Supreme Court No. S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Caden C., A Person Coming Under the Juvenile Court Law.	Court of Appeal Nos A153925, A154042 (San Francisco County Super. Ct. No. JD15-3034)
SAN FRANCISCO HUMAN SERVICES AGENCY, Petitioner and Respondent, vs. Christine C., et al. CADEN C., Appellant.	

On Appeal from the Superior Court of San Francisco City and County,
Sitting as a Juvenile Court
Honorable Monica Wiley, Judge, Presiding

MINOR'S ANSWER TO AMICUS CURIAE BRIEFS

DEBORAH DENTLER
State Bar. No. 92957
510 So. Marengo Ave.
Pasadena, California 91101
Telephone: (626) 796-7555
ddentler@gmail.com
Attorney for Appellant,
Caden C.

Supreme Court No. S255839

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Caden C., A Person Coming Under the Juvenile Court Law. SAN FRANCISCO HUMAN SERVICES AGENCY, Petitioner and Respondent, vs. Christine C., et al. CADEN C., Appellant.	Court of Appeal Nos A153925, A154042 (San Francisco County Super. Ct. No. JD15-3034)

On Appeal from the Superior Court of San Francisco City and County,
Sitting as a Juvenile Court
Honorable Monica Wiley, Judge, Presiding

MINOR'S ANSWER TO AMICUS CURIAE BRIEFS

DEBORAH DENTLER
State Bar. No. 92957
510 So. Marengo Ave.
Pasadena, California 91101
Telephone: (626) 796-7555
ddentler@gmail.com
Attorney for Appellant,
Caden C.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

Other Data Sources

MINOR'S ANSWER TO AMICUS CURIAE BRIEFS

Caden, the subject minor in this juvenile dependency matter, pursuant to rule 8.200(c)(6) of the California Rules of Court, respectfully answers the following two amicus briefs filed in support of respondents:

- California Dependency Trial Counsel
- Professors of Family and Clinical Law

I.

Caden Joins in Respondent Agency's Answer to the Amicus Brief Filed by California Dependency Counsel.

Pursuant to rule 8.200(a)(5) of the California Rules of Court, Caden joins in and adopts by this reference appellant San Francisco Agency's ("Agency") answer to the amicus brief filed by California Dependency Trial Counsel.

II.

The Amici Professors' Anti-Adoption Arguments are Irrelevant to this Case and are Policy Arguments Best Directed to Congress and the State Legislature.

Amici "Professors of Family and Clinical Law" ("the professors") are seventeen law professors and clinical instructors, only one of whom teaches at a California law school.[1] The professors do not seem to understand what this case is about. They address issues not raised by the case and do not address the evidence that established that termination of parental rights and adoption was appropriate for Caden. Instead, amici make two policy

[1] The amici teach at law schools listed at page five of their application for leave to file a brief; the schools are not mentioned in the brief itself. The brief is cited here as "Profs. Br.," followed by a page reference.

arguments not raised by parties to the appeal. New arguments made for the first time by amici should not be considered. (See, *E.L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 510; *American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 275.) If the Court is inclined to consider the amici's policy arguments, both should be rejected as unsupported by legal authority or social scientific research.

First, the professors argue that judicially-ordered termination of parental rights, which is prerequisite to adoption, is inherently detrimental to children and causes children "lifelong harm" (harm they claim has been "established" by scientific research showing that "loss of parents" is harmful). (Profs Br., pp. 15, 23, 29.) They seem to be arguing for reversal of the decision of the Court of Appeal on the ground that remanding the case so parental rights can be terminated would constitute a policy blunder that would negatively affect not only Caden but other children.

Second, the professors contend that affirmance of the Court of Appeal opinion would be generally bad for biological families. Amici contend that *Autumn H.* [2] and its progeny have interpreted the relevant legislation too restrictively, so it has been hard for parents to demonstrate that their children's bond to them confers such a positive benefit that its preservation outweighs the benefit of being adopted, and Caden's case provides an "opportunity" for the Court to decline to "curtail" the statutory scheme any further. (Profs Br., pp. 29, 31.)

---

[2] *In re Autumn H.* (1994) 27 Cal.App.4th 567 and its progeny was discussed at length by both respondents. (Mi's Merits Br., pp. 24, 25, 29, 37; Agency's Answering Brief on the Merits ("Agency's Merits Br."), pp. 8-9, 47-49, 54, 59, 60-62.

