finding a compelling justification for foregoing adoption in this case. (Slip Opinion at pp. 29-32.) It did not hold that a showing of parental rehabilitation was required.

### **III. The Child's Right to and Need for Permanency Should Be the Primary Consideration in Determining Whether the Exception Applies**

Once reunification services to the parent have been terminated, the focus in a dependency case shifts to the child's need for permanency and stability. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) Evidence that there is a "bond" between parent and child, even one that may be characterized as "positive," is rarely sufficient to trigger the exception unless the court also finds that the parent actually meets the child's need for a parent.

Where a biological parent ... is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) Thus, a child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.

(*Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350; accord, *In re Angel B.* (2009) 97 Cal.App.4th 454, 466 [A dependent child should not be deprived of an adoptive home where the parent has maintained a relationship to the child that is beneficial to some degree but does not meet the child's need for a parent.] )

**A. A Bonding Study Does Not Necessarily Establish That The Parent-Child Relationship is Beneficial to the Child**

In this case, the juvenile placed great weight on the opinion of a mental health evaluator who conducted a bonding study and testified to his opinion about the parent-child relationship based on that bonding study. (Slip Opinion at p. 14.) The Court of Appeal correctly concluded that the juvenile court treated the bonding study as conclusive on the issue of whether there was as beneficial relationship but failed to weigh that relationship against uncontroverted evidence that denying Caden a permanent home would cause him serious harm. (Slip Opinion at pp. 24-25, 29-30, fn 6.)

In most cases, a bonding study finding a “positive” relationship will be insufficient to establish the detriment necessary to justify a finding that the parent-child relationship is so beneficial to the child that the child would be harmed if that relationship were to be terminated. At best, a bonding study indicating a positive relationship is some evidence that there is a bond. But the nature and strength of the bond are more important to the juvenile court’s determination of detriment than just the fact that a bond exists.

Here, the evaluator who did the bonding study noted that Christine was “likely on her best behavior” and was not under the influence of drugs (Slip Opinion at p. 14) and that his evaluation was limited solely to the question of whether there was a bond and did not include an assessment of Christine’s parenting capacity or psychological functioning. (Slip Opinion at pp. 14-15.) This is a very common problem when a parent relies solely on a bonding study to try to prove the exception. A bonding study assesses whether there is a bond or attachment between a parent and a child but does not usually address the quality of the parent-child relationship or the parent’s capacities as a parent. In the opinion of one very experienced juvenile court judge,

Bonding studies rarely give the court helpful evidence.

Bonding studies may be helpful when the child(ren) are older and have lived with the parent(s) for a substantial period of time. The expense of the study coupled with time to complete (usually requiring continuance of the Welf & I C §366.26 trial) make it hard to justify a bonding study....

More useful evidence are testimony and reports from the

child(ren)'s therapist, testimony from people who observe visits, observations of the child(ren)'s behaviors before and after visits with the parent(s) over time, and evidence related to the child(ren)'s special needs and the ability of the parent(s) to provide for those needs.

(Cal. Juv. Dependency Prac., *supra*, §8.33, “Judge’s Perspective,” p. 728 [a list of consulting judges is in the Preface at p.xxv].)

“[M]ental health evaluators, attorneys, and courts use the terms “bonding” and “attachment” loosely and casually.” (Arredondo & Edwards, *Attachment, Bonding and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court* (2000) 2 Journal of the Center for Families, Children & the Courts, 109, 109-110.<sup>4</sup> If a juvenile court relies solely on the testimony of a “bonding” expert to determine whether the relationship is beneficial to the child, the court may believe “that the bonding/attachment or lack thereof conclusively determines the quality of the relationship at issue. It is often the case, though, that the expert may have no insight regarding the actual connectedness between the adult and the child and little information on the quality of the child’s relationship with that adult.” (*Id.* at p. 110.) Under the protocol usually employed for bonding studies, “40 to 50 percent of abused and neglected children were classified as securely attached to their maltreating parent. [fn]. This indicates that bonding or attachment studies alone are insufficient to differentiate nurturing and reciprocally involved parents from indifferent, abusive, or uncaring parents.” (*Id.* at p. 113.)