Both arguments should be directed to legislatures. It was Congress that enacted the Adoption and Safe Families Act (ASFA)[3]. It is Congress's permanency preferences and timeline mandates at which the professors take aim. (Profs. Br., p. 23.) It was the California Legislature that passed statutes aligned with ASFA, something the Legislature was required to do because, like all fifty states, California accepts federal funding to operate its child welfare system.[4] Amici's quarrel is with legislative bodies, not the Court of Appeal.

A. Adoption would not be detrimental to Caden nor to children like him.

The question whether termination of parental rights is inherently harmful to children, as amici contend, is not an issue in this case. (Profs Br., pp. 15, 23, 29.) If the Court reaches the issue, the amici's contentions about termination of parental rights and adoption being inherently detrimental to children in general and Caden in particular should be rejected as lacking legal authority or social science data. There is no support for the amici's claim that adoption is detrimental to foster children like Caden—children with unique psychological vulnerabilities who have languished for

---

[3] Pub. L. No 105-89 (Nov. 19, 1997) 111 Stat. 2115.

[4] The history and legislative purposes of the federal Adoption and Safe Families Act (ASFA) and parallel provisions of ASFA adopted by the California Legislature are summarized in the brief filed by amici Advokids, *et al.* at pages fifteen through seventeen. Caden adopts and incorporates herein the entirety of that brief. The professors acknowledge that state legislatures enacted state statutory schemes that align with the ASFA as Congress required. (Profs. Br., p. 23 [California's alignment with federal permanency requirements].)

years in unstable foster placements, have experienced the disappointment of one or more unsuccessful returns to a parent, and are judicially determined to be unable to be placed with any identifiable legal guardian or kin. Amici cite no authority for their belief that adoption does "immense" and "lifelong harm" to children in general, or to Caden in particular. (Profs. Br., pp. 15, 23, 29.) Nor do amici cite any legal or scientific authority for their assertion that "permanent severance of a child's legal ties to a parent" is "inherently harmful." (*Id.* at p. 23.)[5]

Adoption skeptics, as one expert has termed advocates for the views expressed by the amicus brief, believe that "children in foster care are too damaged, and many of them are too old, for adoption to work" and advance the theory that, because some foster care adoptions (about ten percent) "disrupt" the better solutions for "this damaged, older population of children lie in renewed emphasis on family preservation, on long-term foster care or guardianship." (Bartholet, *Nobody's Children: Abuse and*

---

[5] The amici argue that children are better served by being placed with kin or placed in "subsidized guardianships" rather than being adopted. (Profs. Br. pp. 28-29, fn. 2.) This policy position cannot be squared with the Legislature's explicit preference for adoption over the less-permanent status of legal guardianship. (Welf. & Inst. C., § 366.26, subd. (b)(1).) And the argument is irrelevant because kinship placement and legal guardianship were not options available to the juvenile court in Caden's case. Caden's maternal and paternal relatives declined placement of Caden. (See, Mi's Merits Br., p. 17, citing 3CT 794.) As for legal guardianship, the trial court specifically found that no one was willing to serve as Caden's legal guardian. (Mi's Merits Br., pp. 17, 20, citing 3CT 794.) Even if a guardian had been identified for Caden, amici are incorrect in asserting that legal guardianship is "as lasting as adoption." (Profs. Br. p. 28, fn. 2.) Adoption confers a life-long legal relationship and inheritance rights that legal guardianship does not.

Neglect, Foster Drift, and the Adoption Alternative (Beacon Press 1999; digital print ed. 2005), pp. 178-179.) The social science research is to the contrary. When a child cannot be safely returned home to a biological parent, the overwhelming consensus of researchers is that the consistent, reliable, supportive and stable and life-long substitute caregiving that adoption affords promotes healing and resiliency over the lifespan. Being adopted after experiencing a series of unstable foster placements maximizes the chances for a positive life course trajectory. (Fisher, *Review: Adoption, Fostering, and the Needs of Looked-After and Adopted Children* (2015) 20 Child Adolescent Mental Health 5.)[6] The "vast majority of children adopted from foster care," a federal study found in 2007, do very well and they and their adoptive parents have close, happy relationships.[7]

Placement instability of the kind Caden experienced throughout his childhood is harmful to children. The research is clear on that point, and on it's correlative: extended stays in foster care (as was ordered for Caden by the juvenile court) are detrimental. They increase the risk that foster children will experience multiple deleterious changes of foster placements, placement changes researchers have universally concluded contribute to significant adverse mental health and physical health impacts. (Webster, Barth & Needell, *Placement Stability for Children in Out-of-Home Care: A Longitudinal Analysis* (2000) 79 Child Welfare 614.)[8]

---

[6] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4321746/

[7] https://aspe.hhs.gov/basic-report/children-adopted-foster-care-child-and-family-characteristics-adoption-motivation-and-well-being

[8]https://www.researchgate.net/publication/12303141_Placement_Stability_for_Children_in_Out-of-Home_Care_A_Longitudinal_Analysis

There is no support (and amici point to none) for an argument that placement of children into extended foster care for the duration of childhood is better public policy than promoting adoption for children like Caden. The Legislature determined otherwise, by enacting the statutory preference for adoption over extended placement in foster care. (Welf. & Inst. C. § 366.26, subd.(c)(1)(B).) This Court implicitly agreed with the Legislature that adoption is preferable to a life in foster care, when it held in 2003 that children have "compelling rights...to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53.)

Research shows that adoption is better for most children than growing up in foster care. An examination of research literature in 2002 found that children adopted from foster care have "higher levels of emotional security, sense of belonging and general well-being" compared with those fostered long-term. (Triseliotis, *Long-Term Foster Care or Adoption? The Evidence Examined* (Jan. 2002) Child & Family Social Work 7(1): 23-33.)[9]

---

[9] Amici ignore data showing that most adoptions are successful, and focus instead on the rare phenomenon of "disrupted adoption." (Profs. Br. p. 22.) No authority is cited for the proposition that "risk factors for adoption disruption are far more prevalent in adoptions from foster care than in private adoptions." (*Ibid.*) Amici employ overheated rhetoric to describe ways a disrupted adoption may affect a child ("immense" trauma resulting in "exponential" impacts on a child's self-esteem), but all this is immaterial. Nothing in the record (or in the appellate opinion) suggests that Caden's adoption will or may "disrupt" if adoption is selected by the juvenile court as Caden's permanent plan upon remand. Indeed, if the amici and respondents persuade this Court that the juvenile court's decision

Amici, who cannot cite any legal or scientific authority for the position that adoption is inherently bad for children and they should remain in foster care, rely vaguely on data from the National Data Archive on Child Abuse and Neglect showing that approximately seven thousand children were waiting to be adopted in 2016-2017 after parental rights were terminated. (Profs Br. pp. 20, 21, fn. 1.) It is unclear for what purpose this data is cited. The brief provides no link or citation leading to the purported data, so its reliability is as questionable as its relevance. (*Id.* at pp. 20, 21, fn. 1.) However, the mere fact that many children await finalization of their adoptions for some period of time after parental rights are terminated, including while parents' appeals are pending, does nothing to advance the amici's anti-adoption position. Despite the waits some children endure before their adoptions can be finalized in court, the majority of children in the United States wait less than one year, on average, and wait times are dropping each year. The Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case-level information on all children in foster care who have been adopted with federal funding assistance.[10] The most recent AFCARS data shows that America's "waiting children" (children legally freed for adoption and waiting for adoptive placements and adoptions to be finalized) wait less than a year on average to be adopted

---

should be implemented, the opposite scenario will result. Caden will not be adopted. There will be no adoption to disrupt, and Caden will eventually "age-out" of foster care without a stable supportive permanent parent, an outcome even the amici find troubling. (*Id.* at p. 22.)

[10] https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/afcars

after termination of parental rights. In 2015, more than 50,000 children were adopted out of the foster care system in the United States. Fifty-six percent waited for 12 months or less for the adoption to be completed after the termination of parental rights occurred.[11] "Children waiting to be adopted have spent an average of 31.2 months in care, a number which has *dropped* every year since 2009."[12] The wait time is hardly a crisis and does not, in itself, justify placing children into less-permanent placement categories such as guardianships and extended stays in foster care.

Certainly it is the case that California's performance falls far short of national norms and federal mandates, and the federal government has repeatedly criticized California for keeping children in unstable foster placements and returning children repeatedly to birth families and then back into foster care—failures of our child welfare system that deprive children of the placement stability they are entitled to under state and federal law. The 2016 federal review of California's child welfare system was sharply critical of the state's poor record of achieving permanency for foster children in accordance with Congressionally-mandated permanency timetables.[13] The federal review concluded that California was "not in substantial conformity" with federal permanency requirements at the end of

---

[11] https://www.acf.hhs.gov/cb/resource/afcars-report-26

[12] https://www.adoptioncouncil.org/blog/2018/01/stats-show-our-nations-foster-care-system-is-in-trouble

[13] https://cdss.ca.gov/inforesources/child-welfare-program-improvement/federal-child-and-family-services-review

2016, approximately the period in Caden's life when the Agency was reviewing Caden's long and troubling record of instability and recommended to the juvenile court that adoption was the best permanent plan for him. [14]

B. Affirmance in this case would not narrow the statutory dependency scheme to make it harder for Caden's parents (or biological parents generally) to defeat adoption.