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<sup>4</sup> Available online at <<<http://www.judgeleonardedwards.com/docs/bonding-attachment.pdf>>> [as of 11/19/19].

B. A Permanent and Stable Home is Essential to the Long-Term Well-Being of Dependent Children Who Have Experienced Early Childhood Trauma

The 1998 publication of the Adverse Childhood Experiences Study established a direct connection between the traumas inflicted by adverse childhood experiences (ACEs), including abuse, neglect, and household dysfunction, and the subsequent occurrence of chronic illnesses, mental health problems, and risk factors for several of the leading causes of death in adults, including ischemic heart disease, cancer, chronic lung disease, skeletal fractures, and liver disease. (Felitti, V., et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults; The Adverse Childhood Experiences (ACE) Study*, (1988) 14(4) Am. J. of Preventive Medicine 245, 251)<sup>5</sup>

Adverse Childhood Experiences have also been linked to risky health behaviors, such as substance abuse and unsafe sex, emotional health problems such as depression, anxiety, suicide, and PTSD, and to early death. As the number of ACEs increases, so does the risk for poor health outcomes when the child is an adult. (Centers For Disease Control & Prevention, National Center for Injury Prevention and Control, *About Adverse Childhood Experiences*, p. 1.)<sup>6</sup>

Children who have four or more of the adverse experiences identified in the ACEs Study have a *twelve times higher risk* for negative health outcomes as an adult than the general population. (Off. of Planning, Re-

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<sup>5</sup> Available online at <<[https://www.ajpmonline.org/article/S0749-3797\(98\)00017-8/pdf](https://www.ajpmonline.org/article/S0749-3797(98)00017-8/pdf)>> [as of 11/19/19].

<sup>6</sup> Available online at <<<https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/aboutace.html>>> [as of 11/19/19].

search & Evaluation, Admin. of Children & Families, U.S. Dept of Health & Hum. Srvs., *National Survey of Child and Adolescent Well-Being (NSCAW), No. 20: Adverse Childhood Experiences* (8/11/13) at p. 4.<sup>7</sup> (“NSCAW”).) More than 51% of the children entering the child welfare system have already suffered four or more ACEs. (*Id.* at p. 3.) Once these children enter the child welfare system, they are often subjected to additional sources of trauma, including out of home placements, moving from one caregiver to the next, and limited access to services. (*Id.*, at p. 4.)

According to the American Academy of Pediatrics, a child’s ability to weather or withstand the effects of traumatic experiences depends on

nurturing care provided over time by a responsive, attuned caregiver who mediates the world for a child in ways that promote healthy adaptation. Children can withstand significant life stressors if raised in a milieu in which the caregiver is protective, nurturing, and promotes self-efficacy.

[fn] Evidence indicates that children and adolescents fare best when raised in stable homes with nurturing caregivers who respond to their needs and provide reasonable structure.”

(Szilagyi, A., et al., *Health Care Issues for Children and Adolescents in*

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<sup>7</sup> Available online at <<[http://cf.hhs.gov/sites/default/files/opre/aces\\_brief\\_final\\_7\\_23\\_13\\_2.pdf](http://cf.hhs.gov/sites/default/files/opre/aces_brief_final_7_23_13_2.pdf)>> [as of 11/19/19].

*Foster Care and Kinship Care*, 136 (4) *Pediatrics* (October 2015) p. e1142, e1145. (“Szylagyi”)<sup>8</sup>

A “stable foster care placement may be a positive and therapeutic intervention for some children.” (*Ibid.*) “[U]nstable foster care placement[s] can result in a significant increase in behavioral and emotional problems that, in turn, result in more transitions among foster care placements.” (*Ibid.*)

The importance of a competent, caring, nurturing, stable foster or kinship parent in supporting and advocating for a child’s health and well-being cannot be stressed enough. Significant improvements in a child’s health status, development, intelligence, school attendance, and academic achievement have been noted consequent to foster care placement. [fn] Thus, for children who have suffered severe neglect and abuse, placement in foster or kinship care can be an important opportunity for intervention and healing . . . . *When birth parents remain unable to provide adequate and safe care despite diligent efforts at rehabilitation, including trauma treatment, every effort should be made to find permanency with an appropriate adoptive or kinship resource in a timely manner.*

(*Id.* at pp. e1145-e1146; emphasis added.)