Amici contend that "a construction of the beneficial parent-child relationship exception that requires—or even permits—a court to consider a parent's progress in their service plan as an element in and of itself will severely restrict the already narrow applicability of the exception, ...it is essential that the beneficial parent-child relationship exception not be further limited in this way, and Amici respectfully request that this Court take the opportunity presented to it by this case to ensure that it is not." (Profs. Br., p. 31.)

This argument is based on a false premise: that the Court of Appeal's opinion "curtailed" a statutory exception to adoption that was already hard for a parent to meet. (Prof Br., p. 29.) Nowhere in the opinion did the Court of Appeal announce a new requirement that parents must comply with court-ordered reunification services in order to meet the beneficial parent-child relationship exception to adoption that is provided in California's statutory dependency scheme. There was no "curtail[ment]" of the statute enunciated. (*Ibid.*) Nowhere did the Court of Appeal state that, on remand, "the relevant

[14] https://cdss.ca.gov/inforesources/child-welfare-program-improvement/federal-child-and-family-services-review at p. 6 and Appendix B, p. B-2

information" to be considered by the juvenile court must be limited to "the parent's failure to progress *in and of itself*." (*Ibid.* (emphasis added).)

The appellate opinion in fact called for the very same kind of hearing contemplated by amici, who seem to agree with the Court of Appeal that trial courts should "unquestionably" be able to keep doing what they have done in the quarter-century since *Autumn H., supra*, was decided: factor into an assessment of whether the statutory exception applies evidence of the parent's ability to continue or develop a "significant, positive, emotional attachment" through visits and other forms of contact with a child who cannot be returned and must (for the child's protection) grow up in a different home. (Profs Br., p. 32.)

Caden agrees with the professors that "the relevant information there is not the parent's failure to progress in and of itself. Rather, the issue is the nature of the parent-child relationship, which may have been affected by the parent's success or failure." (Profs Br., pp. 32-33.) The Court of Appeal's decision to reverse and remand for a new hearing requires nothing more or less than what Caden (and, apparently) the professors seek: a hearing where the juvenile court will consider whether the parent's failure to overcome her serious problems is a factor that can be weighed by the trial court when it decides whether long-term foster care placement is going to meet the child's need for a stable and lasting home.

Caden appealed an order relegating him to a life in foster care instead of permanency. He needs and deserves a permanent home. Permanency will not be afforded to him by requiring that he grow up in foster care as the juvenile court ordered. The permanency Caden needs can be afforded him only if he remains successfully placed continuously in one

stable home with a caregiver who makes a life-long commitment to him. The Court of Appeal correctly found that the lower court had failed to consider uncontroverted evidence showing that (due to Mother's behaviors) Caden is at substantial risk of experiencing placement instability if he cannot be adopted by the caregiver to whom he is bonded. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 110, 113.)

It would appear the amici professors are arguing for the same evidence-based judicial determination that Caden sought by appealing. Caden, now on the verge of entering his adolescent years, needs an expeditious resolution of the question whether Mother is "able to continue or develop a significant, positive, emotional attachment" with Caden or whether, as appears most likely from the history, maintaining the legal relationship between profoundly dysfunctional natural parents and their uniquely fragile child will cause significant emotional detriment by negatively impacting Caden's ability to reach a healthy adulthood continuously placed in one household.[15] (Profs Br., pp. 32-33.) On this

---

[15] Amici ignore the evidence cited by the appellate opinion (and summarized in the minor's merit's brief) regarding Caden's unique vulnerabilities and Mother's nearly 40-year child welfare history—a history that included frequent interference with Caden's foster placements. (See, Mi's Merits Br., pp. 10-11, 13-15, 17-18; *Caden C., supra*, at pp. 92, 100.) The same court of appeal had previously found that Mother had repeatedly fueled Caden's unrealistic hopes and anxieties "that undermined placement after placement." (Mi's Merits Br., p. 18, citing *C.C. v. Superior Court* (Aug. 28, 2017, A151400) [nonpub. Opn.] 2017 WL 3700807 1, 10.) Amici also ignore Caden's natural father, and do not explain why termination of his parental rights would be detrimental to Caden. Neither of the appellants mentioned the father in their summaries of the facts in the merits briefs, but to recap the salient facts: Father assaulted Mother in Caden's presence,

point, Caden and amici are in agreement.

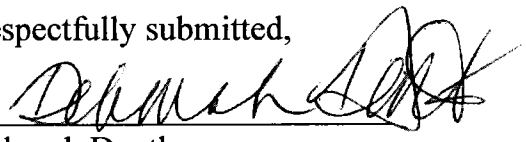
CONCLUSION

The amicus brief espouses policy positions not supported by legal authority or science. The amici's arguments, if they have any merit, should be directed to the legislative branches. The brief misapprehends the Court of Appeal's decision and is irrelevant to Caden's specific circumstances. The brief disserves Caden and children like him, children languishing in California's child welfare system who need timely legal permanency through adoption in accordance with federal and state mandates because they cannot return home to parents unable or unwilling to put their children's needs ahead of their own.

The Court should reject the amici's arguments and find the Court of Appeal correctly held it was error for the juvenile court to order Caden to remain placed in extended foster care where (as uncontroverted evidence established) is at substantial risk of experiencing future placement disruptions caused by Mother's toxic behavior that repeatedly destabilized previous foster placements. (*Caden C.*, *supra*, at p. 110.)

Dated: January 10, 2020

Respectfully submitted,



Deborah Dentler
Attorney for Appellant, Caden C.

---

went to prison, then moved out-of-state; he claimed he wanted to attend the final hearing where the court was to consider terminating parental rights, but did not show up. (See, Mi's Merits Br., p. 10, fn. 3.) Severance of his relationship to Caden is plainly in Caden's best interest and neither amici nor Father have even attempted to argue otherwise.

CERTIFICATION OF FORMAT AND WORD COUNT

(California Rules of Court, Rule 8.500)

I certify that the foregoing Answer to Amicus Curiae Briefs is proportionally spaced, has a typeface of 13 points, and contains twenty-one pages with a total of 3,451 words, including footnotes and excluding tables, according to the word count feature of Microsoft Word, the word processing program used to prepare this document.

Dated: January 10, 2020

DEBORAH DENTLER

PROOF OF SERVICE

***In re Caden C.*, S255839**

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the Law Office of Deborah Dentler in the County of Los Angeles, State of California. The business address is 510 So. Marengo Ave., Pasadena, California 91101. I am over the age of eighteen and not a party to the within action. On January 10, 2020 I served the foregoing document described as

MINOR'S ANSWER TO AMICUS CURIAE BRIEFS

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

[SEE SERVICE LIST, ATTACHED]

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the mail on January 10, 2020 at Pasadena, California.
(By EMAIL) to the authorized e-service addresses shown.

I declare under penalty under the laws of the State of California that the above is true and correct.

By _____
DEBORAH DENTLER

SERVICE LIST

***In re Caden C.*, S255839**

Court of Appeal, First Appellate District
Division Four
350 McAllister St.
San Francisco, CA 94102

Clerk, Juvenile Dependency Appeals
(for Hon. Monica Wiley)
Superior Court of California,
County of San Francisco
400 McAllister St.
San Francisco, CA 94102

Jeremy Sugerman [for San Francisco Agency]
Gordon-Creed, Kelley Holl et al.
sugerman@gkhs.com

Mark Wasacz [Caden's trial counsel]
markwasacz@icloud.com

Nicole Williams [mother C.C.'s appellate counsel]
4790 Irvine Blvd., Suite 105
#263
Irvine, CA 92620
Williams203006@gmail.com
lesliebarrylaw@gmail.com

Michelle Engelhardt Danley [father B.C.'s appellate counsel]
6947 Coal Creek Parkway SE, #175
Newcastle, WA 98059
michelle@danleylawpllc.com

Michelle L. Jarvis [for amici "Professors of Family
mlmesql@aol.com and Clinical Law Professors"]

Amy Mulzer, Professor
N.Y.U. School of Law
amm17@nyu.edu

Brian Okamoto [for amici CA Dependency etc.]
Orange County Public Defender
Brian.okamoto@pubdef.ocgov.com
Cristal.Sanchez@pubdef.ocgov.com

Janet G. Sherwood [for amici Advokids et al.]
jsherwood@advokids.org

Stacie Hendrix (235132) [for amici Children's Law Center et al.]
Leslie Starr Heimov (157500)
Children's Law Center of California
101 Centre Plaza Dr.
Monterey Park, CA 91754
hendrixs@clcla.org

Jennifer Henning [for amici CA State Ass'n of Counties]
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Tahra C. Broderson, Senior Deputy [for amici CA State Ass'n of Counties]
County Counsel of San Diego County
Tahra.broderson@sdcounty.ca.gov

First District Appellate Project
eservice@fdap.org

Sixth District Appellate Project
servesdap@sdap.org