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<sup>8</sup> Available online at <<<https://pediatrics.aappublications.org/content/pediatrics/early/2015/09/22/peds.2015-2656.full.pdf>>> (as of 11/19/ 2019.)



To summarize the brain science, in order to ameliorate the effects of the trauma they have experienced, traumatized children need a consistent relationship with at least one supportive, nurturing adult and a safe and stable home, preferably one that will be permanent. Instability and multiple placement changes can compound already existing trauma and result in an increase in behavioral and emotional problems. Failure to provide a child who has been subjected to multiple adverse childhood experiences with a permanent and stable home exponentially increases that child's risk as an adult for a number of debilitating illnesses and early death.

C. In Weighing the Benefit of a Continued Parental Relationship, the Juvenile Court Must Also Consider the Potential Detriment of Denying Permanency to that Particular Child

The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the “positive” or “negative” effect of interaction between parent and child, and the child's particular needs. [Citation.]

When the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.

*(In re Zachary G. (1999) 77 Cal.App.4th 799, 811.)*

In *In re Dakota H. (2005) 132 Cal.App.4th 212, 218 (Dakota H.)*, the child was autistic and had other special needs. He was in a prospective adoptive home with caregivers who had adopted two other special needs

children, one of whom was also autistic. The prospective adoptive family was skilled at caring for special needs children. (*Dakota H. supra*, 132 Cal.App.4th at p. 219.) A psychologist conducted a bonding study and concluded that the child had a “significant attachment” to his mother. (*Id.* at p. 220.) An expert on autism evaluated the child and testified that the child needed a caregiver with access to specialized services to give him the strategies necessary to develop appropriate social skills. These strategies would make the difference in Dakota's ability to function as an independent adult. In the expert's opinion, mother was not able to meet the child's special needs. (*Ibid.*) Mother raised the beneficial parental relationship exception and filed an appeal when the juvenile court held that the exception did not apply.

The court of appeal affirmed the juvenile court's judgment. While there was substantial evidence that mother had a loving parental relationship with the child, the benefit of continuing that relationship did not outweigh the child's exceptional needs for a stable home and a highly competent caregiver. “Dakota's long-term needs for stability, predictability and highly competent care are of paramount importance. While it is likely Dakota would continue to derive some benefit from continued visitation with [mother], *a nonpermanent placement will not meet his long-term needs.*” (*Id.* at p. 230; emphasis added.) The court went on to say, “*We cannot ignore who Dakota is and what his needs are. His bond with [mother] may be strong, but his needs are exceptional.*” The strength and quality of Dakota's relationship with [mother] must be evaluated in light of any emotional harm to Dakota caused by its severance, his autism, his special needs, and the availability of an exceptional adoptive placement.

No one factor controls the court's analysis. It is a balancing test.” (*Id.* at p. 231; emphasis added.)

This case has many similarities to *Dakota H.* In cases such as these, where the future of a child with special needs is at stake, the juvenile court must not limit the scope of its consideration solely to any potential detriment to the child from the termination of the parent-child relationship. It must also consider any evidence of detriment to the child if parental rights are *not* terminated. If denying the child the benefits of a permanent home would almost certainly cause additional, serious harm, that degree of harm must outweigh any benefit to the child that might otherwise come from maintaining the parent-child relationship.

The Court of Appeal correctly concluded that the juvenile court abused its discretion because it gave almost no consideration to what would happen if Caden was not adopted by his caregiver, Ms. H. Caden suffered from PTSD and several behavioral disorders when he first came into the child welfare system at age four (Slip Opinion at p. 4) and continued to suffer those problems four years later after a number of failed placements, some of which failed because Christine’s behavior undermined the stability of those placements. (Slip Opinion at pp. 7, 8, 9.)

As Dr. Lieberman, an expert in childhood trauma and its effects on children (Slip Opinion at p. 12), explained to the juvenile court, the PTSD diagnosis means that Caden has already suffered a number of traumatic adverse experiences in his early life. (Slip Opinion at p. 13.) In her opinion, because of those childhood adversities, he required “safe and predictable caregiving.” “[S]tability of placement with a caring and reliable caregiver” was “an imperative.” (Slip Opinion at p. 13.) “[A]ny placement other than adoption would pose ‘an unacceptable risk’ to the minor’s

well-being, given mother's 'continued emotional instability and damaging behaviors, such as her interference with the stability of Caden's placements and her recent inability to provide safe care for [a sibling.]' " (Slip Opinion at p. 13.)

Ms. H. was the "only caregiver who has enabled Caden to feel that he is in the care of a consistent and predictable adult who keeps him safe and reliably looks out for his physical and emotional needs." (Slip Opinion at p. 12.) Unfortunately, after the juvenile court found that the exception applied, thereby eliminating Ms. H.'s ability to adopt Caden, Ms. H. declined to become Caden's guardian. In the absence of an adoption, she would be legally unable to set firm boundaries with Christine and Ms. H. felt that her family could not continue to withstand Christine's ongoing demands about visitation and phone contact. Consequently, the juvenile court ordered that Caden's permanent plan be long-term foster care. (Slip Opinion at p. 15-16.)

One study of young adults who lived in foster care during adolescence found a prevalence of PTSD *twice that of combat veterans*. (Szilagyi, *supra*, at p. e1146.) Long-term foster care provides neither stability nor permanence for the dependent child. (*In re Stuart S.* (2002) 104 Cal.App.4th 203, 207.) In the absence of an adoptive home, Caden will continue to be subjected to the risks of multiple, unstable placements until he ages out of the child welfare system and he will be deprived of the very things he needs to be a healthy adult: at least one consistent, nurturing adult caregiver and a stable and permanent home.

Ordering long term foster care so that Caden can continue to have a relationship with Christine, who meets none of his needs for a consistent caregiver or a stable placement, almost guarantees that, as an adult, Caden

will suffer from one or more debilitating diseases and may have a shortened life expectancy as a result. As the court of appeal correctly observed, “[f]or an especially vulnerable child such as Caden, who has suffered significant trauma in his young life, the justification for blocking adoption must indeed be *exceptional*.” (Slip Opinion at p. 31; emphasis in the original.)

To paraphrase *Dakota H., supra*, 132 Cal.App.4th 212, 231, “[w]e cannot ignore who [Caden] is and what his needs are. His bond with [Christine] may be strong, but his needs are exceptional. The strength and quality of [Caden's] relationship with [Christine] must be evaluated in light of any ... harm to [Caden] caused by its severance, his [trauma history], his special needs, and the availability of an exceptional adoptive placement.”

### **Conclusion**

The Court of Appeal’s interpretation of the beneficial parent-child relationship as applied to the facts in this case is the interpretation that this court should affirm and adopt.

Dated: November 25, 2019

Respectfully submitted,

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### **Certification Of Compliance**

I, Janet G. Sherwood, hereby certify that this brief complies with Rule 8.204, because it uses a proportionately spaced font with a typeface of 14 points and, according to the word processing program used to prepare this brief, the proposed Brief of Amici Curiae contains 5,091 words, not including those words excepted by California Rules of Court, rule 8.204(c)(3).

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Janet G. Sherwood

Declaration Of Service

I, the undersigned, declare:

I am a citizen of the United States, a member of the Bar, over the age of 18 years and not a party to the within action; my business address is 5643 Paradise Dr., Suite 12B. Corte Madera, CA 94925.

On November 26, 2019, I served the attached

Application To File Brief as Amici Curiae and proposed Brief of Amici Curiae

by placing a true copy thereof in an envelope addressed to the person(s) named below at the address(es) shown, and by sealing and depositing said envelope in the United States mail at Corte Madera, CA with postage thereon fully prepaid.

Hon. Monica Wiley  
San Francisco Juvenile Court  
400 McAllister St.  
San Francisco, CA 94102

Court of Appeal, First Dist., Div. 1  
350 McAllister St.  
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On November 26, 2019, I transmitted a pdf version of this document electronically, using the email addresses indicated, to:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 26, 2019, at Corte Madera, California.

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Janet G. Sherwood